



UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

March 14, 2008

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Anne Phillips Ogilby
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Re: Municipal Auction Rate Securities

Dear Ms. Norwood and Ms. Ogilby:

Thank you for your letters dated February 21, 2008, in which you outline some concerns about the recent turmoil in the market for municipal auction rate securities. The mission of the Commission is to protect investors, maintain fair and orderly securities markets, and facilitate capital formation. This statutory mission extends to the market for auction rate municipal securities.

I. Background

Municipal auction rate securities are municipal bonds with interest rates that are periodically re-set through auctions, typically every 7, 14, 28, or 35 days. Municipal auction rate securities are usually issued with maturities of 30 years, but the maturities can range from five years to perpetuity. Municipal auction-rate securities are auctioned at par so the return on the investment to the investor and the cost of financing to the issuer between auction dates is determined by the interest rate set through the auctions. The interest rate is set through a process in which bids with successively higher rates are accepted until all of the securities in the auction are sold. The final rate at which all of the securities are sold is the "clearing rate" that applies to all of the securities of an offering until the next auction occurs. If there are not enough bids to cover the securities for sale, then the auction "fails," the issuer pays a predetermined rate that is generally well above-market rates, and the current holders continue to hold the securities. Hundreds of auctions for municipal auction-rate securities recently have failed to obtain sufficient bids to establish a clearing rate.

The dislocation in the market for municipal auction rate securities reflects widely publicized recent developments in the credit markets. The Staff of the Divisions of Trading and Markets and Corporation Finance understand, however, that a contributing factor may be the reluctance of participating dealers to purchase in the auctions due to uncertainty regarding the Staff's views on the circumstances under which participating dealers may accept bids from issuers desiring to participate in auctions.

Since May 2006, the Commission has issued cease-and-desist orders (the "Orders"), to which the respondents consented, against 19 broker-dealer firms and auction agents for engaging in a number of practices in the auction rate securities market that violated the securities laws.¹ For example, without adequate disclosure certain broker-dealer respondents bid to prevent auctions from failing. Collectively, these Orders provided for censures, undertakings, and more than \$15 million in penalties.

II. Discussion

In light of the Orders, we are setting out our views on some of the circumstances under which, consistent with the Orders, and consistent with Section 17(a) of the Securities Act of 1933, Sections 10(b) and 14(e) of the Securities Exchange Act of 1934 and Rule 10b-5 thereunder:

- an issuer of municipal auction rate securities² (a "Municipal Issuer") may submit a bid in an auction for such securities;
- a conduit borrower (a "Conduit Borrower") may submit a bid in an auction for municipal auction rate securities that are payable from amounts due from it; and
- a broker, dealer or municipal securities dealer (together, a "participating dealer") or auction agent may accept and process a bid from a Municipal Issuer or Conduit Borrower.

We note at the outset that the Orders explicitly provide that they do not prohibit broker-dealers from bidding for their proprietary accounts when properly disclosed. Appropriate disclosure about the submission, acceptance and processing of a bid could consist of the following:

- (i) 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, the intention of participating dealers to bid on the

¹ SEC Rel. No. 33-8684, 34-53888 (May 31, 2006); 33-8767 (January 9, 2007); and 34-55712 (May 7, 2007).

² This letter addresses only municipal securities that are exempt securities under Section 3(a)(2) of the Securities Act, and should not be relied on with respect to any other securities. Auction rate securities and separate securities that are not exempt securities under Section 3(a)(2) – such as those issued by corporate entities, certain conduit borrowers and auction rate preferred securities issued by closed-end funds – involve a variety of registration and other issues outside the scope of this letter.

Municipal Issuer's or Conduit Borrower's behalf, and the interest rate(s) and amount(s) of municipal auction rate securities that will be bid for.

- (ii) 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 auction rate securities, 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.
- (iii) 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.
- (iv) 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 (for example, the relevant SIFMA municipal swap index).
- (v) Prompt disclosure following the auction of appropriately detailed information concerning the bidding that occurred, such as that described in clause (iii) above.
- (vi) 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.

Appropriate disclosure in any particular case will, of course, depend on all the relevant facts and circumstances. Among other things, the Staff believes that Municipal Issuers, Conduit Borrowers, participating dealers and auction agents should consider the following issues:

- Is the submission, acceptance and processing of a bid by or on behalf of the Municipal Issuer or Conduit Borrower and, if applicable, an offer to purchase subsequent to an auction, permissible under the contractual arrangements governing the particular municipal auction rate securities?

That question is, of course, a matter of the law under which those securities were issued.

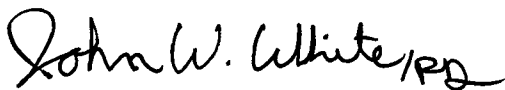
- Is submission of a bid by the Municipal Issuer or Conduit Borrower, or by participating dealers acting on its behalf, and the acceptance or processing of such a bid by participating dealers or auction agents, consistent with the Municipal Issuer's or Conduit Borrower's disclosure documents?
- Is submission of a bid by the Municipal Issuer or Conduit Borrower (or by participating dealers acting on its behalf), or the acceptance or processing of such a bid by participating dealers or auction agents, otherwise permissible under federal securities law, state law or the rules of any self-regulatory organization? We assume that Municipal Issuers, Conduit Borrowers, participating dealers and auction agents will comply with all applicable laws, including any obligations under the Securities Act of 1933 and the Securities Exchange Act of 1934 not covered by this letter.

Consistent with the Orders, and consistent with Section 17(a) of the Securities Act of 1933, Sections 10(b) and 14(e) of the Securities Exchange Act of 1934 and Rule 10b-5 thereunder, the Staff would not recommend enforcement action to the Commission under the circumstances outlined in this letter if Municipal Issuers, Conduit Borrowers, participating dealers and auction agents participate in bids for municipal auction rate securities. This position is based solely on the circumstances described above, and any different circumstances might require a different conclusion. This response expresses the Staff's position on enforcement action only and does not represent a legal conclusion regarding the matters discussed herein, or the applicability of any other federal or state law, or rules of any self-regulatory organization. The Staff intends to continue to monitor conditions in the market for municipal auction rate securities and, if warranted, may modify or withdraw the position taken herein.

Sincerely,

 (v.r.l.c.)

Erik R. Sirri, Director
Division of Trading and Markets



John W. White, Director
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