



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

March 14, 2008

Leslie M. Norwood  
Managing Director and  
Associate General Counsel  
SIFMA  
360 Madison Avenue  
New York, NY 10017-7111

Anne Phillips Ogilby  
Ropes & Gray  
One International Place  
Boston, MA 02110-2624

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.<sup>1</sup> 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 securities<sup>2</sup> (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

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

<sup>2</sup> 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.

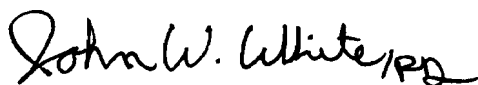
- Is submission of a bid by the Municipal Issuer or Conduit Borrower, or by participating dealers acting on its behalf, and the acceptance or processing of such a bid by participating dealers or auction agents, consistent with the Municipal Issuer's or Conduit Borrower's disclosure documents?
- Is submission 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,

Handwritten signature of Erik R. Sirri in black ink, with the initials "(E.R.S.)" written in parentheses at the end.

Erik R. Sirri, Director  
Division of Trading and Markets

Handwritten signature of John W. White in black ink, with the initials "J.W.W." written at the end.

John W. White, Director  
Division of Corporation Finance



February 21, 2008

Erik R. Sirri  
Director, Division of Trading and Markets  
Securities and Exchange Commission  
100 F Street, NE  
Washington, DC 20549

Re: Auction Rate Securities

Ladies and Gentlemen:

The Securities Industry and Financial Markets Association (“Association”)<sup>1</sup> requests the “no-action” positions described below from the Staff (“Staff”) of the Securities and Exchange Commission (“Commission”), Division of Trading and Markets.

As a result of the recent turmoil in the Auction Rate Securities Market (the “ARS Market”), numerous issuers and conduit borrowers are anxious to participate in the ARS Market to support auctions of their Auction Rate Securities (“ARS”) which are now failing in large numbers. While the Commission evaluates the larger question as to whether there are circumstances under which an issuer or conduit borrower might be able to bid for its own ARS in an auction, the Association requests that the Staff clarify that it is permissible for a broker-dealer to sell to an issuer or conduit borrower ARS of such issuer or conduit borrower out of the broker-dealer’s inventory, subject to the conditions described in the next paragraph.

The purchase by the issuer or conduit borrower would be from the broker-dealer’s inventory. The purchase would not be made in an auction. As currently provided in the Association’s *Best Practices for Broker-Dealers of Auction Rate Securities* there could not be an understanding or agreement on the part of the broker-dealer, submitting a bid in an auction, to effect a purchase on behalf of the issuer or the conduit borrower. The broker-dealer would be purchasing for its own account. Once the ARS are sold, away from the auction, by the broker-dealer to the issuer or conduit borrower, the issuer or conduit borrower would be limited to placing only sell or hold orders in subsequent auctions. This restriction would prevent the issuer or conduit

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<sup>1</sup> The Association, or “SIFMA,” brings together the shared interests of more than 650 securities firms, banks and asset managers. SIFMA’s mission is to promote policies and practices that work to expand and perfect markets, foster the development of new products and services and create efficiencies for member firms, while preserving and enhancing the public’s trust and confidence in the markets and the industry. SIFMA works to represent its members’ interests locally and globally. It has offices in New York, Washington D.C., and London and its associated firm, the Asia Securities Industry and Financial Markets Association, is based in Hong Kong.

borrower from submitting a bid at an artificially low rate and directly influencing subsequent auctions. The issuer or conduit borrower would then have the option of either canceling its ARS or continuing to hold them and paying itself the interest rate until the market has stabilized and the ARS could once again be sold at rates more in line with historic norms.

The advantage of this proposal is that it will provide a significant source of liquidity to the ARS Market and enable broker-dealers to better conduct an orderly ARS Market.

#### Overview of Auction Rate Securities

Auction Rate Securities are securities whose interest or dividend rate is reset periodically. They usually have a long-term maturity (or, in the case of preferred securities, no maturity). They may be issued by municipalities or their authorities in the form of tax-exempt or taxable bonds or by corporations in the form of bonds or preferred stock. Certain municipalities and governmental authorities serve as conduit issuers for not-for-profit and for-profit corporate borrowers which bear the ultimate responsibility for repaying the ARS.

