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MSRB

Municipal Securities Rulemaking Board

Rule Book

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The rules contained in this Rule Book were in effect as of the above date.
The most up-to-date version of the MSRB's rules is posted on the MSRB's website at MSRB.org.

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MSRB GENERAL RULES

Rule G-1
Separately Identifiable Department or Division of a Bank

(a) *Municipal Securities Dealer Activities*.

(i) A separately identifiable department or division of a bank, as such term is used in section 3(a)(30) of the Act, is that unit of the bank which conducts all of the activities of the bank relating to the conduct of business as a municipal securities dealer ("municipal securities dealer activities"), as such activities are hereinafter defined, *provided that:*

(A) Such unit is under the direct supervision of an officer or officers designated by the board of directors of the bank as responsible for the day-to-day conduct of the bank's municipal securities dealer activities, including the supervision of all bank employees engaged in the performance of such activities; and

(B) There are separately maintained in or separately extractable from such unit's own facilities or the facilities of the bank, all of the records relating to the bank's municipal securities dealer activities, and *further provided that* such records are so maintained or otherwise accessible as to permit independent examination thereof and enforcement of applicable provisions of the Act, the rules and regulations thereunder and the rules of the Board.

(ii) For purposes of this rule, the activities of the bank which shall constitute municipal securities dealer activities are as follows:

(A) underwriting, trading and sales of municipal securities;

(B) financial advisory and consultant services for issuers in connection with the issuance of municipal securities;

(C) processing and clearance activities with respect to municipal securities;

(D) research and investment advice with respect to municipal securities;

(E) any activities other than those specifically enumerated above which involve communication, directly or indirectly, with public investors in municipal securities; and

(F) maintenance of records pertaining to the activities described in paragraphs (A) through (E) above;

provided, however, that the activities enumerated in paragraphs (D) and (E) above shall be limited to such activities as they relate to the activities enumerated in paragraphs (A) and (B) above.

(iii) The fact that directors and senior officers of the bank may from time to time set broad policy guidelines affecting the bank as a whole and which are not directly related to the day-to-day conduct of the bank's municipal securities dealer activities, shall not disqualify the unit hereinbefore described as a separately identifiable department or division of the bank or require that such directors or officers be considered as part of such unit.

(iv) The fact that the bank's municipal securities dealer activities are conducted in more than one geographic organizational or operational unit of the bank shall not preclude a finding that the bank has a separately identifiable department or division for purposes of this rule, *provided, however*, that all such units are identifiable and that the requirements of paragraphs (A) and (B) of section (i) of this rule are met with respect to each such unit. All such geographic, organizational or operational units of the bank shall be considered in the aggregate as the separately identifiable department or division of the bank for purposes of this rule.

(b) *Municipal Advisory Activities.* For purposes of its municipal advisory activities, the term "separately identifiable department or division of a bank" shall have the same meaning as used in 17 CFR 240.15Ba1-1(d)(4).

Rule G-1 Interpretations

See:

Rule G-23 Interpretation — Notice of Application of Board Rules to Financial Advisory Services Rendered to Corporate Obligors on Industrial Development Bonds, May 23, 1983.

Interpretive Letters

Separately identifiable department or division of a bank. This will acknowledge receipt of your letter of November 12, 1975, in which you request, on behalf of the Dealer Bank Association, an interpretative opinion with respect to the rule of the Municipal Securities Rulemaking Board (the "Board") defining the term "separately identifiable department or division of a bank," as used in section 3(a)(30) of the Securities Exchange Act of 1934, as amended (the "Act"). Such rule was originally numbered rule 4 of the Board and became effective on October 15, 1975. The rule is presently numbered rule G-1 of the Board.

In your letter you pose a series of questions concerning rule G-1, as follows:

(1) A bank has an operations department that performs processing and clearance activities, and maintains records, with respect to the bank's underwriting, trading and sales of municipal securities, as well as with respect to certain

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other bank activities. Can this bank have a "separately identifiable department or division" as defined in rule G-1?

(2) In a bank with numerous branches, an employee or officer in a branch will on occasion accept or solicit an order from a customer for municipal securities. Does this preclude a finding that the bank has a "separately identifiable department or division"?

(3) Mr. X is a senior vice president of a bank. He is not a director. Mr. X's only relationship to the bank's municipal securities dealer activities is that he is a member of a management committee within the bank that determines the amount of the bank's funds that will be made available for the bank's municipal securities dealer activities, as well as for other bank activities. The bank has a separately identifiable department or division that otherwise meets the requirements of rule G-1. Is Mr. X a person who must be designated by the board of directors of the bank under rule G-1(a)(1)?

(4) A bank has a corporate trust department that, among other things, serves as paying agent for certain municipal securities and performs clearing functions in municipal securities, in addition to the processing and clearance activities performed in connection with the bank's underwriting, trading and sales of municipal securities. Are the persons in the bank's corporate trust department who engage solely in activities that do not relate to the underwriting, trading and sales of municipal securities by the bank performing municipal securities dealer activities?

With respect to question (1) above, paragraph (d) of rule G-1 contemplates that the municipal securities dealer activities of a bank, as such activities are defined in paragraph (b) of the rule, may be conducted in more than one organizational or operational unit of the bank, for example, underwriting, trading and sales activities in the bond department, and processing and clearance activities in the operations department of the bank. Under the rule, all such units can be aggregated to constitute a separately identifiable department or division within the meaning of section 3(a)(30) of the Act, provided that each such unit is identifiable and under the direct supervision of an officer designated by the board of directors of the bank as responsible for the day-to-day conduct of the bank's municipal securities dealer activities. The officer so designated need not be the same for all such units. For example, the senior officer of the bank's bond department may be designated as responsible for the municipal securities dealer activities conducted by that department, while the senior officer of the bank's operations department may be designated as responsible for the municipal securities dealer activities conducted by that department. In addition, the records of each such unit relating to municipal securities dealer activities must be separately maintained or separately extractable so as to permit independent examination of such records and enforcement of applicable provisions of the Act, the rules and regulations of the Commission thereunder and the rules of the Board. Finally, each such unit comprising the separately identifiable department or division may be engaged in activities other than those relating to municipal securities dealer activities. For example, the bond department may also engage in activities relating to United States government obligations, while the operations department may perform processing and clearance functions for departments of the bank other than the bond department.

With respect to question (2) above, paragraph (d) of rule G-1 also contemplates that the municipal securities dealer activities of a bank may be conducted at more than one geographic location. However, in order for such a bank to have a separately identifiable department or division, the branch employees who accept or solicit orders for municipal securities must, with respect to acceptance or solicitation of such orders, be affiliated with one of the identifiable units of the bank comprising such department or division and must, with respect to acceptance or solicitation of such orders, be responsible to an officer designated by the board of directors of the bank as responsible for the day-to-day conduct of the bank's municipal securities dealer activities. Further, the bank's records relating to the transactions effected by such branch employees must meet the criteria of paragraph (a) of rule G-1 with respect to separate maintenance and accessibility.

With respect to question (3) above, paragraph (c) of rule G-1 recognizes that senior officers of a bank may make determinations affecting bank policy as a whole which have an indirect effect on the municipal securities dealer activities of the bank. For example, determinations with respect to the deployment of the bank's funds may affect the size of the bank's inventory of municipal securities or volume of underwriting. Ordinarily such determinations would not directly relate to the dayto-day conduct of the bank's municipal securities dealer activities and senior officers making such determinations need not be designated by the board of directors of the bank as responsible for the conduct of such activities. However, if the determinations of senior officers have a direct and immediate impact on the day-to-day conduct of the bank's municipal securities dealer activities, whether by reason of the scope of such determinations, the frequency with which such determinations are made, or by reason of other factors, such officers may be considered to be directly engaged in the conduct of the bank's municipal securities dealer activities and required to be designated by the board of directors of the bank as responsible for the day-to-day conduct of such activities.

With respect to question (4) above, the regulatory focus of section 15B(b)(2)(H) of the Act is on the dealer activities of a bank. Accordingly, subparagraph (b)(2) of rule G-1 was intended to relate to such dealer activities, and not to describe other activities of the bank which might involve municipal securities. Employees of a bank's corporate trust department who perform clearance and other functions with respect to municipal securities, but which do not relate to the underwriting, trading and sales activities of the bank, do not perform municipal securities dealer activities within the meaning of rule G-1.

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This opinion is rendered on behalf of the Board, pursuant to authority delegated by the Board. Copies of this opinion are being sent to the Securities and Exchange Commission, the bank regulatory agencies and the National Association of Securities Dealers, Inc. *MSRB interpretation of November 17, 1975*.

Inclusion of IDB-related activities. This responds to your letter of June 14, 1983 concerning your request for an interpretation of Board rule G-1, which defines a "separately identifiable department or division" of a bank. In particular, you request our advice concerning whether certain activities engaged in by your Corporate Finance Division (the "Division") should be considered "municipal securities dealer activities" for purposes of the rule. Your letter and a subsequent telephone conversation set forth the following facts:

The Division acts as financial advisor to certain corporate customers of the Bank. Some of these customers wish to raise money through the issuance of IDBs. In order to assist these corporations in the placement of the IDBs, the Division contacts from one to ten institutional investors and provides them with information regarding the terms of the proposed financing and basic facts about the corporation. If the investor expresses interest in the financing, a confidential memorandum describing the financing, prepared by the corporation with the assistance of the Division, is sent.

During negotiations between the corporation and the investor, the Division may act as a liaison between the two parties in the communication of comments on the financing documents. According to the bank, the Division is not an agent of the corporation and is not authorized to act on behalf of the corporation in accepting any terms or conditions associated with the proposed financing. For its services, the Division usually receives a percentage of the total dollar amount of securities issued, with a minimum contingent on the successful completion of the deal. While the bank has established a separately identifiable division pursuant to rule G-1, the Division is not part of it.

Your inquiry was discussed by the Board at its July meeting. The Board is of the view that the activities of the Division, as described, constitute the sales of municipal securities for purposes of the definition of municipal securities dealer activities in Board rule G-1. Therefore, these activities should be conducted in the bank's registered separately identifiable department by persons qualified under the Board's professional qualifications rules. *MSRB interpretation of July 26, 1983*.

Portfolio credit analyst. This will acknowledge with thanks receipt of your letter dated May 2, 1978 concerning the status of persons occupying the position of portfolio credit analyst at your bank. Your letter, as well as our telephone conversations prior and subsequent to the letter, raise two questions concerning the status of such persons under Board rules. First, are the functions of a portfolio credit analyst subject to the requirements of rule G-1, which defines a separately identifiable dealer department or division of a bank? Second, must a portfolio credit analyst qualify as a municipal securities representative or municipal securities principal under Board rule G-3?

Although we recognize that the primary purpose of the portfolio credit analyst, as set forth in the material you furnished to me, is to review your bank's investment portfolio, a function not subject to Board regulation, to the extent that the analyst provides research advice and analysis in connection with your bank's underwriting, trading or sales activities, the analyst must be included within the municipal securities dealer department for purposes of rule G-1, and is subject to the qualification requirements of rule G-3.

Under Board rule G-1, a separately identifiable department or division of a bank is that unit of the bank which conducts all of the municipal securities dealer activities of the bank. Section (b) of the rule defines municipal securities dealer activities to include research with respect to municipal securities to the extent such research relates to underwriting, trading, sales or financial advisory and consultant services performed by the bank. Thus, we think it clear that for purposes of rule G-1, persons functioning as portfolio credit analysts who render research in connection with underwriting, trading or sales activities at your bank must be included within the separately identifiable department or division of the bank for purposes of rule G-1. This is consistent with the underlying purpose of rule G-1 to assure that all of the functions performed at the bank relating to the business of the bank as a municipal securities dealer are appropriately identified for purposes of supervision, inspection and enforcement.

Under rule G-3(a)(iii)[*], a municipal securities representative is defined as a person associated with a municipal securities broker or municipal securities dealer who performs certain functions similar to those defined as municipal securities dealer activities in rule G-1. The position of portfolio credit analyst as described in your letter and accompanying material appears to fit the definition of municipal securities representative to the extent that persons occupying such position perform research in connection with the bank's underwriting, trading or sales activities. Under rule G-3(e)[†], municipal securities representatives are required to qualify in accordance with Board rules. A similar result would obtain with respect to qualification as a municipal securities principal, if the portfolio credit analyst functions in a supervisory capacity. *MSRB interpretation of June 8, 1978*.

[*] [Currently codified at rule G-3(a)(i).]

[†] [Currently codified at rule G-3(a)(ii).]

Rule G-1 Amendment History (since 2003)

Release No. 34-85699 (April 22, 2019), 84 FR 17897 (April 26, 2019); MSRB Notice 2019-11 (April 10, 2019)

Release No. 34-74384 (February 26, 2015), 80 FR 11706 (March 4, 2015); MSRB Notice 2015-04 (March 2, 2015)

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Rule G-2
Standards of Professional Qualification

No broker, dealer or municipal securities dealer shall effect any transaction in, or induce or attempt to induce the purchase or sale of, any municipal security, and no municipal advisor shall engage in municipal advisory activities, unless such broker, dealer, municipal securities dealer or municipal advisor and every natural person associated with such broker, dealer, municipal securities dealer or municipal advisor is qualified in accordance with the rules of the Board.

Rule G-2 Interpretations

Interpretive Letters

Execution of infrequent unsolicited orders. This is in response to your letter in which you state that your firm is a discount broker that executes orders on an unsolicited basis and that occasionally a customer will approach your firm to sell a municipal security they own or to purchase a specific issue. You ask that the Board give consideration to allowing a firm like yours to act as a broker/dealer for customers on an unsolicited basis without being required to have an associated person qualified as a municipal securities principal.

Rule G-2, on standards of professional qualification, states that no dealer shall effect any transaction in, or induce or attempt to induce the purchase or sale of, any municipal security unless such dealer and every natural person associated with such dealer is qualified in accordance with the rules of the Board. Rule G-3, on professional qualifications, states that a dealer that conducts a general securities business shall have at least one associated person qualified as a municipal securities principal to supervise the dealer's municipal securities activities.

The Board's rules do not provide an exemption from the numerical requirements for municipal securities principals based on the type of transactions in municipal securities in which a dealer engages. There also is no exemption from the Board's rules based on a *de minimus* number of transactions in municipal securities. *MSRB interpretation of October 2, 1998*.

Rule G-2 Amendment History (since 2003)

Release No. 34-74384 (February 26, 2015), 80 FR 11706 (March 4, 2015); MSRB Notice 2015-04 (March 2, 2015)

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Rule G-3
Professional Qualification Requirements

No broker, dealer, municipal securities dealer, municipal advisor or person who is a municipal securities representative, municipal securities sales limited representative, limited representative — investment company and variable contracts products, municipal securities principal, municipal fund securities limited principal, municipal securities sales principal, municipal advisor representative or municipal advisor principal (as hereafter defined) shall be qualified for purposes of Rule G-2 unless such broker, dealer, municipal securities dealer, municipal advisor or person meets the requirements of this rule.

(a) *Municipal Securities Representative, Municipal Securities Sales Limited Representative and Limited Representative — Investment Company and Variable Contracts Products*.

(i) Definitions.

(A) The term "municipal securities representative" means a natural person associated with a broker, dealer or municipal securities dealer, other than a person whose functions are solely clerical or ministerial, whose activities include one or more of the following:

(1) underwriting, trading or sales of municipal securities;

(2) financial advisory or consultant services for issuers in connection with the issuance of municipal securities;

(3) research or investment advice with respect to municipal securities; or

(4) any other activities which involve communication, directly or indirectly, with public investors in municipal securities;

provided, however, that the activities enumerated in subparagraphs (3) and (4) above shall be limited to such activities as they relate to the activities enumerated in subparagraphs (1) and (2) above.

(B) The term "municipal securities sales limited representative" means a municipal securities representative whose activities with respect to municipal securities are limited exclusively to sales to and purchases from customers of municipal securities.

(C) The term "limited representative — investment company and variable contracts products" means a municipal securities representative whose activities with respect to municipal securities are limited exclusively to sales to and purchases from customers of municipal fund securities.

(ii) Qualification Requirements.

(A) Except as otherwise provided in this paragraph (a)(ii), any person seeking to become qualified as a municipal securities representative, in accordance with the requirements under this subparagraph, shall take and pass the Securities Industry Essentials Examination ("SIE") and the Municipal Securities Representative Qualification Examination prior to being qualified as a municipal securities representative.

(B) The requirements of subparagraph (a)(ii)(A) of this rule shall not apply to:

(1) any person who is duly qualified as a general securities representative by reason of having taken and passed the General Securities Registered Representative Examination before November 7, 2011, and

(2) a municipal securities sales limited representative who is duly qualified as a general securities representative by reason of having taken and passed the General Securities Registered Representative Examination.

(3) any person who is duly qualified as a limited representative — investment company and variable contracts products by reason of having taken and passed the Limited Representative — Investment Company and Variable Contracts Products Examination.

(C) Any person who ceases to be associated with a broker, dealer or municipal securities dealer (whether as a municipal securities representative or otherwise) for two or more years at any time after having qualified as a municipal securities representative in accordance with subparagraph (a)(ii)(A) or (B) shall again meet the requirements of subparagraph (a)(ii)(A) or (B) of this rule prior to being qualified as a municipal securities representative, unless such person has maintained his or her qualification status in accordance with Rule G-3(i)(i)(C) or as otherwise permitted by the Board.

(b) *Municipal Securities Principal; Municipal Fund Securities Limited Principal*.

(i) Definition. The term "municipal securities principal" means a natural person (other than a municipal securities sales principal), associated with a broker, dealer or municipal securities dealer who is directly engaged in the management, direction or supervision of one or more of the following activities:

(A) underwriting, trading or sales of municipal securities;

(B) financial advisory or consultant services for issuers in connection with the issuance of municipal securities;

(C) processing, clearance, and, in the case of brokers, dealers and municipal securities dealers other than bank dealers, safekeeping of municipal securities;

(D) research or investment advice with respect to municipal securities;

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(E) any other activities which involve communication, directly or indirectly, with public investors in municipal securities;

(F) maintenance of records with respect to the activities described in subparagraphs (A) through (E); or

(G) training of municipal securities principals or municipal securities representatives.

provided, however, that the activities enumerated in subparagraphs (D) and (E) above shall be limited to such activities as they relate to the activities enumerated in subparagraphs (A) or (B) above.

(ii) Qualification Requirements.

(A) Every municipal securities principal shall take and pass the Municipal Securities Principal Qualification Examination prior to being qualified as a municipal securities principal. The passing grade shall be determined by the Board.

(B) Any person seeking to become qualified as a municipal securities principal in accordance with subparagraph (b)(ii)(A) of this rule must, prior to being qualified as a municipal securities principal:

(1) have been duly qualified as either a municipal securities representative or a general securities representative; provided, however, that any person who qualifies as a municipal securities representative solely by reason of subparagraph (a)(ii)(C) shall not be qualified to take the Municipal Securities Principal Qualification Examination on or after October 1, 2002, and any person who qualifies as a municipal securities representative solely by reason of clause (a)(ii)(B)(2) shall not be qualified to take the Municipal Securities Principal Qualification Examination on or after November 7, 2011; or

(2) have taken and passed either the Municipal Securities Representative Qualification or, in the case of persons described in clause (a)(ii)(B)(1), the General Securities Registered Representative Examination.

(C) Any person who ceases to act as a municipal securities principal for two or more years at any time after having qualified as such shall meet the requirements of subparagraphs (b)(ii)(A) and (B) of this rule prior to being qualified as a municipal securities principal, unless such person has maintained his or her qualification status in accordance with Rule G-3(i)(i)(C) or as otherwise permitted by the Board.

(D) For the first 120 calendar days after becoming a municipal securities principal, the requirements of subparagraph (b)(ii)(A) shall not apply to any person who is qualified as a municipal securities representative or general securities representative, provided that such qualified representative has at least 18 months of experience functioning as a representative within the five-year period immediately preceding the principal designation, or as a general securities principal *provided, however,* that each such person shall take and pass the Municipal Securities Principal Qualification Examination within that period.

(iii) Numerical Requirements. Every broker, dealer and municipal securities dealer shall have at least two municipal securities principals, except:

(A) every broker, dealer or municipal securities dealer which is a member of a registered securities association and which conducts a general securities business, or

(B) every broker, dealer or municipal securities dealer having fewer than eleven persons associated with it in whatever capacity on a full-time or full-time equivalent basis who are engaged in the performance of its municipal securities activities, or, in the case of a bank dealer, in the performance of its municipal securities dealer activities, shall have at least one municipal securities principal.

(iv) Municipal Fund Securities Limited Principal.

(A) Definition. The term "municipal fund securities limited principal" means a natural person (other than a municipal securities principal or municipal securities sales principal), associated with a broker, dealer or municipal securities dealer that has filed with the Board in compliance with rule A-12, who is directly engaged in the functions of a municipal securities principal as set forth in paragraph (b)(i), but solely as such activities relate to transactions in municipal fund securities.

(B) Qualification Requirements.

(1) Every municipal fund securities limited principal shall take and pass the Municipal Fund Securities Limited Principal Qualification Examination prior to being qualified as a municipal fund securities limited principal. The passing grade shall be determined by the Board.

(2) Any person seeking to become qualified as a municipal fund securities limited principal in accordance with clause (b)(iv)(B)(1) of this rule must, as a condition to being qualified as a municipal fund securities limited principal:

(a) have been duly qualified as either a general securities principal or an investment company/variable contracts limited principal; or

(b) have taken and passed either the General Securities Principal Qualification Examination or the Investment Company and Annuity Principal Qualification Examination.

(3) Any person who ceases to act as a municipal fund securities limited principal for two or more years at any time after having qualified as such shall

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meet the requirements of clauses (b)(iv)(B)(1) and (2) of this rule prior to being qualified as a municipal fund securities limited principal, unless such person has maintained his or her qualification status in accordance with Rule G-3(i)(i)(C) or as otherwise permitted by the Board.

(4) For the first 120 calendar days after becoming a municipal fund securities limited principal, the requirements of clauses (b)(iv)(B)(1) and (2) shall not apply to any person who is qualified as a general securities representative or investment company/variable contracts limited representative, provided that such qualified representative has at least 18 months of experience functioning as a representative within the five-year period immediately preceding the principal designation, or as a general securities principal or investment company/variable contracts limited principal, *provided, however,* that each such person shall meet the requirements of clauses (b)(iv)(B)(1) and (2) within that period.

(C) Actions as Municipal Securities Principal. Any municipal fund securities limited principal may undertake all actions required or permitted under any Board rule to be taken by a municipal securities principal, but solely with respect to activities related to municipal fund securities, and shall be subject to all provisions of Board rules applicable to municipal securities principals except to the extent inconsistent with this paragraph (b)(iv).

(D) Numerical Requirements. Any broker, dealer or municipal securities dealer whose municipal securities activities are limited exclusively to municipal fund securities may count any municipal fund securities limited principal toward the numerical requirement for municipal securities principal set forth in paragraph (b)(iii).

(c) *Municipal Securities Sales Principal.*

(i) Definition. The term "municipal securities sales principal" means a natural person (other than a municipal securities principal) associated with a broker, dealer or municipal securities dealer (other than a bank dealer) whose supervisory activities with respect to municipal securities are limited exclusively to supervising sales to and purchases from customers of municipal securities.

(ii) Qualification Requirements.

(A) Every municipal securities sales principal shall take and pass the General Securities Sales Supervisor Qualification Examination prior to acting in such capacity. The passing grade shall be determined by the Board.

(B) Any person seeking to become qualified as a municipal securities sales principal in accordance with subparagraph (c)(ii)(A) of this rule, must, prior to being qualified as a municipal securities sales principal:

(1) have been duly qualified as either a municipal securities representative or a general securities representative; or

(2) have taken and passed either the Municipal Securities Representative Qualification Examination or the General Securities Registered Representative Examination.

(C) Any person who ceases to act as a municipal securities sales principal for two or more years at any time after having qualified as such shall meet the requirements of subparagraphs (c)(ii)(A) and (B) of this rule prior to being qualified as a municipal securities sales principal, unless such person has maintained his or her qualification status in accordance with Rule G-3(i)(i)(C) or as otherwise permitted by the Board.

(D) For the first 120 calendar days after becoming a municipal securities sales principal, the requirements of subparagraph (c)(ii)(A) shall not apply to any person who is qualified as a municipal securities representative or general securities representative, provided that such qualified representative has at least 18 months of experience functioning as a representative within the five-year period immediately preceding the principal designation, or as a general securities principal, *provided, however,* that each such person shall take and pass the General Securities Sales Supervisory Qualification Examination within that period.

(d) *Municipal Advisor Representative.*

(i) Definition.

(A) The term "municipal advisor representative" means a natural person associated with a municipal advisor who engages in municipal advisory activities on the municipal advisor's behalf, other than a person performing only clerical, administrative, support or similar functions.

(ii) Qualification Requirements.

(A) Every municipal advisor representative shall take and pass the Municipal Advisor Representative Qualification Examination prior to being qualified as a municipal advisor representative. The passing grade shall be determined by the Board.

(B) Any person who ceases to be associated with or engaged in municipal advisory activities on behalf of a municipal advisor for two or more years at any time after having qualified as a municipal advisor representative in accordance with subparagraph (d)(ii)(A) (a "lapse in qualification") must take and pass the Municipal Advisor Representative Qualification Examination prior to being qualified as a municipal advisor representative, unless exempt pursuant to paragraph (h)(ii) of this rule.

(e) *Municipal Advisor Principal.*

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(i) Definition. The term "municipal advisor principal" means a natural person associated with a municipal advisor who is directly engaged in the management, direction or supervision of the municipal advisory activities of the municipal advisor and its associated persons.

(ii) Qualification Requirements.

(A) To become qualified as a municipal advisor principal a person must:

(1) As a pre-requisite take and pass the Municipal Advisor Representative Qualification Examination, unless exempt from taking the Municipal Advisor Representative Qualification Examination pursuant to paragraph (h)(ii) of this rule; and

(2) Take and pass the Municipal Advisor Principal Qualification Examination.

The passing score shall be determined by the Board.

(B) Any person qualified as a municipal advisor principal who ceases to be associated with or engaged in municipal advisory activities on behalf of a municipal advisor for two or more years at any time after having qualified as a municipal advisor principal in accordance with subparagraph (e)(ii)(A) must take and pass the Municipal Advisor Representative Qualification Examination, unless exempt from taking the Municipal Advisor Representative Qualification Examination pursuant to paragraph (h)(ii) of this rule, and must take and pass the Municipal Advisor Principal Qualification Examination prior to being qualified as a municipal advisor principal.

(C) For the first 120 calendar days after becoming a municipal advisor principal, the requirements of subparagraph (e)(ii)(A)(2) shall not apply to any person who is qualified as a municipal advisor representative, *provided, however*, that such person shall take and pass the Municipal Advisor Principal Qualification Examination within that period.

(iii) Numerical Requirements. Every municipal advisor shall have at least one municipal advisor principal.

(f) *Confidentiality of Qualification Examinations*. No associated person of a broker, dealer, municipal securities dealer or municipal advisor shall:

(i) in the course of taking a qualification examination required by this rule receive or give assistance of any nature;

(ii) disclose to any person questions, or answers to any questions, on any qualification examination required by this rule;

(iii) engage in any activity inconsistent with the confidential nature of any qualification examination required by this rule, or with its purpose as a test of the qualification of persons taking such examinations; or

(iv) knowingly sign a false certification concerning any such qualification examination.

(g) *Retaking of Qualification Examinations*. Any associated person of a broker, dealer, municipal securities dealer or municipal advisor who fails to pass a qualification examination prescribed by the Board shall be permitted to take the examination again after a period of 30 days has elapsed from the date of the prior examination, except that any person who fails to pass an examination three or more times in succession within a two-year period shall be prohibited from again taking the examination until a period of 180 calendar days has elapsed from the date of such person's last attempt to pass the examination.

(h) *Waiver of and Exemption from Qualification Requirements*.

(i) The requirements of paragraphs (a)(ii), (b)(ii), (b)(iv)(B) and (c)(ii) may be waived in extraordinary cases for any associated person of a broker, dealer or municipal securities dealer who demonstrates extensive experience in a field closely related to the municipal securities activities of such broker, dealer or municipal securities dealer or as permitted pursuant to Supplementary Material .04 of this rule. Such waiver may be granted by

(A) a registered securities association with respect to a person associated with a member of such association, or

(B) the appropriate regulatory agency as defined in section 3(a)(34) of the Act with respect to a person associated with any other broker, dealer or municipal securities dealer.

(ii) An individual shall be exempt from the requirements of subparagraph (d)(ii)(B) if all of the following conditions are met:

(A) The individual was previously qualified as a municipal advisor representative by taking and passing the Municipal Advisor Representative Qualification Examination.

(B) The individual maintained the municipal advisor representative qualification for a period of at least three consecutive years while associated with and engaging in municipal advisory activities on behalf of one or more municipal advisors.

(C) Such qualification lapsed pursuant to subparagraph (d)(ii)(B) of this rule and no more than one year has passed since such lapse in qualification.

(D) The individual has not engaged in activities requiring qualification as a municipal advisor representative, as prescribed under subparagraph (d)(i)(A) of this rule, during the individual's lapse in qualification.

(E) The individual is not subject to any events or proceedings that resulted in a regulatory action disclosure report, civil judicial action disclosure report, customer complaint/arbitration/civil litigation disclosure report, criminal action disclosure report, or termination disclo-

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sure report on the Commission's Form MA-I: Information Regarding Natural Persons Who Engage in Municipal Advisory Activities ("Commission Form MA-I").

(F) The individual has not previously obtained the exemption described in paragraph (h)(ii) of this rule.

(G) Prior to engaging in municipal advisory activities on behalf of the municipal advisor with which the individual is to associate (or reassociate), as evidenced by the filing of Commission Form MA-I, the municipal advisor provided, and the individual completed, continuing education covering, at minimum, the subject areas of:

(1) principles of fair dealing;

(2) the applicable regulatory obligations under Rules G-20, on gifts and gratuities; G-37, on political contributions and prohibitions on municipal securities business and municipal advisory business, G-40, on advertising by municipal advisors, and G-8, on books and records to be made and maintained;

(3) for non-solicitor municipal advisors, the core conduct standards under Rule G-42, including the fiduciary duty obligations owed to municipal entity clients, or for solicitor municipal advisors, the core obligations of Rule G-46; and

(4) any changes to applicable securities laws and regulations, including applicable MSRB rules that were adopted since the individual was last associated with a municipal advisor.

(H) Prior to engaging in municipal advisory activities on behalf of the municipal advisor with which the individual is to associate (or reassociate), as evidenced by the filing of Commission Form MA-I, the municipal advisor provided, and the individual reviewed, the compliance policies and procedures of the municipal advisor.

(I) Upon meeting all of the conditions of subparagraphs (h)(ii)(A)-(H) above, the municipal advisor filed a completed Commission Form MA-I. Within 30 days of acceptance, by the Commission, of a completed Commission Form MA-I identifying such individual as engaging in municipal advisory activities on behalf of the municipal advisor, the municipal advisor provided notification electronically to the MSRB (the "affirmation notification") that the individual met the criteria to be exempt from the requirements of subparagraph (d)(ii)(B). The affirmation notification required must be on firm letterhead and include the following information:

(1) Municipal Advisor's MSRB ID number;

(2) Individual's First and Last name;

(3) Individual's FINRA Central Registration Depository (CRD) number, if applicable;

(4) Start date of the individual's association (or reassociation) with the municipal advisor;

(5) Affirmative statement that the municipal advisor has undertaken a diligent effort to reasonably conclude that the individual met the applicable requirements of this paragraph (h)(ii);

(6) Affirmative statement attesting that the municipal advisor provided both the requisite continuing education and the municipal advisor's compliance policies and procedures to the individual for review along with the date the individual completed the continuing education and review of the municipal advisor's compliance policies and procedures provided by the municipal advisor;

(7) Date the municipal advisor filed Commission Form MA-I (and the date of acceptance) with respect to the individual as required under subparagraph (h)(ii)(I) and;

(8) Signature by the individual seeking to obtain the criteria-based exemption attesting that the conditions of subparagraphs (h)(ii)(A) through (h)(ii)(H) have been met and a signature by a municipal advisor principal, on behalf of the municipal advisor, attesting that, based on the exercise of reasonable diligence, the conditions of subparagraphs (h)(ii)(A) through (h)(ii)(I) have been met.

The municipal advisor must provide the affirmation notification required under this paragraph in accordance with Supplementary Material .02 of this rule.

(i) *Continuing Education Requirements*.

(i) Continuing Education Requirements for Brokers, Dealers, and Municipal Securities Dealers — This paragraph prescribes requirements regarding the continuing education of specified registered persons subsequent to their initial qualification and registration with a registered securities association with respect to a person associated with a member of such association, or the appropriate regulatory agency as defined in Section 3(a)(34) of the Act with respect to a person associated with any other broker, dealer or municipal securities dealer ("the appropriate enforcement authority"). The requirements shall consist of a Regulatory Element and a Firm Element as set forth below. This subsection of this rule also sets forth a continuing education program through which specified persons may maintain their qualification in a representative or principal registration category following the termination of that registration category.

(A) Regulatory Element.

(1) Requirements — No broker, dealer or municipal securities dealer shall permit any registered person to continue to, and no registered person shall continue to, perform duties as a registered person, unless such person has complied with the requirements of subparagraph (i)(i)(A) hereof.

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Each covered person qualified in a representative or principal category immediately preceding January 1, 2023, shall complete the Regulatory Element for each applicable registration category annually by December 31, 2023, and by December 31 of every year thereafter in which the person remains registered, or as otherwise prescribed by the Board.

Each covered person registering with the appropriate enforcement authority in a representative or principal registration category for the first time on or after January 1, 2023 shall complete the Regulatory Element for each applicable registration category annually by December 31 of the subsequent calendar year following the calendar year in which the person becomes registered and by December 31 of every year thereafter in which the person remains registered, or as otherwise prescribed by the Board. Nothing in this subparagraph (A)(1) shall prohibit a broker, dealer, or municipal securities dealer from requiring its covered persons to complete their Regulatory Element for each applicable registration category at any time during the calendar year. The content of the Regulatory Element shall be determined by the Board and shall be appropriate to each representative or principal registration category. A covered person shall complete Regulatory Element content for each applicable registration category that such person holds. The content of the Regulatory Element for a covered person designated as eligible for a waiver pursuant to Supplementary Material .04 shall be determined based on the person's most recent registration(s), and the Regulatory Element shall be completed based on the same annual cycle had the person remained registered.

(2) Failure to Complete — Unless otherwise determined by the Board, as provided in this paragraph (i)(i)(A)(2), any covered person, other than a covered person designated as eligible for a waiver pursuant to Supplementary Material .04, who has not completed the Regulatory Element within the prescribed calendar year in which the Regulatory Element is due will have such person's registration(s) deemed inactive until such time as such person completes all required Regulatory Element, including any Regulatory Element that becomes due while such person's registration(s) is deemed inactive.

Any covered person, other than a covered person designated as eligible for a waiver pursuant to Supplementary Material .04, whose registration(s) has been deemed inactive under this clause (i)(i)(A)(2) shall cease all activities as a registered person and is prohibited from performing any duties and functioning in any capacity requiring registration. Such covered person may not receive any compensation for transactions in municipal securities, however, such covered person may receive trails, residual commissions or like compensation resulting from such transactions completed before the covered person's inactive status, unless the dealer with which the covered person is associated has a policy prohibiting such trails, residual commissions or like compensation.

A registration that remains inactive for a period of two consecutive years will be administratively terminated by the appropriate enforcement authority. A person whose registration(s) is so terminated or who otherwise fails to complete the required Regulatory Element for two consecutive years may reactivate the registration(s) only by reapplying for registration and meeting the qualification requirements of the applicable provisions of this rule. The two-year period under this clause (i)(i)(A)(2) is calculated from the date a person's registration(s) is deemed inactive. If a covered person designated as eligible for a waiver pursuant to Supplementary Material .04 fails to complete the Regulatory Element within the prescribed time frames, the person shall no longer be eligible for such a waiver. The appropriate enforcement authority may, upon written application, with supporting documentation, and a showing of good cause, allow for additional time for a covered person to satisfy the Regulatory Element requirements.

(3) Disciplinary Actions — A covered person, other than a covered person designated as eligible for a waiver pursuant to Supplementary Material .04, may be required to complete assigned continuing education as prescribed by the appropriate enforcement authority in the event such person:

(a) becomes subject to any statutory disqualification as defined in Section 3(a)(39) of the Act;

(b) becomes subject to suspension or to the imposition of a fine of $5,000 or more for violation of any provision of any securities law or regulation, or any agreement with or rule or standard of conduct of any securities governmental agency, securities self-regulatory organization, the appropriate enforcement authority or as imposed by any such regulatory or self-regulatory organization in connection with a disciplinary proceeding; or

(c) is ordered as a sanction in a disciplinary action to complete continuing education by any securities governmental agency, the appropriate enforcement authority or securities self-regulatory organization.

Such covered person must complete any continuing education required under subparagraph (A)(3) of this rule within 120 days of the covered person becoming

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subject to the statutory disqualification, in the case of clause (a) above, or the completion of the sanction or the disciplinary action becomes final, in the case of clause (b) or clause (c) above.

(4) Re-registration — Any covered person who re-registers with the appropriate enforcement authority in a representative or principal registration category shall complete the Regulatory Element content for each applicable registration category annually by December 31 of the subsequent calendar year following the calendar year in which the person becomes re-registered and by December 31 of every year thereafter in which the person remains registered, or as otherwise prescribed by the appropriate enforcement authority, provided that such person has already completed the Regulatory Element content for that registration category for the calendar year in which such person is re-registering; such person is re-registering by having passed an examination for that registration category; or such person is re-registering by having obtained an unconditional examination waiver for that registration category.

Any covered person who is re-registering with the appropriate enforcement authority in a representative or principal registration category without having completed any Regulatory Element content for that registration category for the calendar year in which such person is re-registering or without having passed an examination for that registration category or without having obtained an unconditional examination waiver for that registration category shall complete the Regulatory Element content for that registration category annually by December 31 of the calendar year in which such person re-registers and by December 31 of every year thereafter in which such person remains registered, or as otherwise prescribed by the Board.

If a covered person has not completed any Regulatory Element content for a registration category in the prior calendar year(s) to re-registering, such persons would need to either: (i) complete the requisite Regulatory Element content; (ii) pass an examination for that registration category; or (iii) obtain an unconditional examination waiver for that registration category, as applicable, for purposes of the appropriate enforcement authority to consider approving the registration request.

Nothing in this paragraph (A)(4) shall prohibit a broker, dealer or municipal securities dealer from requiring its covered persons, other than a covered person designated as eligible for a waiver pursuant to Supplementary Material .04, to complete their Regulatory Element for their registration categories at any time during the calendar year.

(5) Definition of Covered Person — For purposes of this subparagraph, the term "covered person" means any person registered or registering with the appropriate enforcement authority as a municipal securities representative, municipal securities principal, municipal fund securities limited principal or municipal securities sales principal, including any person who is permissively registered as such pursuant to Supplementary Material .03, and any person who is designated as eligible for a waiver pursuant to Supplementary Material .04.

(6) Delivery of the Regulatory Element — The Regulatory Element shall be administered through Web-based delivery or such other technological manner and format as specified by the Board.

(B) Firm Element.

(1) Persons Subject to the Firm Element — The requirements of this subparagraph shall apply to any person registered or registering with a broker, dealer or municipal securities dealer, including any person who is permissively registered as a representative or principal pursuant to Supplementary Material .03 of this rule and who qualified as a representative or principal in accordance with this rule or as a general securities principal and who regularly engages in or supervises municipal securities activities.

(2) Standards for the Firm Element.

(a) Each broker, dealer and municipal securities dealer must maintain a continuing and current education program for its registered persons to enhance their securities knowledge, skill, and professionalism. At a minimum, each broker, dealer and municipal securities dealer shall at least annually evaluate and prioritize its training needs, develop a written training plan, and conduct training annually on municipal securities for registered persons. The plan must take into consideration the broker, dealer and municipal securities dealer's size, organizational structure, and scope of business activities, as well as regulatory developments and the performance of registered persons in the Regulatory Element.

(b) Minimum Standards for Training Programs — Programs used to implement a broker, dealer or municipal securities dealer's training plan must be appropriate for the business of the broker, dealer or municipal securities dealer and, at a minimum must cover training topics related to the role, activities or responsibilities of the registered person and to professional responsibility.

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(c) Administration of Continuing Education Program — A broker, dealer or municipal securities dealer must administer its continuing education programs under this subparagraph (B) in accordance with its annual evaluation and written plan and must maintain records documenting the content of the programs and completion of the programs by registered persons.

(d) Participation in Other Required Training — A broker, dealer or municipal securities dealer may consider a registered person's participation in the broker, dealer or municipal securities dealer's anti-money laundering compliance training as required by a registered securities association of which the broker, dealer or municipal securities dealer is a member or the appropriate regulatory agency; and a registered person's participation in such broker, dealer or municipal securities dealer's annual compliance training as required by a registered securities association towards satisfying the registered person's continuing education requirement under this subparagraph (B).

(3) Participation in the Firm Element — Registered persons included in a broker, dealer or municipal securities dealer's plan under this subparagraph (B) must take all appropriate and reasonable steps to participate in continuing education programs as required by the broker, dealer or municipal securities dealer.

(4) Specific Training Requirements—The appropriate enforcement authority may require a broker, dealer or municipal securities dealer, individually or as part of a larger group, to provide specific training to its registered persons in such areas the appropriate enforcement authority deems appropriate. Such a requirement may stipulate the class of registered persons for which it is applicable, the time period in which the requirement must be satisfied and, where appropriate, the actual training content.

(C) Continuing Education Program for Persons Maintaining Their Qualification Following the Termination of a Registration Category.

A person who terminates any of his or her representative or principal registration categories with the appropriate enforcement authority may maintain qualification for any of the terminated registration categories for a period of five years following the termination of the registration category, subject to the following conditions:

(1) The person was registered in the registration category for at least one year immediately preceding the termination of the registration category and the person was not subject to a statutory disqualification as defined in Section 3(a)(39) of the Exchange Act during the registration period;

(2) Prior to entering, or during the course of, the CE Program, the person does not have a continuing education deficiency with respect to his or her Regulatory Element for two consecutive years as provided in subclause (i)(i)(A)(2) of this rule under this subparagraph (C);

(3) The person does not become subject to a statutory disqualification as defined in Section 3(a)(39) of the Exchange Act following the termination of his or her registration category or while participating in the program under this subparagraph (C); and

(4) The person completes annually by December 31 of the calendar year in the manner specified, all prescribed continuing education during such person's participation in the program under this subparagraph (C).

A person must elect to participate in the continuing education program under this subparagraph (C) within two years from the termination of such person's registration category, provided that if the person commences participation at a later date, the person shall complete within two years from the termination of such person's registration category any continuing education that was due under the program between the date of termination of such person's registration category and the later date such person commences participation in the program.

(ii) Continuing Education Requirements for Municipal Advisors

(A) Persons Subject to Continuing Education Requirements — The requirements of this paragraph shall apply to any person qualified as either a municipal advisor representative or a municipal advisor principal with a municipal advisor in accordance with this rule (collectively, "covered persons").

(B) Standards for a Continuing Education Program

(1) Each municipal advisor must maintain a continuing and current education program for its covered persons to enhance their municipal advisory knowledge, skill, and professionalism. At a minimum, each municipal advisor shall at least annually evaluate and prioritize its training needs, develop a written training plan, and conduct training annually on municipal advisory activities for covered persons.

The plan must take into consideration the municipal advisor's size, organizational structure, and scope of municipal advisory activities, as well as regulatory developments.

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(2) Minimum Standards for Training Programs — Programs used to implement a municipal advisor's training plan must be appropriate for the business of the municipal advisor and, at a minimum must cover the following matters concerning municipal advisory activities, services and strategies offered by the municipal advisor:

(a) Fiduciary duty obligations owed to municipal entity clients; and

(b) Applicable regulatory requirements.

(3) Administration of Continuing Education Program — A municipal advisor must administer its continuing education program in accordance with its annual evaluation and written training plan and must maintain records documenting the content of the programs and completion of the programs by covered persons.

(C) Participation in the Continuing Education Program — Covered persons included in a municipal advisor's plan must participate in continuing education programs as required by the municipal advisor.

(D) Specific Training Requirements — A registered securities association with respect to a municipal advisor that is a member of such association, or the Commission, or the Commission's designee, with respect to any other municipal advisor ("the appropriate examining authority"), may require a municipal advisor, individually or as part of a larger group, to provide specific training to its covered persons in such areas the appropriate examining authority deems appropriate. Such a requirement may stipulate the class of covered persons for which it is applicable, the time period in which the requirement must be satisfied and, where appropriate, the actual training content.

(E) Each municipal advisor that is also subject to the Standards for the Firm Element as required by Rule G-3(i)(i)(B)(2) is permitted to satisfy the requirements of Rules G-3(i)(i)(B) and G-3(i)(ii), if the municipal advisor:

(1) Develops a single written training plan, if such training plan is consistent with the separate evaluations of the training needs as required under subparagraphs (i)(i)(B)(2)(a) and (i)(ii)(B)(1); and

(2) Conducts annual training for both covered persons and covered registered persons, if such training is consistent with the written training plan(s) and such training meets the minimum standards for training programs required by subparagraphs (i)(i)(B)(2)(b) and (i)(ii)(B)(2).

Supplementary Material

.01 Solicitations of Sales to and Purchases from Customers. In each instance in which the rule references sales of municipal securities or sales to and purchases from customers, such activities may also include the solicitation of sales to and/or purchases from customers.

.02 Affirmation Notification. The affirmation notification required to be provided to the MSRB pursuant to subparagraph (h)(ii)(I) of this rule must be sent to Compliance@msrb.org.

.03 Permissive Qualification. A broker, dealer or municipal securities dealer shall be permitted to make application for, or maintain the qualification of, a municipal securities representative, municipal securities principal or municipal fund securities limited principal for any associated person, including persons whose functions are solely clerical or ministerial or engaged in the investment banking or securities business of a foreign securities affiliate or subsidiary. Any person maintaining a permissive qualification shall be considered a "registered person" for purposes of MSRB rules to the extent relevant to their activities.

.04 Waiver from Requalification by Examination for Individuals Working for a Financial Services Industry Affiliate of a Broker, Dealer or Municipal Securities Dealer. The requirement to requalify by examination for a lapsed qualification pursuant to subparagraphs (a)(ii)(C), (b)(ii)(C) and (b)(iv)(B)(3) of this rule shall be waived upon request to the proper registered securities association or the appropriate regulatory agency consistent with paragraph (h) of this rule for an individual if the following conditions are satisfied:

(1) An individual must have been registered with a broker, dealer or municipal securities dealer for a total of five years within the most recent 10-year period, including the most recent year with the broker, dealer or municipal securities dealer having designated the individual as eligible for a waiver by having met the requirement of this subparagraph;

(2) The waiver request is made within seven years of the individual's initial designation;

(3) The individual continuously worked for a financial services industry affiliate(s) of a broker, dealer or municipal securities dealer since terminating association with a broker, dealer or municipal securities dealer;

(4) The individual has completed the Regulatory Element portion of continuing education consistent with the requirements in Rule G-3(i)(i)(A) based on the person's most recent registration status and on the same Regulatory Element cycle had the person remained registered; and

(5) The individual does not have any pending or adverse regulatory matters or terminations and has not otherwise been subject to a statutory disqualification as defined in Section 3(a)(39) of the Exchange Act while the individual was working for a financial services industry affiliate(s) of a broker, dealer or municipal securities dealer.

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As used under this Supplementary Material, the term "financial services industry affiliate of a broker, dealer or municipal securities dealer" means any legal entity that controls, is controlled by or is under common control with a broker, dealer or municipal securities dealer and is regulated by the SEC, CFTC, state securities authorities, federal or state banking authorities, state insurance authorities, or substantially equivalent foreign regulatory authorities.

On or after March 15, 2022, individuals are no longer able to be designated as an FSA-eligible individual for the waiver program set forth under this Supplementary Material .04 of this rule.

.05 Eligibility of Other Persons to Participate in the Continuing Education Program. A person qualified in a representative or principal registration category with the MSRB within two years immediately preceding March 15, 2022, shall be eligible to participate in the continuing education program under subparagraph (i)(i)(C), provided that such person satisfies the conditions set forth in subparagraph (i)(i)(C)(1) through (5) of this rule. In addition, a person who previously obtained a waiver from requalification by examination by participating in the Financial Services Affiliate Waiver Program under Supplementary Material .04 immediately preceding March 15, 2022, shall be eligible to participate in the continuing education program under subparagraph (i)(i)(C), provided that such person satisfies the conditions set forth in subparagraph (i)(i)(C)(3), and (C)(5) through (C)(6) of this rule.

Persons eligible under this Supplementary Material .05 shall make their election to participate in the continuing education program under subparagraph (i)(i)(C) of this rule. If such persons elect to participate in the continuing education program, such persons must comply with the requirements of the registered securities association, with respect to the timeframe for making such an election.

.06 Re-Eligibility to Participate in the Continuing Education Program. A person who previously participated in the continuing education program pursuant to subparagraph (i)(i)(C) of this rule may become re-eligible to participate in the program if such person re-registers with a member of a registered securities association or appropriate regulatory agency and subsequently satisfies the conditions set forth in subparagraph (i)(i)(C)(1) and (C)(3) of this rule. In such an event, the person may elect to again participate in the program subject to satisfying the remaining conditions set forth in subparagraph (i)(i)(C) of this rule.

.07 All Registered Representatives and Principals Must Satisfy the Regulatory Element of Continuing Education. If a registered person has a continuing education deficiency with respect to that registration as provided under Rule G-3(i)(i)(A), such persons shall not be permitted to be qualified in another registration category under Rule G-3 until such persons have satisfied the deficiency.

.08 Extension of Time Period to Complete Continuing Education Under the CE Maintenance Program. If a person is unable to complete the prescribed continuing education, as provided under Rule G-3(i)(i)(C) by December 31 of the required calendar year, such person may apply for an extension of time by submitting a written application with supporting documentation to the registered securities association.

.09 Status of Qualified Persons Serving in the Armed Forces of the United States.

(a) *Inactive Status for Current Associated Persons*

(1) An associated person of a broker, dealer, municipal securities dealer or municipal advisor who volunteers for or is called into active U.S. military service shall be deemed inactive for purposes of qualification for the period that such person is on active U.S. military service. If applicable, such person will not be required to requalify by examination upon such person's return to employment with a broker, dealer, municipal securities dealer or municipal advisor so long as such person returns to employment with a broker, dealer, municipal securities dealer or municipal advisor within 30 calendar days upon the conclusion of such person's active U.S. military service.

(2) An associated person, as identified in subparagraph (a)(1) of this Supplementary Material, shall remain eligible to receive transaction-related compensation, including continuing commissions. The employing broker, dealer, municipal securities dealer or municipal advisor of such associated person may also allow another associated person of the broker, dealer, municipal securities dealer or municipal advisor to enter into an arrangement to take over and service the clients' accounts of such associated person and to share transaction-related compensation based upon the business generated by such accounts with the associated person who is placed on inactive status pursuant to subparagraph (a) of this Supplementary Material.

(3) An associated person who is placed on inactive status pursuant to subparagraph (a) of this Supplementary Material shall not be required to complete continuing education program requirements as set forth in Rule G-3(i) during the pendency of the person's inactive status.

(4) Notice must be provided electronically to the MSRB within 30 calendar days, upon the conclusion of active U.S. military service and such person's return to employment with such broker, dealer, municipal securities dealer or municipal advisor with which the person was associated with during the period of active U.S. military service or employment with another broker, dealer, municipal securities dealer or municipal advisor. The notice required shall be on firm letterhead and include the following information:

(a) Firm's MSRB ID number;

(b) Individual's name;

(c) Individual's CRD number, if applicable;

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(d) Start and end dates of the individual's active U.S. military service; and

(e) Branch of service.

(b) *Inactive Status for Sole Proprietors*

(1) A broker, dealer, municipal securities dealer or municipal advisor that is a sole proprietor who temporarily closes his or her business because of volunteering for or being called into active U.S. military service shall be placed on inactive status after proper notification to the registered securities association with which the broker, dealer, municipal securities dealer or municipal advisor is registered or the Board with respect to any other broker, dealer, municipal securities dealer or municipal advisor. Such sole proprietor will not be required to requalify by examination upon such person's return to his or her municipal securities or municipal advisory business.

(2) A sole proprietor placed on inactive status as set forth in this paragraph (b) shall not be required to pay fees assessed under Rule A-11 and Rule A-12, as applicable, that accrue during such period of inactive status.

(3) Notice must be provided electronically to the MSRB within 30 calendar days, upon the conclusion of active U.S. military service and such person's return from active U.S. military service to his or her municipal securities or municipal advisory business. The notice required shall be on firm letterhead and include the following information:

(a) Firm's MSRB ID number;

(b) Individual's name;

(c) Individual's CRD number, if applicable;

(d) Start and end dates of the individual's active U.S. military service; and

(e) Branch of service.

Absent notice to the MSRB, former associated persons of a broker, dealer, municipal securities dealer or municipal advisor will not have such person's lapse in qualification requirements deferred and such person's period of time while on active U.S. military service will not be tolled.

(c) *Status for Former Associated Persons*

(1) If a person who was formerly associated with a broker, dealer, municipal securities dealer or municipal advisor volunteers for or is called into active U.S. military service at any time within the two-year period after the date such person ceases to be associated with a broker, dealer, municipal securities dealer or municipal advisor, the lapse of such person's representative and principal-level qualifications, pursuant to subparagraphs (a)(ii)(C), (b)(ii)(C) and (b)(iv)(B)(3) of this rule, shall be deferred (i.e., tolling of the two-year expiration period).

(2) The deferral of the lapse in qualification requirements for associated persons of a broker, dealer, municipal securities dealer or municipal advisor would commence on the date the person begins active U.S. military service, provided that notice is provided to the MSRB.

(3) Notice must be provided electronically to the MSRB within 90 calendar days upon such person's completion of active U.S. military service and include the following information:

(a) Individual's name;

(b) Individual's CRD number, if applicable;

(c) Start and end dates of the individual's active U.S. military service; and

(d) Branch of service.

Absent notice to the MSRB, former associated persons of a dealer or municipal advisor will not have such person's lapse in qualification requirements deferred and such person's period of time while on active U.S. military service will not be tolled.

Rule G-3 Interpretations

Interpretive Notice on Professional Qualifications

January 27, 1977

On December 23, 1976, the Municipal Securities Rulemaking Board (the "Board") issued an interpretive notice addressing certain questions received by the Board with respect to its professional qualifications rules (rules G-2 through G-7). Since that time, the Board has received additional questions concerning rule G-3 which are discussed in this interpretive notice.

1. Requirements for Financial and Operations Principals.

Under the rule G-3(b)(ii)[*], every municipal securities broker and municipal securities dealer other than a bank dealer is required to have at least one qualified financial and operations principal. As defined in the rule, this person is responsible for the overall supervision and preparation of financial reports to the Securities and Exchange Commission and self-regulatory organizations and for the processing, clearance, safekeeping and recordkeeping activities of the firm. If more than one person shares these overall supervisory responsibilities, each such person must be qualified as a financial and operations principal.

The question has been asked whether a financial and operations principal whose duties relate solely to financial and operational matters and not, for example, to underwriting, trading, or sales functions must qualify also as a municipal securities principal by passing the Board's municipal securities principal examination when it is prescribed. The Board does

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not intend to impose such a requirement on persons whose functions are limited to those set forth in the definition of a financial and operations principal.

The question has also been asked whether a person performing only the functions of a financial and operations principal on and after December 1, 1975 would be "grandfathered" as a municipal securities principal for purposes of taking the Board's municipal securities principal examination when prescribed if such person begins supervising underwriting, trading or sales functions. Activities relating to financial and operational matters are substantially different from those relating to underwriting, trading and sales or other categories of activities supervised by municipal securities principals. The Board does not intend, therefore, that financial and operations principals be "grandfathered" for purposes of the Board's examination requirements for municipal securities principals, or that a financial and operations principal would be qualified to engage in such other supervisory activities solely by reason of having met the Board's requirements for financial and operations principals.

The Board has also been asked whether senior officers or general partners of a firm, who may bear ultimate legal responsibility for the financial and operational activities of the firm, must be qualified as financial and operations principals under the Board's rules. Although the answer depends on the particular factual situation, officers or partners not directly involved in the financial and operations affairs of a firm generally would not be required to qualify as financial and operations principals.

2. Activities Requiring Qualification as a Municipal Securities Principal.

The question has been asked whether supervisory personnel in the processing and clearance areas must qualify as the municipal securities principals under rule G-3. In a securities firm, the financial and operations principal ordinarily would be the only person supervising operations-related activities who will be required to pass an examination. With respect to bank dealer supervisory personnel, to whom the financial and operations principal classification does not apply, qualification in a principal capacity in the operations area will not be required unless the person in question exercises policy-making authority. Thus, an individual may supervise a bank dealer's processing activities without qualifying as a municipal securities principal, regardless of the number of persons supervised by such individual, if policy-making functions and discretionary authority are delegated to a higher level.

Somewhat different considerations apply in determining which persons are required to be qualified as municipal securities principals in connection with underwriting, trading, sales or other activities referred to in the Board's rules as municipal securities principal activities. In these areas, the qualification requirements apply to persons having supervisory responsibility with respect to the day-to-day conduct of the activities in question, even though such persons may not have a policy-making role. The Board's conclusions in this regard are based on the fact that in these other areas the supervisory person is responsible for the activities of personnel who communicate directly with issuers, traders, and investors.

3. Activities Requiring Qualification as a Municipal Securities Representative.

In certain cases, communications from customers may be received at a time when a duly qualified municipal securities representative or municipal securities principal is unavailable. Similarly, there may be situations in which it becomes important to advise a customer promptly of transactions effected and orders confirmed, even though the individual responsible for the account may not be able to communicate with the customer at that time.

In many cases under the rules of other self-regulatory organizations, communications of this nature, which in essence reflect a mechanical function, may be received and made by properly supervised competent individuals whose clerical and ministerial functions would not otherwise subject them to qualification requirements. The Board believes the principle underlying this practice and the application of other self-regulatory organizations' qualification rules is sound.

Accordingly, the Board interprets rule G-3 to permit the recording and transmission in customary channels of orders, the reading of approved quotations, and the giving of reports of transactions by non-qualified clerical personnel when the duly qualified municipal securities representative or municipal securities principal who normally handles the account or customer is unavailable. The foregoing interpretation is applicable only to clerical personnel who are: (a) deemed capable and competent by a municipal securities principal or general securities principal to engage in such activities; (b) specifically authorized in writing to perform such functions on an occasional basis as necessary or directed to perform such functions in specific instances, in either case by a duly qualified municipal securities principal or general securities principal; (c) familiar with the normal type and size of transaction effected with or for the customer or the account; and (d) closely supervised by duly qualified municipal personnel.

All orders for municipal securities received by clerical personnel under the foregoing interpretation must be reviewed and approved by duly qualified municipal personnel familiar with the customer or account prior to being accepted or effected by the municipal securities broker or municipal securities dealer. Solicitation of orders by clerical personnel is not permitted. Confirmations of transactions may be given and quotations read by clerical personnel only when approved by duly qualified municipal personnel. Individuals subject to the 90-day apprenticeship requirements of rule G-3(i)[†] are not clerical personnel and are not authorized or permitted to engage in such activities with members of the public.

Also, the question has been raised whether a bank's branch office personnel, who are not otherwise required to be qualified under rule G-3, will be required to take and pass the quali-

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fication examination for municipal securities representatives in order to respond to a depositor's inquiry concerning possible investments in municipal securities. Insofar as the branch office personnel merely refer the depositor to qualified bank dealer personnel for discussion concerning the merits of an investment in municipal securities and execution of the depositor's order, the branch office personnel would not be required to be qualified under the Board's professional qualifications requirements. However, if branch office personnel seek to advise the depositor concerning the merits of a possible investment, or otherwise perform more than a purely ministerial function, qualification under the Board's rules would be required.

[*] [Currently codified at rule G-3(d)(iii).]

[†] [Currently codified at rule G-3(a)(iii).]

Debriefing of Examination Candidates

June 2, 1981

Board rule G-3 sets forth standards of qualifications for municipal securities brokers and municipal securities dealers and their associated persons, including examination requirements for municipal securities principals, municipal securities financial and operations principals, municipal securities sales principals, and municipal securities representatives.

In order to assure that its examinations constitute valid tests of the qualifications of persons who take them, the Board has instituted various procedures, in the question writing as well as the administration phases, which are designed to preserve the confidentiality of the examinations. In addition, on one occasion the Board found it necessary to take legal action, alleging copyright violations, against a securities training school which had used in its training material questions and answers that appeared to have been taken from questions contained in Board qualification examinations.

The Board wishes to point out that the practice of "debriefing" persons who have taken a municipal securities qualifications examination (*i.e.* requesting or encouraging such persons to reveal the contents of the examinations) may not only give rise to an infringement of the Board's copyright but would, if engaged in by members of the municipal securities industry, constitute a violation of the Board's rules. In this regard, rule G-3(g)[*] provides that no person associated with a municipal securities broker or municipal securities dealer shall (i) disclose to any person any question on any municipal securities qualification examination or the answers to any such questions, (ii) engage in any activity inconsistent with the confidential nature of any such qualification examination or its purpose as a test of the qualifications of persons taking such examination, or (iii) knowingly sign a false certification concerning any such qualification examination.

[*] [Currently codified at rule G-3(e).]

Use of Nonqualified Individuals to Solicit New Account Business

December 21, 1984

The Board has received inquiries whether individuals who solicit new account business on behalf of municipal securities dealers must be qualified under the Board's rules. In particular, it has come to the Board's attention that nonqualified individuals are making "cold calls" to individuals and, by reading from prepared scripts, introduce the services offered by a municipal securities dealer, prequalify potential customers, or suggest the purchase of specific securities currently being offered by a municipal securities dealer.

Board rule G-3(a) defines municipal securities representative activities to include any activity which involves communication with public investors regarding the sale of municipal securities but exempts activities that are solely clerical or ministerial. In the past, the Board has permitted nonqualified individuals, under the clerical or ministerial exemption, to contact existing customers in very limited circumstances. In an interpretive notice on rule G-3, the Board permitted certain ministerial and clerical functions to be performed by nonqualified individuals when municipal securities representatives and principals who normally handle the customers' accounts are unavailable, subject to strict supervisory requirements. These functions are: the recording and transmission in customary channels of orders, the reading of approved quotations, and the giving of reports of transactions. In this notice, the Board added that solicitation of orders by clerical personnel is not permitted. The Board is of the view that individuals who solicit new account business are not engaging in clerical or ministerial activities but rather are communicating with public investors regarding the sale of municipal securities and thus are engaging in municipal securities representative activities which require such individuals to be qualified as representatives under the Board's rules.

Finally, under rule G-3(i)[*], a person serving an apprenticeship period prior to qualification as a municipal securities representative may not communicate with public investors regarding the sale of municipal securities. The Board sees no reason to allow nonqualified individuals to contact public investors, except for the limited functions noted above, when persons training to become qualified municipal securities representatives may not do so.

[*] [Currently codified at rule G-3(a)(iii).]

Notice Concerning Municipal Securities Sales Activities in Branch Affiliate and Correspondent Banks Which Are Municipal Securities Dealers

March 11, 1983

The Board has received several inquiries from banks concerning the activities which may be performed in connection with the marketing of municipal securities through branch, affili-

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ate, and correspondent banks. Rule G-2 of the Board provides that no municipal securities dealer may effect transactions in, or induce or attempt to induce the purchase or sale of any municipal security, unless the dealer in question and every individual associated with it is qualified in accordance with the rules of the Board. Board rule G-3 establishes qualification requirements for municipal securities representatives and other municipal securities professionals. Board rule G-27 requires supervision of municipal securities activities by qualified municipal securities principals.

Activities of Branch, Affiliate and Correspondent Bank Personnel

Bank employees who are not qualified municipal securities representatives may perform certain limited functions in connection with the marketing of municipal securities. Namely, such persons may:

advise customers that municipal securities investment services are available in the bank;

make available to customers material concerning municipal securities investments, such as market letters and listings of issues handled by the bank's dealer department, which has been approved for distribution by the dealer department's municipal securities principal; and,

establish contact between the customer and the dealer department.

Further sales-related activity would be construed as inducing or attempting to induce the purchase or sales of a municipal security, and may only be engaged in by duly-qualified municipal securities representatives.

The Board wishes to emphasize that each bank dealer should take steps to assure that its branch, correspondent, and affiliate bank personnel understand and observe the restrictions outlined above concerning referrals of municipal securities customers to the bank's dealer department.

Placement and Supervision of Municipal Securities Representatives

Bank dealers have also directed inquiries to the federal bank regulators and to the Board concerning whether qualified municipal securities representatives in affiliates or branches of a bank dealer may respond to customer inquiries concerning municipal securities and take customer orders for municipal securities if no municipal securities principal is located in such affiliates or branches. Board rule G-27 places on each broker, dealer, and municipal securities dealer the obligation to supervise the municipal securities activities of its associated persons and the conduct of its municipal securities business. The rule requires that municipal securities dealers designate a municipal securities principal as responsible for the supervision and review of municipal securities transactions and other activities. There is no requirement that a municipal securities principal be located in each office or branch of a municipal securities dealer, provided that adequate supervision of all municipal securities activities can be assured. For purposes of the Board rules, each employee of a branch or affiliate of a bank dealer who communicates with public customers on investment opportunities in municipal securities and who takes customers' orders for such securities would be considered an "associated person" to whom the Board's qualification and supervision requirements would apply.

See also:

Rule G-23 Interpretation — Notice on Application of Board Rules to Financial Advisory Services Rendered to Corporate Obligors on Industrial Development Bonds, May 23, 1983

Interpretive Letters

Municipal securities principal. This will acknowledge receipt of your letter of June 10, 1981. In your letter you indicate that the dealer department of [the bank] has recently been inspected by examiners from the Office of the Comptroller of the Currency, and that, during the course of such inspection, the examiners indicated that they believed certain persons should be qualified as municipal securities principals. You indicate your disagreement with the examiners' conclusions, and request an opinion from the Board concerning the need to qualify these personnel.

The two cases you describe are as follows:

(1) Mr. "X", as head of the Operations Division of the bank's Financial Markets Group, is in charge of the operational support services for the bank's securities activities, including the Tax-Exempt Operations Department. The Tax-Exempt Operations Department is under the immediate supervision of yourself. For purposes of bank organizational structure you report to Mr. "X"; however, you also report to the head of the Tax-Exempt Securities Division in connection with "supporting the Tax-Exempt business operation." You are qualified as a municipal securities principal, as is the head of the Tax-Exempt Securities Division; Mr. "X", however, is not. The national bank examiners have expressed the view that he should be.

(2) Two "senior traders" in the Municipal Dealer Department act under the supervision of the department head with regard to the trading and positioning of municipal securities. In connection with these activities they "direct more junior traders" in their municipal securities activities. These persons are not qualified as municipal securities principals; the national bank examiners contend that they should be.

As a general matter we would hesitate to disagree with the opinion expressed by an on-site examiner in a matter of this sort. The examiner is, of course, in direct contact with the matter in question, and has access to the full details of the situation, rather than an abstraction or summary of the par-

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ticulars. Accordingly, we are unable to express a view that the examiner's conclusions are incorrect in the circumstances you describe.

With respect to the specific situations presented in your letter, it is certainly not impossible to establish a reporting and supervisory structure such that a person who is in charge of the division which includes the operational aspects of a bank's municipal securities dealer department need not be qualified as a municipal securities principal. As is indicated in a Board interpretive notice concerning qualifications matters, qualification as a municipal securities principal is required of a person who supervises a bank dealer's processing and clearance activities with respect to municipal securities only to the extent that such person has policy-making authority over such activities. If such person does not have policy-making authority, or if such person's authority extends to the establishment of general guidelines or an overall framework for activities, with the specific function of making policy within that framework reserved for other persons, then such person would not be deemed to be a municipal securities principal.

Further, it is a not uncommon arrangement to have the policy-making authority with respect to the municipal dealer operations activities of a bank allocated between the immediate supervisor of the municipal operations function and a principal in the dealer department itself. In these circumstances the operation supervisor reports to the principal in connection with the municipal dealer activities, and also reports to other, non-qualified persons in connection with bank organizational requirements.

Therefore, the arrangement which you describe would not necessarily require that Mr. "X" be qualified as a municipal securities principal. Whether he should, in fact, be qualified as a municipal securities principal depends, of course, on the extent to which he does exercise policy-making authority over the municipal dealer operations functions; this is a determination that, we suggest, is most appropriately made by yourselves and the national bank examiners.

In the second situation you describe it appears to us clear that the "senior traders" are functioning as municipal securities principals and should be qualified as such. As you may know, the Board's rule defines the term "municipal securities principal" to include persons "who [are] directly engaged in the . . . direction or supervision of. . . underwriting, trading or sales of municipal securities. . ." Your description of the activities of these "senior traders" indicates that they "direct" other persons in trading activities. This certainly supports the conclusion that they are functioning as municipal securities principals. *MSRB interpretation of June 24, 1981.*

Municipal securities principal: numerical requirements. This is in response to your letter of September 28, 1982 concerning the numerical requirements for municipal securities principals in Board rule G-3 … Rule G-3(b)(i)(B)[*] requires that

> every municipal securities broker or municipal securities dealer having fewer than eleven persons associated with it in whatever capacity on a full-time or full-time equivalent basis who are engaged in the performance of its municipal securities activities, or, in the case of a bank dealer, in the performance of its municipal securities dealer activities, shall have at least one municipal securities principal.

You inquired as to the meaning of "full-time equivalent basis" in the reference language. This phrase is intended to require the inclusion of individuals who should be considered as full-time employees, but because of some distinctive employment arrangement do not fit the norm of a full-time employee. For example, a municipal securities representative who usually works out of his home which is in a remote location might not fit the firm's norm for "full-time employment" but should nevertheless be counted for purposes of the rule as an associated person.

You also inquired as to whether a bank dealer is required to have only one municipal securities principal even if it has fifteen full-time persons working in the municipal securities business. The provisions of the rule apply equally to securities firms and to bank dealers. Therefore, a bank dealer with eleven or more associated persons "engaged in the performance of its municipal securities dealer activities" is required to have at least two municipal securities principals.

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[*] [Currently codified at rule G-3(b)(iii)(B).]

Municipal securities principal: MSRB registered dealer. This is in response to your March 21, 1994 letter to [name deleted] of the National Association of Securities Dealers, a copy of which you sent to my attention. The issue in question is whether [name deleted] (the "Dealer") is required at this time to have someone qualified as a municipal securities principal.

You note in your letter that the activities that the Dealer will be engaging in currently do not involve municipal securities, therefore, you concluded that the Dealer is not subject to the Board's requirement that the dealer have at least one municipal securities principal.

Board rules apply only to brokers, dealers and municipal securities dealers who have registered as such with the Securities and Exchange Commission ("SEC") and who engage in municipal securities activities. A dealer "registers" with the Board, pursuant to rule A-12, on the Board's initial fee, by submitting a letter with certain information and paying the … initial fee along with the … annual fee pursuant to rule A-14, on the Board's annual fee. Rule A-12 requires that the information and fee be submitted to the Board prior to the dealer engaging in municipal securities activities. Once a dealer is "registered" with the Board all Board rules are applicable to that dealer including the requirement in rule G-3, on professional qualifications, that every dealer shall have at least one municipal securities principal.[1]

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Regardless of whether the Dealer is currently engaging in municipal securities activities, the dealer has "registered" with the Board and is subject to the Board's requirement that the dealer have a municipal securities principal.[2] If the Dealer determines that it does not wish to remain "registered" with the Board upon its conclusion that it is not engaging in municipal securities activities, rule A-15(a), on notification to Board of termination, requires that the Dealer submit a letter to the Board with a statement of its termination. In the future, should the dealer remain a registered broker or dealer with the SEC and make a determination that it will be engaging in municipal securities activities, the dealer will have to "register" with the Board pursuant to the requirements of rules A-12 and A-14 prior to engaging in municipal securities activities and, of course, meet the Board's numerical requirements concerning municipal securities principals. *MSRB interpretation of March 30, 1994*.

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[1] Rule G-3(b)(iii) requires that a dealer have two municipal securities principals if the dealer performs only municipal securities activities and it employs eleven or more persons associated with it in whatever capacity on a full-time or full-time equivalent basis who are engaged in the performance of its municipal securities activities.

[2] I have enclosed a copy of the December 14, 1993 letter you submitted to the Board pursuant to rule A-12.

Municipal securities principal: bank operations. I am writing in response to your letter of April 26, 1983 concerning the results of a recent examination of your bank's municipal securities dealer department by examiners from the Office of the Comptroller of the Currency. In your letter you indicate that the examiners expressed the view that the bank's present organizational structure did not comport with the definition of a "separately identifiable department or division of a bank" set forth in Board rule G-1. You note that the examiners' basis for this conclusion was their belief that the municipal securities processing functions of the bank were not under the supervision of a qualified municipal securities principal. You state that you disagree with the examiners' conclusions, and you request that the Board indicate whether, in its view, the organizational structure through which the bank presently carries on its municipal securities activities is satisfactory for purposes of compliance with Board rules.

As a general matter we would hesitate to disagree with the opinion expressed by on-site examiners in a matter of this sort. The examiners are, of course, in direct contact with the matter in question, and have access to the full details of the situation, rather than an abstraction or summary of the particulars. Accordingly, we are unable to express a view that the examiners' conclusions are incorrect in the circumstances you describe.

With respect to the specific issues which you raise, it is not impossible for a bank to establish a "separately identifiable department or division" for purposes of rule G-1 which includes areas in the bank which, for other purposes (*e.g.*, for general bank organizational and reporting purposes), would be considered separate. To the extent that such areas are engaged in municipal securities dealer activities (as enumerated in rule G-1), however, they must be under the supervision of the person or persons designated by the bank's board of directors, in accordance with rule G-1(a)(1), as responsible for the conduct of such activities.

As you are aware, the person or persons who are responsible for the management and supervision of the day-to-day activities of the municipal securities processing area need not be qualified as municipal securities principals if they do not have policy-making authority with respect to such activities. However, such activities must be subject to the supervision of a municipal securities principal. Therefore, if those directly involved in the day-to-day supervision of the municipal securities processing activities do not have policymaking authority over such activities and, as a consequence, are not qualified as municipal securities principals, a person who is qualified as a municipal securities principal (whether that person designated by the bank's board of directors pursuant to rule G-1(a)(1) or some other person who is subordinate to that person) must be designated as having responsibility for the supervision of the processing activities. The bank's supervisory procedures should appropriately reflect such designation and set forth the manner in which the designated person will carry out these responsibilities. *MSRB interpretation of May 13, 1983*.

Disqualification of municipal securities principals. In our recent telephone conversation you asked whether the Board has interpreted rule G-3(c)(iv)[*] as to the qualification status of a municipal securities principal in circumstances where the bank dealer, with which the individual is associated, fails to effect a municipal security transaction for a period of two or more years. You proposed that, if there are no municipal securities transactions for the principal to supervise, the individual would not be considered to be "acting as a municipal securities principal" and, consequently, the individual's qualification as a municipal securities principal would lapse after a two-year period of such inactivity.

The Board has considered a similar situation and given an interpretation in the matter. It reaffirmed the interpretation that an individual whose responsibilities no longer include supervision of municipal securities activities probably will not be able to remain adequately informed in the supervisory and compliance matters of concern to municipal securities principals, and that continuing association with a municipal securities dealer, in a capacity other than that of a municipal securities principal, is not sufficient to maintain qualification as a municipal securities principal. However, the Board also concluded that it did not intend this interpretation of rule G-3(c)(iv)[*] to mean that a dealer must necessarily effect transactions in municipal securities in order for its municipal securities principal to maintain such qualification. The Board noted that the definition of a municipal securities principal not only includes supervision of trading or sales, but of other municipal securities activities as well. Consequently, the Board determined that the qualification of a municipal securities principal should not automatically terminate because

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the individual is associated with a municipal securities broker or dealer which has not effected a municipal securities transaction in two or more years, but that to maintain such qualification the individual must demonstrate clearly that:

- the municipal securities broker or dealer was engaged in municipal securities activity during this period (*e.g.*, determination of suitability involving municipal securities, recommendations to customers, advertising, financial advisory activity with respect to municipal issuers); and
- the individual in question had been designated with supervisory responsibility for such municipal securities activities during this period.

MSRB interpretation of January 15, 1987.

[*] [Currently codified at rule G-3(b)(ii)(C).]

"Municipal Securities Principal" defined. This is in response to your letter of January 28, 1987, and subsequent telephone conversations with the Board's staff, requesting an interpretation of Board rule G-3(a)(i)[*], the definition of the term "Municipal Securities Principal". You ask whether an individual, who has day-to-day responsibility for directing the municipal underwriting activities of a firm, must be qualified as a municipal securities principal. You suggest that such activity seems to meet the definition of a municipal securities principal, namely, an individual who is "directly engaged in the management, direction or supervision of. . .underwriting . ..of municipal securities." You note that this individual has the authority to make underwriting commitments in the name of the firm, but that the firm's president is designated with supervisory responsibility for this individual's underwriting activity. Also, you indicated that this individual does not have supervisory responsibility for any other representative.

Your request for an interpretation was referred to a Committee of the Board which has responsibility for professional qualification matters. The Committee concluded that the individual you describe would not be required to qualify as a municipal securities principal, provided that her responsibilities are limited to directing the day-to-day underwriting activities of the dealer, and provided that these responsibilities are carried out within policy guidelines established by the dealer and under the direct supervision of a municipal securities principal. The Committee is also of the opinion that commitment authority alone is not indicative of principal activity, but rather is inherent in the underwriting activities of a municipal securities representative. *MSRB interpretation of February 27, 1987.*

[*] [Currently codified at rule G-3(b)(i).]

Municipal securities representative. Your letter dated October 16, 1978, has been referred to me for response. In your letter, you request clarification of whether personnel in your firm will have to take and pass the Board's qualification examination for municipal securities representatives, since they only effect transactions with other municipal securities professionals.

Board rule G-3(a)(iii)[*] defines the term "municipal securities representative" to mean a natural person associated with a municipal securities broker or municipal securities dealer who performs certain specified functions, which include "trading or sales of municipal securities." A person is deemed to be a municipal securities representative under the rule whether he or she engages in such activities with customers or only other municipal securities professionals. Accordingly, personnel in your firm who only trade with, or sell securities to other municipal securities professionals will have to take and pass the examination for municipal securities representatives, unless they are exempted under the provisions of rule G-3(e)(ii).[†] *MSRB interpretation of October 27, 1978.*

[*] [Currently codified at rule G-3(a)(i).]

[†] [Currently codified at rule G-3(a)(ii)(B).]

Municipal securities representative: credit department employees. This will acknowledge receipt of your letter of October 18, 1979, concerning a proposed arrangement for the performance of municipal credit analysis functions at your bank. In your letter you indicate that the bank wishes to have certain basic statistical and data gathering activities with respect to proposed new issues of municipal securities performed by its Credit Department. The Credit Department will provide the information resulting from these activities to registered personnel in the Investment Department, which will evaluate the credit of the issuer and determine the appropriateness of the issue for the bank's own investment activities and for the bank's customers. You inquire whether the personnel in the Credit Department would be required to register and qualify as municipal securities representatives due to their performance of these activities.

Your question was referred to a committee of the Board which has the responsibility for administering the professional qualifications program on the Board's behalf. The Committee concluded that such persons would not be required to register and qualify as representatives if their functions are limited to information gathering and performance of basic statistical computations. However, if such persons engage in any type of evaluative activity or if such persons make recommendations or suggest conclusions with respect to the securities, registration and qualification would be required. Further, should these persons produce any documents or research products intended for distribution or for use in the solicitation of customers, they would be required to register and qualify. *MSRB interpretation of December 10, 1979.*

Clerical or ministerial duties. This will acknowledge receipt of your letter in which you request advice concerning whether certain persons employed by [Name deleted] must qualify as municipal securities representatives under rule G-3.

In the case of one of the individuals, you state in your letter that he is responsible for calculating coupon rates for new issue securities, based on information provided to him by persons in [Name deleted] underwriting department. According to your letter, the individual has some discretion to

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"revise coupon rates to a more marketable figure," but all of his activities are subject to the approval of, and supervised by, municipal securities professionals in the department. We understand that he does not communicate with issuers, customers or other municipal securities dealers.

Based upon the facts set forth in your letter, we are of the view that the individual described performs only clerical or ministerial functions in calculating the coupon scale, and he is therefore not a municipal securities representative within the meaning of rule G-3.

In your letter, you also request advice regarding certain individuals whose only function is to receive telephonic orders for municipal securities from municipal securities dealers. We understand that these individuals do not solicit orders, negotiate prices or the terms of transactions, or transmit offers to prospective purchasers, nor do they communicate at any time with customers. Based upon the facts you have provided, we are of the opinion that these individuals perform only clerical or ministerial functions, and they are therefore also not municipal securities representatives within the meaning of rule G-3. *MSRB interpretation of December 8, 1978*.

Clerical or ministerial duties. I refer to your letter of June 22, 1979, in which you request advice regarding the applicability of rule G-3 on professional qualifications to an employee of [Company name deleted]. According to your letter, the activities of the employee in question are limited to checking the mathematical accuracy of bids received by an issuer for which [Company name deleted] acts as financial advisor and reporting the results to the issuer.

Based on the facts stated in your letter, the employee is not required to qualify as a municipal securities representative under rule G-3. The Board does not intend the qualification requirements of the rule to apply to persons performing solely clerical or ministerial functions, such as in this case. *MSRB interpretation of July 24, 1979*.

"Finder" of potential issuers. This responds to your letter of May 14, 1981 requesting our advice concerning the application of the qualification provisions of rule G-3 to a person employed by a municipal securities broker or dealer whose activities are limited solely to acting as a "finder" of potential issuers. Based upon the facts contained in your letter, and assuming that such person is not providing financial advisory or consultant services for issuers, it would appear that he or she is not performing functions, which are enumerated in rule G-3(a), the performance of which would require qualification as a municipal securities principal or a municipal securities representative. *MSRB interpretation of June 24, 1981*.

Persons engaged in financial advisory activities. I am writing to confirm our telephone conversation of this afternoon concerning the registration and qualification requirements applicable to persons in your firm's public finance department. In our conversation you inquired whether persons who function as financial advisors to municipal issuers, providing advice to such issuers regarding the structure, timing and terms of new issues of municipal securities to be sold by such issuers, are required to be qualified. As I indicated, such persons are required to be registered and qualified as municipal securities representatives. Furthermore, persons who supervise representatives performing such financial advisory services are required to be registered and qualified as municipal securities principals.

For your information, the provision of financial advisory services to municipal issuers is defined to be a municipal securities representative function in Board rule G-3(a)(iii)(B).[*] The requirement that persons performing such function be qualified is set forth generally in rules G-2 and G-3, and the specific qualification requirements applicable to such persons are stated in rules G-3(e)[†] and (i)[‡]. *MSRB interpretation of June 10, 1982*.

[*] [Currently codified at rule G-3(a)(i)(B).]

[†] [Currently codified at rule G-3(a)(ii).]

[‡] [Currently codified at rule G-3(a)(iii).]

Cold calling. This is in response to your letter regarding the application of rule G-3, concerning professional qualifications, to non-qualified individuals contacting institutional investors. You refer to the Board's December 21, 1984 notice stating that non-qualified individuals making "cold calls" to individuals and introducing the services offered by a municipal securities dealer, prequalifying potential customers or suggesting the purchase of securities must be qualified as a municipal securities representative. You ask whether a non-qualified individual may make a "cold call" to an institutional portfolio manager solely for the purpose of introducing the name of the municipal securities dealer to the portfolio manager and to inquire as to the type of securities in which it invests. You state that the individual or individuals making the calls would be specifically instructed not to discuss the purchase or sale of any specific security.

Board rule G-3(a)(iii)[*] defines municipal securities representative activities to include any activity which involves communication with public investors regarding the sale of municipal securities but exempts activities that are solely clerical or ministerial. As you noted, in December 1984, the Board issued an interpretation of rule G-3 which states that individuals who solicit new account business are not engaging in clerical or ministerial activities but rather are communicating with public investors regarding the sale of municipal securities and thus are engaging in municipal securities representative activities which require such individuals to be qualified as representatives under the Board's rules. Examples of solicitation of new account business stated in the notice included "cold calls" to individuals during which the non-qualified individual introduces the services offered by the dealers, prequalified potential customers, or suggests the purchase of specific securities currently being offered by a municipal securities dealer. An individual who introduces the name of the municipal securities dealer and inquires as to the type of securities in which a portfolio manager invests would

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be communicating with the public in an attempt to prequalify potential customers and thus must be qualified as a municipal securities representative. *MSRB interpretation of January 5, 1987.*

[*] [Currently codified at rule G-3(a)(i).]

Supervision of data processing functions. I am writing in response to your letter of November 7, 1988 and our subsequent telephone conversation by which you requested an interpretation of the Board's qualification requirements for municipal securities principals. You asked whether an individual, who is presently qualified as a representative, additionally must be qualified as a municipal securities principal because he has oversight and supervisory responsibility for the firm's data processing department.

Board rule G-3(a)(i)[*] defines a municipal securities principal as a person directly engaged in the management, direction or supervision of one or more enumerated representative activities. Consequently, whether or not this individual must be qualified as a municipal securities principal depends on whether he is supervising such activities, *i.e.*, whether the data processing department employees are functioning as municipal securities representatives.

You state that the data processing department assists this individual by performing the calculations necessary in the structuring of municipal bond issues and underwritings. Moreover, you note that the employees in the data processing department do not communicate with customers, including issuers, in carrying out their duties and that the above financial advisory and underwriting activities are otherwise supervised by a qualified municipal securities principal.

Based upon the facts set forth above, we are of the view that the individual described supervises only clerical or ministerial functions, and he is therefore not a municipal securities principal within the meaning of Board rule G-3. *MSRB interpretation of December 9, 1988.*

[*] [Currently codified at rule G-3(b)(i).]

See also:

Rule G-1 Interpretive Letter — Portfolio credit analyst, *MSRB interpretation of June 8, 1978.*

Rule G-2 Interpretive Letter — Execution of infrequent unsolicited orders, *MSRB interpretation of October 2, 1998.*

Rule G-27 Interpretive Letter — Supervisory structure, *MSRB interpretation of March 11, 1987*

Rule G-3 Amendment History (since 2003)

Release No. 34-98353 (September 12, 2023), 88 FR 63984 September 18, 2023); MSRB Notice 2023-07 (September 12, 2023)

Release No. 34-96348 (November 17, 2022), 87 FR 71731 (November 23, 2022); MSRB Notice 2022-12 (November 16, 2022)

Release No. 34-95684 (September 7, 2022), 87 FR 56137 (September 13, 2022); MSRB Notice 2022-09 (August 30, 2022)

Release No. 34-92938 (September 10, 2021), 86 FR 51696 (September 16, 2021); MSRB Notice 2021-11 (September 2, 2021)

Release No. 34-90621 (December 9, 2020), 85 FR 81254 (December 15, 2020); MSRB Notice 2020-18 (December 2, 2020)

Release No. 34-88694 (April 20, 2020), 85 FR 23088 (April 24,2020); MSRB Notice 2020-09 (April 9, 2020)

Release No. 34-83483 (June 20, 2018), 83 FR 29855 (June 26, 2018); MSRB Notice 2018-11 (June 11, 2018)

Release No. 34-80699 (May 16, 2017), 82 FR 23394 (May 22, 2017); MSRB Notice 2017-10 (May 17, 2017)

Release No. 34-76146 (October 14, 2015), 80 FR 63595 (October 20, 2015); MSRB Notice 2015-17 (September 30, 2015)

Release No. 34-74384 (February 26, 2015), 80 FR 11706 (March 4, 2015); MSRB Notice 2015-04 (March 2, 2015)

Release No. 34-73368 (October 15, 2014), 79 FR 63001 (October 21, 2014); MSRB Notice 2014-17 (October 17, 2014)

Release No. 34-72743 (August 1, 2014), 79 FR 46290 (August 7, 2014); MSRB Notice 2014-13 (August 4, 2014)

Release No. 34-65679 (November 3, 2011), 76 FR 70207 (November 10, 2011); MSRB Notice 2011-62 (November 7, 2011)

Release No. 34-50557 (October 18, 2004), 69 FR 62311 (October 25, 2004); MSRB Notice 2004-34 (October 25, 2004)

Release No. 34-50323 (September 7, 2004), 69 FR 55201 (September 13, 2004); MSRB Notice 2004-26 (August 3, 2004)

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Rule G-4
Statutory Disqualifications

(a) Except as otherwise provided in sections (b) and (c) of this rule, no broker, dealer or municipal securities dealer or natural person shall be qualified for purposes of rule G-2 if, by action of a national securities exchange or registered securities association, such broker, dealer or municipal securities dealer has been and is expelled or suspended from membership or participation in such exchange or association, or such natural person has been and is barred or suspended from being associated with a member of such exchange or association:

(i) for violation of any rules of such exchange or association which prohibit any act or transaction constituting conduct inconsistent with just and equitable principles of trade, or which requires any act the omission of which constitutes conduct inconsistent with such just and equitable principles of trade; or

(ii) by reason of any statutory disqualification of the character described in subparagraphs (C), (D), (E) or (F) of section 3(a)(39) of the Act.

(b) A broker, dealer or municipal securities dealer or natural person shall be qualified for purposes of rule G-2, notwithstanding the provisions of paragraph (a)(i) of this rule, if the Commission shall so determine upon application by such broker, dealer or municipal securities dealer or natural person in accordance with such standards and procedures as are set forth in rule19h-1(d) under the Act with respect to registered brokers and dealers and their associated persons.

(c) Notwithstanding the provisions of paragraph (a)(ii) of this rule, a broker, dealer or municipal securities dealer or natural person shall be qualified for purposes of rule G-2 upon a determination by a registered securities association in the case of one of its members or such member's associated persons, by the Commission in the case of any other broker, dealer or municipal securities dealer (other than a bank dealer) or their associated persons, or by the appropriate regulatory authority in the case of any bank dealer or such bank dealer's associated persons, upon application by such broker, dealer, or municipal securities dealer or natural person.

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Rule G-5

Disciplinary Actions by Appropriate Regulatory Agencies; Remedial Notices by Registered Securities Associations

(a) No broker, dealer or municipal securities dealer shall effect any transaction in, or induce or attempt to induce the purchase or sale of, any municipal security in contravention of any effective restrictions imposed upon such broker, dealer or municipal securities dealer by the Commission pursuant to sections 15(b)(4) or (5) or 15B(c)(2) or (3) of the Act or by an appropriate regulatory agency pursuant to section 15B(c)(5) of the Act or by a registered securities association pursuant to rules adopted under section 15A(b)(7) of the Act, and no natural person shall be associated with a broker, dealer or municipal securities dealer in contravention of any effective restrictions imposed upon such person by the Commission pursuant to sections 15(b)(6) or 15B(c)(4) of the Act or by an appropriate regulatory agency pursuant to section 15B(c)(5) of the Act or by a registered securities association pursuant to rules adopted under section 15A(b)(7) of the Act.

(b) No broker, dealer or municipal securities dealer that is a member of a registered securities association shall effect any transaction in, or induce or attempt to induce the purchase or sale of, any municipal security, or otherwise act in contravention of or fail to act in accordance with rules adopted by the association, pertaining to remedial activities of members experiencing financial or operational difficulties, as if such rules were applicable to such broker, dealer or municipal securities dealer.

(c) No municipal advisor shall engage in municipal advisory activities in contravention of any effective restrictions imposed upon such municipal advisor by the Commission pursuant to section 15B(c)(2) or (3) of the Act, and no natural person shall be associated with a municipal advisor in contravention of any effective restrictions imposed upon such person by the Commission pursuant to section 15B(c)(4) of the Act.

Rule G-5 Amendment History (since 2003)

Release No. 34-63599 (December 22, 2010), 75 FR 82199 (December 29, 2010); MSRB Notice 2010-59 (December 23, 2010)

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Rule G-6
Fidelity Bonding Requirements

No broker, dealer or municipal securities dealer that is a member of a registered securities association shall be qualified for purposes of rule G-2 unless such broker, dealer or municipal securities dealer has met the fidelity bonding requirements set forth in the rules of such association, to the same extent as if such rules were applicable to such broker, dealer or municipal securities dealer.

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Rule G-7
Information Concerning Associated Persons

(a) No associated person (as hereinafter defined) of a broker, dealer or municipal securities dealer shall be qualified for purposes of Rule G-2 of the Board unless such associated person meets the requirements of this rule. The term "associated person" as used in this rule means (i) a municipal securities principal, (ii) a municipal securities sales principal, (iii) a general securities principal engaging in activities listed in Rule G-27(b)(ii)(C)(3), (iv) a municipal securities representative, (v) a municipal securities sales limited representative, (vi) a limited representative — investment company and variable contracts products, and (vii) a municipal fund securities limited principal.

(b) Every broker, dealer and municipal securities dealer shall obtain from each of its associated persons (as defined in section (a) of this rule), and each associated person shall furnish to the broker, dealer or municipal securities dealer with which such person is or seeks to be associated, a completed Form U4 or similar form prescribed by the Commission or a registered securities association for brokers, dealers and municipal securities dealers other than bank dealers or, in the case of a bank dealer, a completed Form MSD-4 or similar form prescribed by the appropriate regulatory agency for such bank dealer.

(c) To the extent any information on the form furnished by an associated person pursuant to section (b) of this rule is or becomes materially inaccurate or incomplete, such associated person shall furnish in writing to the broker, dealer or municipal securities dealer with which such person is or seeks to be associated a corrected form or a statement correcting such information.

(d) For the purpose of verifying the information furnished by an associated person pursuant to section (b) of this rule, every broker, dealer and municipal securities dealer shall make inquiry of all employers of such associated person during the three years immediately preceding such person's association with such broker, dealer or municipal securities dealer concerning the accuracy and completeness of such information as well as such person's record and reputation as related to the person's ability to perform his or her duties and each such prior employer which is a broker, dealer or municipal securities dealer shall make such information available within ten business days following a request made pursuant to the requirements of this section (d).

