

MEMO# 22368

March 25, 2008

SEC Provides Guidance for Issuers of Municipal Auction Rate Securities

[22368]

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TO: MUNICIPAL SECURITIES ADVISORY COMMITTEE No. 14-08
CLOSED-END INVESTMENT COMPANY COMMITTEE No. 10-08
MONEY MARKET FUNDS ADVISORY COMMITTEE No. 6-08
INST. MONEY MARKET FUNDS ADVISORY COMMITTEE No. 6-08 RE: SEC PROVIDES
GUIDANCE FOR ISSUERS OF MUNICIPAL AUCTION RATE SECURITIES

The Securities and Exchange Commission issued a no-action letter providing guidance to municipal issuers who seek to participate in auctions for their own securities and conduit borrowers who seek to bid in an auction for municipal auction rate securities (“ARS”) that are payable from amounts due from them. [\[1\]](#) The letter also provides guidance to broker-dealers who participate in or facilitate such transactions. The scope of the guidance and relief provided in the letter is limited to municipal securities that are exempt securities under Section 3(a)(2) of the Securities Act of 1933. It does not apply to ARS and separate securities issued by corporate entities, certain conduit borrowers, and auction rate preferred securities issued by closed-end funds.

At the outset, the SEC letter notes that broker-dealers are not prohibited from bidding for their proprietary accounts when properly disclosed. The letter explains that appropriate disclosure – for broker-dealers, issuers, and conduit borrowers – will depend on relevant facts and circumstances. It provides, however, six examples of disclosure regarding the submission, acceptance and processing of a bid that could be appropriate. These include:

- Disclosure a meaningful period (such as two business days) prior to an auction of the

municipal issuer's or conduit borrower's intention to bid in a particular auction, disclosure of the intention of participating dealers to bid on the municipal issuer's or conduit borrower's behalf, and disclosure of the interest rate(s) and amount(s) of municipal ARS that will be bid for.

- If a municipal issuer or conduit borrower intends to bid, directly or through participating dealers, for nearly all (for example, 90% or more) of the outstanding principal amount of an issue of municipal ARS, disclosure of any steps the municipal issuer or conduit borrower intends to take to allow remaining holders of the issue to sell their securities to the municipal issuer or conduit borrower following the auction, such as whether the securities will promptly be purchased at par plus accrued interest, if any, from any and all holders who request such a purchase following the auction.
- Disclosure of appropriately detailed information regarding bidding in the immediately preceding auction, such as the amount of securities for sale in the auction; the number and aggregate dollar amount of bids made; the number of bidders other than the participating dealers, municipal issuer or conduit borrower; the number, interest rate(s) and amount of bids, if any, made by the participating dealers; the number, interest rate(s) and amount(s) of bids, if any, made by the municipal issuer or conduit borrower; the clearing rate; and the high, low, and median bids received.
- Disclosure of any steps to avoid an auction leading to a below market clearing interest rate, such as whether the rate(s) bid would not be less than an appropriate benchmark.
- Prompt disclosure following the auction of appropriately detailed information concerning the bidding that occurred, such as that described above.
- Timely dissemination of the foregoing disclosures to the public, including provision of these disclosures to nationally recognized municipal securities information repositories and the financial press, coupled with posting on publicly accessible portions of the participating dealers' web sites and the municipal issuer's or conduit borrower's web site.

In its letter, the SEC also highlights three issues that it believes issuers, conduit borrowers and broker-dealers should consider, aside from appropriate disclosure, when determining to enter such transactions. First, they should determine whether the proposed transaction is permissible under the contractual arrangements governing the particular municipal ARS. Second, they should determine whether the transaction is consistent with the issuer or conduit borrower's disclosure statements. Third, they should ensure that the transaction is otherwise permissible under federal securities law, state law or the rules of any self-regulatory organization.

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[\[1\]](#) See Letter to Leslie M. Norwood, Managing Director and Associate General Counsel, Securities Industry and Financial Markets Association, and Anne Phillips Ogilby, Partner, Ropes & Gray, from Erik R. Sirri, Director, Division of Trading and Markets, SEC and John W. White, Director, Division of Corporation Finance, SEC, dated March 14, 2008. The letter is

available at <http://www.sec.gov/divisions/corpfin/cf-noaction/2008/mars031408.pdf>.

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