The interest or dividend rate on ARS is reset periodically to the rate produced in an auction that is governed by a set of auction procedures established by the issuer and its auction agent and described in the offering documents or in supplemental disclosure documents. The auction procedures generally provide for investors to submit orders through a broker-dealer. The frequency of the periodic auctions varies, with common reset periods being daily, 7 days, 28 days, 35 days, 49 days and six months. Under some programs, the issuer may change the reset period to a multi-year period. Because the rate ordinarily is reset frequently, the coupon is expected to move in relation to money market rates for instruments with a maturity of the relevant reset period and similar credit quality.

#### Proposal for Guidance to Broker-Dealers

The Association proposes, upon receipt of favorable guidance from the Staff, to notify the members of the Association of the Staff's response and to advise members that they would not be in violation of the Association's *Best Practices for Broker-Dealers of Auction Rate Securities* if broker-dealers sell ARS to an issuer or conduit borrower out of the broker-dealers inventory, subject to the conditions outlined above or in the Staff's response. However, to expedite these procedures, it is requested that, if the Staff reaches a favorable conclusion on this request, any announcement provide that the announcement itself constitutes notice to the market place in order to avoid lost time in communicating the Staff's guidance.

Erik R. Sirri  
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Request for No-Action

The Association respectfully requests that the Staff advise us that it will not recommend any enforcement action under Section 17(a) of the Securities Act of 1933 or Section 10 (and Rule 10b-5) of the Securities Exchange Act of 1934 if broker-dealers sell to an issuer or conduit borrower out of the broker-dealer's inventory on the conditions described above.

Given the current situation in the market, we believe this proposal offers the best hope of fast relief. We respectfully request that it be acted upon as soon as possible.

Respectfully,

A handwritten signature in black ink, appearing to be 'L. M. Norwood', written in a cursive style.

Leslie M. Norwood  
Managing Director and  
Associate General Counsel

Erik R. Sirri  
February 21, 2008  
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cc: ***United States Department of Treasury***

Christopher Cox, Chairman  
Paul S. Atkins, Commissioner  
Kathleen L. Casey, Commissioner  
Robert L.P. Colby, Deputy Director, Division of Trading and Markets  
Martha Mahan Haines, Chief, Office of Municipal Securities

***Securities Industry and Financial Markets Association***

Municipal Executive Committee  
Municipal Policy Committee  
Municipal Legal Advisory Committee



ROPE & GRAY LLP  
ONE INTERNATIONAL PLACE BOSTON, MA 02110-2624 617-951-7000 F 617-951-7050  
BOSTON NEW YORK PALO ALTO SAN FRANCISCO WASHINGTON, DC www.ropesgray.com

February 21, 2008

**BY FEDERAL EXPRESS AND FACSIMILE**

Christopher Cox, Chairman  
Paul S. Atkins, Commissioner  
Kathleen L. Casey, Commissioner  
Securities and Exchange Commission  
100 F Street  
Washington, DC 20549

Re: Request for Help for Non-Profit Borrowers Adversely Affected by Auction Rate Bond  
Debacle

Dear Members of the Commission:

We are writing to ask your help on behalf of the following non-profit clients who are being severely adversely affected by last week's failure in the auction rate bond market:

Beth Israel Deaconess Medical Center (MA)  
Brockton Hospital (MA)  
Children's Hospital Central California (CA)  
Cottage Health System (CA)  
Dana Farber Cancer Institute (MA)  
El Camino Hospital (CA)  
Lucile Packard Children's Hospital (CA)  
Mt. Auburn Hospital (MA)  
New England Baptist Hospital (MA)  
Rady Children's Hospital of San Diego (CA)  
Southcoast Hospitals Group (MA)  
Stanford University (CA)  
Stanford Hospital and Clinics (CA)  
UMass Memorial Medical Center (MA)

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Paul S. Atkins, Commissioner  
Kathleen L. Casey, Commissioner

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**Nature of the Problem:**

These borrowers have billions of dollars of outstanding auction rate bonds in aggregate. Each of these borrowers has experienced or is concerned that it may experience a failed auction with respect to its auction rate bonds. The effect of these failed auctions is to reset the rate on the bonds from the pre-existing short term rates (in general in the 3-4% range, to a maximum rate, which in some cases is as high as 15%). One affiliated hospital group estimated that to compensate for the effect of this reset, it would need to eliminate immediately the salaries of over 250 full time equivalent nurses from its budget.