(e) Every broker, dealer and municipal securities dealer shall maintain and preserve a copy of the form furnished pursuant to section (b) of this rule, and of any corrected forms or additional statements furnished pursuant to section (c) of this rule, until at least three years after the associated person's employment or other association with such broker, dealer or municipal securities dealer has terminated.

(f) Every broker, dealer and municipal securities dealer shall maintain and preserve a record of the name and residence address of each associated person, designated by the category of function performed (whether municipal securities principal, municipal securities sales principal, municipal securities representative or financial and operations principal) and indicating whether such person has taken and passed the qualification examination for municipal securities principals, municipal securities sales principals, municipal securities representatives, municipal securities sales limited representatives, municipal fund securitities limited principals or financial and operations principals prescribed by the Board or was exempt from the requirement to take and pass such examination, indicating the basis for such exemption, until at least three years after the associated person's employment or other association with such broker, dealer or municipal securities dealer has terminated.

(g) Every broker, dealer and municipal securities dealer which is a member of a registered securities association shall file with such association, every bank dealer shall file with the appropriate regulatory agency for such bank dealer, and every broker, dealer or municipal securities dealer other than a bank dealer which is not a member of a registered securities association shall file with the Commission, such of the information prescribed by this rule as such association, agency, or the Commission, respectively, shall by rule or regulation require.

(h) Any records required to be maintained and preserved pursuant to this rule shall be preserved in accordance with the requirements of sections (d), (e) and (f) of rule G-9 of the Board.

Rule G-7 Amendment History (since 2003)

Release No. 34-72743 (August 1, 2014), 79 FR 46290 (August 7, 2014); MSRB Notice 2014-13 (August 4, 2014)

Release No. 34-65679 (November 3, 2011), 76 FR 70207 (November 10, 2011); MSRB Notice 2011-62 (November 7, 2011)

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Rule G-8

Books and Records to be Made by Brokers, Dealers, and Municipal Securities Dealers and Municipal Advisors

(a) *Description of Books and Records Required to be Made*. Except as otherwise specifically indicated in this rule, every broker, dealer and municipal securities dealer shall make and keep current the following books and records, to the extent applicable to the business of such broker, dealer or municipal securities dealer:

(i) *Records of Original Entry.* "Blotters" or other records of original entry containing an itemized daily record of all purchases and sales of municipal securities, all receipts and deliveries of municipal securities (including certificate numbers and, if the securities are in registered form, an indication to such effect), all receipts and disbursement of cash with respect to transactions in municipal securities, all other debits and credits pertaining to transactions in municipal securities, and in the case of brokers, dealers and municipal securities dealers other than bank dealers, all other cash receipts and disbursements if not contained in the records required by any other provision of this rule. The records of original entry shall show the name or other designation of the account for which each such transaction was effected (whether effected for the account of such broker, dealer or municipal securities dealer, the account of a customer, or otherwise), the description of the securities, the aggregate par value of the securities, the dollar price or yield and aggregate purchase or sale price of the securities, accrued interest, the trade date, and the name or other designation of the person from whom purchased or received or to whom sold or delivered. With respect to accrued interest and information relating to "when issued" transactions which may not be available at the time a transaction is effected, entries setting forth such information shall be made promptly as such information becomes available. Dollar price, yield and accrued interest relating to any transaction shall be required to be shown only to the extent required to be included in the confirmation delivered by the broker, dealer or municipal securities dealer in connection with such transaction under rule G-12 or rule G-15.

(ii) *Account Records.* Account records for each customer account and account of such broker, dealer or municipal securities dealer. Such records shall reflect all purchases and sales of municipal securities, all receipts and deliveries of municipal securities, all receipts and disbursements of cash, and all other debits and credits relating to such account. A bank dealer shall not be required to maintain a record of a customer's bank credit or bank debit balances for purposes of this subparagraph.

(iii) *Securities Records.* Records showing separately for each municipal security all positions (including, in the case of a broker, dealer or municipal securities dealer other than a bank dealer, securities in safekeeping) carried by such broker, dealer or municipal securities dealer for its account or for the account of a customer (with all "short" trading positions so designated), the location of all such securities long and the offsetting position to all such securities short, and the name or other designation of the account in which each position is carried. Such records shall also show all long security count differences and short count differences classified by the date of physical count and verification on which they were discovered. Such records shall consist of a single record system. With respect to purchases or sales, such records may be posted on either a settlement date basis or a trade date basis, consistent with the manner of posting the records of original entry of such broker, dealer or municipal securities dealer. For purposes of this subparagraph, multiple maturities of the same issue of municipal securities, as well as multiple coupons of the same maturity, may be shown on the same record, provided that adequate secondary records exist to identify separately such maturities and coupons. With respect to securities which are received in and delivered out by such broker, dealer or municipal securities dealer the same day on or before the settlement date, no posting to such records shall be required. Anything herein to the contrary notwithstanding, a non-clearing broker, dealer or municipal securities dealer which effects transactions for the account of customers on a delivery against payment basis may keep the records of location required by this subparagraph in the form of an alphabetical list or lists of securities showing the location of such securities rather than a record of location separately for each security. Anything herein to the contrary notwithstanding, a bank dealer shall maintain records of the location of securities in its own trading account.

(iv) *Subsidiary Records*. Ledgers or other records reflecting the following information:

(A) *Municipal securities in transfer.* With respect to municipal securities which have been sent out for transfer, the description and the aggregate par value of the securities, the name in which registered, the name in which the securities are to be registered, the date sent out for transfer, the address to which sent for transfer, former certificate numbers, the date returned from transfer, and new certificate numbers.

(B) *Municipal securities to be validated*. With respect to municipal securities which have been sent out for validation, the description and the aggregate par value of the securities, the date sent out for validation, the address to which sent for validation, the certificate numbers, and the date returned from validation.

(C) *Municipal securities borrowed or loaned*. With respect to municipal securities borrowed or loaned, the date borrowed or loaned, the name of the person from whom borrowed or to whom loaned, the description and the aggregate par value of the securities borrowed or loaned, the value at which the securities were borrowed or loaned, and the date returned.

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(D) *Municipal securities transactions not completed on settlement date*. With respect to municipal securities transactions not completed on the settlement date, the description and the aggregate par value of the securities which are the subject of such transactions, the purchase price (with respect to a purchase transaction not completed on the settlement date), the sale price (with respect to a sale transaction not completed on the settlement date), the name of the customer, broker, dealer or municipal securities dealer from whom delivery is due or to whom delivery is to be made, and the date on which the securities are received or delivered. All municipal securities transactions with brokers, dealers and municipal securities dealers not completed on the settlement date shall be separately identifiable as such. For purposes of this rule, the term "settlement date" means the date upon which delivery of the securities is due in a purchase or sale transaction.

Such records shall be maintained as subsidiary records to the general ledger maintained by such broker, dealer or municipal securities dealer. Anything herein to the contrary notwithstanding, the requirements of this subparagraph will be satisfied if the information described is readily obtainable from other records maintained by such broker, dealer or municipal securities dealer.

(v) *Put Options and Repurchase Agreements*. Records of all options (whether written or oral) to sell municipal securities (*i.e.*, put options) and of all repurchase agreements (whether written or oral) with respect to municipal securities, in which such broker, dealer or municipal securities dealer has any direct or indirect interest or which such broker, dealer or municipal securities dealer has granted or guaranteed, showing the description and aggregate par value of the securities, and the terms and conditions of the option, agreement or guarantee.

(vi) *Records for Agency Transactions*. A memorandum of each agency order and any instructions given or received for the purchase or sale of municipal securities pursuant to such order, showing the terms and conditions of the order and instructions, and any modification thereof, the account for which entered, the date and time of receipt of the order by such broker, dealer or municipal securities dealer, the price at which executed, the date of execution and, to the extent feasible, the time of execution and, if such order is entered pursuant to a power of attorney or on behalf of a joint account, corporation or partnership, the name and address (if other than that of the account) of the person who entered the order. If an agency order is canceled by a customer, such records shall also show the terms, conditions and date of cancellation, and, to the extent feasible, the time of cancellation. Orders entered pursuant to the exercise of discretionary power by such broker, dealer or municipal securities dealer shall be designated as such. For purposes of this subparagraph, the term "agency order" shall mean an order given to a broker, dealer or municipal securities dealer to buy a specific security from another person or to sell a specific security to another person, in either case without such broker, dealer or municipal securities dealer acquiring ownership of the security. Customer inquiries of a general nature concerning the availability of securities for purchase or opportunities for sale shall not be considered to be orders. For purposes of this subparagraph and subparagraph (vii) below, the term "memorandum" shall mean a trading ticket or other similar record. For purposes of this subparagraph, the term "instructions" shall mean instructions transmitted within an office with respect to the execution of an agency order, including, but not limited to, instructions transmitted from a sales desk to a trading desk.

(vii) *Records for Transactions as Principal*. A memorandum of each transaction in municipal securities (whether purchase or sale) for the account of such broker, dealer or municipal securities dealer, showing the price and date of execution and, to the extent feasible, the time of execution; and in the event such purchase or sale is with a customer, a record of the customer's order, showing the date and time of receipt, the terms and conditions of the order, and the name or other designation of the account in which it was entered and, if such order is entered pursuant to a power of attorney or on behalf of a joint account, corporation, or partnership, the name and address (if other than that of the account) of the person who entered the order.

(viii) *Records Concerning Primary Offerings*.

(A) For each primary offering for which a syndicate has been formed for the purchase of municipal securities, records shall be maintained by the syndicate manager showing the description and aggregate par value of the securities; the name and percentage of participation of each member of the syndicate; the terms and conditions governing the formation and operation of the syndicate; a statement of all terms and conditions required by the issuer (including, those of any retail order period, if applicable); all orders received for the purchase of the securities from the syndicate and selling group, if any; the information required to be submitted pursuant to Rule G-11(k); all pricing information required to be distributed pursuant to Rule G-11(f); all allotments of securities and the price at which sold; those instances in which the syndicate manager allocated securities in a manner other than in accordance with the priority provisions, including those instances in which the syndicate manager accorded equal or greater priority over other orders to orders by syndicate members for their own accounts or their respective related accounts; and the specific reasons for doing so; the date and amount of any good faith deposit made to the issuer; the date of settlement with the issuer; the date of closing of the account; and a reconciliation of profits and expenses of the account.

(B) For each primary offering for which a syndicate has not been formed for the purchase of municipal securities, records shall be maintained by the sole underwriter showing the description and aggregate par value of the

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securities; all terms and conditions required by the issuer (including, those of any retail order period, if applicable); all orders received for the purchase of the securities from the underwriter; the information required to be submitted pursuant to Rule G-11(k); all allotments of securities and the price at which sold; those instances in which the underwriter accorded equal or greater priority over other orders to orders for its own account or its related accounts, and the specific reasons for doing so; the date and amount of any good faith deposit made to the issuer; and the date of settlement with the issuer.

(ix) *Copies of Confirmations, Periodic Statements and Certain Other Notices to Customers*. A copy of all confirmations of purchase or sale of municipal securities, of all periodic written statements disclosing purchases, sales or redemptions of municipal fund securities pursuant to rule G-15(a)(viii), of written disclosures to customers, if any, as required under rule G-15(f)(iii) and, in the case of a broker, dealer or municipal securities dealer other than a bank dealer, of all other notices sent to customers concerning debits and credits to customer accounts or, in the case of a bank dealer, notices of debits and credits for municipal securities, cash and other items with respect to transactions in municipal securities.

(x) *Financial Records.* Every broker, dealer and municipal securities dealer subject to the provisions of rule 15c3-1 under the Act shall make and keep current the books and records described in subparagraphs (a)(2), (a)(4)(iv) and (vi), and (a)(11) of rule 17a-3 under the Act.

(xi) *Customer Account Information*. A record for each customer, other than an institutional account, setting forth the following information to the extent applicable to such customer:

(A) customer's name and residence or principal business address;

(B) whether customer is of legal age;

(C) tax identification or social security number;

(D) occupation;

(E) name and address of employer;

(F) information about the customer obtained pursuant to rule G-19 or, for a retail customer, as defined in Rule 15l-1(b)(1) under the Act ("Regulation Best Interest"), to whom a recommendation of any securities transaction or investment strategy involving municipal securities is or will be provided, a record of all information collected from and provided to the retail customer pursuant to Regulation Best Interest, as well as the identity of each natural person who is an associated person, if any, responsible for the account. The neglect, refusal, or inability of the retail customer to provide or update any information described in this paragraph shall excuse the dealer from obtaining that required information;

(G) name and address of beneficial owner or owners of such account if other than the customer and transactions are to be confirmed to such owner or owners;

(H) signature of municipal securities representative, general securities representative or limited representative — investment company and variable contracts products introducing the account and signature of a municipal securities principal, municipal securities sales principal or general securities principal indicating acceptance of the account;

(I) with respect to discretionary accounts, customer's written authorization to exercise discretionary power or authority with respect to the account, written approval of municipal securities principal or municipal securities sales principal who supervises the account, and written approval of municipal securities principal or municipal securities sales principal with respect to each transaction in the account, indicating the time and date of approval;

(J) whether customer is employed by another broker, dealer or municipal securities dealer;

(K) in connection with the hypothecation of the customer's securities, the written authorization of, or the notice provided to, the customer in accordance with Commission rules 8c-1 and 15c2-1; and

(L) with respect to official communications, customer's written authorization, if any, that the customer does not object to the disclosure of its name, security position(s) and contact information to a party identified in G-15(g)(iii)(A)(1) for purposes of transmitting official communications under G-15(g).

(M) *Predispute Arbitration Agreements with Customers*.

(1) Any predispute arbitration clause shall be highlighted and shall be immediately preceded by the following language in outline form:

This agreement contains a predispute arbitration clause. By signing an arbitration agreement the parties agree as follows:

(a) All parties to this agreement are giving up the right to sue each other in court, including the right to a trial by jury, except as provided by the rules of the arbitration forum in which a claim is filed.

(b) Arbitration awards are generally final and binding; a party's ability to have a court reverse or modify an arbitration award is very limited.

(c) The ability of the parties to obtain documents, witness statements and other discovery is generally more limited in arbitration than in court proceedings.

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(d) The arbitrators do not have to explain the reason(s) for their award.

(e) The panel of arbitrators will typically include a minority of arbitrators who were or are affiliated with the securities industry.

(f) The rules of some arbitration forums may impose time limits for bringing a claim in arbitration. In some cases, a claim that is ineligible for arbitration may be brought in court.

(g) The rules of the arbitration forum in which the claim is filed, and any amendments thereto, shall be incorporated into this agreement.

(2) (a) In any agreement containing a predispute arbitration agreement, there shall be a highlighted statement immediately preceding any signature line or other place for indicating agreement that states that the agreement contains a predispute arbitration clause. The statement shall also indicate at what page and paragraph the arbitration clause is located.

(b) Within thirty days of signing, a copy of the agreement containing any such clause shall be given to the customer who shall acknowledge receipt thereof on the agreement or on a separate document.

(3) (a) A broker, dealer or municipal securities dealer shall provide a customer with a copy of any predispute arbitration clause or customer agreement executed between the customer and the broker, dealer or municipal securities dealer, or inform the customer that the broker, dealer or municipal securities dealer does not have a copy thereof, within ten business days of receipt of the customer's request. If a customer requests such a copy before the broker, dealer or municipal securities dealer has provided the customer with a copy pursuant to subparagraph (2)(b) above, the broker, dealer or municipal securities dealer must provide a copy to the customer by the earlier date required by this subparagraph (3)(a) or by subparagraph (2)(b) above.

(b) Upon request by a customer, a broker, dealer or municipal securities dealer shall provide the customer with the names of, and information on how to contact or obtain the rules of, all arbitration forums in which a claim may be filed under the agreement.

(4) No predispute arbitration agreement shall include any condition that: (i) limits or contradicts the rules of any self-regulatory organization; (ii) limits the ability of a party to file any claim in arbitration; (iii) limits the ability of a party to file any claim in court permitted to be filed in court under the rules of the forums in which a claim may be filed under the agreement; and (iv) limits the ability of arbitrators to make any award.

(5) If a customer files a complaint in court against a broker, dealer or municipal securities dealer that contains claims that are subject to arbitration pursuant to a predispute arbitration agreement between the broker, dealer or municipal securities dealer and the customer, the broker, dealer or municipal securities dealer may seek to compel arbitration of the claims that are subject to arbitration. If the broker, dealer or municipal securities dealer seeks to compel arbitration of such claims, the broker, dealer or municipal securities dealer must agree to arbitrate all of the claims contained in the complaint if the customer so requests.

(6) All agreements shall include a statement that "No person shall bring a putative or certified class action to arbitration, nor seek to enforce any predispute arbitration agreement against any person who has initiated in court a putative class action; who is a member of a putative class who has not opted out of the class with respect to any claims encompassed by the putative class action until: (i) the class certification is denied; or (ii) the class is decertified; or (iii) the customer is excluded from the class by the court. Such forbearance to enforce an agreement to arbitrate shall not constitute a waiver of any rights under this agreement except to the extent stated herein."

(7) These provisions of Rule G-8(a)(xi)(M) are effective as of May 1, 2005.

For purposes of this subparagraph, the terms "general securities representative," "general securities principal" and "limited representative — investment company and variable contracts products" shall mean such persons as so defined by the rules of a national securities exchange or registered securities association. For purposes of this subparagraph, the term "institutional account" shall mean the account of (i) a bank, savings and loan association, insurance company, or registered investment company; (ii) an investment adviser registered either with the Commission under Section 203 of the Investment Advisers Act of 1940 or with a state securities commission (or any agency or office performing like functions); or (iii) any other entity (whether a natural person, corporation, partnership, trust, or otherwise) with total assets of at least $50 million. Anything in this subparagraph to the contrary notwithstanding, every broker, dealer and municipal securities dealer shall maintain a record of the information required by items (A), (C), (F), (H), (I) and (K) of this subparagraph with respect to each customer which is an institutional account.

(xii) *Customer Complaints*. A record of all written complaints of customers, and persons acting on behalf of customers that are received by the broker, dealer or municipal

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securities dealer. This record must include the complainant's name, address, and account number; the date the complaint was received; the date of the activity that gave rise to the complaint; the name of each associated person of the broker, dealer or municipal securities dealer identified in the complaint; a description of the nature of the complaint; and what action, if any, has been taken by such broker, dealer or municipal securities dealer in connection with each such complaint. In addition, this record must be kept in an electronic format using the complaint product and problem codes set forth in the Municipal Securities Rulemaking Board Rule G-8 Customer and Municipal Advisory Client Complaint Product and Problem Codes Guide.

The term "written," for the purposes of this paragraph, shall include electronic correspondence. The term "complaint" shall mean any written statement alleging a grievance involving the activities of the broker, dealer or municipal securities dealer or any associated persons of such broker, dealer or municipal securities dealer with respect to any matter involving a customer's account.

(xiii) *Records Concerning Disclosures in Connection With Primary Offerings Pursuant to Rule G-32*. A record:

(A) of all documents, notices or written disclosures provided by the broker, dealer or municipal securities dealer to purchasers of offered municipal securities under Rule G-32(a);

(B) if applicable, evidencing compliance with subsection (a)(v) of Rule G-32; and

(C) of all documents, notices and information required to be submitted to the Board by the broker, dealer or municipal securities dealer, in the capacity of underwriter in a primary offering of municipal securities (or, in the event a syndicate or similar account has been formed for the purpose of underwriting the issue, the managing underwriter), under Rule G-32(b), to the extent that any such information is not included in the information submitted through NIIDS (as defined in Rule G-34(a)(ii)(C)(3)(b)) in satisfaction of the requirements of Rule G-32(b) and maintained pursuant to subsection (a)(xxiii) of this rule.

(xiv) *Designation of Persons Responsible for Recordkeeping*. A record of all designations of persons responsible for the maintenance and preservation of books and records as required by rule G-27(b)(ii).

(xv) *Records Concerning Delivery of Official Statements, Advance Refunding Documents and Forms G-36(OS) and G-36(ARD) to the Board or its Designee Pursuant to Former Rule G-36*. In connection with each primary offering of municipal securities subject to former Rule G-36 for which a broker, dealer or municipal securities dealer acted as an underwriter (or, in the event a syndicate or similar account has been formed for the purpose of underwriting the issue, the managing underwriter) and was required under the provisions of former Rule G-36 to send to the Board an official statement prior to June 1, 2009, such underwriter shall maintain, to the extent not maintained pursuant to subsection (a)(xiii) of this Rule G-8:

(A) a record of the name, par amount and CUSIP number or numbers for all such primary offerings of municipal securities; the dates that the documents and written information referred to in former Rule G-36 were received from the issuer and were sent to the Board or its designee; the date of delivery of the issue to the underwriters; and, for issues subject to Securities Exchange Act Rule 15c2-12, the date of the final agreement to purchase, offer or sell the municipal securities; and

(B) copies of the Forms G-36(OS) and G-36(ARD) and documents submitted to the Board or its designee along with the certified or registered mail receipt or other record of sending such forms and documents to the Board or its designee.

For purposes of this subsection (a)(xv), the term "former Rule G-36" means Rule G-36 of the Board in effect on May 31, 2009.

(xvi) *Records Concerning Political Contributions and Prohibitions on Municipal Securities Business Pursuant to Rule G-37*. Records reflecting:

(A) a listing of the names, titles, city/county and state of residence of all municipal finance professionals;

(B) a listing of the names, titles, city/county and state of residence of all non-MFP executive officers;

(C) the states in which the broker, dealer or municipal securities dealer is engaging or is seeking to engage in municipal securities business;

(D) a listing of municipal entities with which the broker, dealer or municipal securities dealer has engaged in municipal securities business, along with the type of municipal securities business engaged in, during the current year and separate listings for each of the previous two calendar years;

(E) the contributions, direct or indirect, to officials of a municipal entity and payments, direct or indirect, made to political parties of states and political subdivisions, by the broker, dealer or municipal securities dealer and each political action committee controlled by the broker, dealer or municipal securities dealer for the current year and separate listings for each of the previous two calendar years, which records shall include: (i) the identity of the contributors, (ii) the names and titles (including any city/county/state or other political subdivision) of the recipients of such contributions and payments, and (iii) the amounts and dates of such contributions and payments;

(F) the contributions, direct or indirect, to officials of a municipal entity made by each municipal finance professional, any political action committee controlled by a municipal finance professional, and non-MFP executive

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officer for the current year, which records shall include: (i) the names, titles, city/county and state of residence of contributors, (ii) the names and titles (including any city/county/state or other political subdivision) of the recipients of such contributions, (iii) the amounts and dates of such contributions; and (iv) whether any such contribution was the subject of an automatic exemption, pursuant to Rule G-37(j), including the amount of the contribution, the date the broker, dealer or municipal securities dealer discovered the contribution, the name of the contributor, and the date the contributor obtained a return of the contribution; provided, however, that such records need not reflect any contribution made by a municipal finance professional or non-MFP executive officer to officials of a municipal entity for whom such person is entitled to vote if the contributions made by such person, in total, are not in excess of $250 to any official of a municipal entity, per election. In addition, brokers, dealers and municipal securities dealers shall maintain separate listings for each of the previous two calendar years containing the information required pursuant to this subparagraph (F) for each municipal finance representative and each dealer solicitor as defined in Rule G-37(g)(ii) and for any political action committee controlled by such individuals, and separate listings for the previous six months containing the information required pursuant to this subparagraph (F) for each municipal finance principal, dealer supervisory chain person and dealer executive officer as defined in Rule G-37(g)(ii) and for any political action committee controlled by such individuals and for any non-MFP executive officers;

(G) the payments, direct or indirect, to political parties othe payments, direct or indirect, to political parties of states and political subdivisions made by all municipal finance professionals, any political action committee controlled by a municipal finance professional, and non-MFP executive officers for the current year, which records shall include: (i) the names, titles, city/county and state of residence of contributors, (ii) the names, and titles (including any city/county/state or other political subdivision) of the recipients of such payments and (iii) the amounts and dates of such payments; provided, however, that such records need not reflect those payments made by any municipal finance professional or non-MFP executive officer to a political party of a state or political subdivision in which such persons are entitled to vote if the payments made by such person, in total, are not in excess of $250 per political party, per year. In addition, brokers, dealers and municipal securities dealers shall maintain separate listings for each of the previous two calendar years containing the information required pursuant to this subparagraph (G) for each municipal finance representative and each dealer solicitor as defined in Rule G-37(g)(ii) and for any political action committee controlled by such individuals, and separate listings for the previous six months containing the information required pursuant to this subparagraph (G) for each municipal finance principal, dealer supervisory chain person and dealer executive officer as defined in Rule G-37(g)(ii) and for any political action committee controlled by such individuals and for any non-MFP executive officers;

(H) the contributions, direct or indirect, to bond ballot campaigns made by the broker, dealer or municipal securities dealer and each political action committee controlled by the broker, dealer or municipal securities dealer for the current year, which records shall include: (i) the identity of the contributors, (ii) the official name of each bond ballot campaign receiving such contributions, and the jurisdiction (including city/county/state or political subdivision) by or for which municipal securities, if approved, would be issued, (iii) the amounts (which, in the case of in-kind contributions, must include both the value and the nature of the goods or services provided, including any ancillary services provided to, on behalf of, or in furtherance of the bond ballot campaign) and the specific dates of such contributions, (iv) the full name of the municipal entity and full issue description of any primary offering resulting from the bond ballot campaign to which the broker, dealer or municipal securities dealer or political action committee controlled by the broker, dealer or municipal securities dealer has made a contribution and the reportable date of selection on which the broker, dealer or municipal securities dealer was selected to engage in the municipal securities business, and (v) the payments or reimbursements, related to any bond ballot contribution, received by the broker, dealer or municipal securities dealer from any third party that are required to be disclosed under Rule G-37(e)(i)(B), including the amount paid and the name of the third party making such payment; and

(I) the contributions, direct or indirect, to bond ballot cathe contributions, direct or indirect, to bond ballot campaigns made by each municipal finance professional, any political action committee controlled by a municipal finance professional, and non-MFP executive officer for the current year, which records shall include: (i) the names, titles, city/county and state of residence of contributors, (ii) the official name of each bond ballot campaign receiving such contributions, and the jurisdiction (including city/county/state or political subdivision) by or for which municipal securities, if approved, would be issued, (iii) the amounts (which, in the case of in-kind contributions, must include both the value and the nature of the goods or services provided, including any ancillary services provided to, on behalf of, or in furtherance of the bond ballot campaign) and the specific dates of such contributions, (iv) the full name of the municipal entity and full issue description of any primary offering resulting from the bond ballot campaign to which the municipal finance professional, political action committee controlled by the municipal finance professional or non-

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MFP executive officer has made a contribution required to be disclosed under Rule G-37(e)(i)(B), or to which a contribution has been made by a municipal finance professional or a non-MFP executive officer during the period beginning two years prior to such individual becoming a municipal finance professional or a non-MFP executive officer that would have been required to be disclosed if such individual had been a municipal finance professional or a non-MFP executive officer at the time of such contribution and the reportable date of selection on which the broker, dealer or municipal securities dealer was selected to engage in the municipal securities business, and (v) the payments or reimbursements, related to any bond ballot contribution, received by the municipal finance professional or non-MFP executive officer from any third party that are required to be disclosed by Rule G-37(e)(i)(B), including the amount paid and the name of the third party making such payment or reimbursement; provided, however, that such records need not reflect any contribution made by a municipal finance professional or non-MFP executive officer to a bond ballot campaign for a ballot initiative with respect to which such person is entitled to vote if the contributions made by such person, in total, are not in excess of $250 to any bond ballot campaign, per ballot initiative.

(J) Brokers, dealers and municipal securities dealers shall maintain copies of the Forms G-37 and G-37x submitted to the Board along with a record of submitting such forms to the Board.

(K) Terms used in this paragraph (xvi) have the same meaning as in Rule G-37.

(L) No change.

(M) No broker, dealer or municipal securities dealer shall be subject to the requirements of this paragraph (a)(xvi) during any period that such broker, dealer or municipal securities dealer has qualified for and invoked the exemption set forth in clause (B) of paragraph (e)(ii) of Rule G-37; provided, however, that such broker, dealer or municipal securities dealer shall remain obligated to comply with clause (H) of this paragraph (a)(xvi) during such period of exemption. At such time as a broker, dealer or municipal securities dealer that has been exempted by this clause (M) from the requirements of this paragraph (a)(xvi) engages in any municipal securities business, all requirements of this paragraph (a)(xvi) covering the periods of time set forth herein (beginning with the then current calendar year and the two preceding calendar years) shall become applicable to such broker, dealer or municipal securities dealer.

(xvii) *Records Concerning Compliance with Rule G-20*. Each broker, dealer and municipal securities dealer shall maintain:

(A) a separate record of any gift or gratuity subject to the general limitation of Rule G-20(c);

(B) all agreements referred to in Rule G-20(f) and records of all compensation paid as a result of those agreements; and

(C) records of all non-cash compensation referred to in Rule G-20(g). The records shall include the name of the person or entity making the payment, the name(s) of the associated person(s) receiving the payments (if applicable), and the nature (including the location of meetings described in Rule G-20(g)(iii), if applicable) and value of non-cash compensation received.

(xviii) *Records Concerning Consultants Pursuant to Former Rule G-38*. Each broker, dealer and municipal securities dealer shall maintain:

(A) a listing of the name of the consultant pursuant to the Consultant Agreement, business address, role (including the state or geographic area in which the consultant is working on behalf of the broker, dealer or municipal securities dealer) and compensation arrangement of each consultant;

(B) a copy of each Consultant Agreement referred to in former rule G-38(b);

(C) a listing of the compensation paid in connection with each such Consultant Agreement;

(D) where applicable, a listing of the municipal securities business obtained or retained through the activities of each consultant;

(E) a listing of issuers and a record of disclosures made to such issuers, pursuant to former rule G-38(d), concerning each consultant used by the broker, dealer or municipal securities dealer to obtain or retain municipal securities business with each such issuer;

(F) records of each reportable political contribution (as defined in former rule G-38(a)(vi)), which records shall include:

(1) the names, city/county and state of residence of contributors;

(2) the names and titles (including any city/county/state or other political subdivision) of the recipients of such contributions; and

(3) the amounts and dates of such contributions;

(G) records of each reportable political party payment (as defined in former rule G-38(a)(vii)), which records shall include:

(1) the names, city/county and state of residence of contributors;

(2) the names and titles (including any city/county/state or other political subdivision) of the recipients of such payments; and

(3) the amounts and dates of such payments;

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(H) records indicating, if applicable, that a consultant made no reportable political contributions (as defined in former rule G-38(a)(vi)) or no reportable political party payments (as defined in former rule G-38(a)(vii));

(I) a statement, if applicable, that a consultant failed to provide any report of information to the dealer concerning reportable political contributions or reportable political party payments;

(J) the date of termination of any consultant arrangement; and

(K) copies of the Forms G-38t sent to the Board along with the certified or registered mail receipt or other record of sending such forms to the Board.

For purposes of this clause (xviii), the term "former rule G-38" shall have the meaning set forth in Rule G-38(c)(ii).

(xix) *Negotiable Instruments Drawn From a Customer's Account.* No broker, dealer or municipal securities dealer or person associated with such broker, dealer or municipal securities dealer shall obtain from a customer or submit for payment a check, draft or other form of negotiable paper drawn on a customer's checking, savings, share, or similar account, without that person's express written authorization, which may include the customer's signature on the negotiable instrument.

(xx) *Records Concerning Compliance with Rule G-27*. Each broker, dealer and municipal securities dealer shall maintain the records required under G-27(c), G-27(d) and G-27(e).

(xxi) *Records Concerning Sign-in Logs for In-Firm Delivery of the Regulatory Element Continuing Education*. If applicable, each broker, dealer and municipal securities dealer shall maintain the records required by rule G-3(h)(i)(G)(6)(c).

(xxii) *Records Concerning Compliance with Rule G-34(c)*.

(A) A broker, dealer or municipal securities dealer that acts as a Program Dealer, as defined in Rule G-34(c)(i)(A)(1), for an Auction Rate Security shall maintain:

(1) a record of the name of and CUSIP number or numbers for all such Auction Rate Securities for which the broker, dealer or municipal securities dealer acts as a Program Dealer;

(2) a record of all information submitted to and received from an Auction Agent as defined in Rule G-34(c)(i) with respect to an auction; and

(3) all information and documents required to be submitted to the Board by the broker, dealer or municipal securities dealer under Rule G-34(c)(i).

(B) A broker, dealer or municipal securities dealer that acts as a Remarketing Agent, as defined in Rule G-34(c)(ii), for a Variable Rate Demand Obligation shall maintain:

(1) a record of the name of and CUSIP number or numbers for all such Variable Rate Demand Obligations for which the broker, dealer or municipal securities dealer acts as a Remarketing Agent; and

(2) all information and documents required to be submitted to the Board by the broker, dealer or municipal securities dealer under Rule G-34(c)(ii); and

(3) for documents detailing provisions of liquidity facilities identified in Rule G-34(c)(ii)(B)(1) associated with the Variable Rate Demand Obligation for which the broker, dealer or municipal securities dealer acts as a Remarketing Agent that are unable to be obtained through best efforts, a record of such efforts undertaken.

(xxiii) *Records Concerning Compliance with Rule G-34(a)(ii)(C)*. A broker, dealer or municipal securities dealer that acts as an underwriter in a primary offering of municipal securities subject to Rule G-34(a)(ii)(C)(1) shall maintain:

(A) a record of the Time of Formal Award;

(B) a record of the Time of First Execution; and

(C) a record of all information submitted to NIIDS (as defined in Rule G-34(a)(ii)(C)(3)(b)) as required elements for "Trade Eligibility" and of the time the new issue received "Trade Eligibility" status in NIIDS.

(xxiv) *Records of Secondary Market Trading Account Transactions*. With respect to each secondary market trading account formed for the purchase of municipal securities, records shall be maintained by the broker, dealer, or municipal securities dealer designated by the account to maintain the books and records of the account, showing the description and aggregate par value of the securities; the name and percentage of participation of each member of the account; the terms and conditions governing the formation and operation of the account; all orders received for the purchase of the securities from the account; all allotments of securities and the price at which sold; the date of closing of the account; and a reconciliation of profits and expenses of the account.

(xxv) *Broker's Brokers*. A broker's broker (as defined in Rule G-43(d)(iii)) shall maintain the following records with respect to its municipal securities activities:

(A) all bids to purchase municipal securities, together with the time of receipt;

(B) all offers to sell municipal securities, together with the time the broker's broker first receives the offering and the time the offering is updated for display or distribution;

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(C) the time that the high bid is provided to the seller; the time that the seller notifies the broker's broker that it will sell the securities at the high bid; and the time of execution of the trade;

(D) for each communication with a seller or bidder pursuant to Rule G-43(b)(iv), the date and time of the communication; whether the bid deviated from the predetermined parameters and, if so, the amount of the deviation; the full name of the person contacted at the bidder; the full name of the person contacted at the seller, if applicable; the direction provided by the bidder to the broker's broker following the communication; the direction provided by the seller to the broker's broker following the communication, if applicable; and the full name of the person at the bidder, or seller if applicable, who provided that direction;

(E) for each communication with a seller pursuant to Rule G-43(b)(v), the date and time of the communication; the amount by which the bid deviated from the predetermined parameters; the full name of the person contacted at the seller; the direction provided by the seller to the broker's broker following the communication; and the full name of the person at the seller who provided that direction;

(F) for all changed bids, the full name of the person at the bidder that authorized the change and the full name of the person at the broker's broker at whose direction the change was made;

(G) for all changes in offering prices, the full name of the person at the seller that authorized the change and the full name of the person at the broker's broker at whose direction the change was made;

(H) a copy of any writings by which the seller and bidders agreed that the broker's broker represents either the bidders or both seller and bidders, rather than the seller alone, which writings shall include the dates and times such writings were executed; and the full names of the signatories to such writings;

(I) a copy of the policies and procedures required by Rule G-43(c);

(J) a copy of its predetermined parameters (as defined in Rule G-43(d)(viii)), its analysis of why those predetermined parameters were reasonably designed to identify most bids that might not represent the fair market value of municipal securities that were the subject of bid-wanteds to which the parameters were applied, and the results of the periodic tests of such predetermined parameters required by Rule G-43(c)(i)(F); and

(K) if a broker's broker trading system is a separately operated and supervised division or unit of a broker, dealer or municipal securities dealer, there must be separately maintained in or separately extractable from such division's or unit's own facilities or the facilities of the broker, dealer or municipal securities dealer, all of the records relating to the activities of the broker's broker or alternative trading system, and such records shall be so maintained or otherwise accessible as to permit independent examination thereof and enforcement of applicable provisions of the Act, the rules and regulations thereunder, and the rules of the Board.

(xxvi) *Alternative Trading Systems*. An alternative trading system registered as such with the Commission shall maintain the following records with respect to its municipal securities activities:

(A) for all changed bids, the full name of the person at the bidder firm that authorized the change and the full name of the person at the alternative trading system at whose direction the change was made;

(B) for all changes in offering prices, the full name of the person at the seller firm that authorized the change and the full name of the person at the alternative trading system at whose direction the change was made;

(C) a copy of the policies and procedures required by Rule G-43(d)(iii)(C); and

(D) if the alternative trading system is a separately operated and supervised division or unit of a broker, dealer or municipal securities dealer, there must be separately maintained in or separately extractable from such division's or unit's own facilities or the facilities of the broker, dealer or municipal securities dealer, all of the records relating to the municipal securities activities of the alternative trading system, and such records shall be so maintained or otherwise accessible as to permit independent examination thereof and enforcement of applicable provisions of the Act, the rules and regulations thereunder, and the rules of the Board.

(xxvii) A record of the date that each Form CRS was provided to each retail investor, as defined in Rule 17a-14 under the Act, including any Form CRS provided before such retail investor opens an account.

(b) *Manner in which Books and Records are to be Maintained.* Nothing herein contained shall be construed to require a broker, dealer or municipal securities dealer to maintain the books and records required by this rule in any given manner, provided that the information required to be shown is clearly and accurately reflected thereon and provides an adequate basis for the audit of such information, nor to require a broker, dealer or municipal securities dealer to maintain its books and records relating to transactions in municipal securities separate and apart from books and records relating to transactions in other types of securities; provided, however, that in the case of a bank dealer, all records relating to transactions in municipal securities effected by such bank dealer must be separately extractable from all other records maintained by the bank.

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(c) *Non-Clearing Brokers, Dealers and Municipal Securities Dealers*. A broker, dealer or municipal securities dealer which executes transactions in municipal securities but clears such transactions through a clearing broker, dealer, or bank, or through a clearing agency, shall not be required to make and keep such books and records prescribed in this rule as are customarily made and kept by a clearing broker, dealer, bank or clearing agency; provided that, in the case of a broker, dealer or municipal securities dealer other than a bank dealer, the arrangements with such clearing broker, dealer or bank meet all applicable requirements prescribed in subparagraph (b) of rule 17a-3 under the Act, or the arrangements with such clearing agency have been approved by the Commission or, in the case of a bank dealer, such arrangements have been approved by the appropriate regulatory agency for such bank dealer; and further provided that such broker, dealer or municipal securities dealer shall remain responsible for the accurate maintenance and preservation of such books and records if they are maintained by a clearing agent other than a clearing broker or dealer.

(d) *Introducing Brokers, Dealers and Municipal Securities Dealers*. A broker, dealer or municipal securities dealer which, as an introducing broker, dealer or municipal securities dealer, clears all transactions with and for customers on a fully disclosed basis with a clearing broker, dealer or municipal securities dealer, and which promptly transmits all customer funds and securities to the clearing broker, dealer or municipal securities dealer which carries all of the accounts of such customers, shall not be required to make and keep such books and records prescribed in this rule as are customarily made and kept by a clearing broker, dealer or municipal securities dealer and which are so made and kept; and such clearing broker, dealer or municipal securities dealer shall be responsible for the accurate maintenance and preservation of such books and records.

(e) *Definitions*

(i) *Customer*. For purposes of this rule, the term "customer" shall not include a broker, dealer, municipal securities dealer or municipal advisor acting in its capacity as such or the issuer of the securities which are the subject of the transaction in question.

(ii) *Municipal Advisory Client.* For the purposes of paragraph (h)(vi) of this rule, the term "municipal advisory client" shall include either a municipal entity or obligated person for whom the municipal advisor engages in municipal advisory activities as defined in Rule G-42(f)(iv), or a broker, dealer, municipal securities dealer, municipal advisor, or investment adviser (as defined in section 202 of the Investment Advisers Act of 1940) on behalf of whom the municipal advisor undertakes a solicitation of a municipal entity or obligated person, as defined in Rule 15Ba1-1(n), 17 CFR 240.15Ba1-1(n), under the Act.

(f) *Compliance with Rule 17a-3*. Brokers, dealers and municipal securities dealers other than bank dealers which are in compliance with rule 17a-3 of the Commission will be deemed to be in compliance with the requirements of this rule, provided that the information required by subparagraph (a)(iv)(D) of this rule as it relates to uncompleted transactions involving customers; subsection paragraph (a)(viii); and subsections paragraphs (a)(xi) through (a)(xxvi) shall in any event be maintained.

(g) *Transactions in Municipal Fund Securities*.

(i) *Books and Records Maintained by Transfer Agents.* Books and records required to be maintained by a broker, dealer or municipal securities dealer under this rule solely with respect to transactions in municipal fund securities may be maintained by a transfer agent registered under Section 17A(c)(2) of the Act used by such broker, dealer or municipal securities dealer in connection with such transactions; provided that such broker, dealer or municipal securities dealer shall remain responsible for the accurate maintenance and preservation of such books and records.

(ii) *Price Substituted for Par Value of Municipal Fund Securities.* For purposes of this rule, each reference to the term "par value," when applied to a municipal fund security, shall be substituted with (A) in the case of a purchase of a municipal fund security by a customer, the purchase price paid by the customer, exclusive of any commission, and (B) in the case of a sale or tender for redemption of a municipal fund security by a customer, the sale price or redemption amount paid to the customer, exclusive of any commission or other charge imposed upon redemption or sale.

(iii) *Underwriters of Municipal Fund Securities That Are Not Local Government Investment Pools*. An underwriter (as defined in Rule G-45(d)(xiv)) shall maintain the information required to be reported on Form G-45.

(h) *Municipal Advisor Records.* Every municipal advisor that is registered or required to be registered under Section 15B of the Act and the rules and regulations thereunder shall make and keep current the following books and records:

(i) *General Business Records.* All books and records described in Rule 15Ba1-8(a)(1)-(8) under the Act.

(ii) *Records Concerning Compliance with Rule G-20*.

(A) a separate record of any gift or gratuity subject to the general limitation of Rule G-20(c); and

(B) all agreements referred to in Rule G-20(f) and records of all compensation paid as a result of those agreements.

(iii) *Records Concerning Political Contributions and Prohibitions on Municipal Advisory Business Pursuant to Rule G-37*. Records reflecting:

(A) a listing of the names, titles, city/county and state of residence of all municipal advisor professionals;

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(B) a listing of the names, titles, city/county and state of residence of all non-MAP executive officers;

(C) the states in which the municipal advisor is engaging or is seeking to engage in municipal advisory business;

(D) a listing of municipal entities with which the municipal advisor has engaged in municipal advisory business, along with the type of municipal advisory business engaged in, during the current year and separate listings for each of the previous two calendar years;

(E) the contributions, direct or indirect, to officials of a municipal entity and payments, direct or indirect, made to political parties of states and political subdivisions, by the municipal advisor and each political action committee controlled by the municipal advisor for the current year and separate listings for each of the previous two calendar years, which records shall include: (i) the identity of the contributors, (ii) the names and titles (including any city/county/state or other political subdivision) of the recipients of such contributions and payments, and (iii) the amounts and dates of such contributions and payments;

(F) the contributions, direct or indirect, to officials of a municipal entity made by each municipal advisor professional, any political action committee controlled by a municipal advisor professional, and non-MAP executive officer for the current year, which records shall include: (i) the names, titles, city/county and state of residence of contributors, (ii) the names and titles (including any city/county/state or other political subdivision) of the recipients of such contributions, (iii) the amounts and dates of such contributions; and (iv) whether any such contribution was the subject of an automatic exemption, pursuant to Rule G-37(j), including the amount of the contribution, the date the municipal advisor discovered the contribution, the name of the contributor, and the date the contributor obtained a return of the contribution; provided, however, that such records need not reflect any contribution made by a municipal advisor professional or non-MAP executive officer to officials of a municipal entity for whom such person is entitled to vote if the contributions made by such person, in total, are not in excess of $250 to any official of a municipal entity, per election. In addition, municipal advisors shall maintain separate listings for each of the previous two calendar years containing the information required pursuant to this subparagraph (F) for each municipal advisor representative and each municipal advisor solicitor as defined in Rule G-37(g)(iii) and for any political action committee controlled by such individuals, and separate listings for the previous six months containing the information required pursuant to this subparagraph (F) for each municipal advisor principal, municipal advisor supervisory chain person and municipal advisor executive officer as defined in Rule G-37(g)(iii) and for any political action committee controlled by such individuals and for any non-MAP executive officers;

(G) the payments, direct or indirect, to political parties of states and political subdivisions made by all municipal advisor professionals, any political action committee controlled by a municipal advisor professional, and non-MAP executive officers for the current year, which records shall include: (i) the names, titles, city/county and state of residence of contributors, (ii) the names, and titles (including any city/county/state or other political subdivision) of the recipients of such payments and (iii) the amounts and dates of such payments; provided, however, that such records need not reflect those payments made by any municipal advisor professional or non-MAP executive officer to a political party of a state or political subdivision in which such persons are entitled to vote if the payments made by such person, in total, are not in excess of $250 per political party, per year. In addition, municipal advisors shall maintain separate listings for each of the previous two calendar years containing the information required pursuant to this subparagraph (G) for each municipal advisor representative and each municipal advisor solicitor as defined in Rule G-37(g)(iii) and for any political action committee controlled by such individuals, and separate listings for the previous six months containing the information required pursuant to this subparagraph (G) for each municipal advisor principal, municipal advisor supervisory chain person and municipal advisor executive officer as defined in Rule G-37(g)(iii) and for any political action committee controlled by such individuals and for any non-MAP executive officers;

(H) the contributions, direct or indirect, to bond ballot campaigns made by the municipal advisor and each political action committee controlled by the municipal advisor for the current year, which records shall include: (i) the identity of the contributors, (ii) the official name of each bond ballot campaign receiving such contributions, and the jurisdiction (including city/county/state or political subdivision) by or for which municipal securities, if approved, would be issued, (iii) the amounts (which, in the case of in-kind contributions, must include both the value and the nature of the goods or services provided, including any ancillary services provided to, on behalf of, or in furtherance of the bond ballot campaign) and the specific dates of such contributions, (iv) the full name of the municipal entity and full issue description of any primary offering resulting from the bond ballot campaign to which the municipal advisor or political action committee controlled by the municipal advisor has made a contribution and the reportable date of selection on which the municipal advisor was selected to engage in the municipal advisory business, and (v) the payments or reimbursements, related to any bond ballot contribution,

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received by the municipal advisor from any third party that are required to be disclosed under Rule G- 37(e)(i)(B), including the amount paid and the name of the third party making such payment; and

(I) the contributions, direct or indirect, to bond ballot campaigns made by each municipal advisor professional, any political action committee controlled by a municipal advisor professional, and non-MAP executive officer for the current year, which records shall include: (i) the names, titles, city/county and state of residence of contributors, (ii) the official name of each bond ballot campaign receiving such contributions, and the jurisdiction (including city/county/state or political subdivision) by or for which municipal securities, if approved, would be issued, (iii) the amounts (which, in the case of in-kind contributions, must include both the value and the nature of the goods or services provided, including any ancillary services provided to, on behalf of, or in furtherance of the bond ballot campaign) and the specific dates of such contributions, (iv) the full name of the municipal entity and full issue description of any primary offering resulting from the bond ballot campaign to which the municipal advisor professional, political action committee controlled by the municipal advisor professional or non-MAP executive officer has made a contribution required to be disclosed under Rule G-37(e)(i)(B), or to which a contribution has been made by a municipal advisor professional or a non-MAP executive officer during the period beginning two years prior to such individual becoming a municipal advisor professional or a non-MAP executive officer that would have been required to be disclosed if such individual had been a municipal advisor professional or a non-MAP executive officer at the time of such contribution and the reportable date of selection on which the municipal advisor was selected to engage in the municipal advisory business, and (v) the payments or reimbursements, related to any bond ballot contribution, received by the municipal advisor professional or non-MAP executive officer from any third party that are required to be disclosed by Rule G-37(e)(i)(B), including the amount paid and the name of the third party making such payment or reimbursement; provided, however, that such records need not reflect any contribution made by a municipal advisor professional or non-MAP executive officer to a bond ballot campaign for a ballot initiative with respect to which such person is entitled to vote if the contributions made by such person, in total, are not in excess of $250 to any bond ballot campaign, per ballot initiative.

(J) Municipal advisors shall maintain copies of the Forms G-37 and G-37x submitted to the Board along with a record of submitting such forms to the Board.

(K) Terms used in this paragraph (iii) have the same meaning as in Rule G-37.

(L) No record is required by this paragraph (h)(iii) of:

(i) any municipal advisory business done or contribution to officials of municipal entities or political parties of states or political subdivisions; or

(ii) any payment to political parties of states or political subdivisions

if such municipal advisory business, contribution, or payment was made prior to August 17, 2016.

(M) No municipal advisor shall be subject to the requirements of this paragraph (h)(iii) during any period that such municipal advisor has qualified for and invoked the exemption set forth in clause (B) of paragraph (e)(ii) of Rule G-37; provided, however, that such municipal advisor shall remain obligated to comply with clause (H) of this paragraph (h)(iii) during such period of exemption. At such time as a municipal advisor that has been exempted by this clause (M) from the requirements of this paragraph (h)(iii) engages in any municipal advisory business, all requirements of this paragraph (h)(iii) covering the periods of time set forth herein (beginning with the then current calendar year and the two preceding calendar years) shall become applicable to such municipal advisor.

(iv) *Records Concerning Duties of Non-Solicitor Municipal Advisors pursuant to Rule G-42.*

(A) A copy of any document created by a municipal advisor that was material to its review of a recommendation by another party or that memorializes the basis for any determination as to suitability.

(v) *Records Concerning Compliance with Rule G-44*.

(A) The written supervisory procedures required by Rule G-44(a)(i);

(B) A record of all designations of persons responsible for supervision as required by Rule G-44(a)(ii);

(C) Records of the reviews of written compliance policies and written supervisory procedures as required by Rule G-44(a) and (b);

(D) A record of all designations of persons as chief compliance officer as required by Rule G-44(c);

(E) The annual certifications as to compliance processes required by Rule G-44(d); and

(F) Any certifications made as to substantially equivalent supervisory and compliance obligations and books and records requirements pursuant to Rule G-44(e).

(vi) *Municipal Advisory Client Complaints*. A record of all written complaints of municipal advisory clients or persons acting on behalf of municipal advisory clients that are received by the municipal advisor. This record must include the complainant's name, address, and municipal advisory

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client number or code, if any; the date the complaint was received; the date of the activity that gave rise to the complaint; the name of each associated person of the municipal advisor identified in the complaint; a description of the nature of the complaint; and what action, if any, has been taken by such municipal advisor in connection with each such complaint. In addition, this record must be kept in an electronic format using the complaint product and problem codes set forth in the Municipal Securities Rulemaking Board Rule G-8 Customer and Municipal Advisory Client Complaint Product and Problem Codes Guide.

The term *"written,"* for the purposes of this paragraph, shall include electronic correspondence. The term "complaint" shall mean any written statement alleging a grievance involving the municipal advisory activities of the municipal advisor or any associated person of such municipal advisor.

(vii) *Records Concerning Compliance with Professional Qualification Requirements of Rule G-3*

(A) Copies of the municipal advisor's needs analysis and written training plan as required by subparagraphs (i)(ii)(B)(1) and (i)(ii)(E)(1) of Rule G-3;

(B) Records documenting the content of the training programs and completion of the programs by each covered person as required by Rule G-3(i)(ii)(B)(3); and

(C) The following records to evidence compliance with the requirements of Rule G-3(h)(ii)(A)-(I):

(1) A record evidencing that the individual seeking to obtain the exemption was previously duly qualified as a municipal advisor representative (e.g., copy of the print-out of the individual exam results or exam result certification letter provided by the MSRB);

(2) Documentation supporting the municipal advisor firm's exercise of reasonable diligence in determining that the conditions outlined in Rule G-3(h)(ii)(A) through (I) were met in making the required affirmation notification in accordance with Rule G-3(h)(ii)(I)(8) (e.g., copies of relevant Commission form filings reviewed; records related to continuing education provided and completed; compliance policies and procedures provided and reviewed; and attestations or other documentation to support such a determination);

(3) A copy of the affirmation notification sent to the MSRB required by Rule G-3(h)(ii)(I); and

(4) A record evidencing that the affirmation notification was made in the prescribed manner and within the required period of time as described in Rule G-3(h)(ii)(I) (e.g., automatic email delivery receipt).

(viii) *Records Concerning Compliance with Rule G-40*

(A) A record of all advertisements required by Rule G-40(e); and

(B) A record of any cash or non-cash compensation provided to a person or entity, directly or indirectly, for a testimonial as that term is defined in Rule G-40(a)(iv)(G).

(ix) *Records Concerning Compliance with Rule G-46*.

(A) evidence that the disclosures required by Rule G-46(b) were made in the manner required by that section;

(B) a copy of each writing or writings required by Rule G-46(c);

(C) documentation substantiating the solicitor municipal advisor's reasonable basis for believing its representations as described in Rule G-46(d); and

(D) evidence that the disclosures required by Rule G-46(e) were made in the manner described in Rule G-46(f) (e.g., automatic email delivery receipt).

Supplementary Material

.01 Electronic Recordkeeping. Paragraphs (a)(xii) and (h)(vi) of this rule require that customer complaint logs be kept in an electronic format. For those purposes, "electronic format" is defined as any computer software program that is used for storing, organizing and/or manipulating data that can be provided promptly upon request to a regulatory authority.

.02 Other Reporting Requirements. In addition to the recordkeeping requirements of Paragraphs (a)(xii) and (h)(vi) of Rule G-8, the regulated entity may be required to promptly report certain written customer or municipal advisory client complaints to other appropriate regulatory authorities. Those written customer or municipal advisory client complaints that may be required to be promptly reported to other appropriate regulatory authorities include complaints in which the customer or municipal advisory client alleges theft or misappropriation of funds or securities or of forgery.

Rule G-8 Interpretations

Interpretive Notice on Recordkeeping

July 29, 1977

The Municipal Securities Rulemaking Board (the "Board") has received a number of inquiries concerning Board rules G-8 and G-9. These rules require municipal securities brokers and municipal securities dealers to make and keep current certain specified records concerning their municipal securities business and to preserve such records for specified periods of time. This interpretive notice addresses several of the more frequent inquiries received by the Board regarding these rules.

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General Purposes of Recordkeeping Rules

The Board's recordkeeping rules are designed to require organizations engaged in the municipal securities business to maintain appropriate records concerning their activities in such business. In writing the rules, the Board adopted the approach of specifying in some detail the information to be reflected in the various records. The Board believed that this approach would provide helpful guidance to municipal securities professionals as well as the regulatory agencies charged with the responsibility of examining the records of such firms. At the same time, the Board attempted to provide a degree of flexibility to firms concerning the manner in which their records are to be maintained, recognizing that various recordkeeping systems could provide a complete and accurate record of a firm's municipal securities activities. The interpretations set forth in this notice are intended to be consistent with the foregoing purposes.

This notice is not intended to address all of the questions which have arisen, or may arise; the Board will continue its policy of responding to written requests for individual interpretations and may issue further interpretive notices on recordkeeping should additional questions of general interest arise.

The following topics are covered in this interpretive notice:

General Purposes of Recordkeeping Rules

Election to Follow Board or Commission Recordkeeping Rules

Maintenance of Records on a Trade Date or Settlement Date Basis

Current Posting of Records

Unit System Method of Recordkeeping

Rule G-8(a)(ii) — Account Records

Rule G-8(a)(iii) — Securities Records

Rules G-8(a)(vi) and (vii) — Records for Agency and Principal Transactions

Rule G-8(a)(xi) — Customer Account Information

Rule G-8(c) — Non-Clearing Municipal Securities Brokers and Municipal Securities Dealers

Rule G-9(b)(viii)(C) — Preservation of Written Communications

Election to Follow Board or Commission Recordkeeping Rules

Rules G-8(f) and G-9(g) provide that municipal securities brokers and municipal securities dealers other than bank dealers, who are in compliance with the recordkeeping rules of the Securities and Exchange Commission (the "Commission"), will be deemed to be in compliance with Board rules G-8 and G-9, provided that the following additional records, not specified in the Commission's rules, are maintained by such firms: records of uncompleted transactions involving customers (subparagraph (a)(iv)(D)); records relating to syndicate transactions (paragraph (a)(viii)); new account information (paragraph (a)(xi)); and information concerning customer complaints (paragraph (a)(xii)). Conversely, Commission rules 17a-3 and 17a-4 provide that securities firms engaged in the municipal securities business will satisfy all regulatory requirements concerning recordkeeping with respect to their municipal securities business if they are in compliance with the Board's rules.

Securities firms must determine to comply with either the Board or Commission rules, but are not required to file with either the Board or the commission a formal written notice of election. Satisfactory compliance with either set of rules will be subject to determination in the course of periodic compliance examinations conducted by the regulatory organizations charged with enforcement of Board and Commission rules.

Maintenance of Records on a Trade Date or Settlement Date Basis

Under rule G-8, records concerning purchases and sales of municipal securities may be maintained on either a trade date or settlement date basis, provided that all records relating to purchases and sales are maintained on a consistent basis. For example, if a municipal securities broker or municipal securities dealer maintains its records of original entry concerning purchases and sales (rule G-8(a)(i)) on a settlement date basis, the municipal securities broker or municipal securities dealer must also maintain its account records (rule G-8(a)(ii)) and securities records (rule G-8(a)(iii)) on the same basis.

The above records may not be maintained on a clearance date basis, that is, the date the securities are actually delivered or received. Records maintained on a clearance date basis would not accurately reflect obligations of a municipal securities broker or municipal securities dealer to deliver or accept delivery of securities. Of course, the date of clearance should be noted in the records of original entry, account records and securities records, regardless of whether these records are kept on a trade date or settlement date basis.

Current Posting of Records

Rule G-8 provides that every municipal securities broker or municipal securities dealer must make and keep current the records specified in the rule. The Board has received inquiries as to the time within which records must be posted to satisfy the currency requirement.

Blotters or other records of original entry showing purchases and sales of municipal securities should be prepared no later than the end of the business day following the trade date. Transactions involving the purchase and sale of securities should be posted to the account records no later than settlement date and to the securities records no later than the end of the business day following the settlement date. Records relating to securities movements and cash receipts and disbursements should reflect such events on the date they occur and should be posted to the appropriate records no later than the end of the following business day.

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Commission rule 17a-11 requires municipal securities dealers, other than bank dealers, to give immediate notice to the Commission and their designated examining authorities of any failure to make and keep current the required records, and to take corrective action within forty-eight hours after the transmittal of such notice.

Unit System Method of Recordkeeping

Under rule G-8, records may be maintained in a variety of ways, including a unit system of recordkeeping. In such a system, records are kept in the form of a group of documents or related groups of documents. For example, customer account records may consist of copies of confirmations and other related source documents, if necessary, arranged by customer.

A unit system of recordkeeping is an acceptable system for purposes of rule G-8 if the information required to be shown is clearly and accurately reflected and there is an adequate basis for audit. This would require in most instances that each record in a unit system be arranged in appropriate sequence, whether chronological or numerical, and fully integrated into the overall recordkeeping system for purposes of posting to general ledger accounts.

Rules G-8(a)(ii) — Account Records

Rule G-8(a)(ii) requires every municipal securities broker and municipal securities dealer to maintain account records for each customer account and the account of the municipal securities broker and municipal securities dealer, showing all purchases and sales, all receipts and deliveries of securities, all receipts and disbursements of cash, and all other debits and credits to such account.

The account records may be kept in several different formats. Ledger entries organized separately for each customer and for the municipal securities broker or municipal securities dealer, showing the requisite information, would clearly satisfy the requirements of rule G-8(a)(ii).

The requirements of rule G-8(a)(ii) can also be satisfied by a unit system of recordkeeping. See discussion above. Under such a system, a municipal securities professional might maintain files, organized by customer, containing copies of confirmations and other pertinent documents, if necessary, which reflect all the information required by rule G-8(a)(ii).

The question has also been raised whether the account records requirement of rule G-8(a)(ii) can be satisfied by an electronic data processing system which can produce account records by tracing through separate transactions. The Board is of the view that such a system is acceptable if the account records should be obtainable without delay, although the records need not be maintained by customer prior to being produced. The account records so produced must also reflect clearly and accurately all the required information, provide an adequate basis for audit and be fully integrated into the overall recordkeeping system. Under rule G-27, on supervision, a municipal securities principal is required to supervise the activities of municipal securities representatives with respect to customer accounts and other matters. In this connection, it may be appropriate to obtain printouts of customer accounts on a periodic basis.

The Board believes that it is important to maintain account records in the fashion described above in view of several of the Board's fair practice rules, such as the rules on suitability and churning. Account records will be important both as a tool for management to detect violations of these rules and for enforcement of these rules by the regulatory agencies conducting compliance examinations or responding to complaints.

The requirement to maintain account records does not apply to a firm which effects transactions exclusively with other municipal securities professionals and has no customers, as defined in paragraph (e) of rule G-8.

Rule G-8(a)(iii) — Securities Records

Rule G-8(a)(iii) requires that records be kept showing separately for each municipal security all long and short positions carried by a municipal securities broker or municipal securities dealer for its account or for the account of a customer, the location of all such securities long and the offsetting position to all such securities short, and the name or other designation of the account in which each position is carried.

The securities records should reflect not only purchases and sales, but also any movement of securities, such as whether securities have been sent out for validation or transfer. If there is no activity with respect to a particular security, it is not necessary to make daily entries for the security in the securities records. The last entry will be deemed to be carried forward until there is further activity involving the security.

Rule G-8(a)(iii) requires that the securities records show all long security count differences and short count differences classified by the date of physical count and verification on which they were discovered. The Board currently has no rule requiring municipal securities professionals to make periodic securities counts. However, if such counts are made, all count differences must be noted as provided in this section. Commission rule 17a-13 requires municipal securities dealers, other than bank dealers and certain securities firms exempted from the rule, to examine and count securities at least once in each quarter.

The requirement to maintain securities records under rule G-8 does not apply to a firm which effects municipal securities transactions exclusively with other municipal securities professionals and has no customers, as defined in paragraph (e) of rule G-8, provided the firm does not carry positions for its own account and records or fails to deliver, fails to receive and bank loans are reflected in other records of the firm.

Rules G-8(a)(vi) and (vii) — Records for Agency and

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Principal Transactions

Rules G-8(a)(vi) and (vii) require municipal securities brokers and municipal securities dealers to make and keep records for each agency order and each transaction effected by the municipal securities broker or municipal securities dealer as principal. The records may be in the form of trading tickets or similar documents. In each case, the records must contain certain specified information, including "to the extent feasible, the time of execution."

The phrase "to the extent feasible" is intended to require municipal securities professionals to note the time of execution for each agency and principal transaction except in extraordinary circumstances when it is impossible to determine the exact time of execution. In such cases, the municipal securities professional should note the approximate time of execution and indicate that it is an approximation.

Rule G-8(a)(xi) — Customer Account Information

Rule G-8(a)(xi) requires a municipal securities broker or municipal securities dealer to obtain certain information for each customer. Several distinct questions have been raised with respect to this provision.

The requirement to obtain the requisite information may be satisfied in a number of ways. Some municipal securities brokers and municipal securities dealers have prepared questionnaires which they have had their customers complete and return. Others have instructed their salesmen to obtain the information from customers over the telephone at the time orders are placed. It is not necessary to obtain a written statement from a customer to be in compliance with the provision.

Except for the tax identification or social security number of a customer, the customer account information required by this provision must be obtained prior to the settlement of a transaction. The Board believes that such a requirement is reasonable since the information is basic and important.

The requirement in subparagraph (C) of rule G-8(a)(xi) to obtain the tax identification or social security number of a customer tracks the requirement in section 103.35, Part 103 of Title 31 of the Code of Federal Regulations, which was adopted by the Treasury Department and became effective in June 1972. Under this section, every broker, dealer and bank must obtain the tax identification or social security number of customers. If a broker, dealer or bank is unable to secure such information after reasonable effort, it must maintain a record identifying all such accounts. The Board interprets subparagraph (C) of rule G-8(a)(xi) in a similar fashion to require municipal securities professionals to make a reasonable effort to obtain a customer's tax identification or social security number and, if they are unable to do so, to keep a record of that fact.

Several inquiries have focused on the scope of subparagraph (G) of rule G-8(a)(xi) which requires that a record be made and kept of the name and address of the beneficial owner or owners of such account if other than the customer and transactions are to be confirmed to such owner or owners.

This provision applies to the situation in which securities are confirmed to an account which has not directly placed the order for the securities. This frequently occurs in connection with investment advisory accounts, where the investment advisor places an order for a client and directs the executing firm to confirm the transaction directly to the investment advisor's client.

Under rule G-8, the only information which must be obtained in such circumstances for the account to which the transaction is confirmed is the name and address of the account, information which would have to be obtained in any event in order to transmit the confirmation. Since the investment advisor itself is the customer, the other items of customer account information set forth in rule G-8(a)(xi) need not be obtained for the investment advisor's client. The customer account information applicable to institutional accounts, however, must be obtained with respect to the investment advisor. Also, the account records required by rule G-8(a)(ii) would not be required to be maintained for the investment advisor's client, although such records would have to be maintained with respect to the account of the investment advisor.

A municipal securities professional is not required to ascertain the name and address of the beneficial owner or owners of an account if such information is not voluntarily furnished. Subparagraph G-8(a)(xi)(G) applies only when an order is entered on behalf of another person and the transaction is to be confirmed directly to the other person.

A recent court decision, *Rolf v. Blyth Eastman Dillon & Co. Inc., et al.* issued on January 17, 1977, in the United States District Court, Southern District of New York, may have important implications with respect to the obligations generally of securities professionals to beneficial owners of accounts, especially to clients of investment advisors. We commend your attention to this decision, which has been appealed.

Rule G-8(c) — Non-Clearing Municipal Securities Brokers and Municipal Securities Dealers

Rule G-8(c) provides that a non-clearing municipal securities broker or municipal securities dealer is not required to make and keep the books and records prescribed by rule G-8 if they are made and kept by a clearing broker, dealer, bank or clearing agency. Accordingly, to the extent that records required by rule G-8 are maintained for a municipal securities broker or municipal securities dealer by a clearing agent, the municipal securities broker or municipal securities dealer does not have to maintain such records. A non-clearing municipal securities broker or municipal securities dealer is still responsible for the accurate maintenance and preservation of the records if they are maintained by a clearing agent other than a clearing

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broker or dealer, and should assure itself that the records are being maintained by the clearing agent in accordance with applicable recordkeeping requirements of the Board.

In the case of a bank dealer, clearing arrangements must be approved by the appropriate regulatory agency for the bank dealer. The bank regulatory agencies are each considering the adoption of procedures to approve clearing arrangements. It is contemplated that these procedures will require the inclusion of certain provisions in clearing agreements, such as an undertaking by the clearing agent to maintain the bank dealer's records in compliance with rules G-8 and G-9, and will specify the mechanics for having such arrangements considered and approved. The bank regulatory agencies indicate that they will advise bank dealers subject to their respective jurisdictions on this matter in the near future.

In the case of a securities firm, Commission approval is required for all clearing arrangements with entities other than a broker, dealer or bank. The Commission has recently proposed an amendment to its rule 17a-4 which would eliminate the need to obtain Commission approval of clearing arrangements with such other entities, provided that certain specified conditions are met. If the proposed rule is adopted, the Board would make a corresponding change in rule G-8.

If an agent clears transactions, but transmits copies of all records to the municipal securities broker or municipal securities dealer, and these records are preserved by the municipal securities broker or municipal securities dealer in accordance with rule G-9, the clearing arrangement is not subject to the rule G-8(c).

Rule G-9(b)(viii)(C) — Preservation of Written Communications

Subparagraph (C) of rule G-9(b)(viii) requires municipal securities brokers and municipal securities dealers to preserve for three years all written communications received or sent, including inter-office memoranda, relating to the conduct of the activities of such municipal securities broker or municipal securities dealer with respect to municipal securities.

The communications required to be preserved by this provision relate to the conduct of a firm's activities with respect to municipal securities. Accordingly, such documents as internal memoranda regarding offerings or bids, letters to or from customers and other municipal securities professionals regarding municipal securities, and research reports must be preserved. Documents pertaining purely to administrative matters, such as vacation policy and the like, would not have to be preserved for purposes of the rule.

Notice of Interpretation Concerning Records of Certificate Numbers of Securities Cleared by Clearing Agents

October 10, 1986

Rule G-8(a)(i) requires that dealers maintain records of original entry that include certificate numbers of all securities received or delivered. The Board has received inquiries whether a dealer must maintain in its records of original entry the certificate numbers of securities that are received or delivered by a clearing agent on behalf of the dealer or whether it is permissible for the clearing agent to maintain records of the certificate numbers for the dealer.

The Board has concluded that, for transactions in which physical securities are cleared by a clearing agent, records of the certificate numbers of the securities required by rule G-8(a)(i) may be maintained by the agent on behalf of the dealer if the dealer obtains an agreement in writing from the agent in which the following conditions are specified: (i) a complete and current record of certificate numbers of physical securities cleared by the agent will be maintained on behalf of the dealer by the agent; (ii) the agent will preserve such record, and will provide such record to the dealer promptly upon request, in a manner allowing the dealer to comply with Board rule G-9 on maintenance and preservation of records. The Board emphasizes that a dealer allowing a clearing agent to maintain records of certificate numbers on its behalf continues to be responsible for the accurate maintenance and preservation of such records in conformance with the Board's recordkeeping rules.

See also:

Rule G-12 Interpretation — Application of Rules G-8, G-12 and G-14 to Specific Electronic Trading Systems, March 26, 2001.

Rule G-17 Interpretation — Notice Concerning Application of Board Rules to Put Option Bonds, September 30, 1985.

Rule G-27 Interpretation — Supervisory Procedures for the Review of Correspondence with the Public, March 24, 2000.

Rule G-32 Interpretations — Notice Regarding the Disclosure Obligations of Brokers, Dealers and Municipal Securities Dealers in Connection with New Issue Municipal Securities Under Rule G-32, November 19, 1998.

- **Notice Regarding Electronic Delivery and Receipt of Information by Brokers, Dealers and Municipal Securities Dealers,** November 20, 1998.

Interpretive Letters

Syndicate records: participations. This will acknowledge receipt of your letter of November 24, 1981 concerning certain of the requirements of Board rule G-8(a)(viii) regarding syndicate records to be maintained by managers of underwritings of new issues of municipal securities.

You note that this provision requires, in pertinent part, that,

> [w]ith respect to each syndicate..., records shall be maintained ... showing ... the name and percentage of participation of each member of the syndicate or account...

You inquire whether this provision necessitates the designation of an actual percentage or decimal participation, or, alternatively,

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> whether a listing of the ... dollar participation [of each member] ... along with [the] aggregate par value of the syndicate meets the requirement ... of the Rule.

The rule should not be construed to require in all cases an indication of a numerical percentage for each member's participation, if other information from which a numerical percentage can easily be determined is set forth. The method you propose, showing the par value amount of the member's participation, is certainly acceptable for purposes of compliance with this provision of the rule. *MSRB interpretation of December 8, 1981.*

Recordkeeping by introducing brokers. Your letter of September 16, 1982, has been referred to me for response. In your letter you indicate that your firm functions as an "introducing broker", and, in such capacity, effects an occasional transaction in municipal securities. You inquire as to the recordkeeping requirements applying to a firm acting in this capacity, and you also inquire as to the possibility of an exemption from the Board's rules, in view of the extremely limited nature of your municipal securities business.

As you recognize, the provision Board rule G-8 on recordkeeping with particular relevance to introducing brokers is section (d), which provides as follows:

> A municipal securities broker or municipal securities dealer which, as an introducing municipal securities broker or municipal securities dealer, clears all transactions with and for customers on a fully disclosed basis with a clearing broker, dealer or municipal securities dealer, and which promptly transmits all customer funds and securities to the clearing broker, dealer or municipal securities dealer which carries all of the accounts of such customers, shall not be required to make and keep *such books and records prescribed in this rule as are customarily made and kept by a clearing broker, dealer or municipal securities dealer and which are so made and kept*; and such clearing broker, dealer or municipal securities dealer shall be responsible for the accurate maintenance and preservation of such books and records. (emphasis supplied)

As you can see, this provision states that the introducing broker need not make and keep those records which are "customarily made and kept by" the clearing dealer, as long as the clearing dealer does, in fact, make and keep those records. The introducing broker is still required, however, to make and keep those records which are not "customarily made and kept by" the clearing firm.

The majority of the specific records you name in your letter fall into the latter category of records which are not customarily made and kept by the clearing firm and therefore remain the responsibility of the introducing broker. Your firm would, therefore, be required to make the records of customer account information required under rule G-8(a)(xi), with all of the itemized details of information recorded on such records. Your firm would also be required to maintain the records of agency and principal transactions ("order tickets") required under rules G-8(a)(vi) and (vii) respectively. In both cases, however, if, for some reason, the clearing firm does make and keep these records, your firm would not be required to make and keep duplicates.

In the case of the requirement to keep confirmation copies, it is my understanding that the clearing firm generally maintains such records. If the clearing firm to which you introduce transactions follows this practice and maintain copies of the confirmations of such transactions, you would not be required to maintain the same record.

In adopting each of these recordkeeping requirements the Board concluded that the information required to be recorded was the minimum basic data necessary to ensure proper handling and recordation of the transaction and customer protection. I note also that these requirements parallel in most respects those of Commission rule 17a-3, to which you are already subject by virtue of your registration as a broker/dealer.

With respect to your inquiry regarding an exemption from the Board's requirements, I must advise that the Board does not have the authority to grant such exemptions. The Securities and Exchange Commission does have the authority to grant such an exemption in unusual circumstances. Any letter regarding such an exemption should be directed to the Commission's Division of Market Regulation. *MSRB interpretation of September 21, 1982.*

Securities record. In your letter, you question the application of Board rule G-8(a)(iii) and, in particular, the requirement that "such [securities] records shall consist of a single record system," to a situation in which a securities firm maintains such records organized by ownership of the securities. It is my understanding that the firm in question maintains records showing securities in the firm's trading account, and offsetting positions long and short, and separate records showing securities owned by customers and the offsetting location for those securities.

Rule G-8(a)(iii) requires, in part

> [r]ecords showing separately for each municipal security all positions ... carried by such municipal securities broker or municipal securities dealer for its account or for the account of a customer...

Therefore, securities records should be maintained by security, although this can be accomplished by separate sheets showing positions in that security held for trading or investment purposes and positions owned by customers. A record organized by customer, showing several securities and offsetting positions held by that customer, is not acceptable for purposes of rule G-8(a)(iii).

With respect to your question regarding the multiple maturity provision of rule G-8(a)(iii), the relevant position of the rule states

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> multiple maturities of the same issue of municipal securities, as well as multiple coupons of the same maturity, may be shown on the same record, provided that adequate secondary records exist to identify separately such maturities and coupons.

Therefore, the securities to be shown on a single securities record must be identical as to issue date or maturity date. Securities which are identical as to issuer may be shown on a single securities record only if the securities have either the same issue date or the same maturity date, and if adequate secondary records exist to identify separately the securities grouped on the record. *MSRB interpretation of April 8, 1978*.

Maintenance of securities record. I refer to your letter of April 9, 1979 concerning rule G-8(a)(iii), which requires the maintenance of a securities record. This letter is intended to address your questions concerning that provision.

Rule G-8(a)(iii) requires every municipal securities dealer to make and keep

> records showing separately for each municipal security all positions (including, in the case of a municipal securities dealer other than a bank dealer, securities in safekeeping) carried by such municipal securities dealer for its own account or for the account of a customer (with all "short" trading positions so designated), the location of all such securities long and the offsetting position to all such securities short, and the name or other designation of the account in which each position is carried.

Rule G-8(a)(iii) further provides that "[s]uch records shall consist of a single record system...," and that "...a bank dealer shall maintain records of the location of securities in its own trading account."

The purpose of the requirement to maintain a "securities record" is to provide a means of securities control, ensuring that all securities owned by the dealer or with respect to which the dealer has outstanding contractual commitments are accounted for in the dealer's records. To achieve this purpose, the record is commonly constructed in "trial balance" format, with information as to the "ownership" of securities reflected on the "long," or debit side, and information as to the location on the "short," or credit side of the record. The record therefore serves a different function from the subsidiary records, such as the "fail" records, required to be maintained under other provisions of the rule. The subsidiary records reflect the details of particular securities transactions; the securities record assures that a municipal securities dealer's over-all position is in balance.

In your letter you inquire specifically whether this record can be constructed through the use of duplicate copies of subsidiary records. The rule requires a system of records organized by security, showing all positions in such security. Record systems organized by position or locations, showing all securities held in such position or location, cannot serve the same balancing and control function.

The securities record, however, does not have to be maintained on a single sheet or ledger card per security. Although this is the most common means of maintaining a securities record, certain municipal securities dealers prepare segments of the record in different physical locations, bringing the segments together at the close of the business day to compose the securities record. This practice is permissible under the rule.

Finally, you have inquired regarding the possibility of maintaining the securities record on a unit system basis. Records in such a system are kept in the form of a group of documents or related groups of documents, most often files of duplicate confirmations. The maintenance of the securities record on such a basis would be acceptable provided that the required information is clearly and accurately reflected and there is an adequate basis for audit. I would note, however, that utilization of a unit system would probably only be feasible for a municipal securities dealer with very limited activity.

I hope this letter is helpful to you in responding to inquiries from your members. If you or any of your members have any further questions regarding this matter, please do not hesitate to contact us. *MSRB interpretation of April 16, 1979*.

Securities control. Your letter dated February 24, 1978, has been referred to me for response. In addition, I understand that you have had several subsequent telephone conversations about your question. In these conversations, you describe the procedures for securities control followed by your bank's dealer department.

Briefly, as we understand your procedures, the dealer department records all certificate numbers of municipal securities received or delivered by the department. This information is recorded in a manner which relates the physical receipt and delivery of specific certificates to specific transactions. Once in safekeeping, the certificates are kept in a vault, and filed by issue, rather than filed separately by account, chronologically, or by transaction. In your letter, you inquired whether this system of filing in the vault raises problems of compliance with Board rule G-8.

Since your bank records in records of original entry the certificate numbers upon receipt and delivery of municipal securities by your dealer department, it appears that your system satisfies the requirement under rule G-8(a)(i) that such information be recorded on the "record of original entry." The safekeeping procedures used by the bank are specifically excluded from the scope of the rule under the provisions of paragraph G-8(a)(iii), which requires

> [r]ecords showing...all positions (including, in the case of a municipal securities broker or municipal securities dealer other than a bank dealer, securities in safekeeping)...

Therefore, based on the information you have provided, we believe that your system is in compliance with the applicable provisions of rule G-8. *MSRB interpretation of April 10, 1978*.

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Customer account information. I am writing in response to your letter of May 25, 1982 concerning the maintenance of customer account information records in connection with certain orders placed with you by a correspondent bank. In your letter you indicate that a correspondent bank periodically purchases securities from your dealer department for the accounts of specified customers. The confirmations of these transactions are sent to the correspondent bank, with a statement on each confirmation designating, by customer name, the account for which the transaction was effected. No confirmations or copies of confirmations are sent to the customers identified by the correspondent bank. You inquire whether customer account information records designating these customers as the "beneficial owners" of these accounts need be maintained by your dealer department.

As you know, rule G-8(a)(xi) requires a municipal securities dealer to record certain information about each customer for which it maintains an account. Subparagraph (G) of such paragraph requires that this record identify the

> name and address of beneficial owner or owners of such account if other than the customer *and transactions are to be confirmed to such owner or owners*...(emphasis added)

If the transactions are not to be confirmed to the customers identified as the owners of the accounts for which the transactions are effected, then such information need not be recorded.

In the situation you cite, therefore, the names of the customers need not be recorded on the customer account information record. *MSRB interpretation of June 1, 1982*.

Use of electronic signatures. This is in response to your letter and a number of subsequent telephone conversations regarding your dealer department's proposed use of a bond trading system. The system is an online, real-time system that integrates all front and back office functions. The system features screen input of customer account and trading information which would allow the dealer department to eliminate the paper documents currently in use. The signature of the representative introducing a customer account, required to be recorded with customer account information by rule G-8, and the signature of the principal signifying approval of each municipal securities transaction, required by rule G-27, would be performed electronically, *i.e.*, by input in a restricted data field. The signature of the principal approving the opening of the account, required by rule G-8, will continue to be performed manually on a printout of the customer information.[1]

Rule G-8(a)(vi) and (vii) require dealers to make and keep records for each agency and principal transaction. The records may be in the form of trading tickets or similar documents. In addition, rule G-8(a)(xi), on recordkeeping of customer account information, requires, among other things, the signature of the representative introducing the account and the principal indicating acceptance of the account to be included on the customer account record. Rule G-27(c)(ii)[*] requires, among other things, the prompt review and written approval of each transaction in municipal securities. In addition, the rule requires the regular and frequent examination of customer accounts in which municipal securities transactions are effected in order to detect and prevent irregularities and abuses. The approvals and review must be made by the designated municipal securities principal or the municipal securities sales principal. Rule G-9(e), on preservation of records, allows records to be retained electronically provided that the dealer has adequate facilities for ready retrieval and inspection of any such record and for production of easily readable facsimile copies.

The Board recognizes that efficiencies would be obtained by the replacement of paper files with electronic data bases and filing systems and generally allows records to be retained in that form.[2] Moreover, as dealers increasingly automate, there will be more interest in deleting most physical records. Electronic trading tickets and auto-mated customer account information satisfy the recordkeeping requirements of rule G-8 as long as such information is maintained in compliance with rule G-9(e).

The Board and your enforcement agency are concerned, however, that it may be difficult to verify a representative's signature on opening the account or a principal's signature approving municipal securities transactions or periodically reviewing customer accounts if the signatures are noted only electronically. Your enforcement agency has advised us of its discussions with you. Apparently, it is satisfied that appropriate security and audit procedures can be developed to permit the use of electronic signatures of representatives and principals and ensure that such signatures are verifiable. Thus, the Board has determined that rules G-8 and G-27 permit the use of electronic signatures when security and audit procedures are agreed upon by the dealer and its appropriate enforcement agency. Whatever procedures are agreed upon must be memorialized in the dealer's written supervisory procedures required by rule G-27. *MSRB Interpretation of February 27, 1989*.

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[1] In addition, you noted in a telephone conversation that the periodic review of customer accounts required by rule G-27(c)(ii)[*] also will be handled electronically using the principal's electronic signature to signify approval.

[2] *See* rule G-9(e).

[*] [Currently codified at Rule G-27(c)(i)(G)(2).]

Records of original entry. Your letter dated October 13, 1978, has been referred to me for response. In your letter you inquire whether a certain method of keeping "records of original entry" is satisfactory for purposes of the requirement to maintain "current" books and records. In particular, you suggest that such records could be maintained by means of a "unit" or "ticket" system during the period from trade date to settlement date, and then recorded on a blotter as of the settlement date.

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As indicated to you, such a method of preserving these records is acceptable, provided that all information required to be shown is clearly and accurately reflected in both forms of the record, and both forms provide adequate audit controls. *MSRB interpretation of October 26, 1978.*

Records of original entry. This will acknowledge receipt of your letter of June 13, 1979, concerning the requirement under Board rule G-8 for records of original entry. In your letter you discuss a "Bond Register" used by your firm, which is organized by security, and presents on separate cards all transactions in particular securities arranged in chronological order. You inquire whether this is satisfactory for purposes of the Board's recordkeeping rule.

The "record of original entry" required under rule G-8(a)(i) is intended to reflect all transactions effected by a municipal securities dealer on a particular day, all transactions cleared on such day, and all receipts and disbursements of cash on such day. The record is intended to provide a complete review of the dealer's activity for the day in question. It is therefore necessary that the record be organized by date. A record organized by security would not serve the purposes of a record of original entry as envisioned in the Board's rule. *MSRB interpretation of August 9, 1979.*

Records of original entry: unit system. This will acknowledge receipt of your letter of November 20, 1981 concerning compliance with certain of the provisions of Board rule G-8 through the use of a "unit system" method of recordkeeping. In your letter you indicate that the bank wishes to maintain the record of original entry required under rule G-8(a)(i) in the form of a collection of duplicate copies of confirmations filed in transaction settlement date order; in addition, you enclose a copy of the confirmation form used by the bank. You inquire whether maintaining the record in this manner would be satisfactory for purposes of the rule.

In a July 29, 1977 interpretive notice on rule G-8 the Board stated:

> Under rule G-8, records may be maintained in a variety of ways, in-cluding a unit system of recordkeeping. In such a system, records are kept in the form of a group of documents or related groups of documents....
>
> A unit system of recordkeeping is an acceptable system for purposes of rule G-8 if the information required to be shown is clearly and accurately reflected and there is an adequate basis for audit. This would require in most instances that each record in a unit system be arranged in appropriate sequence, whether chronological or numerical, and fully integrated into the over-all recordkeeping system for purposes of posting to general ledger accounts.

Therefore, the type of recordkeeping system you propose may be used for purposes of compliance with rule G-8 if (1) the records show, in a clear and accurate fashion, all of the information that is required to be shown, and (2) the records are maintained in a form that provides an adequate basis for audit by bank employees or examiners. It is my understanding that recordkeeping systems similar to that which you propose have been inspected by banking regulatory authorities during examinations of other bank municipal securities dealer departments, and have been found to meet these two criteria.

In your letter you indicate that the confirmation form used by your bank "contains all the information needed" to meet the recordkeeping requirement. Our review of your form indicates that this is not the case. The rule requires the record of original entry to contain

> an itemized daily record of all purchases and sales of municipal securities, all receipts and deliveries of municipal securities (including bond or note numbers and, if the securities are in registered form, an indication to such effect), all receipts and disbursements of cash with respect to transactions in municipal securities, [and] all other debits and credits pertaining to transactions in municipal securities ... The records of original entry shall show the name or other designation of the account for which each such transaction was effected (whether effected for the account of such municipal securities broker or municipal securities dealer, the account of a customer, or otherwise), the description of the securities, the aggregate par value of the securities, the dollar price or yield and aggregate purchase or sale price of the securities, accrued interest, the trade date, and the name or other designation of the person from whom purchased or received or to whom sold or delivered.

The confirmation form you enclosed does not appear to provide a space for notation of "the name or other designation of the account for which [the] transaction was effected." This information is distinct from "the name or other designation of the person from whom purchased ... or to whom sold ..." (which would appear in the "name and address" portion of your form) and requires an indication of the account, whether it be the bank's trading inventory or portfolio, or the contra-principal on an agency transaction, in which the securities were held prior to a sale or will be held subsequent to a purchase. For example, if the bank sells $100,000 par value securities from its trading account to "Mr. Smith", the record of original entry would reflect that this transaction was effected for the account of the [bank's] trading account. A subsequent sale of these securities effected as agent for the customer would be reflected on the record of original entry as for the account of "Mr. Smith."

I note also that, in addition to a record of purchase and sale transactions (which could easily be maintained in the form of duplicate copies of confirmations), the record of original entry must contain information about transactions cleared on the date of the record as well as cash disbursements and receipts. Your letter does not indicate how your bank would comply with these latter requirements. As you may be aware, other banks using unit recordkeeping systems use additional copies of the confirmation as "clearance" records, with information on receipts and deliveries of securities and movements

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of cash noted on these copies. These "clearance" records are then aggregated with the purchase and sale records to form a complete record of original entry.

In summary, the method of maintaining a record of original entry which your bank proposes can be used to comply with the requirements of the rule. Certain aspects of the information required by the rule are not contained on the document you propose to use, however, and provision would have to be made for inclusion of these items in the records before the system you propose would be satisfactory for compliance with the rule's requirements. *MSRB interpretation of November 24, 1981.*

Records of original entry; accessibility of records. As I indicated to you in my previous letter of February 1, 1982, your inquiry of January 21, 1982 was referred to the committee of the Board charged with responsibility for interpreting the requirements of Board rules G-8 and G-9 on books and records. That committee has authorized my sending you this response.

In your letter you indicate that during the course of an examination of your bank's municipal securities dealer department by the Office of the Comptroller of the Currency certain criticisms were made by the examiners regarding the recordkeeping system used by your bank. In particular, the examiners noted that the "record of original entry" maintained by the bank did not contain seven specified items of information,[1] and expressed the view that customer account records more than one year old were not "maintained and preserved in an easily accessible place" within the meaning of rule G-9. You disagree with the examiner's interpretation of "easily accessible." Further, while conceding that the specified items of information are not contained on the record, you indicate that this information is readily available upon specific inquiry to the bank's system data base, and express the view that this should be sufficient for purposes of compliance with Board rule G-8. You request the Board's views on these subjects.

As a general matter we would hesitate to disagree with the opinion expressed by an on-site examiner concerning the auditability of records maintained by a municipal securities dealer. The examiner is, of course, in direct contact with the matter in question, and has access to the full details of the situation, rather than an abstraction or summary of the particulars. Accordingly, we are unable to express a view that the examiner's criticisms are incorrect in the specific circumstances you describe.

With respect to the particular questions which you raise, we note that rule G-8 does require that all of the specified information appear on the record or system of records designated as the dealer's "record of original entry." It is not sufficient that the dealer has the capability of researching specific items, or constructing a record upon request from information maintained in other formats. The record of original entry is intended to provide a journal of all of the basic details of a dealer's activity on a given day. A record that can only be put together on request, or that is missing basic details of information, is not sufficient for this purpose.

We note also that, in reviewing the attachments to your letter, it appears that the absence of several of the specified items of information would be easy to rectify—institution of controls to prevent duplication of customer and security abbreviations would appear to resolve the problems with these details, and a system of grouping transaction input could be devised so that trades for different trade dates are not shown on the same blotter. Similarly, bond or note numbers could be designated on transaction tickets maintained as an augmentation of the computerized records; the attachments indicate that you already maintain such tickets as part of an existing unit system.

With respect to the question of accessibility, we note that this is generally construed by the examining authorities to mean accessibility within 24 or 48 hours. If a system could be devised whereby requests from the dealer department for aged customer account records could be given priority and processed on an expedited basis, this might rectify the problem you describe. *MSRB interpretation of April 27, 1982.*

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[1] Dollar price or yield, trade date, name of contra party (due to use of abbreviations), security identification (due to use of abbreviations), designation of account for which transaction was effected, bond or note numbers, and designation if securities were registered.

Time of receipt and execution of orders. This is in response to your March 3, 1987 letter regarding the application of rule G-8, on recordkeeping, to [name deleted]'s (the "Bank") procedure on time stamping of municipal securities order tickets. You note that it is the Bank's policy to indicate on order tickets the date and time of receipt of the order and the date and time of execution of the order. You note, however, that when the order and execution occur simultaneously, it is your procedure to time stamp the order ticket once. You ask for Board approval of this policy.

Rule G-8(a)(vi) provides in pertinent part for a "memorandum of each agency order . . . showing the date and time of receipt of the order . . . and the date of execution and to the extent feasible, the time of execution . . ." Rule G-8(a)(vii) includes a similar requirement for principal transactions with customers. As noted in a Board interpretive notice on recordkeeping, the phrase "to the extent feasible" is intended to require municipal securities professionals to note the time of execution of each transaction except in extraordinary circumstances when it might be impossible to determine the exact time of execution. However, even in those unusual situations, the rule requires that at least the approximate time be noted.[1] This rule parallels SEC rule 17a-3(a)(6) and (7) on record-keeping.

Thus, rule G-8(a)(vi) and (vii) required agency and principal orders to be time stamped upon receipt and upon execution. The requirement is designed to allow the dealer and the appropriate examining authority to determine whether the dealer has complied with rule G-18, on execution of transactions, and rule G-30, on pricing. Rule G-18 states that when a dealer

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is "executing a transaction in municipal securities for or on behalf of a customer as an agent, it shall make a reasonable effort to obtain a price for the customer that is fair and reasonable in relation to prevailing market conditions." Rule G-30(a) states that a dealer shall not effect a principal transaction with a customer except at a fair and reasonable price, taking into consideration all relevant factors including the fair market value of the securities at the time of the transaction. It is impossible to determine what the prevailing market conditions were at the time of the execution of the order if the date and time of execution are not recorded. In addition, it is important to time stamp the receipt and execution of an order so that a record can be maintained of when the order is executed.

Thus, even when the order and execution occur simultaneously, rule G-8 requires that two time stamps be included on order tickets. *MSRB interpretation of April 20, 1987.*

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[1] *See* [Rule G-8 Interpretation —] Interpretive Notice on Recordkeeping (July 29, 1977) [reprinted in *MSRB Rule Book*].

Contract sheets. This will respond to your letter of May 28, 1987, and confirm our telephone conversation of the same date concerning recordkeeping of "contract sheets." You ask whether dealers are required by Board rules G-8 and G-9 to maintain records of "contract sheets" of municipal securities transactions.

Rule G-8(a)(ix) requires dealers to maintain records of all confirmations of purchases and sales of municipal securities, including inter-dealer transactions. Rule G-12(f), in certain instances, requires interdealer transactions to be compared through an automated comparison system operated by a clearing agency registered with the Securities and Exchange Commission, rather than by physical confirmations.[1] These automated comparison systems generate "contract sheets" to each party of a trade, which confirm the existence and the terms of the transaction.

