TMC Bonds

November 13, 2017

Ronald W. Smith
Corporate Secretary
MSRB
1300 I Street NW
Washington, D.C. 20005

Dear Mr. Smith:

TMC Bonds ("TMC") is pleased to present its comments, with respect to "bona fide public offerings", to the MSRB's Request for Comment Regarding Amendments to Primary Offering Practices. TMC Bonds is a registered ATS that solicits markets and facilitates trades, on behalf of its users, in municipals and in other markets, on a fully anonymous basis. TMC is a market center in the municipal market, counterparty to roughly a third of the inter-dealer trades reported to the MSRB.

In the request for comment, the Board openly wonders whether it should establish a definition for "bona fide public offering". Regardless of its decision about a definition, the Board is questioning whether the municipal syndicate process, as it has evolved over the years, makes new issue municipals available to the "public", as broadly defined. Many syndicates administer "retail order periods" (ROPs), during which "true" retail (individual investors) and "institutional" retail (e.g., SMA managers) have the opportunity to submit orders ahead of the institutions and dealers. At the same time, non-syndicate dealers have been able to access bonds during ROPs and sell them at higher prices later on, presumably for ultimate retail distribution. This practice suggests that original offering prices might not be those that clear the market; instead, those prices sometimes leave room for further markup. The Board might consider that the closed nature of the traditional syndicate structure has an unintended consequence; instead of assuring that the "public" has access to new issue municipals, it could be that only members of the syndicate or participants in distribution agreements have such access.

The Treasury, with its "new issue price rules", effective in 2017, partially addressed the above point with "hold the price" rules, definitions of "public" and "underwriter", etc., designed to establish new issue prices as the price at which at least some of the "public" has purchased bonds. Treasury's definition of "public" is broad, however, and there is nothing in the rules that suggest that a non-syndicate dealer (who might resell the bonds) is not a member of the public. The goal of the Treasury regulations was the establishment of issue price; as a result, its regulations are not useful to the Board's effort to establish the definition of "public".

The Board could consider that a "bona fide public offering" may be accomplished by posting new issues on a "market center", independent of syndicate structure, allowing investors (via a dealer) with no access to ROPs to enter orders for new issues, with the result that the "public" (more narrowly defined than by the Treasury) have access to new issue municipal product in a more transparent manner than provided in a syndicate ROP. Dealers submitting such orders (on behalf of their customers) would be held to G-11 requirements as to legitimacy of orders, and distribution agreements would not be required. As in ROPs, underwriters would have discretion in filling orders, but honoring such orders could provide a safe harbor to underwriters concerned with any subsequent questions as to whether access to a particular transaction was widespread. Even better, this practice could give underwriters valuable information that they can use when their prices are challenged, either during the offering period or subsequent to it.

If the Board were to take this approach, underwriters would need assurance that the sales are to parties that fit the concept of "public. Retail investors generally access market centers via dealers, not directly. Dealers submitting orders would provide, via G-11 attestations, that orders are from "bona fide" retail investors. Parties submitting orders (the dealer *and* the customer) would not be able to do so anonymously, in contrast to the common ATS practice of not disclosing counter-parties to each other, at least prior to execution. Access to a broader base than that provided by conventional ROPs could provide assurance to the Board that an offering fits a new definition of "bona fide". While itt is not feasible to give complete open access to the new issue process, giving access to retail customers of essentially *all* broker-dealers would support the Board's goals in this respect.

There would be benefits to allowing order submission on market centers. For example, thousands of market participants login and transact on these ATS platforms every day, as the MSRB recently noted on its Fact Sheet that almost 60% of the market's inter-dealer trades occur on ATS's. Given the conventional wisdom that more technology will be brought to the markets over time, using technology to achieve a good regulatory result should appeal to the Board.

Again, TMC appreciates the opportunity to respond to the MSRB's request for comment on primary market practices.

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