

## SEC Provides Welcome Relief for Tax-Exempt Borrowers Holding Auction Rate Bonds

Responding to a request from Ropes & Gray, the Securities and Exchange Commission on March 14 issued a [letter](#) giving a “green light” for borrowers with auction rate securities to purchase their own bonds in an auction under specific circumstances. This welcome relief is important for all tax-exempt organizations that have outstanding auction rate debt and that are attempting to reduce the cost of that debt.

Some tax-exempt borrowers have been paying in excess of 18 percent on their auction rate bonds in the wake of auction failures that became widespread on February 14, 2008. The SEC’s letter helps clear the way for many of these borrowers to reduce their borrowing cost rapidly. Borrowers with outstanding auction rate bonds who wish to utilize the SEC’s guidance should consider whether they can satisfy the SEC’s suggested procedural guidelines, which could consist of the following elements:

1. Disclose its intent to bid a meaningful period (such as at least two business days) prior to a particular auction, telling the market the interest rate(s) and amount(s) of municipal auction rate securities for which it plans to bid.
2. Disclose the steps the borrower intends to take to allow the remaining holders to sell their securities to the borrower following the auction if the borrower intends to bid for substantially all (for example, 90 percent or more) of the outstanding principal amount of an issue of auction rate securities.
3. Report detailed information regarding bidding in the immediately preceding auction.
4. Disclose steps to avoid the auction resulting in a below-market clearing rate of interest, such as whether the rate(s) bid would not be less than an appropriate benchmark (*e.g.*, SIFMA municipal swap index).
5. Disclose after the auction detailed information concerning the bidding that occurred.
6. Widely disseminate the foregoing disclosures by posting the disclosures to the national repositories and the financial press, coupled with posting on the websites of the borrower and of the participating dealers.

Bidding directly in an auction may have the following potential benefits to borrowers:

- Shortening the time to market to re-acquire the bonds and thus reducing the “bleed” rate;
- Reducing or eliminating the cost and delays associated with seeking and securing interim financing, including often troublesome intercreditor problems;
- Permitting management to focus on the longer term permanent financing process, rather than multiple interim strategies; and
- Avoiding any problematic covenant limits on substantial short term unsecured borrowing that might preclude a rapid interim bridge loan.

The ability to purchase one's own bonds may be subject to limitations in indentures, auction procedures exhibits, auction agent agreements, broker-dealer agreements and other documents governing the auction rate bonds, which should be consulted.

## Contact Information

For further information about the SEC's release, please contact any of the following:

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