This will confirm my advice to you that such contract sheets are deemed to be confirmations of transactions for purposes of rule G-8(a)(ix). Thus, dealers are required to include contract sheets in their records of confirmations and, under rule G-9(b)(v), are required to maintain these records for no less than three years.[2] *MSRB interpretation of June 25, 1987.*

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[1] Rule G-12(c) governs the content of and procedures for sending physical confirmations.

[2] You also ask about the interpretation of rules 17a-3 and 17a-4 under the Securities Exchange Act. The Board is not authorized to interpret these Securities and Exchange Commission rules. You may wish to contact the SEC for guidance on this matter.

See also:

Rule G-36 Interpretive Letter — Multiple underwriters, *MSRB interpretation of January 30, 1998*

Rule G-8 Amendment History (since 2003)

Release No. 34-98353 (September 12, 2023), 88 FR 63984 September 18, 2023); MSRB Notice 2023-07 (September 12, 2023)

Release No. 34-97218 (March 29, 2023), 88 FR 20004 (April 4, 2023); MSRB Notice 2023-03 (March 30, 2023)

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Release No. 34-76753 (December 23, 2015), 80 FR 81614 (December 30, 2015); MSRB Notice 2016-03 (January 13, 2016)

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Release No. 71598 (February 21, 2014), 79 FR 11161 (February 27, 2014); MSRB Notice 2014-03 (February 24, 2014)

Release No. 34-70532 (September 26, 2013), 78 FR 60956 (October 2, 2013); MSRB Notice 2013-20 (September 27, 2013)

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Release No. 34-67238 (June 22, 2012), 77 FR 38684 (June 28, 2012); MSRB Notice 2012-34 (June 25, 2012)

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Release No. 34-62715 (August 13, 2010), 75 FR 51128 (August 18, 2010); MSRB Notice 2010-26 (August 15, 2010)

Release No. 34-61381 (January 20, 2010), 75 FR 4126 (January 26, 2010); MSRB Notice 2010-01 (January 22, 2010)

Release No. 34-59873 (May 6, 2009), 74 FR 22780 (May 14, 2009); MSRB Notice 2009-16 (April 28, 2009)

Release No. 34-58154 (July 15, 2008), 73 FR 42388 (July 21, 2008); MSRB Notice 2008-32 (July 22, 2008)

Release No. 34-57750 (May 1, 2008), 73 FR 25815 (May 7, 2008); MSRB Notice 2008-22 (May 2, 2008)

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Release No. 34-57463 (March 11, 2008), 73 FR 14292 (March 17, 2008); MSRB Notice 2008-10 (February 20, 2008)

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Release No. 34-51534 (April 12, 2005), 70 FR 20194 (April 18, 2005); MSRB Notice 2005-18 (March 21, 2005)

Release No. 34-52555 (October 3, 2005), 70 FR 59106 (October 11, 2005); MSRB Notice 2005-52 (October 5, 2005)

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Rule G-9
Preservation of Records

(a) *Records to be Preserved for Six Years*. Every broker, dealer and municipal securities dealer shall preserve the following records for a period of not less than six years:

(i) the records of original entry described in rule G-8(a)(i);

(ii) the account records described in rule G-8(a)(ii);

(iii) the securities records described in rule G-8(a)(iii);

(iv) the records concerning primary offerings described in rule G-8(a)(viii), provided, however, that such records need not be preserved for a syndicate or by a sole underwriter that, in either case is not successful in purchasing an issue of municipal securities;

(v) the records concerning suitability or Rule 15l-1(b)(1) under the Act ("Regulation Best Interest") required to be maintained pursuant to Rule G-8(a)(xi)(F), until at least six years after the earlier of the date the account was closed or the date on which the information was collected, provided, replaced, or updated; and the records concerning Form CRS required to be maintained pursuant to Rule G-8(a)(xxvii) and a copy of each Form CRS, until at least six years after such record or Form CRS is created;

(vi) the customer complaint records described in rule G-8(a)(xii);

(vii) if such broker, dealer or municipal securities dealer is subject to rule 15c3-1 under the Act, the general ledgers described in paragraph (a)(2) of rule 17a-3 under the Act;

(viii) the record, described in rule G-27(b)(ii), of each person designated as responsible for supervision of the municipal securities activities of the broker, dealer, or municipal securities dealer and the designated principal's supervisory responsibilities, provided that such record shall be preserved for the period of designation of each person designated and for at least six years following any change in such designation;

(ix) the records to be maintained pursuant to rule G-8(a)(xvi); provided, however, that copies of Forms G-37x shall be preserved for the period during which such Forms G-37x are effective and for at least six years following the end of such effectiveness;

(x) the records regarding information on gifts and gratuities and employment agreements required to be maintained pursuant to rule G-8(a)(xvii); and

(xi) the records required to be maintained pursuant to rule G-8(a)(xviii); and

(xii) the records concerning secondary market trading account transactions described in rule G-8(a)(xxiv), provided, however, that such records need not be preserved for a secondary market trading account which is not successful in purchasing municipal securities;

(xiii) the records required to be maintained pursuant to rule G-8i(a)(xxv);

(xiv) the records required to be maintained pursuant to rule G-8(a)(xxvi); and

(xv) the records required to be maintained pursuant to Rule G-8(g)(iii).

(b) *Records to be Preserved for Four Years*. Every broker, dealer and municipal securities dealer shall preserve the following records for a period of not less than four years; provided, however, that each municipal securities dealer that is a bank or subsidiary or department or division of a bank shall preserve the following records for a period of not less than three years:

(i) the subsidiary records described in rule G-8(a)(iv);

(ii) the records of put options and repurchase agreements described in rule G-8(a)(v);

(iii) the records relating to agency transactions described in rule G-8(a)(vi);

(iv) the records of transactions as principal described in rule G-8(a)(vii);

(v) the copies of confirmations and other notices described in rule G-8(a)(ix);

(vi) the customer account information described in rule G-8(a)(xi), provided that records showing the terms and conditions relating to the opening and maintenance of an account shall be preserved for a period of at least six years following the closing of such account and records required by rule G-8(a)(xi)(F) relating to rule G-19 and Regulation Best Interest shall be preserved for a period of not less than six years after the earlier of the date the account was closed or the date on which the information was collected, provided, replaced, or updated;

(vii) if such broker, dealer or municipal securities dealer is subject to rule 15c3-1 under the Act, the records described in subparagraphs (a)(4)(iv) and (vi) and (a)(11) of rule 17a-3 and subparagraphs (b)(5) and (b)(8) of rule 17a-4 under the Act;

(viii) the following records, to the extent made or received by such broker, dealer or municipal securities dealer in connection with its business as such broker, dealer or municipal securities dealer and not otherwise described in this rule:

(A) check books, bank statements, canceled checks, cash reconciliations and wire transfers;

(B) bills receivable or payable;

(C) all written and electronic communications received and sent, including inter-office memoranda, relating to the conduct of the activities of such municipal securities broker or municipal securities dealer with respect to municipal securities;

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(D) all written agreements entered into by such broker, dealer or municipal securities dealer, including agreements with respect to any account; and

(E) all powers of attorney and other evidence of the granting of any authority to act on behalf of any account, and copies of resolutions empowering an agent to act on behalf of a corporation.

(ix) all records relating to fingerprinting which are required pursuant to paragraph (e) of rule 17f-2 under the Act;

(x) all records relating to Rule G-32 required to be retained as described in rule G-8(a)(xiii);

(xi) the records to be maintained pursuant to rule G-8(a)(xv);

(xii) the authorization required by rule G-8(a)(xix)(B); however, this provision shall not require maintenance of copies of negotiable instruments signed by customers;

(xiii) each advertisement from the date of each use;

(xiv) the records required to be maintained pursuant to rule G-8(a)(xx);

(xv) the records to be maintained pursuant to rule G-8(a)(xxi);

(xvi) the records to be maintained pursuant to rule G-8(a)(xxii); and

(xvii) the records to be maintained pursuant to Rule G-8(a)(xxiii).

(c) *Records to be Preserved for Life of Enterprise*. Every broker, dealer and municipal securities dealer other than a bank dealer shall preserve during the life of such broker, dealer or municipal securities dealer and of any successor broker, dealer or municipal securities dealer all partnership articles or, in the case of a corporation, all articles of incorporation or charter, minute books and stock certificate books.

(d) *Accessibility and Availability of Records*. All books and records required to be preserved pursuant to this rule shall be available for ready inspection by each regulatory authority having jurisdiction under the Act to inspect such records, shall be maintained and preserved in an easily accessible place for a period of at least two years and thereafter shall be maintained and preserved in such manner as to be accessible to each such regulatory authority within a reasonable period of time, taking into consideration the nature of the record and the amount of time expired since the record was made.

(e) *Method of Record Retention.* Whenever a record is required to be preserved by this rule, such record may be retained either as an original or as a copy or other reproduction thereof, or on microfilm, magnetic tape, electronic storage media, or by the other similar medium of record retention, provided that such broker, dealer, municipal securities dealer, or municipal advisor shall have available adequate facilities for ready retrieval and inspection of any such record and for production of easily readable facsimile copies thereof and, in the case of records retained on microfilm, magnetic tape, electronic storage media, or other similar medium of record retention, duplicates of such records shall be stored separately from each other for the periods of time required by this rule.

(f) *Effect of Lapse of Registration.* The requirements of this rule shall continue to apply, for the periods of time specified, to any broker, dealer, municipal securities dealer, or municipal advisor which ceases to be registered with the Commission, except in the event a successor registrant shall undertake to maintain and preserve the books and records described herein for the required periods of time.

(g) *Compliance with Rules 17a-3 and 17a-4*. Brokers, dealers and municipal securities dealers other than bank dealers that are in compliance with rules 17a-3 and 17a-4 under the Act will be deemed to be in compliance with the requirements of this rule, provided that the records enumerated in section (f) of Rule G-8 of the Board and section (b) of this rule shall in any event be preserved for the applicable time periods specified in this rule.

(h) *Municipal Advisor Records.*

(i) Subject to subsections (ii) and (iii) of this section, every municipal advisor shall preserve the books and records described in Rule G-8(h) for a period of not less than five years.

(ii) The records described in Rule G-8(h)(v)(B) and (D) shall be preserved for the period of designation of each person designated and for at least six years following any change in such designation.

(iii) The records described in Rule G-8(h)(iii) and (vi) shall be preserved for at least six years; provided, however, that copies of Forms G-37x shall be preserved for the period during which such Forms G-37x are effective and for at least six years following the end of such effectiveness.

(i) *Municipal Advisor Records Related to Formation and Cessation of its Business.* Every municipal advisor shall comply with the provisions of Rule 15Ba1-8(b)(2) and (c) under the Act.

(j) *Records of Non-Resident Municipal Advisors*. Every non-resident municipal advisor shall comply with the provisions of Rule 15Ba1-8(f) under the Act.

(k) *Electronic Storage of Municipal Advisor Records Permitted*. Whenever a record is required to be preserved by this rule by a municipal advisor, such record may be preserved on electronic storage media in accordance with section (e). Electronic preservation of any record in a manner that complies with Rule 15Ba1-8(d) under the Act will be deemed to be in compliance with the requirements of this rule.

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Rule G-9 Interpretations

Interpretation on the Application of Rules G-8 and G-9 to Electronic Recordkeeping

March 26, 2001

The Municipal Securities Rulemaking Board (the "MSRB") has received requests for interpretive guidance regarding the maintenance in electronic form of records under rule G-8, on books and records, and rule G-9, on preservation of records. As the MSRB has previously noted, rules G-8 and G-9 provide significant flexibility to brokers, dealers and municipal securities dealers ("dealers") concerning the manner in which their records are to be maintained, recognizing that various recordkeeping systems could provide a complete and accurate record of a dealer's municipal securities activities.[1] Part of the reason for providing this flexibility was that a variety of enforcement agencies, including the Securities and Exchange Commission, NASD Regulation, Inc. and the banking regulatory agencies, all may inspect dealer records.

Rule G-8(b) does not specify that a dealer is required to maintain its books and records in a specific manner so long as the information required to be shown by the rule is clearly and accurately reflected and provides an adequate basis for the audit of such information. Further, rule G-9(e) allows records to be retained electronically provided that the dealer has adequate facilities for ready retrieval and inspection of any such record and for production of easily readable facsimile copies.

The MSRB previously has recognized that efficiencies would be obtained by the replacement of paper files with electronic data bases and filing systems and stated that it generally allows records to be retained in that form.[2] In noting that increased automation would likely lead to elimination of most physical records, the MSRB has stated that electronic trading tickets and automated customer account information satisfy the recordkeeping requirements of rule G-8 so long as such information is maintained in compliance with rule G-9(e). The MSRB believes that this position also applies with respect to the other recordkeeping requirements of rule G-8 so long as such information is maintained in compliance with rule G-9(e) and the appropriate enforcement agency is satisfied that such manner of record creation and retention provides an adequate basis for the audit of the information to be maintained. In particular, the MSRB believes that a dealer that meets the requirements of rule 17a-4(f) under the Securities Exchange Act of 1934 with respect to maintenance and preservation of required books and records in the formats described therein would presumptively meet the requirements of rule G-9(e).

[1] See Rule G-8 Interpretation — Interpretive Notice on Recordkeeping, July 29, 1977, reprinted in *MSRB Rule Book* (January 1, 2001) at 42.

[2] See Rule G-8 Interpretive Letters — Use of electronic signatures, MSRB interpretation of February 27, 1989, reprinted in *MSRB Rule Book* (January 1, 2001) at 47.

See also:

Rule G-8 Interpretations — Interpretive Notice on Recordkeeping, July 29, 1977

- **Notice of Interpretation Concerning Records of Certificate Numbers of Securities Cleared by Clearing Agents,** October 10, 1986

Rule G-27 Interpretation — Supervisory Procedures for the Review of Correspondence with the Public, March 24, 2000

Interpretive Letters

Syndicate records. I am writing in response to your letters of October 2 and October 19, 1981 concerning a particular recordkeeping arrangement used by an NASD-member firm in connection with its underwriting activities. In your letters you indicate that the firm conducts its underwriting activities from its main office and four regional branch office "commitment centers," with the committing branch offices authorized to commit to underwriting new issues on the firm's behalf. You inquire whether the firm is in compliance with the Board's recordkeeping and record retention rules if it maintains only part of the records on its underwritings in the main office. Correspondence from a field examiner attached to your letters indicates that the committing branch office originating a particular underwriting maintains all of the records with respect to such underwriting. The majority of these records are the original copies; the copies of confirmations, good faith checks, and syndicate settlement checks maintained at the committing branch office are duplicates of original records maintained at the firm's main office.

Rule G-9(d) requires that books and records shall be maintained and preserved in an easily accessible place for two years and shall be available for ready inspection by the proper regulatory authorities. The fact that the member firm does not maintain all records with respect to all of its underwriting activities in a single location does not contravene these provisions of Board rule G-9. Rule G-9 would permit the arrangement described in your letters, whereby a firm maintains copies of all of the records pertaining to a particular underwriting in the office responsible for that underwriting. *MSRB interpretation of October 21, 1981.*

Microfilming of records. I am writing in response to your letter of May 20, 1983 regarding our previous conversations about the requirements of Board rules G-1 and G-9 as they would apply to the bank's retention of dealer department records on microfilm. In your letter and our previous conversations you indicated that the bank wishes to retain all of the records required to be maintained by its municipal securities dealer department on microfilm, with the hard copy of each record destroyed immediately after it has been microfilmed. You inquired as to the circumstances under which this method of record retention could be used. You also inquired about the extent to which municipal securities dealer department records could be commingled with records of other departments on the same strips of microfilm.

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As you are aware, Board rule G-9(e) provides that

> a record...required to be preserved by this rule...may be retained...on microfilm, electronic or magnetic tape, or by the other similar medium of record retention, provided that [the] municipal securities broker or municipal securities dealer shall have available adequate facilities for ready retrieval and inspection of any such record and for production of easily readable facsimile copies thereof and, in the case of records retained on microfilm, electronic or magnetic tape, or other similar medium of record retention, duplicates of such records shall be stored separately from each other for the periods of time required by this rule.

Therefore, the following three conditions must be met, if records are to be retained on microfilm:

(1) facilities for ready retrieval and inspection of the records (such as a microfilm reader or other similar piece of equipment) must be available;

(2) facilities for the reproduction of a hard copy facsimile of a particular record must also be available; and

(3) duplicate copies of the microfilm must be made and stored separately for the necessary time periods.

If these conditions are met, the retention of records by means of microfilm is satisfactory for purposes of the Board's rules, and hard copy records need not be retained after the microfilming is completed.

With respect to the establishment of a separately identifiable municipal securities dealer department of a bank, Board rule G-1 provides that all of the records relating to the municipal securities activities of such department must be

> separately maintained in or separately extractable from such [department's] own facilities or the facilities of the bank...[and must be] so maintained or otherwise accessible as to permit independent examination thereof and enforcement of applicable provisions of the Act, the rules and regulations thereunder and the rules of the Board.

These requirements would not preclude you from maintaining the required records on microfilm which also contained other bank records, as long as the required records were "separately extractable." The course of action you propose, maintaining all municipal securities dealer department records together as the first items on a roll of microfilm, would seem to be an appropriate way of complying with these requirements. *MSRB interpretation of June 6, 1983*.

See also:

Rule G-8 Interpretive Letters — Contract sheets, *MSRB interpretation of June 25, 1987*

- **Use of electronic signatures,** *MSRB interpretation of February 27, 1989*

Rule G-9 Amendment History (since 2003)

Release No. 34-89154 (June 25, 2020), 85 FR 39613 (July 1, 2020); MSRB Notice 2020-13 (June 26, 2020)

Release No. 34-79801 (January 13, 2016), 82 FR 7898 (January 23, 2017); MSRB Notice 2017-03 (January 18, 2017)

Release No. 34-73415 (October 23, 2014), 79 FR 64423 (October 29, 2014); MSRB Notice 2014-19 (October 24, 2014)

Release No. 71598 (February 21, 2014), 79 FR 11161 (February 27, 2014); MSRB Notice 2014-03 (February 24, 2014)

Release No. 34-67238 (June 22, 2012), 77 FR 38684 (June 28, 2012); MSRB Notice 2012-34 (June 25, 2012)

Release No. 34-65992 (December 16, 2011), 76 FR 79738 (December 22, 2011); MSRB Notice 2011-69 (December 19, 2011)

Release No. 34-62715 (August 13, 2010), 75 FR 51128 (August 18, 2010); MSRB Notice 2010-26 (August 15, 2010)

Release No. 34-57750 (May 1, 2008), 73 FR 25815 (May 7, 2008); MSRB Notice 2008-22 (May 2, 2008)

Release No. 34-55792 (May 22, 2007), 72 FR 29564 (May 29, 2007); MSRB Notice 2007-16 (May 25, 2007)

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Rule G-10
Investor and Municipal Advisory Client Education and Protection

(a) Each broker, dealer and municipal securities dealer (collectively, a "dealer") shall, once every calendar year, provide in writing (which may be electronic) to each customer for whom a purchase or sale of a municipal security was effected or who holds a municipal securities position, the following items of information:

(i) a statement that it is registered with the U.S. Securities and Exchange Commission and the Municipal Securities Rulemaking Board; and

(ii) a statement as to the availability to the customer of an investor brochure that is posted on the website of the Municipal Securities Rulemaking Board at www.msrb.org that describes the protections that may be provided by the Municipal Securities Rulemaking Board rules and how to file a complaint with an appropriate regulatory authority.

(b) With respect to customers not described in section (a) of this rule, each dealer shall make available on its website the information described in sections (a)(i) and (ii).

(c) Notwithstanding the requirement in section (a) of this rule, any dealer that does not have customers, or who is a party to a carrying agreement in which the carrying dealer has agreed to comply with section (a) of this rule, is exempt from the requirements of this rule.

(d) Each municipal advisor shall promptly, after the establishment of a municipal advisory relationship, as defined in MSRB Rule G-42(f)(v), and no less than once each calendar year thereafter during the course of that municipal advisory relationship, or promptly, after entering into an agreement to undertake a solicitation of a municipal entity or obligated person, as defined in Rule 15Ba1-1(n), 17 CFR 240.15Ba1-1(n), under the Act, and no less than once each calendar year thereafter during the course of that agreement, provide in writing (which may be electronic) to the municipal advisory client, the following items of information:

(i) a statement that it is registered with the U.S. Securities and Exchange Commission and the Municipal Securities Rulemaking Board;

(ii) the website address for the Municipal Securities Rulemaking Board; and

(iii) a statement as to the availability to the municipal advisory client of a municipal advisory client brochure that is posted on the website of the Municipal Securities Rulemaking Board that describes the protections that may be provided by the Municipal Securities Rulemaking Board rules and how to file a complaint with an appropriate regulatory authority.

(e) For the purposes of this rule, a municipal advisory client shall include either a municipal entity or obligated person for whom the municipal advisor engages in municipal advisory activities, as defined in Rule G-42(f)(iv), or a broker, dealer, municipal securities dealer, municipal advisor, or investment adviser (as defined in section 202 of the Investment Advisers Act of 1940) on behalf of whom the municipal advisor undertakes a solicitation of a municipal entity or obligated person, as defined in Rule 15Ba1-1(n), 17 CFR 240.15Ba1-1(n), under the Act.

Supplementary Material

.01 Sequencing of Dealer Notifications.

A dealer shall be deemed to have satisfied the obligation under section (a) if a dealer provides the notifications to the applicable customers at a given point in the calendar year and any additional customer(s) that calendar year who subsequently effect a purchase or sale of a municipal security or hold a municipal securities position receive the notifications within the following rolling 12-month period. In accordance with this section, a dealer may provide the notifications within a shorter time period from the preceding notifications, but in no event may a dealer exceed 12 months without remitting the notifications to a customer.

Rule G-10 Interpretation

See:

Rule G-32 Interpretation — Notice Regarding Electronic Delivery and Receipt of Information by Brokers, Dealers and Municipal Securities Dealers, November 20, 1998

Rule G-10 Amendment History (since 2003)

Release No. 34–93261 (October 5, 2021), 86 FR 56741 (October 12, 2021); MSRB Notice 2021-13 (October 6, 2021)

Release No. 34-79801 (January 13, 2016), 82 FR 7898 (January 23, 2017); MSRB Notice 2017-03 (January 18, 2017)

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Rule G-11
Primary Offering Practices

(a) *Definitions*. For purposes of this rule, the following terms have the following meanings:

(i) The term "accumulation account" means an account established in connection with a municipal securities investment trust to hold securities pending their deposit in such trust.

(ii) The term "date of sale" means, in the case of competitive sales, the date on which all bids for the purchase of securities must be submitted to an issuer, and, in the case of negotiated sales, the date on which the contract to purchase securities from an issuer is executed.

(iii) The term "group order" means an order for securities held in syndicate, which order is for the account of all members of the syndicate on a pro rata basis in proportion to their respective participations in the syndicate. Any such order submitted directly to the senior syndicate manager will, for purposes of this rule, be deemed to be the submission of such order by such manager to the syndicate.

(iv) The term "municipal securities investment trust" means a unit investment trust, as defined in the Investment Company Act of 1940, the portfolio of which consists in whole or in part of municipal securities.

(v) The term "order period" means the period of time, if any, announced by a syndicate or, when no syndicate has been formed, a sole underwriter during which orders will be solicited for the purchase of securities in a primary offering.

(vi) The term "priority provisions" means the provisions adopted by a syndicate governing the allocation of securities to different categories of orders.

(vii) The term "retail order period" means an order period during which orders that meet the issuer's designated eligibility criteria for retail orders and for which the customer is already conditionally committed will be either (i) the only orders solicited or (ii) given priority over other orders.

(viii) The term "syndicate" means an account formed by two or more persons for the purpose of purchasing, directly or indirectly, all or any part of a new issue of municipal securities from the issuer, and making a distribution thereof.

(ix) The term "qualified note syndicate" means any syndicate formed for the purpose of purchasing and distributing a new issue of municipal securities that matures in less than two years where:

(A) the new issue is to be purchased by the syndicate on other than an "all or none" basis; or

(B) the syndicate has provided that:

(1) there is to be no order period;

(2) only group orders will be accepted; and,

(3) the syndicate may purchase and sell the municipal securities for its own account.

(x) The term "affiliate" means a person controlling, controlled by, or under common control with a syndicate member or, when no syndicate has been formed, a sole underwriter.

(xi) In the case of a primary offering for which a syndicate is formed for the purchase of municipal securities, the term "related account" includes a municipal securities investment portfolio of a syndicate member or an affiliate, an arbitrage account of a syndicate member or an affiliate, a municipal securities investment trust sponsored by a syndicate member or an affiliate, or an accumulation account established in connection with such a municipal securities investment trust. In the case of a primary offering for which a syndicate has not been formed, the term "related account" includes a municipal securities investment portfolio of the sole underwriter or an affiliate, an arbitrage account of the sole underwriter or an affiliate, a municipal securities investment trust sponsored by the sole underwriter or an affiliate, or an accumulation account established in connection with such a municipal securities investment trust.

(xii) The term "selling group" means a group of brokers, dealers, or municipal securities dealers formed for the purpose of assisting in the distribution of a new issue of municipal securities for the issuer other than members of the syndicate.

(b) *Disclosure of Capacity*. Every broker, dealer or municipal securities dealer that submits an order to a syndicate or to a member of a syndicate for the purchase of municipal securities held by the syndicate shall disclose at the time of submission of such order if the securities are being purchased for its dealer account or for a related account of such broker, dealer or municipal securities dealer.

(c) *Confirmations of Sale*. Sales of securities held by a syndicate to a related account shall be confirmed by the syndicate manager directly to such related account or for the account of such related account submitting the order. Nothing herein contained shall be construed to require that sales of municipal securities to a related account be made for the benefit of the syndicate.

(d) *Disclosure of Group Orders*. Every broker, dealer or municipal securities dealer that submits a group order to a syndicate or to a member of a syndicate shall disclose at the time of submission of such order the identity of the person for whom the order is submitted. This section shall not apply to a qualified note syndicate as defined in subsection (a)(ix) above.

(e) *Priority Provisions.*

(i) In the case of a primary offering for which a syndicate has been formed, the syndicate shall establish priority provisions and, if such priority provisions may be changed, the procedure for making changes. For purposes of this rule, the

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requirement to establish priority provisions shall not be satisfied if a syndicate provides only that the syndicate manager or managers may determine in the manager's or managers' discretion the priority to be accorded different types of orders. Unless otherwise agreed to with the issuer, such priority provisions shall give priority to customer orders over orders by members of the syndicate for their own accounts or orders for their respective related accounts, to the extent feasible and consistent with the orderly distribution of securities in the offering. Notwithstanding the preceding sentence, a syndicate may include a provision permitting the syndicate manager or managers on a case-by-case basis to allocate securities in a manner other than in accordance with the priority provisions, if the syndicate manager or managers determine in its or their discretion that it is in the best interests of the syndicate. In the event any such allocation is made, the syndicate manager or managers shall have the burden of justifying that such allocation was in the best interests of the syndicate.

(ii) In the case of a primary offering for which a syndicate has not been formed, unless otherwise agreed to with the issuer, the sole underwriter shall give priority to customer orders over orders for its own account or orders for its related accounts, to the extent feasible and consistent with the orderly distribution of securities in the offering.

(f) *Communications Relating to Issuer Requirements, Priority Provisions and Order Period.* Prior to the first offer of any securities by a syndicate, the senior syndicate manager shall furnish in writing to the other members of the syndicate and to members of the selling group, if any, for compliance therewith by all parties in sales or distribution of the new issue, (i) a written statement of all terms and conditions required by the issuer, (ii) a written statement of all of the issuer's retail order period requirements, if any, (iii) the priority provisions, (iv) the procedure, if any, by which such priority provisions may be changed, (v) if the senior syndicate manager or managers are to be permitted on a case-by-case basis to allocate securities in a manner other than in accordance with the priority provisions, the fact that they are to be permitted to do so, (vi) if there is to be an order period, whether orders may be confirmed prior to the end of the order period, and (vii) all pricing information. Any change in the priority provisions or pricing information shall be promptly furnished in writing by the senior syndicate manager to the other members of the syndicate and the selling group, if any. Syndicate and selling group members shall promptly furnish in writing the information described in this section to others, upon request. If the senior syndicate manager, rather than the issuer, prepares the written statement of all terms and conditions required by the issuer, such statement shall be provided to the issuer for its approval. An underwriter shall promptly furnish in writing to any other broker, dealer, or municipal securities dealer with which such underwriter has an arrangement to market municipal securities that includes the issuer's new issue, all of the information provided to it from the senior syndicate manager as required by this section.

(g) *Net Designations, Group Net Sales Credits, Allocations of Securities, and Free-to-Trade Communications*. The senior syndicate manager shall:

(i) within 24 hours of the sending of the commitment wire, complete the allocation of securities; provided however, that, if at the time allocations are made the purchase contract in a negotiated sale is not yet signed or the award in a competitive sale is not yet made, such allocations shall be made subject to the signing of the purchase contract or the awarding of the securities, as appropriate, and the purchaser must be informed of this fact;

(ii) notify all members of the syndicate and selling group members, at the same time, via an industry-accepted electronic method of communication, that the issue is free to trade.

(iii) within two business days following the date of sale, disclose to the other members of the syndicate and the issuer, in writing, a summary, by priority category, of all allocations of securities which are accorded priority over members' take-down orders, indicating the aggregate par value, maturity date and price of each maturity so allocated, including any allocation to an order confirmed at a price other than the original list price. The summary shall include allocations of securities to orders submitted through the end of the order period or, if the syndicate does not have an order period, through the first business day following the date of sale;

(iv) disclose, in writing, to each member of the syndicate and the issuer all available information on net designations paid to any syndicate and non-syndicate members, or any group net sales credits (including the identity of each person submitting a group order) paid to any syndicate members, expressed in total dollar amounts, within 10 business days following the date of sale, with the sending of the net designation and group net sales credit checks pursuant to section (j) below; except this paragraph shall not apply to the senior syndicate manager of a qualified note syndicate as defined in subsection a(ix) above; and

(v) disclose to the members of the syndicate, in writing, the amount of any portion of the take-down directed to each member by the issuer. Such disclosure is to be made by the later of 15 business days following the date of sale or three business days following receipt by the senior syndicate manager of notification of such set asides of the take-down.

(h) *Disclosure of Syndicate Expenses and Other Information.* At or before the final settlement of a syndicate account, the senior syndicate manager shall furnish to the other members of the syndicate:

(i) an itemized statement setting forth the nature and amounts of all actual expenses incurred on behalf of the syndicate. Notwithstanding the foregoing, any such statement may include an item for miscellaneous expenses, provided that the amount shown under such item is not disproportionately large in relation to other items of expense shown on the statement and includes only minor items of expense which cannot be

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easily categorized elsewhere in the statement. The amount of discretionary fees for clearance costs, if any, to be imposed by a syndicate manager and the amount of management fees, if any, shall be disclosed to syndicate members prior to the submission of a bid, in the case of a competitive sale, or prior to the execution of a purchase contract with the issuer, in the case of a negotiated sale. For purposes of this section, the term "management fees" shall include, in addition to amounts categorized as management fees by the syndicate manager, any amount to be realized by a syndicate manager, and not shared with the other members of the syndicate, which is attributable to the difference in price to be paid to an issuer for the purchase of a new issue of municipal securities and the price at which such securities are to be delivered by the syndicate manager to the members of the syndicate; and

(ii) a summary statement showing:

(A) the identity of each related account submitting an order to which securities have been allocated as well as the aggregate par value and maturity date of each maturity so allocated; and

(B) the aggregate par values and prices (expressed in terms of dollar prices or yields) of all securities sold from the syndicate account. This subparagraph shall not apply to a qualified note syndicate as defined in subsection (a)(ix) above.

(i) *Settlement of Syndicate or Similar Account*. Final settlement of a syndicate or similar account formed for the purchase of securities shall be made within 30 calendar days following the date the issuer delivers the securities to the syndicate.

(j) *Payments of Designations and Group Net Sales Credits*. All syndicate or similar account members shall submit the allocations of their designations according to the rules of the syndicate or similar account to the syndicate or account manager within two business days following the date the issuer delivers the securities to the syndicate. Any credit designated by a customer or any group net sales credits in connection with the purchase of securities as due to a member of a syndicate or similar account shall be distributed to such member by the broker, dealer or municipal securities dealer handling such order within 10 calendar days following the date the issuer delivers the securities to the syndicate.

(k) *Retail Order Period Representations and Required Disclosures.* From the end of the retail order period but no later than the Time of Formal Award (as defined in Rule G-34(a)(ii)(C)(1)(a)), each broker, dealer, or municipal securities dealer that submits an order during a retail order period to the senior syndicate manager or sole underwriter, as applicable, shall provide, in writing, which may be electronic (including, but not limited to, an electronic order entry system), the following information relating to each order designated as retail submitted during a retail order period:

(i) whether the order is from a customer that meets the issuer's eligibility criteria for participation in the retail order period;

(ii) whether the order is one for which a customer is already conditionally committed;

(iii) whether the broker, dealer, or municipal securities dealer has received more than one order from such retail customer for a security for which the same CUSIP number has been assigned;

(iv) any identifying information required by the issuer, or the senior syndicate manager on the issuer's behalf, in connection with such retail order (but not including customer names or social security numbers); and

(v) the par amount of the order.

The senior syndicate manager may rely on the information furnished by each broker, dealer, or municipal securities dealer that provided the information required by (i)-(v) unless the senior syndicate manager knows, or has reason to know, that the information is not true, accurate or complete.

(l) *(i) Prohibitions on Consents by Brokers, Dealers, and Municipal Securities Dealers*. No broker, dealer, or municipal securities dealer shall provide bond owner consent to amendments to authorizing documents for municipal securities, either in its capacity as an underwriter or remarketing agent, or as agent for or in lieu of bond owners, provided that this prohibition shall not apply in the following circumstances:

(A) the authorizing document expressly allows an underwriter to provide bond owner consent and the offering documents for the existing securities expressly disclosed that bond owner consents could be provided by underwriters of other securities issued under the authorizing document;

(B) such securities are owned by such broker, dealer, or municipal securities dealer other than in its capacity as underwriter or remarketing agent;

(C) all securities affected by such amendments (other than securities retained by an owner in lieu of a tender and for which such bond owner had delivered consent to such amendment), are held by the broker, dealer, or municipal securities dealer acting as remarketing agent, as a result of a mandatory tender of such securities;

(D) the broker, dealer or municipal securities dealer provides consent solely as agent for and on behalf of bond owners delivering written consent to such amendments; or

(E) such consent provided by a broker, dealer or municipal securities dealer, in its capacity as an underwriter on behalf of prospective purchasers, would not become effective until all bond owners of securities affected by the proposed amendments (other than the prospective purchasers for whom the underwriter had provided consent) had also consented to such amendments.

(ii) For purposes of this section, the term "authorizing document" shall mean the trust indenture, resolution, ordinance, or other document under which the securities

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are issued. The term "bond owner" shall mean the owner of municipal securities issued under the applicable authorizing document. The term "bond owner consent" shall mean any consent specified in an authorizing document that may be or is required to be given by a bond owner pursuant to such authorizing document.

Rule G-11 Interpretations

Syndicate Settlement Practice Violations Noted

July 1981

The Board continues to be concerned about industry compliance with certain of the requirements of Board rules G-11, "Sales of New Issue Municipal Securities During the Underwriting Period," and G-12, "Uniform Practice," with respect to the settlement of syndicate accounts. Board rule G-11(g) [*] requires, among other matters, that syndicate managers provide to members at the time of settlement of a syndicate account a detailed statement of the expenses incurred by the syndicate.[1] Rule G-12(j) requires that settlement of a syndicate account and distribution of any profit due to members be made within 60 days of delivery of the syndicate's securities. In addition, rule G-12(i) requires that good faith deposits be returned within two business days of settlement with an issuer, and rule G-12(k) requires that sales credits designated by a customer be distributed within 30 days following delivery of the securities [by the issuer to the syndicate].

The Board has from time to time received complaints from industry members concerning certain managers' non-compliance with these requirements. These persons allege that certain managers unduly delay the sending of syndicate settlement checks and other disbursements, and furnish settlement statements that provide little or no detail about the nature of the expenses incurred by the syndicate. These persons have also, on occasion, furnished to the Board copies of syndicate statements which illustrate clearly these managers' failure to provide the requisite information and to meet the time requirement for these disbursements. The Board has referred each of these complaints to the appropriate regulatory agency for investigation and appropriate action.

The Board wishes to emphasize strongly the need for compliance with these provisions. The Board continues to be of the view that the time periods and other requirements of the rules, which were arrived at after considerable deliberation, are fair and reasonable. The Board believes that failure to comply with these provisions is inexcusable. The Board does not accept the rationale offered by some, that the difficulties in obtaining bills for syndicate expenses justify these undue delays; the Board believes that it is incumbent upon managers to assure that such bills are received and processed in timely fashion, to permit compliance with the rule. The Board strongly urges syndicate managers who have failed to comply with these requirements to bring their practices into compliance with the requirements of the rules.

The Board also is communicating these views to the enforcement organizations and stressing its concern with respect to compliance with these provisions. It strongly urges all syndicate members to notify the appropriate enforcement organization of any violations by managers of these provisions.

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[1] The rule contemplates that the statement will set forth a detailed breakdown of expenses into specified categories, such as advertising, printing, legal, computer services, packaging and handling, etc. The statement may include an item for miscellaneous expenses, provided that the amount shown under such an item is not disproportionately large in relation to other items of expense shown and includes only items of expense which cannot be easily categorized elsewhere in the statement.

[*] [Currently codified at rule G-11(h).]

NOTE: Revised to reflect subsequent amendments.

Notice Concerning Syndicate Expenses

November 14, 1991

Board rule G-11, concerning syndicate practices, among other things, requires syndicates to establish priorities for different categories of orders and requires certain disclosures to syndicate members which are intended to assure that allocations are made in accordance with those priorities. Rule G-11(h)(i) requires that a senior syndicate manager, at or before final settlement of a syndicate account, furnish to syndicate members "an itemized statement setting forth the nature and amount of all actual expenses incurred on behalf of the syndicate." One of the purposes of this section is to render managers accountable for their handling of syndicate funds.

Over the years, the Board, pursuant to rule G-11 and rule G-17, on fair dealing, has urged syndicate managers to provide members with a clear and accurate itemized statement of all actual expenses incurred in the underwriting of each issue. In a 1984 notice, the Board stated that expense items must be sufficiently described to make the expenditures readily understandable by syndicate members, and that generalized categories of expenses are not sufficient if they do not portray the specific nature of the expenses.[1] In 1985, the Board issued a notice specifically warning managers to take care in determining actual syndicate expenses, and noting that managers may violate rule G-17 if the expenses charged to syndicate members bear no relation to, or otherwise overstate, the actual expenses incurred.[2] And in 1987, in response to industry complaints concerning the amount of syndicate expenses charged by managers, the Board issued another notice reiterating that Board rules prohibit managers from overstating actual syndicate expenses.[3]

The Board wishes to reiterate its interpretation of rules G-11 and G-17 that syndicate expenses charged to members must be clearly identified and must be the actual expenses incurred on behalf of the syndicate.[4] The Board continues to be concerned over the number of complaints about syndicate managers who may be charging expenses that are overstated or excessive,

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particularly with respect to clearance fees for designated sales and computer expenses. Board rules specifically prohibit managers from overstating actual syndicate expenses.

The Board urges syndicate members to report possible overstatements of syndicate expenses and other problems in compli-ance with rule G-11(h)(i). The Board will continue to monitor this situation, and will refer any complaints it receives in this area to the appropriate enforcement agencies. In addition, the NASD has alerted the Board that it will accept telephone complaints or information from syndicate members who do not wish to reveal their identities.

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[1] Notice Concerning Disclosure of Syndicate Expenses (January 12, 1984), [re-printed in *MSRB Reports*, Vol. 4, No. 1 (February 1984) at 9].

[2] Notice Concerning Syndicate Managers Charging Excessive Fees for Designated Sales (July 29, 1985), [reprinted in *MSRB Reports*, Vol. 5, No. 5 (August 1985) at 17].

[3] Notice Concerning Syndicate Expenses that Appear Excessive (March 3, 1987), [reprinted in *MSRB Reports*, Vol. 7, No. 2 (March 1987) at 5].

[4] See *MSRB Reports*, Vol. 5, No. 6 (November 1985) [at 5], and Vol. 5, No. 5 (August 1985) [at 5].

Syndicate Expenses: Per Bond Fee for Bookrunning Expenses

June 14, 1995

Board rule G-11, concerning syndicate practices, among other things, requires syndicates to establish priorities for different categories of orders and requires certain disclosures to syndicate members which are intended to assure that allocations are made in accordance with those priorities. In addition, the rule requires that the manager provide certain accounting information to syndicate members. In particular, rule G-11(h)(i) provides that: "Discretionary fees for clearance costs to be imposed by a syndicate manager and management fees shall be disclosed to syndicate members prior to the submission of a bid, in the case of a competitive sale, or prior to the execution of a purchase contract with the issuer, in the case of a negotiated sale."[1] The purpose of this provision is to provide information useful to syndicate members in determining whether to participate in a syndicate account. The rule also requires that the senior syndicate manager, at or before final settlement of a syndicate account, furnish to the syndicate members "an itemized statement setting for the nature and amount of all actual expenses incurred on behalf of the syndicate." One of the purposes of this section is to render managers accountable for their handling of syndicate funds.

The Board has received inquiries regarding the appropriateness of a per-bond fee for the bookrunning expenses or management fees of the senior syndicate manager. Discretionary fees for clearance costs and management fees may be expressed as a perbond charge. These expenses, however, must be disclosed to members prior to the submission of a bid or prior to the execution of a purchase contract with the issuer; for example, in the Agreement Among Underwriters. The itemized statement setting forth a detailed breakdown of actual expenses incurred on behalf of the syndicate, such as advertising, printing, legal, computer services, etc., must be disclosed to syndicate members at or before final settlement of the syndicate account. With respect to these fees, the Board has previously noted that managers who assess a per-bond charge for designated sales may be acting in violation of rule G-17 if the expenses charged to members bear no relation to or otherwise overstate the actual expenses incurred on behalf of the syndicate.[2] The Board believes a per-bond fee creates the appearance that it is not an actual expense related to and incurred on behalf of the syndicate.

The Board is concerned about the charging of syndicate expenses and compliance with rule G-11. Managers should exercise care in accounting for syndicate funds, and any charge that has not been disclosed to members prior to the submission of a bid or prior to the execution of a purchase contract may be charged to syndicate members only if it is an actual expense incurred on behalf of the syndicate. The Board will continue to monitor syndicate practices and will notify the appropriate enforcement agency of any complaints it receives in this area. Syndicate members are encouraged to notify directly the appropriate enforcement agency of any violations of these provisions.

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[1] The rule defines management fees to include, "in addition to amounts categorized as management fees by the syndicate manager, any amount to be realized by a syndicate manager, and not shared with the other members of the syndicate, which is attributable to the difference in price to be paid to an issuer for the purchase of a new issue of municipal securities and the price at which such securities are to be delivered by the syndicate manager to the members of the syndicate."

[2] Syndicate Managers Charging Excessive Fees for Designated Sales (July 29, 1985), [reprinted in *MSRB Reports,* Vol. 7, No. 2 (March 1987) at 5].

See also:

Rule G-17 Interpretation — Notice of Interpretation Concerning Priority of Orders for New Issue Securities: Rule G-17, December 22, 1987.

Rule G-32 Interpretation — Notice Regarding Electronic Delivery and Receipt of Information by Brokers, Dealers and Municipal Securities Dealers, November 20, 1998.

Interpretive Letters

Communication of information. I refer to your letter dated October 23, 1978 in which you request advice concerning the application of certain provisions of rule G-11. In your letter, you state that it is your understanding that the requirement in the rule for a syndicate manager to communicate information regarding the priority to be accorded to different orders could be satisfied if an agreement among underwriters provides for the managing underwriters, in their discretion, to establish the priorities to be accorded to different types of orders for the purchase of bonds from the syndicate so long as information as to the priorities so established is furnished to the members of the syndicate prior to the beginning of the order period.

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Rule G-11 would permit the inclusion of a provision delegating to the managing underwriters the authority to establish the priority provisions under which the syndicate would operate. However, under section (f) of rule G-11, such information must be provided by the senior syndicate manager in writing to other members of a syndicate "prior to the first offer of any securities by a syndicate." Accordingly, if there is a presale period, the required disclosure must be made prior to the commencement of such period, and not prior to "the beginning of the order period." The procedures outlined in your letter would be permissible under the rule only if no securities are offered by a syndicate prior to the order period. *MSRB interpretation of November 9, 1978*.

Fixed-price offerings. This responds to your letter of February 17, 1984, requesting our view on the applicability of the Board's rules to the following situation:

[Name deleted] the ("Dealer") is an underwriter of industrial revenue bonds. It underwrites on average three or four issues per month and sells them almost entirely on a retail basis to individual investors. The coupon rates are fixed at current market levels. The bonds are then offered to the public at par. Official statements are provided to investors, fully disclosing all pertinent information and making clear note of the fact that the initial offering price of par may be changed without prior notice.

Recently, interest rates dropped significantly during the two or three-week time period needed for the Dealer to sell out a bond issue. This caused the offering price of the fixed rate municipal bonds to rise above the initial offering price stated in the official statement. All of this occurred before the closing of the syndicate account. You ask specifically whether, under the Board's rules, it is permissible to raise the offering price of municipal bonds which are part of a new issue above the initial price before the close of the underwriting period.

Board rule G-11 generally requires syndicates to establish priorities for different categories of orders and requires that certain disclosures be made to syndicate members which are intended to assure that allocations are made in accordance with those priorities. The rule also requires that the manager provide account information to syndicate members in writing. The Board has described rule G-11 as a "disclosure rule" designed to provide information to new issue participants so that they can understand and evaluate syndicate practices. The rule does not, however, dictate what those practices must be. Thus, rule G-11 does not require that the offering price of new issue municipal securities remain fixed through the underwriting period. The Board considered the issue of fixed-price offerings when it formulated rule G-11 and again when the Public Securities Association, in 1981, asked the Board to consider the adoption of rules governing the granting of concessions in new issues of municipal securities. Since the kind of fixed price offering system developed for corporate securities has not been the primary means of distributing municipal securities and in light of industry concerns that any such proposed regulations could unnecessarily restrict prices and increase the borrowing costs for municipal issues, the Board determined not to adopt any rules addressing the issue.[1]

Finally, we know of no laws or regulations which purport to require fixed-price offerings for new issue municipal securities, and the NASD's rules in this area do not apply to transactions in municipal securities.[2] Of course, Board rule G-30, on prices and commissions, prohibits a dealer from buying municipal securities for its own account from a customer or selling municipal securities for its own account to a customer at an aggregate price unless that price is reasonable taking into consideration all relevant factors. *MSRB interpretation of March 16, 1984*.

[1] For a fuller explanation of the Board's review of G-11 in this area, *See Notice Concerning Board Determination Not to Adopt Concession Rules*, [*MSRB Reports*, Vol. 2, No. 5 (July 1982) at 7].

[2] See NASD Rules of Fair Practice, Article II, Section 1, subsection (m) [currently codified as NASD Rule 114].

Concessions and discounts. This is in response to your October 13, 1986 letter asking if the Board's rules prohibit a dealer from granting a price concession on a new issue security to a customer. The Board's rules do not address the granting of concessions or price discounts to customers on new issue offerings; however, the terms of the applicable syndicate agreement may address this issue. *MSRB interpretation of October 22, 1986*.

See also:

Rule G-8 Interpretive Letter — Syndicate records: sole underwriter, *MSRB interpretation of May 12, 1989*.

Rule G-11 Amendment History (since 2003)

Release No. 34-86219 (June 27, 2019), 84 FR 31961 (July 3, 2019); MSRB Notice 2019-15 (June 28, 2019)

Release No. 34-70990 (December 5, 2013), 78 FR 75398 (December 11, 2013); MSRB Notice 2013-21 (December 10, 2013)

Release No. 34-70532 (September 26, 2013), 78 FR 60956 (October 2, 2013); MSRB Notice 2013-20 (September 27, 2013)

Release No. 34-62715 (August 13, 2010), 75 FR 51128 (August 18, 2010); MSRB Notice 2010-26 (August 15, 2010)

Release No. 34-60725 (September 28, 2009), 74 FR 50855 (October 1, 2009); MSRB Notice 2009-55 (September 30, 2009)

Release No. 34-58154 (July 15, 2008), 73 FR 42388 (July 21, 2008); MSRB Notice 2008-32 (July 22, 2008)

Release No. 34-52333 (August 25, 2005), 70 FR 51857 (August 31, 2005); MSRB Notice 2005-47 (August 30, 2005)

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Rule G-12
Uniform Practice

(a) *Scope and Notice*.

(i) All transactions in municipal securities between any broker, dealer or municipal securities dealer and any other broker, dealer or municipal securities dealer shall be subject to the provisions of this rule, provided, however, that a transaction submitted to a registered clearing agency for comparison shall be exempt from the provisions of section (c) and, to the extent such transaction is compared by the clearing agency, section (d) of this rule, and a transaction which is settled or cleared through the facilities of a registered clearing agency shall be exempt from the provisions of section (e) of this rule.

(ii) Failure to deliver securities sold or to pay for securities as delivered, on or after the settlement date does not effect a cancellation of a transaction which is subject to the provisions of this rule, unless otherwise provided in this rule or agreed upon by the parties.

(iii) Unless otherwise specifically indicated, any "immediate" notice required by this rule or any notice required to be given "immediately" shall be given by telephone, telegraph or other means of communication having same day receipt capability and confirmed in writing within one business day.

(b) *Settlement Dates*.

(i) *Definitions*. For purposes of this rule, the following terms shall have the following meanings:

(A) *Settlement Date*. The term "settlement date" shall mean the day used in price and interest computations, which shall also be the day delivery is due unless otherwise agreed by the parties.

(B) *Business Day*. The term "business day" shall mean a day recognized by the Financial Industry Regulatory Authority as a day on which securities transactions may be settled.

(ii) *Settlement Dates*. Settlement dates shall be as follows:

(A) for "cash" transactions, the trade date;

(B) for "regular way" transactions, the first business day following the trade date;

(C) for "when, as and if issued" transactions, a date agreed upon by both parties, which date: (1) with respect to transactions required to be compared in an automated comparison system under rule G-12(f)(i), shall not be earlier than two business days after notification of initial settlement date for the issue is provided to the registered clearing agency by the managing underwriter for the issue as required by rule G-34(a)(ii)(D)(2); and (2) with respect to transactions not eligible for automated comparison, shall not be earlier than the first business day following the date that the confirmation indicating the final settlement date is sent; and

(D) for all other transactions, a date agreed upon by both parties, *provided, however*, that a broker, dealer or municipal securities dealer shall not effect or enter into a transaction for the purchase or sale of a municipal security (other than a "when, as and if issued" transaction) that provides for payment of funds and delivery of securities later than the first business day after the date of the transaction unless expressly agreed to by the parties, at the time of the transaction.

(c) *Dealer Confirmations*. All municipal securities transactions that are ineligible for automated comparison in a system operated by a registered clearing agency shall be subject to the provisions of this section (c).

(i) Except as otherwise indicated in this section (c), each party to a transaction shall send a confirmation of the transaction to the other party on the trade date.

(ii) Confirmations of cash transactions shall be exchanged by telephone on the trade date, with written confirmation sent within one business day following the trade date.

(iii) For transactions effected on a "when, as and if issued" basis, initial confirmations shall be sent within one business day following the trade date. Confirmations from a syndicate or account manager to the members of the syndicate or account may be in the form of a letter, covering all maturities of the issue, setting forth the information hereafter specified in this section (c). Confirmations indicating the final settlement date shall be sent by the seller at least three business days prior to the settlement date.

(iv) **Reserved for future use.**

(v) Each confirmation shall contain the following information:

(A) confirming party's name, address and telephone number;

(B) "contra party" identification;

(C) designation of purchase from or sale to;

(D) par value of the securities;

(E) description of the securities, including at a minimum the name of the issuer, interest rate, maturity date, and if the securities are limited tax, subject to redemption prior to maturity (callable), or revenue bonds, an indication to such effect, including in the case of revenue bonds the type of revenue, if necessary for a materially complete description of the securities and in the case of any securities, if necessary for a materially complete description of the securities, the name of any company or other person in addition to the issuer obligated, directly or indirectly, with respect to debt service or, if there is more than one such obligor, the statement "multiple obligors" may be shown;

(F) CUSIP number, if any, assigned to the securities;

(G) trade date;

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(H) settlement date;

(I) yield at which transaction was effected and resulting dollar price, except in the case of securities which are traded on the basis of dollar price or securities sold at par, in which event only dollar price need be shown (in cases in which securities are priced to call or to par option, this must be stated and the call or option date and price used in the calculation must be shown, and where a transaction is effected on a yield basis, the dollar price shall be calculated to the lowest of price to call, price to par option, or price to maturity);

(J) amount of concession, if any, per $1000 par value unless stated to be an aggregate figure, *provided, however*, that for a transaction in securities maturing in two or more years and, at the time of the transaction, paying investment return solely through capital appreciation, the concession, if any, shall be expressed as a percentage of the price of these securities;

(K) amount of accrued interest;

(L) extended principal amount;

(M) total dollar amount of transaction; and

(N) instructions, if available, regarding receipt or delivery of securities, and form of payment if other than as usual and customary between the parties.

The confirmation for a transaction in securities traded on a discounted basis (other than discounted securities traded on a yield-equivalent basis) shall not be required to show the pricing information specified in subparagraph (I) nor the accrued interest specified in subparagraph (K). Such information shall, however, contain the rate of discount and resulting dollar price. Such confirmation may, in lieu of the resulting dollar price and the extended principal amount specified in subparagraph (L), show the total dollar amount of the discount.

The confirmation for a transaction in securities maturing in more than two years and paying investment return solely at redemption shall not show the par value of the securities specified in subparagraph (D) and shall not be required to show the amount of accrued interest specified in subparagraph (K). Such confirmation shall, however, show the maturity value of the securities and specify that the interest rate on the securities is "0%."

The initial confirmation for a "when, as and if issued" transaction shall not be required to contain the information specified in subparagraphs (H), (K), (L), and (M) of this paragraph or the resulting dollar price as specified in subparagraph (I).

(vi) In addition to the information required by paragraph (v) above, each confirmation shall contain the following information, if applicable:

(A) dated date if it affects the price or interest calculation, and first interest payment date, if other than semi-annual;

(B) if the securities are available only in book-entry form, a designation to such effect;

(C) if the securities are identified by the issuer or sold by the underwriter as subject to federal taxation, a designation to that effect;

(D) if the interest on the securities is identified by the issuer or the underwriter as subject to the alternative minimum tax, a designation to that effect;

(E) if the securities are "called" or "pre-refunded," a designation to such effect, the date of maturity which has been fixed by the call notice, and the amount of the call price;

(F) denominations of securities other than bonds, and, in the case of bonds, denominations other than those specified in paragraph (e)(v) hereof;

(G) if the securities pay periodic interest and are sold by the underwriter as original issue discount securities, a designation that they are "original issue discount" securities;

(H) any special instructions or qualifications, or factors affecting payment of principal or interest, such as (1) "ex legal," or (2) if the securities are traded without interest, "flat," or (3) if the securities are in default as to the payment of interest or principal, "in default," or (4) with respect to securities with periodic interest payments, if such securities pay interest on other than a semi-annual basis, a statement of the basis on which interest is paid; and

(I) such other information as may be necessary to ensure that the parties agree to the details of the transaction.

(d) *Comparison and Verification of Confirmations; Unrecognized Transactions*.

(i) Upon receipt of a confirmation, each party to a transaction shall compare and verify such confirmation to ascertain whether any discrepancies exist. If any discrepancies exist in the information as set forth in two compared confirmations, the party discovering such discrepancies shall promptly communicate such discrepancies to the contra party and both parties shall promptly attempt to resolve the discrepancies. In the event the parties are able to resolve the discrepancies, the party in error shall within one business day following such resolution, send a corrected confirmation to the contra party. Such confirmation shall indicate that it is a correction and the date of the corrected confirmation. In the event the parties are unable to resolve the discrepancies, each party shall promptly send to the contra party a written notice, return receipt requested, indicating nonrecognition of the transaction.

(ii) In the event a party receives a confirmation for a transaction which it does not recognize, it shall promptly seek to ascertain whether a trade occurred and the terms of the trade. In the event it determines that a trade occurred and the

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confirmation it received was correct, such party shall immediately notify the confirming party by telephone and, within one business day thereafter, send a written confirmation of the transaction to the confirming party. In the event a party cannot confirm the trade, such party shall immediately notify the confirming party by telephone and, within one business day, thereafter send a written notice, return receipt requested, to the confirming party, indicating nonrecognition of the transaction. Promptly upon receipt of such notice, the confirming party shall verify its records and, if it agrees with the non-confirming party, promptly send a notice of cancellation of the transaction, return receipt requested, to the non-confirming party.

(iii) In the event a party has sent a confirmation of a transaction, but fails to receive a confirmation from the contra party or a notice indicating nonrecognition of the transaction, the confirming party shall, not earlier than the fourth business day following the trade date (the sixth business day following the trade date, in the case of an initial confirmation of a transaction effected on a "when, as and if issued" basis) nor later than the eighth business day following the trade date, seek to ascertain whether a trade occurred. If, after such verification, such party believes that a trade occurred, it shall immediately notify the non-confirming party by telephone to such effect and send within one business day thereafter, a written notice, return receipt requested, to the non-confirming party, indicating failure to confirm. Promptly following receipt of telephone notice from the confirming party, the non-confirming party shall seek to ascertain whether a trade occurred and the terms of the trade. In the event the non-confirming party determines that a trade occurred, it shall immediately notify the confirming party by telephone to such effect and, within one business day thereafter, send a written confirmation of the transaction to the confirming party. In the event a party cannot confirm the trade, such party shall promptly send a written notice, return receipt requested, to the confirming party, indicating nonrecognition of the transaction.

(iv) If procedures are initiated pursuant to paragraph (ii) of this section, the procedures required by paragraph (iii) need not be followed; and conversely, if procedures are initiated pursuant to paragraph (iii) of this section, the procedures required by paragraph (ii) need not be followed.

(v) In the event any material discrepancies or differences, basic to the transaction, remain unresolved by the close of the business day following receipt by a party of a written notice indicating nonrecognition or by the close of the business day following the date the confirming party gives telephone notice of the transaction to the non-confirming party pursuant to paragraph (iii) above, whichever first occurs, the transaction may be cancelled by the confirming party or, in the event there exists disagreement concerning the terms of the transaction, by either confirming party. Nothing herein contained shall be construed to affect whatever rights the confirming party or parties may otherwise have with respect to a transaction which is cancelled pursuant to this paragraph.

(vi) Nothing herein contained shall be construed to prevent the settlement of a transaction prior to completion of the procedures prescribed in this section (d); *provided* that each party to the transaction shall be responsible for sending to the other party, within one business day of such settlement, a confirmation evidencing the terms of the transaction.

(vii) The notices referred to in this section indicating nonrecognition of a transaction or failure to confirm a transaction shall contain sufficient information to identify the confirmation to which the notice relates including, at a minimum, the information set forth in subparagraphs (A) through (E), (G) and (H) of paragraph (c)(v), as well as the confirmation number. In addition, such notice shall identify the firm and person providing such notice and the date thereof. The requirements of this paragraph may be satisfied by providing a copy of the confirmation of an unrecognized transaction, marked "don't know," together with the name of the firm and person providing such notice and the date thereof.

(e) *Delivery of Securities*. The following provisions shall, unless otherwise agreed by the parties, govern the delivery of securities:

(i) *Place and Time of Delivery*. Delivery shall be made at the office of the purchaser, or its designated agent, between the hours established by rule or practice in the community in which such office is located. If the parties so agree, book entry or other delivery through the facilities of a registered clearing agency will constitute good delivery for purposes of this rule.

(ii) *Securities Delivered*.

(A) All securities delivered on a transaction shall be identical as to the information set forth in subparagraph (E) of paragraph (c)(v) and, to the extent applicable, the information set forth in subparagraphs (A) and (E) of paragraph (c)(vi). All securities delivered shall also be identical as to the call provisions and the dated date of such securities.

(B) *CUSIP Numbers*.

(1) The securities delivered on a transaction shall have the same CUSIP number as that set forth on the confirmation of such transaction pursuant to the requirements of subparagraph (c)(v)(F) of this rule; *provided, however*, that, for purposes of this item (1), a security shall be deemed to have the same CUSIP number as that specified on the confirmation (a) if the number assigned to the security and the number specified on the confirmation differ only as a result of a transposition or other transcription error, or (b) if the number specified on the confirmation has been assigned as a substitute or alternative number for the number reflected on the security.

(2) A new issue security delivered by an underwriter who is subject to the provisions of rule G-34 shall have the CUSIP number assigned to the security imprinted on or otherwise affixed to the security.

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(iii) *Delivery Ticket*. A delivery ticket shall accompany the delivery of securities. Such ticket shall contain the information set forth in subparagraphs (A), (B), (D) (except in the case of transactions in zero coupon, compound interest and multiplier securities, in which case the maturity value shall be shown), (E) through (H), (M) and (N) of paragraph (c)(v) and, to the extent applicable, the information set forth in subparagraphs (A) through (I) of paragraph (c)(vi) and shall have attached to it an extra copy of the ticket which may be used to acknowledge receipt of the securities.

(iv) *Partial Delivery*. The purchaser shall not be required to accept a partial delivery with respect to a single trade in a single security. For purposes of this paragraph, a "single security" shall mean a security of the same issuer having the same maturity date, coupon rate and price. The provisions of this paragraph shall not apply to deliveries made pursuant to balance orders or other similar instructions issued by a registered clearing agency.

(v) *Units of Delivery*. Delivery of bonds shall be made in the following denominations:

(A) for bearer bonds, in denominations of $1,000 or $5,000 par value; and

(B) for registered bonds, in denominations which are multiples of $1,000 par value, up to $100,000 par value.

Delivery of other municipal securities shall be made in the denominations specified on the confirmation as required pursuant to paragraph (c)(vi) of this rule except that deliveries of notes may be made in denominations smaller than those specified if the notes delivered can be aggregated to constitute the denominations specified.

(vi) *Form of Securities*.

(A) *Bearer and Registered Form*. Delivery of securities which are issuable in both bearer and registered form may be in bearer form unless otherwise agreed by the parties; *provided, however,* that delivery of securities which are required to be in registered form in order for interest thereon to be exempt from Federal income taxation shall be in registered form.

(B) *Book-Entry Form*. Notwithstanding the other provisions of this section (e), with respect to a security which may be transferred only by bookkeeping entry, without the physical delivery of securities certificates, on books maintained for this purpose by a person who is not a registered clearing agent, a delivery of such security shall be made only by a book-entry transfer of the ownership of the security to the purchasing dealer or a person designated by the purchasing dealer.

(vii) *Mutilated Certificates*. Delivery of a certificate which is damaged to the extent that any of the following is not ascertainable:

(A) name of issuer;

(B) par value;

(C) signature;

(D) coupon rate;

(E) maturity date;

(F) seal of the issuer; or

(G) certificate number

shall not constitute good delivery unless validated by the trustee, registrar, transfer agent, paying agent or issuer of the securities or by an authorized agent or official of the issuer.

(viii) *Coupon Securities.*

(A) Coupon securities shall have securely attached to the certificate in the correct sequence all appropriate coupons, including supplemental coupons if specified at the time of trade, which in the case of securities upon which interest is in default shall include all unpaid or partially paid coupons. All coupons attached to the certificates must have the same serial number as the certificate.

(B) Anything herein to the contrary notwithstanding, if securities are traded "and interest" and the settlement date is on or after the interest payment date, such securities shall be delivered without the coupon payable on such interest payment date.

(C) If delivery of securities is made on or after the thirtieth calendar day prior to an interest payment date, the seller may deliver to the purchaser a draft or bank check of the seller or its agent, payable not later than the interest payment date or the delivery date, whichever is later, in an amount equal to the interest due in lieu of the coupon.

(ix) *Mutilated or Cancelled Coupons.* Delivery of a certificate which bears a coupon which is damaged to the extent that any one of the following cannot be ascertained from the coupon:

(A) title of the issuer;

(B) certificate number;

(C) coupon number or payment date (if either the coupon number or the payment date is ascertainable from the coupon, the coupon will not be considered mutilated); or

(D) the fact that there is a signature;

or which coupon has been cancelled, shall not constitute good delivery unless the coupon is endorsed or guaranteed. In the case of damaged coupons, such endorsement or guarantee must be by the issuer or by a commercial bank. In the case of cancelled coupons, such endorsement or guarantee must be by the issuer or an authorized agent or official of the issuer, or by the trustee or paying agent.

(x) *Delivery of Certificates Called for Redemption*.

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(A) A certificate for which a notice of call applicable to less than the entire issue of securities has been published on or prior to the delivery date shall not constitute good delivery unless the securities are identified as "called" at the time of trade.

(B) A certificate for which a notice of call applicable to the entire issue of securities has been published on or prior to the trade date shall not constitute good delivery unless the securities are identified as "called" at the time of trade.

(C) For purposes of this paragraph (x) and Items (D)(2) and (D)(3) of paragraph G-12(g)(iii), the term "entire issue of securities" shall mean securities of the same issuer having the same date of issue, maturity date and interest rate.

(xi) *Delivery Without Legal Opinions or Other Documents*. Delivery of certificates without legal opinions or other documents legally required to accompany the certificates shall not constitute good delivery unless identified as "ex legal" at the time of trade.

(xii) *Insured Securities*. Delivery of certificates for securities traded as insured securities shall be accompanied by evidence of such insurance, either on the face of the certificate or in a document attached to the certificate.

(xiii) *Endorsements for Banking or Insurance Requirements*. A security bearing an endorsement indicating that it was deposited in accordance with legal requirements applicable to banking institutions or insurance companies shall not constitute good delivery unless it bears a release acknowledged before an officer authorized to take such acknowledgments and was designated as a released endorsed security at the time of trade.

(xiv) *Delivery of Registered Securities*

(A) *Assignments*. Delivery of a certificate in registered form must be accompanied by an assignment on the certificate or on a separate bond power for such certificate, containing a signature or signatures which corresponds in every particular with the name or names written upon the certificate, except that the following shall be interchangeable: "and" or "&"; "Company" or "Co."; "Incorporated" or "Inc."; and "Limited" or "Ltd."

(B) *Detached Assignment Requirements*. A detached assignment shall provide for the irrevocable appointment of an attorney, with power of substitution, a full description of the security, including the name of the issuer, the maturity date and interest date, the bond or note number, and the par value (expressed in words and numerals).

(C) *Power of Substitution*. When the name of an individual or firm has been inserted in an assignment as attorney, a power of substitution shall be executed in blank by such individual or firm. When the name of an individual or firm has been inserted in a power of substitution as a substitute attorney, a new power of substitution shall be executed in blank by such substitute attorney.

(D) *Guarantee.* Each assignment, endorsement, alteration and erasure shall bear a guarantee acceptable to the transfer agent or registrar.

(E) *Form of Registration*. Delivery of a certificate accompanied by the documentation required in this paragraph (xiv) shall constitute good delivery if the certificate is registered in the name of:

(1) an individual or individuals;

(2) a nominee;

(3) a member of a national securities exchange whose specimen signature is on file with the transfer agent or any other broker, dealer or municipal securities dealer who has filed specimen signatures with the transfer agent and places a statement to this effect on the assignment; or

(4) an individual or individuals acting in a fiduciary capacity.

(F) *Certificate in Legal Form*. Good transfer of a security in legal form shall be determined only by the transfer agent for the security. Delivery of a certificate in legal form shall not constitute good delivery unless the certificate is identified as being in such form at the time of trade. A certificate shall be considered to be in legal form if documentation in addition to that specified in this paragraph (xiv) is required to complete a transfer of the securities.

(G) *Payment of Interest*. If a registered security is traded "and interest" a delivery of such security made on a date after the record date for the determination of registered holders for the payment of interest shall be accompanied by a draft or bank check of the seller or its agent, payable not later than the interest payment date or the delivery date, whichever is later, for the amount of the interest.

(H) *Registered Securities in Default*. If a registered security is in default (*i.e.*, is in default in the payment of principal or interest) and a date for payment of interest due has been established, a delivery of such security made on a date after the date established as the record date for the determination of registered holders for the payment of interest shall be accompanied by a draft or bank check of the seller or its agent, payable not later than the interest payment date or the delivery date, whichever is later, for the amount of the payment to be made by the issuer, unless the security is traded "ex-interest."

(xv) *Expenses of Shipment*. Expenses of shipment of securities, including insurance, postage, draft, and collection charges, shall be paid by the seller.

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(xvi) *Money Differences*. The following money differences shall not be sufficient to cause rejection of delivery:

Par Value	Maximum Differences Per Transaction
$1,000 to $24,999	$10
$25,000 to $99,999	$25
$100,000 to $249,999	$60
$250,000 to $999,999	$250
$1,000,000 and over	$500

The calculations of the seller shall be utilized in determining the maximum permissible differences and amount of payment to be made upon delivery. The parties shall seek to reconcile any such money differences within ten business days following settlement.

(f) *Use of Automated Comparison, Clearance, and Settlement Systems*.

(i) Notwithstanding the provisions of sections (c) and (d) of this rule, an Inter-Dealer Transaction Eligible for Comparison by a Clearing Agency Registered with the Commission (registered clearing agency) shall be compared through a registered clearing agency. Each party to such a transaction shall submit or cause to be submitted to a registered clearing agency all information and instructions required from the party by the registered clearing agency for automated comparison of the transaction to occur. Each transaction effected during the RTRS Business Day shall be submitted for comparison within 15 minutes of the Time of Trade, unless the transaction is subject to an exception specified in the Rule G-14 RTRS Procedures paragraph (a)(ii), in which case it shall be submitted for comparison in the time frame specified in the Rule G-14 RTRS Procedures paragraph (a)(ii). Transactions effected outside the hours of an RTRS Business Day shall be submitted no later than 15 minutes after the beginning of the next RTRS Business Day. In the event that a transaction submitted to a registered clearing agency for comparison in accordance with the requirements of this paragraph (i) shall fail to compare, the party submitting such transaction shall, as soon as possible, use the procedures provided by the registered clearing agency in connection with such transaction until such time as the transaction is compared or final notification of a failure to compare the transaction is received from the contra-party. A broker, dealer or municipal securities dealer ("dealer") that effects inter-dealer transactions eligible for comparison by a clearing agency registered with the Commission shall ensure that submissions made against it in the comparison system are monitored for the purpose of ensuring that correct trade information alleged against it is acknowledged promptly and that erroneous information alleged concerning its side of a trade (or its side of a purported trade) is corrected promptly through the procedures of the registered securities clearing agency or the MSRB.

(ii) Notwithstanding the provisions of section (e) of this rule, a transaction eligible for book-entry settlement at a securities depository registered with the Securities and Exchange Commission (depository) shall be settled by book-entry through the facilities of a depository or through the interface between two depositories. Each party to such a transaction shall submit or cause to be submitted to a depository all information and instructions required from the party by the depository for book-entry settlement of the transaction to occur; *provided that,* if a party to a transaction has made arrangements, through its clearing agent or otherwise, to use one or more depositories exclusively, a transaction by that party shall not be subject to the requirements of this paragraph (ii) if the transaction is ineligible for book-entry settlement at all such depositories with which such arrangements have been made.

(iii) For purposes of paragraph (i) of this section (f) a broker, dealer or municipal securities dealer who clears a transaction through an agent who is a member of a registered clearing agency shall be deemed to be a member of such registered clearing agency with respect to such transaction.

(iv) *Definitions*.

(A) "Inter-Dealer Transaction Eligible for Comparison by a Clearing Agency Registered with the Commission" means a contract for purchase and sale between one dealer and another dealer, resulting in a contractual obligation for one such dealer to transfer municipal securities to the other dealer involved in the transaction, and which contract is eligible for comparison under the procedures of an automated comparison system operated by a registered clearing agency.

(B) "Time of Trade" is defined in Rule G-14 Transaction Reporting Procedures.

(C) The "RTRS Business Day" is defined in Rule G-14 RTRS Transaction Reporting Procedures.

(g) *Rejections and Reclamations*.

(i) *Definitions*. For purposes of this section, the terms "rejection" and "reclamation" shall have the following meanings:

(A) "Rejection" shall mean refusal to accept securities which have been presented for delivery.

(B) "Reclamation" shall mean return by the receiving party of securities previously accepted for delivery.

(ii) *Basis for Rejection.* Securities presented for delivery may be rejected if the contra party fails to make a good delivery.

(iii) *Basis for Reclamation and Time Limits*. A reclamation may be made by the receiving party or a demand for reclamation may be made by the delivering party if, subsequent to delivery, information is discovered which, if known at the time of the delivery, would have caused the delivery

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not to constitute good delivery, provided such reclamation or demand for reclamation is made within the following time limits:

(A) Reclamation or demand for reclamation by reason of the following shall be made within one business day following the date of delivery:

(1) not good delivery because a coupon, or an interest check in lieu thereof, required by this rule to accompany delivery was missing; or

(2) not good delivery because a certificate or coupon was mutilated in a manner inconsistent with the provisions of paragraphs (e)(vii) or (ix) hereof; or

(3) not good delivery because a legal opinion or other documents referred to in paragraph (e)(xi) hereof were missing.

(B) Reclamation or demand for reclamation because an interest check accompanying delivery was not honored shall be made within three business days following receipt by the purchaser of the notice of dishonor.

(C) reclamation or demand for reclamation by reason of the following shall be made within 18 months following the date of delivery:

(1) irregularity in delivery, including, but not limited to, delivery of the wrong issue (*i.e.*, issuer, coupon rate or maturity date), duplicate delivery, delivery to the wrong party or location, or over delivery; or

(2) refusal to transfer or deregister by the transfer agent due to presentation of documentation in connection with the transfer or deregistration which the transfer agent deems inadequate; or

(3) information pertaining to the description of the securities was inaccurate for either of the following reasons:

(i) information required by subparagraph (c)(v)(E) of this rule was omitted or erroneously noted on a confirmation, or

(ii) information material to the transaction but not required by subparagraph (c)(v)(E) of this rule was erroneously noted on a confirmation.

(D) Reclamation or demand for reclamation by reason of the following may be made without any time limitation:

(1) the security delivered is reported missing, stolen, fraudulent or counterfeit;

(2) the security delivered is the subject of a notice of call applicable to less than the entire issue of securities that was published on or prior to the delivery date and the security was not identified as "called" at the time of trade; or

(3) the security delivered is the subject of a notice of call applicable to the entire issue of securities that was published on or prior to trade date and the security was not identified as "called" at the time of trade.

The running of any of the time periods specified in this paragraph shall not be deemed to foreclose a party's right to pursue its claim via other means, including arbitration.

(iv) *Procedure for Rejection or Reclamation*.

(A) If a party elects to reject or reclaim securities, rejection or reclamation shall be effected by returning the securities to the party who had previously delivered them. In the case of a reclamation, the reclaiming party may reclaim all (or, in the case of a reclamation of securities reported to be missing, stolen, fraudulent or counterfeit, any part) of the securities which were not in "good delivery" form on the delivery date in lieu of reclaiming all of the securities delivered. In the case of a reclamation of securities reported missing, stolen, fraudulent or counterfeit, in the event that the securities have been seized by the issuer, an agent of the issuer, or a law enforcement official, reclamation by means of a presentation of a receipt for such securities executed by such person will meet the requirements of this subparagraph (A).

(B) The rejecting or reclaiming party shall also provide a written notice which contains sufficient information to identify the delivery to which the notice relates. The notice shall have attached to it a copy of the original delivery ticket or other proof of delivery, and shall state, to the extent not set forth on the attached document, the following:

(1) the name of the party delivering the securities;

(2) the name of the party receiving the securities;

(3) a description of the securities;

(4) the date the securities were delivered;

(5) the date of rejection or reclamation;

(6) the par value of the securities which are being rejected or reclaimed;

(7) in the case of a reclamation, the amount of money the securities are reclaimed for;

(8) the reason for rejection or reclamation; and

(9) the name and telephone number of the person to contact concerning the rejection or reclamation.

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(C) A party demanding reclamation of securities shall send to the contra-party a notice demanding reclamation of the securities. Such notice shall have attached to it a copy of the original delivery ticket or other proof of delivery, and shall state, to the extent not set forth on the attached document, the information specified in items (1) through (9) of subparagraph (B) above.

(D) In the event of a reclamation or a demand for reclamation of a security reported missing, stolen, fraudulent or counterfeit, the reclaiming party or the party demanding reclamation shall also provide a document or documents made available by the issuer, an agent of the issuer, or other authorized person evidencing the report and, in the case of securities reported missing or stolen, evidencing that the loss or theft that is the subject of the report had occurred on or prior to the original delivery date.

(v) *Manner of Settlement of Reclamation*. Upon reclamation properly made pursuant to this rule, the party receiving the reclamation shall immediately give the party making the reclamation either the correct securities in proper form for delivery in exchange for the securities originally delivered, or the money amount (or the appropriate portion of the money amount) of the original transaction. A party receiving a notice of demand for reclamation shall reclaim the securities which are the subject of such notice as promptly as possible.

(vi) *Effect of Rejection or Reclamation*. Rejection or reclamation of securities shall not constitute a cancellation of the transaction. In the event of a reclamation of securities, unless otherwise agreed, the party to whom the securities have been reclaimed shall be deemed to be failing to deliver the securities, as of the original transaction settlement date, until such time as a proper delivery is made or the transaction is closed out in accordance with section (h) of this rule.

(h) *Close-Out.* Transactions which have been compared or otherwise agreed upon by both parties but which have not been completed shall be closed out in accordance with this section, or cancelled by the parties, no later than 10 calendar days after settlement date.

(i) *Close-Out by Purchaser*. With respect to a transaction which has not been completed by the seller according to its terms and the requirements of this rule, the purchaser may close out the transaction in accordance with the following procedures:

(A) *Notice of Close-Out*. If the purchaser elects to close out a transaction, the purchaser shall, not earlier than the first business day following the purchaser's original transaction settlement date, notify the seller via an inter-dealer communication system of the registered clearing agency through which the transaction was compared of the purchaser's intention to close out the transaction ("notice").

(1) The purchaser's notice shall state:

(a) the date and time by which the transaction must be completed, which shall not be earlier than 5:15 p.m. EST of the third business day following the date notice is given (the first business day, in the case of a second or subsequent notice);

(b) the period of time, during which the purchaser intends to execute the close-out transaction, provided that the close-out transaction initiated by the notice (or subsequent notices) must be completed and settled no later than the tenth calendar day following the purchaser's original transaction settlement date; and

(c) contain the information specified in item (1) of subparagraph (C) below.

(B) *Retransmittal*. Any party receiving a notice of close-out may retransmit the notice to another broker, dealer or municipal securities dealer from whom the securities are due ("obliged party"). The retransmitting party shall, not later than 5:15 p.m. EST of the first business day following its receipt of the notice from the originating party:

(1) provide the obliged party the name of the originating party and note the dates applicable to the notice are extended by one business day;

(2) retransmit the notice to the obliged party, which shall contain the requirements specified in section (C)(2) below; and

(3) notify the originating party, of the retransmittal notice of extension dates, which shall include the information specified in section (C)(3) below.

(C) *Contents of Notices*. Notices sent in accordance with the requirements of subparagraphs (A) or (B) above shall contain the following information:

(1) The notice of close-out required under subparagraph (A) above shall set forth:

(a) the identity of the broker, dealer or municipal securities dealer originating the notice;

(b) the identity of the broker, dealer or municipal securities dealer to whom the notice is being sent;

(c) the contact to whom the originator provided the required notice;

(d) the date of such notice;

(e) the par value and description of the securities involved in the transaction with respect to which the close-out notice is given;

(f) the trade date and settlement date of the transaction;

(g) the price and total dollar amount of the transaction;

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(h) the date by which the securities must be received by the originating dealer, which shall be completed within 10 calendar days of the purchaser's original transaction settlement date;

(i) the date or dates during which the notice of close-out may be executed; and

(j) the name and telephone number of the person at the broker, dealer, or municipal securities dealer originating the notice to contact concerning the close-out.

(2) The notice of retransmittal required under subparagraph (B) above shall set forth:

(a) the identity of the broker, dealer or municipal securities dealer retransmitting the notice;

(b) the identity of the broker, dealer or municipal securities dealer to whom the notice is being retransmitted;

(c) the identity of the broker, dealer or municipal securities dealer originating the notice;

(d) the contact to whom the retransmitting party provided the required notice;

(e) the date of such notice;

(f) the par value and description of the securities involved in the transaction with respect to which the retransmittal notice is given;

(g) the trade date and settlement date of the transaction;

(h) the price and total dollar amount of the transaction;

(i) the date by which the securities must be received by the dealer originating the notice (as extended due to the retransmittal);

(j) the date or dates during which the notice of close-out may be executed (as extended due to the retransmittal); and

(k) the name and telephone number of the person at the broker, dealer, or municipal securities dealer retransmitting the notice to contact concerning the retransmittal.

(3) The notice of extension of dates required under subparagraph (B) above shall set forth:

(a) the identity of the broker, dealer or municipal securities dealer originating the notice of close-out;

(b) the identity of the broker, dealer or municipal securities dealer retransmitting the notice;

(c) the identity of the broker, dealer or municipal securities dealer to whom the notice is being retransmitted;

(d) the contact to whom the retransmitting party provided the required telephonic notice of the extension of dates;

(e) the date of such notice;

(f) the par value and description of the securities involved in the transaction with respect to which the notice is given;

(g) the date specified by the originating dealer as the date by which delivery of such securities must be made;

(h) the date by which such delivery must be made, as extended due to the retransmittal;

(i) the effective date or dates for the notice of close-out, as extended due to the retransmittal; and

(j) the name and telephone number of the person at the broker, dealer, or municipal securities dealer retransmitting the notice to contact concerning the close-out.

(D) *Seller's Responsibilities*. Once the seller receives a notice it is required to use its best efforts to locate the securities referenced in the notice.

(E) *Purchaser's Options.* If the securities described in the notice of close-out are not delivered to the originating purchaser by the date specified in the original notice, or the extended date resulting from a retransmittal, such purchaser may, at its discretion, grant the seller one 10 calendar day extension. To close out a transaction in accordance with the terms of the notice as provided herein the purchaser may, at its option, take one of the following actions:

(1) purchase ("buy-in") at the current market all or any part of the securities necessary to complete the transaction, with the seller bearing any burden from any change in the market price, and any benefit from any change in the market price remaining with the purchaser; or

(2) accept from the seller in satisfaction of the seller's obligation under the original contract (which shall be concurrently cancelled) a transaction in municipal securities which are comparable to those originally bought in quantity, quality, yield or price, and maturity, with any additional expenses or any additional cost of acquiring such substituted securities being borne by the seller; or

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(3) require the seller to repurchase the securities in a transaction on terms which provide that the seller pay an amount which includes accrued interest and bear the burden of any change in market price or yield.

A purchaser executing a close-out shall, upon execution, notify the selling dealer for whose account and liability the transaction was closed out, stating the means of close-out utilized. The purchaser shall immediately thereafter confirm such notice in writing, sent return receipt requested, and forward a copy of the confirmation of the executed transaction. A retransmitting party shall give immediate notice of the execution of the close-out, in accordance with the procedure set forth herein, to the party to whom it retransmitted the notice.

A close-out will operate to close out all transactions covered under retransmitted notices. Any moneys due on the transaction, or on the close-out of the transaction, shall be forwarded to the appropriate party within five business days of the date of execution of the close-out notice. A buy-in may be executed from a long position in customers' accounts maintained with the party executing the buy-in or, with the agreement of the seller, from the purchaser's contra-party. In all cases, the purchaser must be prepared to defend the price at which the close-out is executed relative to market conditions at the time of the execution.

If the purchasing dealer has multiple transactions in fail status with multiple counterparties, the purchasing dealer may utilize the FIFO (first-in-first-out) method for determining the contract date for the failing quantity.

(F) *"Cash" Transactions*. The purchaser may close out transactions made for "cash" or made for or amended to include guaranteed delivery at the close of business on the day delivery is due.

(ii) *Close-Out by Seller*. If a seller makes good delivery according to the terms of the transaction and the requirements of this rule and the purchaser rejects delivery, the seller may close out the transaction in accordance with the following procedures:

(A) *Notice of Close-Out*. If the seller elects to close out a transaction in accordance with this paragraph (ii), the seller shall at any time not later than the close of business on the first business day following receipt by the seller of notice of the rejection, notify the purchaser via an inter-dealer communication system of the registered clearing agency through which the transaction was compared of the seller's intention to close out the transaction.

(1) The seller's notice shall state:

(a) the date and time by which the transaction must be completed which shall not be earlier than 5:15 p.m. EST of the close of the business day following the date the notice is given, the transaction may be closed out in accordance with this section; and

(b) contain the information specified in subparagraph (B) below, and shall be accompanied by a copy of the purchaser's confirmation of the transaction to be closed out or other evidence of the contract between the parties.

(B) *Content of Notice*. The written notice sent in accordance with the requirements of subparagraph (A) above shall set forth:

(1) the identity of the broker, dealer or municipal securities dealer originating the notice;

(2) the identity of the broker, dealer or municipal securities dealer to whom the notice is being sent;

(3) the contact to whom the originator provided the required telephonic notice;

(4) the date of such notice;

(5) the par value and description of the securities involved in the transaction with respect to which the close-out notice is given;

(6) the trade date and settlement date of the transaction;

(7) the price and total dollar amount of the transaction;

(8) the date of improper rejection of the delivery;

(9) the date by which the delivery of the securities must be accepted, which shall be completed within 10 calendar days; and

(10) the name and telephone number of the person at the broker, dealer, or municipal securities dealer originating the notice to contact regarding the close-out.

(C) *Execution of Close-Out.* Not earlier than the close of the business day following the date notice of close-out is given to the purchaser, the seller may sell out the transaction at the current market for the account and liability of the purchaser. A seller executing a close-out shall, upon execution, notify the purchaser for whose account and liability the transaction was closed out by telephone. The seller shall immediately thereafter confirm such notice and forward a copy of the confirmation of the executed transaction. Any moneys with any additional expenses or any additional cost due on the close-out of the transaction shall be forwarded to the appropriate party within five business days of the date of execution of the close-out notice.

(D) *Acceptance of Delivery*. In the event the transaction is completed by the date and time specified in the notice of close-out, the seller shall be entitled, upon

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demand made to the purchaser, to recover from the purchaser all actual and necessary expenses incurred by the seller by reason of the purchaser's rejection of delivery.

(iii) *Close-Out Under Special Rulings.* Nothing herein contained shall be construed to prevent brokers, dealers or municipal securities dealers from closing out transactions as directed by a ruling of a national securities exchange, a registered securities association or an appropriate regulatory agency issued in connection with the liquidation of a broker, dealer or municipal securities dealer.

(iv) *Recordkeeping*. All records regarding the close-out transaction shall be maintained as part of the firm's books and records.

(i) *Settlement of Secondary Market Trading Account*. Final settlement of a secondary market trading account formed for the purchase of securities shall be made within 30 calendar days following the date all securities have been delivered by the account manager to the account members.

(j) *Interest Payment Claims*. A broker, dealer or municipal securities dealer seeking to claim an interest payment on a municipal security from another broker, dealer or municipal securities dealer may claim such interest payment in accordance with this section. A broker, dealer or municipal securities dealer receiving a claim made under this section shall send to the claimant a draft or bank check for the amount of the interest payment or a statement of its basis for denying the claim no later than 10 business days after the date of receipt of the written notice of the claim or 20 business days in the case of a claim involving an interest payment scheduled to be made more than 60 days prior to the date of the claim.

(i) *Determining Party to Receive Claim*. A claimant making an interest payment claim under this section shall direct such claim to the party described in this paragraph (i).

(A) *Previously Delivered Registered Securities*. An interest payment claim made with respect to a registered security previously delivered to the claimant which is registered in the name of a broker, dealer or municipal securities dealer at the time of delivery shall be directed to such broker, dealer, or municipal securities dealer. A claim made with respect to a previously delivered registered security not registered in the name of a broker, dealer or municipal securities dealer guaranteeing the signature of the registered owner or, if neither the registered owner nor its signature guarantor is a broker, dealer or municipal securities dealer, to the broker, dealer or municipal securities dealer that first placed a signature guarantee on any assignment or power of substitution accompanying the security.

(B) *Previously Delivered Bearer Securities*. An interest payment claim made with respect to a bearer security previously delivered to the claimant shall be directed to the broker, dealer or municipal securities dealer that previously delivered the security.

(C) *Securities Delivered by Claimant*. An interest payment claim made with respect to a security previously delivered by the claimant shall be directed to the broker, dealer or municipal securities dealer that received the securities.

(D) *Deliveries by Book-Entry*. An interest payment claim arising out of a transaction with a contractual settlement date before, and settled by book-entry on or after, the interest payment date of the security shall be directed to the broker, dealer or municipal securities dealer that made the delivery.

(ii) *Content of Claim Notice*. A claimant seeking to claim an interest payment under this section shall send to the broker, dealer or municipal securities dealer against which the claim is made a written notice of claim including, at minimum:

(A) the name and address of the broker, dealer or municipal securities dealer making the claim;

(B) the name of the broker, dealer or municipal securities dealer against which the claim is made;

(C) the amount of the interest payment which is the subject of the claim;

(D) the date on which such interest payment was scheduled to be made (and, in the case of an interest payment on securities which are in default, the original interest payment date);

(E) a description of the security (including any CUSIP number assigned) on which such interest payment was made;

(F) a statement of the basis of the claim for the interest payment;

(G) if the claim is based on the delivery of a registered security, the certificate numbers of each security on which the claim is based and a photocopy of the certificate(s) on which the claim is based or (in lieu of such a photocopy) a written statement from the paying agent identifying the party that received the interest payment which is the subject of the claim; and,

(H) if the claim is made against the broker, dealer or municipal securities dealer that previously delivered the security on which the claim is based, or the broker, dealer or municipal securities dealer that received such security, the delivery date or settlement date of the transaction.

(k) Same-day allocation, confirmation, and affirmation.

(i) For purposes of this section (k) only, the terms "confirmation," "affirmation" and "allocation" shall have the same meaning as used in the Securities Exchange Act Rule 15c6-2.

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(ii) Any broker, dealer or municipal securities dealer engaging in the allocation, confirmation, or affirmation process with another party or parties to achieve settlement of a municipal securities transaction required to be settled on the first business day following the trade date under Rule G-12(b)(ii)(B) or G-15(b)(ii)(B) shall:

(A) Enter into a written agreement with the relevant parties to ensure completion of the allocation, confirmation, affirmation, or any combination thereof, for the transaction as soon as technologically practicable and no later than the end of the day on trade date in such form as necessary to achieve settlement of the transaction; or

(B) Establish, maintain, and enforce written policies and procedures reasonably designed to ensure completion of the allocation, confirmation, affirmation, or any combination thereof, for the transaction as soon as technologically practicable and no later than the end of the day on trade date in such form as necessary to achieve settlement of the transaction.

(iii) To ensure completion of the allocation, confirmation, affirmation, or any combination thereof for the transaction as soon as technologically practicable and no later than the end of the day on trade date, the reasonably designed written policies and procedures required by section (k)(ii)(B) of this rule shall:

(A) Identify and describe any technology systems, operations, and processes that the broker, dealer or municipal securities dealer uses to coordinate with other relevant parties, including investment advisers and custodians, to ensure completion of the allocation, confirmation, or affirmation process for the transaction;

(B) Set target time frames on trade date for completing the allocation, confirmation, and affirmation for the transaction;

(C) Describe the procedures that the broker, dealer or municipal securities dealer will follow to ensure the prompt communication of trade information, investigate any discrepancies in trade information, and adjust trade information to help ensure that the allocation, confirmation, and affirmation can be completed by the target time frames on trade date;

(D) Describe how the broker, dealer or municipal securities dealer plans to identify and address delays if another party, including an investment adviser or a custodian, is not promptly completing the allocation or affirmation for the transaction, or if the broker, dealer or municipal securities dealer experiences delays in promptly completing the confirmation; and

(E) Measure, monitor, and document the rates of allocations, confirmations, and affirmations completed as soon as technologically practicable and no later than the end of the day on trade date.

Rule G-12 Interpretations

Notice Concerning "Immediate" Close-Outs

August 19, 1981

The Municipal Securities Rulemaking Board has recently received inquiries concerning the provisions of rule G-12(h)(iii) regarding close-out procedures in the event of a firm's liquidation. The Board has been advised that a SIPC trustee has been appointed in connection with the liquidation of a general securities firm with which certain municipal securities brokers and dealers have uncompleted transactions in municipal securities, and that the New York Stock Exchange and the National Association of Securities Dealers, Inc., have notified their respective members that they may institute "immediate" close-out procedures on open transactions with the firm in liquidation. In accordance with a previous understanding between the Board and the NASD, the NASD has also advised municipal securities brokers and dealers that, pursuant to rule G-12(h)(iii), they may execute "immediate" close-outs on open transactions in municipal securities.

Rule G-12(h)(iii) provides:

> Nothing herein contained shall be construed to prevent brokers, dealers or municipal securities dealers from closing out transactions as directed by a ruling of a national securities exchange, a registered securities by a ruling of a national securities exchange, a registered securities association or an appropriate regulatory agency issued in connection with the liquidation of a broker, dealer or municipal securities dealer.

Therefore, in the event that a national securities exchange or registered securities association makes a ruling that close-outs may be effected "immediately" on transactions with a firm in liquidation, municipal securities brokers and dealers may take such action. In these circumstances, a purchasing dealer seeking to execute such a close-out need not follow the procedures for initiation of a closeout procedure, nor is the dealer required to wait the prescribed time periods prior to executing the close-out notice. Similarly, a selling dealer need not attempt delivery prior to using the procedure for close-outs by sellers. In both cases dealers may proceed to execute the close-out immediately — that is, the purchasing dealer may immediately "buy in" the securities in question for the account and liability of the firm in liquidation (or utilize one of the other options available for execution of the close-out), and a selling dealer may immediately "sell out" the subject securities. Notification of the execution of the close-out should be provided in accordance with the normal procedure.