There has been, effectively, a "run on the bank" in this particular category of bonds because of credit issues affecting several of the leading monoline bond insurers, and these borrowers are now directly adversely affected. The public finance market is attempting to develop longer term solutions, but we seek your assistance in connection with an immediate, short term "fix" for this problem, as described below.

**Proposed Interim Solution:**

The borrowers would like to be able to provide interim, short term self-liquidity to support the auctions and avoid the auction failures that are causing the reset to the very high failed auction rates. Concerns have been raised among various participants in the auction rate market that such bidding might be construed to violate the cease-and-desist order issued by the Commission in May 2006 (Release No. 8684 and Release No. 53888) and two subsequent orders (Release No. 8767 and Release No. 55712) relating to practices in the auction rate market.

More specifically, we request that the Commission issue an interpretive release, exemptive order, or take other action confirming to borrowers, their affiliates, broker-dealers, and auction agents that the Commission's prior administrative actions listed above should not be construed to preclude borrowers from making, and broker-dealers and auction agents from accepting, bids submitted in an auction during the next one year period if the borrowers observe the following precautions against market manipulation:

1. The borrowers publicly disclose their intent to bid in advance of the auction so as to promote market transparency.
2. The borrowers publicly disclose the dollar amount and interest rates specified in such bids by wire release or other appropriate measure after each auction so that the market is aware of the extent of the self-bidding and potential investors can make an informed investment decision in advance of each auction.

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Christopher Cox, Chairman  
Paul S. Atkins, Commissioner  
Kathleen L. Casey, Commissioner

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3. The official statement or other offering document did not expressly state that the borrower would not participate in the auctions.

We also request that the interpretive release confirm that the administrative actions described above should not be construed to preclude the affected parties from agreeing to amendments to ancillary documents such as broker-dealer agreements and auction agent agreements that may be necessary to effect the proposed self-bidding, so long as such bidding conforms with the precautions described above.

**Why This Solution is in the Public Interest:**

This solution is in the public interest and should be supported by the Commission for several reasons:

1. It will reduce the extreme market dislocation currently hurting this sector of the market. This in turn will help diminish pressure on the borrower's own credit ratings, which may be in jeopardy if the higher maximum interest rates continue unabated. This should help decrease the likelihood of a systemic or chain reaction problem affecting the otherwise sound underlying credits.
2. It will enhance the ability of existing holders of these bonds, who are currently "stuck" as holders in failed auctions, to liquidate their positions.
3. It will give the borrowers time in which they can effect an orderly transition to an alternative debt structure (fixed rate, letter of credit backed variable rate demand bonds, etc). Given the volume of anticipated conversions, it will take some time for all conversions to take place on an orderly basis.
4. It will eliminate the need for these borrowers to make potentially wrenching budget cuts that would adversely affect the millions of patients, students, employees, and other individuals served by these major employers. As these institutions are generally major employers in their respective geographic areas, such cuts could accelerate the downturn in the regional and ultimately national economy.
5. This is a privately funded solution to a part of the subprime market debacle. It will cost American taxpayers nothing.

**Conclusion:**

We respectfully request on behalf of the borrowers that the Commission act as soon as possible to issue an interpretive release, exemptive order, or take other action clarifying that the Commission's prior administrative proceedings should not be construed to prohibit borrowers,

ROPES & GRAY LLP

Christopher Cox, Chairman  
Paul S. Atkins, Commissioner  
Kathleen L. Casey, Commissioner


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their affiliates, broker-dealers, auction agents, and other auction rate market participants from making or accepting bids from the borrowers in connection with auction rate securities.

Thank you for your assistance.

Sincerely,

  
Anne Phillips Ogbey