Dealers executing close-outs in these circumstances should advise the trustee of the firm in liquidation of their actions in closing out these transactions. If proceeds from the close-out execution are due to the firm in liquidation, they should be remitted to the trustee. Requests for payment of amounts

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due on close-out executions should also be sent to the trustee; the trustee will resolve these claims in the course of the liquidation.

The Board also notes that dealers having open transactions with a firm in liquidation may, but are not required to, execute "immediate" close-outs in these circumstances. If individual dealers wish to attempt some other means of completing these transactions, such as seeking to complete a transaction with the liquidated firm's other contra-side, they may do so.

Application of the Board's Rules to Trades in Misdescribed or Non-Existent Securities

January 12, 1984

From time to time, industry members have asked the Board for guidance in situations in which municipal securities dealers have traded securities which either are different from those described ("misdescribed") or do not exist as described ("nonexistent") and the parties involved were unaware of this fact at the time of trade. A sale of a misdescribed security may occur, for example, when a minor characteristic of the issue is misstated. A sale of a non-existent security may result, for example, from the sale of a "when, as and if issued" security which is never authorized or issued.

The Board has responded to these inquiries by advising that its rules do not address the resolution of any underlying contractual dispute arising from trades in such misdescribed or nonexistent securities, and that the parties involved in the trade should work out an appropriate resolution. Board rule G-12(g) does permit reclamation of an inter-dealer delivery in certain instances in which information required to be included on a confirmation by rule G-12(c)(v)(E)[1] is omitted or erroneously noted on the confirmation or where other material information is erroneously noted on the confirmation. Rule G-12(g)(v) and (vi), however, make clear that a reclamation only reverses the act of delivery and reinstates the open contract on the terms and conditions of the original contract, requiring the parties to work out an appropriate resolution of the transaction.

The Board wishes to emphasize that general principles of fair dealing would seem to require that a seller of non-existent or misdescribed securities make particular effort to reach an agreement on some disposition of the open trade with the purchaser. The Board believes that this obligation arises since it is usually the seller's responsibility to determine the status of the municipal securities it is offering for sale. The extent to which the seller bears this responsibility, of course, may vary, depending on the facts of a trade.

The Board notes that the status of the underlying contract claim for trades in non-existent or misdescribed securities ultimately is a matter of state law, and each fact situation must be dealt with under applicable state law, and each fact situation must be dealt with under applicable contract principles. The Board believes that the position set forth above is consistent with general contract principles, which commonly hold that a seller is responsible to the purchaser in most instances for failing to deliver goods as identified in the contract, or for negligently contracting for goods which do not exist if the purchaser relied in good faith on the seller's representation that the goods existed.

Parties to trades in misdescribed or non-existent securities should attempt to work out an appropriate resolution of the contractual agreement. If no agreement is reached, the Board's closeout and arbitration procedures may be available.

[1] Rule G-12(c)(v)(E) requires that confirmations contain a description of the securi-ties, including at a minimum the name of the issuer, interest rate, maturity date, and if the securities are limited tax, subject to redemption prior to maturity (callable), or revenue bonds, an indication to such effect, including in the case of revenue bonds the type of revenue, if necessary for a materially complete description of the securities and in the case of any securities, if necessary for a materially complete description of the securities, the name of any company or other person in addition to the issuer obligated, directly or indirectly, with respect to debt service or, if there is more than one such obligor, the statement "multiple obligors" may be shown.

Notice Concerning Documentation on Rejection and Reclamation of Deliveries

March 5, 1982

The Municipal Securities Rulemaking Board has recently received complaints from certain municipal securities brokers and municipal securities dealers concerning problems with the documentation provided on rejections or reclamations of deliveries on municipal securities transactions. These brokers and dealers have alleged that other organizations, when rejecting or reclaiming deliveries, have failed to provide the requisite information regarding the return of the securities, thereby making it very difficult to accomplish prompt resolution of any delivery problems. In particular, these dealers indicate, notices of rejection or reclamation have often failed to state a reason for the rejection or reclamation, or to name a person who can be contacted regarding the delivery problem.

Rule G-12(g)(iv) requires that a dealer rejecting or reclaiming a delivery of securities must provide a notice or other document with the rejected or reclaimed securities, which notice shall include the following information:

(A) the name of the party rejecting or reclaiming the securities;

(B) the name of the party to whom the securities are being rejected or reclaimed;

(C) a description of the securities;

(D) the date the securities were delivered;

(E) the date of rejection or reclamation;

(F) the par value of the securities which are being rejected or reclaimed;

(G) in the case of a reclamation, the amount of money the securities are reclaimed for;

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(H) the reason for rejection or reclamation; and

(I) the name and telephone number of the person to contact concerning the rejection or reclamation.

The Uniform Reclamation Form may be used for this purpose.

The Board believes that the required information is the minimum necessary to permit prompt resolution of the problem, and does not view the requirement to provide this information as burdensome. The Board is concerned that failure to provide this information may contribute to inefficiencies in the clearance process, and strongly urges municipal securities brokers and dealers to take steps to ensure that the requirements of the rule are complied with. The Board notes that, in the case of reclaimed securities, failure to provide this information may result in, at minimum, a refusal on the part of the receiving party to honor the reclamation.

Notice of Interpretation of Rules G-12(e) and G-15(c) on Deliveries of Called Securities — Definition of "Publication Date"

October 20, 1986

Rules G-12(e)(x) and G-15(c)(viii) on deliveries of called securities provide that a certificate for which a notice of partial call has been published does not constitute good delivery unless it was identified as called at the time of trade. The rules also provide that, if a notice of call affecting an entire issue has been published on or prior to the trade date, called securities do not constitute good delivery unless identified as such at the time of trade.[1] Thus, a dealer, in some instances, must determine the date that a notice of call is published (the "publication date") to determine whether delivery of a called certificate constitutes good delivery for a particular transaction. The Board has adopted the following interpretation of rules G-12(e)(x) and G-15(e)(viii) to assist the industry in determining the publication date of a notice of a call. The Board understands this interpretation to be consistent with the procedure currently being used by certain depositories in allocating the results of partial calls.

In general, the publication date of a notice of call is the date of the edition of the publication in which the issuer, the issuer's agent or the trustee publishes the notice. To qualify as a notice of call under the rules, a notice must contain the date of the early redemption, and, for partial calls, must contain information that specifically identifies the certificates being called. If a notice of call is published on more than one date, the earliest date of publication constitutes the publication date for purposes of the rules.

If a notice of call for a registered security is not published, but is sent to registered owners, the publication date is the date shown on the notice. If no date is shown on the notice, the issuer, the trustee or the appropriate agent of the issuer should be contacted to determine the date of the notice of call.

If a notice of call of a registered security is published and also is sent directly to registered owners, the publication date is the earlier of the actual publication date or the date shown on the notice sent to registered owners. For bearer securities, the first date of publication always constitutes the publication date, even if another date is shown on the notice.

[1] An inter-dealer delivery that does not meet these requirements may be rejected or reclaimed under rule G-12(g).

Notice on Determining Whether Transactions Are Inter-Dealer or Customer Transactions: Rules G-12 and G-15

May 1, 1988

In December 1984, the Board published a notice providing guidance to dealers in determining whether certain transactions are inter-dealer or customer transactions for purposes of Board rules. Since the publication of this notice, the Board has continued to receive reports that inter-dealer transactions sometimes are erroneously submitted to automated confirmation/affirmation systems for customer transactions. This practice reduces the efficiencies of automated clearance since these transactions fail to compare in the initial comparison cycle. The Board is republishing the notice to remind dealers of the need to submit interdealer and customer transactions to the correct automated clearance systems.

The Board recently has been advised that some members of the municipal securities industry are experiencing difficulties in determining the proper classification of a contra-party as a dealer or customer for purposes of automated comparison and confirmation. In particular, questions have arisen about the status of banks purchasing for their trust departments and dealers buying securities to be deposited in accumulation accounts for unit investment trusts. Because a misclassification of a contra-party can cause significant difficulty to persons seeking to comply with the automated clearance requirements of rules G-12, and G-15, the Board believes that guidance concerning the appropriate classification of contra-parties in certain transactions would be helpful to the municipal securities industry.

Background

Rule G-12(f)(i) requires dealers to submit an inter-dealer transaction for automated comparison if the transaction is eligible for automated comparison …. Rule G-15(d)(ii) requires dealers to use an automated confirmation/affirmation service for delivery versus payment or receipt versus payment (DVP/RVP) customer transactions if the [transactions are eligible for automated confirmation and acknowledgement].

The systems available for the automated comparison of inter-dealer transactions and automated confirmation/affirmation of customer transactions are separate and distinct. As a result, misclassification of a contra-party may frustrate efficient use of the systems. For example, a selling dealer in an inter-dealer transaction may misclassify the contra-party as a customer,

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and submit the trade for confirmation/affirmation through the automated system for customer transactions while the purchaser (correctly considering itself to be a dealer) seeks to compare the transaction through the inter-dealer comparison system. Since, the automated systems for inter-dealer and customer transactions are entirely separate, the transaction will not be successfully compared or acknowledged through either automated system.

Transactions Effected by Banks

The Board has received certain questions about the proper classification of contra-parties in the context of transactions effected by banks. A bank may be the purchaser or seller of municipal securities either as a dealer or as a customer. For example, a dealer may sell municipal securities to a bank's trust department for various trust accounts. Such purchases by a bank in a fiduciary capacity would not constitute "municipal securities dealer activities" under the Board's rules[1] and are properly classified and confirmed as customer transactions. A second type of transaction by a bank is the purchase or sale of securities for the dealer trading account of a dealer bank. The bank in this instance clearly is acting in its capacity as a municipal securities dealer and the transaction should be compared as an inter-dealer transaction.

A dealer effecting a transaction with a dealer bank may not know whether the bank is acting in its capacity as a dealer or as a customer. The Board is of the view that, in such a case, the dealer should ascertain the appropriate classification of the bank at the time of trade to ensure that the transaction can be compared or confirmed appropriately. The Board anticipates that dealer banks will assist in this process by informing contra-parties whether the bank is acting as a dealer or customer in transactions in which the bank's role may be unclear to the contra-party.

Transactions by Dealer Purchasing Municipal Securities for UIT Accumulation Accounts

The Board has also received several inquiries concerning the appropriate classification of a dealer who purchases municipal securities to be deposited into an accumulation account for ultimate transfer to a unit investment trust (UIT). The dealer buying securities for a UIT accumulation account may purchase and hold the securities over a period of several days before depositing them with the trustee of the UIT in exchange for all of the units of the trust; during this time the dealer is exposed to potential market risk on these securities positions. The subsequent deposit of the securities with the trustee of the UIT in exchange for the units of the trust may be viewed as a separate, customer transaction between the dealer buying the accumulation account and the trust. The original purchase of the securities by the dealer for the account then must be considered an inter-dealer transaction since the dealer is purchasing for its own account ultimately to execute a customer transaction. The Board notes that the SEC has taken this approach in applying its net capital and customer protection rules to such transactions.

The Board is of the view that, for purposes of its automated comparison requirements, transactions involving dealers purchasing for UIT accumulation accounts should be considered interdealer transactions. The Board also notes the distinction between this situation, in which a dealer purchases for ultimate transfer to a trust or fund, and situations where purchases or sales of municipal securities are made directly by the fund, as is the case with purchases or sales by some open-end mutual funds. These latter transactions should be considered as customer transactions and confirmed accordingly.

Other Inter-Dealer Transactions

In addition to questions on the status of a dealer bank and dealers purchasing for accumulation accounts, the Board has received information that a few large firms are sometimes subtracting trades with regional securities dealers into the customer confirmation system. The Board is aware that these firms may classify transactions with regional dealers or bank dealers as "customer" transactions for purposes of internal accounting and compensation systems. The Board reminds industry members that transactions with other municipal securities dealers will always be inter-dealer transactions and should be compared in the interdealer automated comparison system without regard to how the transactions are classified internally within a dealer's accounting systems. The Board believes it is incumbent upon those firms who misclassify transactions in this fashion to promptly make the necessary alterations to their internal systems to ensure that this practice of misclassifying transactions is corrected.

[1] Section 3(a)(30) of the Securities Exchange Act of 1934 defines a bank to be a municipal securities dealers if it "is engaged in the business of buying and selling municipal securities for its own account other than in a fiduciary capacity." For purposes of the Board's rule G-1, defining a separately identifiable department or division of a bank dealer, the purchase and sale of municipal securities by a trust department would not be considered to be "municipal securities dealer activities."

NOTE: Revised to reflect subsequent amendments.

Locked-In Transactions

March 1, 2001

The Securities and Exchange Commission has approved the National Securities Clearing Corporation's ("NSCC") proposed rule change (SR-NSCC-00-13) regarding the submission of trade data for comparison of fixed income inter-dealer transactions.[1] NSCC proposes to offer its members the ability to submit their fixed income transaction information "locked-in" through Qualified Special Representatives ("QSR") for trades executed via an Alternative Trading System ("ATS"). Locked-in QSR trade data submission currently is only available for transactions in equity securities. The Municipal Securities Rulemaking Board ("MSRB") is publishing this notice to clarify the requirements of MSRB rules G-12(f) and G-14 as they pertain to the submission of locked-in transactions.

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To accomplish a locked-in QSR submission, NSCC members on each side of a trade must have executed, or clear for a firm that executed, their trade through an ATS and previously authorized a specific NSCC-authorized QSR to submit locked-in trades to NSCC on their behalf. The locked-in transaction records are not compared in the traditional manner through the two-sided NSCC comparison process. Instead, the QSR itself takes responsibility to ensure that the trade data is correct and the parties have agreed to the trade according to the stated terms. Once NSCC receives a locked-in trade, it treats it as compared so that the transaction can proceed to netting or other automated settlement procedures.

MSRB rule G-12(f) on inter-dealer comparison and rule G-14 on Transaction Reporting Procedures each refer to the NSCC comparison process for inter-dealer transactions in municipal securities. These rules require dealers to submit their inter-dealer trade data to NSCC for purposes of comparison and for forwarding to the MSRB for trade-reporting purposes. Questions may arise as to whether the submission of trade data already locked-in by a QSR complies with these rules.

NSCC's proposal requires that a QSR must obtain authorization to submit locked-in transactions both from NSCC as well as from the NSCC members who wish to use the QSR for locked-in trade submission. Given this fact, and the fact that both rules G-12(f) and G-14 specifically contemplate the use of intermediaries in submitting data to NSCC and to the MSRB, locked-in trades submitted under NSCC's program will comply both with rule G-12(f) and rule G-14.

[1] *See* Securities Exchange Act Release No. 43949 (Feb. 9, 2001), 66 FR 10765 (Feb. 16, 2001)

Interpretation on the Application of Rules G-8, G-12 and G-14 to Specific Electronic Trading Systems

March 26, 2001

The Municipal Securities Rulemaking Board (the "MSRB") understands that, over time, the advent of new trading systems will present novel situations in applying MSRB uniform practice rules. The MSRB is prepared to provide interpretative guidance in these situations as they arise, and, if necessary, implement formal rule interpretations or rule changes to provide clarity or prevent unintended results in novel situations. The MSRB has been asked to provide guidance on the application of certain of its rules to transactions effected on a proposed electronic trading system with features similar to those described below.

Description of System

The system is an electronic trading system offering a variety of trading services and operated by an entity registered as a dealer under the Securities Exchange Act of 1934. The system is qualified as an alternative trading system under Regulation ATS. Trading in the system is limited to brokers, dealers and municipal securities dealers ("dealers"). Purchase and sale contracts are created in the system through various types of electronic communications via the system, including acceptance of priced offers, a bid-wanted process, and through negotiation by system participants with each other. System rules govern how the bid/offer process is conducted and otherwise govern how contracts are formed between buyers and sellers.

Participants are, or may be, anonymous during the bid/offer/negotiation process. After a sales contract is formed, the system immediately sends an electronic communication to the buyer and seller, noting the transaction details as well as the identity of the contra-party. The transaction is then sent by the buyer and seller to a registered securities clearing agency for comparison and is settled without involvement of the system operator.

The system operator does not take a position in the securities traded on the system, even for clearance purposes. Dealers trading on the system are required by system rules to clear and settle transactions directly with each other even though the parties do not know each other at the time the sale contract is formed. If a dealer using the system does not wish to do business with another specific contra-party using the system, it may direct the system operator to adjust the system so that contracts with that contra-party cannot be formed through the system.

Application of Certain Uniform Practice Rules to System

It appears to the MSRB that the dealer operating the system is effecting agency transactions for dealer clients.[1] The system operator does not have a role in clearing the transactions and is not taking principal positions in the securities being traded. However, the system operator is participating in the transactions at key points by providing anonymity to buyers and sellers during the formation of contracts and by setting system rules for the formation of contracts. Consequently, all MSRB rules generally applicable to inter-dealer transactions would apply except to the extent that such rules explicitly, or by context, are limited to principal transactions.

Automated Comparison

One issue raised by the description of the system above is the planned method of clearance and settlement. Rule G-12(f)(i) requires that inter-dealer transactions be compared in an automated comparison system operated by a clearing corporation registered with the Securities and Exchange Commission. The purpose of rule G-12(f)(i) is to facilitate clearance and settlement of inter-dealer transactions. In this case, the system operator: (i) electronically communicates the transaction details to the buyer and seller; (ii) requires the buyer and seller to compare the transaction directly with each other in a registered securities clearing corporation; and (iii) is not otherwise involved in clearing or settling the transaction. The MSRB believes that under these circumstances, it is unnecessary for the system operator to obtain a separate comparison of its agency transactions with the buyer and seller.

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Although automated comparison is not required between the system operator and the buyer and seller, the transaction details sent to each party by the system must conform to the information requirements for inter-dealer confirmations contained in rule G-12(c). Since system participants implicitly agree to receive this information in electronic form by participating in the system, a paper confirmation is not necessary. Also, the system operator may have an agreement with its participants that participants are not required to confirm the transactions back to the system operator, which normally would be required by rule G-12(c).

The system operator, which is subject to Regulation ATS, will be governed by the recordkeeping requirements of Regulation ATS for purposes of transaction records, including municipal securities transactions. However, the system operator also must comply with any applicable recordkeeping requirements in rule G-8(f), which relate to records specific to effecting municipal securities transactions. With respect to recordkeeping by dealers using the system, the specific procedures associated with this system require that transactions be recorded as principal transactions directly between buyer and seller, with notations of the fact that the transactions were effected through the system.

Transaction Reporting

Rule G-14 requires inter-dealer transactions to be reported to the MSRB for the purposes of price transparency, market surveillance and fee assessment. The mechanism for reporting inter-dealer transactions is through National Securities Clearing Corporation ("NSCC"). In the system described above, the buyer and seller clear and settle transactions directly as principals with each other, and without the involvement of the dealer operating the system. The buyer and seller therefore will report transactions directly to NSCC. No transaction or pricing information will be lost if the system operator does not report the transaction. Consequently, it is not necessary for the system operator separately to report the transactions to the MSRB.

[1] This situation can be contrasted with the typical broker's broker operation in which the broker's broker effects riskless principal transactions for dealer clients. The nature of the transactions as either agency or principal is governed for purposes of MSRB rules by whether a principal position is taken with respect to the security. "Riskless principal" transactions in this context are considered to be principal transactions in which a dealer has a firm order on one side at the time it executes a matching transaction on the contraside. For purposes of the uniform practice rules, the MSRB considers broker's broker transactions to be riskless principal transactions even though the broker's broker may be acting for one party and may have agency or fiduciary obligations toward that party.

Notice on Reporting and Comparison of Certain Transactions Effected by Investment Advisors: Rules G-12(f) and G-14

May 23, 2003

In recent months, the MSRB has received a number of questions relating to certain kinds of transactions in which independent investment advisors instruct selling dealers to make deliveries to other dealers. This notice addresses questions that have been raised relating to Rule G-12(f)(i), on automated comparison, and Rule G-14, on transaction reporting. It describes existing requirements that follow from the language of the rules and does not set forth any new policies or procedures.

An independent investment advisor purchasing securities from one dealer sometimes instructs that dealer to make delivery of the securities to other dealers where the investment advisor's clients have accounts. The identities of individual account holders typically are not given.[1] The dealers receiving the deliveries in these cases generally are providing "wrap fee" or similar types of accounts that allow investors to use independent investment advisors to manage their municipal securities portfolios. In these kinds of arrangements, the investment advisor chosen by the account holder may be picked from a list of advisors approved by the dealer; however, dealers offering these accounts have indicated that the investment advisor acts independently in effecting transactions for the client's municipal securities portfolio.

The following example illustrates the situation. An Investment Advisor purchases a $1 million block of municipal bonds from the Selling Dealer and instructs the Selling Dealer to deliver $300,000 of the bonds to Dealer X and $700,000 to Dealer Y. The Investment Advisor does not give the Selling Dealer the individual client accounts at Dealer X and Dealer Y to which the bonds will be allocated and there is no contact between the Selling Dealer and Dealers X and Y at the time of trade. The Investment Advisor, however, later informs Dealer X and Dealer Y to expect the delivery from the Selling Dealer, and gives the identity and quantity of securities that will be delivered, the final monies, and the individual account allocations. For example, the Investment Advisor may instruct Dealer X to allocate its $300,000 delivery by placing $100,000 in John Doe's account and $200,000 in Mary Smith's account.

With respect to transaction reporting requirements in this situation, the Selling Dealer should report a $1 million sale to a customer. No other dealer should report a transaction. The comparison system should not be used for the inter-dealer transfers between the Selling Dealer and Dealers X and Y because this would cause them to be reported as inter-dealer trades.

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Frequently Asked Questions

One frequently asked question in the context of the above example is whether the transfers of the $300,000 and $700,000 blocks by the Selling Dealer to Dealer X and Dealer Y should be reported as inter-dealer transactions. Another question is whether these transfers may be accomplished by submitting them to the automated comparison system for inter-dealer transactions. Based on the information that has been provided to the MSRB, these transfers do not appear to represent inter-dealer trades and thus should not be reported under Rule G-14 or compared under Rule G-12(f)(i) using the current central comparison system.

One reason for the conclusion that no inter-dealer trade exists is that municipal securities professionals for firms in the roles of Dealer X and Y have stated that the Investment Advisor is acting independently and is not acting as their agent when effecting the trade with the Selling Dealer. In support of this assertion, they note that they often are not informed of the transaction or the deliveries that they should expect until well after the trade has been effected by the Investment Advisor. They also note that the actions of the Investment Advisor are not subject to their control or supervision. Thus, the $300,000 and $700,000 inter-dealer transfers in the above example appear to be simply deliveries made in accordance with a contract made by, and the instructions given by, the Investment Advisor. The inter-dealer transfers thus do not constitute inter-dealer transactions.

Because Rule G-14 transaction reporting of inter-dealer trades is accomplished through the central comparison system, any dealer submitting the $300,000 and $700,000 inter-dealer transfers to the comparison system is in effect reporting interdealer transactions that did not occur. In addition, this practice tends to drive down comparison rates and the overall performance of dealers in the automated comparison system. As noted above, the trading desks of Dealer X and Dealer Y generally do not know about the Investment Advisor's transaction at the time of trade. They consequently cannot submit comparison information to the system unless the Investment Advisor provides them with the trade details in a timely, accurate and complete manner. Since the Investment Advisor is acting independently and is not supervised by municipal securities professionals at Dealer X and Dealer Y, there is no means for the municipal securities professionals at Dealer X and Dealer Y to ensure that this happens.

Questions also have been received on whether the individual allocations to investor accounts (*e.g.*, the $100,000 and $200,000 allocations to the accounts of John Doe and Mary Smith in the example above) should be reported under Rule G-14 as customer transactions. Even though the dealer housing these accounts obviously has important obligations to the investor with respect to receiving deliveries, paying the Selling Dealer for the securities, and processing the allocations under the instructions of the Investment Advisor, it does not appear that the dealer entered into a purchase or sale contract with the investor and thus nothing is reportable under Rule G-14. This conclusion again is based upon statements by dealers providing the "wrap fee" and similar accounts, who indicate that the investment advisor acts independently and not as the dealer's agent when it effects the original block transaction and when it makes allocation decisions.

For purposes of price transparency, the only transaction to be reported in the above example is a single $1 million sale to a customer. This is appropriate because the only market price to be reported is the one set between the Selling Dealer and the Investment Advisor for the $1 million block of securities. It is appropriate that the $300,000 and $700,000 inter-dealer transfers, and the $100,000 or $200,000 investor allocations are not disseminated as transactions since they would have to be reported using the price for the $1 million block. This could be misleading in that market for $1 million round lots are often different than market prices for smaller transaction sizes.

[1] It should be noted that in this situation, the investment advisor itself is the customer and must be treated as such for recordkeeping and other regulatory purposes. For discussion of a similar situation, see "Interpretive Notice on Recordkeeping" dated July 29, 1977.

Transaction Reporting of Multiple Transactions Between Dealers in the Same Issue: Rules G-12(f) and G-14

November 24, 2003

The MSRB has become aware of problems in transaction reporting as a result of dealers "bunching" certain inter-dealer transactions in the comparison system. Recently, some dealers have reported the sum of two trades as one transaction in instances when two dealers effected two trades with each other in the same issue and at the same price. When two transactions are effected, two transactions should be reflected in each dealer's books and records and two transactions are required to be reported to the MSRB. The time of trade for each transaction also must accurately reflect the time at which a contractual commitment was formed for each quantity of securities. For example, if Dealer A purchases $50,000 of a municipal issue at a price of par from Dealer B at 11:00 am and then purchases an additional $50,000 at par from Dealer B at 2:00 pm, two transactions are required to be reflected on each dealers' books and records and two transactions are required to be reported to the MSRB.

Since the same inter-dealer trade record submitted for automated comparison under Rule G-12(f) also is used to satisfy the requirements of Rule G-14, on transaction reporting, each interdealer transaction should be submitted for automated comparison separately in order to comply with Rule G-14's requirement to report all transactions. Failure to do so causes erroneous information concerning transaction size and time of trade to appear in the transparency reports published by the MSRB as well as in the audit trail used by regulators and enforcement agencies. To the extent that dealers use the re-

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cords generated by the comparison system for purposes of complying with MSRB Rule G-8, on recordkeeping, it may also create erroneous information as to the size of transactions effected or time of trade execution.

Notice on Certain Inter-Dealer Transfers of Municipal Securities: Rules G-12(f) and G-14

June 4, 2004

The MSRB has received questions about whether certain transfers of municipal securities between dealers to move securities between safekeeping locations are required to be reported to the MSRB Transaction Reporting System under Rule G-14, on transaction reporting. When a transfer of municipal securities does not represent a purchase-sale transaction and is not required to be recorded on a dealer's books and records under MSRB Rule G-8 or SEC Rule 17a-3, such transfers should not be reported under Rule G-14 and a transaction report must not be sent to the MSRB.

One scenario that has been brought to the MSRB's attention is when a dealer ("Dealer A") that self-clears inter-dealer transactions contracts with another dealer ("Dealer B") for the safekeeping and maintenance of customer accounts. As part of this process, Dealer A transfers securities sold to customers to Dealer B for safekeeping. The transfer of securities from Dealer A to Dealer B in this example is not an inter-dealer purchase-sale transaction and must not be reported to the MSRB as such. However, Dealer A and Dealer B may wish to utilize the comparison and netting facilities of a registered clearing agency to effect the delivery of securities.

In March 2004, the MSRB published a notice addressing the processing of certain inter-dealer transfers of securities that do not represent inter-dealer purchase-sale transactions through the automated comparison facilities of National Securities Clearing Corporation (NSCC).[1] Since data sent to NSCC for comparison of an inter-dealer purchase-sale transaction also is sent to the MSRB for transaction reporting purposes, the March 2004 notice described use of the "B" indicator for identifying such data submissions relating to transfers of securities so that they are not confused with transaction reports between dealers that represent trades made through the comparison system. Dealers should refer to the March 2004 notice if they chose to use the facilities of NSCC for such transfers to ensure that erroneous inter-dealer transaction reports are not sent to the MSRB Transaction Reporting System.[2]

[1] *See* MSRB Notice 2004-9, "Notice on Deliveries of Step Out Transactions Through the Automated Comparison System," March 3, 2004, on www.msrb.org.

[2] Note, however, that a different procedure will be used to effect inter-dealer transfers of securities, using the NSCC comparison system, and without reporting the transfer to the MSRB as a transaction when MSRB's Real-Time Transaction Reporting System goes into operation, currently planned for January 2005.

Notice on Automated Comparison and Transaction Reporting of Certain Inter-Dealer Transactions in When-Issued Municipal Securities: Rules G-12(f) and G-14

September 28, 2004

The MSRB has received reports of problems with automated comparison and transaction reporting of certain inter-dealer transactions involving syndicate managers. These reports indicate that some dealers may have incorrectly identified some of their when, as and if issued ("when-issued") transactions in new issue municipal securities as "syndicate transactions." The MSRB reminds dealers that erroneous coding of comparison reports is a violation of Rule G-14, on transaction reporting, and that transactions with dealers that are not members of the syndicate or selling group for a new issue, by definition, cannot be considered "syndicate transactions" for purposes of comparison procedures.

MSRB Rule G-12(f), on automated comparison of inter-dealer transactions, requires dealers to submit for automated comparison all transactions eligible for comparison under National Securities Clearing Corporation's (NSCC) rules and procedures. For transactions by a syndicate manager with syndicate or selling group members, NSCC procedures call for the use of a special "syndicate" submission, which does not require a submission by the contra-side for comparison to occur.[1] Transactions between syndicate managers and dealers that are not members of the syndicate or selling group are not "syndicate transactions" under NSCC's rules and procedures and both the selling and purchasing dealers are required to report its side to the transaction for automated comparison.

Various problems arise in the comparison process if the parties to a trade do not follow the correct procedures for comparison of the trade. Moreover, since the trade report submitted for comparison also serves as the transaction report to the MSRB, identifying a transaction as a "syndicate transaction" in trade reports, when such transaction is not a syndicate transaction under NSCC's rules and procedures, represents a violation of a dealer's obligation to accurately report transactions to the MSRB under Rule G-14.

[1] *See* "Municipal Bond Selling Group Trades," NSCC Important Notice # 2971 dated April 8, 1988.

See also:

Rule G-11 Interpretation — Syndicate Settlement Practice Violations Noted, July 1981.

Rule G-15 Interpretations — Interpretive Notice on Rule G-12 on Uniform Practice and Rule G-15 on Customer Confirmations, November 28, 1977.

- **Interpretive Notice on Confirmation Requirements,** March 25, 1980.
- **Interpretive Notice Concerning Confirmation Disclosure Requirements Applicable to Variable-Rate Municipal Securities,** December 10, 1980.
- **Notice Concerning "Zero Coupon" and "Stepped Coupon" Securities,** April 27, 1982.

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- **Notice Concerning Pricing to Call,** December 10, 1980.
- **Notice Concerning Confirmation Disclosure Requirements for Callable Municipal Securities,** February 20, 1986.
- **Notice Concerning Confirmation, Delivery and Reclamation of Interchangeable Securities,** August 10, 1988.
- **Notice Concerning Stripped Coupon Municipal Securities,** March 13, 1989.

Rule G-17 Interpretations — Notice Concerning the Application of Board Rules to Put Option Bonds, September 30, 1985.

- **Notice of Interpretation on Escrowed-to-Maturity Securities: Rules G-17, G-12 and G-15,** September 21, 1987.

Rule G-32 Interpretation — Notice Regarding Electronic Delivery and Receipt of Information by Brokers, Dealers and Municipal Securities Dealers, *November 20, 1998*.

Interpretive Letters

Delivery requirements: partials. I am writing to confirm the substance of our telephone conversation concerning the provision of rule G-12(e)(iv) on partial deliveries. In our discussion, you posed a specific example of a single purchase of securities in which half are of one maturity and half of another maturity and inquired whether or not delivery of only one of the maturities would constitute a "partial" under the terms of the rule.

As I stated to you, if the transaction is effected on an "all or none" basis, and your confirmation is marked "all or none" or "AON," this would suffice to indicate that the purchase of both maturities constitutes a single transaction, and that both maturities must be delivered to effect good delivery. *MSRB interpretation of February 23, 1978*.

Delivery requirements: coupons and coupon checks. This letter is to confirm the substance of conversations you had with the Board's staff concerning the application of certain provisions of rule G-12, the uniform practice rule, to deliveries of securities bearing past-due coupons. You inquire whether, in the case where a transaction is effected for a settlement date prior to the coupon payment date, a delivery of securities with this past-due coupon attached constitutes "good delivery" for purposes of the rule.

Rule G-12(e)(vii)(C) provides that a seller may, but is not required to, deliver a check in lieu of coupons if delivery is made within thirty calendar days prior to an interest payment date. Thus, in the circumstances you set forth, the seller would have the option to detach the coupons and provide a check, but is under no obligation to do so. A delivery with these coupons still attached would constitute "good delivery," and a rejection of the delivery for this reason would be an improper rejection. *MSRB interpretation of March 9, 1978*.

Delivery requirements: mutilated coupons. I am writing in response to your recent letter concerning the provisions of Board rule G-12(e) with respect to interdealer deliveries of securities with mutilated coupons attached. You indicate that your firm recently became involved in a dispute with another firm's clearing agent concerning whether certain coupons attached to securities your firm had delivered to the agent were mutilated. You request guidance as to the standards set forth in rule G-12(e) for the identification of mutilated coupons.

As you are aware, rule G-12(e)(ix) indicates that a coupon will be considered to be mutilated if the coupon is damaged to the extent that any one of the following *cannot be ascertained* from the coupon:

(A) title of the issuer;

(B) certificate number;

(C) coupon number or payment date...;

or

(D) the fact that there is a signature... (emphasis added)

The standard set forth in the rule (that the information "cannot be ascertained") was deliberately chosen to make clear that minimal damage to a coupon is not sufficient to cause that coupon to be considered mutilated. For example, if the certificate number imprinted on a coupon is partially torn, but a sufficient portion of the coupon remains to permit identification of the number, the coupon would not be considered to be mutilated under the standard set forth in the rule, and a rejection of the delivery due to the damage to the coupon would not be permitted. In the case of the damaged coupon shown on the sample certificate enclosed with your letter, it seems clear that the certificate number can be identified, and confusion with another number would not be possible; therefore, this coupon would not be considered to be mutilated under the rule, and a rejection of a delivery due to the damage to this coupon would not be in accordance with the rule's provisions.

Your letter also inquires as to the means by which dealers can obtain redress in the event that a delivery is rejected due to damaged coupons which are not, in their view, mutilated under the standard set forth in the rule. I note that rule G-12(h)(ii) sets forth a procedure for a close-out by a selling dealer in the event that a delivery is improperly rejected by the purchaser; this procedure could be used in the circumstances you describe to obtain redress in this situation. Further, the arbitration procedure under Board rule G-35 could also be used in the event that the dealer incurs additional costs as a result of such an improper rejection of a delivery. *MSRB interpretation of January 4, 1984*.

Delivery requirements: put option bonds. In a previous telephone conversation [name omitted] of your office had inquired whether any or all of the following deliveries of securities which are subject to a put option could be rejected:

(1) Certain securities are the subject of a "one time only" put option, exercisable by delivery of the securities to a designated trustee on or before a stated expiration date. An interdealer transaction in the securities — described as "puttable" securities — is effected for settlement prior to the expiration date. Delivery on the transaction is not made, however, until after the expiration date, and the re-

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cipient is accordingly unable to exercise the option, since it cannot deliver the securities to the trustee by the expiration date.

(2) Certain securities are the subject of a "one time only" put option, exercisable by delivery of the securities to a designated trustee on or before a stated expiration date. An interdealer transaction in the securities — described as "puttable" securities — is effected for settlement prior to the expiration date. Delivery on the transaction is made prior to the expiration date, but too late to permit the recipient to satisfy the conditions under which it can exercise the option (*e.g.*, the trustee is located too far away for the recipient to be able to present the physical securities by the expiration date).

(3) Certain securities are the subject of a put option exercisable on a stated periodic basis (*e.g.*, annually). An inter-dealer transaction in the securities — described as "puttable" securities — is effected for settlement shortly before the annual exercise date on the option. Delivery on the transaction, however, is not made until after the annual exercise date, so that the recipient is unable to exercise the option at the time it anticipated being able to do so.

I am writing to confirm my previous advice to him regarding the Board's consideration of his inquiry.

As I informed him, his inquiry was referred to a Committee of the Board which has responsibility for interpreting the "delivery" provisions of the Board's rules; that Committee has authorized my sending this response. In considering the inquiry, the Committee took note of the provisions of Board rule G-12(g), under which an inter-dealer delivery may be reclaimed for a period of eighteen months following the delivery date in the event that information pertaining to the description of the securities was inaccurate for either of the following reasons:

(i) information required by subparagraph (c)(v)(E) of this rule was omitted or erroneously noted on a confirmation, or

(ii) information material to the transaction but not required by subparagraph (c)(v)(E) of this rule was erroneously noted on a confirmation.

Under this provision, therefore, a delivery of securities described on the confirmation as being "puttable" securities could be reclaimed if the securities delivered are not, in fact, "puttable" securities.

The Committee is of the view that, in the first of the situations which he cited, the delivery could be rejected or reclaimed pursuant to the provisions of rule G-12(g). In this instance the securities were traded and described as being "puttable" securities; the securities delivered, however, are no longer "puttable" securities, since the put option has expired by the delivery date. Accordingly, the rule would permit rejection or reclamation of the delivery.

In the third case he put forth, however, this provision would not be applicable, since the securities delivered are as described. Accordingly, there would not be a basis under the rules to reject or reclaim this delivery, and a purchasing dealer who believed that it had incurred some loss as a result of the delivery would have to seek redress in an arbitration proceeding or in the courts. This may also be the result in the second case he cited, depending on the facts and circumstances of the delivery. *MSRB interpretation of February 27, 1985*.

Confirmation disclosure: put option bonds. This will acknowledge receipt of your letter of March 17, 1981, with respect to "put option" or "tender option" features on certain new issues of municipal securities. In your letter you note that an increasing number of issues with "put option" features are being brought to market, and you inquire concerning the application of the Board's rules to these securities.

The issues of this type with which we are familiar have a "put option" or "tender option" feature permitting the holder of securities of an issue to sell the securities back to the trustee of the issue at par. The "put" or "tender option" privilege normally becomes available a stated number of years (*e.g.*, six years) after issuance, and is available on stated dates thereafter (*e.g.*, once annually, on an interest payment date). The holder of the securities must usually give several months prior notice to the trustee of his intention to exercise the "put option."

Most Board rules will, of course, apply to "put option" issues as they would to any other municipal security. As you recognize in your letter, the only requirements raising interpretive questions appear to be the requirements of rules G-12 and G-15 concerning confirmations. These present two interpretive issues: (1) does the existence of the "put option" have to be disclosed and if so, how, and (2) should the "put option" be used in the computation of yield and dollar price.

Both rules require confirmations to set forth a

> description of the securities, including ... if the securities are ... subject to redemption prior to maturity ..., an indication to such effect

Confirmations of transactions in "put option" securities would therefore have to indicate the existence of the "put option," much as confirmations concerning callable securities must indicate the existence of the call feature. The confirmation need not set forth the specific details of the "put option" feature.

The requirements of the rules differ with respect to disclosure of yields and dollar prices. Rule G-12, which governs interdealer confirmations, requires such confirmations to set forth the

> yield at which transaction was effected and resulting dollar price, except in the case of securities which are traded on the basis of dollar price or securities sold at par, in which event only dollar price need be shown (in cases in which securities are priced to premium call or to par option, this must be stated and the call or option date and price used in the calculation must be shown, and where

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a transaction is effected on a yield basis, the dollar price shall be calculated to the lowest of price to premium call, price to par option, or price to maturity)

Rule G-15 requires customer confirmations to contain yield and dollar price as follows:

(A) for transactions effected on a yield basis, the yield at which transaction was effected and the resulting dollar price shall be shown. Such dollar price shall be calculated to the lowest of price to premium call, price to par option, or price to maturity. In cases in which the dollar price is calculated to premium call or par option, this must be stated, and the call or option date and price used in the calculation must be shown.

(B) for transactions effected on the basis of dollar price, the dollar price at which transaction was effected, and the lowest of the resulting yield to premium call, yield to par option, or yield to maturity shall be shown; provided, however, that yield information for transactions in callable securities effected at a dollar price in excess of par, other than transactions in securities which have been called or prerefunded, is not required to be shown until October 1, 1981.

(C) for transactions at par, the dollar price shall be shown[.]

Therefore, with respect to transactions in "put option" securities effected on the basis of dollar price, rule G-12 requires that confirmations simply set forth the dollar price. Rule G-15 requires that confirmations of such transactions set forth the dollar price and the yield to maturity resulting from such dollar price. With respect to transactions effected on the basis of yield, both rules require that the confirmations set forth the yield at which the transaction was effected and the resulting dollar price. Unless the parties otherwise agree, the yield should be computed to the maturity date when deriving the dollar price. If the parties explicitly agree that the transaction is effected at a yield to the "put option" date, then such yield may be shown on the confirmation, together with a statement that it is a "yield to the [date] put option," and an indication of the date the option first becomes available to the holder.

Since the exercise of the "put option" is at the discretion of the holder of the securities, and not, as in the case of a call feature, at the discretion of someone other than the holder, the Board concludes that the presentation of a yield to maturity on the confirmation, and the computation of yield prices to the maturity date, is appropriate, and accords with the goal of advising the purchaser of the minimum assured yield on the transaction. The Board further believes that the ability of the two parties to a transaction to agree to price the transaction to the "put option" date, should they so desire, provides sufficient additional flexibility in applying the rules to transactions in "put option" securities. *MSRB interpretation of April 24, 1981.*

Confirmation requirements for partially refunded securities. This will respond to your letter of May 16, 1989. The Board reviewed your letter at its August 1989 meeting and authorized this response.

You ask what is the correct method of computing price from yield on certain types of "partially prerefunded" issues having a mandatory sinking fund redemption. The escrow agreement for the issues provides for a stated portion of the issue to be redeemed at a premium price on an optional, "in-whole," call date for the issue. The remainder of the issue is subject to a sinking fund redemption at par.[1] Unlike some issues that are prerefunded by certificate number, the certificates that will be called at a premium price on the optional call date are not identified and published in advance. Instead, they are selected by lottery 30 to 60 days before the redemption date for the premium call. Prior to this time, it is not known which certificates will be called at a premium price on the optional call date. In the particular issues you have described, the operation of the sinking fund redemption will retire the entire issue prior to the stated maturity date for the issue.

As you know, rules G-12(c) and G-15(a) govern inter-dealer and customer confirmations, respectively. Rules G-12(c)(v)(1) and G-15(a)(i)(1)[*] require the dollar price computed from yield and shown on the confirmation to be computed to the lower of call date or maturity. For purposes of computing price to call, only "in-whole" calls, of the type which may be exercised in the event of a refunding, are used.[2] Accordingly, the Board previously has concluded that the sinking fund redemption in the type of issue you have described should be ignored and the dollar price should be calculated to the lowest of the "in-whole" call date for the issue (*i.e.*, the redemption date of the prerefunding) or maturity. In addition, the stated maturity date must be used for the calculation of price to maturity rather than any "effective" maturity which results from the operation of the sinking fund redemption. Identical rules apply when calculating yield from dollar price. Of course, the parties to a transaction may agree to calculate price or yield to a specific date, *e.g.*, a date which takes into account a sinking fund redemption. If this is done, it should be noted on the confirmation.[3]

In our telephone conversations, you also asked what is the appropriate securities description for securities that are advance refunded in this manner. Rules G-12(c)(v)(E) and G-15(a)(i)(E)[†] require that confirmations of securities that are "prerefunded" include a notation of this fact along with the date of "maturity" that has been fixed by the advance refunding and the redemption price. The rules also state that securities that are redeemable prior to maturity must be described as "callable."[4] In addition, rules G-12(c)(vi)(I) and G-15(a)(iii)(J)[‡] state that confirmations must include information not specifically required by the rules if the information is necessary to ensure that the parties agree to the details of the transaction. Since, in this case, only a portion of the issue will be chosen by lot and redeemed at a premium price under the prerefunding, this fact must be noted on the confirmation. As an

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example, the issue could be described as "partially prerefunded to [redemption date] at [premium price] to be chosen by lot-callable." The notation of this fact must be included within the securities description shown on the front of the confirmation. *MSRB Interpretation of August 15, 1989*.

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[1] In some issues, a sinking fund redemption operates prior to the optional call date, while, in others, the sinking fund redemption does not begin until on or after that date.

[2] See [Rule G-15 Interpretation —] Notice of December 10, 1980, Concerning Pricing to Call, MSRB Manual, paragraph 3571.

[3] These rules on pricing partially prerefunded securities with sinking funds are set forth in [Rule G-15 Interpretive Letter — Disclosure of pricing: calculating the dollar price of partially prerefunded bonds,] MSRB interpretation of May 15, 1986, MSRB Manual, paragraph 3571.26.

[4] The Board has published an interpretive notice providing specific guidance on the confirmation of advanced refunded securities that are callable pursuant to an optional call. See Application of Rules G-12(c) and G-15(a) on Confirmation Disclosure of Escrowed-to-Maturity Securities [in Rule G-17 Interpretation — Notice of Interpretation on Escrowed-to-Maturity Securities: Rules G-17, G-12 and G-15], MSRB Manual, paragraph 3581.

[*] [Currently codified at rule G-15(a)(i)(A)(5)(c)(i).]

[†] [Currently codified at rule G-15(a)(i)(C)(3)(a).]

[‡] [Currently codified at rule G-15(a)(i)(A)(8)]

Close-out procedures: mandatory repurchase. You recently inquired concerning the use of the "mandatory repurchase" option provided under Board rule G-12(h)(i)(D) for execution of a close-out notice. In the situation you presented, a municipal securities dealer executing a notice was requiring, under the provisions of this option, a repurchase at the original contract price. Since the transaction was originally effected on the basis of a yield price, you inquired whether the repurchase should be effected at this yield price (with the dollar price computed to the settlement date of the repurchase transaction), or at the dollar price computed from this yield price at the time of the original transaction.

At the time of your telephone call I responded that, while the Board would have to consider this inquiry, the Board's response to somewhat similar inquiries in the past suggested that the dollar price of the original contract should be used. I am writing to advise you that the Board did not adopt this position. With respect to the specific circumstances presented in your inquiry, the Board has concluded that the purchasing dealer does have the right, in the appropriate circumstances, to execute a close-out by requiring the seller to repurchase the securities at the yield price of the original contract, with the resulting dollar price computed to the settlement date of the repurchase transaction. The Board notes that, in these circumstances, the selling dealer has failed to fulfill its contractual obligations, and believes that permitting the use of the yield price of the original contract, with the resulting dollar price computed to the settlement date of the repurchase transaction, will in the majority of cases most fairly compensate the purchaser for the time value of the investment for the period from the original execution to the mandatory repurchase.[1]

The Board also is generally of the view that purchasers executing mandatory repurchase transactions may require a mandatory repurchase at the yield basis of the original transaction, with the resulting dollar price computed to the settlement date of the repurchase transaction, except in the case where both parties to the transaction agree that the original transaction was, and the repurchase transaction should be, effected on the basis of a dollar price, or where the terms of the transaction and/or the trading characteristics of the security (*e.g.*, issues with an active sinking fund or tender program) suggest that dollar price rather than yield was the dominant consideration in the original transaction. *MSRB interpretation of March 4, 1982*.

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[1] The Board notes, for example, that, in the case of a security purchased at a discount, the purchaser and the purchaser's customer would realize the accretion of the discount for the period the security was owned. In the case of a security purchased at a premium, the premium would be amortized for the period the purchaser owned the security.

Settlement of syndicate accounts. This is in response to your letter of July 28, 1981, suggesting that requirements analogous to those placed on syndicate managers in rule G-12(j) be imposed on syndicate members who must remit their share of syndicate losses to their syndicate managers. You state that syndicate members frequently do not remit their losses to the manager in a timely fashion and that such a requirement would establish an "equitable balance between the interests of syndicate members and syndicate managers."

Rule G-12(j) provides:

> Final settlement of a syndicate or similar account formed for the purchase of securities shall be made within 60 days following the date all securities have been delivered by the syndicate or account manager to the syndicate or account members.

The rule is not expressly limited to money payments by syndicate managers, but broadly requires that final settlement shall be made within 60 days following the date the manager delivers the securities to the syndicate members. Thus, the rule requires syndicate members to remit their share of syndicate losses to the syndicate manager within the 60-day period set forth in the rule. Since a syndicate member cannot remit his share of losses until he is apprised by the syndicate manager of the amount of his share, a member should remit his share of the losses to the manager within a reasonable period of time after receiving the syndicate accounting required by rule G-11(h). *MSRB interpretation of September 28, 1981*.

Confirmation: Mailing of WAII confirmation. I am writing to confirm my recent telephone conversation with you regarding the requirements for mailing "when, as and if issued" confirmations of transactions in new issue municipal securities. Our recent conversation concerned your previous inquiry as to the time limit by which a municipal securities dealer must send out such confirmations in connection with allocations of securities to "pre-sale" orders, and the propriety of a dealer's sending out such confirmations prior to the award of the new issue.

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As we discussed, rule G-12(c)(iii) requires that,

> [f] or transactions effected on a "when, as and if issued" basis, initial confirmations shall be sent within two business days following the trade date.

For purposes of this requirement the designation "trade date" should be understood to refer to, in the case of a competitive new issue, a date no earlier than the date of award of the new issue of municipal securities, and, in the case of a negotiated new issue, a date no earlier than the date of signing of the bond purchase agreement. Therefore, the rule would require that initial "when, as and if issued" confirmations reflecting the allocation of new issue securities to "pre-sale" orders be sent within [one] business day after the date of award or of signing of the bond purchase agreement. For example, if the bond purchase agreement on a negotiated new issue is signed on Monday, April 26, the initial "when, as and if issued" confirmations must be sent out not later than the close of business on [Tuesday], April [27], [one] business day later.

Further, the Board is of the view that its rules prohibit a municipal securities dealer from sending out initial "when, as and if issued" confirmations prior to the trade date. In reaching this conclusion the Board does not intend to call into question the validity of a "pre-sale" order received for a syndicate's securities or the practice of soliciting such orders. The Board recognizes that such orders are expressions of the purchasers' firm intent to buy the new issue securities in accordance with the stated terms, and that such orders may be filled and confirmed immediately upon the award of the issue or the execution of a bond purchase agreement. The Board is of the view, however, that such orders cannot be deemed to be executed until the time of the award of the new issue, or the execution of a bond purchase agreement on the new issue. Mailing of confirmations on such orders prior to this time, therefore, is a representation that the orders have been filled before this actually occurs, and, as such, may be deceptive or misleading to the purchasers. *MSRB interpretation of April 30, 1982*.

NOTE: Revised to reflect subsequent amendments.

Automated clearance: use of comparison systems. I am writing to confirm the substance of our conversations with you at our meeting on October 3 to discuss certain of the issues that have arisen since the August 1 effective date of the requirements of rule G-12(f) for the use of automated comparison services on certain interdealer transactions in municipal securities. In our meeting you explained certain problems that have become apparent since the implementation of these requirements, and you inquired as to our views concerning the application of Board rules to these difficulties or appropriate procedures to remedy them. The essential points of our responses are summarized below.

In particular, you indicated that the use of the "as of" (or "demand as of") feature of the automated comparison system has, in some cases, caused inappropriate rejections of deliveries of securities. This occurs, you explained, because the comparison system is currently programmed to display an alternative settlement date of two business days following the date of successful comparison of the transaction, if such comparison is accomplished through use of the "as of" or "demand as of" feature.[1] As a result, in certain cases involving transactions compared on an "as of" basis dealers have attempted to make delivery on the transaction on the contractual settlement date, and have had those deliveries rejected, since the receiving party recognizes only the later "alternative settlement date" assigned to the transaction by the comparison system. You inquire whether such rejections of deliveries are in accordance with Board rules.

I note that this "alternative settlement date" has significance for clearance purposes only, and does not result in a recomputation of the dollar price or accrued interest on the transaction.

As we advised in our conversation, the receiving dealer clearly cannot reject a good delivery of securities made on or after the contractual settlement date on the basis that the delivery is made prior to the "alternative settlement date" displayed by the comparison system. Both dealers have a contract involving the purchase of securities as of a specified settlement date, and a delivery tendered on or after that date in "good delivery" form must be accepted. A dealer rejecting such a delivery on the basis that it has been made prior to the "alternative settlement date" would be subject to the procedures for a "close-out by seller" due to the improper rejection of a delivery, as set forth in Board rule G-12(h)(ii).[2]

* * *

You also advised that some dealers who are using the automated comparison system are using their own delivery tickets, rather than the delivery tickets generated by the system, at the time they make delivery on the transaction. As a result, you indicated, there have been rejections of these deliveries, since the receiving dealer is unable to correlate these deliveries with its records of transactions compared through the system. You suggested that the inclusion of the "control numbers" generated by the comparison system on these self-generated delivery tickets would help to eliminate these unnecessary rejections and facilitate the correlation of receipts and deliveries with records of transactions compared through the system. As I indicated in our conversation, the Board concurs with your suggestion. The Board strongly encourages dealers who choose to use their own delivery tickets for transactions compared through the automated system to display on those tickets the control number or other number identifying the transaction in the system.[3] This would ensure that the receiving dealer can verify that it knows the transaction being delivered and that it was successfully compared through the system.

* * *

You also noted that many municipal securities dealers have continued the practice of sending physical confirmations of transactions, in addition to submitting such transactions for comparison through the automated system. You advised that

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this is causing significant problems for certain dealers, since they are required to maintain a duplicate system in order to provide for the review of these physical confirmations.

The Board is aware that certain municipal securities dealers chose to maintain parallel confirmation systems following implementation of the automated comparison requirements on August 1 in order to ensure that they maintained adequate control over their activities, and recognizes that for many such dealers this was an appropriate and prudent course of action.[4] However, the Board wishes to emphasize that its rules do not require the sending of a physical confirmation on any transaction which has been submitted for comparison through the system. On the contrary, the continued use of unnecessary physical comparisons increases the risk of the duplication of trades and deliveries and substantially decreases the efficiencies and cost savings available from the use of the automated comparison system. The Board believes that all system participants must understand that the use of the automated comparison system is of primary importance. Accordingly, the Board strongly suggests that the mailing of unnecessary physical confirmations should be discontinued once a dealer is satisfied that it has adequate control over its comparison activities through the system.

You and others have suggested that it would be helpful if dealers which are unable to discontinue the mailing of physical confirmations would identify those transactions which have also been submitted for comparison through the system through some legend or stamp placed on the physical confirmation sent on the transaction. The Board concurs with your suggestion, and recommends that, during the short remaining interim when dealers are continuing to use duplicate physical confirmations, they include on physical confirmations of transactions submitted to the automated comparison system a stamp or legend in a prominent location which clearly indicates that the transaction has been submitted for automated comparison. *MSRB interpretation of January 2, 1985*.

[1] For example, a transaction of trade date October 19 for settlement October 25 fails to compare through the normal comparison cycle. Due to this failure to compare, the transaction is dropped from the comparison system on October 23; however, due to a resolution of the dispute, both parties resubmit the trade on an "as of" basis on October 24, and it is successfully compared on that date. Due to the delay in the comparison of the transaction, the system will display an "alternative settlement date" on this transaction of October 26 on the system-generated delivery tickets.

[2] I understand that [Registered Clearing Agency] is taking steps to have the contractual settlement date reflected on delivery tickets produced with respect to transactions compared on an "as of" or "demand as of" basis. We believe that this will be most helpful in clarifying and receiving dealer's contractual obligation to accept a proper delivery made on or after the date.

[3] I understand that proper utilization of the comparison system control number is a reliable method for identifying and referring to transactions.

[4] The Board is also aware that on certain transactions dealers will need to send physical confirmations to document the terms of a specific agreement concluded as the time of trade (*e.g.*, a specification of a rating). In such circumstances the Board anticipates that physical confirmations will continue to be sent.

Automated settlement involving multidepository participants. This will respond to your letter concerning the requirements of rule G-12(f)(ii) applicable to transactions involving firms that are members of more than one registered securities depository. Your inquiry concerns situations in which a dealer that is a member of more than one depository executes a transaction with another dealer that is a member of one or more depositories. Your question is whether such dealers may specify the depository through which delivery must be made, either as a term of an individual transaction or with standing delivery instructions.

Your inquiry was referred to the Committee of the Board with the responsibility for interpreting the Board's automated clearance and settlement rules, which has authorized my sending this response.

The rule does not specify which depository shall be used for settlement if the transaction is eligible for settlement at more than one depository.

The Board is of the view that, under rule G-12(f), parties to a transaction are free to agree, on a trade-by-trade basis or with standing delivery agreements, on the depository to be used for making book-entry deliveries. Absent such an agreement, a seller may effect good delivery under rule G-12(f) by delivering at any depository of which the receiving dealer is a member. *MSRB interpretation of November 18, 1985*.

NOTE: Revised to reflect subsequent amendments.

See also:

Rule G-15 Interpretive Letters — Callable securities: "catastrophe" calls, *MSRB interpretation of November 7, 1977*.

- **Callable securities: disclosure,** *MSRB interpretation of August 23, 1982*.
- **Original issue discount, zero coupon securities: disclosure of, pricing to call feature,** *MSRB interpretation of June 30, 1982*.
- **Callable securities: pricing to call,** *MSRB interpretation of June 8, 1978*.
- **Calculation of price and yield on continuously callable securities,** *MSRB interpretation of August 15, 1989*.
- **Disclosure of pricing: calculating the dollar price of partially prerefunded bonds,** *MSRB interpretation of May 15, 1986*.
- **Securities description: revenue securities,** *MSRB interpretation of December 1, 1982*.
- **Securities description: securities backed by letters of credit,** *MSRB interpretation of December 2, 1982*.

Rule G-17 Interpretive Letter — Put option bonds: safekeeping, pricing, *MSRB interpretation of February 18, 1983*.

Rule G-12 Amendment History (since 2003)

Release No. 34-99484 (February 7, 2024), 89 FR 10110 (February 13, 2024); MSRB Notice 2024-03 (February 8, 2024)

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Release No. 34-85699 (April 22, 2019), 84 FR 17897 (April 26, 2019); MSRB Notice 2019-11 (April 10, 2019)

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Release No. 34-58154 (July 15, 2008), 73 FR 42388 (July 21, 2008); MSRB Notice 2008-32 (July 22, 2008)

Release No. 34-50294 (August 31, 2004), 69 FR 54170 (September 7, 2004); MSRB Notice 2004-29 (September 2, 2004)

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Rule G-13
Quotations Relating to Municipal Securities

(a) *General.* The provisions of this rule shall apply to all quotations relating to municipal securities which are distributed or published, or caused to be distributed or published, by any broker, dealer or municipal securities dealer or any person associated with and acting on behalf of a broker, dealer or municipal securities dealer. For purposes of this rule, the term "quotation" shall mean any bid for, or offer of, municipal securities, or any request for bids for or offers of municipal securities, including indications of "bid wanted" or "offer wanted." The terms "distributed" or "published" shall mean the dissemination of quotations by any means of communication. Reference in this rule to a broker, dealer or municipal securities dealer shall be deemed to include reference to any person associated with a broker, dealer or municipal securities dealer.

(b) *Bona Fide Quotations.*

(i) Except as provided below, no broker, dealer or municipal securities dealer shall distribute or publish, or cause to be distributed or published, any quotation relating to municipal securities, unless the quotation represents a bona fide bid for, or offer of, municipal securities by such broker, dealer or municipal securities dealer, provided, however, that all quotations, unless otherwise indicated at the time made, shall be subject to prior purchase or sale and to subsequent change in price. If such broker, dealer or municipal securities dealer is distributing or publishing the quotation on behalf of another broker, dealer, or municipal securities dealer, such broker, dealer or municipal securities dealer shall have no reason to believe that such quotation does not represent a bona fide bid for, or offer of, municipal securities. Nothing in this paragraph shall be construed to prohibit requests for bids or offers, including indications of "bid wanted" or "offer wanted," or shall be construed to prohibit nominal quotations, if such quotations are, at the time made, clearly stated or indicated to be such. For purposes of this paragraph, a "nominal quotation" shall mean an indication of the price given solely for informational purposes.

(ii) No broker, dealer or municipal securities dealer shall distribute or publish, or cause to be distributed or published, any quotation relating to municipal securities, unless the price stated in the quotation is based on the best judgment of such broker, dealer or municipal securities dealer of the fair market value of the securities which are the subject of the quotation at the time the quotation is made. If a broker, dealer or municipal securities dealer is distributing or publishing a quotation on behalf of another broker, dealer, or municipal securities dealer, such broker, dealer or municipal securities dealer shall have no reason to believe that the price stated in the quotation is not based on the best judgment of the fair market value of the securities of the broker, dealer or municipal securities dealer on whose behalf such broker, dealer or municipal securities dealer is distributing or publishing the quotation.

(iii) For purposes of subparagraph (i), a quotation shall be deemed to represent a "bona fide bid for, or offer of, municipal securities" if the broker, dealer or municipal securities dealer making the quotation is prepared to purchase or sell the security which is the subject of the quotation at the price stated in the quotation and under such conditions, if any, as are specified at the time the quotation is made.

(iv) No broker, dealer or municipal securities dealer shall knowingly misrepresent a quotation relating to municipal securities made by any other broker, dealer, or municipal securities dealer.

(c) *Multiple Markets in the Same Securities.* No broker, dealer or municipal securities dealer participating in a joint account shall, together with one or more other participants in such account, distribute or publish, or cause to be distributed or published, quotations relating to the municipal securities which are the subject of such account if such quotations indicate more than one market for the same securities.

Rule G-13 Interpretations

Notice of Interpretation of Rule G-13 on Published Quotations

April 21, 1988

The Board has received complaints regarding published quotations, such as those appearing in *The Blue List*. The complaints, which have been referred to the appropriate enforcement agency, state that municipal securities offerings published by dealers often do not reflect prices and amounts of securities that currently are being offered by the quoting dealer.

Board rule G-13, on quotations, prohibits the dissemination of a quotation relating to municipal securities unless the quotation represents a bona fide bid for, or offer of, municipal securities. The term quotation is defined to mean any bid for, or offer of, municipal securities. A quotation is deemed to be bona fide if the dealer on whose behalf the quotation is made is prepared to purchase or sell the municipal securities at the price stated and in the amount specified at the time the quotation is made.

Under rule G-13, the price stated in a quotation for municipal securities must be based on the best judgment of the dealer making the quotation as to the fair market value of such securities at the time the quotation is made. The Board has stated that the price must have a reasonable relationship to the fair market value of the securities, and may take into account relevant factors such as the dealer's current inventory position, overall and in respect to a particular security, and the dealer's anticipation of the direction of the market price for the securities.

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Rule G-13 also prohibits a dealer from entering a quotation on behalf of another dealer if the dealer entering the quotation has any reason to believe that the quotation does not represent a bona fide bid for, or offer of, municipal securities. In addition, participants in a joint account are prohibited from entering quotations relating to municipal securities which are the subject of the joint account, if such quotations indicate more than one market for the same securities. Rule G-13 does not prohibit giving "nominal" bids or offers or giving indications of price solely for informational purposes as long as an indication of the price given is clearly shown to be for such purposes.

A dealer that publishes a quote in a daily or other listing must stand ready to purchase or sell the securities at the stated price and amount until the securities are sold or the dealer subsequently changes its price. If either of these events occur, the dealer must withdraw or update its published quotation in the next publication. Stale or invalid quotations violate rule G-13. Rule G-13 does permit a dealer to publish a quotation for a security it does not own if the dealer is prepared to sell the security at the price stated in the quotation. If the dealer knows that the security is not available in the market or is not prepared to sell the security at the stated price, the quotation would violate rule G-13.

See also:

Rule G-17 Interpretations — Application of Board Rules to Transactions in Municipal Securities Subject to Secondary Market Insurance or Other Credit Enhancement Features, March 6, 1984.

Rule G-43 Interpretation — Notice to Dealers That Use the Services of Broker's Brokers, December 22, 2012.

Interpretive Letter

Quotation of municipal securities. This will acknowledge receipt of your letter dated February 9, 1977 concerning the Board's proposed rule G-13 on quotations relating to municipal securities. In your letter you raise certain questions concerning the intent and application of paragraph (b)(ii) of proposed rule G-13, which prohibits a municipal securities professional from distributing or publishing a municipal securities quotation, or causing such a quotation to be distributed or published, unless the quotation is based upon the professional's best judgment as to the fair market value of the security.

While the provision in question would undoubtedly apply to situations involving outright fraud, the Board believes the rule to have appropriate application in other circumstances as well. Thus, the Board has attempted in paragraph (b)(ii) to proscribe conduct which, in the Board's opinion, constitutes bad business practice but may not, depending on the circumstances, constitute fraud. The Board firmly believes that as a matter of just and equitable principles of trade in the municipal securities industry and with a view to promoting free and open markets in municipal securities, certain practices should not be condoned, even though they do not necessarily rise to the level of fraud or cannot be proven to constitute fraud.

Some examples of how paragraph (b)(ii) would operate may be useful. First, assume that a dealer submits a bid for bonds, knowing that they have been called by the issuer. The bonds are not general market bonds and the fact that they have been called is not widely known. While called bonds ordinarily trade at a premium, the dealer's bid is based on the value of the bonds as though they had not been called and is accepted by the dealer on the other side of the trade who is unaware of the called status of the bonds. In these circumstances, the bid clearly would not have been based upon the best judgment of the dealer making it as to the fair market value of the bonds. While one might argue that the dealer accepting the bid should have known of the called status of the bonds, the dealer making the bid acted unethically and in a manner not conducive to free and open markets in municipal securities. In the Board's view, the actions of the dealer making the bid should not be condoned, although a charge of fraud might be difficult to sustain in dealings between professionals and might be inappropriate. The improper nature of the dealer's conduct would be exacerbated, of course, if the person on the other side of the transaction is a non-professional. However, difficulties in proof that the conduct of the dealer was fraudulent suggest that the best judgment rule would provide an appropriate alternative basis for enforcement action.

Another situation that would be covered by the best judgment rule is one in which a dealer submits a bid for bonds based on valuations obtained from independent sources, which in turn are based on mistaken assumptions concerning the nature of the securities in question. The circumstances indicate that the dealer submitting the bid knows that the securities have a substantially greater market value than the price bid, but the fact that independent valuations were obtained, albeit based on mistaken facts, clouds the dealer's culpability.

A third situation to which the best judgment rule would apply is one in which a dealer makes a bid for or offer of a security without any knowledge as to the value of the security or the value of comparable securities. While the Board does not intend that the best judgment of a dealer as to the fair market value of a security be second-guessed for purposes of the proposed rule, the Board does intend that the dealer be required to act responsibly and to exercise some judgment in submitting a quotation. In other words, a quotation which has been "pulled out of the air" is not based on the best judgment of the dealer and, in the interests of promoting free and open markets in municipal securities, should not be encouraged.

Given the manner in which the Board intends the "best judgment" rule to operate, the Board concluded that it would not have an anti-competitive impact on the municipal markets. The proposed rule is not intended to prohibit legitimate price discounts or mark-ups, as the case may be, based upon a dealer's anticipation of the direction of the movement of the markets and other factors. The Board does not intend to inter-

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fere with legitimate pricing mechanisms and recognizes that there may be a variety of quotations with respect to a given security, each of which would comply with the terms of the proposed rule.

While it is not possible to anticipate all of the specific fact situations that might run afoul of the "best judgment" rule, I would like to make some general observations concerning the operation of the proposed rule. As you know, one of Congress' principal purposes in calling for the establishment of the Board was to promote the development of a body of rules for the municipal securities industry that would furnish guidelines for good business conduct. The Senate Committee on Banking, Housing and Urban Affairs observed in its Report on the Securities Acts Amendments of 1975 that prior to the legislation, the conduct of municipal market professionals could be controlled only after the fact through enforcement by the Commission of the fraud prohibitions of the federal securities laws. The Senate Committee expressed hope that a self-regulatory body like the Board would develop prophylactic rules for the industry which would deter unethical and fraudulent practices in the first instance. See Senate Report 94-75, 94th Cong., 1st Sess., 42-43. *MSRB interpretation of February 24, 1977*.

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Rule G-14
Reports of Sales or Purchases

(a) *General.* No broker, dealer or municipal securities dealer or person associated with a broker, dealer or municipal securities dealer shall distribute or publish, or cause to be distributed or published, any report of a purchase or sale of municipal securities, unless such broker, dealer or municipal securities dealer or associated person knows or has reason to believe that the purchase or sale was actually effected and has no reason to believe that the reported transaction is fictitious or in furtherance of any fraudulent, deceptive or manipulative purpose. For purposes of this rule, the terms "distributed" or "published" shall mean the dissemination of a report by any means of communication.

(b) *Transaction Reporting Requirements*.

(i) Each broker, dealer or municipal securities dealer ("dealer") shall report to the Board or its designee information about each purchase and sale transaction effected in municipal securities to the Real-time Transaction Reporting System ("RTRS") in the manner prescribed by Rule G-14 RTRS Procedures and the RTRS Users Manual. Transaction information collected by the Board under this rule will be used to make public reports of market activity and prices and to assess transaction fees. The transaction information will be made available by the Board to the Commission, securities associations registered under Section 15A of the Act and other appropriate regulatory agencies defined in Section 3(a)(34)(A) of the Act to assist in the inspection for compliance with and the enforcement of Board rules.

(ii) The information specified in the Rule G-14 RTRS Procedures is critical to public reporting of prices for transparency purposes and to the compilation of an audit trail for regulatory purposes. All dealers have an ongoing obligation to report this information promptly, accurately and completely. The dealer may employ an agent for the purpose of submitting transaction information; however the primary responsibility for the timely and accurate submission remains with the dealer that effected the transaction. A dealer that acts as a submitter for another dealer has specific responsibility to ensure that transaction reporting requirements are met with respect to those aspects of the reporting process that are under the Submitter's control. A dealer that submits inter-dealer municipal securities transactions for comparison, either for itself or on behalf of another dealer, has specific responsibility to ensure that transaction reporting requirements are met with respect to those aspects of the comparison process that are under the Submitter's control.

(iii) To identify its transactions for reporting purposes, each dealer shall obtain a unique broker symbol from NASDAQ Subscriber Services.

(iv) The provisions of this section (b) shall not apply to a dealer if such dealer does not effect any transactions in municipal securities or if such dealer's transactions in municipal securities are limited exclusively to transactions described in subsection (b)(v) of this rule and the dealer has confirmed that it is qualified for this exemption as provided in Rule A-12(g).

(v) The following transactions shall not be reported under Rule G-14:

(A) Transactions in securities without assigned CUSIP numbers;

(B) Transactions in Municipal Fund Securities; and

(C) Inter-dealer transactions for principal movement of securities between dealers that are not inter-dealer transactions eligible for comparison in a clearing agency registered with the Commission.

Rule G-14 RTRS Procedures

(a) *General Procedures.*

(i) The Board has designated three RTRS Portals for dealers to use in the submission of transaction information. Transaction data submissions must conform to the formats specified for the RTRS Portal used for the trade submission. The RTRS Portals may be used as follows:

(A) The message-based trade input RTRS Portal operated by National Securities Clearing Corporation (NSCC) ("Message Portal") may be used for any trade record submission or trade record modification.

(B) The RTRS Web-based trade input method ("RTRS Web Portal" or "RTRS Web") operated by the MSRB may be used for low volume transaction submissions and for modifications of trade records, but cannot be used for submitting or amending inter-dealer transaction data that is used in the comparison process. Comparison data instead must be entered into the comparison system using a method authorized by the registered clearing agency.

(C) The NSCC Real-Time Trade Matching ("RTTM") Web-based trade input method ("RTTM Web Portal" or "RTTM Web") may be used only for submitting or modifying data with respect to Inter-Dealer Transactions Eligible for Comparison.

(ii) Transactions effected with a Time of Trade during the hours of the RTRS Business Day shall be reported within 15 minutes of Time of Trade to an RTRS Portal except in the following situations:

(A) A "List Offering Price/Takedown Transaction," as defined in paragraph (d)(vii) of Rule G-14 RTRS Procedures, shall be reported by the end of the day on which the trade is executed.

(B) A dealer effecting trades in short-term instruments maturing in nine months or less, variable rate instruments that may be tendered for purchase at least as frequently as every nine months, auction rate products for which auctions are scheduled to occur at least as

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frequently as every nine months, and commercial paper maturing or rolling-over in nine months or less shall report such trades by the end of the RTRS Business Day on which the trades were executed.

(C) A dealer reporting an "away from market" trade as described in Section 4.3.2 of the Specifications for Real-Time Reporting of Municipal Securities Transactions shall report such trade by the end of the day on which the trade is executed.

(D) A dealer reporting an inter-dealer "VRDO ineligible on trade date" as described in Section 4.3.2 of the Specifications for Real-Time Reporting of Municipal Securities Transactions shall report such trade by the end of the day on which the trade becomes eligible for automated comparison by a clearing agency registered with the Commission.

(E) A dealer reporting an inter-dealer "resubmission of an RTTM cancel" as described in Section 4.3.2 of the Specifications for Real-Time Reporting of Municipal Securities Transactions shall resubmit identical information about the trade cancelled by the end of the RTRS Business Day following the day the trade was cancelled.

(iii) Transactions effected with a Time of Trade outside the hours of the RTRS Business Day shall be reported no later than 15 minutes after the beginning of the next RTRS Business Day.

(iv) Transaction data that is not submitted in a timely and accurate manner in accordance with these Procedures shall be submitted or corrected as soon as possible.

(v) Information on the status of trade reports in RTRS is available through the Message Portal, through the RTRS Web Portal, or via electronic mail. Trade status information from RTRS indicating a problem or potential problem with reported trade data must be reviewed and addressed promptly to ensure that the information being disseminated by RTRS is as accurate and timely as possible.

(vi) RTRS Portals will be open for transmission of transaction data and status of trade reports beginning 30 minutes prior to the beginning of the RTRS Business Day and ending 90 minutes after the end of the RTRS Business Day.

(b) *Reporting Requirements for Specific Types of Transactions*.

(i) Inter-Dealer Transactions Eligible for Comparison by a Clearing Agency Registered with the Commission.

(A) Bilateral Submissions: Inter-Dealer Transactions Eligible for Trade Comparison at a Clearing Agency Registered with the Commission (registered clearing agency) shall be reported by each dealer submitting, or causing to be submitted, such transaction records required by the registered clearing agency to achieve comparison of the transaction. The transaction records also shall include the additional trade information for such trades listed in the Specifications for Real-Time Reporting of Municipal Securities Transactions contained in the RTRS Users Manual.

(B) Unilateral Submissions: For transactions that, under the rules of the registered clearing agency, are deemed compared upon submission by one side of the transaction (unilateral submissions), a submission is not required by the contra-side of the transaction. The contra-side, however, must monitor such submissions to ensure that data representing its side of the trade is correct and use procedures of the registered clearing agency to correct the trade data if it is not.

(ii) *Customer Transactions*. Reports of transactions with customers shall include the specific items of information listed for such transactions in the Specifications for Real-Time Reporting of Municipal Securities Transactions.

(iii) *Agency Transactions With Customers Effected By An Introducing Broker Against Principal Account of its Clearing Broker*. Reports of agency transactions effected by an introducing broker for a customer against the principal account of its clearing broker shall include the specific items of information listed in the Specifications for Real-Time Reporting of Municipal Securities Transactions for "Inter-Dealer Regulatory-Only" trades.

(iv) *Transactions with Special Conditions*. Reports of transactions affected by the special conditions described in the RTRS Users Manual in Section 4.3.2 of the Specifications for Real-Time Reporting of Municipal Securities Transactions shall be reported with the "special condition indicators" shown and in the manner specified. Special condition indicators designated as "optional" in these Specifications are required for the Submitter to obtain an extended reporting deadline under paragraphs (a)(ii)(B)-(C) of Rule G-14 RTRS Procedures, but may be omitted if a deadline extension is not claimed. All other special condition indicators are mandatory, including the List Offering Price/Takedown Transaction indicator for transactions identified in paragraph (a)(ii)(A) of Rule G-14 RTRS Procedures, alternative trading system transaction indicator for transactions defined in paragraph (d)(ix) of Rule G-14 RTRS Procedures, and non-transaction-based compensation arrangement indicator for transactions defined in paragraph (d)(x) of Rule G-14 RTRS Procedures.

(c) *RTRS Users Manual*. The RTRS Users Manual is comprised of the Specifications for Real-Time Reporting of Municipal Securities Transactions, the Users Guide for RTRS Web, Testing Procedures, guidance on how to report specific types of transactions and other information relevant to transaction reporting under Rule G-14. The RTRS Users Manual is located at www.msrb.org and may be updated from time to time with additional guidance or revisions to existing documents.

(d) *Definitions*.

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(i) "RTRS" or "Real-Time Transaction Reporting System" is a facility operated by the MSRB. RTRS receives municipal securities transaction reports submitted by dealers pursuant to Rule G-14, disseminates price and volume information in real time for transparency purposes, and otherwise processes information pursuant to Rule G-14.

(ii) The "RTRS Business Day" is 7:30 a.m. to 6:30 p.m., Eastern Time, Monday through Friday, unless otherwise announced by the Board.

(iii) "Time of Trade" is the time at which a contract is formed for a sale or purchase of municipal securities at a set quantity and set price.

(iv) "Submitter" means a dealer, or service bureau acting on behalf of a dealer, that has been authorized to interface with RTRS for the purposes of entering transaction data into the system.

(v) "Inter-Dealer Transaction Eligible for Automated Comparison by a Clearing Agency Registered with the Commission" is defined in MSRB Rule G-12(f)(iv).

(vi) "Municipal Fund Securities" is defined in Rule D-12.

(vii) "List Offering Price/Takedown Transaction" means a primary market sale transaction executed on the first day of trading of a new issue:

(A) by a sole underwriter, syndicate manager, syndicate member, selling group member, or distribution participant to a customer at the published list offering price for the security ("List Offering Price Transaction"); or

(B) by a sole underwriter or syndicate manager to a syndicate member, selling group member, or distribution participant ("RTRS Takedown Transaction").

(viii) "Distribution participant" means for the purposes of this rule a dealer that has agreed to assist an underwriter in selling a new issue at the list offering price.

(ix) "Alternative trading system transaction" means for the purposes of this rule an inter-dealer transaction with or executed using the services of an alternative trading system with Form ATS on file with the Securities and Exchange Commission.

(x) "Non-transaction-based compensation arrangement transaction" means for the purposes of this rule a transaction with a customer that does not include a mark-up, mark-down or commission.

Rule G-14 Interpretations

Rule G-14 Transaction Reporting Procedures — Time of Trade Reporting

August 1, 1996

1. *Q: When is the inter-dealer time of trade reporting requirement effective?*

A: The amendment to the rule G-14 transaction reporting procedures requiring the submission of time of trade execution for inter-dealer transactions became effective on July 1, 1996.

2. *Q: What is the purpose of submitting the time of trade to the Board?*

A: The Board's Transaction Reporting Program has two functions — public dissemination of price and volume information about frequently traded securities and the maintenance of a surveillance database to assist regulators in inspection for compliance with, and enforcement of, Board rules and securities laws. The surveillance database includes, among other things, the price and volume of each reported transaction, the trade date, the identification of the security traded, and the parties to the trade. The addition of the time of trade execution will enable the enforcement agencies to construct audit trails of inter-dealer transactions. When customer transactions are added to the system in 1998, these transaction records also will include time of trade. Time of trade will not be made public.

3. *Q: How is time of trade reported?*

A: Under rule G-14, inter-dealer transaction information is reported to the Municipal Securities Rulemaking Board using the same system used for automated comparison of inter-dealer transactions, operated by National Securities Clearing Corporation. Rule G-14 requires that the transaction information be submitted in the format specified by NSCC, and within such timeframe as required by NSCC to produce a compared trade for the transaction in the initial comparison cycle on the night of trade date. A broker, dealer or municipal securities dealer may employ an agent that is a member of NSCC or a registered clearing agency for the purpose of submitting transaction information. For example, the clearing broker generally reports transactions to the MSRB through NSCC when there is an introducing/clearing broker arrangement.

Under the new amendment to rule G-14, the transaction information submitted in accordance with the rule G-14 procedures must include the time of trade execution. NSCC has provided a space designated for this purpose in the standard format used for submitting trade data into the automated comparison system.

4. *Q: Which dealer in an inter-dealer transaction reports the time of trade?*

A: Under NSCC's automated comparison procedures, both sides of a transaction generally are required to submit transaction information. Therefore, time of trade will be reported by each side of the transaction in most cases. For "syndicate take-down" transactions, which are reported by only the seller, the time of trade is reported only by the seller.

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5. *Q: If the time of trade that I submit does not agree with the time of trade that the contra party submits, will this cause the trade not to compare?*

A: No. The time of trade is not a match item in the automated comparison system.

6. *Q: Why do both sides to the transaction have to submit the time of trade?*

A: In some cases, even though both sides of a transaction are supposed to submit transaction information, the Board receives transaction information from only one party to a transaction. This may occur, for example, when a dealer "stamps an advisory" to create a compared trade. It therefore is necessary for each side of a transaction to report the time of trade to ensure that the surveillance data base has at least one report of the time of trade.

7. *Q: Does the time of trade reporting requirement apply only to secondary market transactions?*

A: No. The time of trade is required for all inter-dealer transactions including those in the primary market.

8. *Q: How does a dealer determine the time of trade for transactions?*

A: In general, this is the same time as the "time of execution," as currently required for recordkeeping purposes under rule G-8(a)(vi) and (vii).

9. *Q: What is the time of trade for syndicate allocations on new issues?*

A: First it should be noted that the "initial trade date" for an issue of municipal securities cannot precede the date of award (for competitive issues) or the date that the bond purchase agreement is signed (for negotiated issues). See rule G-34(a)(ii)(C)(2) and MSRB Interpretations of April 30, 1982, *MSRB Manual* and October 7, 1982, *MSRB Manual*. Similarly, the time of trade may not precede the time of award (for competitive issues) or the time that the bond purchase agreement is signed (for negotiated issues). In the typical case involving a competitive issue in which allocations are made after the date of award, the time of trade execution is the time that the allocation is made. If allocations have been "preassigned," prior to a competitive award, or prior to the signing of a bond purchase agreement, the time of award or signing of the bond purchase agreement should be entered as the "time of trade."

Reminder Regarding MSRB Rule G-14 Transaction Reporting Requirements

March 3, 2003

The Municipal Securities Rulemaking Board ("MSRB") and NASD would like to remind brokers, dealers and municipal securities dealers (collectively "dealers") about the requirements of MSRB Rule G-14, on transaction reporting. This document also describes services provided by the MSRB designed to assist dealers in complying with Rule G-14.

Transactions reported to the MSRB under Rule G-14 are made available to the NASD and other regulators for their market surveillance and enforcement activities. The MSRB also makes public price information on municipal securities transactions using data reported by dealers. One product is the Daily Report of Frequently Traded Securities ("Daily Report") that is made available to subscribers each morning by 7:00 am. Currently, it includes details of transactions in municipal securities issues that were "frequently traded" the previous business day.[1] The Daily Report is one of the primary public sources of municipal securities price information and is used by a variety of industry participants to evaluate municipal securities.[2]

Dealers can monitor their municipal transaction reporting compliance in several ways. For customer and inter-dealer transaction reporting, the MSRB Dealer Feedback System ("DFS") provides monthly statistical information on transactions reported by a dealer to the MSRB and information about individual transactions reported by a dealer to the MSRB. For daily feedback on customer trades reported, the MSRB provides dealers a "customer report edit register" on the day after trades were submitted. This product indicates trades successfully submitted and those that contained errors or possible errors.[3] For inter-dealer transactions, National Securities Clearing Corporation ("NSCC") provides to its members daily files, sometimes called "contract sheets," that can be used to check the content and status of the transactions the member has submitted.

Inter-Dealer Transactions

Even before Rule G-14 imposed requirements for transaction reporting, MSRB Rule G-12(f), on use of automated comparison, clearance and settlement systems, required dealers to submit data on their inter-dealer transactions in municipal securities to a registered clearing agency for automated comparison on trade date ("T"). NSCC provides the automated comparison services for transactions in municipal securities. The same inter-dealer trade record dealers submit to NSCC for comparison also is used to satisfy the requirements of MSRB Rule G-14 to report inter-dealer transactions to the MSRB. NSCC forwards the transaction data it receives from dealers to the MSRB so that dealers do not have to send a separate record to the MSRB. However, satisfying the requirements for successful trade comparison under Rule G-12(f) does not, by itself, necessarily satisfy a dealer's Rule G-14 transaction reporting requirements. In addition to the trade information necessary for a successful trade comparison, Rule G-14 requires dealers to submit accrued interest, time of trade (in military format) and the effecting brokers' (both buy and sell side) four-letter identifiers, also known as executing broker symbols ("EBS"). Failure to include accrued interest, time of trade and EBS when submitting transaction information to NSCC's automated comparison system is a violation of MSRB Rule G-14 on transaction reporting even though the trade may compare on T.

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As noted above, the MSRB provides dealers with statistical measures of compliance with some important aspects of MSRB Rules G-12 and G-14 through its Dealer Feedback System.[4] The statistics available for inter-dealer trades include:

- **Late or Stamped.** The frequency with which a dealer causes an inter-dealer trade not to compare on trade date is reflected in the "late or stamped" statistic. Trades that do not compare on trade date are ineligible for the Daily Report. The statistic is an indication of how often a dealer submits a trade late or stamps its contra-party's advisory, and is expressed as a percentage of the dealer's total compared trades. Because this statistic includes both "when, as and if issued" and regular-way trades, it provides a comprehensive analysis of the timeliness with which a dealer reports its trades.

- **Invalid Time of Trade.** This statistic reflects the total number of trade records submitted by a dealer in which the time of trade is null or not within the hours of 0600 to 2100. Accurate times of trade are essential to regulatory surveillance because they provide an audit trail of trading activity.

- **Uncompared Input.** A high percentage of uncompared trades may indicate that a dealer is submitting duplicative trade information, inaccurate information, or is erroneously submitting buy-side reports against syndicate takedowns.[5] The uncompared input statistic reflects trade records that a dealer inputs for comparison that never compare and are expressed as a percentage of a dealer's total number of compared trades. It is a violation of Rule G-14 to submit trade reports that do not accurately represent trades. Moreover, Rule G-12(f) requires that dealers follow-up on inter-dealer trade submissions that do not compare in the initial trade cycle by using the post-original comparison procedures at NSCC. Trade reports made to MSRB and NSCC that never compare are a concern because they either represent inaccurate trade input or indicate that the dealer is not following-up on uncompared trades using the post-original comparison procedures provided by NSCC.

- **Compared but Deleted or Withheld.** This statistic represents deleted or withheld trade records and is a percentage of all compared trade records. Compared trade records that are subsequently deleted or withheld are a concern because these trades may have previously appeared on the Daily Report. While it is sometimes necessary to correct erroneous trade submissions using delete or withhold procedures, this will be an infrequent occurrence if proper attention is paid to transaction reporting procedures. Dealers that have a high percentage of such trades should review their procedures to determine why transaction data is being entered inaccurately.

- **Executing Broker Symbol (EBS) Statistics.** These statistics indicate the percentage of trade submissions for which the field identifying the dealer that effected the trade is either empty or contains an invalid entry. These statistics are compiled for every member of NSCC.[6] It provides information on three types of EBS errors: 1) null EBS, where a dealer left the EBS field blank; 2) numeric EBS, where a dealer entered a number in the EBS field; and 3) unknown EBS, where a dealer populated the EBS field with a symbol that is not a valid NASD-assigned EBS. A large number of EBS errors may indicate that both clearing firm and correspondent dealer reporting procedures and/or software need to be reviewed to ensure that the EBS is entered correctly and does not "drop out" of the data during the submission process. The compatibility of correspondent dealer and clearing broker reporting systems also may need to be examined.

Note on Stamped Advisories

Firms often stamp advisories on T+1 after failing to submit accurate inter-dealer transaction information on trade date. A stamped advisory essentially is a message sent through the NSCC comparison system by the clearing firm on one side of a trade indicating that it agrees with the trade details submitted by the contra party.

A significant percentage of stamped advisories is a concern for two reasons. First, trades compared via a stamped advisory cannot be published in the Daily Report because they do not compare on trade date. Second, unless the dealer stamping the advisory verifies every data element submitted by the contra party (including accrued interest, time of trade and EBS) stamping the advisory may effectively confirm erroneous data about the trade, which will be included in the surveillance data provided to market regulators. With particular respect to EBS, both the MSRB and the NASD have observed that dealers do not always include accurate contra parties' EBSs in transaction reports. As a result, when a firm "stamps" a contra party's submission, its own EBS may not be correctly included in the transaction report sent to the MSRB.

In lieu of stamping an advisory, it is possible for a dealer to submit an "as of" trade record to match an advisory pending against it. This serves the same purpose as stamping an advisory but in addition allows the dealer to input its own EBS (and other data elements) and thus ensure the accuracy of the information about its side of the trade. While the trade will still be reported late, the data about the trade will be more likely to be correct.

Note on Clearing Broker-Correspondent Issues

While Rule G-14 notes that accurate and timely transaction reporting is primarily a responsibility of the firm that effected a trade, it also notes that a firm may use an agent or intermediary to submit trade information on its behalf. For inter-dealer trades, a direct member of NSCC must be used to input transaction data if the dealer effecting the transaction is not itself a direct member. This Rule G-14 requirement that a clearing broker and correspondent work together to submit transaction reporting data in a timely and accurate manner is the same as exists in Rule G-12(f) on inter-dealer comparison.

Where there is a clearing-correspondent relationship between dealers, timely and accurate submission of trade data to NSCC generally requires specific action by both the direct member of NSCC (who clears the trade) as well as the correspondent

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firm. The MSRB has noted that the responsibility for proper trade submission is shared between the correspondent and its clearing broker.[7] Clearing brokers, their correspondents and their contraparties all have a responsibility to work together to resolve inaccurate or untimely information on transactions in municipal securities. A clearing firm's use of a large number of stamped advisories may indicate systemic problems with the clearing broker's procedures, the correspondents' procedures, or both.[8]

Customer Transactions

Dealers that engage in municipal securities transactions with customers also are required to submit accurate and complete trade information to the MSRB by midnight of trade date under Rule G-14. MSRB customer transaction reporting requirements include the reporting of time of trade and the dealer's EBS for each trade.

Dealers have flexibility in the way they report customer transactions to the MSRB Transaction Reporting System. The three options available allow dealers to: 1) transmit customer transaction data directly to NSCC, which, using its communications line with MSRB, forwards trade data to the MSRB the evening on which it is received; 2) send the data via an intermediary, such as a clearing broker or service bureau, to NSCC, which forwards the data to the MSRB; or 3) submit the data directly to the MSRB using a PC dial-up connection and software provided by the MSRB.

The MSRB Dealer Feedback System also provides dealers with performance statistics for customer trade reporting. These statistics include:

- **Ineligible.** This statistic reflects the percentage of a dealer's initial customer trade records that were ineligible for the Daily Report, because either the trade reports were submitted after trade date or they contained some other dealer error that caused it to be rejected by the MSRB Transaction Reporting System.

- **Late.** Initial customer trade records that were submitted after trade date are indicated in this statistic and are a subset of ineligible trades. This percentage is reported separately because late reporting is the most common reason for trade records to be ineligible for the Daily Report.

- **Cancelled.** This is the percentage of a dealer's initial customer trade records that were cancelled by the dealer after initial submission. Cancelled trades are a cause for concern because the data in the trade record submitted prior to cancellation may have already been included in the Daily Report.

- **Amended.** This is the percentage of a dealer's initial customer trade records that were amended by the dealer after initial submission. Amended trades are a cause for concern because the data in the trade record may have already been included in the Daily Report. While it is important that customer trades be immediately amended if any of the required information was incorrectly reported, dealers sometimes amend customer trade records unnecessarily. If trade details solely for internal dealer recordkeeping or delivery are changed, the dealer should ensure that its processing systems do not automatically send MSRB an "amend" record. For example, if a transaction is reported correctly to the MSRB on trade date, the dealer should not amend the transaction (or cancel and resubmit another transaction record to the MSRB) simply because customer account numbers or allocation and delivery information is added or changed in the dealer's own records.[9] Amendments to change settlement dates for when-issued transaction also are generally unnecessary. Since MSRB monitors settlement dates for new issues through other sources, dealers should not send amended trade records merely because the settlement date becomes known. Dealers may find that their automated systems are sending amended trade records to the MSRB in these cases, even though amendments are unneeded. Attention to these areas could greatly reduce the number of amendments sent to MSRB by some dealers.

- **Invalid Time of Trade.** This statistic reflects the total number of trade records submitted by a dealer in which the time of trade is null or not within the hours of 0600 to 2100. Accurate times of trade are essential to regulatory surveillance as they provide an audit trail of trading activity.

Questions / Further Information

Questions about this notice may be directed to staff at either MSRB or NASD. For more information on transaction reporting, including questions and answers and the customer transaction reporting system user guide, or to sign up for the Dealer Feedback System, we encourage dealers to visit the MSRB Web site at www.msrb.org, particularly the Municipal Price Reporting / Transaction Reporting System section.

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[1] The Daily Report is available by subscription at no cost. Currently, "frequently traded" securities are those that traded two or more times during a trading day. As noted below, inter-dealer transactions must be compared on trade date to be eligible for this report.

[2] The MSRB also publishes a "Daily Comprehensive Report," providing details of all municipal securities transactions that were effected during the trading day one week earlier. The Daily Comprehensive Report is available by subscription for $2,000 per year. Along with trades in issues that are not "frequently traded," this report includes transactions reported to the MSRB late, inter-dealer trades compared after trade date, and transaction data corrected by dealers after trade date.

[3] A dealer may call the MSRB at (703) 797-6600 and ask to speak with a Transaction Reporting Assistant who can check to see if its firm is signed up for this free service.

[4] A complete description of the service is available at www.msrb.org in the Municipal Price Reporting/Transaction Reporting System section. NASD also has informed dealers of this service in "Municipal Transaction Reporting Compliance Information," *Regulatory and Compliance Alert* (Summer 2002).

[5] Under NSCC procedures, no buy-side trade report should be submitted for comparison against a syndicate "takedown" trade submitted by the syndicate manager. Syndicate transactions are "one-sided submissions" and compare automatically after being submitted by the syndicate manager. Paragraph (a) (ii) of Rule G-14 procedures thus requires that only the syndicate manager submit the trade.

[6] The EBS statistics reflect the aggregate number of such errors found in transaction data submitted by a particular NSCC member firm for itself and/or for its correspondents. This statistic cannot be generated indi-

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vidually for each correspondent because the EBS needed to identify the correspondent is itself missing or invalid. EBS statistics only measure the validity of the input the submitter provides to identify its own side of the trade and do not measure the accuracy with which a dealer uses EBSs to identify its contra-parties.

[7] In 1994, the MSRB stated that, "introducing brokers share the responsibility for complying with [Rule G-12(f)] with their clearing brokers. Introducing brokers who fail to submit transaction information in a timely and accurate manner could subject either or both parties to enforcement action for violating [Rule G-12(f)]." *See* "Enforcement Initiative," *MSRB Reports*, Vol. 14, No. 3 (June 1994) at 35. NASD has since reiterated this policy; see the following articles in *Regulatory and Compliance Alert*: "Introducing Firm Responsibility When Reporting Municipal Trades Through Service Bureaus and Clearing Firms" (Winter 2000) and "Municipal Securities Transaction Reporting Compliance Information" (Spring 2001).

[8] As explained above, one of the problems often associated with stamped advisories is that the EBS on transaction records may be missing or inaccurate. Since a clearing broker may have many correspondents, stamping an advisory can make it impossible for market regulators to know which correspondent actually effected the trade.

[9] Of course, if the initial information reported to the MSRB, such as total par value, is changed, the trade record must be amended to make it correct.

Reminder Notice on Use of "List Offering Price/ Takedown" Indicator: Rule G-14

January 19, 2007

On January 8, 2007, certain amendments to Rule G-14 concerning the "List Offering Price/Takedown" indicator became effective. These amendments require the use of the "List Offering Price/Takedown" indicator on primary market sale transactions executed on the first day of trading of a new issue:

- by a sole underwriter, syndicate manager, syndicate member or selling group member at the published list offering price for the security ("List Offering Price Transaction"); or
- by a sole underwriter or syndicate manager to a syndicate or selling group member at a discount from the published list offering price for the security ("RTRS Takedown Transaction").[1]

Since implementation of the revised "List Offering Price/ Takedown" indicator, the MSRB has received several questions concerning the use of the indicator on certain transactions executed by sole underwriters, syndicate managers, syndicate members, or selling group members on the first day of trading in a new issue. These questions relate to whether inter-dealer transactions at a price equal to the "list offering price" are included in the definition of "List Offering Price Transactions." The MSRB wishes to clarify that inter-dealer transactions are not included in the definition of "List Offering Price Transactions."[2]

The MSRB has previously clarified that the published list offering price is defined as the "publicly announced 'initial offering price' at which a new issue of municipal securities is to be offered to the public."[3] A large number of sales to investors at the published list price are expected on the first day of trading of a new issue, and these transactions offer relatively little value to real-time transparency. Consequently, the "List Offering Price" exception provides these transactions with an end-of-day exception to the 15-minute deadline. An inter-dealer sale transaction at a price equal to the list offering price, however, does provide useful current market information, since it can be presumed that the security is destined to be redistributed to investors at a price above the published list offering price. Inter-dealer transactions at the list offering price, therefore, are not included in the definition of "List Offering Price Transactions," and identifying such transactions with the "List Offering Price/Takedown" indicator would violate MSRB Rule G-14.

[1] *See* Rule G-14 RTRS Procedures (d)(vii). A transaction reported with the "List Offering Price/Takedown" indicator receives an end-of-day exception to the 15-minute reporting deadline.

[2] An inter-dealer transaction may meet the definition of an "RTRS Takedown Transaction" when a sole underwriter or syndicate manager executes a transaction with a syndicate or selling group member at a discount from the published list offering price for the security.

[3] *See* "Reminder Notice on 'List Offering Price' and Three-Hour Exception for Real-Time Transaction Reporting: Rule G-14," MSRB Notice 2004-40 (December 10, 2004). If the price is not publicly disseminated (*e.g.*, if the security is a "not reoffered" maturity within a serial issue), the transaction is not considered a "List Offering Price Transaction."

Notice on Comparison of Inter-Dealer Deliveries That Do Not Represent Inter-Dealer Transactions — "Step Out" Deliveries: Rules G-12(f) And G-14

April 1, 2005

The MSRB reminds dealers of trade reporting procedures with respect to "step outs" and other inter-dealer deliveries that are not the result of inter-dealer transactions.

Rule G-14 requires that inter-dealer purchase-sale transactions eligible for comparison through the National Securities Clearing Corporation (NSCC) automated comparison system (RTTM) be reported to the MSRB Transaction Reporting System. For these inter-dealer transactions, trade reporting to the MSRB is accomplished by both the purchasing and selling dealers submitting the trade for comparison following NSCC's procedures, and ensuring that the trade record includes certain additional data required by Rule G-14. NSCC then forwards each dealer's trade submission to the MSRB. In effect, the comparison submission to NSCC doubles as the trade report to the MSRB.

In certain situations, deliveries of securities occur between two dealers even though the two dealers did not effect a purchase-sale transaction with each other. **Dealers using the comparison system to facilitate these deliveries must be careful not to report the deliveries as inter-dealer transactions.** A frequent example of this situation occurs when an independent investment advisor effects a transaction with a dealer (the "executing dealer") and instructs the executing dealer to deliver securities to another dealer (the "custody dealer") for unnamed clients of the investment advisor. The resulting delivery between the executing dealer and the custody dealer may be handled through NSCC by submitting

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the delivery to RTTM for comparison, even though there was no purchase-sale transaction between the two dealers. However, in these cases, the executing dealer and the custody dealer each must indicate that the submissions are for RTTM Matching Only (Destination 01, see below) to ensure that the submissions do not also constitute trade reports under Rule G-14. **Failure to do so by either party will result in a violation of Rule G-14.**[1]

NSCC has published procedures for identifying comparison submissions as step outs, meaning comparison submissions that do not represent reportable inter-dealer transactions.[2] Although the full procedures are not repeated here, they basically require dealers using interactive messaging to submit data to NSCC with "DEST 01" (and no other "DEST") in the destination indicator message field and dealers using RTTM Web to select the "RTTM" trade reporting indicator.[3] To avoid violations of Rule G-14, dealers also should be careful to use NSCC's step out procedures only when applicable (*i.e.*, when there is an inter-dealer delivery being compared, but there was no purchase-sale transaction between the dealers).[4]

It is worth noting that comparison submissions will compare against each other in RTTM regardless of whether their step out indicators match. When two dealers submit "mismatched" destination indicators and a comparison occurs, NSCC forwards data about both submissions to the MSRB, but the MSRB is unable to determine which dealer was correct as to whether the comparison represents a transaction or a step out. However, it is clear in such a case that at least one of the dealers has violated Rule G-14, either by reporting a true inter-dealer trade as a step out or by reporting an inter-dealer transaction that did not occur.

The MSRB is developing a report that will identify such "mismatched" inter-dealer trade comparisons as an aid to dealers and enforcement personnel. The MSRB will publish a notice when the report is available. However, dealers should at this time review their comparison and trade reporting procedures to ensure that their comparison submissions correctly use the step out indicator and use it only when appropriate.

Questions about the procedure for processing step out deliveries should be directed to NSCC. Questions about whether a particular type of delivery is reportable as an inter-dealer purchase-sale transaction may be directed to MSRB staff.

[1] In this example, the executing dealer has an additional duty to report its execution of the investment advisor's order to the MSRB as a dealer sale to a customer; the submission of the "step out" delivery to NSCC does not substitute for this customer trade report. See MSRB Notice 2003-20, "Notice on Reporting and Comparison of Certain Transactions Effected by Investment Advisors: Rules G-12(f) and G-14," May 23, 2003.

[2] For NSCC's complete procedure on comparing step out deliveries, *see e.g.*, NSCC Important Notice A5943/P&S5513, "Changes to Municipal Bond 'Step Out' Processing," December 2, 2004, on www.nscc.com.

[3] To further distinguish step out submissions, dealers also should include "STEP" in the Trader ID contra party field.

[4] Another example of a transfer of securities between dealers that is not the result of a purchase-sale transaction was described in MSRB Notice 2004-14, "Notice on Certain Inter-Dealer Transfers of Municipal Securities: Rules G-12(f) and G-14," June 4, 2004.

Reminder Regarding Modification and Cancellation of Transaction Reports: Rule G-14

March 2, 2005

Executive Summary

The Municipal Securities Rulemaking Board ("MSRB") reminds brokers, dealers and municipal securities dealers (collectively "dealers") of the need to report municipal securities transactions accurately and to minimize the submission of modifications and cancellations to the Real-Time Transaction Reporting System ("RTRS"). Each transaction initially should be reported correctly to RTRS. Thereafter, only changes necessary to achieve accurate and complete transaction reporting should be submitted to RTRS. Changes should be rare since properly reported transactions should not need to be corrected.

* * *

Under Rule G-14, dealers are required to report all transactions to the MSRB and to report accurately and completely the information specified in the Rule G-14 RTRS Procedures ("Procedures"). Trades that are reported with errors affect the accuracy of the information published in price transparency reports as well as the audit trail information retained in the surveillance database.[1]

The MSRB has published notices to dealers reminding them of their obligation to report transactions correctly and to monitor error reports the MSRB sends them.[2] Each trade should be reported correctly in the dealer's *initial* submission of trade data to RTRS and, for inter-dealer trades, to the Real-time Trade Matching ("RTTM") system as well. Changes should be rare since properly reported transactions should not need to be corrected. If, however, a transaction is reported with incorrect or missing attributes (such as price or capacity), the Procedures re-quire the dealer to correct the report as soon as possible.[3] When RTRS sends certain error messages to a dealer, the dealer is *required* to correct the trade report.[4] Dealers can make those corrections, or other necessary corrections in reported data, by modifying the trade report or by cancelling the report and submitting a correct replacement.[5] If it is necessary to modify a report, modification is preferred over cancellation and resubmission.[6]

Dealers should not change trade reports when the transaction attribute that changes is not required to be reported by MSRB or NSCC. For example, if only the account representative associated with a transaction changes, the report to the MSRB should not be changed, as this information is not required to be reported to the MSRB under Rule G-14. Dealers should

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take care that, if a modification or cancellation is submitted that is *not* responding to an RTRS error message, the dealer is correcting or cancelling an erroneous report.[7]

RTRS counts the number of modifications and cancellations submitted by each dealer. The MSRB provides statistics to the NASD and other enforcement agencies that measure dealer performance in modifying and cancelling transactions, as well as error rates of original submissions. Dealers that excessively modify or cancel trade reports will have above-average rates in these statistical reports. Dealers therefore should change trade reports only when appropriate to attain accurate and complete reporting under Rule G-14 and the Procedures.

Dealers can monitor their reporting of transactions in compliance with Rule G-14 in several ways. The MSRB currently provides information to dealers about their reporting performance. Any error detected by RTRS is reported back to the submitter by electronic message and is shown to the submitter and the executing dealer on the RTRS Web screen.[8] RTRS also sends e-mail error messages to dealers on request. The RTRS Web screen lists all trades cancelled by the dealer, under its Advanced Search feature. In addition, beginning in March 2005, the MSRB plans to make available to dealers the same statistics provided to the enforcement agencies, in a report entitled "G-12(f)/G-14 Compliance Data from RTRS." This will be available monthly on the first Monday after the 15th of the month. A dealer's report will include its statistics for the most recent full month and for the previous month.[9] It will also include summary statistics for the municipal securities industry so that the dealer can compare its performance to the industry's. Further information about how a dealer can obtain its compliance statistics will be posted in March on the MSRB website, www.msrb.org.

[1] Transactions reported to the MSRB are made available to the NASD and other regulators for their market surveillance and enforcement activities.

[2] *See, e.g.,* "Reminder Regarding MSRB Rule G-14 Transaction Reporting Requirements" (March 3, 2003) on www.msrb.org.

[3] *See* Rule G-14 RTRS Procedures paragraph (a)(iv) and "Reminder Regarding Accuracy of Information Submitted to the MSRB Transaction Reporting System: Rule G-14" (February 10, 2004) on www.msrb.org.

[4] Messages which indicate a trade report is "unsatisfactory" and which have an error code beginning with "U" require that the trade be modified or that it be cancelled and replaced. *See* "Specifications for Real-time Reporting of Municipal Securities Transactions," especially the table and text after the table in section 2.9. This document is on www.msrb.org.

[5] Changes to inter-dealer trades are governed also by National Securities Clearing Corporation ("NSCC") rules. *See, e.g.,* "Interactive Messaging: NSCC Participant Specifications for Matching Input and Output" on www.nscc.com.

[6] Modification is preferred when changes are necessary because a modification is counted as a single change to a trade report. A cancellation and resubmission are counted as a change and (unless the resubmission is done within the original deadline for reporting the trade) also a late report of a trade. Methods for cancelling and modifying reports are described in Sections 1.3.3 and 2.9 of "Specifications for Real-time Reporting of Municipal Securities Transactions: Version 1.2" on www.msrb.org.

[7] Note that the MSRB does not require a dealer to report a change to the settlement date of a trade in when-issued securities, if that is the only change.

[8] See "Real-Time Transaction Reporting Web User Manual" on www.msrb.org.

[9] The first report, planned for March 21, 2005, will include statistics only for February, since RTRS went into operation on January 31, 2005.

Reporting of Transactions in Certain Special Trading Situations: Rule G-14

January 2, 2008

The MSRB Real-Time Transaction Reporting System (RTRS) serves the dual purposes of price transparency and market surveillance. Because a comprehensive database of transactions is needed for the surveillance function of RTRS, MSRB Rule G-14, on transaction reporting, with limited exceptions, requires dealers to report all of their purchase-sale transactions to RTRS within fifteen minutes. All reported transactions are entered into the RTRS surveillance database used by market regulators and enforcement agencies. However, the special nature of some transactions effects their value for price transparency and the ability of dealers to meet the fifteen minute reporting deadline. To address these issues, RTRS was designed so that a dealer can code a specific transaction report with a "special condition indicator" to designate the transaction as being subject to a special condition.[1]

Transactions Executed With Special Pricing Conditions

Three trading scenarios recently have generated questions from dealers and users of the MSRB price transparency products. Each of the three trading scenarios described below represents situations where the transaction executed is not a typical armslength transaction negotiated in the secondary market and thus may be a misleading indicator of the market value of a security. To clarify transaction reporting requirements and to prevent publication of a potentially misleading price, dealers are required to report these transactions with the M9c0 special condition indicator.[2] Transactions reported with this special condition indicator are entered into the surveillance database but suppressed from price dissemination to ensure that transparency products do not include prices that might be confusing or misleading.

Customer Repurchase Agreement Transactions

Some dealers have programs allowing customers to finance municipal securities positions with repurchase agreements ("repos"). Typically, a bona fide repo consists of two transactions whereby a dealer will sell securities to a customer and agree to repurchase the securities on a future date at a pre-determined price that will produce an agreed-upon rate of return. Both the sale and purchase transactions resulting from a customer repo do not represent typical arms-length transactions negotiated in the secondary market and are therefore required to be reported with the M9c0 special condition indicator.

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UIT-Related Transactions

Dealers sponsoring Unit Investment Trusts ("UIT") or similar programs sometimes purchase securities through several transactions and deposit such securities into an "accumulation" account. After the accumulation account contains the necessary securities for the UIT, the dealer transfers the securities from the accumulation account into the UIT. Purchases of securities for an accumulation account are presumably done at market value and are required to be reported normally. The transfer of securities out of the accumulation account and into the UIT, however, does not represent a typical arms-length transaction negotiated in the secondary market. Dealers are required to report the subsequent transfer of securities from the accumulation account to the UIT with the M9c0 special condition indicator.

TOB Program-Related Transactions

Dealers sponsoring tender option bond programs ("TOB Programs") for customers sometimes transfer securities previously sold to a customer into a derivative trust from which derivative products are created. If the customer sells the securities held in the derivative trust, the trust is liquidated and the securities are reconstituted from the derivative products and transferred back to the customer. The transfer of securities into the derivative trust and the transfer of securities back to the customer upon liquidation of the trust do not represent typical arms-length transactions negotiated in the secondary market. Such transactions are required to be reported using the M9c0 special condition indicator.[3]

Inter-Dealer Transactions Reported "Late"

Inter-dealer transaction reporting is accomplished by both the purchasing and selling dealers submitting the trade to the Depository Trust and Clearing Corporation's (DTCC) automated comparison system (RTTM) following DTCC's procedures. RTTM forwards information about the transaction to RTRS. The inter-dealer trade processing situations described below are the subject of dealer questions and currently result in dealers being charged with "late" reporting or reporting of a trade date and time that differs from the date and time of trade execution. To allow dealers to report these types of transactions without receiving a late error and to allow enforcement agencies to identify these trades as reported under special circumstances, the MSRB has added two new special condition indicators.[4] New special condition indicator Mc40 is used to identify certain inter-dealer transactions that are ineligible for comparison on trade date, and new special condition indicator Mc50 is used to identify resubmissions of certain uncompared inter-dealer transactions that have been cancelled by RTTM. Described below are the procedures for reporting transactions arising in three inter-dealer transaction reporting scenarios using the new special condition indicators.

Inter-Dealer Ineligible on Trade Date

Certain inter-dealer transactions are not able to be submitted to RTTM on trade date or with the accurate trade date either because all information necessary for comparison is not available or because the trade date is not a "valid" trade date in RTTM. The two inter-dealer trading scenarios described below are required to be reported using the new Mc40 special condition indicator.

VRDO Ineligible on Trade Date

On occasion, inter-dealer secondary market transactions are effected in variable rate demand obligations (VRDOs) in which the interest rate reset date occurs between trade date and the time of settlement. Since dealers in this scenario cannot calculate accrued interest or final money on trade date, they cannot process the trade through RTTM until the interest rate reset has occurred. To report such transactions, both dealers that are party to the transaction are required to report the transaction by the end of the day that the interest rate reset occurs, including the trade date and time that the original trade was executed. Both dealers are required to include the new Mc40 special condition indicator that causes RTRS not to score either dealer late. Transactions reported using this procedure are disseminated without a special condition indicator and the trade reports reflect the original trade date and time.

Invalid RTTM Trade Dates

Dealers sometimes execute inter-dealer transactions on weekends and on certain holidays that are not valid RTTM trade dates. Such trades cannot be reported to RTRS using the actual trade date if they occur on a weekend or holiday. To accomplish automated comparison and transaction reporting of such transactions, dealers are required to submit these inter-dealer transactions to RTTM no later than fifteen minutes after the start of the next RTRS Business Day and to include a trade date and time that represents the next earliest "valid" values that can be submitted.[5] Dealers also are required to include the new Mc40 special condition indicator that allows RTRS to identify these transactions so that enforcement agencies can be alerted to the fact that the trade reports were made under special circumstances using a special trade date and time. RTRS disseminates these trade reports without a special condition indicator and the trade report includes the trade date and time reflecting the next earliest "valid" values that can be submitted.[6]

Resubmission of an RTTM Cancel

A dealer may submit an inter-dealer trade to RTTM and find that the contra-party fails to report its side of the trade. Such "uncompared" trades are not disseminated by RTRS on price transparency products. After two days, RTTM removes the uncompared trade report from its system and the dealer originally submitting the trade must resubmit the transaction in a second attempt to obtain a comparison with its contra-party, which currently results in RTRS scoring the resubmitted trade report "late."

The dealer that originally submitted information to RTTM is required to resubmit identical information about the transactionin the second attempt to compare and report the trade by the end of the day after RTTM cancels the trade. The resubmitting dealer also is required to include the new Mc50

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special condition indicator that causes RTRS to not score the resubmitting dealer late. The indicator may only be used by a dealer resubmitting the exact same trade information for the same trade.[7] For example, the contra-party that failed to submit its side to the trade accurately, thus preventing comparison of the transaction, is not allowed to use the indicator. RTRS disseminates trade reports made under this procedure without a special condition indicator once RTTM compares the trade and the trade report reflects the original trade date and time.

[1] *See Specifications for Real-Time Reporting of Municipal Securities Transactions* Section 4.3.2.

[2] In addition to the special trading situations identified in this notice, the M9c0 special condition indicator, "away from market — other reason," is required to be included on a trade report if the transaction price differs substantially from the market price for multiple reasons or for a reason not covered by another special condition indicator.

[3] In some cases, the transfer of securities into the derivative trust and the transfer of securities back to the customer upon liquidation of the trust do not represent purchase-sale transactions due to the terms of the trust agreement. MSRB rules on transaction reporting do not require a dealer to report a transfer of securities to RTRS that is not a purchase-sale transaction in municipal securities.

[4] *See* MSRB Notice 2007-25 (August 13, 2007).

[5] The MSRB previously provided an example of a trade date and time that would be included on a trade report using this procedure. See "Reporting of Inter-Dealer Transactions That Occur Outside of RTRS Business Day Hours or on Invalid RTTM Trade Dates," MSRB Notice 2007-12 (March 23, 2007).

[6] Using this procedure will result in transactions reported with a trade date and time that differs from what is recorded in a dealer's books and records. Dealers are reminded that books and records are required to reflect the date and time of trade execution.

[7] The resubmitting dealer would not be required to resubmit the same reference number or preparation time on the resubmitted transaction; however, other information about the transaction, such as price, quantity, trade date and time, would be required to be identical to information included in the original trade submission.

Transaction Reporting of Dealer Buybacks of Auction Rate Securities: Rule G-14

September 2, 2008

As a result of the unprecedented number of "failed auctions"[1] in municipal Auction Rate Securities ("ARS") that have occurred this year, many dealers have announced plans to offer to purchase customer positions in municipal ARS at a stated price, typically par ("ARS Buybacks"). These ARS Buyback programs predominantly have occurred pursuant to settlement agreements with state attorneys general. The MSRB has received questions from dealers whether ARS Buybacks must be reported to the MSRB Real-Time Transaction Reporting System (RTRS) and, if so, whether the M9c0 "away from market — other reason" special condition indicator must be included on such trade reports.

MSRB Rule G-14, on transaction reporting, requires all purchase-sale transactions in municipal securities to be reported to RTRS. Transactions in ARS must be reported to RTRS and trade reports of ARS Buybacks must be reported to RTRS without the M9c0 special condition indicator. The primary reason a trade report would be required to include the M9c0 special condition indicator is that the trade report contains information that could be misleading to users of price transparency reports.[2] The MSRB does not believe that trade reports of ARS Buybacks would provide misleading information relating to the market value of ARS because the price at which ARS Buybacks are executed has been publicly announced. Therefore, trade reports of ARS Buybacks as well as of other purchases of ARS from holders at current market prices must be reported without the M9c0 special condition indicator.[3]

[1] A "failed auction" is not an event of default by the issuer, it only relates to the auction process not being able to determine a clearing rate and not permitting investors attempting to sell their securities from being able to do so.

[2] RTRS serves the dual purposes of price transparency and market surveillance. Transactions reported with the M9c0 special condition indicator are entered into the surveillance database but suppressed from price dissemination. The MSRB has identified three specific situations in which the M9c0 special condition indicator is required to be included on trade reports. See Notice of Interpretation of Rule G-14: "Reporting of Transactions in Certain Special Trading Situations: Rule G-14," dated January 2, 2008.

[3] Users of the MSRB's price transparency reports produced from RTRS should be aware that ARS Buybacks may result in a higher than normal volume of trade reports in ARS and should not use this volume as an indication that the market for ARS has fully recovered from the unprecedented number of failed auctions that have occurred in 2008. Further, the prices at which ARS Buybacks are executed may not reflect the actual market value for the security.

Build America Bonds and Other Tax Credit Bonds

April 24, 2009

The American Recovery and Reinvestment Act of 2009 added a provision to the Internal Revenue Code that authorizes state and local governments to issue two types of "Build America Bonds" as taxable governmental bonds with Federal subsidies for a portion of their borrowing costs.

The first type of Build America Bond provides a Federal subsidy through Federal tax credits to investors in the bonds. The tax credits may also be "stripped" and sold to other investors, pursuant to regulations to be issued by the Treasury Department. In its Notice 2009-26, the Treasury Department refers to this type of Build America Bond as "Build America Bonds (Tax Credit)."

The second type of Build America Bond provides a Federal subsidy through a refundable tax credit paid to state or local governmental issuers by the Treasury Department and the Internal Revenue Service. The Treasury Department refers to this type of Build America Bond as "Build America Bonds (Direct Payment)." This Notice refers to both Build America Bonds (Tax Credit) and Build America Bonds (Direct Payment) as "Build America Bonds."

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Some municipal market participants have requested guidance on whether Municipal Securities Rulemaking Board rules are applicable to Build America Bonds. Build America Bonds are municipal securities, because they are issued by States and their political subdivisions and instrumentalities. Accordingly, all of the MSRB's rules apply to transactions effected by brokers, dealers, and municipal securities dealers ("dealers") in Build America Bonds, including rules regarding uniform and fair practice, political contributions, automated clearance and settlement, the payment of MSRB underwriting and transaction assessment fees, and the professional qualifications of registered representatives and principals.

For example, dealers in the primary market should note that current Rule G-36 requires underwriters to submit official statements to the MSRB, accompanied by completed Form G-36 (OS), for most primary offerings of municipal securities. Dealers also have official statement delivery responsibilities to customers under Rule G-32. Once final, recently proposed revisions to Rule G-32 will require underwriters to satisfy their official statement submission obligations electronically through use of the MSRB's Electronic Municipal Market Access system ("EMMA") and will allow dealers to satisfy their official statement delivery obligations by means of appropriate notice to customers.

The MSRB understands that many Build America Bonds may be sold by dealers' taxable desks and reminds dealers that Rule G-27 requires that municipal securities principals must supervise all municipal securities activities, including such sales.

Dealers in the secondary market should note that Rule G-14 requires that all transactions in municipal securities must be reported to the MSRB within certain prescribed time periods.

The following additional types of tax credit bonds are also municipal securities subject to MSRB rules: Recovery Zone Economic Development Bonds, Qualified School Construction Bonds, Clean Renewable Energy Bonds, New Clean Renewable Energy Bonds, Midwestern Tax Credit Bonds, Energy Conservation Bonds, and Qualified Zone Academy Bonds.

This Notice does not address the securities law characterization of the tax credit component of Build America Bonds (Tax Credit) or other tax credit bonds, whether the credits are used by investors in the bonds or stripped and sold to other investors.

Questions and Answers Notice Concerning Real-Time Reporting of Municipal Securities Transactions

August 9, 2016

1. ***Q: Dealers are required to include time of trade (along with trade date) on all transaction reports. What is "time of trade?"***

A: Transaction reporting procedures define "time of trade" as the time at which a contract is formed for a sale or purchase of municipal securities at a set quantity and set price.[1] For transaction reporting purposes, this is considered to be the same as the time that a trade is "executed." The time that the trade is executed is not necessarily the time that the trade information is entered into the dealer's processing system. For example, if a trade is executed on a trading desk but not entered for processing until later, the time of execution (not the time of entering the record into the processing system) is required to be reported as the "time of trade." Similarly, when a dealer executes a transaction outside of the RTRS Business Day,[2] the time the trade was executed (rather than the time that the trade report is made) is the "time of trade" required to be reported.

2. ***Q: What is "time of trade" for new issue securities?***

A: For new issue securities, a transaction effected on a "when, as and if issued"[3] basis cannot be executed, confirmed and reported until the municipal security has been formally awarded by the issuer. For a negotiated issue, this "time of formal award" is defined as the time of the signing of the bond purchase agreement and for a competitive issue, it is the time of the official award by the issuer. While dealers may take orders for securities and make conditional trading commitments prior to the award, dealers cannot execute transactions, send confirmations or make a trade report prior to the time of formal award. Once a new issue of municipal securities has been formally awarded, trade executions can begin. The time of execution is then reported to the MSRB.[4]

3. ***Q: There is a non-transaction-based compensation special condition indicator (NTBC indicator) for customer transactions. Is the NTBC indicator to be used only on customer transactions executed in a wrap fee account?***

A: No, while transactions that occur in a wrap fee account may be one example of a transaction that qualifies as a customer transaction with no transaction-based dealer compensation component, the NTBC indicator is intended to distinguish all customer transactions that do not include a transaction-based compensation component from those transactions that do include a mark-up, mark-down or commission. Dealers should carefully consider other transactions that may require this indicator, such as those in which the dealer receives a remarketing fee, or a transaction often referred to as an "accommodation" that does not include a transaction-based dealer compensation component.

4. ***Q: Is the NTBC indicator to be used only on customer trades executed on a principal basis?***

A: No. The NTBC indicator applies to both principal and agency trades. It is important for dealers to affirmatively indicate the transactions where a principal transaction does not include a mark-up or mark-down and an agency trade does not include a commission.

5. ***Q: Is the NTBC indicator to be used only on retail customer accounts?***

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A: No. There is no exemption for transactions with Sophisticated Municipal Market Professionals (SMMPs). The NTBC indicator is determined on a transaction basis and is to be used on any customer transaction to which it applies.

6. *Q: What is the purpose of identifying an inter-dealer trade executed with or using the services of an alternative trading system (ATS)?*

A: The purpose of the indicator is to better ascertain the extent to which ATSs are used in the municipal market and to indicate to market participants information that the services of an ATS were used in executing the inter-dealer transaction.

7. *Q: If a counterparty does not use the ATS indicator, will the two dealers' transaction submission still match on the NSCC Real-Time Trade Matching (RTTM)?*

A: Yes. The ATS indicator is not a matching value for RTTM. As noted in the MSRB's Specifications for Real-Time Reporting of Municipal Securities Transactions, a new error code (Q55A) will be noted when the seller's and buyer's trade reports differ with respect to the ATS special condition indicator. Incorrect submissions should be modified as necessary.

8. *Q: Do transactions executed over the phone with an ATS (voice trades) require a special condition indicator?*

A: As noted in MSRB Notice 2015-07, an inter-dealer transaction executed with or using the services of an alternative trading system with Form ATS on file with the SEC is required to be reported with the ATS indicator regardless of the mode of the transaction. See the MSRB's Specifications for Real-Time Reporting of Municipal Securities Transactions for more detail on the use of the ATS special condition indicator.

9. *Q: As of July 18, 2016, dealers are no longer required to report yield on customer trade reports, but MSRB Rule G-15 still obligates a dealer to calculate yield for customer confirmations. If a dealer's yield calculation used for customer confirmations to comply with Rule G-15 differs from the yield disseminated by the MSRB, how can the dealer determine the reason for the difference?*

A: The EMMA website includes a column labeled "Calculation Date & Price (%)" that displays the date and price for which the yield was calculated, which provides transparency on the inputs used in MSRB yield calculations to explain any potential calculation differences.

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[1] *See* MSRB Rule G-14 RTRS Procedures (d)(iii).

[2] Transactions effected during the RTRS Business Day (from 7:30 a.m. to 6:30 p.m. Eastern time) are required to be reported in real-time. Transactions effected outside of those hours are required to be reported within 15 minutes after the start of the next RTRS Business Day.

[3] *See* MSRB Glossary of Municipal Securities Terms, Third Edition, August 2013.

[4] For additional discussion of time of trade on transactions in new issue securities, see "Notice Requesting Comment on Draft Amendments to Rule G-34 to Facilitate Real-Time Transaction Reporting and Explaining Time of Trade for Reporting New Issue Trades," MSRB Notice 2004-18 (June 18, 2004) and "Notice of Filing of Proposed Rule Changes to Extend the Expiration of the Three-Hour Exception and to Require Underwriter Participation with DTCC's NIIDS System," MSRB Notice 2007-36 (November 27, 2007).

See also:

Rule G-12 Interpretations — Locked-In Transactions, March 1, 2001

- **Interpretation on the Application of Rules G-8, G-12 and G-14 to Specific Electronic Trading Systems,** March 26, 2001
- **Notice on Reporting and Comparison of Certain Transactions Effected by Investment Advisors,** May 23, 2003
- **Transaction Reporting of Multiple Transactions Between Dealers in the Same Issue,** November 24, 2003
- **Notice on Certain Inter-Dealer Transfers of Municipal Securities: Rules G-12(f) and G-14,** June 4, 2004

Rule G-14 Amendment History (since 2003)

Release No. 34-77366 (March 14, 2016), 81 FR 14919 (March 18, 2016); MSRB Notice 2016-09 (March 2, 2016)

Release No. 34-75039 (May 22, 2015), 80 FR 31084 (June 1, 2015); MSRB Notice 2015-07 (May 26, 2015)

Release No. 34-71616 (February 26, 2014), 79 FR 12254 (March 4, 2014); MSRB Notice 2014-05 (February 27, 2014)

Release No. 34-68472 (December 19, 2012), 77 FR 76146 (December 26, 2012); MSRB Notice 2012-64 (December 24, 2012)

Release No. 34-66622 (March 20, 2012), 77 FR 17557 (March 26, 2012); MSRB Notice 2012-15 (March 21, 2012)

Release No. 34-57002 (December 20, 2007), 72 FR 73939 (December 28, 2007); MSRB Notice 2007-36 (November 27, 2007)

Release No. 34-56202 (August 3, 2007), 72 FR 45077 (August 10, 2007); MSRB Notice 2007-20 (June 13, 2007)

Release No. 34-54612 (October 17, 2006), 71 FR 62141 (October 23, 2006); MSRB Notice 2006-28 (October 19, 2006)

Release No. 34-52967 (December 16, 2005), 70 FR 76092 (December 22, 2005); MSRB Notice 2005-62 (December 22, 2005)

Release No. 34-50294 (August 31, 2004), 69 FR 54170 (September 7, 2004); MSRB Notice 2004-29 (September 2, 2004)

Release No. 34-47888 (May 19, 2003), 68 FR 28865 (May 27, 2003); MSRB Notice 2003-18 (May 21, 2003)

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Rule G-15

Confirmation, Clearance, Settlement and Other Uniform Practice Requirements with Respect to Transactions with Customers

(a) *Customer Confirmations*.

(i) At or before the completion of a transaction in municipal securities with or for the account of a customer, each broker, dealer or municipal securities dealer shall give or send to the customer a written confirmation that complies with the requirements of this paragraph (i):

(A) Transaction information. The confirmation shall include information regarding the terms of the transaction as set forth in this subparagraph (A):

(1) The parties, their capacities, and any remuneration from other parties. The following information regarding the parties to the transaction and their relationship shall be included:

(a) name, address, and telephone number of the broker, dealer, or municipal securities dealer, provided, however, that the address and telephone number need not be stated on a confirmation sent through the automated confirmation facilities of a clearing agency registered with the Securities and Exchange Commission;

(b) name of customer;

(c) designation of whether the transaction was a purchase from or sale to the customer;

(d) the capacity in which the broker, dealer or municipal securities dealer effected the transaction, whether acting:

(i) as principal for its own account,

(ii) as agent for the customer,

(iii) as agent for a person other than the customer, or

(iv) as agent for both the customer and another person;

(e) if the broker, dealer or municipal securities dealer is effecting a transaction as agent for the customer or as agent for both the customer and another person, the confirmation shall include: (i) either (A) the name of the person from whom the securities were purchased or to whom the securities were sold for the customer, or (B) a statement that this information will be furnished upon the written request of the customer; and (ii) either (A) the source and amount of any remuneration received or to be received (shown in aggregate dollar amount) by the broker, dealer or municipal securities dealer in connection with the transaction from any person other than the customer, or (B) a statement indicating whether any such remuneration has been or will be received and that the source and amount of such other remuneration will be furnished upon written request of the customer. In applying the terms of this subparagraph (A)(1)(e), if a security is acquired at a discount (*e.g.*, "net" price less concession) and is sold at a "net" price to a customer, the discount must be disclosed as remuneration received from the customer pursuant to subparagraph (A)(6)(f) of this paragraph rather than as remuneration received from "a person other than the customer."

(2) Trade date and time of execution.

(a) The trade date shall be shown.

(b) The time of execution shall be shown; provided that, for a transaction for an institutional account as defined in Rule G-8(a)(xi) or a transaction in municipal fund securities, a statement that the time of execution will be furnished upon written request of the customer may be shown in satisfaction of the obligation to disclose the time of execution on the confirmation.

(3) Par value. The par value of the securities shall be shown, with special requirements for the following securities:

(a) Zero coupon securities. For zero coupon securities, the maturity value of the securities must be shown if it differs from the par value.

(b) Municipal fund securities. For municipal fund securities, in place of par value, the confirmation shall show (i) in the case of a purchase of a municipal fund security by a customer, the total purchase price paid by the customer, exclusive of any commission, and (ii) in the case of a sale or tender for redemption of a municipal fund security by a customer, the total sale price or redemption amount paid to the customer, exclusive of any commission or other charge imposed upon redemption or sale.

(4) Settlement date. The settlement date as defined in section (b) of this rule shall be shown.

(5) Yield and dollar price. Yields and dollar prices shall be computed and shown in the following manner, subject to the exceptions stated in subparagraph (A)(5)(d) of this paragraph:

(a) For transactions that are effected on the basis of a yield to maturity, yield to a call date, or yield to a put date:

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(i) The yield at which the transaction was effected shall be shown and, if that yield is to a call date or to a put date, this shall be noted, along with the date and dollar price of the call or put.

(ii) A dollar price shall be computed and shown in accordance with the rules in subparagraph (A)(5)(c) of this paragraph, and such dollar price shall be used in computations of extended principal and final monies shown on the confirmation.

(b) For transactions that are effected on the basis of a dollar price:

(i) The dollar price at which the transaction was effected shall be shown.

(ii) A yield shall be computed and shown in accordance with subparagraph (A)(5)(c) of this paragraph, unless the transaction was effected at "par."

(c) In computing yield and dollar price, the following rules shall be observed:

(i) The yield or dollar price computed and shown shall be computed to the lower of call or nominal maturity date, with the exceptions noted in this subparagraph (A)(5)(c).

(ii) For purposes of computing yield to call or dollar price to call, only those call features that represent "in whole calls" of the type that may be used by the issuer without restriction in a refunding ("pricing calls") shall be considered in computations made under this subparagraph (A)(5).

(iii) Yield computations shall take into account dollar price concessions granted to the customer, commissions charged to the customer and adjustable tender fees applicable to puttable securities, but shall not take into account incidental transaction fees or miscellaneous charges, provided, however, that as specified in subparagraph (A)(6)(e) of this paragraph, such fees or charges must be indicated on the confirmation.

(iv) With respect to the following specific situations, these additional rules shall be observed:

(A) Declining premium calls. For those securities subject to a series of pricing calls at declining premiums, the call date resulting in the lowest yield or dollar price shall be considered the yield to call or dollar price to call.

(B) Continuously callable securities. For those securities that, at the time of trade, are subject to a notice of a pricing call at any time, the yield to call or dollar price to call shall be computed based upon the assumption that a notice of call may be issued on the day after trade date or on any subsequent date.

(C) Mandatory tender dates. For those securities subject to a mandatory tender date, the mandatory tender date and dollar price of redemption shall be used in computations in lieu of nominal maturity date and maturity value.

(D) Securities sold on basis of yield to put. For those transactions effected on the basis of a yield to put date, the put date and dollar price of redemption shall be used in computations in lieu of maturity date and maturity value.

(E) Prerefunded or called securities. For those securities that are prerefunded or called to a call date prior to maturity, the date and dollar price of redemption set by the prerefunding shall be used in computations in lieu of maturity date and maturity value.

(v) Computations shall be made in accordance with the requirements of rule G-33.

(vi) If the computed yield or dollar price shown on the confirmation is not based upon the nominal maturity date, then the date used in the computation shall be identified and stated. If the computed yield or dollar price is not based upon a redemption value of par, the dollar price used in the computation shall be shown (*e.g.*, 5.00% yield to call on 1/1/99 at 103).

(vii) If the computed yield required by this paragraph (5) is different than the yield at which the transaction was effected, the computed yield must be shown in addition to the yield at which the transaction was effected.

(d) Notwithstanding the requirements noted in subparagraphs (A)(5)(a) through (c) of this paragraph above:

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(i) Securities that prepay principal. For securities that prepay principal periodically, a yield computation and display of yield is not required, provided, however, that if a yield is displayed, there shall be included a statement describing how the yield was computed.

(ii) Municipal Collateralized Mortgage Obligations. For municipal collateralized mortgage obligations, a yield computation and display of yield is not required, provided however, that if a yield is displayed, there shall be included a statement describing how the yield was computed.

(iii) Defaulted securities. For securities that have defaulted in the payment of interest or principal, a yield shall not be shown.

(iv) Variable rate securities. For municipal securities with a variable interest rate, a yield shall not be shown unless the transaction was effected on the basis of yield to put.

(v) Securities traded on a discounted basis. For securities traded on a discounted basis, a yield shall not be shown.

(vi) Municipal fund securities. For municipal fund securities, neither yield nor dollar price shall be shown.

(6) Final Monies. The following information relating to the calculation and display of final monies shall be shown:

(a) total dollar amount of transaction;

(b) amount of accrued interest, with special requirements for the following securities:

(i) Zero coupon securities. For zero coupon securities, no figure for accrued interest shall be shown;

(ii) Securities traded on discounted basis. For securities traded on a discounted basis (other than discounted securities traded on a yield-equivalent basis), no figure for accrued interest shall be shown;

(iii) Municipal fund securities. For municipal fund securities, no figure for accrued interest shall be shown;

(c) if the securities pay interest on a current basis but are traded without interest, a notation of "flat;"

(d) extended principal amount, with special requirements for the following securities:

(i) Securities traded on discounted basis. For securities traded on a discounted basis (other than discounted securities sold on a yield-equivalent basis) total dollar amount of discount may be shown in lieu of the resulting dollar price and extended principal amount;

(ii) Municipal fund securities. For municipal fund securities, no extended principal amount shall be shown;

(e) the nature and amount of miscellaneous fees, such as special delivery arrangements or a "per transaction" fee, or if agreed to, any fees for converting registered certificates to or from bearer form;

(f) if the broker, dealer or municipal securities dealer is effecting the transaction as agent for the customer or as agent for both the customer and another person, the amount of any remuneration received or to be received (shown in aggregate dollar amount) by the broker, dealer or municipal securities dealer from the customer in connection with the transaction unless remuneration paid by the customer is determined, pursuant to a written agreement with the customer, other than on a transaction basis;

(g) the first interest payment date if other than semi-annual, but only if necessary for the calculation of final money;

(h) for callable zero coupon securities, if applicable, the percentage of the purchase price at risk due to the lowest possible call, which shall be calculated based upon the ratio between (i) the difference between the price paid by the customer and the lowest possible call price, and (ii) the price paid by the customer.

(7) Delivery of securities. The following information regarding the delivery of securities shall be shown:

(a) Securities other than bonds or municipal fund securities. For securities other than bonds or municipal fund securities, denominations to be delivered;

(b) Bond certificates delivered in non-standard denominations. For bonds, denominations of certificates to be delivered shall be stated if:

(i) for bearer bonds, denominations are other than $1,000 or $5,000 in par value, and

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(ii) for registered bonds, denominations are other than multiples of $1,000 par value, or exceed $100,000 par value;

(c) Municipal fund securities. For municipal fund securities, the purchase price, exclusive of commission, of each share or unit and the number of shares or units to be delivered;

(d) Delivery instructions. Instructions, if available, regarding receipt or delivery of securities and form of payment, if other than as usual and customary between the parties.

(8) Additional information about the transaction. In addition to the transaction information required above, such other information as may be necessary to ensure that the parties agree to details of the transaction also shall be shown.

(B) Securities identification information. The confirmation shall include a securities identification which includes, at a minimum:

(1) the name of the issuer, with special requirements for the following securities:

(a) For stripped coupon securities, the trade name and series designation assigned to the stripped coupon municipal security by the broker, dealer or municipal securities dealer sponsoring the program must be shown;

(b) Municipal fund securities. For municipal fund securities, the name used by the issuer to identify such securities and, to the extent necessary to differentiate the securities from other municipal fund securities of the issuer, any separate program series, portfolio or fund designation for such securities must be shown;

(2) CUSIP number, if any, assigned to the securities;

(3) maturity date, if any, with special requirements for the following securities:

(a) Stripped coupon securities. For stripped coupon securities, the maturity date of the instrument must be shown in lieu of the maturity date of the underlying securities;

(b) Municipal fund securities. For municipal fund securities, no maturity date shall be shown;

(4) interest rate, if any, with special requirements for the following securities:

(a) Zero coupon securities. For zero coupon securities, the interest rate must be shown as 0%;

(b) Variable rate securities. For securities with a variable or floating interest rate, the interest rate must be shown as "variable;" provided however if the yield is computed to put date or to mandatory tender date, the interest rate used in that calculation shall be shown.

(c) Securities with adjustable tender fees. If the net interest rate paid on a tender option security is affected by an adjustable "tender fee," the stated interest rate must be shown as that of the underlying security with the phrase "less fee for put;"

(d) Stepped coupon securities. For stepped coupon securities, the interest rate currently being paid must be shown;

(e) Stripped coupon securities. For stripped coupon securities, the interest rate actually paid on the instrument must be shown in lieu of interest rate on underlying security;

(f) Municipal fund securities. For municipal fund securities, no interest rate shall be shown;

(5) the dated date if it affects the price or interest calculation, with special requirements for the following securities:

(a) Stripped coupon securities. For stripped coupon securities, the date that interest begins accruing to the custodian for payment to the beneficial owner shall be shown in lieu of the dated date of the underlying securities. This date, along with the first date that interest will be paid to the owner, must be stated on the confirmation whenever it is necessary for calculation of price or accrued interest.

(C) Securities descriptive information. The confirmation shall include descriptive information about the securities which includes, at a minimum:

(1) Credit backing. The following information, if applicable, regarding the credit backing of the security:

(a) Revenue securities. For revenue securities, a notation of that fact, and a notation of the primary source of revenue (*e.g.*, project name). This subparagraph will be satisfied if these designations appear on the confirmation in the formal title of the security or elsewhere in the securities description.

(b) Securities with additional credit backing. The name of any company or other person in addition to the issuer obligated, directly or indirectly, with respect to debt service or, if there is more than one such obligor, the state-

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ment "multiple obligors" may be shown and, if a letter of credit is used, the identity of the bank issuing the letter of credit must be noted.

(2) Features of the securities. The following information, if applicable, regarding features of the securities:

(a) Callable securities. If the securities are subject to call prior to maturity through any means, a notation of "callable" shall be included. This shall not be required if the only call feature applicable to the securities is a "catastrophe" or "calamity" call feature, such as one relating to an event such as an act of God or eminent domain, and which event is beyond the control of the issuer of the securities. The date and price of the next pricing call shall be included and so designated. Other specific call features are not required to be listed unless required by subparagraph (A)(5)(c)(ii) of this paragraph on computation and display of price and yield. If any specific call feature is listed even though not required by this rule, it shall be identified. If there are any call features in addition to the next pricing call, disclosure must be made on the confirmation that "additional call features exist that may affect yield; complete information will be provided upon request;"

(b) Puttable securities. If the securities are puttable by the customer, a designation to that effect;

(c) Stepped coupon securities. If stepped coupon securities, a designation to that effect;

(d) Book-entry only securities. If the securities are available only in book entry form, a designation to that effect;

(e) Periodic interest payment. With respect to securities that pay interest on other than a semi-annual basis, a statement of the basis on which interest is paid;

(3) Information on status of securities. The following information, as applicable, regarding the status of the security shall be included:

(a) Prerefunded and called securities. If the securities are called or "prerefunded," a designation to such effect, the date of maturity which has been fixed by the call notice, and the amount of the call price.

(b) Escrowed to maturity securities. If the securities are advance refunded to maturity date and no call feature (with the exception of a sinking fund call) is explicitly reserved by the issuer, the securities must be described as "escrowed to maturity" and, if a sinking fund call is operable with respect to the securities, additionally described as "callable."

(c) Advanced refunded/callable securities. If advanced refunded securities have an explicitly reserved call feature other than a sinking fund call, the securities shall be described as "escrowed to [redemption date] — callable."

(d) Advanced refunded/stripped coupon securities. If the municipal securities underlying stripped coupon securities are advance-refunded, the stripped coupon securities shall be described as "escrowed-to-maturity," or "pre-refunded" as applicable.

(e) Securities in default. If the securities are in default as to the payment of interest or principal, they shall be described as "in default;"

(f) Unrated securities. If the security is unrated by a nationally recognized statistical rating organization, a disclosure to such effect.

(4) Tax information. The following information that may be related to the tax treatment of the security:

(a) Taxable securities. If the securities are identified by the issuer or sold by the underwriter as subject to federal taxation, a designation to that effect.

(b) Alternative minimum tax securities. If interest on the securities is identified by the issuer or underwriter as subject to the alternative minimum tax, a designation to that effect.

(c) Original issue discount securities. If the securities pay periodic interest and are sold by the underwriter as original issue discount securities, a designation that they are "original issue discount" securities and a statement of the initial public offering price of the securities, expressed as a dollar price.

(5) Municipal fund securities. For municipal fund securities, the information described in clauses (1) through (4) of this subparagraph (C) is not required to be shown.

(D) Disclosure statements:

(1) The confirmation for zero coupon securities shall include a statement to the effect that "No periodic payments," and, if applicable, "callable below maturity value," and, if callable and available in bearer form, "callable without notice by mail to holder unless registered."

(2) The confirmation for municipal collateralized mortgage obligations shall include a statement indicating that the actual yield of such security may

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vary according to the rate at which the underlying receivables or other financial assets are prepaid and a statement that information concerning the factors that affect yield (including at a minimum estimated yield, weighted average life, and the prepayment assumptions underlying yield) will be furnished upon written request.

(3) The confirmation for securities for which a deferred commission or other charge is imposed upon redemption or as a condition for payment of principal or interest thereon shall include a statement that the customer may be required to make a payment of such deferred commission or other charge upon redemption of such securities or as a condition for payment of principal or interest thereon, as appropriate, and that information concerning such deferred commission or other charge will be furnished upon written request.

(4) The confirmation for a transaction (other than a transaction in municipal fund securities) executed for or with a non-institutional customer shall include, in a format specified by the MSRB, a reference and, if the confirmation is electronic, a hyperlink to a webpage on EMMA that contains publicly available trading data for the specific security that was traded, along with a brief description of the type of information available on that page.

(E) Confirmation format. All requirements must be clearly and specifically indicated on the front of the confirmation, except that the following statements may be on the reverse side of the confirmation:

(1) The disclosure statements required in subparagraph (D)(1), (D)(2) or (D)(3) of this paragraph, provided that their specific applicability is noted on the front of the confirmation.

(2) The statement concerning the person from whom the securities were purchased or to whom the securities were sold that can be provided in satisfaction of subparagraph (A)(1)(e)(i) of this paragraph.

(F) Mark-ups and Mark-downs.

(1) General. A confirmation shall include the dealer's mark-up or mark-down for the transaction, to be calculated in compliance with Rule G-30, Supplementary Material .06 and expressed as a total dollar amount and as a percentage of the prevailing market price if:

(a) the broker, dealer or municipal securities dealer ("dealer") is effecting a transaction in a principal capacity with a non-institutional customer, and

(b) the broker, dealer or municipal securities dealer purchased (sold) the security in one or more offsetting transactions in an aggregate trading size meeting or exceeding the size of such sale to (purchase from) the non-institutional customer on the same trading day as the non-institutional customer transaction. If any such transaction occurs with an affiliate of the dealer and is not an arms-length transaction, the dealer is required to "look through" to the time and terms of the affiliate's transaction(s) with third parties in the security in determining whether the conditions of this paragraph have been met.

(2) Exceptions. A dealer shall not be required to include the disclosure specified in paragraph (F)(1) above if:

(a) the non-institutional customer transaction was executed by a principal trading desk that is functionally separate from the principal trading desk within the same dealer that executed the dealer purchase (in the case of a sale to a customer) or dealer sale (in the case of a purchase from a customer) of the security, and the dealer had in place policies and procedures reasonably designed to ensure that the functionally separate principal trading desk through which the dealer purchase or dealer sale was executed had no knowledge of the customer transaction;

(b) the customer transaction is a "list offering price transaction" as defined in paragraph (d)(vii) of Rule G-14 RTRS Procedures; or

(c) the customer transaction is for the purchase or sale of municipal fund securities.

(ii) Separate confirmation for each transaction. Each broker, dealer or municipal securities dealer for each transaction in municipal securities shall give or send to the customer a separate written confirmation in accordance with the requirements of (i) above. Multiple confirmations may be printed on one page, provided that each transaction is clearly segregated and the information provided for each transaction complies with the requirements of (i) above; provided, however, that if multiple confirmations are printed in a continuous manner within a single document, it is permissible for the name and address of the broker, dealer or municipal securities dealer and the customer to appear once at the beginning of the document, rather than being included in the confirmation information for each transaction.

(iii) "When, as and if issued" transactions. A confirmation meeting the requirements of this rule shall be sent in all "when, as and if issued" transactions. In addition, a broker, dealer or municipal securities dealer may send a confirmation for a "when, as and if issued" transaction executed prior to determination of settlement date and may be required to do so for delivery vs. payment and receipt vs. payment ("DVP/RVP") accounts under paragraph (d)(i)(C) of this rule. If such a confirmation is sent, it shall include all information required

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by this section with the exception of settlement date, dollar price for transactions executed on a yield basis, yield for transactions executed on a dollar price, total monies, accrued interest, extended principal and delivery instructions.

(iv) Confirmation to customers who tender put option bonds or municipal fund securities. A broker, dealer, or municipal securities dealer that has an interest in put option bonds (including acting as remarketing agent) and accepts for tender put option bonds from a customer, or that has an interest in municipal fund securities (including acting as agent for the issuer thereof) and accepts for redemption municipal fund securities tendered by a customer, is engaging in a transaction in such municipal securities and shall send a confirmation under paragraph (i) of this section.

(v) Timing for providing information. Information requested by a customer pursuant to statements required on the confirmation shall be given or sent to the customer within five business days following the date of receipt of a request for such information; provided however, that in the case of information relating to a transaction executed more than 30 calendar days prior to the date of receipt of a request, the information shall be given or sent to the customer within 15 business days following the date of receipt of the request.

(vi) Definitions. For purposes of this rule, the following terms shall have the following meanings:

(A) Execution of a transaction. The term "the time of execution of a transaction" shall be the time of execution reflected in the records of the broker, dealer or municipal securities dealer pursuant to rule G-8 or Rule 17a-3 under the Act.

(B) Completion of transaction. The term "completion of transaction" shall have the same meaning as provided in Rule 15c1-1 under the Act.

(C) Stepped coupon securities. The term "stepped coupon securities" shall mean securities with the interest rate periodically changing on a pre-established schedule.

(D) Zero coupon securities. The term "zero coupon securities" shall mean securities maturing in more than two years and paying investment return solely at redemption.

(E) Stripped coupon securities. The term "stripped coupon securities" shall have the same meaning as in SEC staff letter dated January 19, 1989 (Stripped Coupon Municipal Securities, SEC No-Action Letter, Fed. Sec. L. Rep. (CCH) ¶ 78,949 (Jan. 19, 1989)), reprinted in MSRB Reports, Vol. 9, No. 1 (March 1989) at 6-7.

(F) The term "pricing call" shall mean a call feature that represents "an in whole call" of the type that may be used by the issuer without restriction in a refunding.

(G) The term "periodic municipal fund security plan" shall mean any written authorization or arrangement for a broker, dealer or municipal securities dealer, acting as agent, to purchase, sell or redeem for a customer or group of customers one or more specific municipal fund securities, in specific amounts (calculated in security units or dollars), at specific time intervals and setting forth the commissions or charges to be paid by the customer in connection therewith (or the manner of calculating them).

(H) The term "non-periodic municipal fund security program" shall mean any written authorization or arrangement for a broker, dealer or municipal securities dealer, acting as agent, to purchase, sell or redeem for a customer or group of customers one or more specific municipal fund securities, setting forth the commissions or charges to be paid by the customer in connection therewith (or the manner of calculating them) and either (1) providing for the purchase, sale or redemption of such municipal fund securities at the direction of the customer or customers or (2) providing for the purchase, sale or redemption of such municipal fund securities at the direction of the customer or customers as well as authorizing the purchase, sale or redemption of such municipal fund securities in specific amounts (calculated in security units or dollars) at specific time intervals.

(I) The term "arms-length transaction" shall mean a transaction that was conducted through a competitive process in which non-affiliate firms could also participate, and where the affiliate relationship did not influence the price paid or proceeds received by the dealer.

(J) The term "non-institutional customer" shall mean a customer with an account that is not an institutional account, as defined in Rule G-8(a)(xi).

(vii) Price substituted for par value of municipal fund securities. For purposes of this rule, each reference to the term "par value," when applied to a municipal fund security, shall be substituted with (i) in the case of a purchase of a municipal fund security by a customer, the purchase price paid by the customer, exclusive of any commission, and (ii) in the case of a sale or tender for redemption of a municipal fund security by a customer, the sale price or redemption amount paid to the customer, exclusive of any commission or other charge imposed upon redemption or sale.

(viii) Alternative periodic reporting for certain transactions in municipal fund securities. Notwithstanding any other provision of this section (a), a broker, dealer or municipal securities dealer may effect transactions in municipal fund securities with customers without giving or sending to such customer the written confirmation required by paragraph (i) of this section (a) at or before completion of each such transaction if:

(A) such transactions are effected pursuant to a periodic municipal fund security plan or a non-periodic municipal fund security program; and

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(B) such broker, dealer or municipal securities dealer gives or sends to such customer within five business days after the end of each quarterly period, in the case of a customer participating in a periodic municipal fund security plan, or each monthly period, in the case of a customer participating in a non-periodic municipal fund security program, a written statement disclosing, for each purchase, sale or redemption effected for or with, and each payment of investment earnings credited to or reinvested for, the account of such customer during the reporting period, the information required to be disclosed to customers pursuant to subparagraphs (A) through (D) of paragraph (i) of this section (a), with the information regarding each transaction clearly segregated; provided that it is permissible:

(1) for the name and address of the broker, dealer or municipal securities dealer and the customer to appear once at the beginning of the periodic statement; and

(2) for information required to be included pursuant to subparagraph (A)(1)(d), (A)(2)(a) or (D)(3) of paragraph (i) of this section (a) to:

(a) appear once in the periodic statement if such information is identical for all transactions disclosed in such statement; or

(b) be omitted from the periodic statement, but only if such information previously has been delivered to the customer in writing and the periodic statement includes a statement indicating that such information has been provided to the customer and identifying the document in which such information appears; and

(C) in the case of a periodic municipal fund security plan that consists of an arrangement involving a group of two or more customers and contemplating periodic purchases of municipal fund securities by each customer through a person designated by the group, such broker, dealer or municipal securities dealer:

(1) gives or sends to the designated person, at or before the completion of the transaction for the purchase of such municipal fund securities, a written notification of the receipt of the total amount paid by the group;

(2) sends to anyone in the group who was a customer in the prior quarter and on whose behalf payment has not been received in the current quarter a quarterly written statement reflecting that a payment was not received on such customer's behalf; and

(3) advises each customer in the group if a payment is not received from the designated person on behalf of the group within 10 days of a date certain specified in the arrangement for delivery of that payment by the designated person and either (a) thereafter sends to each customer the written confirmation described in paragraph (i) of this section (a) for the next three succeeding payments, or (b) includes in the quarterly statement referred to in subparagraph (B) of this paragraph (viii) each date certain specified in the arrangement for delivery of a payment by the designated person and each date on which a payment received from the designated person is applied to the purchase of municipal fund securities; and

(D) such customer is provided with prior notification in writing disclosing the intention to send the written information referred to in subparagraph (B) of this paragraph (viii) on a periodic basis in lieu of an immediate confirmation for each transaction; and

(E) such customer has consented in writing to receipt of the written information referred to in subparagraph (B) of this paragraph (viii) on a periodic basis in lieu of an immediate confirmation for each transaction; provided, however, that such customer consent shall not be required if:

(1) the customer is not a natural person;

(2) the customer is a natural person who participates in a periodic municipal fund security plan described in subparagraph (C) of this paragraph (viii); or

(3) the customer is a natural person who participates in a periodic municipal fund security plan (other than a plan described in subparagraph (C) of this paragraph (viii)) or a non-periodic municipal fund security program and the issuer has consented in writing to the use by the broker, dealer or municipal securities dealer of the periodic written information referred to in subparagraph (B) of this paragraph (viii) in lieu of an immediate confirmation for each transaction with each customer participating in such plan or program.

(b) *Settlement Dates*.

(i) Definitions. For purposes of this rule, the following terms shall have the following meanings:

(A) Settlement Date. The term "settlement date" shall mean the day used in price and interest computations, which shall also be the day delivery is due unless otherwise agreed by the parties.

(B) Business Day. The term "business day" shall mean a day recognized by the Financial Industry Regulatory Authority as a day on which securities transactions may be settled.

(ii) Settlement Dates. Settlement dates shall be as follows:

(A) for "cash" transactions, the trade date;

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(B) for "regular way" transactions, the first business day following the trade date; and

(C) for all other transactions, a date agreed upon by both parties; *provided, however,* that a broker, dealer or municipal securities dealer shall not effect or enter into a transaction for the purchase or sale of a municipal security (other than a "when, as and if issued" transaction) that provides for payment of funds and delivery of securities later than the first business day after the date of the transaction unless expressly agreed to by the parties, at the time of the transaction.

(c) *Deliveries to Customers*. Except as provided in section (d) below, a delivery of securities by a broker, dealer, or municipal securities dealer to a customer or to another person acting as agent for the customer shall, unless otherwise agreed by the parties or otherwise specified by the customer, be made in accordance with the following provisions:

(i) Securities Delivered.

(A) All securities delivered on a transaction shall be identical as to the applicable information set forth in section (a) of this rule. All securities delivered shall also be identical as to the call provisions and the dated date of such securities.

(B) CUSIP Numbers.

(1) The securities delivered on a transaction shall have the same CUSIP number as that set forth on the confirmation of such transaction pursuant to the requirements of section (a) of this rule; *provided, however,* that for purposes of this item (1), a security shall be deemed to have the same CUSIP number as that specified on the confirmation (a) if the number assigned to the security and the number specified on the confirmation differ only as a result of a transposition or other transcription error, or (b) if the number specified on the confirmation has been assigned as a substitute or alternative number for the number reflected on the security.

(2) A new issue security delivered by an underwriter who is subject to the provisions of rule G-34 shall have the CUSIP number assigned to the security imprinted on or otherwise affixed to the security.

(ii) Delivery Ticket. A delivery ticket shall accompany the delivery of securities. Such ticket shall contain the information set forth in section (a) of this rule.

(iii) Units of Delivery. Delivery of bonds shall be made in the following denominations:

(A) for bearer bonds, in denominations of $1,000 or $5,000 par value; and

(B) for registered bonds, in denominations which are multiples of $1,000 par value, up to $100,000 par value.

Delivery of other municipal securities shall be made in the denominations specified on the confirmation as required pursuant to section (a) of this rule.

(iv) Form of Securities.

(A) Bearer and Registered Form. Delivery of securities which are issuable in both bearer and registered form may be in bearer form unless otherwise agreed by the parties; *provided, however,* that delivery of securities which are required to be in registered form in order for interest thereon to be exempted from Federal income taxation shall be in registered form.

(B) Book-Entry Form. Notwithstanding the other provisions of this section (c), a delivery of a book-entry form security shall be made only by a book-entry transfer of the ownership of the security to the purchasing customer or a person designated by the purchasing customer. For purposes of this subparagraph a "book-entry form" security shall mean a security which may be transferred only by bookkeeping entry, without the issuance or physical delivery of securities certificates, on books maintained for this purpose by a registered clearing agency or by the issuer or a person acting on behalf of the issuer.

(v) Mutilated Certificates. Delivery of a certificate which is damaged to the extent that any of the following is not ascertainable:

(A) name of issuer;

(B) par value;

(C) signature;

(D) coupon rate;

(E) maturity date;

(F) seal of the issuer; or

(G) certificate number

shall not constitute good delivery unless validated by the trustee, registrar, transfer agent, paying agent or issuer of the securities or by an authorized agent or official of the issuer.

(vi) Coupon Securities.

(A) Coupon securities shall have securely attached to the certificate in the correct sequence all appropriate coupons, including supplemental coupons if specified at the time of trade, which in the case of securities upon which interest is in default shall include all unpaid or partially paid coupons. All coupons attached to the certificates must have the same serial number as the certificate.

(B) Anything herein to the contrary notwithstanding, if securities are traded "and interest" and the settlement date is on or after the interest payment date, such securities shall be delivered without the coupon payable on such interest payment date.

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(C) If delivery of securities is made on or after the thirtieth calendar day prior to an interest payment date, the seller may deliver to the purchaser a draft or bank check of the seller or its agent, payable not later than the interest payment date or the delivery date, whichever is later, in an amount equal to the interest due, in lieu of the coupon.

(vii) Mutilated or Cancelled Coupons. Delivery of a certificate which bears a coupon which is damaged to the extent that any one of the following cannot be ascertained from the coupon:

(A) title of the issuer;

(B) certificate number;

(C) coupon number or payment date (if either the coupon number or the payment date is ascertainable from the coupon, the coupon will not be considered mutilated); or

(D) the fact that there is a signature;

(E) or which coupon has been cancelled,

shall not constitute good delivery unless the coupon is endorsed or guaranteed. In the case of damaged coupons, such endorsement or guarantee must be by the issuer or by a commercial bank. In the case of cancelled coupons, such endorsement or guarantee must be by the issuer or an authorized agent or official of the issuer, or by the trustee or paying agent.

(viii) Delivery of Certificates Called for Redemption.

(A) A certificate for which a notice of call applicable to less than the entire issue of securities has been published on or prior to the delivery date shall not constitute good delivery unless the securities are identified as "called" at the time of trade.

(B) A certificate for which a notice of call applicable to the entire issue of securities has been published on or prior to the trade date shall not constitute good delivery unless the securities are identified as "called" at the time of trade.

(C) For purposes of this paragraph (viii) the term "entire issue of securities" shall mean securities of the same issuer having the same date of issue, maturity date and interest rate.

(ix) Delivery Without Legal Opinions or Other Documents. Delivery of certificates without legal opinions or other documents legally required to accompany the certificates shall not constitute good delivery unless identified as "ex legal" at the time of trade.

(x) Insured Securities. Delivery of certificates for securities traded as insured securities shall be accompanied by evidence of such insurance, either on the face of the certificate or in a document attached to the certificate.

(xi) Endorsements for Banking or Insurance Requirements. A security bearing an endorsement indicating that it was deposited in accordance with legal requirements applicable to banking institutions or insurance companies shall not constitute good delivery unless it bears a release acknowledged before an officer authorized to take such acknowledgments and was designated as a released endorsed security at the time of trade.

(xii) Delivery of Registered Securities.

(A) Delivery to the Customer. Registered securities delivered directly to a customer shall be registered in the customer's name or in such name as the customer shall direct.

(B) Delivery to an Agent of the Customer. Registered securities delivered to an agent of a customer may be registered in the customer's name or as otherwise directed by the customer. If such securities are not so registered, such securities shall be delivered in accordance with the following provisions:

(1) Assignments. Delivery of a certificate in registered form must be accompanied by an assignment on the certificate or on a separate bond power for such certificate, containing a signature or signatures which correspond in every particular with the name or names written upon the certificate, except that the following shall be interchangeable: "and" or "&"; "Company" or "Co."; "Incorporated" or "Inc."; and "Limited" or "Ltd."

(2) Detached Assignment Requirements. A detached assignment shall provide for the irrevocable appointment of an attorney, with power of substitution, a full description of the security, including the name of the issuer, the maturity date and interest date, the bond or note number, and the par value (expressed in words and numerals).

(3) Power of Substitution. When the name of an individual or firm has been inserted in an assignment as attorney, a power of substitution shall be executed in blank by such individual or firm. When the name of an individual or firm has been inserted in a power of substitution as a substitute attorney, a new power of substitution shall be executed in blank by such substitute attorney.

(4) Guarantee. Each assignment, endorsement, alteration and erasure shall bear a guarantee acceptable to the transfer agent or registrar.

(5) Form of Registration. Delivery of a certificate accompanied by the documentation required in this subparagraph (B) shall constitute good delivery if the certificate is registered in the name of:

(a) an individual or individuals;

(b) a nominee;

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(c) a member of a national securities exchange whose specimen signature is on file with the transfer agent or any other broker, dealer or municipal securities dealer who has filed specimen signatures with the transfer agent and places a statement to this effect on the assignment; or

(d) an individual or individuals acting in a fiduciary capacity.

(6) Certificate in Legal Form. Good transfer of a security in legal form shall be determined only by the transfer agent for the security. Delivery of a certificate in legal form shall not constitute good delivery unless the certificate is identified as being in such form at the time of trade. A certificate shall be considered to be in legal form if documentation in addition to that specified in this subparagraph (B) is required to complete a transfer of the securities.

(C) Payment of Interest. If a registered security is traded "and interest" and transfer of record ownership cannot be or has not been accomplished on or before the record date for the determination of registered holders for the payment of interest, delivery shall be accompanied by a draft or bank check of the seller or its agent, payable not later than the interest payment date or the delivery date, whichever is later, for the amount of the interest.

(D) Registered Securities In Default. If a registered security is in default (*i.e.*, is in default in the payment of principal or interest) and transfer of record ownership cannot be or has not been accomplished on or before the record date for the determination of registered holders for the payment of interest, an interest payment date having been established on or after the trade date, delivery shall be accompanied by a draft or bank check of the seller or its agent, payable not later than the interest payment date or the delivery date, whichever is later, for the amount of the payment to be made by the issuer, unless the security is traded "ex-interest."

(d) *Delivery/Receipt vs. Payment Transactions*.

(i) No broker, dealer or municipal securities dealer shall execute a transaction with a customer pursuant to an arrangement whereby payment for securities received (RVP) or delivery against payment of securities sold (DVP) is to be made to or by an agent of the customer unless all of the following procedures are followed:

(A) the broker, dealer or municipal securities dealer shall have received from the customer prior to or at the time of accepting such order, the name and address of the agent and the name and account number of the customer on file with the agent;

(B) the memorandum of such order made in accordance with the requirements of paragraph (a)(vi) or (a)(vii) of rule G-8 shall include a designation of the fact that it is a delivery vs. payment (DVP) or receipt vs. payment (RVP) transaction;

(C) the broker, dealer or municipal securities dealer shall give or send to the customer a confirmation in accordance with the requirements of section (a) of this rule with respect to the execution of the order not later than the day of such execution; and

(D) the broker, dealer or municipal securities dealer shall have obtained a representation from the customer (1) that the customer will furnish the agent instructions with respect to the receipt or delivery of the securities involved in the transaction promptly and in a manner to assure that settlement will occur on settlement date, and (2) that, with respect to a transaction subject to the provisions of paragraph (ii) below, the customer will furnish the agent such instructions in accordance with the rules of the registered clearing agency through whose facilities the transaction has been or will be confirmed.

(ii) Requirement for Confirmation/Acknowledgment.

(A) Use of Registered Clearing Agency or Qualified Vendor. Except as provided in this paragraph (ii) of rule G-15(d), no broker, dealer or municipal securities dealer shall effect a customer transaction for settlement on a delivery vs. payment or receipt vs. payment (DVP/RVP) basis unless the facilities of a Clearing Agency or Qualified Vendor are used for automated confirmation and acknowledgment of the transaction. Each broker, dealer and municipal securities dealer executing a customer transaction on a DVP/RVP basis shall:

(1) ensure that the customer has the capability, either directly or through its clearing agent, to acknowledge transactions in an automated confirmation/acknowledgment system operated by a Clearing Agency or Qualified Vendor;

(2) submit or cause to be submitted to a Clearing Agency or Qualified Vendor all information and instructions required by the Clearing Agency or Qualified Vendor for the production of a confirmation that can be acknowledged by the customer or the customer's clearing agent; and

(3) submit such transaction information to the automated confirmation/acknowledgment system on the date of execution of such transaction; provided that a transaction that is not eligible for automated confirmation and acknowledgment through the facilities of a Clearing Agency shall not be subject to this paragraph (ii).

(B) Definitions for Rule G-15(d)(ii).

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(1) "Clearing Agency" shall mean a clearing agency as defined in Section 3(a)(23) of the Act that is registered with the Commission pursuant to Section 17A(b)(2) of the Act or has obtained from the Commission an exemption from registration granted specifically to allow the clearing agency to provide confirmation/acknowledgment services.

(2) "Qualified Vendor" shall mean a vendor of electronic confirmation and acknowledgment services that:

(a) for each transaction subject to this rule:

(i) delivers a trade record to a Clearing Agency in the Clearing Agency's format;

(ii) obtains a control number for the trade record from the Clearing Agency;

(iii) cross-references the control number to the confirmation and subsequent acknowledgment of the trade; and

(iv) electronically delivers any acknowledgment received on the trade to the Clearing Agency and includes the control number when delivering the acknowledgment of the trade to the Clearing Agency;

(b) certifies to its customers:

(i) with respect to its electronic trade confirmation/acknowledgment system, that it has a capacity requirements evaluation and monitoring process that allows the vendor to formulate current and anticipated estimated capacity requirements;

(ii) that its electronic trade confirmation/acknowledgment system has sufficient capacity to process the volume of data that it reasonably anticipates to be entered into its electronic trade confirmation/acknowledgment service during the upcoming year;

(iii) that its electronic trade confirmation/acknowledgment system has formal contingency procedures, that the entity has followed a formal process for reviewing the likelihood of contingency occurrences, and that the contingency protocols are reviewed, tested, and updated on a regular basis;

(iv) that its electronic confirmation/acknowledgment system has a process for preventing, detecting, and controlling any potential or actual systems or computer operations failures, including any failure to interface with a Clearing Agency as described in rule G-15(d)(ii)(B)(2)(a), above, and that its procedures designed to protect against security breaches are followed; and

(v) that its current assets exceed its current liabilities by at least five hundred thousand dollars;

(c) when it begins providing such services, and annually thereafter, submits an Auditor's Report to the Commission staff which is not deemed unacceptable by the Commission staff. (An Auditor's Report will be deemed unacceptable if it contains any findings of material weakness.);

(d) notifies the Commission staff immediately in writing of any material change to its confirmation/affirmation systems. (For purposes of this subparagraph (d) "material change" means any changes to the vendor's systems that significantly affect or have the potential to significantly affect its electronic trade confirmation/acknowledgment systems, including changes that:

(i) affect or potentially affect the capacity or security of its electronic trade confirmation/acknowledgment system;

(ii) rely on new or substantially different technology;

(iii) provide a new service as part of the Qualified Vendor's electronic trade confirmation/acknowledgment system; or

(iv) affect or have the potential to adversely affect the vendor's confirmation/acknowledgment system's interface with a Clearing Agency.);

(e) notifies the Commission staff in writing if it intends to cease providing services;

(f) provides the Board with copies of any submissions to the Commission staff made pursuant to subparagraphs (c), (d), and (e) of this rule G-15(d)(ii)(B)(2) within ten business days; and

(g) promptly supplies supplemental information regarding its confirmation/acknowledgment system when requested by the Commission staff or the Board.

(3) "Auditor's Report" shall mean a written report which is prepared by competent, independent, external audit personnel in accordance with the standards of the American Institute of Certified Public Accountants and the Information Systems Audit and Control Association and which:

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(a) verifies the certifications described in subparagraph (d)(ii)(B)(2)(b) of this rule G-15;

(b) contains a risk analysis of all aspects of the entity's information technology systems including, computer operations, telecommunications, data security, systems development, capacity planning and testing, and contingency planning and testing; and

(c) contains the written response of the entity's management to the information provided pursuant to (a) and (b) of this subparagraph (d)(ii)(B)(3) of rule G-15.

(C) Disqualification of Vendor. A broker, dealer or municipal securities dealer using a Qualified Vendor that ceases to be qualified under the definition in rule G-15(d)(ii)(B)(2) shall not be deemed in violation of this rule G-15(d)(ii) if it ceases using such vendor promptly upon receiving notice that the vendor is no longer qualified.

(iii) Notwithstanding the provisions of section (c) of this rule, no broker, dealer or municipal securities dealer shall effect a delivery vs. payment or receipt vs. payment (DVP/RVP) customer transaction that is eligible for book-entry settlement in a depository registered with the Securities and Exchange Commission (depository) unless the transaction is settled through the facilities of a depository or through the interface between the two depositories. Each broker, dealer and municipal securities dealer settling such a customer transaction on a DVP/RVP basis shall:

(A) ensure that the customer has the capability, either directly or through its clearing agent, to settle transactions in a depository; and

(B) submit or cause to be submitted to a depository all information and instructions required from the broker, dealer or municipal securities dealer by the depository for book-entry settlement of the transaction to occur; provided that, if a party to a DVP/RVP customer transaction has made arrangements, through its clearing agent or otherwise, to use one or more depositories exclusively, a transaction by that party shall not be subject to the requirements of this paragraph (iii) if the transaction is ineligible for settlement at all such depositories with which such arrangements have been made; and further provided that purchases made by trustees or issuers to retire securities shall not be subject to this paragraph (iii).

(e) *Interest Payment Claims*. A broker, dealer or municipal securities dealer that receives from a customer a claim for the payment of interest due the customer on securities previously delivered to (or by) the customer shall respond to the claim no later than 10 business days following the date of the receipt of the claim or 20 business days in the case of a claim involving an interest payment scheduled to be made more than 60 days prior to the date of the claim.

(f) *Minimum Denominations*.

(i) Except as provided in this section (f), a broker, dealer or municipal securities dealer shall not effect a customer transaction in municipal securities issued after June 1, 2002 in an amount lower than the minimum denomination of the issue.

(ii) The prohibition in subsection (f)(i) of this rule shall not apply to the purchase of securities from a customer in an amount below the minimum denomination if the broker, dealer or municipal securities dealer determines that the customer's position in the issue already is below the minimum denomination and that the entire position would be liquidated by the transaction. In determining whether this is the case, a broker, dealer or municipal securities dealer may rely either upon customer account information in its possession or upon a written statement by the customer as to its position in an issue.

(iii) The prohibition in subsection (f)(i) of this rule shall not apply to the sale of securities to a customer in an amount below the minimum denomination if the broker, dealer or municipal securities dealer determines that the securities position being sold is the result of a customer liquidating a position below the minimum denomination, as described in subsection (f)(ii) of this rule. In determining whether this is the case, a broker, dealer or municipal securities dealer may rely upon customer account records in its possession or upon a written statement provided by the party from which the securities are purchased. A broker, dealer or municipal securities dealer effecting a sale to a customer under this subsection (iii) shall at or before the completion of the transaction, give or send to the customer a written statement informing the customer that the quantity of securities being sold is below the minimum denomination for the issue and that this may adversely affect the liquidity of the position unless the customer has other securities from the issue that can be combined to reach the minimum denomination. Such written statement may be included on the customer's confirmation or may be provided on a document separate from the confirmation.

(g) *Forwarding Official Communications*.

(i) If a broker, dealer or municipal securities dealer receives an official communication to beneficial owners applicable to an issue of municipal securities that the broker, dealer or municipal securities dealer has in safekeeping along with a request to forward such official communication to the applicable beneficial owners, the broker, dealer or municipal securities dealer shall use reasonable efforts to promptly retransmit the official communication to the parties for whom it is safekeeping the issue.

(ii) In determining whether reasonable efforts have been made to retransmit official communications, the following considerations are relevant:

(A) *CUSIP Numbers*. If CUSIP numbers are included on or with the official communication to beneficial owners, the broker, dealer or municipal securities dealer shall use such CUSIP numbers in determining the issue(s)

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to which the official communication applies. If CUSIP numbers are not included on or with the official communication, the broker, dealer or municipal securities dealer shall use reasonable efforts to determine the issue(s) to which the official communication applies; provided however, that it shall not be a violation of this rule if, after reasonable efforts are made, the issue(s) to which the official communication applies are not correctly identified by the broker, dealer or municipal securities dealer.

(B) *Compensation*. A broker, dealer or municipal securities dealer shall not be required by this rule to retransmit official communications without an offer of adequate compensation. If compensation is explicitly offered in or with the official communication, the broker, dealer or municipal securities dealer shall effect the retransmission and seek compensation concurrently; provided, however, that if total compensation would be more than $500.00, the broker, dealer or municipal securities dealer may, in lieu of this procedure, promptly contact the party offering compensation, inform it of the amount of compensation required, obtain specific agreement on the amount of compensation and wait for receipt of such compensation prior to proceeding with the retransmission. In determining whether compensation is adequate, the broker, dealer or municipal securities dealer shall make reference to the suggested rates for similar document transmission services found in "Suggested Rates of Reimbursement" for expenses incurred in forwarding proxy material, annual reports, information statements and other material referenced in FINRA Rule 2251(g), taking into account revisions or amendments to such suggested rates as may be made from time to time.

(C) *Sufficient Copies of Official Communications*. A broker, dealer or municipal securities dealer is not required to provide duplication services for official communications but may elect to do so. If sufficient copies of official communications are not received, and the broker, dealer or municipal securities dealer elects not to offer duplication services, the broker, dealer or municipal securities dealer shall promptly request from the party requesting the forwarding of the official communication the correct number of copies of the official communication.

(D) *Non-Objecting Beneficial Owners*. In lieu of retransmitting official communications to beneficial owners who have indicated in writing that they do not object to the disclosure of their names and security positions, a broker, dealer or municipal securities dealer may instead promptly provide a list of such non-objecting beneficial owners and their addresses.

(E) *Beneficial Owners Residing Outside of the United States.* A broker, dealer or municipal securities dealer shall not be required to send official communications to persons outside of the United States of America, although brokers, dealers and municipal securities dealers may voluntarily do so.

(F) *Investment Advisors*. A broker, dealer or municipal securities dealer shall send official communications to the investment advisor for a beneficial owner, rather than to the beneficial owner, when the broker, dealer or municipal securities dealer has on file a written authorization for such documents to be sent to the investment advisor in lieu of the beneficial owner.

(iii) *Definitions*

(A) The terms "official communication to beneficial owners" and "official communication," as used in this section (g), mean any document or collection of documents pertaining to a specific issue or issues of municipal securities that both:

(1) is addressed to beneficial owners and was prepared or authorized by: (a) an issuer of municipal securities; (b) a trustee for an issue of municipal securities in its capacity as trustee; (c) a state or federal tax authority; or (d) a custody agent for a stripped coupon municipal securities program in its capacity as custody agent; and

(2) contains official information about such issue or issues including, but not limited to, notices concerning monetary or technical defaults, financial reports, material event notices, information statements, or status or review of status as to taxability.

Rule G-15 Interpretations

Interpretive Notice on Rule G-12 on Uniform Practice and Rule G-15 on Customer Confirmations

November 28, 1977

This notice addresses several questions that have arisen concerning Board rules G-12 and G-15. Board rule G-12 establishes uniform industry procedures for the processing, clearance, and settlement of transactions in municipal securities... Board rule G-15 requires municipal securities professionals to send written confirmations of transactions to customers, and specifies the information required to be set forth on the confirmation.

Settlement Dates

In order to establish uniform settlement dates for "regular way" transactions in municipal securities, rule G-12(b)(i)(B) de-fines the term "business day" as "a day recognized by the National Association of Securities Dealers, Inc. [the "NASD"] as a day on which securities transactions may be settled." The practice of the NASD has been to exclude from the category of "business day," any day widely designated as a legal bank holiday, and to notify the NASD membership accordingly. Such notices set forth the NASD's trade and settlement date schedules for periods which include a legal holiday.

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"Catastrophe" Call Features

Rules G-12 and G-15 require that confirmations of transactions set forth a "description of the securities, including at a minimum… if the securities are subject to redemption prior to maturity (callable)… an indication to such effect…" (paragraphs G-12(c)(v)(E) and G-15(a)(v)[*]). Both rules also require that in transactions in callable securities effected on a yield basis, dollar price must be shown and "the calculation of dollar price shall be to the lower of price to call or price to maturity" (paragraphs G-12(c)(v)(I) and G-15(a)(viii)[†]).

The references to "callable" securities and pricing to call in rules G-12 and G-15 do not refer to "catastrophe" call features, such as those relating to acts of God or eminent domain, which are beyond the control of the issuer of the securities.

[*] [Currently codified at rule G-15(a)(i)(C)(2)(a).]

[†] [Currently codified at rule G-15(a)(i)(A)(5).]

Interpretive Notice on Confirmation Requirements

March 25, 1980

Rule G-12(c)(v)(E) requires a municipal securities dealer to set forth on an inter-dealer confirmation a description of the securities which are the subject of the transaction, including "…in the case of revenue bonds the type of revenue, if necessary for a materially complete description of the securities…."

Rule G-15(a)(v)[*] imposes the identical requirement with respect to customer confirmations. The Board has recently received an inquiry regarding whether these provisions require confirmations of transactions in Los Angeles Department of Water and Power bonds to distinguish between bonds secured by revenues of the electric power system and bonds secured by revenues of the waterworks system.

The Board is of the view that, if securities of a particular issuer are secured by separate sources of revenue, the source of revenue of the securities involved in a transaction is a material element of the description of the securities which should be set forth on customer and inter-dealer confirmations. Confirmations of transactions in Los Angeles Department of Water and Power bonds must therefore indicate whether the securities are "electric revenue" or "water revenue" bonds.

[*] [Currently codified at rule G-15 (a)(i)(C)(1)(a).]

Interpretive Notice Concerning Confirmation Disclosure Requirements Applicable to Variable-Rate Municipal Securities

December 10, 1980

The Municipal Securities Rulemaking Board has recently received inquiries concerning the application of the Board's confirmation disclosure requirements, which are contained in Board rules G-12 and G-15, to municipal securities with variable or "floating" interest rates.

Rule G-12(c)(v)(E)[*] requires a municipal securities dealer to set forth on an inter-dealer confirmation a description of the securities which are the subject of the transaction, including the interest rate. Rule G-15(a)(i)(E)[*] imposes the same requirement with respect to customer confirmations. The Board is of the view that these provisions require that the security description appearing on customer and inter-dealer confirmations for securities with variable interest rates include a clear indication that the interest rates are variable or "floating."

The Board also notes that due to the variability of the interest rates on these securities, it is not possible to derive a yield to a future call or maturity date. Therefore, the Board has concluded that the provision of rule G-15 which requires that customer confirmations for transactions effected at a dollar price set forth the yield resulting from such dollar price is not applicable to transactions in variable-rate municipal securities.

[*] [Currently codified at rule G-15(a)(1)(B)(4).]

Notice Concerning "Zero Coupon" and "Stepped Coupon" Securities

April 27, 1982

The Municipal Securities Rulemaking Board has recently received inquiries concerning the application of the confirmation disclosure requirements of Board rules G-12 and G-15 to transactions in municipal securities with "zero coupons" or "stepped coupons." Certain recent new issues of municipal securities have had several maturities paying 0% interest; securities of these maturities are sold at deep discounts, with the investor's return received in the form of an accretion of this discount to par. Other issues have been sold which have "stepped coupons;" that is, all outstanding bonds pay the same interest rate each year, with the interest rate periodically rising, on a pre-established schedule, on all securities yet to be redeemed. Interested persons have inquired concerning how the description requirements of the rules apply to such securities, and whether the yield disclosure requirements of rule G-15 apply to confirmations of transactions in such securities for the accounts of customers.

Rule G-12(c)(v)(E) requires a municipal securities dealer to set forth on an inter-dealer confirmation a description of the securities which are the subject of the transaction, including the interest rate. Rule G-15(a)(i)(E)[*] imposes the same requirement with respect to customer confirmations. Further, rule G-15(a)(i)(I)(2)[†] requires that customer confirmations of transactions effected at dollar prices (except for transactions at par) state the lowest of the resulting yield to call, yield to par option, or yield to maturity.

A confirmation of a transaction in a "zero coupon" security must state that the interest rate on the security is "0%." A customer confirmation of such a transaction must state the lowest of the yield to call or yield to maturity resulting from the dollar price of the transaction.[1] The Board believes that

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the disclosure of the resulting yield is particularly important on such transactions, since it provides the only indication to the investor of the return he or she can expect from the investment.

A confirmation of a transaction in a "stepped coupon" security must state the interest rate currently being paid on the securities, and must identify the securities as "stepped coupon" securities. A customer confirmation of such a transaction must also state the lowest of the yield to call, yield to par option, or yield to maturity resulting from the dollar price of the transaction.[2] In view of the wide variation in the coupon interest rates that will be received over the life of a "stepped coupon" security, the Board believes that the disclosure of yield will assist customers in determining the actual return to be received on the investment.

In addition to the specific confirmation disclosure requirements of Board rules G-12 and G-15 discussed above, the Board is of the view that persons selling such securities to the public have an obligation to adequately disclose the special characteristics of such securities so as to comply with the Board's fair practice rules. For example, although the details of the increases to the interest rates on "stepped coupon" securities need not be provided on confirmations, such information is, of course, material information regarding the securities, and municipal securities dealers would be obliged to inform customers about this feature of the securities at or before the time of trade.

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[1] The Board notes that, upon the effectiveness of Board rule G-33, such yield must be computed on a basis that presumes semi-annual compounding.

[2] In the case of both "zero coupon" and "stepped coupon" securities, if the transaction is effected in a yield basis, the confirmation must show the yield price and the resulting dollar price, computed to the lowest of price to premium call, price to par option, or price to maturity.

[*] [Currently codified at rule G-15(a)(i)(B)(4).]

[†] [Currently codified at rule G-15 (a)(i)(A)(5).]

Notice Concerning Pricing to Call

December 10, 1980

Board rules G-12 on uniform practice and G-15 on customer confirmations set forth certain requirements concerning the computations of yields and dollar prices to premium call or par option features. Both rules currently require that, in the case of a transaction in callable securities effected on the basis of a yield price, the dollar price should be calculated to the lowest of the price to premium call, price to par option, or price to maturity. Further, confirmations of transactions on which the dollar price has been computed to a call or option feature must state the call date and price used in the computation. Amendments to rule G-15 which will become effective on October 1, 1981, generally require that confirmations of transactions in callable securities effected at a dollar price in excess of par must set forth the lowest of the yield to premium call, yield to par option, or yield to maturity resulting from such dollar price.[1]

Since the December 1977 effective dates of rule G-12 and G-15, the Board has received numerous inquiries concerning these provisions and their application to different issues of municipal securities. In view of the general interest in this subject, the Board is issuing this notice to provide guidance with respect to the general criteria to be used in selecting the appropriate call feature for yield or dollar price computations.

The requirement for the computation of dollar price to the lowest of price to premium call, par option, or maturity reflects the long-established practice of the industry in pricing transactions. This practice assures a customer that he or she will realize, at a minimum, the stated yield, even in the event that a call provision is exercised. The pending amendment to rule G-15, which requires the presentation of information concerning the lowest yield on confirmations of dollar price transactions, will provide investors with the equivalent information on these types of transactions.

In view of the variety of call provisions applicable to different kinds of municipal securities, there is often uncertainty concerning the selection of the appropriate call feature for use in the computation of yield or dollar price. Issues of municipal securities often have several different call features, ranging from calls associated with mandatory sinking fund requirements to optional calls from the proceeds of a refunding or funds in excess of debt service requirements. Certain issues have additional call provisions in the event that funds designated for specific purposes are not expended or obligations securing the issue are prepaid.[2] Most of the inquiries which the Board has received concerning the provisions of rules G-12 and G-15 focus on this question of selection of the call provisions to be used for computation purposes.

The Board is of the view that a distinction should be drawn between "in whole" call provisions, (*i.e.*, those under which all outstanding securities of a particular issue may be called) and "in part" call provisions (*i.e.*, those under which part of an issue, usually selected by lot or in inverse maturity or numerical order, may be called for redemption). The Board is of the view that for computation purposes only "in whole" calls should be used; sinking fund calls and other "in part" calls should not be used in making the computations required by rules G-12 and G-15.

Several inquiries have raised the question of which "in whole" call should be used in the case of issues which have more than one such call. The earlier call features of such issues are often subject to restrictions on the proceeds which may be used to redeem securities (*e.g.*, a restriction that only unexpended funds from the original issue may be used for redemption purposes). Since such call features operate as a practical matter as "in part" calls, the Board is of the view that the "in whole" call feature which would be exercised in the event of a refunding is the call feature which should generally be used for purposes of the computation of yields and dollar prices.

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Other concerned persons have inquired regarding the application of the "pricing to call" requirements in the case of an issue with a sequence of call dates at gradually declining premiums. The Board believes that, as a general matter, a trial computation to the first date on which a security is callable "in whole" at a premium will be sufficient to determine whether the price to the premium call is the lowest dollar price. However, in the rare instance where the price to an intermediate premium call (*i.e.*, a call in the "middle" of a sequence of calls at declining premiums) is the lowest dollar price, such price should be used. The Board notes that, in such cases, the structure of the call schedule is sufficiently unusual (*e.g.*, with sharp declines in the premium amount over a very short period of time) that dealers should be alerted to the need to take the intermediate calls into consideration.

[1] Effective December 1, 1980, customer confirmations of transactions in callable securities effected at a dollar price less than par must set forth the yield to maturity resulting from such dollar price. Confirmations of dollar-price transactions in non-callable securities, or securities which have been called or prerefunded, must set forth the resulting yield to maturity (or to the date for redemption of the securities, in the case of called or prerefunded securities).

[2] Other issues are also callable in the event that the financed project is damaged or destroyed, or the tax exempt status of the issue is revoked. Since the possibility of such a call being exercised is extremely remote, and beyond the control of the issuer of the securities, the Board does not believe that these "catastrophe" calls need be considered for computation purposes.

Interpretive Notice Concerning Yield Disclosure Requirements for Purchases from Customers

September 1, 1981

Certain amendments to Board rule G-15 on customer confirmations became effective on December 1, 1980. Among other matters, these amendments require that customer confirmations of transactions effected on the basis of dollar price, including confirmations of purchases from customers, set forth certain yield information concerning the transaction. Confirmations of dollar price transactions in non-callable securities, or in callable securities traded at prices below par, must set forth the yield to maturity resulting from the dollar price. Confirmations of dollar price transactions in securities which have been called or prerefunded must show the yield to the maturity date established by the call or prerefunding. Confirmations of transactions in callable securities traded at dollar prices in excess of par are exempt from yield disclosure requirements until October 1, 1981; after that date such confirmations must show the lowest of the yield to premium call, yield to par option, or yield to maturity resulting from such dollar price.[1]

Since the effective date of these amendments, the Board has received several inquiries as to whether all confirmations of purchases from customers, including purchases effected at a price derived from a yield price less a spread or concession, must show the yield resulting from the actual unit dollar price of the transaction.

The Board is of the view that all confirmations of purchases from customers (except for purchases at par) must set forth the net or effective yield resulting from the actual unit dollar price of the transaction. The yield disclosure on confirmations of purchases from customers is intended to provide customers with a means of assessing the merits of alternative investment strategies (such as different possible reinvestment transactions) and the merits of the particular transaction being confirmed. The Board believes that the disclosure of the net or effective yield (*i.e.*, that derived from the actual unit dollar price of the transaction) best serves these purposes.

[1] Confirmations of transactions effected at a dollar price of par ("100") continue to be exempt from any yield disclosure requirements.

Sending Confirmations to Customers Who Utilize Dealers to Tender Put Option Bonds

September 30, 1985

The Board has received inquiries whether a municipal securities dealer must send a confirmation to a customer when the customer utilizes the dealer to tender bonds pursuant to a put option. Board rule G-15(a)(i) requires dealers to send confirmations to customers at or before the completion of a transaction in municipal securities. The Board believes that whether a dealer that accepts for tender put bonds from a customer is engaging in "transactions in municipal securities" depends on whether the dealer has some interest in the put option bond.

In the situation in which a customer puts back a bond through a municipal securities dealer either because he purchased the bond from the dealer or he has an account with the dealer, and the dealer does not have an interest in the put option and has not been designated as the remarketing agent for the issue, there seems to be no "transaction in municipal securities" between the dealer and the tendering bondholder and no confirmation needs to be sent. The Board suggests, however, that it would be good industry practice to obtain written approval of the tender from the customer, give the customer a receipt for his bonds and promptly credit the customer's account. Of course, if the dealer actually purchases the security and places it in its trading account, even for an instant, prior to tendering the bond, a confirmation of this sale transaction should be sent.[1]

If a dealer has some interest in a put option bond which its customer has delivered to it for tendering, a confirmation must be sent to the customer. A dealer that is the issuer of a secondary market put option on a bond has an interest in the security and is deemed to be engaging in a municipal securities transaction if the bond is put back to it.

In addition, a remarketing agent, (*i.e.*, a dealer which, pursuant to an agreement with an issuer, is obligated to use its best efforts to resell bonds tendered by their owners pursuant to put options) who accepts put option bonds tendered by customers also is deemed to be engaging in a "transac-

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tion in municipal securities" with the customer for purposes of sending a confirmation to the customer because of the remarketing agent's interest in the bonds.[2] The Board's position on remarketing agents is based upon its understanding that remarketing agents sell the bonds that their customers submit for tendering, as well as other bonds tendered directly to the trustee or tender agent, pursuant to the put option. The customers and other bondholders, pursuant to the terms of the issue, usually are paid from the proceeds of the remarketing agents' sales activities.[3]

[1] This would apply equally in circumstances in which the dealer has an interest in the put option bond.

[2] Of course, remarketing agents also must send confirmations to those to whom they resell the bonds.

[3] If these funds are not sufficient to pay tendering bondholders, such bond-holders usually are paid from certain funds set up under the issue's indenture or from advances under the letter of credit that usually backs the put option.

Notice Concerning Confirmation Disclosure Requirements for Callable Municipal Securities

February 20, 1986

Recently, the Board has received inquiries concerning the application of its inter-dealer and customer confirmation rules, rules G-12(c) and G-15(a) respectively, to municipal securities subject to call features. In particular, the Board has been made aware of instances in which dealers note one call date and price, usually the first in-whole call, on inter-dealer and customer confirmations without noting that the call information relates to the first in-whole call or that the bonds are otherwise callable.

Rules G-12(c) and G-15(a) require that confirmations set forth a

> description of the securities, including… if the securities are… subject to redemption prior to maturity (callable)…, an indication to such effect…

Thus, municipal securities subject to in-whole or in-part calls must be described as callable. Rules G-12(c) and G-15(a) also require dealers, when securities transactions are effected on a yield basis, to set forth a dollar price that has been computed to the lowest of the price to call, price to par option, or price to maturity; rule G-15 requires that confirmations of customer transactions effected on a dollar price disclose a yield in a similar manner. These rules provide that when a price or yield is calculated to a call, this must be stated, and the call date and price used in the calculation must be shown.[1] These are the only instances in which specific call features must be identified on a confirmation.

The Board understands that confusion may arise when specific call features are noted on confirmations without an adequate description of such information. The Board has determined that confirmations that include specific call information not required to be included under the Board's confirmation rules also must include a notation that other call features exist and must provide clarifying information about the noted call, *e.g.* "first in-whole call." These disclosures should be sufficient to ensure that purchasing dealers and customers will be alerted to the need to obtain additional information.

The Board cautions dealers to ensure that confirmations of municipal securities with call features clearly describe the securities as "callable." If this information is erroneously noted on the confirmation, purchasing dealers have the right to reclaim the securities under rule G-12(g)(iii)(C)(3).

[1] In addition, rule G-15(a)(iii)(D)[currently codified at rule G-15(a)(i)(C)(2)(a)] requires a legend to be placed on customer confirmations of transactions in callable securities which notes that "[additional] call features ... exist... [that may] affect yield; complete information will be provided upon request." **[Note: Revised to reflect subsequent amendments.]**

Notice Concerning Confirmation, Delivery and Reclamation of Interchangeable Securities

August 10, 1988

In March 1988, the Securities and Exchange Commission approved amendments to rules G-12 and G-15 concerning municipal securities that may be issued in bearer or registered form (interchangeable securities).[1] These amendments will become effective for transactions executed on or after September 18, 1988. The amendments revise rules G-12(e) and G-15(c) to allow inter-dealer and customer deliveries of interchangeable securities to be either in bearer or registered form, ending the presumption in favor of bearer certificates for such deliveries. The amendments also delete the provision in rule G-12(g) that allows an inter-dealer delivery of interchangeable securities to be reclaimed within one day if the delivery is in registered form. In addition, the amendments remove the provisions in rules G-12(c) and G-15(a) that require dealers to disclose on inter-dealer and customer confirmations that securities are in registered form.

The Board has received inquiries on several matters concerning the amendments and is providing the following clarifications and interpretive guidance.

Deliveries of Interchangeable Securities

Several dealers have asked whether the amendments apply to securities that can be converted from bearer to registered form, but that cannot then be converted back to bearer form. These securities are "interchangeable securities" because they originally were issuable in either bearer or registered form. Therefore, under the amendments, physical deliveries of these certificates may be made in either bearer or registered form, unless a contrary agreement has been made by the parties to the transaction.[2]

The Board also has been asked whether a mixed delivery of bearer and registered certificates is permissible under the amendments. Since the amendments provide that either bearer

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or registered certificates are acceptable for physical deliveries, a delivery consisting of bearer and registered certificates also is an acceptable delivery under the amendments.

Fees for Conversion

Transfer agents for some interchangeable securities charge fees for conversion of registered certificates to bearer form. Dealers should be aware that these fees can be substantial and, in some cases, may be prohibitively expensive. Dealers, therefore, should ascertain the amount of the fee prior to agreeing to deliver bearer certificates. A dealer may pass on the costs of converting registered securities to bearer form to its customer. In such a case, the dealer must disclose the amount of the conversion fee to the customer at or prior to the time of trade, and the customer must agree to pay it.[3] In addition, rule G-15(a)(iii)(J)[*] requires that the dealer note such an agreement (including the amount of the conversion fee) on the confirmation.[4] The conversion fee, however, should not be included in the price when calculating the yield shown on the confirmation.[5] In collecting this fee, the dealer merely would be passing on the costs imposed by a third party, voluntarily assumed by the customer, relating to the form in which the securities are held. The conversion fee thus is not a necessary or intrinsic cost of the transaction for purposes of yield calculation.[6]

Continued Application of the Board's Automated Clearance Rules

The Board's automated clearance rules, rules G-12(f) and G-15(d), require book-entry settlements of certain inter-dealer and customer transactions.[7] The amendments on interchangeable securities address only physical deliveries of certificates and, therefore, apply solely to transactions that are not required to be settled by book-entry under the automated clearance rules.

When a physical delivery is permitted under Board rules (*e.g.*, because the securities are not depository eligible), dealers may agree at the time of trade on the form of certificates to be delivered. When such an agreement is made, this special condition must be included on the confirmation, as required by rules G-12(c)(vi)(I) and G-15(a)(iii)(J).[8] [*] Dealers, however, may not enter into an agreement providing for a physical delivery when book-entry settlement is required under the automated clearance rules, as this would result in a violation of the automated clearance rules.[9]

Need for Education of Customers on Benefits of Registered Securities

Dealers should begin planning as soon as possible any internal or operational changes that may be needed to comply with the amendments. The Depository Trust Company (DTC) has announced plans for a full-scale program of converting interchangeable securities now held in bearer form to registered form beginning on September 18, 1988.[10] When possible, DTC plans to retain a small supply of bearer certificates in interchangeable issues to accommodate withdrawal requests for bearer certificates.[11] The general effect of the amendments and DTC's policy, however, will make it difficult for dealers, in certain cases, to ensure that their customers will receive bearer certificates. Dealers should educate customers who now prefer bearer certificates on the call notification and interest payment benefits offered by registered certificates and dealer safekeeping and advise them when it is unlikely that bearer certificates can be obtained in a particular transaction. Dealers safekeeping municipal securities through DTC on behalf of such customers also may wish to review with those customers DTC's new arrangements for interchangeable securities.

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1 *See* SEC Release No. 34-25489 (March 18, 1988); MSRB Reports Vol. 8, no. 2 (March 1988), at 3.

2 The amendments should substantially reduce delays in physical deliveries that result because of dealer questions about whether specific certificates should be in bearer form. This efficiency would be impossible if these "one-way" interchangeable securities were excluded from the amendments since dealers would be required to determine, for each physical delivery of registered securities, whether the securities are "one-way" interchangeable securities.

3 Rule G-17, on fair dealing, requires dealers to disclose all material facts about a transaction to a customer at or before the time of trade. In many cases, the conversion fee is as much as $15 for each bearer certificate. The Board also has been made aware of some cases in which the transfer agent must obtain new printing plates or print new bearer certificates to effect a conversion. The conversion costs then may be in excess of several hundred or a thousand dollars. Therefore, it is important that the customer be aware of the amount of the conversion costs prior to agreeing to pay for them.

4 This rule requires that, in addition to any other information required on the confirmation, the dealer must include "such other information as may be necessary to ensure that the parties agree on the details of the transaction."

5 Rule G-15(a)(i)(I) [currently codified at rule G-15(a)(i)(A)(5)] requires the yield of a customer transaction to be shown on the confirmation.

6 Some customers, for example, may ask dealers to convert registered securities to bearer form even though the customers also may be willing to accept registered certificates if this is more economical.

7 Rule G-12(f)(ii) requires book-entry settlement of an inter-dealer municipal securities transaction if both dealers (or their clearing agents for the transaction) are members of a depository making the securities eligible and the transaction is compared through a registered securities clearing agency. Rule G-15(d)(iii) requires book-entry settlement of a customer transaction if the dealer grants delivery versus payment or receipt versus payment privileges on the transaction and both the dealer and the customer (or the clearing agents for the transaction) are members of a depository making the securities eligible.

8 These rules require that, in addition to the other information required on interdealer and customer confirmation, confirmations must include "such other information as may be necessary to ensure that the parties agree to the details of the transaction."

9 Of course, dealers may withdraw physical certificates from a depository once a book-entry delivery is accepted.

10 DTC expects this conversion process to take approximately two years. Midwest Securities Trust Company and The Philadelphia Depository Trust Company have not yet announced their plans with regard to interchangeable securities.

11 DTC Notice to Participants on Plans for Comprehensive Conversion of Interchangeable Municipal Bonds to the Registered Form (August 10, 1988).

[*] [Currently codified at rule G-15(a)(i)(A)(8).]

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Notice Concerning Stripped Coupon Municipal Securities

March 13, 1989

In 1986, several municipal securities dealers began selling ownership rights to discrete interest payments, principal payments or combinations of interest and principal payments on municipal securities. In 1987, the Board asked the Securities and Exchange Commission staff whether these "stripped coupon" instruments are municipal securities for purposes of the Securities Exchange Act and thus are subject to Board rules. On January 19, 1989, the staff of the Division of Market Regulation of the Commission issued a letter stating that, subject to certain conditions, these instruments are municipal securities for purposes of Board rules (SEC staff letter).

The Board is providing the following guidance on the application of its rules to transactions in stripped coupon instruments defined as municipal securities in the SEC staff letter (stripped coupon municipal securities). Questions whether other stripped coupon instruments are municipal securities and questions concerning the SEC staff letter should be directed to the Commission staff.

Background

A dealer sponsoring a stripped coupon municipal securities program typically deposits municipal securities (the underlying securities) with a barred custodian. Pursuant to a custody agreement, the custodian separately records the ownership of the various interest payments, principal payments, or specified combinations of interest and principal payments. One combination of interest and principal payments sometimes offered is the "annual payment security," which represents one principal payment, with alternate semi-annual interest payments. This results in an annual interest rate equal to one-half the original interest rate on the securities.[1] Stripped coupon municipal securities are marketed under trade names such as Municipal Tax Exempt Investment Growth Receipts (Municipal TIGRs), Municipal Receipts (MRs), and Municipal Receipts of Accrual on Exempt Securities (MUNI RAES).

Application of Board Rules

In general, the Board's rules apply to transactions in stripped coupon municipal securities in the same way as they apply to other municipal securities transactions. The Board's rules on professional qualifications and supervision, for example, apply to persons executing transactions in the securities the same as any other municipal security. The Board's rules on recordkeeping, quotations, advertising and arbitration also apply to transactions in the securities. Dealers should be aware that rule G-19, on suitability of recommendations, and rule G-30, on fair pricing, apply to transactions in such instruments.

The Board emphasizes that its rule on fair dealing, rule G-17, requires dealers to disclose to customers purchasing stripped coupon municipal securities all material facts about the securities at or before the time of trade. Any facts concerning the underlying securities which materially affect the stripped coupon instruments, of course, must be disclosed to the customer. The Board understands that some stripped coupon municipal securities are sold without any credit enhancement to the underlying municipal securities. As pointed out in the SEC staff letter, dealers must be particularly careful in these cases to disclose all material facts relevant to the creditworthiness of the underlying issue.

Confirmation Requirements

Dealers generally should confirm transactions in stripped coupon municipal securities as they would transactions in other municipal securities that do not pay periodic interest or which pay interest annually.[2] A review of the Board's confirmation requirements applicable to the securities follows.

Securities Descriptions. Rules G-12(c)(v)(E) and G-15(a)(i)(E)[*] require a complete securities description to be included on inter-dealer and customer confirmations, respectively, including the name of the issuer, interest rate and maturity date.[3] In addition to the name of the issuer of the underlying municipal securities, the trade name and series designation assigned to the stripped coupon municipal security by the dealer sponsoring the program must be included on the confirmation.[4] Of course, the interest rate actually paid by the stripped coupon security (*e.g.*, zero percent or the actual, annual interest rate) must be stated on the confirmation rather than the interest rate on the underlying security.[†] Similarly, the maturity date listed on the confirmation must be the date of the final payment made by the stripped coupon municipal security rather than the maturity date of the underlying securities.[5]

Credit Enhancement Information. Rules G-12(c)(vi)(D) and G-15(a)(ii)(D)[‡] require confirmations of securities prerefunded to a call date or escrowed to maturity to state this fact along with the date of maturity set by the advance refunding and the redemption price. If the underlying municipal securities are advance-refunded, confirmations of the stripped coupon municipal securities must note this. In addition, rules G-12(c)(v)(E) and G-15(c)(i)(E)[#] require that the name of any company or other person, in addition to the issuer, obligated directly or indirectly with respect to debt service on the underlying issue or the stripped coupon security be included on confirmations.[6]

Quantity of Securities and Denominations. For securities that mature in more than two years and pay investment return only at maturity, rules G-12(c)(v) and G-15(a)(v)[**] require the maturity value to be stated on confirmations in lieu of par value. This requirement is applicable to transactions in stripped coupon municipal securities over two years in maturity that pay investment return only at maturity, *e.g.*, securities representing one interest payment or one principal payment. For securities that pay only principal and that are pre-refunded at a premium price, the principal amount may be stated as the transaction amount, but the maturity value must be clearly

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noted elsewhere on the confirmation. This will permit such securities to be sold in standard denominations and will facilitate the clearance and settlement of the securities.

Rules G-12(c)(vi)(F) and G-15(a)(iii)(G)[††] require confirmations of securities that are sold or that will be delivered in denominations other than the standard denominations specified in rules G-12(e)(v) and G-15(a)(iii)(G)[††] to state the denominations on the confirmation. The standard denominations are $1,000 or $5,000 for bearer securities, and for registered securities, increments of $1,000 up to a maximum of $100,000. If stripped coupon municipal securities are sold or will be delivered in any other denominations, the denomination of the security must be stated on the confirmation.

Dated Date. Rules G-12(c)(vi)(A) and G-15(a)(iii)(A)[***] require that confirmations state the dated date of a security if it affects price or interest calculations, and the first interest payment date if other than semi-annual. The dated date for purposes of an interest-paying stripped coupon municipal security is the date that interest begins accruing to the custodian for payment to the beneficial owner. This date, along with the first date that interest will be paid to the owner, must be stated on the confirmation whenever it is necessary for calculation of price or accrued interest.

Original Issue Discount Disclosure. Rules G-12(c)(vi)(G) and G-15(a)(iii)(H)[†††] require that confirmations identify securities that pay periodic interest and that are sold by an underwriter or designated by the issuer as "original issue discount." This alerts purchasers that the periodic interest received on the securities is not the only source of tax-exempt return on investment. Under federal tax law, the purchaser of stripped coupon municipal securities is assumed to have purchased the securities at an "original issue discount," which determines the amount of investment income that will be tax-exempt to the purchaser. Thus, dealers should include the designation of "original issue discount" on confirmations of stripped coupon municipal securities, such as annual payment securities, which pay periodic interest.

Clearance and Settlement of Stripped Coupon Municipal Securities

Under rules G-12(e)(vi)(B) and G-15(a)(iv)(B), delivery of securities transferable only on the books of a custodian can be made only by the bookkeeping entry of the custodian.[7] Many dealers sponsoring stripped coupon programs provide customers with "certificates of accrual" or "receipts," which evidence the type and amount of the stripped coupon municipal securities that are held by the custodian on behalf of the beneficial owner. Some of these documents, which generally are referred to as "custodial receipts," include "assignment forms," which allow the beneficial owner to instruct the custodian to transfer the ownership of the securities on its books. Physical delivery of a custodial receipt is not a good delivery under rules G-12(e) and G-15(a) unless the parties specifically have agreed to the delivery of a custodial receipt. If such an agreement is reached, it should be noted on the confirmation of the transaction, as required by rules G-12(c)(v)(N) and G-15(a)(i)(N)[****].

The Board understands that some stripped coupon municipal securities that are assigned CUSIP numbers and sold in denominations which are multiples of $1,000 are eligible for automated comparison and automated confirmation/affirmation and that some of these instruments also are eligible for book-entry delivery through registered securities depositories. The Board reminds dealers that transactions in stripped coupon municipal securities are subject to the automated clearance requirements of rules G-12(f) and G-15(d) if they are eligible in the automated clearance systems. Dealers sponsoring stripped coupon programs also should note that rule G-34(b)(ii) requires CUSIP numbers to be assigned to stripped coupon municipal securities prior to the initial sale of the securities to facilitate clearance and settlement.

Written Disclosures in Connection with Sales of Stripped Coupon Municipal Securities

Dealers sponsoring stripped coupon municipal securities programs generally prepare "offering circulars" or "offering memoranda" describing the securities that have been placed on deposit with the custodian, the custody agreement under which the securities are held, and the tax treatment of transactions in the securities. These documents generally are provided to all customers purchasing the securities during the initial offering of the instruments. The Board strongly encourages all dealers selling stripped coupon municipal securities to provide these documents to their customers whether the securities are purchased during the initial distribution or at a later time.[8] Although the material information contained in these documents, under rule G-17, must be disclosed to customers orally if not provided in writing prior to the time of trade, the Board believes that the unusual nature of stripped coupon municipal securities and their tax treatment warrants special efforts to provide written disclosures. Moreover, if stripped coupon municipal securities are marketed during the underwriting period of the underlying issue, rule G-32 requires distribution of the official statement for the underlying issue prior to settlement of the transaction of the stripped coupon municipal securities.

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[1] The Board understands that other types of stripped coupon municipal securities also may be offered with combinations of interest and principal payments providing an interest rate different than the original interest rate of the securities.

[2] Thus, for stripped coupon municipal securities that do not pay periodic interest, rules G-12(c)(v) and G-15(a)(v) require confirmations to state the interest rate as zero and, for customer confirmations, the inclusion of a legend indicating that the customer will not receive periodic interest payments. [See current rule G-15(a)(vi)(D), G-15(a)(i)(B)(4)(a) and G-15(a)(i)(D)(1).] Rules G-12(c)(vi)(H) and G-15(a)(iii)(I) [currently codified at rule G-15(a)(i)(C)(2)(e)] require confirmations of securities paying annual interest to note this fact.

[3] The complete description consists of all of the following information: the name of the issuer, interest rate, maturity date, and if the securities are limited tax, subject to redemption prior to maturity (callable), or revenue

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bonds, an indication to such effect, including in the case of revenue bonds the type of revenue, if necessary for a materially complete description of the securities and in the case of any securities, if necessary for a materially complete description of the securities, the name of any company or other person in addition to the issuer obligated, directly or indirectly, with respect to debt service or, if there is more than one such obligor, the statement, "multiple obligors" may be shown.

[4] Trade name and series designation is required under rules G-12(c)(vi)(l) and G-15(a)(iii)(J) [currently codified at rule G-15(a)(i)(A)(8)], which state that confirmations, must include all information necessary to ensure that the parties agree to the details of the transaction. [*See also* current rule G-15(a)(i)(B)(1)(a).]

[5] Therefore, the maturity date of a stripped coupon municipal security representing one interest payment is the date of the interest payment. [*See* current rule G-15(a)(i)(B)(3)(a).]

[6] It should be noted that the SEC staff letter is limited to instruments in which "neither the custodian nor sponsor additionally will guarantee or otherwise enhance the creditworthiness of the underlying municipal security or the stripped coupon security."

[7] Under rules G-12(c)(vi)(B) and G-15(a)(iii)(B) [currently codified at rule G-15(a)(i)(C)(2)(d)] the book-entry-only nature of the securities also must be noted on the confirmation.

[8] The Board understands that these documents generally are available from the dealers sponsoring the stripped coupon municipal securities program.

[*] [Currently codified at rule G-15(a)(i)(B).]

[†] [Currently codified at rule G-15(a)(i)(B)(4)(e).]

[‡] [Currently codified at rule G-15(a)(i)(C)(3)(c).]

[#] [Currently codified at rule G-15(a)(i)(C)(1)(b).]

[**] [Currently codified at rule G-15(a)(i)(A)(3).]

[††] [Currently codified at rule G-15(a)(i)(A)(7)(b).]

[***] [Currently codified at rule G-15(a)(i)(B)(5).]

[†††] [Currently codified at rule G-15(a)(i)(C)(4)(c).]

[****] [Currently codified at rule G-15(a)(i)(A)(7)(c).]

Notice Concerning Confirmation Disclosure of Miscellaneous Transaction Charges

May 14, 1990

In recent months, several dealers have requested guidance from the Board on the appropriate confirmation treatment of miscellaneous charges added to customer transactions. These inquiries typically relate to small amounts which some dealers add to the combined extended principal and accrued interest of a transaction, prior to arriving at the final monies.[1] In some cases, the charges are levied for specific services provided as part of the transaction (*e.g.*, special delivery arrangements, delivery of physical securities, delivery vs. payment settlement). In other cases, dealers may charge a flat fee characterized simply as a "transaction fee." These miscellaneous fees differ from the commissions charged on agency transactions in that they are flat amounts and are not computed from the par value of the transaction.

Rule G-15(a)(iii)(J)[*] requires each customer confirmation to include, in addition to the specific items noted in G-15(a), "such other information as may be necessary to ensure that the parties agree to the details of the transaction." Accordingly, the nature and amount of miscellaneous charges must be noted on the confirmation.[2]

Questions have arisen whether miscellaneous transaction fees also should be reflected in the yield required to be disclosed on the confirmation under rule G-15(a)(i)(l).[3] The Board does not believe that it is appropriate for these fees to be incorporated in the stated yield. Because such fees are small, they generally will not significantly affect a customer's return on investment. To the extent that the minor miscellaneous fees charged in today's market may be relevant to the customer's investment decision, the Board believes that a clear disclosure of the nature and amount of the fee on the confirmation will provide customers with sufficient information. If the practice of charging that the fees routinely begin to represent significant factors in customers' return on investment, the Board may reconsider this interpretation in favor of placing the charges in the stated yield.

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[1] In purchases from customers, such transaction charges may be subtracted from the monies owed the customer.

[2] The Board also has considered questions relating to periodic charges, such as monthly charges for safekeeping. A dealer assessing periodic charges to customer accounts, of course, must reach agreement with the customer on the nature and extent of the charges and the services that will be provided in return. However, since periodic charges do not relate to a specific transaction and may change over time, a dealer's policy on periodic charges is not required on the confirmation as a "detail of the transaction."

[3] [Currently codified at rule G-15(a)(i)(A)(8)] Commissions charged on agency transactions must be included in the yield calculation. *See* [Rule G-15 Interpretive Letter — Agency transactions: yield disclosures] MSRB interpretation of July 13,1984, *MSRB Manual* 3571,33 at 4528. This has led dealers to ask whether miscellaneous transaction charges should be handled in a similar manner. As noted above, the Board does not believe that miscellaneous charges should be handled in the same manner as commissions.

[*] [Currently codified at rule G-15(a)(i)(A)(8).]

Notice Concerning Transactions in Municipal Collateralized Mortgage Obligations: Rule G-15

April 8, 1992

The Board has become aware that some municipal issuers recently have issued securities that are structured as collateralized mortgage obligations (CMOs). Like the CMOs issued by nonmunicipal issuers, these securities represent interest in pools of mortgages and are partitioned into several classes (or tranches), which are serialized as to priority for redemption and payment of principal.

Since these "municipal CMOs" are being issued directly by political subdivisions, agencies or instrumentalities of state or local governments, it appears that they may be "municipal securities," as that term is defined under section 3(a)(29) of the Securities Exchange Act of 1934.[1] Although the interest paid on these instruments may be subject to federal taxation, the Board reminds dealers that transactions in municipal securities are subject to Board rules whether those securities are taxable or tax-exempt. Accordingly, dealers executing

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transactions in municipal CMOs should ensure that they are in compliance with all applicable Board rules. For example, dealers should ensure that all Board requirements regarding professional qualifications and record-keeping are observed.[2]

Because the interest and principal payment features of municipal CMOs are very different from those of traditional municipal bonds, dealers should take care to ensure that all Board rules designed for the protection of customers are observed. This includes ensuring that: (i) all material facts about each transaction are disclosed to the customer, in compliance with rule G-17; (ii) each transaction recommended to a customer is suitable for the customer, in compliance with rule G-19; and (iii) the price of each customer transaction is fair and reasonable, in compliance with rule G-30. With respect to the material facts that should be disclosed to customers, dealers should ensure that customers are adequately informed of the likelihood of "prepayment" of principal on the securities and the likelihood of the securities being redeemed substantially prior to the stated maturity date. If the amount of principal that will be delivered to the customer differs from the "face" amount to be delivered, the customer also should be informed of this fact, along with the amount of the principal that will be delivered.

The Board also has reviewed the requirements of rule G-15(a)(i)(l)[*] with respect to confirmation disclosure of "yield to maturity" or "yield to call" on customer confirmations in these securities. Because CMOs typically pay principal to holders prior to maturity and because the actual duration of the securities often varies significantly from the stated maturity, the Board has interpreted rule G-15(a) not to require a statement of yield for transactions in municipal CMOs. A dealer that decides to voluntarily include a statement of "yield" on a confirmation for these securities must also disclose on the confirmation the method by which yield was computed. This will help to avoid the possibility of the customer misunderstanding the yield figure if he should use it to compare the merits of alternative investments.

The Board will be monitoring municipal CMOs and will adopt specific rules for the instruments in the future if this appears to be necessary.

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[1] Of course, whether any instrument is a municipal security is a matter to be determined by the Securities and Exchange Commission.

[2] In addition, as noted above, the interest paid on these instruments may be subject to federal taxation. If the securities are identified by the issuer or sold by the underwriter as subject to federal taxation, rules G-12(c) and G-15(a) require confirmations to contain a designation to that effect.

[*] [Currently codified at rule G-15(a)(i)(A)(5).]

Notice Concerning Use of the OASYS Global Trade Confirmation System to Satisfy Rule G-15(a)

June 6, 1994

Rule G-15(a) requires that, at or before the completion of a transaction in municipal securities with or for the account of a customer, each broker, dealer or municipal securities dealer (dealers) shall give or send to the customer "a written confirmation of the transaction" containing specified information. Securities Exchange Act Rule 10b-10 states similar confirmation requirements for customer transactions in securities other than municipal securities. In December 1992, Thomson Financial Services, Inc. (Thomson) asked the Securities and Exchange Commission (Commission) to allow dealers to use Thomson's OASYS Global system for delivering confirmation under Rule 10b-10. In October 1993, the Commission staff provided Thomson with a "no-action" letter stating that, if OASYS Global system participants agree between themselves to use the system's electronic "contract confirmation messages" (CCMs) instead of hard-copy confirmations and if certain other requirements are met[1] the Commission staff would not recommend enforcement action to the Commission if broker-dealers rely on CCMs sent through the OASYS Global system to satisfy the requirements to confirm a transaction under Rule 10b-10.[2]

Thomson has asked the Board for an interpretation of rule G-15(a) that would allow dealers to use the OASYS Global system for municipal securities transactions to the same extent as dealers are allowed to use the system to comply with Rule 10b-10. The Board believes that the speed and efficiencies offered by electronic confirmation delivery are of benefit to the municipal securities industry, especially in light of the move to T+3 settlement. Therefore, the Board has interpreted the requirement in rule G-15(a) to provide customers with a written confirmation to be satisfied by a CCM sent through the OASYS Global system when the following conditions are met: (i) the customer and dealer have both agreed to use the OASYS Global system for purposes of confirmation delivery; (ii) the CCM includes all information required by rule G-15(a); and (iii) all other applicable requirements and conditions concerning the OASYS Global system expressed in the Commission's October 8, 1993 no-action letter concerning Securities Exchange Act Rule 10b-10 continue to be met.[3]

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[1] The other requirements contained in the Commission's no-action letter are as follows: (i) that the CCMs can be printed or downloaded by the participants, (ii) that the recipient of a CCM must respond through the system affirming or rejecting the trade, (iii) that the CCMs will not be automatically deleted by the system, and (iv) that the use of the system by the participants ensures that both parties to the transaction have the capacity to receive the CCMs.

[2] The Commission's October 8, 1993 no-action letter is reprinted in *MSRB Reports*, Vol. 14, No. 3 (June 1994) at 38-39.

[3] The Board understands that Thomson's OASYS Global system is not at this time a registered securities clearing agency and is not linked with other registered securities clearing agencies for purposes of automated confirmation/acknowledgement required under rule G-15(d). Thus, under these circumstances, use of the OASYS Global system will not constitute compliance with rule G-15(d) on automated confirmation/acknowledgement.

Notice Concerning Flat Transaction Fees

June 13, 2001

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The MSRB has received inquiries regarding an interpretation of rule G-15(a) from dealers who offer automated execution of transactions and charge a small, flat "transaction fee" per transaction. These dealers asked whether a $15.00 flat fee qualifies as a miscellaneous transaction charge.

Rule G-15(a) sets out confirmation requirements for transactions with customers and specifies that dealers include a yield on the confirmation. In computing yield, G-15(a)(i)(A)(5)(c)(iii) states that such "computations shall take into account … commissions charged to the customer … but shall not take into account incidental transaction fees or miscellaneous charges, provided, however, that … such fees or charges [are] indicated on the confirmation."

In a May 14, 1990 Notice Concerning Confirmation Disclosure of Miscellaneous Transaction Charges,[1] the MSRB reminded dealers that clear disclosure of the nature and amount of miscellaneous fees is required. The notice stated that these fees should not be incorporated into the stated yield because they are small and do not significantly affect a customer's return on investment, as shown in the yield. The notice also stated that miscellaneous fees differ from commissions because they are flat amounts, and, unlike the common practice used in computing commissions for agency transactions, are not related to the par value of the transaction.

The dealers who contacted the MSRB will charge a flat transaction fee of $15.00 for trades executed through an automated trading system. Since this fee is relatively small and unrelated to the par value of the transaction, the MSRB believes that the transaction fee should be considered a miscellaneous transaction fee. Therefore the fee would not have to be incorporated into the stated yield, but would need to be separately disclosed on the confirmation.

[1] *See* Rule G-15 Interpretation Notice Concerning Confirmation Disclosure of Miscellaneous Transaction Charges, May 14, 1990, *MSRB Rule Book* (January 1, 2001) at 108.

Build America Bonds: Reminder of Customer Confirmation Yield Disclosure Requirement

August 25, 2009

On April 24, 2009, the Municipal Securities Rulemaking Board (MSRB) published a notice clarifying that "Build America Bonds" and other tax credit bonds are municipal securities and, therefore, subject to MSRB rules.[1] The MSRB understands that many of these securities contain certain redemption provisions, such as mandatory pro rata sinking funds, and that brokers, dealers and municipal securities dealers (collectively "dealers") frequently effect transactions on a basis of "yield to average life." The MSRB reminds dealers that, for transactions effected on the basis of "yield to average life," Rule G-15(a), on customer confirmations, requires the confirmation to display that yield as well as the yield computed to the lower of an "in whole" call or maturity.

Rule G-15(a)(i)(A)(5) states requirements for dealers to calculate and display yields and dollar prices on customer confirmations. For transactions effected on the basis of yield to maturity, call or put date, the yield at which the transaction was effected as well as a dollar price computed to the lower of an "in whole" call or maturity are required to be shown on a confirmation. Similarly, for transactions effected on the basis of a dollar price, the dollar price at which the transaction was effected along with a yield computed to the lower of an "in whole" call or maturity are required to be shown on a confirmation.

Sinking funds do not represent "in whole" call features. Accordingly, MSRB confirmation requirements do not require dealers to compute yield or dollar price to a sinking fund call date or to compute a "yield to average life" using multiple sinking fund dates. However, dealers should note that if the computed yield otherwise required by Rule G-15(a)(i)(A)(5) is different than the yield at which the transaction was effected, Rule G-15(a)(i)(A)(5)(vii) provides that both the computed yield and the yield at which the transaction was effected must be shown on the confirmation. Therefore, when a transaction is effected on the basis of "yield to average life," such yield must be displayed on a customer confirmation.

[1] *See* MSRB Notice 2009-15.

Use of Electronic Confirmations Produced by a Clearing Agency or Qualified Vendor to Satisfy the Requirements of Rule G-15(a)

September 15, 2009

MSRB Rule G-15 provides confirmation, clearance, settlement and other uniform practice requirements with respect to transactions with customers. Rule G-15(a) requires that, at or before the completion of a transaction in municipal securities with or for the account of a customer, each broker, dealer or municipal securities dealer (collectively "dealer") give or send to the customer "a written confirmation of the transaction" containing the information specified by the rule. Rule 15(d) provides additional uniform practice requirements for transactions executed with customers on a payment for securities received ("RVP") or delivery against payment of securities sold ("DVP") basis (collectively, "DVP/RVP"). In addition to the specific uniform practice requirements of this section, Rule G-15(d)(i)(c) expressly provides that dealers executing DVP/RVP transactions must comply with the requirements of section (a) of the rule pertaining to customer confirmations. Rule G-15(d) also requires dealers that transact with customers on a DVP/RVP basis to use the facilities of a Clearing Agency or Qualified Vendor, as defined in Rule G-15(d)(ii)(B), for automated confirmation and acknowledgement of the transaction.

Securities Exchange Act Rule 10b-10, on customer confirmations of non-municipal securities transactions, provides for confirmation requirements that are similar to Rule G-15(a). Several providers of automated confirmation and acknowl-

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edgement services have received no-action letters from the Securities and Exchange Commission ("SEC") staff that allow their dealer clients to rely on the confirmations they produce to satisfy dealer confirmation delivery obligations to certain customers under SEC Rule 10b-10 where the disclosures customarily provided on the back of paper confirmations are provided electronically using a uniform resource locator ("URL") link.[1] One of the service providers that received a no-action letter, as described above, permitting it to use URL links for its dealer clients, has requested an interpretation of Rule G-15(a) to allow dealers to rely on confirmations produced by this service provider to the same extent as dealers are allowed to use the confirmations produced by the service providers to comply with SEC Rule 10b-10.

In a 1994 Interpretive Notice, the MSRB recognized that the speed and efficiencies offered by electronic confirmation delivery are of benefit to the municipal securities industry.[2] Therefore, the MSRB has interpreted the requirement in Rule G-15(a) to provide a customer with a written confirmation to be satisfied by an electronic confirmation for DVP/RVP transactions sent by a Clearing Agency or Qualified Vendor, as defined in MSRB Rule G-15(d)(ii)(B), where disclosures customarily provided on the back of paper confirmations are provided electronically using a URL link when the following conditions are met: (i) the confirmation sent includes all of the information required by Rule G-15(a); and (ii) all of the requirements and conditions concerning the use of the electronic confirmation service expressed in applicable SEC no-action letters concerning SEC Rule 10b-10 continue to be met.

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[1] *See*, *e.g.*, letter from Paula R. Jenson, Deputy Chief Counsel, SEC, to Norman Reed, General Counsel, Omgeo LLC (March 12, 2008).

[2] *See* Rule G-15 Interpretation Notice Concerning Use of the OASYS Global Trade Confirmation System to Satisfy Rule G-15(a), June 6, 1994, MSRB Rulebook (January 1, 2009) at 138.

See also:

Rule G-12 Interpretations — Notice of Interpretation of Rules G-12(e) and G-15(c) on Deliveries of Called Securities — Definition of "Publication Date," October 20, 1986.

- **Notice on Determining Whether Transactions are Inter-Dealer or Customer Transactions: Rules G-12 and G-15,** May 1988.

Rule G-17 Interpretations — Altering the Settlement Date on Transactions in "When-Issued" Securities, February 26, 1985.

- **Notice Concerning the Application of Board Rules to Put Option Bonds,** September 30, 1985.
- **Notice of Interpretation on Escrowed-to-Maturity Securities: Rules G-17, G-12 and G-15,** September 21, 1987.
- **Educational Notice on Bonds Subject to "Detachable" Call Features,** May 13, 1993.
- **Bond Insurance Ratings — Application of MSRB Rules,** January 22, 2008.

Rule G-32 Interpretation — Notice Regarding Electronic Delivery and Receipt of Information by Brokers, Dealers and Municipal Securities Dealers, November 20, 1998.

Confirmation Disclosure and Prevailing Market Price Guidance: Frequently Asked Questions

March 19, 2018

Effective May 14, 2018, amendments to MSRB Rule G-15 require dealers to disclose additional information on retail customer confirmations for a specified class of principal transactions, including the dealer's mark-up or mark-down as determined from the prevailing market price (PMP) of the security. Dealers generally also are required to disclose on retail customer confirmations the time of execution and a security-specific URL to the MSRB's Electronic Municipal Market Access (EMMA®) website.[1] Related amendments to Rule G-30, on prices and commissions, provide guidance on determining the PMP for the purpose of calculating a dealer's mark-up or mark-down and for other Rule G-30 determinations.

Also, effective May 14, 2018, amendments to Financial Industry Regulatory Authority (FINRA) Rule 2232 create similar confirmation disclosure requirements for other areas of the fixed income markets. Among other things, the FINRA amendments require dealers to determine their disclosed mark-ups and mark-downs from the PMP of the security that is traded, in accordance with existing guidance under FINRA Rule 2121.

Below are answers to frequently asked questions (FAQs) about the confirmation disclosure requirements under Rule G-15 and related PMP guidance under Rule G-30, Supplementary Material .06 (also referred to as the "waterfall" guidance or analysis). While these FAQs address MSRB rules only, FINRA has also issued guidance for the FINRA rules applicable to agency and corporate bonds. The MSRB and FINRA worked together to produce this guidance. While each has published its own version to refer to MSRB and FINRA rules and materials, respectively, the versions are materially the same and reflect the organizations' coordinated approach to enhanced confirmation disclosure for debt securities. To the extent the MSRB and FINRA offer different guidance based on differences between the markets for corporate, agency and municipal securities, those differences are discussed in the context of the relevant question and answer.

During the implementation period, the MSRB will continue to work with dealers on questions related to the confirmation disclosure requirements and PMP guidance. Dealers are encouraged to contact the MSRB to suggest additional topics or questions for inclusion in the FAQs. Accordingly, the MSRB may add to, update or revise this guidance. The most recent date for the content of an answer will be clearly marked.

For ease of reference, unless otherwise noted, the term "mark-up" refers both to mark-ups applied to sales to customers and mark-downs applied to purchases from customers, and the term "contemporaneous cost" refers both to contemporaneous cost in the context of sales to customers and contemporaneous proceeds in the context of purchases from customers.

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Section 1: When Mark-Up Disclosure Is Required

1.1 When does Rule G-15 require mark-up disclosure?

A dealer is required to disclose on a customer confirmation the mark-up on a transaction in municipal securities with a non-institutional customer if the dealer also executes one or more offsetting principal transaction(s) on the same trading day as the customer transaction in an aggregate trading size that meets or exceeds the size of the customer trade. A non-institutional customer is a customer with an account that is not an institutional account, as defined in MSRB Rule G-8(a)(xi).

As noted during the MSRB's confirmation disclosure rulemaking process, any intentional delay of a customer execution to avoid triggering the mark-up disclosure requirements may violate Rule G-18, on best execution, and Rule G-17, on conduct of municipal securities and municipal advisory activities.

SR-MSRB-2016-12 Proposed Rule Change to MSRB Rules G-15 and G-30, at 7 (September 1, 2016); MSRB Response to Comments on SR-MSRB-2016-12, at 3-4 (November 14, 2016)

(July 12, 2017)

1.2 Is mark-up disclosure required only where the sizes of same-day customer and principal trades offset each other?

Yes. Mark-up disclosure is required only where a customer trade offsets a same-day principal trade in whole or in part. For example, if a dealer purchased 100 bonds at 9:30 a.m., and then, as principal, satisfied three noninstitutional customer buy orders for 50 bonds each in the same security on the same trading day without making any other purchases of the bonds that day, mark-up disclosure would be required only on two of the three customer purchases, since one of the trades would need to be satisfied out of the dealer's prior inventory rather than offset by the dealer's same-day principal transaction.

SR-MSRB-2016-12 Proposed Rule Change to MSRB Rules G-15 and G-30, at 4; 7-8 (September 1, 2016); MSRB Response to Comments on SR-MSRB-2016-12, at 3-4 (November 14, 2016); Amendment No. 1 to SR-MSRB-2016-12, at 4 (November 14, 2016)

(July 12, 2017)

1.2.1 Are position moves between separate desks within a firm considered "transactions" for purposes of determining whether a dealer has offsetting transactions that trigger a mark-up disclosure requirement?

No. Mark-up disclosure is triggered under Rule G-15 when a customer trade is offset by one or more "transactions." For purposes of the rule, the MSRB considers a "transaction" to entail a change of beneficial ownership between parties. Accordingly, if a retail desk within a dealer acquires bonds through a position move from another desk within the same firm and then sells those bonds to a non-institutional customer, the dealer is required to provide the customer with mark-up disclosure only if the dealer bought the bonds in one or more offsetting transactions on the same trading day as the sale to the customer (subject to the exceptions discussed in Question 1.7).

(March 19, 2018)

1.3 When are trades executed by a dealer's affiliate relevant for determining whether the mark-up disclosure requirements are triggered?

If a dealer's offsetting principal trade is executed with a dealer affiliate and did not occur at arm's length, the dealer is required to "look through" to the time and terms of the affiliate's trade with a third party to determine whether mark-up disclosure is triggered under Rule G-15. On the other hand, if the dealer's transaction with its affiliate is an arms-length transaction, the dealer would treat that transaction as any other offsetting transaction (*i.e.*, the dealer would not "look through" to the time and terms of the arms-length transaction).

SR-MSRB-2016-12 Proposed Rule Change to MSRB Rules G-15 and G-30, at 910; 23; 26 (September 1, 2016)

(July 12, 2017)

1.4 What is considered an "arms-length transaction" when considering whether a dealer must "look through" to the time and terms of an affiliate's trade?

The term "arms-length transaction" is defined in Rule G-15(a)(vi)(I) to mean a transaction that was conducted through a competitive process in which nonaffiliate firms could also participate, and where the affiliate relationship did not influence the price paid or proceeds received by the dealer. The MSRB has noted that as a general matter, it expects the competitive process used in an arms-length transaction to be one in which non-affiliates have frequently participated. In other words, the MSRB would not view a process, like a request for pricing protocol or posting of bids and offers, as competitive if non-affiliates responded to requests or otherwise participated in only isolated or limited circumstances.

Factors that may be relevant to a dealer's determination that a transaction with an affiliate was conducted at arm's length include, but are not limited to: counterparty anonymity during the competitive process to the time of execution; the presence of other competitive bids or offers, in addition to the affiliate's, in the competitive process; contemporaneous market activity in the same or a similar security (or securities) which is used to evaluate the relative competitiveness of bids or offers received during a competitive process; and a lack of preferential arrangements between the affiliates concerning, or based on, the handling of orders between them. The MSRB notes that no one of these factors is necessarily determinative on its own.

SR-MSRB-2016-12 Proposed Rule Change to MSRB Rules G-15 and G-30, at 9 (September 1, 2016)

(July 12, 2017)
(Updated March 19, 2018)

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1.5 If a dealer has an exclusive agreement with a non-affiliated dealer under which it always purchases its securities from, or always sells its securities to, that non-affiliate, would the "look through" requirements apply when the dealer transacts with the non-affiliate?

No. The "look through" applies only to certain transactions between affiliated dealers. Under Rule G-15, a "look through" is required when the dealer's offsetting transaction is with an affiliate and is not an "arms-length transaction." A transaction with a non-affiliate would not meet these conditions, so a "look through" would not be required. The MSRB notes that dealers should continue to evaluate the terms and circumstances of any such arrangements in light of other MSRB rules and guidance, including best execution. In evaluating these terms and circumstances, dealers should consider whether they diminish the reliability and utility of mark-up disclosure to investors.

(July 12, 2017)

1.6 Does the mark-up disclosure requirement in Rule G-15 apply to transactions that involve a dealer and a registered investment adviser?

No. To trigger the mark-up disclosure requirement in Rule G-15, a dealer must execute a trade with a non-institutional customer. Under the rule, registered investment advisers are institutional customers; accordingly, mark-up disclosure is not required when dealers transact with registered investment advisers. This is the case even where the registered investment adviser with whom the dealer transacted later allocates all or a portion of the securities to a retail account or where the transaction is executed directly for a retail account if the investment adviser has discretion over the transaction. The MSRB notes that this answer is specific to the mark-up disclosure requirement in Rule G-15; it is not intended to alter any other obligations.

(July 12, 2017)

1.7 Are there any exceptions to the mark-up disclosure trigger requirements?

Yes. There are three exceptions. First, disclosure is not required for transactions in municipal fund securities. Second, mark-up disclosure is not necessarily triggered by principal trades that a dealer executes on a trading desk that is functionally separate from a trading desk that executes customer trades, provided the dealer maintains policies and procedures reasonably designed to ensure that the functionally separate trading desk had no knowledge of the customer trades. For example, the exception allows an institutional desk within a dealer to service an institutional customer without necessarily triggering the disclosure requirement for an unrelated trade performed by a separate retail desk within the dealer. Third, disclosure is not required for transactions that are list offering price transactions, as defined in paragraph (d)(vii)(A) of Rule G-14 RTRS Procedures.

SR-MSRB-2016-12 Proposed Rule Change to MSRB Rules G-15 and G-30, at 10 (September 1, 2016)

(July 12, 2017)

1.8 May dealers voluntarily provide mark-up disclosure on additional transactions that do not trigger mandatory disclosure?

Yes. In disclosing this information on a voluntary basis, dealers should be mindful of any applicable MSRB rules. For example, while mark-up disclosure is voluntary for trades that are not triggered by the relevant provisions of Rule G-15, the process for determining the PMP according to Rule G-30 applies in all cases. In addition, to avoid customer confusion, voluntary disclosure should also follow the same format and labeling requirements applicable to mandatory disclosure.

SR-MSRB-2016-12 Proposed Rule Change to MSRB Rules G-15 and G-30, at 13 n. 27 (September 1, 2016)

(July 12, 2017)

1.9 In arrangements involving clearing dealers and introducing or correspondent dealers, who is responsible for mark-up disclosure?

The introducing or correspondent dealer bears the ultimate responsibility for compliance with the disclosure requirements under Rule G-15. Although an introducing or correspondent dealer may use the assistance of a clearing dealer, as it may use other third-party service providers subject to due diligence and oversight, the introducing or correspondent dealer remains ultimately responsible for compliance.

(July 12, 2017)

Section 2: Content and Format of Mark-Up Disclosure

2.1 What information must be included when dealers provide mark-up disclosure on a confirmation?

When mark-up disclosure is provided on a customer confirmation, Rule G-15 requires firms to express the disclosed mark-up as both a total dollar amount and a percentage amount of PMP. The mark-up should be calculated and disclosed as the total amount per transaction; disclosure of the per bond dollar amount of mark-up (*e.g.*, $9.45 per bond) would not satisfy the requirement to disclose the total dollar amount of the transaction mark-up.

SR-MSRB-2016-12 Proposed Rule Change to MSRB Rules G-15 and G-30, at 12 (September 1, 2016)

(July 12, 2017)

2.2 Where is mark-up disclosure required to be located on a confirmation?

For printed confirmations, Rule G-15(a)(i)(E) requires the mark-up disclosure to be located on the front of the customer confirmation. For electronic confirmations, the disclosure should appear in a naturally visible place. Because the rule requires mark-up disclosure to be on the confirmation itself, the inclusion of a link on the customer confirmation that a

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customer could click to obtain his or her mark-up disclosure would not satisfy the requirements of Rule G-15.

(July 12, 2017)

2.3 May dealers use explanatory language to provide context for mark-up disclosure?

Yes. Dealers may include accompanying language to explain mark-up related concepts, or a dealer's particular methodology for calculating mark-ups according to MSRB guidance (or to note the availability of information about the methodology upon request), provided such statements are accurate and not misleading. However, dealers may not label mark-ups as "estimated" or "approximate" figures, or use other such labels. These types of qualifiers risk diminishing the utility of the disclosure and of the dealer's own determination of the security's PMP and mark-up charged, and otherwise risk diminishing the value to retail investors of the disclosure.

MSRB Response to Comments on SR-MSRB-2016-12, at 11-12 (November 14, 2016)

(July 12, 2017)

2.4 If a dealer encounters a situation where a mark-up is negative (i.e., the dealer sold to the customer at a price lower than the PMP), may it choose to disclose a mark-up of zero instead?

The MSRB believes that negative mark-ups will be very infrequent; however, if such a case arises, a dealer may not disclose a mark-up of zero where the mark-up is not, in fact, zero. Dealers should disclose the mark-up that they calculate based on their determination of PMP consistent with Rule G-30. As an alternative to disclosing a negative mark-up, dealers are permitted to disclose "N/A" in the mark-up/mark-down field if the confirmation also includes a brief explanation of the "N/A" disclosure and the reason it has been provided. Dealers also have the flexibility to provide an explanation for trades with disclosed negative or zero mark-ups as well, consistent with Question 2.3 above.

(July 12, 2017)

2.5 How many decimal places should dealers use when disclosing the mark-up as a percentage amount?

Dealers should disclose the percentage amount rounded to at least two decimal places (*e.g.*, hundredths of a percent). For example, if a dealer charged a $120 mark-up on a 10-bond transaction where the PMP was 99, the mark-up percentage should be disclosed to at least the hundredth of a percentage point, as 1.21% (as opposed to 1.2% or 1%). However, if a dealer charged a $100 mark-up on a 10-bond transaction where the PMP was 100, the mark-up percentage could be disclosed as 1.00% or 1%.

(March 19, 2018)

Section 3: Determining Prevailing Market Price

3.1 How should dealers determine PMP to calculate mark-ups?

Dealers must calculate mark-ups from a municipal security's PMP, consistent with Rule G-30 and the supplementary material thereunder, particularly Supplementary Material .06 (sometimes referred to as the "waterfall" guidance or analysis). Under the applicable standard of "reasonable diligence" (discussed below), dealers may rely on reasonable policies and procedures to facilitate PMP determination, provided the policies and procedures are consistent with Rule G-30 and are consistently applied.

SR-MSRB-2016-12 Proposed Rule Change to MSRB Rules G-15 and G-30, at 12 (September 1, 2016)

(July 12, 2017)

3.2 Does the PMP guidance in Rule G-30, Supplementary Material .06 apply for mark-up (and mark-down) disclosure purposes under Rule G-15 and for fair pricing purposes under Rule G-30?

Yes. Dealers should read the guidance in Supplementary Material .06 together with Rule G-30 and all the other supplementary material thereto. For example, while Supplementary Material .06 provides guidance in determining the PMP, Supplementary Material .01(a) explains that dealers must exercise "reasonable diligence" in establishing the market value of a security, and Supplementary Material .01(d) states that dealer compensation on a principal transaction with a customer is determined from the PMP of the security, as described in Supplementary Material .06. Read as a whole, Rule G-30 requires dealers to use reasonable diligence to determine the PMP of a municipal security in accordance with Supplementary Material .06.[2] This standard applies for mark-up disclosure purposes under Rule G-15 and for fair pricing purposes under Rule G-30.

SR-MSRB-2016-12 Proposed Rule Change to MSRB Rules G-15 and G-30, at 25; 28 (September 1, 2016); MSRB Response to Comments on SR-MSRB-2016-12, at 9-11 (November 14, 2016)

(July 12, 2017)
(Updated March 19, 2018)

3.2.1 Does the functionally separate trading desk exception apply for purposes of determining the PMP of a security?

No. As explained in the rule filing, this exception "would only apply to determine whether or not the [mark-up] disclosure requirement has been triggered; it does not change the dealer's requirements relating to the calculation of its mark-up or mark-down under Rule G-30."

SR-MSRB-2016-12 Proposed Rule Change to MSRB Rules G-15 and G-30, at n. 20 (September 1, 2016)

(March 19, 2018)

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3.3 When reading the PMP guidance in Rule G-30, Supplementary Material .06, what does the language in parentheses mean?

Unless the context requires otherwise, language in parentheses that is not preceded by an "*i.e.*," or "*e.g.*," within sentences refers to scenarios where a dealer is charging a customer a mark-down. Thus, for example, in the phrase, "contemporaneous dealer purchases (sales) in the municipal security in question from (to) institutional accounts," the terms "(sales)" and "(to)" apply where a dealer is charging a customer a mark-down.

(July 12, 2017)

3.4 When should dealers determine PMP and calculate the mark-up to be disclosed on a confirmation?

The MSRB recognizes that dealers may employ different processes for generating customer confirmations such that this may occur at the end of the day, or during the day for firms that use real-time, intra-day confirmation generation processes. Therefore, although the objective must always be to determine the price prevailing at the time of the customer transaction, different dealers may consistently conduct the analysis to make that determination at different times. Specifically, dealers may base their mark-up calculations for confirmation disclosure purposes on the information they have available to them (based on the exercise of reasonable diligence) at the time they systematically input relevant transaction information into the systems they use to generate confirmations.

This means that a dealer that systematically inputs the information at the time of trade may determine the PMP—and therefore, the mark-up—at the same time (even if the confirmation itself is not printed until the end of day). On the other hand, if a dealer systematically inputs such information at the end of the day, the dealer must use the information available to the dealer at that time to determine the price prevailing at the time of the customer transaction—and, therefore, the mark-up.

The timing of the determination must be applied consistently across all transactions in municipal securities (*e.g.*, the dealer may not enter information into its systems at the time of trade and determine the PMP at the time of trade for some trades but at the end of the day for others).

SR-MSRB-2016-12 Proposed Rule Change to MSRB Rules G-15 and G-30, at 24 (September 1, 2016); MSRB Response to Comments on SR-MSRB-2016-12, at 10 (November 14, 2016)

(July 12, 2017)

3.4.1 May a dealer determine PMP between the time of trade and the end of the day?

Yes. The MSRB recognizes that firms may employ different processes for generating customer confirmations, and dealers are not limited to determining PMP for purposes of confirmation disclosure only at the times provided as examples in Question 3.4 (*i.e.*, the time of trade or the end of the day). While the objective must always be to determine the price prevailing at the time of the customer transaction, as noted above in Question 3.4, PMP may be determined for disclosure purposes when a firm systematically enters the information into its confirmation generation system, based on information that is reasonably available to it at that time. Accordingly, a dealer may determine PMP at various times, including at the time of the trade, at the end of the day, or at times in between, provided the dealer does so according to reasonable, consistently applied policies and procedures and does not "cherry pick" favorable data.

(March 19, 2018)

3.4.2 May a dealer determine PMP at the time of trade (or at some other time before the end of the day) and wait until later in the day to analyze which trades triggered the disclosure requirement?

Yes. A dealer may determine PMP, enter the PMP information into a confirmation generation system, and later populate the mark-up field only on confirmations of trades that trigger disclosure. The MSRB would expect in such cases that the PMP determination would not be subject to change when the dealer performs the trigger analysis later in the day, other than for a reasonable exception review process (as discussed in Question 3.8.1). In all cases, dealers must follow consistently applied policies and procedures and may not "cherry pick" favorable data. Dealers are reminded that when determining PMP, they must use the information reasonably available to them at the time of the PMP determination and that the objective is always to determine the price prevailing at the time of the customer transaction.

(March 19, 2018)

3.4.3 What is considered a confirmation generation system, for purposes of the guidance on when dealers may determine PMP for disclosure purposes?

As noted above in Question 3.4, the MSRB recognizes that dealers may employ different processes for generating customer confirmations. For purposes of this guidance, the MSRB would consider a dealer to enter information systematically into a confirmation generation system when it stores the information in a location that is part of the confirmation generation process. The MSRB expects that the stored PMP information would not be subject to change, other than for a reasonable exception review process (as discussed in Question 3.8.1). The MSRB also expects that a dealer will clearly explain in its policies and procedures its confirmation generation process, including the timing and role of each material step in the process.

(March 19, 2018)

3.5 Once dealers determine PMP and input relevant information into their confirmation generation

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systems, would they be required to cancel and correct a confirmation to revise a disclosed mark-up if later events might contribute to a different PMP determination?

No. The disclosure must be accurate, based on the dealer's exercise of reasonable diligence, as of the time the dealer systematically inputs the information into its systems to generate the disclosure. Once the dealer has input the information into its confirmation generation systems, the MSRB does not expect dealers to send revised confirmations solely based on the occurrence of a subsequent transaction or event that would otherwise be relevant to PMP determination under Rule G-30. On a voluntary basis, dealers may correct a confirmation, pursuant to reasonable and consistently applied policies and procedures.

SR-MSRB-2016-12 Proposed Rule Change to MSRB Rules G-15 and G-30, at 24 (September 1, 2016)

(July 12, 2017)

3.5.1 If a dealer corrects the price to a customer or determines that, at the time the dealer systematically entered the information into its systems to generate the mark-up disclosure, the PMP was inaccurate, must the dealer send a corrected confirmation that reflects a corrected mark-up disclosure and price?

Yes. Consistent with Question 3.5, dealers are not required to cancel and correct a confirmation to revise a disclosed mark-up solely based on the occurrence of a subsequent transaction or event that would otherwise be relevant to PMP determination under Rule G-30. However, if the dealer corrects the price to the customer or determines that a PMP was inaccurate at the time it was systematically entered into the dealer's confirmation generation system, the dealer must send a confirmation that reflects an accurate mark-up and price.

(March 19, 2018)

3.6 May dealers engage third-party vendors to perform some or all of the steps required to fulfill the mark-up disclosure requirements?

Yes. Dealers may engage third-party service providers to facilitate mark-up disclosure consistent with Rules G-15 and G-30. For example, dealers that wish to perform most of the steps of the waterfall internally may choose to use the services of a vendor at the economic models level of the waterfall. Other dealers may wish to use the services of a vendor to perform most or all of the steps of the waterfall. In either case, the dealers retain the responsibility for ensuring the PMP is determined in accordance with Rule G-30 and that the mark-up is disclosed in compliance with Rule G-15 and must exercise due diligence and oversight over their third-party relationships.

As a policy matter, the MSRB does not endorse or approve the use of any specific vendors.

MSRB Response to Comments on SR-MSRB-2016-12, at 8 (November 14, 2016)

(July 12, 2017)

3.7 May dealers use a third-party evaluated pricing service as an economic model at the final step of the waterfall?

Yes. However, before doing so, the dealer should have a reasonable basis for believing the third-party pricing service's pricing methodologies produce evaluated prices that reflect actual prevailing market prices. A dealer would not have a reasonable basis for such a belief, for example, where a periodic review of the evaluated prices provided by the pricing service frequently (over the course of multiple trades) reveals a substantial difference between the evaluated prices and the prices at which actual transactions in the relevant securities occurred. In choosing to use evaluated prices from any pricing service, a dealer should assess, among other things, the quality of the evaluated prices provided by the service and the extent to which the service determines its evaluated prices on an intra-day basis.

To be clear, dealers are not required to use such pricing services at this stage of the waterfall analysis. Rather, third-party evaluated pricing services are only one type of economic model. Other types of economic models may include internally developed models such as a discounted cash flow model or a reasonable and consistent methodology to be used in connection with an applicable index or benchmark. Dealers are reminded that when using an internally developed model, the dealer must be able to provide information that the dealer used on the day of the transaction to develop the pricing information (*i.e.*, the data that was input and the data that the model generated and the dealer used to arrive at the PMP).

MSRB Response to Comments on SR-MSRB-2016-12, at 8 (November 14, 2016)

(July 12, 2017)
(Updated March 19, 2018)

3.8 May dealers use or rely on automated systems to determine PMP?

Yes. While dealers are not required to automate the PMP determination and markup disclosure, they may choose to do so, provided they (and/or their vendors) do so consistent with Rule G-30 and Rule G-15, and all other applicable rules. The MSRB has provided guidance in several areas during the rulemaking process to facilitate automation for firms that choose to employ it. First, as noted above in Question 3.4, dealers are permitted on certain conditions to determine PMP on an intra-day basis (*e.g.*, at the time of trade), allowing dealers that generate confirmations intra-day to continue to do so. Second, as noted in Question 3.1 and discussed throughout this guidance, the MSRB has acknowledged that dealers may develop policies and procedures that rely on reasonable, objective criteria to apply the PMP guidance in Supplementary Material .06 at a systematic level. Consistent with the reasonable policies and procedures approach, the MSRB further recognized during the rulemaking process that reasonable policies and procedures could result in different firms mak-

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ing different PMP determinations for the same security. (The MSRB would expect, however, that the consistent application of policies and procedures within a dealer would result in different traders or desks arriving at PMP determinations that are substantially the same under comparable facts and circumstances.)

MSRB Response to Comments on SR-MSRB-2016-12, at 7-8 (November 14, 2016)

(July 12, 2017)

3.8.1 May dealers adopt a reasonable exception review process to evaluate PMP determinations?

Yes. As a general matter, the MSRB expects that dealers will employ supervisory review processes that consider, among other things, the reliability of their (or their vendors') PMP determinations. To review reliability, a dealer might review PMP determinations that result in mark-ups that exceed pre-determined thresholds, and it also might compare PMP determinations with some other measure of market value to ascertain whether the PMP determinations fall outside pre-established ranges.

In cases where a dealer reviews PMP determinations before the associated trade confirmations are sent, dealers may correct PMP determinations to promote more accurate mark-up calculations, provided they do so according to reasonable and consistently applied policies and procedures. As a general matter, however, the MSRB expects that it will be rare for a dealer to correct the PMP of a security based on exception reporting, and documentation in such situations will be paramount. To prevent "cherry picking," the dealer's policies and procedures should be specific in describing the PMP review process and the conditions under which the dealer may show that a PMP was erroneous (*e.g.*, the PMP determination was based on an isolated transaction, or a PMP determined through the use of an economic model did not reflect recent news about the security). If a dealer determines that a PMP is erroneous, it must correct it consistent with Rule G-30, and it must do so using the information reasonably available to it at the time it makes the correction.

There may also be cases where a dealer's exception review process results in corrected customer trade prices. For example, a dealer may review a trade where the mark-up exceeded a pre-determined threshold and the PMP was determined correctly. Dealers may refer to Question 3.5.1 in these cases.

(March 19, 2018)

3.9 May dealers develop objective criteria to automatically determine whether a trade is "contemporaneous" for purposes of establishing a presumptive PMP at the first step of the waterfall analysis?

Yes. Dealers may establish an objective set of criteria to determine whether a trade is contemporaneous, provided the objective criteria are established based on the exercise of reasonable diligence. For example, dealers could define an objective period of time as a default proxy for determining whether the trade is contemporaneous. Dealers could also define criteria to consider other relevant factors, such as whether intervening trades by other firms occurred at prices sufficiently different than the dealer's trade to suggest that the dealer's trade no longer reasonably reflects the current market price for the security, or whether changes in interest rates or the credit quality of the security, or news reports were significant enough to reasonably change the PMP of the security.

Given the different trading characteristics of different municipal securities, and relevant court and SEC case law applicable to debt securities in general, it likely would not be reasonable for a dealer's policies and procedures to determine categorically that all transactions that occur outside of a specified time frame are not "contemporaneous." Accordingly, dealers should include in their policies and procedures an opportunity to review and override the automatic application of default proxies (*e.g.*, by reconsidering the application for transactions identified through reasonable exception reporting and specifying designated time intervals (or market events) after which such proxies will be reviewed).

(July 12, 2017)

3.10 Since Rule G-15 adopts a same-day trigger standard for mark-up disclosure, would it be reasonable to assume a same-day standard for determining whether trades are contemporaneous for purposes of determining PMP under Rule G-30?

The MSRB notes that the determination of whether mark-up disclosure is required under Rule G-15 is distinct from the determination of whether a transaction is contemporaneous under the waterfall analysis. The PMP guidance under Rule G-30 provides that a dealer's cost is considered contemporaneous if the transaction occurs close enough in time to the subject transaction that it would reasonably be expected to reflect the current market price for the municipal security. While same-day transactions may often be contemporaneous according to this meaning, the MSRB has not set forth a specific time-period that is categorically contemporaneous. As noted above in Question 3.9, the MSRB would expect that dealers developing objective criteria for this purpose would base the determination of such criteria on the exercise of reasonable diligence.

(July 12, 2017)

3.11 How should dealers determine their contemporaneous cost if they have multiple contemporaneous purchases?

Dealers may rely on reasonable and consistently applied policies and procedures that employ methodologies to establish PMP where they have multiple contemporaneous principal trades. For example, a dealer could employ consistently an average weighted price or a last price methodology. Such methodologies could further account for the type of principal trade, giving greater weight to principal trades with other dealers than to principal trades with customers.

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MSRB Response to Comments on SR-MSRB-2016-12, at 12-13 (November 14, 2016)

(July 12, 2017)

3.12 What is the next step in the analysis, when determining contemporaneous cost or proceeds, if a dealer has no contemporaneous transactions with another dealer?

Where the dealer has no contemporaneous cost or proceeds, as applicable, from an inter-dealer transaction, the dealer must then consider whether it has contemporaneous cost or proceeds, as applicable, from a customer transaction. Note that, because the dealer's contemporaneous cost or proceeds from a customer transaction will also include the mark-up or mark-down charged in that transaction, the dealer should adjust its contemporaneous cost or proceeds from that customer transaction to account for the mark-up or mark-down included in the price. In these instances, the difference between the dealer's "adjusted contemporaneous cost or proceeds" (the dealer's contemporaneous cost or proceeds in the customer transaction, adjusted by the mark-up or mark-down) and the price to its customer is equal to the mark-up (or mark-down) to be disclosed on customer confirmations under Rule G-15. The MSRB has noted that this approach allows the dealer to avoid "double counting" in the mark-up and mark-down it discloses to each customer. For example, if a dealer buys 100 bonds from Customer A at a price of 98 and immediately sells 100 of the same bonds to Customer B at a price of 100, the dealer may apportion the mark-up and mark-down paid by each customer. Assuming for illustration that the dealer determines the PMP in accordance with the waterfall guidance to be 99, then the dealer would disclose to Customer A a total dollar amount mark-down of $1,000, also expressed as 1.01% of PMP, and it would disclose to Customer B a total dollar amount mark-up of $1,000, also expressed as 1.01% of PMP.[3]

SR-MSRB-2016-12 Proposed Rule Change to MSRB Rules G-15 and G-30, at 21 (September 1, 2016)

(July 12, 2017)
(Updated March 19, 2018)

3.13 May dealers adjust their contemporaneous cost to reflect what they believe to be a more accurate PMP, or their role taking risk to provide liquidity?

Dealers may adjust their contemporaneous cost only in one case: where a dealer's offsetting trades that trigger disclosure under Rule G-15 are both customer transactions (discussed above at Question 3.12). Other adjustments to reflect the size or side of market for a dealer's contemporaneous cost are not permitted.

(July 12, 2017)

3.14 May dealers apportion their expected aggregate monthly fees—for example to access an alternative trading system (ATS) or other trading platform—to individual contemporaneous transactions to be included in their contemporaneous costs?

No. For any given mark-up on a transaction, Supplementary Material .06 requires dealers to look first to their contemporaneous cost as incurred. The MSRB does not believe it would be consistent with Rule G-30 for dealers to consider an estimated apportionment of a future charge to be part of the specific cost they incurred in a contemporaneous transaction.

(July 12, 2017)

3.15 In determining contemporaneous cost, may dealers include transaction fees—for example to access an ATS or other trading platform—that were included in the price they paid?

Yes, provided the transaction fee is reflected in the price of the contemporaneous trade that is reported to EMMA, consistent with MSRB rules and guidance on pricing, trade reporting and fees. The MSRB will monitor and adjust this guidance as needed if it determines that pricing practices change in a way that diminishes the utility and reliability of mark-up disclosure.

(July 12, 2017)

3.16 May a dealer treat its own contemporaneous transaction as "isolated" and therefore disregard it when determining PMP?

No. Under Supplementary Material .06, isolated transactions or isolated quotations generally will have little or no weight or relevance in establishing PMP. The guidance also specifically provides that, in the municipal market, an "off-market" transaction may qualify as an isolated transaction. Through cross-references, Supplementary Material .06 makes clear that a dealer may deem a transaction or quotation at the hierarchy of pricing factors or similar-securities level of the waterfall to be isolated. However, the concept of "isolated" transactions or quotations does not apply to a dealer's contemporaneous cost, which presumptively determines PMP.

SR-MSRB-2016-12 Proposed Rule Change to MSRB Rules G-15 and G-30, at 19; 21 (September 1, 2016)

(July 12, 2017)

3.17 Supplementary Material .06 notes that changes in interest rates may allow a dealer to overcome the presumption that its own contemporaneous cost is the best measure of PMP. Does this refer only to formal policy interest rate changes, or does it also contemplate market changes in interest rates?

It refers to any change in interest rates, whether the change is caused by formal policy decisions or market events. However, Supplementary Material .06 notes that a dealer may overcome the presumption that its contemporaneous cost is the best measure of PMP based on a change in interest rates only in instances where they have changed after the dealer's transaction to a degree that such change would reasonably cause a change in municipal securities pricing.

(July 12, 2017)

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3.18 Supplementary Material .06 notes that changes in the credit quality of the municipal security may allow a dealer to overcome the presumption that its own contemporaneous cost is the best measure of PMP. Does this refer only to formal credit rating changes, or does it also contemplate market changes in implied or observed credit spreads such as those due to market-wide credit spread volatility or anticipated changes in the credit quality of the individual issuer?

It refers to any changes to credit quality, with respect to that particular security or the particular issuer of that security, whether the change is caused by a formal ratings announcement or market events. Thus, for example, this could include changes in the guarantee or collateral supporting repayment as well as significant recent information concerning the issuer that is not yet incorporated in credit ratings (*e.g.*, changes to ratings outlooks). However, Supplementary Material .06 notes that a dealer may overcome the presumption that its contemporaneous cost is the best measure of PMP based on a change in credit quality only in instances where it has changed significantly after the dealer's transaction.

(July 12, 2017)

3.18.1 When considering inter-dealer trades at the hierarchy of pricing factors level of the waterfall analysis, if the only contemporaneous interdealer trades in the security are executed at the same time and involve a broker's broker or an ATS, may a dealer choose to determine PMP by reference to the inter-dealer trade price which is reasonably likely to be on the opposite side of the market from the dealer seeking to determine PMP?

Yes. Consistent with the standard of reasonable diligence, dealers may adopt a reasonable approach to consistently choosing between or referring to multiple contemporaneous inter-dealer trades. If the only contemporaneous inter-dealer trades in the security are executed at the same time and involve a broker's broker or an ATS in the security, it may be reasonable for the dealer seeking to determine PMP to do so by reference to the trade price which is reasonably likely to be on the opposite side of the market from the dealer seeking to determine PMP.

For example, assume that Dealer XYZ is selling a municipal security to a retail customer. Also, assume that the dealer lacks contemporaneous cost and that there are only two contemporaneous inter-dealer transactions in the security, and that both of those transactions occur at the exact same time and in the exact same trade amount. Additionally, both inter-dealer transactions are identified by an ATS special condition indicator on EMMA. One transaction is executed at a price of 113.618 and the other is executed at a price of 113.868. Assume further that the difference between these two ATS transaction prices is in the customary and typical range of the fee an ATS would charge for its services. In this case, it may be reasonable for Dealer XYZ to conclude that the transaction at 113.618 reflects a sale from a dealer to an ATS taking a principal position in the security, and that the transaction at 113.868 reflects a sale from that ATS to another dealer. Under these circumstances, Dealer XYZ may reasonably determine the PMP by reference to the transaction at 113.868, because the counterparty to the ATS in that transaction was purchasing the security and thus on the opposite side of the market from the side of Dealer XYZ in its customer trade.

(March 19, 2018)

3.19 May dealers adopt a reasonable default proxy where the waterfall guidance refers to trades between dealers and institutional accounts with which any dealer regularly effects transactions in the same security, if such information cannot be ascertained through reasonable diligence?

Yes. Consistent with the Rule G-30 standard of "reasonable diligence" in establishing the PMP of a municipal security, dealers reasonably may use objective criteria as a proxy for the elements of these steps of the waterfall that they cannot reasonably ascertain, such as whether a customer transaction involves an institutional customer and whether that institutional customer regularly trades in the same security with any dealer. A reasonable approach might assume that transactions at or above a $1,000,000 par amount involve institutional customers, since that size transaction is conventionally considered to be an institutional-sized transaction. In addition, because institutional investors transacting at or above this size threshold are typically sophisticated investors, the same size proxy might be used to assume that the institutional customer regularly transacts with a dealer in the same security.

(July 12, 2017)

3.19.1 May a dealer reasonably determine that new issue trade prices executed at list offering/takedown prices are not reflective of the PMP at the time of their execution?

Yes. Because new issues may be priced days before the transactions are executed and reported to RTRS, a dealer may, but is not required to, determine that new issue trades executed at list offering or takedown prices are not reflective of the PMP at the time of their execution. These transactions generally are denoted by a list offering price/takedown indicator on EMMA and in the MSRB Transaction Subscription Service. Market participants may also determine the list offering price by viewing the security's home page (*i.e.*, the Security Details page) on EMMA.

(March 19, 2018)

3.20 Can an "all-to-all" platform (i.e., one that allows non-dealers to participate) qualify as an inter-dealer mechanism at the step of the waterfall that refers to bids and offers for actively traded securities?

Yes, provided that the dealer determines that the prices available on an "allto-all" platform are generally consistent with inter-dealer prices. Dealers should include in their policies

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and procedures how they will periodically review a platform's activity to make such a determination.

(July 12, 2017)

3.21 When considering bid and offer quotations from an inter-dealer mechanism, how many inter-dealer mechanisms must a dealer check before considering the next category of factors under the waterfall analysis?

The obligation to determine PMP requires a dealer to use reasonable diligence. It does not require a dealer to seek out and consider every potentially relevant data point available in the market. With respect to this factor in the waterfall analysis, a dealer must only seek out and consider enough information to reasonably determine that there is no probative information to determine PMP before proceeding to the next category of factors.

(July 12, 2017)

3.22 In considering bids and offers for actively traded securities made through an inter-dealer mechanism, how can a dealer determine that transactions generally occur at the displayed quotations on the inter-dealer mechanism?

Consistent with the Rule G-30 standard of reasonable diligence and a reasonable policies and procedures approach, a dealer could request and assess from the platform relevant statistics and relevant information reasonably sufficient to conclude that the inter-dealer mechanism meets the applicable requirements under Supplementary Material .06. A dealer could then periodically request and assess updated statistics and relevant information to confirm that the inter-dealer mechanism continues to satisfy the requirements.

(July 12, 2017)

3.23 At the similar securities stage of the waterfall analysis, how can a dealer determine on a systematic basis that an inter-dealer quotation is "validated"?

Consistent with the standard of reasonable diligence and a reasonable and consistently applied policies and procedures approach to the PMP determination, for example, a dealer could determine that a bid (offer) quotation is validated if it is quoted on an "inter-dealer mechanism" (including the all-to-all platforms that qualify, as discussed above). With respect to a dealer's own bids or offers, dealers are reminded of their existing regulatory obligations under applicable MSRB rules regarding bona fide bids or offers and the requirement that any published quotations must be based on the dealer's best judgment of the fair market value of the securities. *See, e.g.*, Rule G-13 and MSRB Notice to Dealers That Use the Services of Broker's Brokers (December 22, 2012). Dealers are also reminded that under Rule G-30, Supplementary Material .06, isolated transactions or isolated quotations (including those that are off-market) generally will have little or no weight or relevance in establishing the PMP of a security.

Due to the lack of bid (offer) quotations for many municipal securities, under the waterfall analysis, dealers in the municipal securities market may not often find information from contemporaneous bid (offer) quotations in the municipal securities market.

(July 12, 2017)
(Updated March 19, 2018)

3.24 May a dealer use the same process it uses to identify a "similar" security for best-execution purposes to identify "similar" securities for PMP purposes?

Yes. Assuming the dealer's process for identifying "similar" securities for Rule G-18 best-execution purposes is reasonable and in compliance with Rule G-18, a dealer may rely on the same process in connection with identifying similar securities under Rule G-30, Supplementary Material .06.

Alternatively, due to the different purposes of the "similar" security analysis for best-execution purposes as compared to PMP determination purposes, dealers reasonably may adopt a more restrictive approach to identifying "similar" securities for Rule G-30 than they may for Rule G-18. While the relevant part of the best-execution analysis under Rule G-18 seeks to identify the *best market* to address a customer's order or inquiry by reference to another security, the relevant part of the waterfall analysis seeks to identify the *PMP* of one security by reference to another security. Further, Rule G-30 Supplementary Material .06 provides that, in order to qualify as a "similar" security, *at a minimum*, the municipal security should be sufficiently similar that a market yield for the subject security can be fairly estimated from the yield of the "similar" security. Due to the large number and diversity of municipal securities, the MSRB is of the view that, generally, if the prices or yields of a security would require an adjustment in order to account for differences between the security and the subject security, it would be reasonable for a dealer to determine that that security is not sufficiently "similar" to the subject security for purposes of Supplementary Material .06. To be clear, dealers have the flexibility to determine that a security that requires an *immaterial* adjustment in order to account for differences is sufficiently "similar" for these purposes, but they are not required to do so. This approach also is consistent with the MSRB's view that, in order for a security to qualify as sufficiently "similar," the security must be at least highly similar to the subject security with respect to nearly all the "similar" security factors listed in Rule G-30 Supplementary Material .06(b)(ii) that are relevant to the subject security.

Whichever approach a dealer chooses to apply, the dealer must apply that approach consistently across all municipal securities.

Due to the lack of active trading in many municipal securities and the above discussion regarding the identification of "similar" securities in the municipal securities market, under the waterfall analysis, dealers in the municipal securities market

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may not often find information from sufficiently similar securities as compared to dealers in other fixed income markets.

Because of the unique characteristics of the municipal securities market, the MSRB response to this question may differ from the FINRA interpretation under FINRA Rule 2121.

(July 12, 2017)

3.24.1 How many "similar" securities must a dealer consider at the "similar" securities stage of the waterfall analysis?

The obligation to determine PMP requires a dealer to use reasonable diligence. It does not require a dealer to seek out and consider every potentially relevant data point available in the market. At this point in the waterfall analysis, a dealer must only seek out and consider enough information to reasonably determine that it has identified the prevailing market price of the security (or that there is no probative information to determine PMP before proceeding to the next level). A dealer's policies and procedures should explain the process for identifying similar securities (and, if relevant, how the dealer may adjust the prices or yields of identified similar securities). Because the reasonable diligence standard is often guided by industry norms, dealers should periodically revisit their policies and procedures to ensure that their established processes continue to remain reasonable.

Due to the unique characteristics of the municipal securities market, including the large number of issuers and the bespoke nature of many municipal securities, it is unlikely that the dealer will identify a substantial number of "similar" securities for many municipal securities. For example, it would be reasonable for a dealer to determine that a comparison security is not sufficiently "similar" to the subject security for purposes of Supplementary Material .06 if the prices or yields of the comparison security would require an adjustment in order to account for differences between that security and the subject security.

(March 19, 2018)

3.25 How is the "relative weight" provision in paragraphs (a)(v) (regarding the hierarchy of pricing factors) and (a)(vi) (regarding similar securities) of Supplementary Material .06 meant to be used in operation?

This provision is meant to be used when there is more than one comparison transaction or quotation within the categories specified in the hierarchy of pricing factors and when there is more than one comparison transaction or quotation within the similar securities level of the waterfall analysis. In these cases, a dealer may consider the facts and circumstances of the comparison transactions or quotations to determine the weight or degree of influence to attribute to a particular transaction or quotation. For example, a dealer might give greater weight to more recent (timely) comparison transactions or quotations. Similarly, to the extent a dealer considers comparison transactions or quotations in which the dealer is on the same side of the market as the dealer in the subject transaction (if known from dealer customer trade reports),[4] a dealer might give relatively less weight or influence to such information in determining PMP than information from transactions or quotations in which the dealer was on the opposite side of the market from the dealer in the subject transaction.

Consistent with the standard of reasonable diligence and a reasonable policies and procedures approach to the PMP determination, a dealer may adopt a reasonable methodology that it will consistently apply when considering the facts and circumstances of comparison transactions or quotations and assigning relative weight to such transactions or quotations. For example, a dealer might employ an average weighted price methodology (if all relevant trade sizes are publicly available) or last price methodology, provided its policies and procedures called for the reasonable and consistent use of the methodology and did not ignore potentially relevant facts and circumstances, such as side of the market.

Due to the unique characteristics of the municipal securities market, the MSRB response to this question may differ from the FINRA interpretation under FINRA Rule 2121.

(July 12, 2017)
(Updated March 19, 2018)

3.26 When dealers consider the hierarchy of pricing factors under Supplementary Material .06(a)(v), or similar securities factors under paragraph (a)(vi), may they consider the size of comparison transactions to determine their relative weight?

Yes. Paragraphs (a)(v) and (a)(vi) include a non-exhaustive list of facts and circumstances that may impact the "relative weight" of comparison transactions or quotations that may be considered at that point in the waterfall analysis. The MSRB believes it would be reasonable to consider the size of a comparison transaction when considering its relative weight.

(July 12, 2017)

3.27 What is an "applicable index" as that term is used at the "similar securities" level of Supplementary Material .06?

Supplementary Material .06 lists a number of non-exclusive factors that a dealer can look to in determining whether a security is sufficiently "similar" to the subject security. One of these factors is how comparably they trade over an applicable index or U.S. Treasury securities of a similar duration. The inclusion of the more general term "applicable index," is intended to give dealers flexibility to consider, for example, commonly used municipal market bond indices, yield curves and benchmarks as these may be more relevant than data on Treasury securities (especially for tax-exempt bonds).

Amendment No. 1 to SR-MSRB-2016-12, at 5 (November 14, 2016)

(July 12, 2017)

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3.28 Must dealers keep their PMP determination for each trade in their books and records?

The MSRB believes that dealers should keep records to demonstrate their compliance with Rule G-30, particularly where they have the evidentiary burden to demonstrate why a contemporaneous transaction was not the best measure of PMP for a given trade. The MSRB further notes that it would expect PMP documentation to be an important component of a firm's system to supervise compliance with Rules G-15 and G-30.

SR-MSRB-2016-12 Proposed Rule Change to MSRB Rules G-15 and G-30, at 20 n. 39 (September 1, 2016); MSRB Response to Comments on SR-MSRB-2016-12, at 8 (November 14, 2016)

(July 12, 2017)
(Updated March 19, 2018)

3.29 Is there a difference between the PMP that is determined for mark-up disclosure purposes under Rule G-15 and for fair pricing purposes under Rule G-30?

As noted during the rulemaking process, the MSRB recognizes that by allowing dealers to determine PMP for mark-up disclosure purposes at the time of entry of information into systems for confirmation generation, a mark-up disclosed on a confirmation may not reflect subsequent trades that could be considered "contemporaneous" under Supplementary Material .06. However, the MSRB does not believe it is necessary to make a formal distinction between a PMP determined for disclosure purposes and a PMP determined for other regulatory purposes. Still, in connection with any post-transaction fair pricing review process, dealers should not disregard any new information relevant under Supplementary Material .06 that occurs after the mark-up determination (*e.g.*, contemporaneous proceeds obtained after the customer transaction).

SR-MSRB-2016-12 Proposed Rule Change to MSRB Rules G-15 and G-30, at 14; 25; 28 (September 1, 2016); MSRB Response to Comments on SR-MSRB-2016-12, at 10 (November 14, 2016)

(July 12, 2017)

Section 4: Time of Execution and Security-Specific URL Disclosures

4.1 When must dealers disclose the time of execution on a customer confirmation?

Under Rule G-15, dealers must disclose the time of execution for all transactions, including principal and agency transactions. However, for transactions in municipal fund securities and transactions for an institutional account, as defined in Rule G-8(a)(xi), in lieu of disclosing the time of execution, dealers may instead include on the confirmation a statement that the time of execution will be furnished upon written request of the customer. This time-of-execution disclosure requirement is not limited to circumstances where mark-up disclosure is triggered; therefore, it is required even where mark-up disclosure is not.

SR-MSRB-2016-12 Proposed Rule Change to MSRB Rules G-15 and G-30, at 13-14 (September 1, 2016); Amendment No. 1 to SR-MSRB-2016-12, at 4-5 (November 14, 2016)

(July 12, 2017)

4.2 How should the time of execution be disclosed?

Dealers have an obligation under Rule G-14, on reports of sales or purchases of municipal securities, to report the "time of trade" to the MSRB's Real-Time Transaction Reporting System. In addition, dealers have an obligation under Rule G-8(a)(vii) to make and keep records of the time of execution of principal transactions in municipal securities. The time of execution for confirmation disclosure purposes is the same as the time of trade for Rule G-14 reporting purposes and the time of execution for purposes of Rule G-8(a)(vii), except that dealers should omit all seconds, without rounding to the minute, from the time-of-execution disclosure because the trade data displayed on EMMA does not include seconds.

Alternatively, if disclosure in this format is operationally challenging or burdensome for a dealer, a dealer may choose to disclose the seconds, again without rounding to the minute (*e.g.*, a time of trade of 10:00:59 may be disclosed as 10:00:59 or 10:00). Additionally, because EMMA displays the time of trade in eastern standard time (EST), dealers may disclose on the customer confirmation the time of execution in either military time (as reported to RTRS under Rule G-14) or in traditional EST with an AM or PM indicator (*e.g.*, a time of trade of 14:00:59 may be disclosed on a confirmation as 14:00:59, 14:00, 2:00:59 PM or 02:00 PM). The time-of-execution disclosure format used by a dealer should be consistent for all municipal securities transaction confirmations on which the disclosure is provided.

SR-MSRB-2016-12 Proposed Rule Change to MSRB Rules G-15 and G-30, at 14 n. 29 (September 1, 2016); MSRB Response to Comments on SR-MSRB-2016-12, at 6 n. 11 (November 14, 2016)

(July 12, 2017)
(Updated March 19, 2018)

4.3 When must dealers disclose a security-specific URL on a customer confirmation?

Under Rule G-15, dealers must disclose a security-specific URL, in a format specified by the MSRB as discussed below, for all non-institutional customer trades other than transactions in municipal fund securities, even where mark-up disclosure is not required. In the rare situations where there is no CUSIP assigned for a security that is subject to Rule G-15 at the time the dealer trades the security with a customer, the dealer is not required to include the security-specific URL on the customer confirmation.

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SR-MSRB-2016-12 Proposed Rule Change to MSRB Rules G-15 and G-30, at 13-14; 27; 35 (September 1, 2016); Amendment No. 1 to SR-MSRB-2016-12, at 4 (November 14, 2016)

(July 12, 2017)
(Updated March 19, 2018)

4.4 What is the security-specific URL that must be disclosed?

The template for the URL that must be disclosed under Rule G-15 is: https://emma.msrb.org/cusip/[insert CUSIP number].[5] The URL is currently live and operational. Paper confirmations must include this URL with the security-specific CUSIP in print form; electronic confirmations must include the security-specific URL as a hyperlink to the web page.

MSRB Response to Comments on SR-MSRB-2016-12, at 6 (November 14, 2016)

FINRA has provided its own security-specific URL template in its guidance.

(July 12, 2017)
(Updated March 19, 2018)

4.5 Do dealers need to provide any other disclosure concerning the security-specific URL?

Yes. Dealers must include a brief description of the type of information that is available on the security-specific web page for the subject security, such as information about the prices of other transactions in the same security, the official statement and other disclosures for the security, ratings and other market data and educational material. To be clear, the disclosure does not need to describe with specificity all of the information available on the relevant web page. As described above, the description should be brief. Additionally, it only needs to describe enough information about the relevant web page that a reasonable investor would understand the type of information available on that page. For example, the following language would satisfy this obligation: "For more information about this security (including the official statement and trade and price history), visit [insert link]."[6] Because this language is an example only, dealers may use other language to describe the content of the web page.

As a reminder, Rule G-15(a)(i)(E) requires all requirements to be clearly and specifically indicated on the front of the confirmation, subject to limited exceptions. Because the description of the type of information available on the security-specific web page is not listed as an exception, it must be on the front of the confirmation.

SR-MSRB-2016-12 Proposed Rule Change to MSRB Rules G-15 and G-30, at 13; 27 (September 1, 2016); MSRB Response to Comments on SR-MSRB-2016-12, at 6 n. 9 (November 14, 2016)

(July 12, 2017)
(Updated March 19, 2018)

4.6 Is disclosure of the time of execution or security-specific URL required for transactions that involve a dealer and a registered investment adviser?

No. Disclosure of the time of execution and security-specific URL is not required for transactions with an institutional customer. Under Rule G-15, a registered investment adviser is an institutional accountholder; accordingly, disclosure is not required for these transactions. This is the case even if the registered investment adviser with whom the dealer transacted later allocates all or a portion of the securities to a retail account or where the transaction is executed directly for a retail account if the investment adviser has discretion over the transaction. The MSRB notes that this answer is specific to the time-of-execution and security-specific URL disclosure requirements in Rule G-15; it is not intended to alter any other obligations.

(July 12, 2017)

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[1] EMMA is a registered trademark of the MSRB.

[2] Prior to May 14, 2018, Supplementary Material .01(d) provides that dealer compensation on a principal transaction is considered to be a mark-up or mark-down that is computed from the inter-dealer market price prevailing at the time of the customer transaction. As of May 14, 2018, the reference to the prevailing "inter-dealer" price is amended to instead, as noted above, reference the "prevailing market price," as described in Supplementary Material .06. Supplementary Material .06, which applies to customer transactions and not internal position movements, generally embodies the principle that the PMP of a security is generally the price at which dealers trade with one another. This underlying principle does not mean that dealers may avoid following the steps of the waterfall analysis in the specific order prescribed in Supplementary Material .06. However, it remains a useful principle that dealers may wish to consider in approaching certain unspecified aspects of the waterfall analysis. The MSRB's responses to Questions 3.11, 3.12, 3.20 and 3.23, in part, are reflective of this underlying principle. Other answers, including those in response to Questions 3.9, 3.10, 3.21 and 3.25 are reflective of the MSRB's longstanding "reasonable diligence" standard, discussed above.

[3] This example assumes that the dealer has identified that it has contemporaneous cost and proceeds at the time that it is determining the mark-up and mark-down to each customer. If this is not the case, however, because the dealer systematically inputs information into its systems for the generation of PMP at the time of trade, then there is a different result. For example, assume that the trade at 98 occurs at 10:00 AM, the trade at 100 occurs at 3:00 PM and these trades are contemporaneous. If the dealer systematically determines PMP at the time of trade, consistent with Question 3.4, at the time of the 10:00 AM trade, the dealer may simply proceed down the waterfall to determine the PMP for the security without the need to adjust that PMP. At the time of the 3:00 PM trade, however, the dealer should adjust its contemporaneous cost as described above to account for the mark-down included in the price.

[4] At the institutional transactions and quotations categories in the hierarchy of pricing factors level of the waterfall, generally, dealers consider information from only one side of the market, depending on whether the dealer is charging a mark-up or mark-down. However, pursuant to reasonable and consistently applied policies and procedures, a dealer may consider information from transactions in which the dealer is on the other side of the market when reasonable to do so. For example, this may be reasonable where the dealer has identified no comparison transactions in which the dealer is on the opposite side of the market as the dealer in the subject transaction. In this case, the dealer may reasonably adjust the transaction price by an amount to account for the price at which that transaction might have occurred had it been a transaction in which the dealer was on the opposite side of the market from the dealer in the subject transaction. Also for example, where the dealer has identified comparison transactions on

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both sides of the market, the dealer reasonably may perform a similar adjustment (*i.e.*, adjust a price from a transaction in which the dealer is on the same side of the market as the dealer in the subject transaction by an amount to account for the price at which that transaction might have occurred had it been a transaction in which the dealer was on the opposite side of the market from the dealer in the subject transaction). A dealer's ability to consider such information may be particularly important in the municipal market in which securities often trade infrequently and in which dealers may often have such limited information available to them at the time of their PMP determination.

[5] The MSRB previously announced the URL template as: http://emma.msrb.org/cusip/[insert CUSIP number]. Accordingly, confirmations for dealers that began to program their confirmations in accordance with the previously announced URL template may begin with the *http* format, rather than the *https* format. The MSRB does not expect such dealers to reprogram the URLs provided on customer confirmations as the *http* format will continue to function and will automatically redirect to the more secure *https* site.

[6] As a reminder, for dealers that currently seek to satisfy their obligation to provide a copy of the official statement to customers under Rule G-32(a)(iii) by notifying customers of the availability of the official statement through EMMA, the provision of the link described in this set of FAQs would satisfy both the relevant Rule G-15 security-specific URL obligation and the Rule G-32(a)(iii), provided that, for purposes of Rule G-32(a)(iii), the URL address also is accompanied by the additional information described. For example, if a dealer included the sample description included in this question, the addition of the language "Copies of the official statement are also available from [insert dealer name] upon request" would satisfy both the Rule G-15 security-specific URL obligation and Rule G-32(a)(iii) obligations.

Interpretive Letters

Callable securities: "catastrophe" calls. This will acknowledge receipt of your letter dated October 20, 1977 which has been referred to me for reply. In your letter you request an interpretation of the provisions in rules G-12 and G-15 requiring that the dollar price for transactions in callable securities effected on a yield basis be priced to the lower of price to call or price to maturity. (*See* rules G-12(c)(v)(I) and G-15(a)(viii)[1]).

At its meeting held October 25-26, 1977, the Board confirmed that the requirements in rules G-12 and G-15 relating to pricing to call do not include "catastrophe" calls, that is, calls which occur as a result of events specified in the bond indenture which are beyond the control of the issuer. *MSRB interpretation of November 7, 1977*.

[1] Currently codified at rule G-15(a)(i)(A)(5).

Callable securities: disclosure. I am writing in response to your letter of August 17, 1982, concerning the requirements of Board rules G-12(c)(v)(E) and G-15(a)(v)[*] concerning securities descriptions set forth on confirmations. In your letter you note that certain descriptive details are required to be disclosed on the confirmation only "if necessary for a materially complete description of the securities," and you inquire whether information as to a security's callability is one of these details.

Rules G-12(c)(v)(E) and G-15(a)(v)[1] require confirmations to set forth a

> description of the securities, including at a minimum the name of the issuer, interest rate, maturity date, and if the securities are limited tax, subject to redemption prior to maturity (callable) or revenue bonds, an indication to such effect, including in the case of revenue bonds the type of revenue, **if necessary for a materially complete description of the securities**, and in the case of any securities, **if necessary for a materially complete description of the securities**, the name of any company or other person in addition to the issuer obligated, directly or indirectly, with respect to debt service or, if there is more than one such obligor, the statement 'multiple obligators' may be shown." (emphasis added)

As you can see, the phrase "if necessary for a materially complete description of the securities" modifies only the requirements for disclosure of "the type of revenue," or ... disclosure of "the name of any company or other person obligated ... with respect to debt service...," and does not modify the requirements for disclosure of the other listed information. Both rules, therefore, deem information as to the "name of the issuer, interest rate, maturity date and if the securities are limited tax, subject to redemption prior to maturity (callable) or revenue bonds" to be necessarily material and subject to disclosure on the confirmation. In the specific case which you cite, that of a security with an "in-part" sinking fund call feature, the confirmation of a transaction in such security would be required to identify the security as "callable." *MSRB interpretation of August 23, 1982*.

[1] Currently codified at rules G-15(a)(i)(B) and G-15 (a)(i)(C).

Callable securities: extraordinary mandatory redemption features. I am writing in response to your letter of February 15, 1983 regarding the confirmation disclosure requirements applicable to municipal securities which are subject to extraordinary mandatory redemption features. In your letter you inquire whether such securities need be identified as "callable" securities on the confirmation. You also inquire as to the relationship between an extraordinary mandatory redemption feature and a "catastrophe call" feature, and the disclosure requirements applicable to the latter type of provision.

An extraordinary mandatory redemption feature, in my understanding, is a call provision under which an issuer of securities would be obliged to call all or a part of an issue if certain stated unexpected events occur. For example, many of the recent mortgage revenue issues have extraordinary mandatory redemption provisions under which securities would be called if a portion of the proceeds of the issue has not been used to acquire mortgages by a certain stated date, or if moneys received from principal prepayments have not been used to acquire new mortgages by a certain period following receipt of the prepayment. In general, securities which are subject to extraordinary mandatory redemption provisions must be identified as "callable" securities on any confirmation. Extraordinary redemption provisions would not, however, be used for purposes of computing a yield or dollar price.

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One specific type of extraordinary mandatory redemption provision is what has been colloquially termed a "catastrophe" or "calamity" call provision. Under this type of provision the issuer of securities would be obliged to call all or part of an issue if the financed project is destroyed or damaged by some catastrophe (*e.g.*, by fire, flood, lightning or other act of God) or if the tax exempt status of the issue is negated. The Board has previously expressed the view that securities which are callable solely under this type of "catastrophe" call provision, and are not otherwise callable, need not be designated as "callable" securities on a confirmation.

In summary, therefore, securities which are subject to extraordinary mandatory redemption provisions other than "catastrophe" call provisions must be identified as "callable" securities on confirmations. *MSRB interpretation of February 18, 1983*.

Original issue discount, zero coupon securities: disclosure of, pricing to call feature. I am writing in response to your inquiry in our recent telephone conversation regarding the application of Board rules to the recent original issue discount on "zero coupon" new issues of municipal securities. In particular, you indicated that these types of securities are often subject to somewhat unusual call provisions, and you inquired as to the application to these types of securities of Board rules concerning the disclosure of call provisions and the use of such call provisions in dollar price and yield computations.

Subsequent to our conversation, I obtained several examples of these call provisions, which were provided to the Board in connection with your inquiry. In the first of these examples, involving an original issue discount security, the call provision commences ten years after issuance, with the redemption price initially set at 90 and increasing by 2 points every three years, reaching a redemption price of 100 twenty-five years after issuance. In the second example, involving a "zero coupon" security, the call provision commences ten years after issuance; the redemption price is based on the compound accreted value of the security (plus a stated redemption premium for the first five years of the call provision), with certain of the securities initially redeemable at an approximate dollar price of 18.

As you know, the call provisions on "zero coupon" and original issue discount securities are one of the special characteristics of such securities, but are not, by any means, the sole special characteristic. The Board is of the view that municipal securities brokers and dealers selling such securities are obliged, under Board rule G-17 as well as under the anti-fraud rules under the Securities Exchange Act, to disclose to customers all material information regarding such special characteristics. As the Board stated in its April 27, 1982 "Notice Concerning 'Zero Coupon' and 'Stepped Coupon' Securities,"

> persons selling such securities to the public have an obligation to adequately disclose the special characteristics of such securities so as to comply with the Board's fair practice rules.

Therefore, in selling an original issue discount or "zero coupon" security to a customer, a dealer would be obliged to disclose, among other matters, any material information with respect to the call provisions of such securities.

I note also that Rule G-15 requires customer confirmations of transactions in callable securities to indicate that the securities are "callable," and to contain a legend stating, in part, that information concerning the call provisions of such securities will be made available upon the customer's request. Customer confirmations of transactions in callable original issue discount or "zero coupon" securities would have to contain such a legend, in addition to the designation "callable," and the details of the call provisions of such securities would have to be provided to the customer in writing upon the customer's request.

The requirement under rules G-12 and G-15 for the computation of dollar price and (under rule G-15) yield to a call or option feature would apply to a transaction in an original issue discount or "zero coupon" security. Therefore, if the dollar price to the call on a transaction in such securities is lower than the price to maturity, such dollar price should be used. In the case of customer confirmations, if the yield to call on a transaction in such securities is lower, such yield must be shown. As you noted in our conversation, in view of the redemption price structure of the call provisions on such securities, the price or yield to call on a particular transaction might be lower than the price or yield to maturity, even though the transaction is effected at a price below par. Since heretofore the industry has been accustomed to call provisions at prices at or above par, industry members may wish to pay particular attention to the processing of transactions in original issue discount or "zero coupon" securities with these unusual types of call provisions, to ensure that the dollar price or yield of such transactions is not inadvertently overstated due to a failure to check the price or yield to call. *MSRB interpretation of June 30, 1982*.

Callable securities: pricing to call. Your letter dated May 1, 1978 concerning the pricing to call provisions of rules G-12 and G-15 has been referred to me for response. In your letter, you request clarification of the application of such provisions to a situation in which securities have been prerefunded and the escrow fund is to be held to the maturity date of the securities. We understand that the securities in question are part of a term issue, sold on a yield basis, and are subject to a mandatory sinking fund call beginning two years prior to maturity.

Under rules G-12 and G-15, the dollar price of a transaction effected on a yield basis must be calculated to the lowest of price to premium call price to par option or price to maturity. The calculation of dollar price to a premium call or par option date should be to that date at which the issuer may exercise an option to call the whole of a particular issue or, in the case of serial bonds, a particular maturity, and not to the date of a call in part.

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Accordingly, the calculation of the dollar price of a transaction in the securities in your example should be made to the maturity date. The existence of the sinking fund call should, however, be disclosed on the confirmation by an indication that the securities are "callable." The fact that the securities are prerefunded should also be noted on the confirmation. *MSRB interpretation of June 8, 1978*.

Callable securities: pricing to call and extraordinary mandatory redemption features. This is in response to your November 16, 1983, letter concerning the application of the Board's rules to sales of municipal securities that are subject to extraordinary redemption features.

As a general matter, rule G-17 of the Board's rules of fair practice requires municipal securities brokers and dealers to deal fairly with all persons and prohibits them from engaging in any deceptive, dishonest, or unfair practice. The Board has interpreted this rule to require, in connection with the purchase from or sale of a municipal security to a customer, that a dealer must disclose, at or before the time the transaction occurs, all material facts concerning the transaction and not omit any material facts which would render other statements misleading. The fact that a security may be redeemed "in whole," "in part," or in extraordinary circumstances prior to maturity is essential to a customer's investment decision about the security and is one of the facts a dealer must disclose prior to the transaction. It should be noted that the Board has determined that certain items of information must, because of their materiality, be disclosed on confirmations of transactions. However, a confirmation is not received by a customer until after a transaction is effected and is not meant to take the place of oral disclosure prior to the time the trade occurs.

You ask whether, for an issue which has more than one call feature, the disclosure requirements of MSRB rule G-15 would be better served by merely stating on the confirmation that the bonds are callable, instead of disclosing the terms of one call feature and not another. Board rule G-15, among other things, prescribes what items of information must be disclosed on confirmations of transactions with customers.[1] Rule G-15(a)(i)(E)[*] requires that customer confirmations contain a materially complete description of the securities and specifically identifies the fact that securities are subject to redemption prior to maturity as one item that must be specified. The Board is of the view that the fact that a security may be subject to an "in whole" or "in part" call is a material fact for an individual making an investment decision about the securities and has further required in rule G-15a(iii)(D)[†] that confirmations of transactions in callable securities must state that the resulting yield may be affected by the exercise of a call provision, and that information relating to call provisions is available upon request.[2]

With respect to the computation of yields and dollar prices, rule G-15(a)(i)(I)[‡] requires that the yield and dollar price for the transaction be disclosed as the price (if the transaction is done on a yield basis) or yield (if the transaction is done on the basis of a dollar price) calculated to the lowest price or yield to call, to par option, or to maturity. The provision also requires, in cases in which the resulting dollar price or yield shown on the confirmation is calculated to call or par option, that this must be stated and the call or option date and price used in the calculation must be shown. The Board has determined that, for purposes of making this computation, only "in whole" calls should be used.[3] This requirement reflects the longstanding practice of the municipal securities industry and advises a purchaser what amount of return he can expect to realize from the investment and the terms under which such return would be realized.

You also ask whether it is reasonable to infer from the discharge of one call feature that no other call features exist. As discussed above, the Board requires a customer confirmation to disclose, when applicable, that a security is subject to redemption prior to maturity and that the call feature may affect the security's yield. This requirement applies to securities subject to either "in whole" or "in part" calls. Moreover, as noted earlier, because information concerning call features is material information, principles of fair dealing embodied by rule G-17 require that these details be disclosed orally at the time of trade.

By contrast, identification of the first "in-whole" call date and its price must be made only when they are used to compute the yield or resulting dollar price for a transaction. This disclosure is designed only to advise an investor what information was used in computing the lowest of yield or price to call, to par option, or to maturity and is not meant to describe the only call features of the municipal security.

In addition, in the case of the sale of new issue securities during the underwriting period, Board rule G-32 requires that … a copy of the final official statement, if any, must be provided to the customer.[4] While the official statement would describe all call features of an issue, it must be emphasized that delivery of this document does not relieve a dealer of its obligation to advise a customer of material characteristics and facts concerning the security at the time of trade.

Finally, you ask whether the omission of this or other call features on the confirmation is a material omission of the kind which would be actionable under SEC rule 10b-5. The Board is not empowered to interpret the Securities Exchange Act or rules thereunder; that responsibility has been delegated to the Securities and Exchange Commission. We note, however, that the failure to disclose the existence of a call feature would violate rule G-15 and, in egregious situations, also may violate rule G-17, the Board's fair dealing rule. *MSRB interpretation of February 10, 1984*.

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[1] Similar requirements are specified in rule G-12 for confirmations of interdealer transactions.

[2] The rule states that this requirement will be satisfied by placing in footnote or otherwise the statement:

"[Additional] call features … exist [that may] affect yield; complete information will be provided upon request."

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[3] *See* [Rule G-15 Interpretation — Notice concerning pricing to call], December 10, 1980 … at ¶ 3571.

[4] The term underwriting period is defined in rule G-11 as:

> the period commencing with the first submission to a syndicate of an order for the purchase of new issue municipal securities or the purchase of such securities from the issuer, whichever first occurs, and ending at such time as the issuer delivers the securities to the syndicate or the syndicate no longer retains an unsold balance of securities, whichever last occurs.

[*] [Currently codified at rule G-15 (a)(i)(C).]

[†] [Currently codified at rule G-15 (a)(i)(C)(2)(a).]

[‡] [Currently codified at rule G-15 (a)(i)(A)(5).]

NOTE: Revised to reflect subsequent amendments.

Calculation of price and yield on continuously callable securities. This will respond to your letter of May 30, 1989, relating to the calculation of price and yield in transactions involving municipal securities which can be called by the issuer at any time after the first optional "in-whole" call date. The Board reviewed your letter at its August 1989 meeting and has authorized this response.

Rules G-12(c) and G-15(a) govern inter-dealer and customer confirmations, respectively. For transactions executed on a yield basis, rules G-12(c)(v)(l) and G-15(a)(v)(l)[*] require the dollar price computed from yield and shown on the confirmation to be computed to the lower of call or maturity. The rules also require the call date and price to be shown on the confirmation when securities are priced to a call date.

In computing price to call, only "in-whole" calls, of the type which may be exercised in the event of a refunding, should be used.[1] The "in-whole" call producing the lowest price must be used when computing price to call. If there is a series of "in-whole" call dates with declining premiums, a calculation to the first premium call date generally will produce the lowest price to call. However, in certain circumstances involving premiums which decline steeply over a short time, an "intermediate" call date — a date on which a lower premium or par call becomes operative — may produce the lowest price. Dealers must calculate prices to intermediate call dates when this is the case.[2] Identical rules govern the computation and display of yield to call and yield to maturity, as required on customer confirmations under rule G-15(a).

The issues that you describe are callable at declining premiums, in part or in whole, at any time after the first optional call date. There is no restriction on the issuer in exercising a call after this date except for the requirement to give 30 to 60 days notice of the redemption. Since this "continuous" call provision is an "in-whole" call of the type which may be used for a refunding, it must be considered when calculating price or yield.

The procedure for calculating price to call for these issues is the same as for other securities with declining premium calls. Dealers must take the lowest price possible from the operation of an "in-whole" call feature, compare it to the price calculated to maturity and use the lower of the two figures on the confirmation. For settlement dates prior to the first "in-whole" call, it generally should be sufficient to check the first and intermediate call dates (including the par call), determine which produces the lowest price, and compare that price to the price calculated to maturity. For settlement dates occurring after the first "in-whole" call date, it must be assumed that a notice of call could be published on the day after trade date, which would result in the redemption of the issue 31 days after trade date.[3] The price calculated to this possible redemption date should be compared to prices calculated to subsequent intermediate call dates and the lowest of these prices used as the price to call. The price computed to call then can be compared to the price computed to maturity and the lower of the two included on the confirmation. If a price to call is used, the date and redemption price of the call must be stated. Identical procedures are used for computing yield from price for display on customer confirmations under rule G-15(a).

You also have asked for the Board's interpretation of two official statements which you believe have a continuous call feature and ask whether securities with continuous call features typically are called between the normal coupon dates. The Board's rulemaking authority does not extend to the interpretation of official statements and the Board does not collect information on issuer practices in calling securities. Therefore, the Board cannot assist you with these inquiries. *MSRB interpretation of August 15, 1989.*

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[1] The parties to a transaction may agree at the time of trade to price securities to a date other than an "in-whole" call date or maturity. If such an agreement is reached, it must be noted on the confirmation.

[2] *See* [Rule G-15 Interpretation] Notice Concerning Pricing to Call, December 10, 1980, *MSRB Manual* (CCH) paragraph 3571.

[3] If a notice of call for the entire issue occurs on or prior to the trade date, delivery cannot be made on the transaction and it must be worked out or arbitrated by the parties. See rules G-12(e)(x)(B) and G-15(c)(viii)(B).

[*] [Currently codified at rule G-15(a)(i)(A)(5)(c).]

Callable securities: pricing to mandatory sinking fund calls. This is in response to your February 21, 1986 letter concerning the application of rule G-15(a) regarding pricing to prerefunded bonds with mandatory sinking fund calls.

You give the following example:

Bonds, due 7/1/10, are prerefunded to 7/1/91 at 102. There are $17,605,000 of these bonds outstanding. However, there is a mandatory sinking fund which will operate to call $1,000,000 of these bonds at par every year from 7/1/86 to 7/1/91. The balance ($11,605,000) then will be redeemed 7/1/91 at 102. If this bond is priced to the 1991 prerefunded date in today's market at a 6.75 yield, the dollar price would be approximately 127.94. However, if this bond is called 7/1/86 at 100 and a customer paid the above price, his/her yield would be a minus 52 percent (-52%) on the called portion.

You state that the correct way to price the bond is to the 7/1/86 par call at a 5% level which equates to an approximate dollar price of 102.61. The subsequent yield to the 7/1/91 at 102 prerefunded date would be 12.33% if the bond survived all the mandatory calls to that date. You note that a June 8, 1978,

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MSRB interpretation states, "the calculation of dollar price to a premium call or par option date should be to that date at which the issuer may exercise an option to call the whole of a particular issue or, in the case of serial bonds, a particular maturity, and not to the date of a call in-part." You believe, however, that, as the rule is presently written, dealers are leaving themselves open for litigation from customers if bonds, which are trading at a premium, are not priced to the mandatory sinking fund call. You ask that the Board review this interpretation.

Your letter was referred to a Committee of the Board which has responsibility for interpreting the Board's fair practice rules. That Committee has authorized this response.

Rule G-15(a)(i)(I)[*] requires that on customer confirmations the yield and dollar price for the transaction be disclosed as the price (if the transaction is done on a yield basis) or yield (if the transaction is done on the basis of the dollar price) calculated to the lowest price or yield to call, to par option, or to maturity. The provision also requires, in cases in which the resulting dollar price or yield shown on the confirmation is calculated to call or par option, that this must be stated and the call or option date and price used in the calculation must be shown. The Board has determined that, for purposes of making this computation, only "in-whole" calls should be used.[1] This requirement reflects the longstanding practice of the municipal securities industry that a price calculated to an "in-part" call, such as a sinking fund call, is not adequate because, depending on the probability of the call provision being exercised and the portion of the issue subject to the call provision, the effective yield based on the price to a sinking fund date may not bear any relation to the likely return on the investment.

Rule G-15(a)(i)(I)[*] applies, however, only when the parties have not specified that the bonds are priced to a specific call date. In some circumstances, the parties to a particular transaction may agree that the transaction is effected on the basis of a yield to a particular date, *e.g.* put option date, and that the dollar price will be computed in this fashion. If that is the case, the yield to this agreed upon date must be included on confirmations as the yield at which the transaction was effected and the resulting dollar price computed to that date, together with a statement that it is a "yield to [date]." In an August 1979 interpretive notice on pricing of callable securities, the Board stated that, under rule G-30, a dealer pricing securities on the basis of a yield to a specified call feature should take into account the possibility that the call feature may not be exercised.[2] Accordingly, the price to be paid by the customer should reflect this possibility, and the resulting yield to maturity should bear a reasonable relationship to yields on securities of similar quality and maturity. Failure to price securities in such a manner may constitute a violation of rule G-30 since the price may not be "fair and reasonable" in the event the call feature is not exercised. The Board also noted that the fact that a customer in these circumstances may realize a yield in excess of the yield at which the transaction was effected does not relieve a municipal securities dealer of its responsibilities under rule G-30.

Accordingly, the calculation of the dollar price of a transaction in the securities in your example, unless the parties have agreed otherwise, should be made to the prerefunded date. Of course, under rule G-17 on fair dealing, dealers must explain to customers the existence of sinking fund calls at the time of trade. The sinking fund call, in addition, should be disclosed on the confirmation by an indication that the securities are "callable." The fact that the securities are prerefunded also should be noted on the confirmation. *MSRB Interpretation of April 30, 1986*.

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[1] *See* [Rule G-15 Interpretation — Notice Concerning Pricing to Call], December 10, 1980 at ¶ 3571.

[2] *See* [Rule G-30 Interpretation — Interpretive Notice on Pricing of Callable Securities], August 10, 1979 … at ¶ 3646.

[*] [Currently codified at rule G-15 (a)(i)(A)(5).]

Disclosure of pricing: calculating the dollar price of partially prerefunded bonds. This is in response to your March 21, 1986 letter concerning the application of Board rules to the description of municipal securities provided at or prior to the time of trade and the application of rules G-12(c) and G-15(a) on calculating the dollar price of partially prerefunded bonds with mandatory sinking fund calls.

You describe an issue, due 10/1/13. Mandatory sinking fund calls for this issue begin 10/1/05 and end 10/1/13. Recently, a partial refunding took place which prerefunds the 2011, 2012 and 2013 mandatory sinking fund requirements totaling $11,195,000 (which is 43.6% of the issue) to 10/1/94 at 102. The certificate numbers for the partial prerefunding will not be chosen until 30 days prior to the prerefunded date. Thus, a large percentage of the bonds are prerefunded and all the bonds will be redeemed by 10/1/10 because the 2011, 2012, and 2013 maturities no longer exist.

You note that the bonds should be described as partially prerefunded to 10/1/94 with a 10/1/10 maturity. Also, you state that the price of these securities should be calculated to the cheapest call, in this case, the partial prerefunded date of 10/1/94 at 102. You add that there is a 9½ point difference in price between calculating to maturity and to the partially prerefunded date.

You note that the descriptions you have seen on various brokers' wires do not accurately describe these securities and a purchaser of these bonds would not know what they bought if the purchase was based on current descriptions. You ask the Board to address the description and calculation problems posed by this issue.

Your letter was referred to a Committee of the Board which has responsibility for interpreting the Board's fair practice rules. That Committee has authorized this response.

Board rule G-17 provides that

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> In the conduct of its municipal securities business, each broker, dealer, and municipal securities dealer shall deal fairly with all persons and shall not engage in any deceptive, dishonest, or unfair practice.

In regard to inter-dealer transactions, the items of information that professionals must exchange at or prior to the time of trade are governed by principles of contract law and essentially are those items necessary adequately to describe the security that is the subject of the contract. As a general matter, these items of information do not encompass all material facts, but should be sufficient to distinguish the security from other similar issues. The Board has interpreted rule G-17 to require dealers to treat other dealers fairly and to hold them to the prevailing ethical standards of the industry.[1] The rule also prohibits dealers from knowingly misdescribing securities to another dealer.[2]

Board rules G-12(c) and G-15(a) require that

> where a transaction is effected on a yield basis, the dollar price shall be calculated to the lowest of price to call, price to par option, or price to maturity ...

In addition, for customer confirmations, rule G-15(a) requires that

> for transactions effected on the basis of dollar price, ... the lowest of the resulting yield to call, yield to par option, or yield to maturity shall be shown....

These provisions also require, in cases in which the resulting dollar price or yield shown on the confirmation is calculated to call or par option, that this must be stated and the call or option date and price used in the calculation must be shown. The Board has determined that, for purposes of making this computation, only "in-whole" calls should be used.[3] This requirement reflects the longstanding practice of the municipal securities industry that a price calculated to an "in-part" call, for example, a partial prerefunding date, is not adequate because, depending on the probability of the call provision being exercised and the portion of the issue subject to the call provision, the effective yield based on the price to a partial prerefunding date may not bear any relation to the likely return on the investment.

These provisions of Rules G-12(c) and G-15(a) apply, however, only when the parties have not specified that the bonds are priced to a specific call date. In some circumstances, the parties to a particular transaction may agree that the transaction is effected on the basis of a yield to a particular date, *e.g.*, a partial prerefunding date, and that the dollar price will be computed in this fashion. If that is the case, the yield to this agreed upon date must be included on confirmations as the yield at which the transaction was effected and the resulting dollar price computed to that date, together with a statement that it is a "yield to [date]." In an August 1979 interpretive notice on pricing of callable securities, the Board stated that, under rule G-30, a dealer pricing securities sold to a customer on the basis of a yield to a specified call feature should take into account the possibility that the call feature may not be exercised.[4]

Accordingly, the price to be paid by the customer should reflect this possibility, and the resulting yield to maturity should bear a reasonable relationship to yields on securities of similar quality and maturity. Failure to price securities in such a manner may constitute a violation of rule G-30 since the price may not be "fair and reasonable" in the event the call feature is not exercised. The Board also noted that the fact that a customer in these circumstances may realize a yield in excess of the yield at which the transaction was effected does not relieve a municipal securities dealer of its responsibilities under rule G-30.

Accordingly, the calculation of the dollar price of a transaction in the securities you describe, unless the parties have agreed otherwise, should be made to the lowest of price to the first in-whole call, par option, or maturity. While the partial prerefunding effectively redeems the issue by 10/1/10, the stated maturity of the bond is 10/1/13 and, subject to the parties agreeing to price to 10/1/10, the stated maturity date should be used. *MSRB interpretation of May 15, 1986*.

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[1] In addition, the Board has interpreted this rule to require that, in connection with the purchase from or sale of a municipal security to a customer, at or before execution of the transaction, a dealer must disclose all material facts concerning the transaction which could affect the customer's investment decision, including a complete description of the security, and not omit any material facts which would render other statements misleading.

[2] While the Board does not have any specific disclosure requirements applicable to dealers at the time of trade, a dealer is free to disclose any unique aspect of an issue. For example, in the issue described above, a dealer may decide to disclose the "effective" maturity date of 2010, as well as the stated maturity date of 2013.

[3] *See* [Rule G-15 Interpretation — Notice Concerning Pricing to Call], December 10, 1980 … at ¶ 3571.

[4] *See* [Rule G-30 Interpretation — Interpretive Notice on Pricing of Callable Securities] August 10, 1979 … at ¶ 3646.

Disclosure of the investment of bond proceeds. This is in response to your letter asking whether rule G-15(a), on customer confirmations, requires disclosure of the investment of bond proceeds.

Rule G-15(a)(i)(E)[*] requires dealers to note on customer confirmations the description of the securities, including, at a minimum

> the name of the issuer, interest rate, maturity date and if the securities are limited tax, subject to redemption prior to maturity (callable), or revenue bonds, an indication to such effect, including in the case of revenue bonds the type of revenue, if necessary for a materially complete description of the securities, and in the case of any securities, if necessary for a materially complete description of the securities, the name of any company or other person in addition to the issuer obligated, directly or indirectly,

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with respect to debt service or, if there is more than one such obligor, the statement "multiple obligors" may be shown.

The Board has not interpreted this provision as requiring disclosure of the investment of bond proceeds.

Of course, rule G-17, on fair dealing, has been interpreted by the Board to require that, in connection with the purchase from or sale of a municipal security to a customer, at or before execution of the transaction, a dealer must disclose all material facts concerning the transaction which could affect the customer's investment decision and must not omit any material facts which would render other statements misleading. Thus, if information on the investment of bond proceeds of a particular issue is a material fact, Board rules require disclosure at the time of trade. *MSRB Interpretation of August 16, 1991.*

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[*] [Currently codified at rules G-15(a)(i)(B) and G-15(a)(i)(C).]

Agency transactions: remuneration. This will acknowledge receipt of your letter dated November 1, 1977 in which you request an interpretation concerning the provision in Board rule G-15(b)(ii)[*] which requires that "the source and amount of any commission or other remuneration" received by a municipal securities dealer in a transaction in which the municipal securities dealer is acting as agent for a customer be disclosed on the confirmation to the customer.

The reference to the "amount of any commission or other remuneration" requires that an aggregate dollar amount be shown, in a purchase transaction on behalf of an equivalent of the dealer concession, and, if applicable, any additional charge to the customer above the price paid to the seller of the securities. In a sale transaction on behalf of a customer, this would normally be the difference between the net price paid by the purchaser of the securities and the proceeds to the customer. If a percentage of par value or unit profit were shown it would be difficult for many customers to relate this information to the "total dollar amount of [the] transaction" required by rule G-15(a)(xi)[†] to be shown on the confirmation.

The reference in rule G-15(b)(ii)[*] to the "source" of remuneration would not require you to differentiate between the concession and any additional charge. Standard language could be included on the confirmation to indicate that your remuneration may include dealer concessions and other charges. *MSRB interpretation of November 10, 1977.*

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[*] [Currently codified at rule G-15(a)(i)(A)(1)(e).]

[†] [Currently codified at rule G-15(a)(i)(A)(6)(a).]

Agency transaction: pricing. This will acknowledge receipt of your letter of March 17, 1981 concerning the appropriate method of disclosing remuneration on agency transactions. In your letter you indicate that the bank wishes to use one of the following two legends, as appropriate, in disclosing such remuneration:

1) "Commission: Agency Fee $ ... per $1,000 of par value included in/deducted from net price to customer;" or

2) "Commission: Concession received from broker/dealer $ ... per $1,000 of par value."

You inquire whether these legends, indicating the amount of remuneration on a "dollars per bond" basis, are satisfactory for purposes of rule G-15.

Rule G-15(b)[*] requires that

> [i]f the broker, dealer or municipal securities dealer is effecting a transaction as agent for the customer or as agent for both the customer and another person, the confirmation shall set forth ... the source and amount of any commission or other remuneration received or to be received by the broker, dealer or municipal securities dealer in connection with the transaction.

As you are aware, the Board has previously interpreted this provision to require that an aggregate dollar amount be shown. The Board adopted this position due to its belief that many customers would find it difficult to interpret the meaning of a statement disclosing the remuneration as a percentage of par value or a unit profit per bond, or to relate this information to the "total dollar amount of [the] transaction" required to be shown under G-15(a)(xi)[†].

Accordingly, we are unable to conclude that disclosure of the remuneration in the manner in which you suggest would be satisfactory for purposes of the rule. The total dollar amount of the remuneration should be set forth on the confirmation. *MSRB interpretation of April 23, 1981.*

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[*] [Currently codified at rule G-15(a)(i)(A)(1)(e).]

[†] [Currently codified at rule G-15(a)(i)(A)(6)(a).]

Agency transactions: yield disclosures. I am writing in connection with your previous conversations with Christopher Taylor of the Board's staff concerning the application of the yield disclosure requirements of Board rule G-15 to certain types of transactions in municipal securities. In your conversations you noted that dealers occasionally effect transactions in municipal securities on an "agency" basis. In these transactions the customer's confirmation would typically show as the dollar price of the transaction the price paid by the dealer to the person from whom it acquired the securities; the dealer's remuneration, received in the form of a commission paid by the customer, is typically shown separately, as a charge included in the summing of the total dollar amount due from (or to) the customer in connection with the transaction. You inquired whether, in such a transaction, the yield to the customer disclosed on the confirmation should be derived from the price shown as the dollar price of the transaction or from the total dollar amount of the transaction (*i.e.*, whether the yield should show the effect of the commission charged).

This will confirm Mr. Taylor's advice to you that the yield shown on the confirmation of such a transaction should be derived from the total dollar amount of the transaction, and

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therefore should show the effect of the commission charged to the customer on the transaction. As the Board has previously stated, the yield disclosure on customer confirmations is intended to provide customers with a means of assessing the merits of alternative investment strategies and the merits of the transaction being confirmed. The disclosure of the yield after giving effect to the commission charged the customer best serves these purposes. *MSRB interpretation of July 13, 1984*.

Disclosure of pricing: accrued interest. This is in response to your request by telephone for an interpretation of Board rule G-15 which requires that a municipal securities dealer provide to his customer, at or prior to completion of a transaction, a written confirmation containing certain general information including the amount of accrued interest. Specifically, you have asked whether the rule permits a municipal securities dealer, in using one confirmation to confirm transactions in several different municipal securities of one issuer, to disclose the amount of accrued interest for the bonds as an aggregate figure. You have advised us that, typically, such a confirmation will show other items of information required by the rule such as yield and dollar price, separately for each issue.

Rule G-15 was adopted by the Board to assure that confirmations of municipal securities transactions provide investors with certain fundamental information concerning transactions. The Board believes that disclosure of accrued interest as an aggregate sum does not permit investors to determine easily from the confirmation the amount of accrued interest attributable to each security purchased, but rather necessitates the performance of several computations. It, thus, would be more difficult for an investor to determine whether the information concerning accrued interest is correct if the information is presented in aggregate form.

Such a result is inconsistent with the purposes of rule G-15. Accordingly, the Board has concluded that, under rule G-15, the amount of accrued interest must be shown for each issue of bonds to which the customer confirmation relates. *MSRB interpretation of July 27, 1981*.

Yield disclosures. This letter is in response to your inquiry of April 14, 1981 concerning the application of the yield disclosure requirements of Board rule G-15 to a particular transaction effected by your firm. As I indicated to you in my letter of May 9, 1981, the Board was unable to consider your inquiry at its April meeting, and, accordingly, deferred the matter to its July meeting. At that meeting the Board took up your question and authorized my sending you this answer to your inquiry. While we realize that the matter is now moot with respect to the particular transaction about which you were writing, we assume that this question may arise again with respect to future transactions.

In your April 14 letter you inquired concerning a recent sale of new issue securities to a customer. You indicated that the firm had sold all twenty maturities of the new issue to a customer. This sale had been effected at the same premium dollar price for all maturities, and the customer had been advised of the average life of the issue and the yield to the average life. You inquired whether the final money confirmation of this sale should show "one dollar price ... and one yield to the average life," or the dollar price and each of the yields to the twenty different maturities of the issue.[1]

Rule G-15(a)(viii)(B)[*] requires that customer confirmations of transactions in noncallable securities effected on the basis of a dollar price set forth the dollar price and the resulting yield to maturity. In the situation you describe, it would be difficult to conclude that the rule would permit the confirmation to show only a "yield to the average life," omitting any yield to maturity information. Although the "yield to the average life" would provide the customer with some indication of the return on his or her investment, the customer could easily make the mistake of assuming that this would be the yield on all of the securities, and not realize that it is the result of differing yields, with lower yields on the short-term maturities and higher yields on the long-term ones. The Board believes that disclosure of each of the yields to the twenty maturities of the issue would provide the customer with much more accurate information concerning the return on his or her investments. Accordingly, the Board concludes that, in a transaction of this type, the final money confirmation(s) should set forth each of the yields. *MSRB interpretation of July 27, 1981*.

[1] Although you did not indicate this, we assume that all of these securities are noncallable.

[*] [Currently codified at rule G-15(a)(i)(A)(5)(b).]

Yield disclosures: transactions at par. I am writing in response to your letter of April 2, 1982, concerning certain of the yield disclosure requirements of Board rule G-15 on customer confirmations. In your letter you note that item (C) of rule G-15(a)(viii)[*] requires that "for transactions at par, the dollar price shall be shown" on the confirmations of such transactions, and you inquire whether it is necessary to show a yield on such confirmations.

Please be advised that a confirmation of a transaction effected at par (*i.e.*, at a dollar price of "100") need show only the dollar price "100" and need not, under the terms of the rule, show the resulting yield.

I note, however, that a transaction effected on the basis of a yield price equal to the interest rate of the security which is the subject of the transaction would be considered, for purposes of the rule, to be a "transaction effected on a yield basis," and therefore would be subject to the requirements of item (A) of rule G-15(a)(viii)[†]. The confirmation of such transaction would therefore be required to state "the yield at which [the] transaction was effected and the resulting dollar price[.]" *MSRB interpretation of April 8, 1982*.

[*] [Currently codified at rule G-15(a)(i)(A)(5)(b)(ii).]

[†] [Currently codified at rule G-15(a)(i)(A)(5)(a).]

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Yield disclosures: yields to call on zero coupon bonds. I am writing in response to your letter of October 18, 1983 concerning the appropriate method of disclosing on a confirmation a call price used in the computation of a dollar price or yield on a transaction in a zero coupon, compound interest, multiplier, or other similar type of security. In your letter you indicate that the call features on these types of securities often express the call prices in terms of a percentage of the compound accreted value of the security as of the call date.[1] You note that, in computing a price or yield to such a call feature, it is necessary for the computing dealer to convert such a call price into its equivalent in terms of a percentage of maturity value (*i.e.*, into a standard dollar price), and use this figure in the computation. You inquire whether, in circumstances where the confirmation of a transaction is required to disclose a yield or dollar price computed to such a call feature, the call price used in the calculation should be stated on the confirmation in terms of the percentage of the compound accreted value or in terms of the equivalent percentage of maturity value.

The requirement which is the subject of your inquiry is set forth in Board rule G-15(a)(i)(I)[*] as follows:

> In cases in which the resulting dollar price or yield shown on the confirmation is calculated to call or par option, this must be stated, and the call or option date and price used in the calculation must be shown...[2]

The Board is of the view that, in the case of a computation of a yield or dollar price to a call or option feature on a transaction in a zero coupon or similar security, the call price shown on the confirmation should be expressed in terms of a percentage of the security's maturity value. The Board believes that the disclosure of the call price in terms of the security's maturity value would provide more meaningful information to the purchaser, since other confirmation disclosure on these types of securities are also expressed in terms of the security's maturity value. This form of disclosure therefore presents the information to a purchaser in a consistent format, thereby facilitating the purchaser's understanding of the information shown on the confirmation. The Board notes also that this form of disclosure is simpler and requires less confirmation space to present. *MSRB interpretation of January 4, 1984.*

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[1] For example, the selected portions of an official statement describing one of these types of issues enclosed with your letter indicate that the security in question is callable on October 1, 1993 at 108% of the security's compound accreted value on that date (which is indicated elsewhere in the official statement to be $146.02 per $1,000 of maturity value).

[2] Comparable requirements with respect to inter-dealer confirmations are set forth in Board rule G-12(c)(v)(I).

[*] Currently codified at rule G-15(a)(i)(A)(5).]

Particularity of legend. I refer to your recent letter in which you inquired regarding the appropriateness of using a particular legend to satisfy certain requirements of rule G-15 on customer confirmations. As you note in your letter, rule G-15 requires that information concerning time of execution of a transaction and the iden-tity of the contra-side of an agency transaction be furnished to customers, at least upon request. You have requested advice as to whether the following legend satisfies the requirements of rule G-15 with respect to this information:

"Other details about this trade may be obtained by written request to the above address."

We are of the opinion that the legend in question does not satisfy the requirements of rule G-15 because it is too general in nature. The legend does not sufficiently apprise customers of their right to obtain information pertaining to the time of execution of a transaction or the identity of the contra-party, as contemplated by rule G-15. A legend specifically alluding to the availability of such information is necessary to satisfy the rule.

The Board has not adopted a standardized form, nor approved particular language for use in compliance with the requirements of the rule. I believe, however, that [Name deleted] is a member of the Dealer Bank Association. I suggest that you refer to the Forms Book prepared by the Dealer Bank Association, which may be of help to you. *MSRB interpretation of March 6, 1979.*

Securities description: revenue securities. I am writing in response to your letter of September 30, 1982 regarding the confirmation description of revenue securities. In your letter you note that the designation "revenue" is often not included in the title of the security, and you raise several questions concerning the method of deriving a proper confirmation description of revenue securities.

As you know, rule G-15(a)(v)[*] requires that customer confirmations set forth a description of the securities [involved in the transaction] including at a minimum the name of the issuer, interest rate, maturity date and *if the securities are ... revenue bonds, an indication to such effect, including in the case of revenue bonds the type of revenue, if necessary for a materially complete description of the securities...*[1] [emphasis added]

The rule requires, therefore, that revenue securities be designated as such, regardless of whether or not such designation appears in the formal title of the security. The dealer preparing the confirmation is responsible for ensuring that the designation is included in the securities description. In circumstances in which standard sources of descriptive information (*e.g.*, official statements, rating agency and service bureau publications, and the like) do not include such a designation in the security title, therefore, the dealer must augment this title to include the requisite information.

In your letter you inquire as to who is responsible for providing this type of descriptive information to the facilities manager of the CUSIP system. Although the Board does not currently have any requirements concerning this matter, proposed rule G-34 will, when approved by the Securities and Exchange Commission, require that the managing underwriter of a new issue of municipal securities apply for the assignment of CUSIP numbers of such new issue if no other person (*i.e.*, the issuer or a person acting on behalf of the

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issuer) has already applied for number assignment. In connection with such application, if one is necessary, the managing underwriter is required, under the proposed rule, to provide certain information about the new issue, including a designation of the "type of issue (*e.g.*, general obligation, limited tax, or revenue)" and an indication of the "type of revenue, if the issue is a revenue issue."

In your letter you also ask for "the official definition of a 'revenue' issue." There is no "official definition" of what constitutes a revenue issue. Various publications include a definition of the term (*e.g.*, the PSA's *Fundamentals of Municipal Bonds*, the State of Florida's *Glossary of Municipal Securities Terms*, etc.) and I would urge you to consult these for further information. *MSRB interpretation of December 1, 1982.*

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[1] Rule G-12(c)(v)(E) sets forth the same requirement with respect to inter-dealer confirmations.

[*] [Currently codified at rules G-15(a)(i)(B) and G-15(a)(i)(C).]

Securities description: securities backed by letters of credit. I am writing in connection with our previous telephone conversation of last June regarding the confirmation of a transaction in a municipal issue secured by an irrevocable letter of credit issued by a bank. In our conversation you noted that both rules G-12 and G-15 require confirmations to contain a:

> description of the securities including at a minimum..., if necessary for a materially complete description of the securities, the name of any company or other person in addition to the issuer obligated, directly or indirectly, with respect to debt service...

You inquired whether the name of the bank issuing a letter of credit securing principal and interest payments on an issue, or securing payments under the exercise of a put option or tender option feature, need be stated on the confirmation.

At that time I indicated to you that the identity of the bank issuing the letter of credit would have to be disclosed on the confirmation if the letter of credit could be drawn upon to cover scheduled interest and principal payments when due, since the bank would be "obligated ... with respect to debt service." I am writing to advise that the committee of the Board which reviewed a memorandum of our conversation has concluded that a bank issuing a letter of credit which secures a put option or tender option feature on an issue is similarly "obligated ... with respect to debt service" on such issue. The identity of the bank issuing the letter of credit securing the put option must therefore also be indicated on the confirmation. *MSRB interpretation of December 2, 1982.*

Automated clearance: "internal" transactions. As you are aware, the Board has been considering for the past year the adoption of amendments to the Board rules to mandate the use of automated confirmation/comparison and book-entry settlement systems in connection with the clearance of certain inter-dealer and customer transactions in municipal securities. In connection with its consideration of this matter, the Board released, in July 1982, an exposure draft of a proposal to apply such requirements to customer transactions, and, in March 1983, two exposure drafts of comparable proposals with respect to customer transactions and inter-dealer transactions. The Board has recently taken action on these proposals, and adopted amendments to its rules, substantially along the lines of the March 1983 proposals, for filing with the Securities and Exchange Commission; a copy of the notice of filing of these amendments is enclosed for your information.

[The bank] commented to the Board on both the July 1982 exposure draft, by letter dated October 15, 1982 from [name omitted] of the bank's Operations Department, and on the March 1983 exposure drafts, by letter dated June 1, 1983 from yourself. In these letters, among other comments, the bank suggested that the proposed requirement for the use of automated confirmation and book-entry settlement systems on certain customer transactions should not apply in circumstances where the transaction is between the bank's dealer department and a customer who clears or safekeeps securities through the dealer department or through the bank's custodian or safekeeping department. Your June 1983 letter, for example, commented as follows:

> Internal trades [with] customers of a dealer bank are not exempt from the amendment. This seems inconsistent with operating efficiency and the objectives of the amendment. Technically, a bank dealer would have to submit to [an automated confirmation and book-entry settlement system] trades made with customers who clear or safekeep through another department in the bank. If adopted, the amendment should allow for such an exemption.

I am writing to advise you that, in reviewing the comments on the July 1982 and March 1983 proposals, the Board concurred with this suggestion. The Board is of the view that the proposed requirement for the automated confirmation and book-entry settlement of certain customer transactions does not apply to a purchase or sale of municipal securities effected by a broker, dealer, or municipal securities dealer for the account of a customer in circumstances where the securities are to be delivered to or received from a clearance or safekeeping account maintained by the customer with the broker, dealer, or municipal securities dealer itself, or with a clearance or safekeeping department of an organization of which the broker, dealer, or municipal securities dealer is a division or department. *MSRB interpretation of September 21, 1983.*

See also:

Rule G-12 Interpretive Letters — Confirmation disclosure: put option bonds, *MSRB interpretation of April 24, 1981.*

- **Confirmation requirements for partially refunded securities,** *MSRB interpretation of August 15, 1989.*

Rule G-17 Interpretive Letter — Put option bonds: safekeeping, pricing, *MSRB interpretation of February 18, 1983.*

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Rule G-15 Amendment History (since 2003)

Release No. 34-97585 (May 25, 2023), 88 FR 35961 (June 1, 2023); MSRB Notice 2023-06 (May 30, 2023)

Release No. 34- 79347 (November 17, 2016), 81 FR 84637 (November 23, 20016); MSRB Notice 2016-28 (November 29, 2016)

Release No. 34-77744 (April 29, 2016), 81 FR 26851 (May 4, 2016); MSRB Notice 2016-15 (May 2, 2016)

Release No, 34- 60690 (September 18, 2009), 74 FR 49049 (September 25, 2009); MSRB Notice 2009-50 (September 15, 2009)

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Rule G-16
Periodic Compliance Examination

At least once each four calendar years, each broker, dealer and municipal securities dealer that is a member of a registered securities association, and at least once each two calendar years, each municipal securities dealer that is a bank or subsidiary or department or division of a bank, shall be examined in accordance with Section 15B(c)(7) of the Act to determine, at a minimum, whether such broker, dealer or municipal securities dealer and its associated persons are in compliance with applicable rules of the Board and applicable provisions of the Act and rules and regulations of the Commission thereunder.

Rule G-16 Amendment History (since 2003)

Release No. 34-97423 (May 2, 2023), 88 FR 29774 (May 8, 2023); MSRB Notice 2023-04 (April 27, 2023)

Release No. 34-90621 (December 9, 2020), 85 FR 81254 (December 15, 2020); MSRB Notice 2020-18 (December 2, 2020)

Release No. 34-65992 (December 16, 2011), 76 FR 79738 (December 22, 2011); MSRB Notice 2011-69 (December 19, 2011)

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Rule G-17

Conduct of Municipal Securities and Municipal Advisory Activities

In the conduct of its municipal securities or municipal advisory activities, each broker, dealer, municipal securities dealer, and municipal advisor shall deal fairly with all persons and shall not engage in any deceptive, dishonest, or unfair practice.

Rule G-17 Interpretations

Notice of Interpretation of Rule G-17 Concerning Prompt Delivery of Securities

October 13, 1983

From time to time the Board has received inquiries from purchasers of municipal securities concerning the duty of municipal securities brokers and dealers to deliver securities to customers under the Board's rules. In particular, customers have asked what, if any, remedies are available when long delays occur between the purchase, payment and delivery of municipal securities. The Board has advised such individuals that under rule G-17, the Board's fair dealing rule, a municipal securities broker or dealer has a duty to deliver securities sold to customers in a prompt fashion.

The Board is mindful that a dealer's failure to deliver municipal securities often is caused by its failure to receive delivery of the securities from another dealer or by other circumstances beyond its control. It nevertheless believes that a dealer's duty to deliver securities promptly to customers is inherent in rule G-17.[1] A violation of that duty could occur, for example, if a dealer sells securities to a customer when it knows that it cannot effect delivery by the specified settlement date or within a reasonable length of time thereafter and does not disclose that fact to its customer.

The Board notes that customers who fail to receive securities are not entitled to take advantage of the Board's procedures to close out a failed transaction which are available only for inter-dealer transactions under rule G-12. However, if a customer sustains a loss or otherwise is damaged by his dealer's failure to deliver securities, he may seek recovery through the Board's arbitration program or through litigation. These remedies may accrue to the customer whether or not a dealer's failure to deliver violates rule G-17.

[1] The duty of a securities professional to complete promptly transactions with customers also has been found to flow from the federal securities laws by the SEC and the courts.

Application of Board Rules to Transactions in Municipal Securities Subject to Secondary Market Insurance or Other Credit Enhancement Features

March 6, 1984

It has come to the Board's attention that insurance companies are offering to insure whole maturities of issues of municipal securities outstanding in the secondary market. The Board understands that municipal securities professionals must apply for the insurance which, once issued, will remain in effect for the life of the security. The Board further understands that other credit enhancement devices also may be developed for secondary market issues.

The Board wishes to remind the industry of the application of rule G-17, the Board's fair dealing rule, in connection with transactions with customers in securities that are subject to secondary market insurance or other credit enhancement devices or in securities for which arrangements for such insurance or device have been initiated.[1] The Board is of the view that facts, for example, that a security has been insured or arrangements for insurance have been initiated, that will affect the market price of the security are material and must be disclosed to a customer at or before execution of a transaction in the security. In addition, the Board believes that a dealer should advise a customer if evidence of insurance or other credit enhancement feature must be attached to the security for effective transference of the insurance or device.[2]

The Board also wishes to remind the industry that under rule G-13, concerning quotations, all quotations relating to municipal securities made by a dealer must be based on the dealer's best judgment of the fair market value of the securities at the time the quotation is made. Offers to buy securities that are insured or otherwise have a credit enhancement feature, or for which arrangements for insurance or other credit enhancement have been initiated, must comply with rule G-13. Similarly, the prices at which these securities are purchased or sold by a municipal securities dealer must be fair and reasonable to its customers under Board rule G-30 on prices and commissions.

[1] Rule G-17 provides:

> In the conduct of its municipal securities business, each broker, dealer, and municipal securities dealer shall deal fairly with all persons and shall not engage in any deceptive, dishonest, or unfair practice.

[2] The Board has adopted amendments to rule G-15 which, among other things, require that deliveries to customers of insured securities be accompanied by some evidence of the insurance.

Notice Concerning Application of Rule G-17 to Use of Lotteries to Allocate Partial Calls to Securities Held in Safekeeping

March 6, 1984

The Board has received inquiries concerning the duty of municipal securities brokers and dealers to allocate partial calls fairly among customer securities held in safekeeping. In

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particular, it has come to the Board's attention that certain municipal securities dealers use lottery systems that include only customer positions and exclude the dealer's proprietary accounts when the call is exercised at a price below the current market value.

The Board recognizes that lottery systems are a proper method of allocating the results of a partial call. Principles of fair dealing require that all such lotteries treat dealer and customer account alike. The Board is of the view that a municipal securities dealer which uses a lottery that excludes the dealer's proprietary accounts when the call is exercised at a price below the current market value is acting in violation of rule G-17, the Board's fair dealing rule.[1]

[1] Rule G-17 provides:

> In the conduct of its municipal securities business, each broker, dealer, and municipal securities dealer shall deal fairly with all persons and shall not engage in any deceptive, dishonest, or unfair practice.

Syndicate Manager Selling Short for own Account to Detriment of Syndicate Account

December 21, 1984

The Board has received an inquiry concerning a situation in which a municipal securities dealer that is acting as a syndicate manager sells bonds "short" for its own account to the detriment of the syndicate account. In particular, the Board has been made aware of allegations that certain syndicate managers, with knowledge that the syndicate account on a particular new issue of securities is not successful, have sold securities of the new issue "short" for their own accounts and then required syndicate members to take their allotments of unsold bonds. The syndicate managers allegedly have subsequently covered their short positions when the syndicate members attempt to sell their allotments at the lower market price.

Rule G-17, the Board's fair dealing rule, provides:

> In the conduct of its municipal securities business, each broker, dealer, and municipal securities dealer shall deal fairly with all persons and shall not engage in any deceptive, dishonest, or unfair practice.

Syndicate managers act in a fiduciary capacity in relation to syndicate accounts. Therefore they may not use proprietary information about the account obtained solely as a result of acting as manager to their personal advantage over the syndicate's best interests. The Board is of the view that a syndicate manager that uses information on the status of the syndicate account which is not available to syndicate members to its own benefit and to the detriment of the syndicate account (*e.g.*, by effecting "short sale" transactions for its own account against the interests of other syndicate members) appears to be acting in violation of the fair dealing provisions of rule G-17.

Altering the Settlement Date on Transactions in "When-Issued" Securities

February 26, 1985

The Board has received inquiries concerning situations in which a municipal securities dealer alters the settlement date on transactions in "when-issued" securities. In particular, the Board has been made aware of a situation in which a dealer sells a "when-issued" security but accepts the customer's money prior to the new issue settlement date and specifies on the confirmation for the transaction a settlement date that is weeks before the actual settlement date of the issue. The dealer apparently does this in order to put the customer's money "to work" as soon as possible. The Board is of the view that this situation is one in which a customer deposits a free credit balance with the dealer and then, using this balance, purchases securities on the actual settlement date. The dealer pays interest on the free credit balance at the same rate as the securities later purchased by the customer.

Rule G-17 provides that

> In the conduct of its municipal securities business, each broker, dealer, and municipal securities dealer shall deal fairly with all persons and shall not engage in any deceptive, dishonest, or unfair practice.

The Board believes that this practice would violate rule G-17 if the customer is not advised that the interest received on the free credit balance would probably be taxable. In addition, the Board notes that a dealer that specifies a fictitious settlement date on a confirmation would violate rule G-15(a) which requires that the settlement date be included on customer confirmations.

Syndicate Managers Charging Excessive Fees for Designated Sales

July 29, 1985

The Board has received inquiries concerning situations in which syndicate managers charge fees for designated sales that do not appear to be actual expenses incurred on behalf of the syndicate or may appear to be excessive in amount. For example, one commentator has described a situation in which the syndicate managers charge $0.25 to $0.40 per bond as expenses on designated sales and has suggested that such a charge seems to bear no relation to the actual out-of-pocket costs of handling such transactions.

G-17 provides that

> In the conduct of its municipal securities business, each broker, dealer, and municipal securities dealer shall deal fairly with all persons and shall not engage in any deceptive, dishonest, or unfair practice.

The Board wishes to emphasize that syndicate managers should take care in determining the actual expenses involved in handling designated sales and may be acting in violation

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of rule G-17 if the expenses charged to syndicate members bear no relation to or otherwise overstate the actual expenses incurred on behalf of the syndicate.

Notice Concerning the Application of Board Rules to Put Option Bonds

September 30, 1985

The Board has received a number of inquiries from municipal securities brokers and dealers regarding the application of the Board's rules to transactions in put option bonds. Put option or tender option bonds on new issue securities are obligations which grant the bondholder the right to require the issuer (or a specified third party acting as agent for the issuer), after giving required notice, to purchase the bonds, usually at par (the "strike price"), at a certain time or times prior to maturity (the "expiration date(s)") or upon the occurrence of specified events or conditions. Put options on secondary market securities also are coming into prominence. These instruments are issued by financial institutions and permit the purchaser to sell, after giving required notice, a specified amount of securities from a specified issue to the financial institution on certain expiration dates at the strike price. Put options generally are backed by letters of credit. Secondary market put options often are sold as an attachment to the security, and subsequently are transferred with that security. Frequently, however, the put option may be sold separately from that security and re-attached to other securities from the same issue.

Of course, the Board's rules apply to put option bonds just as they apply to all other municipal securities. The Board, however, has issued a number of interpretive letters on the specific application of its rules to these types of bonds. These interpretive positions are reviewed below.

Fair Practice Rules.

1. Rule G-17

Board rule G-17, regarding fair dealing, imposes an obligation on persons selling put option bonds to customers to disclose adequately all material information concerning these securities and the put features at the time of trade. In an interpretive letter on this issue,[1] the Board responded to the question whether a dealer who had previously sold put option securities to a customer would be obligated to contact that customer around the time the put option comes into effect to remind the customer that the put option is available. The Board stated that no Board rule would impose such an obligation on the dealer.

In addition, the Board was asked whether a dealer who purchased from a customer securities with a put option feature at the time of the put option exercise date at a price significantly below the put exercise price would be in violation of any Board rules. The Board responded that such dealer may well be deemed to be in violation of Board rules G-17 on fair dealing and G-30 on prices and commissions.

2. Rule G-25(b)

Board rule G-25(b) prohibits brokers, dealers, and municipal securities dealers from guaranteeing or offering to guarantee a customer against loss in municipal securities transactions. Under the rule, put options are not deemed to be guarantees against loss if their terms are provided in writing to the customer with or on the confirmation of the transaction and recorded in accordance with rule G-8(a)(v).[2] Thus, when a municipal securities dealer is the issuer of a secondary market put option on a municipal security, the terms of the put option must be included with or on customer confirmations of transactions in the underlying security. Dealers that sell bonds subject to put options issued by an entity other than the dealer would not be subject to this disclosure requirement.

Confirmation Disclosure Rules.

1. Description of Security

Rules G-12(c)(v)(E) and G-15(a)(i)(E)[*] require inter-dealer and customer confirmations to set forth

> a description of the securities, including… if the securities are… subject to redemption prior to maturity, an indication to such effect.

Confirmations of transactions in put option securities, therefore, would have to indicate the existence of the put option (*e.g.*, by including the designation "puttable" on the confirmation), much as confirmations concerning callable securities must indicate the existence of the call feature. The confirmation need not set forth the specific details of the put option feature.[3]

Rules G-12(c)(v)(E) and G-15(a)(i)(E)[†] also require confirmations to contain

> a description of the securities including at a minimum… if necessary for a materially complete description of the securities, the name of any company or other person in addition to the issuer obligated, directly or indirectly, with respect to debt service…

The Board has stated that a bank issuing a letter of credit which secures a put option feature on an issue is "obligated… with respect to debt service" on such issue. Thus, the identity of the bank issuing the letter of credit securing the put option also must be indicated on the confirmation.[4]

Finally, rules G-12(c)(v)(E) and G-15(a)(i)(E)[‡] require that dealer and customer confirmations contain a description of the securities including, among other things, the interest rate on the bonds. The Board has interpreted this provision as it pertains to certain tender option bonds with adjustable tender fees to require that the net interest rate (*i.e.*, the current effective interest rate taking into account the tender fee) be disclosed in the interest rate field and that dealers include elsewhere in the description field of the confirmation the stated interest rate with the phrase "less fee for put."[5]

2. Yield Disclosure

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Board rule G-12(c)(v)(I) requires that inter-dealer confirmations include the

> yield at which transaction was effected and resulting dollar price, except in the case of securities which are traded on the basis of dollar price or securities sold at par, in which event only dollar price need be shown (in cases in which securities are priced to call or to par option, this must be stated and the call or option date and price used in the calculation must be shown, and where a transaction is effected on a yield basis, the dollar price shall be calculated to the lowest of price to call, price to par option, or price to maturity);

Rule G-15(a)(i)(I)[#] requires that customer confirmations include information on yield and dollar price as follows:

(1) for transactions effected on a yield basis, the yield at which transaction was effected and the resulting dollar price shall be shown. Such dollar price shall be calculated to the lowest of price to call, price to par option, or price to maturity.

(2) for transactions effected on the basis of dollar price, the dollar price at which transaction was effected, and the lowest of the resulting yield to call, yield to par option, or yield to maturity shall be shown.

(3) for transactions at par, the dollar price shall be shown.

In cases in which the resulting dollar price or yield shown on the confirmation is calculated to call or par option, this must be stated, and the call or option date and price used in the calculation must be shown.

Neither of these rules requires the presentation of a yield or a dollar price computed to the put option date as a part of the standard confirmation process. In many circumstances, however, the parties to a particular transaction may agree that the transaction is effected on the basis of a yield to the put option date, and that the dollar price will be computed in this fashion. If that is the case, the yield to the put date must be included on confirmations as the yield at which the transaction was effected and the resulting dollar price computed to the put date, together with a statement that it is a "yield to the [date] put option" and an indication of the date the option first becomes available to the holder.[6] The requirement for transactions effected on a yield basis of pricing to the lowest of price to call, price to par option or price to maturity, applies only when the parties have not specified the yield on which the transaction is based.

In addition, in regard to transactions in tender option bonds with adjustable tender fees, even if the transaction is not effected on the basis of a yield to the tender date, dealers must include the yield to the tender date since an accurate yield to maturity cannot be calculated for these securities because of the yearly adjustment in tender fees.[7]

Delivery Requirements.

In a recent interpretive letter, the Board responded to an inquiry whether, in three situations, the delivery of securities subject to put options could be rejected.[8] The Board responded that, in the first situation in which securities subject to a "one time only" put option were purchased for settlement prior to the option expiration date but delivered after the option expiration date, such delivery could be rejected since the securities delivered were no longer "puttable" securities. In the second situation in which securities subject to a "one time only" put option were purchased for settlement prior to the option expiration date and delivered prior to that date, but too late to permit the recipient to satisfy the conditions under which it could exercise the option (*e.g.*, the trustee is located too far away for the recipient to be able to present the physical securities by the expiration date), the Board stated that there might not be a basis for rejecting delivery, since the bonds delivered were "puttable" bonds, depending on the facts and circumstances of the delivery. A purchasing dealer who believed that it had incurred some loss as a result of the delivery would have to seek redress in an arbitration proceeding.

Finally, in the third situation, securities which were the subject of a put option exercisable on a stated periodic basis (*e.g.*, annually) were purchased for settlement prior to the annual exercise date so that the recipient was unable to exercise the option at the time it anticipated being able to do so. The Board stated that this delivery could not be rejected since "puttable" bonds were delivered. A purchasing dealer who believed that it had incurred some loss as a result of the delivery would have to seek redress in an arbitration proceeding.

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1 *See* [Rule G-17 Interpretive Letter — Put option bonds: safekeeping, pricing,] MSRB interpretation of February 18, 1983. [Reprinted in *MSRB Rule Book*].

2 Rule G-8(a)(v) requires dealers to record, among other things, oral or written put options with respect to municipal securities in which such municipal securities broker or dealer has any direct or indirect interest, showing the description and aggregate par value of the securities and the terms and conditions of the option.

3 *See* [Rule G-12 Interpretive Letter — Confirmation disclosure: put option bonds,] MSRB interpretation of April 24, 1981. [Reprinted in *MSRB Rule Book*].

4 *See* [Rule G-15 Interpretive Letter — Securities description: securities backed by letters of credit,] MSRB interpretation of December 2, 1982. [Reprinted in *MSRB Rule Book*].

5 *See* [Rule G-12 Interpretive Letter — Confirmation disclosure: tender option bonds with adjustable tender fees,] MSRB interpretation of March 5, 1985. [Reprinted in *MSRB Rule Book*].

6 *See* [Rule G-12 Interpretive Letter — Confirmation disclosure: put option bonds,] MSRB interpretation of April 24, 1981. [Reprinted in *MSRB Rule Book*].

7 *See* fn. 5.

8 *See* [Rule G-12 Interpretive Letter — Delivery requirements: put option bonds,] MSRB interpretation of February 27, 1985. [Reprinted in *MSRB Rule Book*].

[*] [Currently codified at rule G-15(a)(i)(C)(2)(a). See also current rule G-15(a)(i)(C)(2)(b).]

[†] [Currently codified at rule G-15(a)(i)(C)(1)(b).]

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[‡] [Currently codified at rule G-15(a)(i)(B)(4). See also current rule G-15(a)(i)(B)(4)(c).]

[#] [Currently codified at rule G-15(a)(i)(A)(5). See also current rule G-15(a)(i)(A)(5)(c)(iv)(D).]

Notice of Interpretation Requiring Dealers to Submit to Arbitration as a Matter of Fair Dealing

March 6, 1987

Section 2 of the Board's Arbitration Code, rule G-35, requires all dealers to submit to arbitration at the instance of a customer or another dealer. From time to time, a dealer will refuse to submit to arbitration or will delay or even refuse to make payment of an award. Such acts constitute violations of rule G-35. The Board believes that it is a violation of rule G-17, on fair dealing, for a broker, dealer or municipal securities dealer or its associated persons to fail to submit to arbitration as required by Rule G-35, or to fail to comply with the procedures therein, including the production of documents, or to fail to honor an award of arbitrators unless a timely motion to vacate the award has been made according to applicable law.[1]

[1] A party typically has 90 days to seek judicial review of an arbitration award; after that the award cannot be challenged. Challenges to arbitration awards are heard only in limited, egregious circumstances such as fraud or collusion on the part of the arbitrators.

Notice of Interpretation on Escrowed-to-Maturity Securities: Rules G-17, G-12 and G-15

September 21, 1987

The Board is concerned that the market for escrowed-to-maturity securities has been disrupted by uncertainty whether these securities may be called pursuant to optional redemption provisions. Accordingly, the Board has issued the following interpretations of rule G-17, on fair dealing, and rules G-12(c) and G-15(a), on confirmation disclosure, concerning escrowed-to-maturity securities. The interpretations are effective immediately.

Background

Traditionally, the term escrowed-to-maturity has meant that such securities are not subject to optional redemption prior to maturity. Investors and market professionals have relied on this understanding in their purchases and sales of such securities. Recently, certain issuers have attempted to call escrowed-to-maturity securities. As a result, investors and market professionals considering transactions in escrowed-to-maturity securities must review the documents for the original issue, for any refunding issue, as well as the escrow agreement and state law, to determine whether any optional redemption provisions apply. In addition, the Board understands that there is uncertainly as to the fair market price of such securities which may cause harm to investors.

On March 17, 1987, the Board sent letters to the Public Securities Association, the Government Finance Officers Association and the National Association of Bond Lawyers expressing its concern. The Board stated that it is essential that issuers, when applicable, expressly note in official statements and defeasance notices relating to escrowed-to-maturity securities whether they have reserved the right to call such securities. It stated that the absence of such express disclosure would raise concerns whether the issuer's disclosure documents adequately explain the material features of the issue and would severely damage investor confidence in the municipal securities market. Although the Board has no rulemaking authority over issuers, it advised brokers, dealers and municipal securities dealers (dealers) that assist issuers in preparing disclosure documents for escrowed-to-maturity securities to alert these issuers of the need to disclose whether they have reserved the right to call the securities since such information is material to a customer's investment decision about the securities and to the efficient trading of such securities.

Application of Rule G-17 on Fair Dealing

In the intervening months since the Board's letter, the Board has continued to receive inquiries from market participants concerning the callability of escrowed-to-maturity securities. Apparently, some dealers now are describing all escrowed-to-maturity securities as callable and there is confusion how to price such securities. In order to avoid confusion with respect to issues that might be escrowed-to-maturity in the future, the Board is interpreting rule G-17, on fair dealing,[1] to require that municipal securities dealers that assist in the preparation of refunding documents as underwriters or financial advisors alert issuers of the materiality of information relating to the callability of escrowed-to-maturity securities. Accordingly, such dealers must recommend that issuers clearly state when the refunded securities will be redeemed and whether the issuer reserves the option to redeem the securities prior to their maturity.

Application of Rules G-12(c) and G-15(a) on Confirmation Disclosure of Escrowed-to-Maturity Securities

Rules G-12(c)(vi)(E) and G-15(a)(iii)(E)[*] require dealers to disclose on inter-dealer and customer confirmations, respectively, whether the securities are "called" or "prerefunded," the date of maturity which has been fixed by the call notice, and the call price. The Board has stated that this paragraph would require, in the case of escrowed-to-maturity securities, a statement to that effect (which would also meet the requirement to state "the date of maturity which has been fixed") and the amount to be paid at redemption. In addition, rules G-12(c)(v)(E) and G-15(a)(i)(E)[†] require dealers to note on confirmations if securities are subject to redemption prior to maturity (callable).

The Board understands that dealers traditionally have used the term escrowed-to-maturity only for non-callable advance refunded issues the proceeds of which are escrowed to original maturity date or for escrowed-to-maturity issues with mandatory sinking fund calls. To avoid confusion in the use of the term escrowed-to-maturity, the Board has determined that

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dealers should use the term escrowed-to-maturity to describe on confirmations only those issues with no optional redemption provisions expressly reserved in escrow and refunding documents. Escrowed-to-maturity issues with no optional or mandatory call features must be described as "escrowed-to-maturity." Escrowed-to-maturity issues subject to mandatory sinking fund calls must be described as "escrowed-to-maturity" and "callable." If an issue is advance refunded to the original maturity date, but the issuer expressly reserves optional redemption features, the security should be described on confirmations as "escrowed (or prerefunded) to [the actual maturity date]" and "callable."[2]

The Board believes that the use of different terminology to describe advance refunded issues expressly subject to optional calls will better alert dealers and customers to this important aspect of certain escrowed issues.[3]

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[1] Rule G-17 states that "[i]n the conduct of its municipal securities business, each broker, dealer, and municipal securities dealer shall deal fairly with all persons and shall not engage in any deceptive, dishonest, or unfair practice."

[2] This terminology also would be used for any issue prerefunded to a call date, with an earlier optional call expressly reserved.

[3] The Board believes that, because of the small number of advance refunded issues that expressly reserve the right of the issuer to call the issue pursuant to an optional redemption provision, confirmation systems should be able to be programmed for use of the new terminology without delay.

[*] [Currently codified at rule G-15(a)(i)(C)(3)(a). See also current rule G-15(a)(i)(C)(3)(b).]

[†] [Currently codified at rule G-15(a)(i)(C)(2)(a).]

Notice Concerning Securities that Prepay Principal

March 19, 1991

The Board has become aware of several issues of municipal securities that prepay principal to the bondholders over the life of the issue. These securities are issued with a face value that equals the total principal amount of the securities. However, as the prepayment of principal to bondholders occurs over time, the "unpaid principal" associated with a given quantity of the securities become an increasingly lower percentage of the face amount. The Board believes that there is a possibility of confusion in transactions involving such securities, since most dealers and customers are accustomed to municipal securities in which the face amount always equals the principal amount that will be paid at maturity.

Because of the somewhat unusual nature of the securities, the Board believes that dealers should be alert to their disclosure responsibilities. For customer transactions, rule G-17 requires that the dealer disclose to its customer, at or prior to the time of trade, all material facts with respect to the proposed transaction. Because the prepayment of principal is a material feature of these securities, dealers must ensure that the customer knows that securities prepay principal. The dealer also must inform the customer of the amount of unpaid principal that will be delivered on the transaction.

For inter-dealer transactions, there is no specific requirement for a dealer to disclose all material facts to another dealer at time of trade. A selling dealer is not generally charged with the responsibility to ensure that the purchasing dealer knows all relevant features of the securities being offered for sale. The selling dealer may rely, at least to a reasonable extent, on the fact that the purchasing dealer is also a professional and will satisfy his need for information prior to entering into a contract for the securities. Nevertheless, it is possible that non-disclosure of an unusual feature such as principal prepayment might constitute an unfair practice and thus become a violation of rule G-17 even in an interdealer transaction. This would be especially true if the information about the prepayment feature is not accessible to the market and is intentionally withheld by the selling dealer. Whether or not non-disclosure constitutes an unfair practice in a specific case would depend upon the individual facts of the case. However, to avoid trade disputes and settlement delays in inter-dealer transactions, it generally is in dealers' interest to reach specific agreement on the existence of any prepayment feature and the amount of unpaid principal that will be delivered.

Educational Notice on Bonds Subject to "Detachable" Call Features

May 13, 1993

New products are constantly being introduced into the municipal securities market. Dealers must ensure that, prior to effecting transactions with customers in municipal securities with new features, they obtain all necessary information regarding these features. The Board will attempt periodically through educational notices to describe new products or features of municipal securities and review the responsibilities of dealers to customers in these transactions. In this notice, the Board will review detachable call features.

Certain recent issues of municipal securities include a new feature called a detachable call right. This feature allows the issuer to sell its right to call the bond. Thus, upon the sale of this call right, the owner of the right has the ability, at certain times, to require the mandatory tender of the underlying municipal bond. The dates of mandatory tender of the underlying bonds generally correlate with the optional call dates. If the holder exercises such rights, the underlying bondholder tenders its bond to the issuer (just as if the issuer had called the bond) and the holder of the call right purchases the bond. In some instances, issuers already have issued municipal call rights and the underlying bonds in such cases are sometimes referred to as being subject to "detached" call rights.

Bonds subject to detachable call rights generally include a provision that permits an investor that owns both the detached call right and the underlying bond to link the two instruments together, subject to certain conditions. Such "linked" municipal securities would not be subject to being called at certain times by holders of call rights or the issuer. They may, however, be subject to other calls, such as sinking fund provisions.

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If a customer obtains a linked security, thereafter the customer has the option to de-link the security, again subject to certain conditions, into a municipal call right and an underlying bond subject to a right of mandatory tender.

Applicability of Board Rules

Of course, the Board's rules apply to bonds subject to detachable call features and "linked" securities just as they apply to all other municipal securities. The Board, however, would like to remind dealers of certain Board rules that should be considered in transactions involving these municipal securities.

Rule G-15(a) on Customer Confirmations

Rule G-15(a)(i)(E)[*] requires customer confirmations to set forth "a description of the securities, including… if the securities are… subject to redemption prior to maturity…, an indication to such effect." Additionally, rule G-15(a)(iii)(F)[*] requires a legend to be placed on customer confirmations of transactions in callable securities which notes that "Call features may exist which could affect yield; complete information will be provided upon request."

Confirmations of transactions in bonds subject to detachable call rights, therefore, would have to indicate this information.[1] In addition, the details of the call provisions of such securities would have to be provided to the customer upon the customer's request.

Confirmation disclosure, however, serves merely to support — not to satisfy — a dealer's general disclosure obligations. More specifically, the disclosure items required on the confirmation do not encompass "all material facts" that must be disclosed to customers at the time of trade pursuant to rule G-17.

Rule G-17 on Fair Dealing

Rule G-17 of the Board's rules of fair practice requires municipal securities dealers to deal fairly with all persons and prohibits them from engaging in any deceptive, dishonest, or unfair practice. The Board has interpreted this rule to require that a dealer must disclose, at or before the sale of municipal securities to a customer, all material facts concerning the transaction, including a complete description of the security, and must not omit any material facts which would render other statements misleading. Among other things, a dealer must disclose at the time of trade whether a security may be redeemed prior to maturity in-whole, in-part, or in extraordinary circumstances because this knowledge is essential to a customer's investment decision.

Clearly, bonds subject to detachable calls must be described as callable at the time of the trade.[2] In addition, if a dealer is asked by a customer at the time of trade for specific information regarding call features, this information must be obtained and relayed promptly.

Although the Board requires dealers to indicate to customers at the time of trade whether municipal securities are callable, the Board has not categorized which, if any, specific call features it considers to be material and therefore also must be disclosed. Instead, the Board believes that it is the responsibility of the dealer to determine whether a particular feature is material.

With regard to detachable calls, dealers must decide whether the ability of a third party to call the bond is a material fact that should be disclosed to investors. Dealers should make this determination in the same way they determine whether other facets of a municipal securities transaction are material — is it a fact that a reasonable investor would want to know when making an investment decision? For example, would a reasonable investor who knows a bond is callable base an investment decision on whether someone other than the issuer can call the bond? Does this new feature affect the pricing of the bond?

* * *

The Board is continuing its review of detachable call rights and may take additional related action at a later date. The Board welcomes the views of all persons on the application of Board rules to transactions in securities subject to detachable call rights.

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[1] With regard to the confirmation requirement for linked securities, if these securities are subject to other call provisions such as sinking fund calls, the customer confirmation must indicate that these securities are callable.

[2] Similarly, when considering the application of rule G-17 to transactions in "linked" securities, as with other municipal securities, dealers have the obligation to ensure that investors understand the features of the security. In particular, if a linked security to other call provisions, dealers should ensure that retail customers do not mistakenly believe the bond is "non-callable."

[*] [Currently codified at rule G-15(a)(i)(C)(2)(a).]

Transactions in Municipal Securities with Non-Standard Features Affecting Price/Yield Calculations

June 12, 1995

Rule G-15(a) generally requires that confirmations of municipal securities transactions with customers state a dollar price and yield for the transaction. Thus, for transactions executed on a dollar price basis, a yield must be calculated; for transactions executed on a yield basis, a dollar price must be calculated. Rule G-33 provides the standard formulae for making these price/yield calculations.

It has come to the Board's attention that certain municipal securities have been issued in recent years with features that do not fall within any of the standard formulae and assumptions in rule G-33, nor within the calculation formulae available through the available settings on existing bond calculators. For example, an issue may have first and last coupon periods that are longer than the standard coupon period of six months.

With respect to some municipal securities issues with non-standard features, industry members have agreed to certain conventions regarding price/yield calculations. For example, one of the available bond calculator setting might be used for the issue, even though the calculator setting does not provide

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a formula specifically designed to account for the non-standard feature. In such cases, anomalies may result in the price/yield calculations. The anomalies may appear when the calculations are compared to those using more sophisticated actuarial techniques or when the calculations are compared to those of other securities that are similar, but that do not have the non-standard feature.

The Board reminds dealers that, under rule G-17, dealers have the obligation to explain all material facts about a transaction to a customer buying or selling a municipal security. Dealers should take particular effort to ensure that customers are aware of any non-standard feature of a security. If price/yield calculations are affected by anomalies due to a non-standard feature, this may also constitute a material fact about the transaction that must be disclosed to the customer.

Interpretive Reminder Notice Regarding Rule G-17, on Disclosure of Material Facts — Disclosure of Original Issue Discount Bonds

January 5, 2005

The MSRB is publishing this notice to remind dealers of their affirmative disclosure obligations when effecting transactions with customers in original issue discount bonds. An original issue discount bond, or O.I.D. bond, is a bond that was sold at the time of issue at a price that included an original issue discount. The original issue discount is the amount by which the par value of the bond exceeded its public offering price at the time of its original issuance. The original issue discount is amortized over the life of the security and, on a municipal security, is generally treated as tax-exempt interest. When the investor sells the security before maturity, any profit realized on such sale is calculated (for tax purposes) on the adjusted book value, which is calculated for each year the security is outstanding by adding the accretion value to the original offering price. The amount of the accretion value (and the existence and total amount of original issue discount) is determined in accordance with the provisions of the Internal Revenue Code and the rules and regulations of the Internal Revenue Service.[1]

Rule G-17, the MSRB's fair dealing rule, encompasses two general principles. First, the rule imposes a duty on dealers not to engage in deceptive, dishonest, or unfair practices. This first prong of Rule G-17 is essentially an antifraud prohibition. In addition to the basic antifraud provisions in the rule, the rule imposes a duty to deal fairly with all persons. As part of a dealer's obligation to deal fairly, the MSRB has interpreted the rule to create affirmative disclosure obligations for dealers. The MSRB has stated that the dealer's affirmative disclosure obligations require that a dealer disclose, at or before the sale of municipal securities to a customer, all material facts concerning the transaction, including a complete description of the security.[2] These obligations apply even when a dealer is effecting non-recommended secondary market transactions.

In the context of the sale to customers of an original issue discount security, the MSRB's customer confirmation rule, Rule G-15(a), provides that information regarding the status of bonds as original issue discount securities must be included on customer confirmations. Specifically, Rule G-15(a)(i)(C)(4)(c) provides that, "If the securities pay periodic interest and are sold by the underwriter as original issue discount securities, a designation that they are "original issue discount" securities and a statement of the initial public offering price of the securities, expressed as a dollar price" must be included on the customer's confirmation.

The MSRB previously has alerted dealers of their obligation to make original issue discount disclosures to customers and has stated that, "The Board believes that the fact that a security bears an original issue discount is material information (since it may affect the tax treatment of the security); therefore, this fact should be disclosed to a customer prior to or at the time of trade."[3] The MSRB is publishing this notice to remind dealers of their disclosure obligations under Rule G-17 because it remains concerned that, absent adequate disclosure of a security's original issue discount status, an investor might not be aware that all or a portion of the component of his or her investment return represented by accretion of the discount is tax-exempt, and therefore might sell the securities at an inappropriately low price (*i.e.*, at a price not reflecting the tax-exempt portion of the discount) or pay capital gains tax on the accreted discount amount. Without appropriate disclosure, an investor also might not be aware of how his or her transaction price compares to the initial public offering price of the security. Appropriate disclosure of a security's original issue discount feature should assist customers in computing the market discount or premium on their transaction.

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1 *See* Glossary of Municipal Securities Terms, Second Edition (January 2004).

2 *See e.g.*, Rule G-17 Interpretation — Educational Notice on Bonds Subject to "Detachable" Call Features, May 13, 1993, MSRB Rule Book (July 2004) at 135.

3 Rules G-12 and G-15, Comments Requested on Draft Amendments on Original Issue Discount Securities, *MSRB Reports,* Vol. 4, No. 6 (May 1994) at 7.

Interpretation on Customer Protection Obligations Relating to the Marketing of 529 College Savings Plans

August 7, 2006

The Municipal Securities Rulemaking Board ("MSRB") is publishing this interpretation to ensure that brokers, dealers and municipal securities dealers ("dealers") effecting transactions in the 529 college savings plan market fully understand their fair practice and disclosure duties to their customers.[1]

Basic Customer Protection Obligation

At the core of the MSRB's customer protection rules is Rule G-17, which provides that, in the conduct of its municipal securities activities, each dealer shall deal fairly with all persons and shall not engage in any deceptive, dishonest or

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unfair practice. The rule encompasses two basic principles: an anti-fraud prohibition similar to the standard set forth in Rule 10b-5 adopted by the Securities and Exchange Commission ("SEC") under the Securities Exchange Act of 1934 (the "Exchange Act"), and a general duty to deal fairly even in the absence of fraud. All activities of dealers must be viewed in light of these basic principles, regardless of whether other MSRB rules establish specific requirements applicable to such activities.

Disclosure

The MSRB has interpreted Rule G-17 to require a dealer, in connection with any transaction in municipal securities, to disclose to its customer, at or prior to the sale of the securities to the customer (the "time of trade"), all material facts about the transaction known by the dealer, as well as material facts about the security that are reasonably accessible to the market.[2] This duty applies to any dealer transaction in a 529 college savings plan interest regardless of whether the transaction has been recommended by the dealer.

Many states offer favorable state tax treatment or other valuable benefits to their residents in connection with investments in their own 529 college savings plan. In the case of sales of out-of-state 529 college savings plan interests to a customer, the MSRB views Rule G-17 as requiring a dealer to make, at or prior to the time of trade, additional disclosures that:

(i) depending upon the laws of the home state of the customer or designated beneficiary, favorable state tax treatment or other benefits offered by such home state for investing in 529 college savings plans may be available only if the customer invests in the home state's 529 college savings plan;

(ii) any state-based benefit offered with respect to a particular 529 college savings plan should be one of many appropriately weighted factors to be considered in making an investment decision; and

(iii) the customer should consult with his or her financial, tax or other adviser to learn more about how state-based benefits (including any limitations) would apply to the customer's specific circumstances and also may wish to contact his or her home state or any other 529 college savings plan to learn more about the features, benefits and limitations of that state's 529 college savings plan.

This disclosure obligation is hereinafter referred to as the "out-of-state disclosure obligation."[3]

The out-of-state disclosure obligation may be met if the disclosure appears in the program disclosure document, so long as the program disclosure document has been delivered to the customer at or prior to the time of trade and the disclosure appears in the program disclosure document in a manner that is reasonably likely to be noted by an investor.[4] A presentation of this disclosure in the program disclosure document in close proximity and with equal prominence to the principal presentation of substantive information regarding other federal or state tax-related consequences of investing in the 529 college savings plan, and the inclusion of a reference to this disclosure in close proximity and with equal prominence to each other presentation of information regarding state tax-related consequences of investing in the 529 college savings plan, would be deemed to satisfy this requirement.[5]

The MSRB has no authority to mandate inclusion of any particular items in the issuer's program disclosure document.[6] Dealers who wish to rely on the program disclosure document for fulfillment of the out-of-state disclosure obligation are responsible for understanding what is included within the program disclosure document of any 529 college savings plan they market and for determining whether such information is sufficient to meet this disclosure obligation. Notwithstanding any of the foregoing, disclosure through the program disclosure document as described above is not the sole manner in which a dealer may fulfill its out-of-state disclosure obligation. Thus, if the issuer has not included this information in the program disclosure document in the manner described, inclusion in the program disclosure document in another manner may nonetheless fulfill the dealer's out-of-state disclosure obligation so long as disclosure in such other manner is reasonably likely to be noted by an investor. Otherwise, the dealer would remain obligated to disclose such information separately to the customer under Rule G-17 by no later than the time of trade.[7]

If the dealer proceeds to provide information to an out-of-state customer about the state tax or other benefits available through such customer's home state, Rule G-17 requires that the dealer ensure that the information is not false or misleading. For example, a dealer would violate Rule G-17 if it were to inform a customer that investment in the 529 college savings plan of the customer's home state did not provide the customer with any state tax benefit even though such a state tax benefit is in fact available. Furthermore, a dealer would violate Rule G-17 if it were to inform a customer that investment in the 529 college savings plan of another state would provide the customer with the same state tax benefits as would be available if the customer were to invest in his or her home state's 529 college savings plan even though this is not the case.[8] Dealers should make certain that information they provide to their customers, whether provided under an affirmative disclosure obligation imposed by MSRB rules or in response to questions from customers, is correct and not misleading.

Dealers are reminded that this out-of-state disclosure obligation is in addition to their general obligation under Rule G-17 to disclose to their customers at or prior to the time of trade all material facts known by dealers about the 529 college savings plan interests they are selling to their customers, as well as material facts about such 529 college savings plan that are reasonably accessible to the market. Further, dealers are reminded that disclosures made to customers as required under MSRB rules with respect to 529 college savings plans do not relieve dealers of their suitability obligations — including the

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obligation to consider the customer's financial status, tax status and investment objectives — if they have recommended investments in 529 college savings plans.

Suitability

Under Rule G-19, a dealer that recommends to a customer a transaction in a security must have reasonable grounds for believing that the recommendation is suitable, based upon information available from the issuer of the security or otherwise and the facts disclosed by or otherwise known about the customer.[9] To assure that a dealer effecting a recommended transaction with a non-institutional customer has the information needed about the customer to make its suitability determination, the rule requires the dealer to make reasonable efforts to obtain information concerning the customer's financial status, tax status and investment objectives, as well as any other information reasonable and necessary in making the recommendation.[10] Dealers are reminded that the obligation arising under Rule G-19 in connection with a recommended transaction requires a meaningful analysis, taking into consideration the information obtained about the customer and the security, that establishes the reasonable grounds for believing that the recommendation is suitable. Such suitability determinations should be based on the appropriately weighted factors that are relevant in any particular set of facts and circumstances, which factors may vary from transaction to transaction.[11] Pursuant to Rule G-27(c), dealers must have written supervisory procedures in place that are reasonably designed to ensure compliance with this Rule G-19 obligation to undertake a suitability analysis in connection with every recommended transaction, and dealers must enforce these procedures to ensure that such meaningful analysis does in fact occur in connection with the dealer's recommended transactions.

In the context of a recommended transaction relating to a 529 college savings plan, the MSRB believes that it is crucial for dealers to remain cognizant of the fact that these instruments are designed for a particular purpose and that this purpose generally should match the customer's investment objective. For example, dealers should bear in mind the potential tax consequences of a customer making an investment in a 529 college savings plan where the dealer understands that the customer's investment objective may not involve use of such funds for qualified higher education expenses.[12] Dealers also should consider whether a recommendation is consistent with the customer's tax status and any customer investment objectives materially related to federal or state tax consequences of an investment.

Furthermore, investors generally are required to designate a specific beneficiary under a 529 college savings plan. The MSRB believes that information known about the designated beneficiary generally would be relevant in weighing the investment objectives of the customer, including (among other things) information regarding the age of the beneficiary and the number of years until funds will be needed to pay qualified higher education expenses of the beneficiary. The MSRB notes that, since the person making the investment in a 529 college savings plan retains significant control over the investment (*e.g.*, may withdraw funds, change plans, or change beneficiary, etc.), this person is appropriately considered the customer for purposes of Rule G-19 and other MSRB rules. As noted above, information regarding the designated beneficiary should be treated as information relating to the customer's investment objective for purposes of Rule G-19.

In many cases, dealers may offer the same investment option in a 529 college savings plan sold with different commission structures. For example, an A share may have a front-end load, a B share may have a contingent deferred sales charge or back-end load that reduces in amount depending upon the number of years that the investment is held, and a C share may have an annual asset-based charge. A customer's investment objective — particularly, the number of years until withdrawals are expected to be made — can be a significant factor in determining which share class would be suitable for the particular customer.

Rule G-19(e), on churning, prohibits a dealer from recommending transactions to a customer that are excessive in size or frequency, in view of information known to such dealer concerning the customer's financial background, tax status and investment objectives. Thus, for example, where the dealer knows that a customer is investing in a 529 college savings plan with the intention of receiving the available federal tax benefit, such dealer could, depending upon the facts and circumstances, violate rule G-19(e) if it were to recommend roll-overs from one 529 college savings plan to another with such frequency as to lose the federal tax benefit. Even where the frequency does not imperil the federal tax benefit, roll-overs recommended year after year by a dealer could, depending upon the facts and circumstances (including consideration of legitimate investment and other purposes), be viewed as churning. Similarly, depending upon the facts and circumstances, where a dealer recommends investments in one or more plans for a single beneficiary in amounts that far exceed the amount that could reasonably be used by such beneficiary to pay for qualified higher education expenses, a violation of rule G-19(e) could result.[13]

Other Sales Practice Principles

Dealers must keep in mind the requirements under Rule G-17 — that they deal fairly with all persons and that they not engage in any deceptive, dishonest or unfair practice — when considering the appropriateness of day-to-day sales-related activities with respect to municipal fund securities, including 529 college savings plans. In some cases, certain sales-related activities are governed in part by specific MSRB rules, such as Rule G-19 (as described above) and Rule G-30(b), on commissions.[14] Other activities may not be explicitly addressed by a specific MSRB rule. In either case, the general principles of Rule G-17 always apply.

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In particular, dealers must ensure that they do not engage in transactions primarily designed to increase commission revenues in a manner that is unfair to customers under Rule G-17. Thus, in addition to being a potential violation of Rule G-19 as discussed above, recommending a particular share class to a customer that is not suitable for that customer, or engaging in churning, may also constitute a violation of Rule G-17 if the recommendation was made for the purpose of generating higher commission revenues. Also, where a dealer offers investments in multiple 529 college savings plans, consistently recommending that customers invest in the one 529 college savings plan that offers the dealer the highest compensation may, depending on the facts and circumstances, constitute a violation of Rule G-17 if the recommendation of such 529 college savings plan over the other 529 college savings plans offered by the dealer does not reflect a legitimate investment-based purpose.

Further, recommending transactions to customers in amounts designed to avoid commission discounts (*i.e.*, sales below breakpoints where the customer would be entitled to lower commission charges) may also violate Rule G-17, depending upon the facts and circumstances. For example, a recommendation that a customer make two smaller investments in separate but nearly identical 529 college savings plans for the purposes of avoiding a reduced commission rate that would be available upon investing the full amount in a single 529 college savings plan, or that a customer time his or her multiple investments in a 529 college savings plan so as to avoid being able to take advantage of a lower commission rate, in either case without a legitimate investment-based purpose, could violate Rule G-17.

With respect to sales incentives, the MSRB has previously interpreted Rule G-20, relating to gifts, gratuities and non-cash compensation, to require a dealer that sponsors a sales contest involving representatives who are not employed by the sponsoring dealer to have in place written agreements with these representatives.[15] In addition, the general principles of Rule G-17 are applicable. Thus, if a dealer or any of its associated persons engages in any marketing activities that result in a customer being treated unfairly, or if the dealer or any of its associated persons engages in any deceptive, dishonest or unfair practice in connection with such marketing activities, Rule G-17 could be violated. The MSRB believes that, depending upon the specific facts and circumstances, a dealer may violate Rule G-17 if it acts in a manner that is reasonably likely to induce another dealer or such other dealer's associated persons to violate the principles of Rule G-17 or other MSRB customer protection rules, such as Rule G-19 or Rule G-30. Dealers are also reminded that Rule G-20 establishes standards regarding incentives for sales of municipal securities, including 529 college savings plan interests, that are substantially similar to those currently applicable to sales of mutual fund shares under NASD rules.

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[1] 529 college savings plans are established by states under Section 529(b)(A)(ii) of the Internal Revenue Code as "qualified tuition programs" through which individuals make investments for the purpose of accumulating savings for qualifying higher education costs of beneficiaries. Section 529 of the Internal Revenue Code also permits the establishment of so-called prepaid tuition plans by states and higher education institutions, which are not treated as 529 college savings plans for purposes of this notice.

[2] *See* Rule G-17 Interpretation — Interpretive Notice Regarding Rule G-17, on Disclosure of Material Facts, March 20, 2002, reprinted in *MSRB Rule Book*.

[3] This out-of-state disclosure obligation constitutes an expansion of, and supersedes, certain disclosure requirements with respect to out-of-state 529 college savings plan transactions established under "Application of Fair Practice and Advertising Rules to Municipal Securities," May 14, 2002, published in *MSRB Rule Book*.

[4] As used in this notice, the term "program disclosure document" has the same meaning as "official statement" under the rules of the MSRB and SEC. The delivery of the program disclosure document to customers pursuant to Rule G-32, which requires delivery by settlement of the transaction, would be timely for purposes of Rule G-17 only if such delivery is accelerated so that it is received by the customer by no later than the time of trade.

[5] Thus, if the program disclosure document contains a series of sections in which the principal disclosures of substantive information on federal or state-tax related consequences of investing in the 529 college savings plan appear, a single inclusion of the required disclosure within, at the beginning or at the end of such series would be satisfactory for purposes of the inclusion with the principal presentation of such other disclosures. Similarly, if the program disclosure document includes any other series of statements on state-tax related consequences, such as might exist in a summary statement appearing at the beginning of some program disclosure documents, a single prominent reference in the summary statement to the fuller disclosure made pursuant to the out-of-state disclosure obligation appearing elsewhere in the program disclosure document would be satisfactory.

[6] However, the MSRB notes that Exchange Act Rule 15c2-12(f)(3) of the SEC defines a "final official statement" as:

> a document or set of documents prepared by an issuer of municipal securities or its representatives that is complete as of the date delivered to the Participating Underwriter(s) and that sets forth information concerning the terms of the proposed issue of securities; information, including financial information or operating data, concerning such issuers of municipal securities and those other entities, enterprises, funds, accounts, and other persons material to an evaluation of the Offering; and a description of the undertakings to be provided pursuant to paragraph (b)(5)(i), paragraph (d)(2)(ii), and paragraph (d)(2)(iii) of this section, if applicable, and of any instances in the previous five years in which each person specified pursuant to paragraph (b)(5)(ii) of this section failed to comply, in all material respects, with any previous undertakings in a written contract or agreement specified in paragraph (b)(5)(i) of this section.

Section (b) of that rule requires that the participating underwriter of an offering review a "deemed-final" official statement and contract to receive the final official statement from the issuer. *See* Rule D-12 Interpretation — Interpretation Relating to Sales of Municipal Fund Securities in the Primary Market, January 18, 2001, published in *MSRB Rule Book*, for a discussion of the applicability of Rule 15c2-12 to offerings of 529 college savings plans.

[7] Although Rule G-17 does not dictate the precise manner in which material facts must be disclosed to the customer at or prior to the time of trade, dealers must ensure that such disclosure is effectively provided to the customer in connection with the specific transaction and cannot merely rely on the inclusion of a disclosure in general advertising materials.

[8] Dealers should note that these examples are illustrative and do not limit the circumstances under which, depending on the facts and circumstances, a Rule G-17 violation could occur.

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[9] The MSRB has previously stated that most situations in which a dealer brings a municipal security to the attention of a customer involve an implicit recommendation of the security to the customer, but determining whether a particular transaction is in fact recommended depends on an analysis of all the relevant facts and circumstances. *See* Rule G-19 Interpretive Letter — Recommendations, February 17, 1998, published in *MSRB Rule Book*. The MSRB also has provided guidance on recommendations in the context of on-line communications in Rule G-19 Interpretation — Notice Regarding Application of Rule G-19, on Suitability of Recommendations and Transactions, to Online Communications, September 25, 2002, published in *MSRB Rule Book*.

[10] Rule G-8(a)(xi)(F) requires that dealers maintain records for each customer of such information about the customer used in making recommendations to the customer.

[11] Although certain factors relating to recommended transactions in 529 college savings plans are discussed in this notice, whether such enumerated factors or any other considerations are relevant in connection with a particular recommendation is dependent upon the facts and circumstances. The factors that may be relevant with respect to a specific transaction in a 529 college savings plan generally include the various considerations that would be applicable in connection with the process of making suitability determinations for recommendations of any other type of security.

[12] See Section 529(c)(3) of the Internal Revenue Code. State tax laws also may result in certain adverse consequences for use of funds other than for educational costs.

[13] The MSRB understands that investors may change designated beneficiaries and therefore amounts in excess of what a single beneficiary could use ultimately might be fully expended by additional beneficiaries. The MSRB expresses no view as to the applicability of federal tax law to any particular plan of investment and does not interpret its rules to prohibit transactions in furtherance of legitimate tax planning objectives, so long as any recommended transaction is suitable.

[14] The MSRB has previously provided guidance on dealer commissions in Rule G-30 Interpretation — Interpretive Notice on Commissions and Other Charges, Advertisements and Official Statements Relating to Municipal Fund Securities, December 19, 2001, published in *MSRB Rule Book*. The MSRB believes that Rule G-30(b), as interpreted in this 2001 guidance, should effectively maintain dealer charges for 529 college savings plan sales at a level consistent with, if not lower than, the sales loads and commissions charged for comparable mutual fund sales.

[15] *See* Rule G-20 Interpretive Letter —Authorization of sales contests, June 25, 1982, published in *MSRB Rule Book*.

Reminder of Customer Protection Obligations in Connection with Sales of Municipal Securities

March 30, 2007

The Municipal Securities Rulemaking Board ("MSRB") is publishing this notice to remind brokers, dealers and municipal securities dealers ("dealers") of their customer protection obligations — specifically the application of Rule G-17, on fair dealing, and Rule G-19, on suitability — in connection with their municipal securities sales activities, including but not limited to situations in which dealers offer sales incentives.[1]

Basic Customer Protection Obligation

At the core of the MSRB's customer protection rules is Rule G-17 which provides that, in the conduct of its municipal securities activities, each dealer shall deal fairly with all persons and shall not engage in any deceptive, dishonest or unfair practice. The rule encompasses two basic principles: an anti-fraud prohibition similar to the standard set forth in Rule 10b-5 adopted by the Securities and Exchange Commission under the Securities Exchange Act of 1934, and a general duty to deal fairly even in the absence of fraud. All activities of dealers must be viewed in light of these basic principles, regardless of whether other MSRB rules establish specific requirements applicable to such activities.

Disclosure

The MSRB has interpreted Rule G-17 to require a dealer, in connection with any transaction in municipal securities, to disclose to its customer, at or prior to the sale of the securities to the customer, all material facts about the transaction known by the dealer, as well as material facts about the security that are reasonably accessible to the market.[2] This duty applies to any transaction in a municipal security regardless of whether the dealer has recommended the transaction. Dealers should make certain that information they provide to their customers, whether provided under an affirmative disclosure obligation imposed by MSRB rules or in response to questions from customers, is correct and not misleading. Further, dealers are reminded that disclosures made to customers as required under MSRB rules do not relieve dealers of their suitability obligations — including the obligation to consider the customer's financial status, tax status and investment objectives — if they have recommended transactions in municipal securities.

Suitability

Under Rule G-19, a dealer that recommends to a customer a transaction in a municipal security must have reasonable grounds for believing that the recommendation is suitable, based upon information available from the issuer of the security or otherwise and the facts disclosed by or otherwise known about the customer.[3] To assure that a dealer effecting a recommended transaction with a non-institutional customer has the information needed about the customer to make its suitability determination, Rule G-19 requires the dealer to make reasonable efforts to obtain information concerning the customer's financial status, tax status and investment objectives, as well as any other information reasonable and necessary in making the recommendation.[4] Dealers are reminded that the obligation arising under Rule G-19 in connection with a recommended transaction requires a meaningful analysis, taking into consideration the information obtained about the customer and the security, which establishes the reasonable grounds for believing that the recommendation is suitable. Such suitability determinations should be based on the appropriately weighted factors that are relevant in any particular set of facts and circumstances, which factors may vary from transaction to transaction. Pursuant to Rule G-27, on supervision, dealers must have written supervisory procedures in place that are reasonably designed to ensure compliance with the Rule G-19 obligation to undertake a suitability analysis in connection with every recommended transaction, and dealers must enforce these procedures to ensure that such meaningful analysis does in fact occur in connection with the dealer's recommended transactions.

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Other Sales Practice Principles

Dealers must keep in mind the requirements under Rule G-17 — that they deal fairly with all persons and that they not engage in any deceptive, dishonest or unfair practice — when considering the appropriateness of day-to-day sales-related activities with respect to municipal securities. In some cases, certain sales-related activities are governed in part by specific MSRB rules, such as Rule G-19 (as described above), Rule G-18 on execution of transactions, and Rule G-30 on prices and commissions. Other activities may not be explicitly addressed by a specific MSRB rule. In either case, the general principles of Rule G-17 always apply.

In particular, dealers must ensure that they do not engage in transactions that are unfair to customers under Rule G-17. This principle applies in the case of an individual transaction to ensure that the dealer does not unfairly attempt to increase its own revenue or otherwise advance its interests without due regard to the customer's interests. In addition, where a dealer consistently recommends that customers invest in the municipal securities that offer the dealer the highest compensation, such pattern or general practice may, depending on the facts and circumstances, constitute a violation of Rule G-17 if the recommendation of such municipal securities over the other municipal securities offered by the dealer does not reflect a legitimate investment-based purpose.

With respect to sales incentives, the MSRB has previously interpreted Rule G-20, relating to gifts, gratuities and non-cash compensation, to require a dealer that sponsors a sales contest involving representatives who are not employed by the sponsoring dealer to have in place written agreements with these representatives.[5] Dealers are also reminded that Rule G-20(d) establishes standards regarding non-cash incentives for sales of municipal securities that are substantially similar to those currently applicable to the public offering of corporate securities under NASD Rule 2710(i) but also include "total production" and "equal weighting" requirements for internal sales contests. Dealers should be mindful that financial incentives may cause an associated person (whether an associated person of the dealer offering the sales incentive or an associated person of another dealer) to favor one municipal security over another and thereby potentially compromise the dealer's obligations under MSRB rules, including Rules G-17 and G-19. Rule G-17 may be violated if a dealer or any of its associated persons engages in any marketing activities that result in a customer being treated unfairly, or if the dealer or any of its associated persons engages in any deceptive, dishonest or unfair practice in connection with such marketing activities. The MSRB also believes that, depending upon the specific facts and circumstances, a dealer may violate Rule G-17 if it acts in a manner that is reasonably likely to induce another dealer or such other dealer's associated persons to violate the principles of Rule G-17 or other MSRB customer protection rules, such as Rule G-18, G-19 or Rule G-30.

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[1] The principles enunciated in this notice were previously discussed, in the context of the 529 college savings plan market, in *Rule G-17 Interpretation — Interpretation on Customer Protection Obligations Relating to the Marketing of 529 College Savings Plans* (August 7, 2006), reprinted in *MSRB Rule Book*. This notice makes clear that the general principles discussed in the August 2006 interpretation also apply in the context of the markets for municipal bonds, notes and other types of municipal securities. This notice in no way alters the substance or applicability of the August 2006 interpretation with respect to the 529 college savings plan market.

[2] *See Rule G-17 Interpretation — Interpretive Notice Regarding Rule G-17, on Disclosure of Material Facts* (March 20, 2002), reprinted in *MSRB Rule Book*.

[3] The MSRB has previously stated that most situations in which a dealer brings a municipal security to the attention of a customer involve an implicit recommendation of the security to the customer, but determining whether a particular transaction is in fact recommended depends on an analysis of all the relevant facts and circumstances. *See Rule G-19 Interpretive Letter — Recommendations*, February 17, 1998, reprinted in *MSRB Rule Book*. The MSRB also has provided guidance on recommendations in the context of on-line communications in *Rule G-19 Interpretation — Notice Regarding Application of Rule G-19, on Suitability of Recommendations and Transaction, to Online Communications*, September 25, 2002, reprinted in *MSRB Rule Book*.

[4] Rule G-8(a)(x)(F) requires that dealers maintain records for each customer of such information about the customer used in making recommendations to the customer. Rule G-19(e), on churning, also prohibits a dealer from recommending transactions to a customer that are excessive in size or frequency, in view of information known to such dealer concerning the customer's financial background, tax status and investment objectives.

[5] *See Rule G-20 Interpretive Letter — Authorization of sales contests*, June 25, 1982, reprinted in *MSRB Rule Book*.

Bond Insurance Ratings — Application of MSRB Rules

January 22, 2008

Bond insurance companies recently have been subject to increased attention in the municipal securities market as a result of credit rating agency downgrades and ongoing credit agency reviews. Because of these recent events and the prominence of bond insurance in the municipal securities market, the MSRB is publishing this notice to review some of the investor protection rules applicable to brokers, dealers and municipal securities dealers ("dealers") effecting transactions in insured municipal securities.

Rule G-17 and Time of Trade Disclosure to Customers

One of the most important MSRB investor protection rules is Rule G-17, which requires dealers to deal fairly with all persons and prohibits deceptive, dishonest, or unfair practices. A long-standing interpretation of Rule G-17 is that a dealer transacting with a customer[1] must ensure that the customer is informed of all material facts concerning the transaction, including a complete description of the security.[2] Disclosure of material facts to a customer under Rule G-17 may be made orally or in writing, but must be made at or prior to the time of trade. In general, a fact is considered "material" if there is a substantial likelihood that its disclosure would have been considered significant by a reasonable investor.[3] As applied to customer transactions in insured municipal securities, the dis-

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closures required under Rule G-17 include a description of the securities and identification of any bond insurance as well as material facts that relate to the credit rating of the issue. The disclosures required under Rule G-17 also may include material facts about the credit enhancement applicable to the issue.

March 2002 Notice

In a March 2002 Interpretative Notice, the MSRB provided specific guidance on the disclosure requirements of Rule G-17.[4] The March 2002 Notice clarified that, in addition to the requirement to disclose material facts about a transaction of which the dealer is specifically aware, the dealer is responsible for disclosing any material fact that has been made available through sources such as the NRMSIR system,[5] the Municipal Securities Information Library® (MSIL®) system,[6] RTRS,[7] *rating agency reports* and other sources of information relating to the municipal securities transaction generally used by dealers that effect transactions in the type of municipal securities at issue (collectively, "established industry sources").[8] The inclusion of "rating agency reports" within the list of "established industry sources" of information makes clear the Board's view that information about the rating of a bond, or information from the rating agency about potential rating actions with respect to a bond, may be material information about the transaction. It follows that, where the issue's credit rating is based in whole or in part on bond insurance, the credit rating of the insurance company, or information from the rating agency about potential rating actions with respect to the bond insurance company, may be material information about the transaction.

In addition to the actual credit rating of a municipal issue, "underlying" credit ratings are assigned by rating agencies to some municipal securities issues. An underlying credit rating is assigned to reflect the credit quality of an issue independent of credit enhancements such as bond insurance. The underlying rating (or the lack of an underlying rating)[9] may be relevant to a transaction when the credit rating of the bond insurer is downgraded or is the subject of information from the rating agency about a potential rating action with respect to the insurance company. In order to ensure all required disclosures are made under Rule G-17, a dealer must take into consideration information on underlying credit ratings that is available in established industry sources (or information otherwise known to the dealer) and must incorporate such information when determining the material facts to be disclosed about the transaction.

April 2002 Notice on Sophisticated Municipal Market Professionals

In a notice dated April 30, 2002, the MSRB provided additional guidance on Rule G-17 and other customer protection rules as they apply to transactions with a special class of institutional customers known as "Sophisticated Municipal Market Professionals" ("SMMPs").[10] The April 2002 Notice provides a definition of SMMP, which includes critical elements such as the customer's financial sophistication and access to established industry sources for municipal securities information. When a dealer has reasonable grounds for concluding that the institutional customer is an SMMP as defined in the April 2002 Notice, the institutional customer necessarily is already aware, or capable of making itself aware of, material facts found in the established industry sources. In addition, the customer in such cases is able to independently understand the significance of such material facts.

The April 2002 Notice provides that a dealer's Rule G-17 obligation to affirmatively disclose material facts available from established industry sources is qualified to some extent in certain kinds of SMMP transactions. Specifically, when effecting non-recommended, secondary market transactions, a dealer is not required to provide an SMMP with affirmative disclosure of the material facts that already exist in established industry sources. This differs from the general Rule G-17 requirement of disclosure, discussed above, and therefore may be relevant to dealers trading with SMMPs in insured municipal securities.

Rule G-19 and Suitability Determinations

In addition to the customer disclosure obligations relating to bond insurance and credit ratings, dealers also should be aware of how suitability requirements of MSRB Rule G-19 relate to transactions in insured bonds that are recommended to customers. Rule G-19 provides that a dealer must consider the nature of the security as well as the customer's financial status, tax status and investment objectives when making recommendations to customers. The dealer must have reasonable grounds for believing that the recommendation is suitable, based upon information available about the security and the facts disclosed by or otherwise known about the customer.[11] Facts relating to the credit rating of a bond insurer may affect suitability determinations, particularly for customers that have conveyed to the dealer investment objectives relating to credit quality of investments. For example, if a customer has expressed the desire to purchase only "triple A" rated securities, recommendations to the customer should take into account information from rating agencies, including information about potential rating actions that may affect the future "triple A" status of the issue.[12]

Rule G-30 and Fair Pricing Requirements

Another important investor protection provision within MSRB rules is Rule G-30 on prices and commissions. Rule G-30 requires that, for principal transactions with customers, the dealer must ensure that the price of each transaction is fair and reasonable, taking into account all relevant factors. Dealers should consider the effect of ratings on the value of the securities involved in customer transactions, and should specifically consider the effect of information from rating agencies, both with respect to actual or potential changes in the underlying rating of a security and with respect to actual or potential changes in the rating of any bond insurance applicable to the security.

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Rule G-15(a) and Confirmation Disclosure

The content of information required to be included on customer confirmations of municipal securities transactions is set forth in MSRB Rule G-15(a). For securities with additional credit backing, such as bond insurance, the rule requires the confirmation to state "the name of any company or other person in addition to the issuer obligated, directly or indirectly, with respect to debt service."[13] Rule G-15(a) does not generally require that credit agency ratings be included on customer confirmations. However, if credit ratings are given on the confirmation, the ratings must be correct.

Conclusion

Meeting the disclosure requirements of Rule G-17 requires attention to the facts and circumstances of individual transactions as well as attention to the specific securities and customers that are involved in those transactions. In light of recent events affecting credit ratings of bond insurance companies, dealers may wish to review both the March 2002 Notice on Rule G-17 disclosure requirements and the April 2002 Notice on SMMP transactions to ensure compliance with the rule in the changing environment for bond insurance companies. In addition, dealers may wish to review how transactions in insured securities are being recommended, priced and confirmed to customers to ensure compliance with other MSRB investor protection rules.

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[1] The word "customer," as used in this notice, follows the definition in MSRB Rule D-9, which states that a "customer" is any person other than a broker, dealer, or municipal securities dealer acting in its capacity as such or an issuer in transactions involving the sale by the issuer of a new issue of its securities.

[2] *See, e.g.*, Notice Concerning Disclosure of Call Information to Customers of Municipal Securities (March 4, 1986), MSRB Manual (CCH) para. 3591.

[3] *See, e.g., Basic v. Levinson*, 485 U.S. 224 (1988).

[4] Interpretive Notice Regarding Rule G-17, on Disclosure of Material Facts, MSRB Notice (March 25, 2002) (hereinafter "March 2002 Notice").

[5] For purposes of this notice, the "NRMSIR system" refers to the disclosure dissemination system adopted by the SEC in SEC Rule 15c2-12.

[6] The MSIL® system collects and makes available to the marketplace official statements and advance refunding documents submitted under MSRB Rule G-36, on the delivery of official statements, as well as certain secondary market material event disclosures provided by issuers under SEC Rule 15c2-12. Municipal Securities Information Library® and MSIL® are registered trademarks of the MSRB.

[7] The MSRB's Real-Time Transaction Reporting System ("RTRS") collects and makes available to the marketplace information regarding inter-dealer and dealer-customer transactions in municipal securities.

[8] *See* March 2002 Notice (emphasis added).

[9] The lack of a rating for a municipal issue does not necessarily imply that the credit quality of such an issue is inferior, but is information that should be taken into account when accessing material facts about a transaction in the security.

[10] Notice Regarding the Application of MSRB Rules to Transactions with Sophisticated Municipal Market Professionals (April 30, 2002) (hereinafter "April 2002 Notice").

[11] As with Rule G-17, the MSRB has provided specific qualifications with respect to how a dealer fulfills its suitability duties when making recommendations to SMMPs. These are described in the April 2002 Notice on SMMPs, discussed above.

[12] To assure that a dealer effecting a recommended transaction with a non-SMMP customer has the information needed about the customer to make its suitability determination, Rule G-19 requires the dealer to make reasonable efforts to obtain information concerning the customer's financial status, tax status and investment objectives, as well as any other information reasonable and necessary in making the recommendation. The obligations arising under Rule G-19 in connection with a recommended transaction require a meaningful analysis, taking into consideration the information obtained about the customer and the security, which establishes the reasonable grounds for believing that the recommendation is suitable. Such suitability determinations should be based on the appropriately weighted factors that are relevant in any particular set of facts and circumstances, which factors may vary from transaction to transaction. *See* Reminder of Customer Protection Obligations In Connection With Sales of Municipal Securities, MSRB Notice 2007-17 (May 30, 2007).

[13] The rule provides that, if there is more than one such obligor, the statement "multiple obligors" may be shown. If a security is unrated by a nationally recognized statistical rating organization, Rule G-15(a) requires dealers to disclose the fact that the security is unrated.

Notice on Bank Tying Arrangements, Underpricing of Credit and Rule G-17 on Fair Dealing

August 14, 2008

The Municipal Securities Rulemaking Board is concerned that the recent increase in demand for liquidity facilities in the municipal securities market due to the downgrade of the monoline insurers and the conversion of auction rate securities programs may result in certain activities that could violate federal bank tying and underpricing of credit prohibitions. The MSRB wishes to remind dealers of these prohibitions as well as the fact that any broker, dealer or municipal securities dealer ("dealer") that aids and abets a violation of federal bank tying or underpricing of credit prohibitions also would violate Rule G-17 on fair dealing.

Section 106 of the Bank Holding Company Act Amendments of 1970 prohibits commercial banks from imposing certain types of tying arrangements on their customers, a practice known as "tying." Tying includes conditioning the availability or terms of loans or other credit products on the purchase of certain other products and services. It is legal for banks to tie credit and traditional banking products, such as cash management, but it is not legal for banks to tie credit and debt underwriting from the bank or from the bank's investment affiliate. For example, a bank would violate Section 106 if the bank informs a customer seeking a liquidity facility from the bank that the bank will provide the liquidity facility only if the customer commits to hire the bank's securities affiliate to underwrite an upcoming bond offering for the customer. Section 106, however, does not prohibit a customer from deciding on its own to award some of its business to a bank or an affiliate as a reward for the bank previously providing credit or other business to the customer. So too, if a bank provides a reduced rate on a liquidity facility because of an illegal tie in with an underwriting, that may also constitute an underpric-

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ing of credit (*i.e.*, an extension of credit below market rates). The underpricing could violate Section 23B of the Federal Reserve Act of 1913 which generally requires that certain transactions between a bank and its affiliates occur on market terms and applies to any transaction by a bank with a third party if an affiliate has a financial interest in the third party or if an affiliate is a participant in the transaction.

The MSRB encourages all interested parties to provide information concerning any arrangement in which the provision of liquidity facilities may have been illegally tied to investment banking services. Such information may be provided to the appropriate bank regulatory authority or, if provided to the MSRB, the MSRB will forward it to the appropriate bank regulatory authority. In addition, the MSRB cautions that any dealer that aids or abets a violation of bank tying or the underpricing of credit prohibitions also would violate Rule G-17. A dealer would be deemed to have aided and abetted a violation of the bank tying prohibition or underpricing of credit if it knew or had reason to know that the purchase of investment banking services had been tied to the provision and/or pricing of a liquidity facility by an affiliated bank in violation of the federal banking laws.

Guidance on Disclosure and Other Sales Practice Obligations to Individual and Other Retail Investors in Municipal Securities

July 14, 2009

Significant participation by individual investors has long been a hallmark of the municipal securities market and, consequently, a focus of the core investor protection efforts of the Municipal Securities Rulemaking Board (the "MSRB").[1] This Notice reminds brokers, dealers and municipal securities dealers ("dealers") of their sales practice obligations under MSRB rules as applied specifically to individual and other retail investors. Among other things, this Notice updates guidance to dealers on (i) their obligations to disclose material information about issuers, their securities and credit/liquidity support for such securities in connection with the fulfillment of their disclosure obligations under MSRB Rule G-17, (ii) their obligations to use such material information in fulfilling their suitability obligations under MSRB Rule G-19, and (iii) their fair pricing obligations under MSRB Rules G-18 and G-30.[2] This Notice also applies previous guidance on bond insurance rating downgrades and wide-scale auction failures for municipal auction rate securities ("ARS") to municipal securities transactions in general and specifically to transactions with individual and other retail investors in variable rate demand obligations ("VRDOs").[3]

Basic Investor Protection Obligation

Rule G-17 is the core of the MSRB's investor protection rules. It provides that, in the conduct of its municipal securities activities, each dealer shall deal fairly with all persons and shall not engage in any deceptive, dishonest or unfair practice. The rule contains an anti-fraud prohibition similar to the standard set forth in Rule 10b-5 adopted by the Securities and Exchange Commission ("SEC") under the Securities Exchange Act of 1934 (the "Exchange Act"). However, it also establishes a general duty to deal fairly, even in the absence of fraud. This general duty to deal fairly places several specific obligations on dealers with respect to their dealings with their customers, including the obligation to disclose material information, described below. All activities of dealers must be viewed in light of these basic principles, regardless of whether other MSRB rules establish additional requirements on dealers.

Access to Material Information in the Municipal Securities Market

Many of the investor protection obligations established under MSRB rules are premised on dealer access to material information about municipal securities. Such access is fundamental not only to the ability of a dealer to meet its disclosure obligations to customers under MSRB rules but also to the ability of the dealer to undertake the necessary analyses to determine the suitability of a recommended municipal securities transaction and to determine the prevailing market price in connection with establishing a fair transaction price, among other things.

As professionals in the marketplace, dealers use a combination of internal resources and public and proprietary information sources to obtain the information necessary to conduct their business in a professional manner and to meet their disclosure and fair practice duties to investors. In 2002, the MSRB identified certain "established industry sources" in the municipal securities market that were available to and generally used by dealers that effect transactions in municipal securities.[4] While dealers and some institutional investors could readily access information from the established industry sources directly or through information vendors, most investors (and, in particular, individual investors) did not have ready access to many of the established industry sources and were largely limited to the information they could obtain through dealers.

With the advent of the MSRB's Electronic Municipal Market Access system ("EMMA") as a new established industry source, the amount, nature, timing and accessibility of information available to the entire marketplace, including both professionals and individual investors, has changed significantly since 2002. Official statements and other primary market disclosure documents, as well as continuing disclosure documents, are available to the general public through the EMMA web portal. Transaction price information is now available on a real-time basis, and comprehensive interest rate information for VRDOs and ARS also is available for the first time. All of this information is made available to the general public, at no cost, through the EMMA web portal, and also is available through subscription feeds to market participants and information vendors. It is expected that information

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vendors will continue to make this information available to their clients, together with increasing levels of value added products.

Disclosure of Material Information

General Disclosure Duty. Rule G-17 requires a dealer effecting a municipal securities transaction to disclose to its customer all material information about the transaction known by the dealer, as well as material information about the security that is reasonably accessible to the market.[5] Information available from established industry sources is deemed to be reasonably accessible to the market for purposes of this Rule G-17 disclosure obligation. Such disclosures must be made at or prior to the sale of municipal securities to the investor (*i.e.*, when the investor and the dealer agree to make the trade), also referred to as the "time of trade." This is a key protection mandated by MSRB rules.[6] This disclosure duty applies to any municipal securities transaction, regardless of whether the dealer is acting as a so-called "order-taker" (as when the trade is "unsolicited"), whether the transaction is recommended, or whether the transaction is a primary or secondary market trade.[7] Dealers continue to be obligated to make the required time of trade disclosures to their customers mandated by Rule G-17, notwithstanding the availability to investors of comprehensive information from EMMA and other established industry sources.

In general, information is considered "material" if there is a substantial likelihood that its disclosure would have been considered important or significant by a reasonable investor.[8] The duty to disclose material information to a customer in a municipal securities transaction includes the duty to give a complete description of the security, including a description of the features that likely would be considered significant by a reasonable investor and facts that are material to assessing the potential risks of the investment.[9] For VRDOs, ARS or other securities for which interest payments may fluctuate, such material facts would include a description of the basis on which periodic interest rate resets are determined.

The scope of material information that dealers are obligated to disclose to their customers under Rule G-17 is not limited solely to the information made available through established industry sources. Dealers also must disclose material information they know about the securities even if such information is not then available from established industry sources. It is essential that dealers establish procedures reasonably designed to ensure that information known to the dealer is communicated internally or otherwise made available to relevant personnel in a manner reasonably designed to ensure compliance with this disclosure obligation.

Disclosures with Respect to Credit/Liquidity Enhancement and Ratings. The MSRB previously has provided guidance on specific disclosures that may be required in connection with insured municipal securities, including in particular insured ratings, underlying ratings and potential rating actions disclosed by the rating agencies.[10] The principles enunciated with respect to insured bonds also are generally applicable in connection with any third-party credit enhancement provided with respect to municipal securities, regardless of the type of such enhancement. This disclosure obligation extends to enhancements such as, without limitation, letters of credit, surety bonds, state or federal agency enhancements, and other similar products or programs.

For VRDOs, dealers generally must consider factors relevant to both the long-term nature of the securities as well as short-term liquidity features of such securities. Banks or other financial institutions (collectively, "banks") may issue letters of credit or similar product ("LOCs"), which provide both long-term credit support (by guaranteeing payment of principal and interest on VRDOs) and short-term liquidity support (by guaranteeing the purchase price of tendered VRDOs). Alternatively, banks may provide only liquidity support for tendered VRDOs, through a standby bond purchase agreement or similar product ("SBPA"). Typically, an SBPA is used when the issuer has a strong credit rating by itself or it is coupled with bond insurance. However, while LOCs are generally irrevocable for the term of the LOC, that is frequently not the case with SBPAs. Some SBPAs are structured so that certain negative credit or other events with regard to the issue or bond insurer result in the immediate termination of the SBPA and the loss of liquidity support, without a prior mandatory tender of the bonds.[11] If such an immediate termination event occurs, investors are left holding long-term, floating-rate bonds with no tender right.

The role of the remarketing agent also may be material to investors. If the remarketing agent for a VRDO has customarily or from time-to-time taken tendered bonds into inventory to make it unnecessary to draw on the liquidity facility for unremarketed bonds (thereby in effect providing liquidity support), the fact that the remarketing agent is not contractually obligated to maintain such practice will generally be material information required to be disclosed to customers to which VRDOs are sold.

The following information will generally be material information required to be disclosed to investors in credit/liquidity enhanced securities, including but not limited to VRDOs, if known to the dealer or if reasonably available from established industry sources: (i) the credit rating of the issue or lack thereof; (ii) the underlying credit rating or lack thereof; (iii) the identity of any credit enhancer or liquidity provider; and (iv) the credit rating of the credit provider and liquidity provider, including potential rating actions (*e.g.*, downgrade). Additionally, material terms of the credit facility or liquidity facility should be disclosed (*e.g.*, any circumstances under which an SBPA would terminate without a mandatory tender). This list is not exhaustive. Other information may also be material to investors in credit/liquidity enhanced securities.

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Other Investor Protection Obligations

Although disclosure to investors is a key customer protection duty of dealers under MSRB rules, other important customer protection rules also apply. Thus, dealers are reminded that they are not relieved of their suitability obligations under MSRB Rule G-19 simply by disclosing material information to the customer. They are also not relieved of their fair pricing obligations to their customers under MSRB Rules G-18 and G-30 by disclosing material information to investors. The information known by a dealer in connection with a municipal security, together with the information available from established industry sources, generally should inform the dealer, to the extent applicable, in undertaking the necessary analyses and determinations needed to meet these other customer protection obligations.

Suitability of Recommendations. Under MSRB Rule G-19, a dealer that recommends a municipal securities transaction to a customer must have reasonable grounds for believing that the recommendation is suitable, based upon information available from the issuer of the security or otherwise (including from established industry sources) and the facts disclosed by or otherwise known about the customer.[12] To assure that a dealer effecting a recommended transaction with an individual investor has the information needed about the investor to make its suitability determination, the rule requires the dealer to make reasonable efforts to obtain information concerning the investor's financial status, tax status and investment objectives, as well as any other information reasonable and necessary in making the recommendation.[13]

Dealers are reminded that the obligation arising under Rule G-19 in connection with a recommended transaction requires a meaningful analysis,[14] taking into consideration the information obtained about the investor and the security, which establishes the reasonable grounds for believing that the recommendation is suitable. Such suitability determinations are required regardless of the apparent safety of a particular security or issuer or the apparent wealth or sophistication of a particular investor. Suitability determinations should be based on the appropriately weighted factors that are relevant in any particular set of facts and circumstances, and those factors may vary from transaction to transaction. Factors to be considered include, but are not limited to, the investor's financial profile, tax status, investment objectives (including portfolio concentration/diversification), and the specific characteristics and risks of the municipal security recommended to the investor.

The MSRB notes that Section (c) of Exchange Act Rule 15c2-12 provides that it is impermissible for a dealer to recommend the purchase or sale of a municipal security unless the dealer has procedures in place that provide reasonable assurance that it will receive prompt notice of the specified material events that are subject to the continuing disclosure obligations of the rule. A dealer would be expected to have reviewed any applicable continuing disclosures made available through EMMA or other established industry sources and to have taken such disclosures into account in undertaking its suitability determination.

With regard to credit-enhanced securities, facts relating to the credit rating of the credit enhancer may affect suitability determinations, particularly for investors who have conveyed to the dealer investment objectives relating to credit quality of investments. For example, if a customer has expressed the desire to purchase only "triple A" rated securities, recommendations to the customer should take into account information from rating agencies, including information about potential rating actions that may affect the future "triple A" status of the issue. In the case of recommended VRDOs or any other securities that are viewed as providing significant liquidity to investors, a dealer must consider both the liquidity characteristics of the security and the investor's need for a liquid investment when making a suitability determination. Facts relating to the short-term credit rating, if any, of the LOC or SBPA provider, or of any other third-party liquidity facility provider, generally would affect suitability determinations in such securities. To the extent that an investor seeks to invest in VRDOs due to their liquidity characteristics, a suitability analysis also generally would require a dealer, in recommending a VRDO to an individual investor, to consider carefully the circumstances, if any, under which the liquidity feature may no longer be effectively available to the customer.

It is incumbent upon any dealer wishing to market municipal securities to customers that it understand the material features of the security, particularly if such dealer is to fulfill its obligation to undertake a suitability determination in connection with a recommended transaction. Dealers should take particular care with respect to new products that may be introduced into the municipal securities market,[15] existing products that may have complex structures that can differ materially from issue to issue, and outstanding securities that may trade infrequently, may be issued by less well-known issuers, or may have unusual features. Dealers are reminded that they must review the relevant disclosure documents to become familiar with the specific characteristics of the product, including the tax features, prior to recommending such products to their customers.

Fair Pricing. MSRB Rule G-30(a) establishes the pricing obligation of dealers in principal transactions between dealers and customers. The rule provides that the aggregate transaction price to the customer must be fair and reasonable, taking into consideration all relevant factors. A "fair and reasonable" price is one that bears a reasonable relationship to the prevailing market price of the security.[16] Dealers have a similar obligation with respect to the price of securities sold in agency transactions pursuant to Rule G-18. Dealer compensation on a principal transaction is considered to be a mark-up or mark-down that is computed from the inter-dealer market price prevailing at the time of the customer transaction, while compensation on an agency transaction generally consists of a commission. As part of the aggregate price to the customer,

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the mark-up or mark-down also must be fair and reasonable, taking into account all relevant factors.[17] Similarly, under Rule G-30(b), the commission on an agency transaction must be fair and reasonable, taking into account all relevant factors.

As a general matter, in addition to information about prices of transactions effected by such dealers and other market participants in such security, material information about a security available through EMMA or other established industry sources may also be among the relevant factors that the dealer should consider in connection with ensuring fair pricing of its transactions with investors. Among other things, dealers would be expected to have reviewed any applicable continuing disclosures made available through EMMA or other established industry sources and to have taken such disclosures into account in determining a fair and reasonable transaction price. In addition, dealers should consider the effect of ratings on the value of the securities involved in customer transactions, and should specifically consider the effect of information from rating agencies, both with respect to actual or potential changes in the underlying rating of a security and with respect to actual or potential changes in the rating of any third-party credit enhancement applicable to the security.

Finally, many issuers currently include a retail order period in the marketing of new issues. The retail order period is intended to provide an opportunity for individual investors to place orders in advance of institutional investors. Dealers are reminded that an issuer's use of a retail order period based on a perception that the retail order period will improve pricing of the new issue for the issuer does not create a safe harbor for dealers to engage in pricing that violates the fair pricing obligation under Rule G-30. Large differences between institutional and individual prices that exceed the price/yield variance that normally applies to transactions of different sizes in the primary market provide evidence that the duty of fair pricing to individual clients may not have been met.

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[1] *See Federal Reserve Flow of Funds*, Table L-211 (June 11, 2009) available at http://www.federalreserve.gov/releases/z1/Current/ (The household category in the Table reflects direct investments by individual investors, as well as investments by trusts, investment advisors, arbitrageurs, and various other accounts that do not fall into other tracked categories).

[2] *See Reminder of Customer Protection Obligations in Connection With Sales of Municipal Securities*, MSRB Notice 2007-17 (May 30, 2007) (the "Fair Practice Notice"); *Interpretation on Customer Protection Obligations Relating to the Marketing of 529 College Savings Plans*, MSRB Notice 2006-23 (August 7, 2006) (the "529 Notice").

[3] *See Application of MSRB Rules to Transactions in Auction Rate Securities*, MSRB Notice 2008-09 (February 19, 2008) (the "ARS Notice"); *Bond Insurance Ratings Application of MSRB Rules*, MSRB Notice 2008-04 (January 22, 2008) (the "Bond Insurance Notice").

[4] *See* Rule G-17 Interpretation — Interpretive Notice Regarding Rule G-17, on Disclosure of Material Facts, March 20, 2002, *reprinted in* MSRB Rule Book (the "2002 Disclosure Notice"). The 2002 Disclosure Notice described these established industry sources as including such sources as the system of nationally recognized municipal securities information repositories ("NRMSIRs") established by the SEC under Exchange Act Rule 15c2-12 for continuing disclosures by issuers and other obligors, the MSRB's Municipal Securities Information Library® (MSIL®) system for official statements and advance refunding documents, the MSRB's Transaction Reporting System for prices of transactions in municipal securities, rating agency reports, and other sources of information on municipal securities generally used by dealers that effect transactions in the type of securities at issue.

[5] *See* 2002 Disclosure Notice, *supra* n.5.

[6] Additional MSRB disclosure requirements under Rule G-15, relating to trade confirmations, and Rule G-32, relating to official statements, focus on information to be provided after the investment decision and do not fulfill the Rule G-17 disclosure obligation because they are not provided at or prior to the investment decision. Recent amendments to MSRB Rule G-32 in connection with electronic dissemination of official statements to investors purchasing municipal securities in a primary offering do not alter this time-of-trade disclosure obligation.

[7] A dealer's specific investor protection obligations, including its disclosure, fair practice and suitability obligations under Rules G-17 and G-19, may be affected by the status of an institutional investor as a Sophisticated Municipal Market Professional ("SMMP"). *See* Rule G-17 Interpretation — Notice Regarding the Application of MSRB Rules to Transactions with Sophisticated Municipal Market Professionals, April 30, 2002, *reprinted in* MSRB Rule Book.

[8] *See* ARS Notice and Bond Insurance Notice; *see also Basic v. Levinson*, 485 U.S. 224 (1988). The SEC has described material facts as those "facts which a prudent investor should know in order to evaluate the offering before reaching an investment decision." *Municipal Securities Disclosure,* Exchange Act Release No. 26100 (September 22, 1988) at note 76, quoting *In re Walston & Co. Inc., and Harrington*, Exchange Act Release No. 8165 (September 22, 1967).

[9] *See, e.g.*, Rule G-17 Interpretation — Educational Notice on Bonds Subject to "Detachable" Call Features, May 13, 1993, *reprinted in* MSRB Rule Book; Rule G-17 Interpretation — Notice Concerning Disclosure of Call Information to Customers of Municipal Securities, March 4, 1986, *reprinted in* MSRB Rule Book.

[10] *See* Bond Insurance Notice, *supra* n.3.

[11] The termination of the SBPA may result in other changes to the terms of securities, such as the loss of any rights to tender the securities for purchase or an interest rate to be determined based on a floating rate index or in another manner, which may produce a yield that is substantially below market for a fixed rate bond of comparable maturity. Such facts may be material to investors.

[12] *See, e.g.*, Fair Practice Notice, *supra* n.2. The MSRB has previously stated that most situations in which a dealer brings a municipal security to the attention of a customer involve an implicit recommendation of the security to the customer, but determining whether a particular transaction is in fact recommended depends on an analysis of all the relevant facts and circumstances. *See* Rule G-19 Interpretive Letter — Recommendations, February 17, 1998, published in *MSRB Rule Book*. The MSRB also has provided guidance on recommendations in the context of on-line communications in Rule G-19 Interpretation — Notice Regarding Application of Rule G-19, on Suitability of Recommendations and Transactions, to Online Communications, September 25, 2002, published in *MSRB Rule Book*.

[13] Rule G-8(a)(xi)(F) requires that dealers maintain records for each customer of such information about the customer used in making recommendations to the customer.

[14] *See* 529 Notice n.2; Fair Practice Notice n.2; Bond Insurance Notice n.3.

[15] From time to time, the MSRB provides guidance on specific new products introduced into the municipal securities market. For example, the American Recovery and Reinvestment Act of 2009 authorized state and local governments to issue two types of Build America Bonds ("BABs") as taxable governmental bonds with federal subsidies for a portion of their borrowing costs. The MSRB has previously provided guidance to dealers regarding the application of MSRB rules to BABs, including fair practice rules. *See Build America Bonds and Other Tax Credit Bonds*, MSRB Notice 2009-15 (April 24, 2009); *Build America Bonds: Application of Rule G-37 to Solicitations of Issuers,* MSRB Notice 2009-30 (June 9, 2009). In addition, the MSRB has provided guidance on dealer transactions in

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registered warrants, or IOUs, issued by the State of California. *See Applicability of MSRB Rules to California Registered Warrants*, MSRB Notice 2009-41 (July 10, 2009). Nonetheless, dealers must understand the material features of any security they recommend, regardless of whether specific guidance is provided by the MSRB.

[16] *See Review of Dealer Pricing Responsibilities*, MSRB Notice 2004-3 (January 26, 2004) (the "Dealer Pricing Notice").

[17] Dealer Pricing Notice, *supra*.

Reminder Notice on Fair Practice Duties to Issuers of Municipal Securities

September 29, 2009

The Municipal Securities Rulemaking Board ("MSRB") has recently provided guidance regarding the fair practice and related obligations of brokers, dealers and municipal securities dealers ("dealers") to investors.[1] Specifically, MSRB Rule G-17, on conduct of municipal securities activities, states that, in the conduct of its municipal securities business, each dealer shall deal fairly with all persons and shall not engage in any deceptive, dishonest, or unfair practice. The MSRB is publishing this notice to remind dealers that the fair practice requirements of Rule G-17 also apply to their municipal securities activities with issuers of municipal securities.

Thus, the rule requires dealers to deal fairly with issuers in connection with all aspects of the underwriting of their municipal securities, including representations regarding investors made by the dealer. As the MSRB has previously stated, whether or not an underwriter has dealt fairly with an issuer is dependent upon the facts and circumstances of an underwriting and cannot be addressed simply by virtue of the price of the issue.[2] The MSRB has also previously noted that Rule G-17 may apply in connection with certain payments made and expenses reimbursed during the municipal bond issuance process for excessive or lavish entertainment or travel expenses.[3]

As noted above, the fair practice requirements of Rule G-17 apply to all municipal securities activities of dealers with issuers. In particular, even where other MSRB rules provide for specific disclosures or other actions by, or establish specific standards of behavior for, dealers with respect to or on behalf of issuers, such disclosures, actions or behavior must also comport with the fair practice principles of Rule G-17. The MSRB will continue to review practices with respect to dealer activities with issuers.

[1] *See* MSRB Notice 2009-42 (July 14, 2009).

[2] *See* Rule G-17 Interpretive Letter — Purchase of new issue from issuer, *MSRB interpretation of December 1, 1997*, reprinted in *MSRB Rule Book*.

[3] *See* MSRB Rule G-20 Interpretation — Dealer payments in connection with the municipal securities issuance process, *MSRB interpretation of January 29, 2007*, reprinted in *MSRB Rule Book*.

MSRB Reminds Firms of Their Sales Practice and Due Diligence Obligations when Selling Municipal Securities in the Secondary Market

September 20, 2010

Executive Summary

Brokers, dealers and municipal securities dealers (dealers or firms) must fully understand the bonds they sell in order to meet their disclosure, suitability and pricing obligations under the rules of the Municipal Securities Rulemaking Board (MSRB) and federal securities laws. These obligations are not limited to firms involved in primary offerings. Dealers must also obtain, analyze and disclose all material facts about secondary market transactions that are known to the dealer, or that are reasonably accessible to the market through established industry sources.

Those sources include, among other things, official statements, continuing disclosures, trade data, and other information made available through the MSRB's Electronic Municipal Market Access system (EMMA). Firms may also have a duty to obtain and disclose information that is not available through EMMA, if it is material and available through other public sources. The public availability of material information, through EMMA or otherwise, does not relieve a firm of its duty to disclose that information. Firms must also have reasonable grounds for determining that a recommendation is suitable based on information available from the issuer of the security or otherwise. Firms must also use this information to determine the prevailing market price of a security as the basis for establishing a fair price in a transaction with a customer. To meet these requirements, firms must perform an independent analysis of the bonds they sell, and may not rely solely on a bond's credit rating.

Continuing disclosures made by issuers to the MSRB via EMMA are part of the information that dealers must obtain, disclose and consider in meeting their regulatory obligations. The Securities and Exchange Commission (SEC) has recently approved amendments to Securities Exchange Act Rule 15c2-12, governing continuing disclosures. Firms that sell municipal securities should review and, if necessary, update their procedures to reflect the amendments, which have a compliance date of December 1, 2010.

Background and Discussion

MSRB Disclosure, Suitability and Pricing Rules

MSRB Rule G-17 provides that, in the conduct of its municipal securities activities, each dealer must deal fairly with all persons and may not engage in any deceptive, dishonest or unfair practice. The MSRB has interpreted Rule G-17 to require a dealer, in connection with any transaction in municipal securities, to disclose to its customer, at or prior to the sale, all material facts about the transaction known by the dealer, as well as material facts about the security that are reasonably accessible to the market.[1] This includes the obligation to give

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customers a complete description of the security, including a description of the features that likely would be considered significant by a reasonable investor and facts that are material to assessing the potential risks of the investment.

Such disclosures must be made at the "time of trade," which the MSRB defines as at or before the point at which the investor and the dealer agree to make the trade. Rule G-17 applies to all sales of municipal securities, whether or not a transaction was recommended by a broker-dealer.[2] This means that municipal securities dealers must disclose all information required to be disclosed by the rule even if the trade is self-directed.[3]

MSRB Rule G-19 requires that a dealer that recommends a municipal securities transaction have reasonable grounds for believing that the recommendation is suitable for the customer based upon information available from the issuer of the security or otherwise and the facts disclosed by, or otherwise known about, the customer.[4]

MSRB Rule G-30 requires that dealers trade with customers at prices that are fair and reasonable, taking into consideration all relevant factors.[5] The MSRB has stated that the concept of a "fair and reasonable" price includes the concept that the price must "bear a reasonable relationship to the prevailing market price of the security." The impetus for the MSRB's Real-time Transaction Reporting System (RTRS), which was implemented in January 2005, was to allow market participants to monitor market price levels on a real-time basis and thus assist them in identifying changes in market prices that may have been caused by news or market events.[6] The MSRB now makes the transaction data reported to RTRS available to the public through EMMA.

In meeting these disclosure, suitability and pricing obligations, firms must take into account all material information that is known to the firm or that is available through "established industry sources," including official statements, continuing disclosures, and trade data, much of which is now available through EMMA. Resources outside of EMMA may include press releases, research reports and other data provided by independent sources. Established industry sources can also include material event notices and other data filed with former nationally recognized municipal securities information repositories (NRMSIRs) before July 1, 2009.[7] Therefore, firms should review their policies and procedures for obtaining material information about the bonds they sell to make sure they are reasonably designed to access all material information that is available, whether through EMMA or other established industry sources. The MSRB has also noted that the fact that material information is publicly available through EMMA does not relieve a firm of its duty to specifically disclose it to the customer at the time of trade, or to consider it in determining the suitability of a bond for a specific customer.[8] Importantly, the dealer may not simply direct the customer to EMMA to fulfill its time-of-trade disclosure obligations under Rule G-17.[9]

Amendments to Rule 15c2-12 Concerning Continuing Disclosure

Securities Exchange Act Rule 15c2-12 requires underwriters participating in municipal bond offerings that are subject to that rule[10] to receive, review, and distribute official statements of issuers of primary municipal securities offerings, and prohibits underwriters from purchasing or selling municipal securities covered by the rule unless they have first reasonably determined that the issuer or an obligated person[11] has contractually agreed to make certain continuing disclosures to the MSRB, including certain financial information and notice of certain events. The MSRB makes such disclosure public via EMMA.

Financial information to be disclosed under the rule consists of the following:

- Annual financial information updating the financial information in the official statement;
- Audited financial statements, if available and not included within the annual financial information; and
- Notices of failure to provide such financial information on a timely basis.

Currently, the rule enumerates the following as notice events, if material:

- Principal and interest payment delinquencies;
- Non-payment related defaults;
- Unscheduled draws on debt service reserves reflecting financial difficulties;
- Unscheduled draws on credit enhancements reflecting financial difficulties;
- Substitution of credit or liquidity providers or their failure to perform;
- Adverse tax opinions or events affecting the tax-exempt status of the security;
- Modifications to rights of security holders;
- Bond calls;
- Defeasances;
- Release, substitution or sale of property securing repayment of the securities; and
- Rating changes.

Rule 15c2-12(c) also prohibits any dealer from recommending the purchase or sale of a municipal security unless it has procedures in place that provide reasonable assurance that it will receive prompt notice of any event notice reported pursuant to the rule. Firms should review any applicable continuing disclosures made available through EMMA and other established industry sources and take such disclosures into account in undertaking its suitability and pricing determinations.

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On May 26, 2010, the SEC amended the rule's disclosure obligations, with a compliance date of December 1, 2010, to: (1) apply continuing disclosure requirements to new primary offerings of certain variable rate demand obligations (VRDOs); (2) add four new notice events;[12] (3) remove the materiality standard for certain notice events;[13] and (4) require that event notices be filed in a timely manner but no later than 10 business days after their occurrence. With respect to the tax status of the security, the rule has been broadened to require disclosure of adverse tax opinions, issuance by the IRS of proposed or final determinations of taxability and other material notices, and determinations or events affecting the tax status of the bonds (including a Notice of Proposed Issue). Firms that deal in municipal securities should familiarize themselves with these amendments, and, if necessary, modify their policies and procedures to incorporate this additional disclosure accordingly.

The Financial Industry Regulatory Authority (FINRA) noted in its Regulatory Notice 09-35 that, if a firm discovers through its Rule 15c2-12 procedures or otherwise that an issuer has failed to make filings required under its continuing disclosure agreements, the firm must take this information into consideration in meeting its disclosure obligations under MSRB Rule G-17 and in assessing the suitability of the issuer's bonds under MSRB Rule G-19.

Credit Ratings

In order to meet their obligations under MSRB Rules G-17 and G-19, firms must analyze and disclose to customers the risks associated with the bonds they sell, including, but not limited to, the bond's credit risk. A credit rating is a third-party opinion of the credit quality of a municipal security. While the MSRB generally considers credit ratings and rating changes to be material information for purposes of disclosure, suitability and pricing, they are only one factor to be considered, and dealers should not solely rely on credit ratings as a substitute for their own assessment of a bond's credit risk.[14] Moreover, different agencies use different quantitative and qualitative criteria and methodologies to determine their rating opinions. Dealers should familiarize themselves with the rating systems used by rating agencies in order to understand and assess the relevance of a particular rating to the firm's overall assessment of the bond.[15] With respect to credit or liquidity enhanced securities, the MSRB has stated that material information includes the following, if known to the dealer or if reasonably available from established industry sources: (i) the credit rating of the issue or lack thereof; (ii) the underlying credit rating or lack thereof, (iii) the identity of any credit enhancer or liquidity provider; and (iv) the credit rating of the credit provider and liquidity provider, including potential rating actions (*e.g.,* downgrade).[16] Additionally, material terms of the credit facility or liquidity facility should be disclosed (*e.g.,* any circumstances under which a standby bond purchase agreement would terminate without a mandatory tender).

Other Material Information

In addition to a bond's credit quality, firms must obtain, analyze and disclose other material information about a bond, including but not limited to whether the bond may be redeemed prior to maturity in-whole, in-part or in extraordinary circumstances,[17] whether the bond has non-standard features that may affect price or yield calculations,[18] whether the bond was issued with original issue discount or has other features that would affect its tax status,[19] and other key features likely to be considered significant by a reasonable investor. For example, for VRDOs, auction rate securities or other securities for which interest payments may fluctuate, firms should explain to customers the basis on which periodic interest rate resets are determined.[20] The MSRB has stated that firms should take particular care with respect to new products that may be introduced into the municipal securities market, existing products that may have complex structures that can differ materially from issue to issue, and outstanding securities that may trade infrequently, may be issued by less well-known issuers, or may have unusual features.[21]

Supervision

Firms are reminded that MSRB Rule G-27 requires firms to supervise their municipal securities business, and to ensure that they have adequate policies and procedures in place for monitoring the effectiveness of their supervisory systems. Specifically, firms must:

- Supervise the conduct of the municipal securities activities of the firm and associated persons to ensure compliance with all MSRB rules, the Exchange Act and the rules thereunder;
- Have adequate written supervisory procedures; and
- Implement supervisory controls to ensure that their supervisory procedures are adequate.

Rule G-27 requires that a firm's supervisory procedures provide for the regular and frequent review and approval by a designated principal of customer accounts introduced or carried by the dealer in which transactions in municipal securities are effected, with such review being designed to ensure that transactions are in accordance with all applicable rules and to detect and prevent irregularities and abuses. Although the rule does not establish a specific procedure for ensuring compliance with the requirement to provide disclosures to customers pursuant to Rule G-17, firms should consider including in their procedures for reviewing accounts and transactions specific processes for documenting or otherwise ascertaining that such disclosures have been made.

Questions to Consider

Before selling any municipal bond, dealers should make sure that they fully understand the bonds they are selling in order to make adequate disclosure to customers under Rule G-17, to ensure that recommendations are suitable under Rule G-19,

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and to ensure that they are fairly priced under Rule G-30. Among other things, dealers should ask and be able to answer the following questions:

- What are the bond's key terms and features and structural characteristics, including but not limited to its issuer, source of funding (*e.g.,* general obligation or revenue bond), repayment priority, and scheduled repayment rate? (Much of this information will be in the Official Statement, which for many municipal bonds can be obtained by entering the CUSIP number in the MuniSearch box at www.emma.msrb.org.) Be aware, however, data in the Official Statement may have been superseded by the issuer's on-going disclosures.
- Does information available through EMMA or other established industry sources indicate that an issuer is delinquent in its material event notice and other continuing disclosure filings? Delinquencies should be viewed as a red flag.
- What other public material information about the bond or its issuer is available through established industry sources other than EMMA?
- What is the bond's rating? Has the issuer of the bond recently been downgraded? Has the issuer filed any recent default or other event notices, or has any other information become available through established industry sources that might call into question whether the published rating has been revised to take such event into consideration?
- Is the bond insured, or does it benefit from liquidity support, a letter of credit or is it otherwise supported by a third party? If so, check the credit rating of the bond insurer or other backing, and the bond's underlying rating (without third party support). If supported by a third party, review the terms and conditions under which the third party support may terminate.
- How is it priced? Be aware that the price of a bond can be priced above or below its par value for many reasons, including changes in the creditworthiness of a bond's issuer and a host of other factors, including prevailing interest rates.
- How and when will interest on the bond be paid? Most municipal bonds pay semiannually, but zero coupon municipal bonds pay all interest at the time the bond matures. Variable rate bonds typically will pay interest more frequently, usually on a monthly basis in variable amounts.
- What is the bond's tax status, under both state and federal laws? Is it subject to the Federal Alternate Minimum Tax? Is it fully taxable (*e.g.,* Build America Bonds)?
- What are its call provisions? Call provisions allow the issuer to retire the bond before it matures. How would a call affect expected future income?

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[1] MSRB Rule G-17 applies to all transactions in municipal securities, including those in both the primary and secondary market. MSRB Rule G-32 specifically addresses the delivery of the official statement in connection with primary offerings.

[2] *See* MSRB Notice 2009-42 (July 14, 2009).

[3] A dealer's specific investor protection obligations, including its disclosure, fair practice and suitability obligations under Rules G-17 and G-19, may be affected by the status of an institutional investor as a Sophisticated Municipal Market Professional ("SMMP"). *See* Rule G-17 Interpretation — Notice Regarding the Application of MSRB Rules to Transactions with Sophisticated Municipal Market Professionals (April 30, 2002).

[4] *See* MSRB Notice 2009-42, *supra* n.2.

[5] Rule G-18 requires that a dealer effecting an agency trade with a customer make a reasonable effort to obtain a price for the customer that is fair and reasonable in relation to prevailing market conditions.

[6] *See* MSRB Notice 2004-3 (January 26, 2004).

[7] Since July 1, 2009, material event notices are required to be filed through EMMA, which has replaced Bloomberg Municipal Repository; DPC DATA Inc.; Interactive Data Pricing and Reference Data, Inc.; and Standard & Poor's Securities Evaluations, Inc. as the sole NRMSIR.

[8] The MSRB has also stated that providing adequate disclosure does not relieve a firm of its suitability obligations. *See* MSRB Notice 2007-17 (March 30, 2007).

[9] Rule G-32 does allow a dealer to satisfy its obligation to deliver an official statement to its customer during the primary offering disclosure period no later than the settlement of the transaction by advising the customer of how to obtain it on EMMA, unless the customer requests a paper copy. The delivery obligation under Rule G-32 is distinct from the duty to disclose material information under Rule G-17, which applies to all primary and secondary market transactions.

[10] Certain limited offerings, variable rate demand obligations, and small issues are exempt from Rule 15c2-12.

[11] "Obligated person" is defined as "any person, including an issuer of municipal securities, who is either generally or through an enterprise, fund or account of such person committed by contract or other arrangement to support payment of all, or part of the obligations of the municipal securities to be sold in the offering (other than providers of municipal bond insurance, letters of credit, or other liquidity facilities)."

[12] The new notice events are (1) tender offers, (2) bankruptcy, insolvency, receivership, or similar events, (3) consummation of mergers, consolidations, acquisitions, or asset sales, or entry into or termination of a definitive agreement related to do the same, if material, and (4) appointment of a successor or additional trustee or a change in the name of the trustee, if material.

[13] The amendments removed the materiality standard and require notices for the following events: (1) principal and interest payment delinquencies with respect to the securities being offered; (2) unscheduled draws on debt service reserves reflecting financial difficulties; (3) unscheduled draws on credit enhancements reflecting financial difficulties; (4) substitution of credit or liquidity providers, or their failure to perform; (5) defeasances: and (6) rating changes. The amendments retained the materiality standard for the following events: (1) non-payment related defaults; (2) modifications to rights of security holders; (3) bond calls; and (4) release, substitution, or sale of property securing repayment of the securities.

[14] *See* MSRB Notice 2009-42, supra n.2. Ratings changes are reportable events under Rule 15c2-12.

[15] Not all municipal bonds are rated. While an absence of a credit rating is not, by itself, a determinant of low credit quality, it is a factor that the dealers should consider, and may warrant additional due diligence of the bond and its issuer by the dealer. In addition, MSRB Rule G-15 requires confirmation statements for customer trades in unrated municipal securities to disclose that the securities are not rated.

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[16] *See* MSRB Notice 2009-42. The SEC has approved the MSRB's proposal to require dealers to submit copies of credit enhancement and liquidity facility documents to EMMA pursuant to amended MSRB Rule G-34(c), which may increase the availability of such information to dealers. *See* Securities Exchange Act Release No. 62755, August 20, 2010 (File No. SR-MSRB-2010-02).

[17] *See* Notice Concerning Disclosure of Call Information to Customers of Municipal Securities, MSRB Interpretation of March 4, 1986.

[18] *See* Transactions in Municipal Securities With Non-Standard Features Affecting Price/Yield Calculations, MSRB Interpretation of June 12, 1995.

[19] *See* MSRB Notice 2005-01 (January 5, 2005); MSRB Notice 2009-41 (July 10, 2009).

[20] *See* MSRB Notice 2008-09 (February 19, 2008).

[21] *See* MSRB Notice 2009-42, *supra* n.2.

Interpretation on Priority of Orders for Securities in a Primary Offering under Rule G-17

October 12, 2010

On December 22, 1987, the MSRB published a notice[1] interpreting the fair practice principles of Rule G-17 as they apply to the priority of orders for new issue securities (the "1987 notice"). The MSRB wishes to update the guidance provided in the 1987 notice due to changes in the marketplace and subsequent amendments to Rule G-11.

Rule G-11(e) requires syndicates to establish priority provisions and, if such priority provisions may be changed, to specify the procedure for making changes. The rule also permits a syndicate to allow the syndicate manager, on a case-by-case basis, to allocate securities in a manner other than in accordance with the priority provisions if the syndicate manager determines in its discretion that it is in the best interests of the syndicate. Under Rule G-11(f), syndicate managers must furnish information, in writing, to the syndicate members about terms and conditions required by the issuer,[2] priority provisions and the ability of the syndicate manager to allocate away from the priority provisions, among other things. Syndicate members must promptly furnish this information, in writing, to others upon request. This requirement was adopted to allow prospective purchasers to frame their orders to the syndicate in a manner that would enhance their ability to obtain securities since the syndicate's allocation procedures would be known.

In addition to traditional priority provisions found in syndicate agreements, municipal securities underwriters frequently agree to other terms and conditions specified by the issuer of the securities relating to the distribution of the issuer's securities. Such provisions include, but are not limited to, requirements concerning retail order periods. MSRB Rule G-17 states that, in the conduct of its municipal securities business, each broker, dealer, and municipal securities dealer ("dealer") shall deal fairly with all persons and shall not engage in any deceptive, dishonest or unfair practice. These requirements specifically apply to an underwriter's activities conducted with a municipal securities issuer, including any commitments that the underwriter makes regarding the distribution of the issuer's securities. An underwriter may violate the duty of fair dealing by making such commitments to the issuer and then failing to honor them. This could happen, for example, if an underwriter fails to accept, give priority to, or allocate to retail orders in conformance with the provisions agreed to in an undertaking to provide a retail order period. A dealer who wishes to allocate securities in a manner that is inconsistent with an issuer's requirements must not do so without the issuer's consent.

Except as otherwise provided in this notice, principles of fair dealing will require the syndicate manager to give priority to customer orders over orders for its own account, orders by other members of the syndicate for their own accounts, orders from persons controlling, controlled by, or under common control with any syndicate member ("affiliates") for their own accounts, or orders for their respective related accounts,[3] to the extent feasible and consistent with the orderly distribution of securities in a primary offering. This principle may affect a wide range of dealers and their related accounts given changes in organizational structures due to consolidations, acquisitions, and other corporate actions that have, in many cases, resulted in increasing numbers of dealers, and their related dealer accounts, becoming affiliated with one another.

Rule G-17 does not require the syndicate manager to accord greater priority to customer orders over orders submitted by non-syndicate dealers (including selling group members). However, prioritization of customer orders over orders of non-syndicate dealers may be necessary to honor terms and conditions agreed to with issuers, such as requirements relating to retail orders.

The MSRB understands that syndicate managers must balance a number of competing interests in allocating securities in a primary offering and must be able quickly to determine when it is appropriate to allocate away from the priority provisions, to the extent consistent with the issuer's requirements. Thus, Rule G-17 does not preclude the syndicate manager or managers from according equal or greater priority to orders by syndicate members for their own accounts, affiliates for their own accounts, or their respective related accounts if, on a case-by-case basis, the syndicate manager determines in its discretion that it is in the best interests of the syndicate. However, the syndicate manager shall have the burden of justifying that such allocation was in the best interests of the syndicate. Syndicate managers should ensure that all allocations, even those away from the priority provisions, are fair and reasonable and consistent with principles of fair dealing under Rule G-17.

It should be noted that all of the principles of fair dealing articulated in this notice extend to any underwriter of a primary offering, whether a sole underwriter, a syndicate manager, or a syndicate member.

[1] MSRB Notice of Interpretation Concerning Priority of Orders for New Issue Securities: Rule G-17 (December 22, 1987).

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[2] The requirements of Rule G-11(f) with respect to issuer requirements were adopted by the MSRB in 1998. *See* Exchange Act Release No. 40717 (November 27, 1998) (File No. SR-MSRB-97-15).

[3] "Related account" has the meaning set forth in Rule G-11(a)(xi).

Excerpt from Notice of Application of MSRB Rules to Solicitor Municipal Advisors

May 4, 2017

Conduct of Municipal Securities and Municipal Advisor Activities, Rule G-17

The MSRB amended Rule G-17, regarding fair dealing, to require that, in the conduct of their municipal advisory activities, municipal advisors, including solicitor municipal advisors, and their associated persons must deal fairly with all persons and not engage in any deceptive, dishonest, or unfair practice. (Previously, the rule applied only to dealers and their associated persons.) Rule G-17 became applicable to all municipal advisors, including solicitor municipal advisors, and their associated persons, on December 22, 2010.

Rule G-17 contains an anti-fraud prohibition similar to the standard set forth in Rule 10b-5 adopted by the SEC under the Exchange Act. Thus, all municipal advisors must refrain from engaging in certain conduct and must not misrepresent or omit the facts, risks, or other material information about municipal advisory activities undertaken. However, Rule G-17 does not merely prohibit deceptive conduct on the part of a municipal advisor. The rule also establishes a general duty of a municipal advisor to deal fairly with all persons, even in the absence of fraud.

Rule G-17 imposes a duty of fair dealing on solicitor municipal advisors when they are soliciting business from municipal entities and obligated persons on behalf of third parties. Again, municipal advisors are reminded that the term "municipal entity" also includes certain entities that do not issue municipal securities. Thus, in addition to owing the specific obligations discussed below to issuers of municipal securities, solicitor municipal advisors also owe such obligations to, for example, state and local government sponsored public pension plans and local government investment pools.

The duty of fair dealing includes, but is not limited to, a duty to disclose to the municipal entity or obligated person being solicited material facts about the solicitation, such as the name of the solicitor's client; the type of business being solicited; the amount and source of all of the solicitor's compensation; payments (including in-kind) made by the solicitor to another solicitor municipal advisor (including an affiliate, but not an employee) to facilitate the solicitation regardless of characterization; and any relationships of the solicitor with any employees or board members of the municipal entity or obligated person being solicited or any other persons affiliated with the municipal entity or obligated person or its officials who may have influence over the selection of the solicitor's client.

Additionally, if a solicitor municipal advisor is engaged by its client to present information about a product or service offered by the third-party client to the municipal entity or obligated person, the solicitor municipal advisor must disclose all material risks and characteristics of the product or service. The solicitor municipal advisor must also advise the municipal entity or obligated person of any incentives received by the solicitor (that are not already disclosed as part of the solicitor municipal advisor's compensation from its client) to recommend the product or service, as well as any other conflicts of interest regarding the product or service, and must not make material misstatements or omissions when discussing the product or service.

Under the Exchange Act, municipal advisors and their associated persons are deemed to owe a fiduciary duty to their municipal entity clients.* Similarly, Rule G-42 (which applies only to non-solicitor municipal advisors) follows the Exchange Act in deeming municipal advisors to owe a fiduciary duty, for purposes of Rule G-42, to such municipal entity clients. However, because a solicitor municipal advisor's clients are not the municipal entities that they solicit, but rather the third parties that retain or engage the solicitor municipal advisor to solicit such municipal entities, solicitor municipal advisors do not owe a fiduciary duty under the Exchange Act or MSRB rules to their clients (or the municipal entity) in connection with such activity. Nonetheless, as noted above, solicitor municipal advisors are subject to the fair dealing standards under Rule G-17 (including with respect to their clients and the entities that they solicit).

* *See* Order Adopting SEC Final Rule [Release No. 34-70462 (September 20, 2013), 78 FR 67467 (November 12, 2013) (File No. S7-45-10)], at n. 100 (noting that the fiduciary duty of a municipal advisor, as set forth in Section 15B(c)(1) of the Exchange Act, extends only to its municipal entity clients).

Interpretive Notice Concerning the Application of MSRB Rule G-17 To Underwriters of Municipal Securities

March 31, 2021

Under Rule G-17 of the Municipal Securities Rulemaking Board (MSRB), brokers, dealers, and municipal securities dealers ("dealers") must, in the conduct of their municipal securities activities, deal fairly with all persons and must not engage in any deceptive, dishonest, or unfair practice. This rule is most often cited in connection with duties owed by dealers to investors; however, it also applies to their interactions with other market participants, including municipal entities[1] such as states and their political subdivisions that are issuers of municipal securities ("issuers").

The MSRB has previously observed that Rule G-17 requires dealers to deal fairly with issuers.[2] With the passage of the Dodd-Frank Wall Street Reform and Consumer Protection Act,[3] the MSRB was expressly directed by Congress to protect municipal entities. Accordingly, in 2012, the MSRB provid-

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ed additional interpretive guidance that addressed how Rule G-17 applies to dealers acting in the capacity of underwriters in the municipal securities transactions described therein (the "2012 Interpretive Notice").[4]

This notice supersedes the MSRB's 2012 Interpretive Notice, dated August 2, 2012, concerning the application of Rule G-17 to underwriters of municipal securities, as well as the related implementation guidance, dated July 18, 2012, and frequently-asked questions, dated March 25, 2013 (the "prior guidance").[5] The prior guidance will remain applicable to underwriting relationships commencing prior to March 31, 2021. Underwriters will be subject to the amended guidance provided by this notice for all of their underwriting relationships beginning on or after that date. For purposes of this notice, an underwriting relationship is considered to have begun at the time the delivery of the first disclosure is triggered as described under "Timing and Manner of Disclosures" below (*i.e.*, the earliest stages of an underwriter's relationship with an issuer with respect to an issue, such as in a response to a request for proposal or in promotional materials provided to an issuer).

Applicability of the Notice

Except where a competitive underwriting is specifically mentioned, this notice applies to negotiated underwritings only.[6] This notice does not apply to a dealer acting as a primary distributor in a continuous offering of municipal fund securities, such as interests in 529 savings plans and Achieving a Better Life Experience (ABLE) programs. It does not apply to selling group members. This notice does not address a dealer's duties when the dealer is serving as an advisor to a municipal entity. This notice applies to a primary offering of a new issue of municipal securities that is placed with investors by a dealer serving as placement agent, although certain disclosures may be omitted as described below.

The fair practice duties outlined in this notice are those duties that a dealer owes to a municipal entity when the dealer underwrites a new issue of municipal securities. This notice does not set out the underwriter's fair-practice duties to other parties to a municipal securities financing (*e.g.*, conduit borrowers). The MSRB notes, however, that Rule G-17 does require that an underwriter deal fairly with all persons in the course of the dealer's municipal securities activities. What actions are considered fair will, of necessity, be dependent on the nature of the relationship between a dealer and such other parties, the particular actions undertaken, and all other relevant facts and circumstances. Although this notice does not address what an underwriter's fair-dealing duties may be with respect to other parties, it may serve as one of many bases for an underwriter to consider how to establish appropriate policies and procedures for ensuring that it meets such fair-practice obligations, in light of its relationship with such other participants and their particular roles.

The examples discussed in this notice are illustrative only and are not meant to encompass all obligations of dealers to municipal entities under Rule G-17. Furthermore, when municipal entities are customers[7] of dealers, they are subject to the same protections under MSRB rules, including Rule G-17, that apply to other customers.[8] The MSRB notes that an underwriter has a duty of fair dealing to investors in addition to its duty of fair dealing to issuers. An underwriter also has a duty to comply with other MSRB rules as well as other federal and state securities laws.

Basic Fair Dealing Principle

As noted above, Rule G-17 precludes a dealer, in the conduct of its municipal securities activities, from engaging in any deceptive, dishonest, or unfair practice with any person, including an issuer. The rule contains an anti-fraud prohibition. Thus, an underwriter must not misrepresent or omit the facts, risks, potential benefits, or other material information about municipal securities activities undertaken with a municipal issuer. However, Rule G-17 does not merely prohibit deceptive conduct on the part of the dealer; it also establishes a general duty of a dealer to deal fairly with all persons (including, but not limited to, issuers), even in the absence of fraud.

Role of Underwriters and Conflicts of Interest

In negotiated underwritings, underwriters' Rule G-17 duty to deal fairly with an issuer requires certain disclosures to the issuer in connection with an issue or proposed issue of municipal securities, as provided below.[9]

- The disclosures discussed under "Disclosures Concerning the Underwriters' Role" and "Disclosures Concerning Underwriters' Compensation" (the "standard disclosures") must be provided by the sole underwriter or the syndicate manager[10] to the issuer as described below.
- The disclosures discussed under "Required Disclosures to Issuers" (the "transaction-specific disclosures") must be provided to the issuer by the underwriter who has recommended a financing structure or product to the issuer as described below.[11]
- The disclosures discussed under "Other Conflicts Disclosures" (the "dealer-specific disclosures") must be provided by the sole underwriter or each underwriter in a syndicate (as applicable) as described below.[12]

Disclosures Concerning the Underwriter's Role. The sole underwriter or the syndicate manager[13] must disclose to the issuer that:

(i) Municipal Securities Rulemaking Board Rule G-17 requires an underwriter to deal fairly at all times with both issuers and investors;

(ii) the underwriter's primary role is to purchase securities with a view to distribution in an arm's-length commercial transaction with the issuer and it has financial and other interests that differ from those of the issuer;[14]

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(iii) unlike a municipal advisor, the underwriter does not have a fiduciary duty to the issuer under the federal securities laws and is, therefore, not required by federal law to act in the best interests of the issuer without regard to its own financial or other interests;[15]

(iv) the issuer may choose to engage the services of a municipal advisor with a fiduciary obligation to represent the issuer's interests in the transaction;

(v) the underwriter has a duty to purchase securities from the issuer at a fair and reasonable price, but must balance that duty with its duty to sell municipal securities to investors at prices that are fair and reasonable; and

(vi) the underwriter will review the official statement for the issuer's securities in accordance with, and as part of, its responsibilities to investors under the federal securities laws, as applied to the facts and circumstances of the transaction.[16]

Underwriters also must not recommend that issuers not retain a municipal advisor. Accordingly, underwriters may not discourage issuers from using a municipal advisor or otherwise imply that the hiring of a municipal advisor would be redundant because the sole underwriter or underwriting syndicate can provide the services that a municipal advisor would.

Disclosure Concerning the Underwriters' Compensation. The sole underwriter or syndicate manager must disclose to issuers whether underwriting compensation will be contingent on the closing of a transaction. Sole underwriters or syndicate managers must also disclose that compensation that is contingent on the closing of a transaction or the size of a transaction presents a conflict of interest because it may cause underwriters to recommend a transaction that is unnecessary or to recommend that the size of a transaction be larger than is necessary.

Other Conflicts Disclosures. The sole underwriter or each underwriter in a syndicate must also, when and if applicable, disclose other dealer-specific actual material conflicts of interest and potential material conflicts of interest,[17] including, but not limited to, the following:

(i) any payments described below under "Conflicts of Interest/Payments to or from Third Parties";[18]

(ii) any arrangements described below under "Conflicts of Interest/Profit-Sharing with Investors";

(iii) the credit default swap disclosures described below under "Conflicts of Interest/Credit Default Swaps"; and

(iv) any incentives for the underwriter to recommend a complex municipal securities financing and other associated conflicts of interest (as described below under "Required Disclosures to Issuers").[19]

These categories of conflicts of interest are not mutually exclusive and, in some cases, a specific conflict may reasonably be viewed as falling into two or even more categories. An underwriter making disclosures of dealer-specific conflicts of interest to an issuer should concentrate on making them in a complete and understandable manner and need not necessarily organize them according to the categories listed above, particularly if adhering to a strict categorization process might interfere with the clarity and conciseness of disclosures.

Where there is a syndicate, each underwriter in the syndicate has a duty to provide its dealer-specific disclosures to the issuer. In general, dealer-specific disclosures for one dealer cannot be satisfied by disclosures made by another dealer (e.g., the syndicate manager) because such disclosures are, by their nature, not uniform, and must be prepared by each dealer. However, a syndicate manager may deliver each of the dealer-specific disclosures to the issuer as part of a single package of disclosures, as long as it is clear to which dealer each disclosure is attributed. An underwriter in the syndicate is not required to notify an issuer if it has determined that it does not have any dealer-specific disclosures to make. However, the obligation to provide dealer-specific disclosures includes material conflicts of interest arising after the time of engagement with the issuer, as noted below.

Timing and Manner of Disclosures. The standard disclosures, transaction-specific disclosures, and dealer-specific disclosures must be made in writing to an official of the issuer identified by the issuer as a primary contact for that issuer for the receipt of the foregoing disclosures. In the absence of such identification, an underwriter may make such disclosures in writing to an official of the issuer that the underwriter reasonably believes has the authority to bind the issuer by contract with the underwriter and that, to the knowledge of the underwriter, is not a party to a disclosed conflict.[20] If provided within the same document as the dealer-specific disclosures and/or transaction-specific disclosures, the standard disclosures must be identified clearly as such and provided apart from the other disclosures (*e.g.*, in an appendix).

Disclosures must be made in a clear and concise manner designed to make clear to such official the subject matter of such disclosures and their implications for the issuer in accordance with the following timelines.

- A sole underwriter or syndicate manager must make the standard disclosure concerning the arm's-length nature of the underwriter-issuer relationship at the earliest stages of the underwriter's relationship with the issuer with respect to an issue (*e.g.*, in a response to a request for proposals or in promotional materials provided to an issuer).[21]
- A sole underwriter or syndicate manager must make the other standard disclosures regarding the underwriter's role and compensation at or before the time the underwriter is engaged to perform underwriting services (*e.g.*, in an engagement letter), not solely in a bond purchase agreement.
- An underwriter must make the dealer-specific disclosures at or before the time the underwriter has been engaged to perform the underwriting services.[22] Thereafter, an

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underwriter must make any applicable dealer-specific disclosures discovered or arising after being engaged as an underwriter as soon as practicable after being discovered and with sufficient time for the issuer to fully evaluate any such conflict and its implications.[23]

- An underwriter who recommends a financing structure or product to an issuer must make the transaction-specific disclosures in sufficient time before the execution of a commitment by an issuer (which may include a bond purchase agreement) relating to the financing, and with sufficient time to allow the issuer to fully evaluate the features of the financing.

Unless directed otherwise by an issuer, an underwriter may update selected portions of disclosures previously provided so long as such updates clearly identify the additions or deletions and are capable of being read independently of the prior disclosures.[24]

Acknowledgement of Disclosures. When delivering a disclosure, the underwriter must attempt to receive written acknowledgement[25] from an official of the issuer identified by the issuer as a primary contact for the issuer's receipt of the foregoing disclosures.[26] In the absence of such identification, an underwriter may seek acknowledgement from an official of the issuer whom the underwriter reasonably believes has the authority to bind the issuer by contract with the underwriter and that, to the knowledge of the underwriter, is not party to a disclosed conflict. This notice does not specify the particular form of acknowledgement, but may include, for example, an e-mail read receipt.[27] An underwriter may proceed with a receipt of a written acknowledgement that includes an issuer's reservation of rights or other self-protective language. If the official of the issuer agrees to proceed with the underwriting engagement after receipt of the disclosures but will not provide written acknowledgement of receipt, the underwriter responsible for making the requisite disclosure may proceed with the engagement after documenting with specificity why it was unable to obtain such written acknowledgement. Additionally, an underwriter must be able to produce evidence (including, for example, by automatic e-mail delivery receipt) that the disclosures were delivered with sufficient time for evaluation by the issuer before proceeding with the transaction. An issuer's written acknowledgement of the receipt of disclosure is not dispositive of whether such disclosures were made with an appropriate amount of time. The analysis of whether disclosures were provided with sufficient time for an issuer's review is based on the totality of the facts and circumstances.

Representations to Issuers

All representations made by underwriters to issuers in connection with municipal securities underwritings, whether written or oral, must be truthful and accurate and must not misrepresent or omit material facts. Underwriters must have a reasonable basis for the representations and other material information contained in documents they prepare and must refrain from including representations or other information they know or should know is inaccurate or misleading. For example, in connection with a certificate signed by the underwriter that will be relied upon by the issuer or other relevant parties to an underwriting (*e.g.*, an issue price certificate), the dealer must have a reasonable basis for the representations and other material information contained therein.[28] In addition, an underwriter's response to an issuer's request for proposals or qualifications must fairly and accurately describe the underwriter's capacity, resources, and knowledge to perform the proposed underwriting as of the time the proposal is submitted and must not contain any representations or other material information about such capacity, resources, or knowledge that the underwriter knows or should know to be inaccurate or misleading.[29] Matters not within the personal knowledge of those preparing the response (*e.g.*, pending litigation) must be confirmed by those with knowledge of the subject matter. An underwriter must not represent that it has the requisite knowledge or expertise with respect to a particular financing if the personnel that it intends to work on the financing do not have the requisite knowledge or expertise.

Required Disclosures to Issuers

Many municipal securities are issued using financing structures that are routine and well understood by the typical municipal market professional, including most issuer personnel that have the lead responsibilities in connection with the issuance of municipal securities. For example, absent unusual circumstances or features, the typical fixed rate offering may be presumed to be well understood. Nevertheless, in the case of issuer personnel that the underwriter reasonably believes lack the requisite knowledge or experience to fully understand or assess the implications of a financing structures or products recommended by an underwriter, the underwriter making such recommendation must provide disclosures on the material aspects of such financing structures or product that it recommends (*i.e.*, the "transaction-specific disclosures").[30]

In some cases, issuer personnel responsible for the issuance of municipal securities would not be well positioned to fully understand or assess the implications of a recommended financing structure in its totality, because it is structured in a unique, atypical, or otherwise complex manner or incorporates unique, atypical, or otherwise complex features or products (a "complex municipal securities financing").[31] Examples of complex municipal securities financings include, but are not limited to, variable rate demand obligations ("VRDOs"), financings involving derivatives (such as swaps), and financings in which interest rates are benchmarked to an index (such as LIBOR, SIFMA, or SOFR).[32] When a recommendation regarding a complex municipal securities financing structure has been made by an underwriter in a negotiated offering,[33] the underwriter making the recommendation has an obligation under Rule G-17 to communicate more particularized transaction-specific disclosures than those that may be required in the case of the recommendation of routine financing structures or products.[34] The underwriter making the

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recommendation must also disclose the material financial characteristics of the complex municipal securities financing, as well as the material financial risks of the financing that are known to the underwriter and reasonably foreseeable at the time of the disclosure.[35] It must also disclose any incentives for the recommendation of the complex municipal securities financing and other associated material conflicts of interest.[36] Such disclosures must be made in a fair and balanced manner based on principles of fair dealing and good faith.

The level of transaction-specific disclosure required may vary according to the issuer's knowledge or experience with the proposed financing structure or similar structures, capability of evaluating the risks of the recommended financing structure or product, and financial ability to bear the risks of the recommended financing structure or product, in each case based on the reasonable belief of the underwriter.[37] Consequently, the level of transaction-specific disclosure to be provided to a particular issuer also can vary over time. In all events, the underwriter must disclose any incentives for the recommendation of the complex municipal securities financing and other associated conflicts of interest.

As previously mentioned, the transaction-specific disclosures must be made in writing to an official of the issuer identified by the issuer as a primary contact for the issuer for the receipt of such disclosures, or, in the absence of such identification, an underwriter may make such disclosures in writing to an issuer official whom the underwriter reasonably believes has the authority to bind the issuer by contract with the underwriter(s), and that, to the knowledge of the underwriter delivering the disclosure, is not a party to a disclosed conflict: (i) in sufficient time before the execution of a contract with the underwriter to allow the official to evaluate the recommendation (including consultation with any of its counsel or advisors) and (ii) in a manner designed to make clear to such official the subject matter of such disclosures and their implications for the issuer.

The disclosures concerning a complex municipal securities financing must address the specific elements of, and/or relevant products incorporated, into the recommended financing structure, rather than being general in nature.[38] An underwriter making a Complex Municipal Securities Financing Recommendation to an issuer cannot satisfy its fair dealing obligations by providing an issuer a single document setting out general descriptions of the various financing structures and/or products that may be recommended from time to time to various issuer clients that would effectively require issuer personnel to discover which disclosures apply to a particular recommendation and to the particular circumstances of that issuer. Underwriters can create, in anticipation of making such a recommendation, individualized descriptions, with appropriate levels of detail, of the material financial characteristics and risks for each of the various complex municipal securities financing structures and/or products (including any typical variations) they may recommend from time to time to various issuer clients, with such standardized descriptions serving as the base for more particularized disclosures for the specific complex financing the underwriter recommends to particular issuers.[39] In making a recommendation, an underwriter could incorporate, to the extent applicable, any refinements to the base description needed to fully describe the material financial features and risks unique to that financing.[40]

If the underwriter who has made a recommendation does not reasonably believe that the official to whom the disclosures are addressed is capable of independently evaluating the disclosures, the underwriter must make additional efforts reasonably designed to inform the official or its employees or agent. The underwriter also must make an independent assessment that such disclosures are appropriately tailored to the issuer's level of sophistication.

Underwriter Duties in Connection with Issuer Disclosure Documents

Underwriters often play an important role in assisting issuers in the preparation of disclosure documents, such as preliminary official statements and official statements.[41] These documents are critical to the municipal securities transaction, because investors rely on the representations contained in such documents in making their investment decisions. Moreover, investment professionals, such as municipal securities analysts and ratings services, rely on the representations in forming an opinion regarding the credit. A dealer's duty to have a reasonable basis for the representations it makes, and other material information it provides, to an issuer and to ensure that such representations and information are accurate and not misleading, as described above, extends to representations and information provided by the underwriter in connection with the preparation by the issuer of its disclosure documents (*e.g.*, cash flows).

Underwriter Compensation and New Issue Pricing

Excessive Compensation. An underwriter's compensation for a new issue (including both direct compensation paid by the issuer and other separate payments, values, or credits received by the underwriter from the issuer or any other party in connection with the underwriting), in certain cases and depending upon the specific facts and circumstances of the offering, may be so disproportionate to the nature of the underwriting and related services performed as to constitute an unfair practice with regard to the issuer that it is a violation of Rule G-17. Among the factors relevant to whether an underwriter's compensation is disproportionate to the nature of the underwriting and related services performed, are the credit quality of the issue, the size of the issue, market conditions, the length of time spent structuring the issue, and whether the underwriter is paying the fee of the underwriter's counsel or any other relevant costs related to the financing.

Fair Pricing. The duty of fair dealing under Rule G-17 includes an implied representation that the price an underwriter pays to an issuer is fair and reasonable, taking into consideration all relevant factors, including the best judgment of the

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underwriter as to the fair market value of the issue at the time it is priced.[42] In general, a dealer purchasing bonds in a competitive underwriting for which the issuer may reject any and all bids will be deemed to have satisfied its duty of fairness to the issuer with respect to the purchase price of the issue as long as the dealer's bid is a bona fide bid (as defined in MSRB Rule G-13)[43] that is based on the dealer's best judgment of the fair market value of the securities that are the subject of the bid. In a negotiated underwriting, the underwriter has a duty under Rule G-17 to negotiate in good faith with the issuer. This duty includes the obligation of the dealer to ensure the accuracy of representations made during the course of such negotiations, including representations regarding the price negotiated and the nature of investor demand for the securities (*e.g.*, the status of the order period and the order book). If, for example, the dealer represents to the issuer that it is providing the "best" market price available on the new issue, or that it will exert its best efforts to obtain the "most favorable" pricing, the dealer may violate Rule G-17 if its actions are inconsistent with such representations.[44]

Conflicts of Interest

Payments to or from Third Parties. In certain cases, compensation received by an underwriter from third parties, such as the providers of derivatives and investments (including affiliates of an underwriter), may color the underwriter's judgment and cause it to recommend products, structures, and pricing levels to an issuer when it would not have done so absent such payments. The MSRB views the failure of an underwriter to disclose to the issuer the existence of payments, values, or credits received by an underwriter in connection with its underwriting of the new issue from parties other than the issuer, and payments made by the underwriter in connection with such new issue to parties other than the issuer (in either case including payments, values, or credits that relate directly or indirectly to collateral transactions integrally related to the issue being underwritten), to be a violation of an underwriter's obligation to the issuer under Rule G-17.[45] For example, it would be a violation of Rule G-17 for an underwriter to compensate an undisclosed third party in order to secure municipal securities business. Similarly, it would be a violation of Rule G-17 for an underwriter to receive undisclosed compensation from a third party in exchange for recommending that third party's services or product to an issuer, including business related to municipal securities derivative transactions. This notice does not require that the amount of such third-party payments be disclosed. The underwriter must also disclose to the issuer whether it has entered into any third-party arrangements for the marketing of the issuer's securities.

Profit-Sharing with Investors. Arrangements between the underwriter and an investor purchasing new issue securities from the underwriter (including purchases that are contingent upon the delivery by the issuer to the underwriter of the securities) according to which profits realized from the resale by such investor of the securities are directly or indirectly split or otherwise shared with the underwriter also would, depending on the facts and circumstances (including in particular if such resale occurs reasonably close in time to the original sale by the underwriter to the investor), constitute a violation of the underwriter's fair dealing obligation under Rule G-17.[46] Such arrangements could also constitute a violation of Rule G-25(c), which precludes a dealer from sharing, directly or indirectly, in the profits or losses of a transaction in municipal securities with or for a customer. An underwriter should carefully consider whether any such arrangement, regardless of whether it constitutes a violation of Rule G-25(c), may evidence a potential failure of the underwriter's duty with regard to new issue pricing described above.

Credit Default Swaps. The issuance or purchase by a dealer of credit default swaps for which the reference is the issuer for which the dealer is serving as underwriter, or an obligation of that issuer, may pose a conflict of interest, including a dealer-specific conflict of interest, because trading in such municipal credit default swaps has the potential to affect the pricing of the underlying reference obligations, as well as the pricing of other obligations brought to market by that issuer. Rule G-17 requires, therefore, that a dealer disclose the fact that it engages in such activities to the issuers for which it serves as underwriter. Activities with regard to credit default swaps based on baskets or indexes of municipal issuers that include the issuer or its obligation(s) need not be disclosed, unless the issuer or its obligation(s) represents more than 2% of the total notional amount of the credit default swap or the underwriter otherwise caused the issuer or its obligation(s) to be included in the basket or index.

Retail Order Periods

Rule G-17 requires an underwriter that has agreed to underwrite a transaction with a retail order period to, in fact, honor such agreement.[47] A dealer that wishes to allocate securities in a manner that is inconsistent with an issuer's requirements must not do so without the issuer's consent. In addition, Rule G-17 requires an underwriter that has agreed to underwrite a transaction with a retail order period to take reasonable measures to ensure that retail clients are bona fide. An underwriter that knowingly accepts an order that has been framed as a retail order when it is not (*e.g.*, a number of small orders placed by an institutional investor that would otherwise not qualify as a retail customer) would violate Rule G-17 if its actions are inconsistent with the issuer's expectations regarding retail orders. In addition, a dealer that places an order that is framed as a qualifying retail order but in fact represents an order that does not meet the qualification requirements to be treated as a retail order (*e.g.*, an order by a retail dealer without "going away" orders[48] from retail customers, when such orders are not within the issuer's definition of "retail") violates its Rule G-17 duty of fair dealing. The MSRB will continue to review activities relating to retail order periods to ensure that they are conducted in a fair and orderly manner consistent with the intent of the issuer and the MSRB's investor protection mandate.

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Dealer Payments to Issuer Personnel

Dealers are reminded of the application of MSRB Rule G-20, on gifts, gratuities, and non-cash compensation, and Rule G-17, in connection with certain payments made to, and expenses reimbursed for, issuer personnel during the municipal bond issuance process.[49] These rules are designed to avoid conflicts of interest and to promote fair practices in the municipal securities market.

Dealers should consider carefully whether payments they make in regard to expenses of issuer personnel in the course of the bond issuance process, including in particular, but not limited to, payments for which dealers seek reimbursement from bond proceeds or issuers, comport with the requirements of Rule G-20. For example, a dealer acting as a financial advisor or underwriter may violate Rule G-20 by paying for excessive or lavish travel, meal, lodging and entertainment expenses in connection with an offering (such as may be incurred for rating agency trips, bond closing dinners, and other functions) that inure to the personal benefit of issuer personnel and that exceed the limits or otherwise violate the requirements of the rule.[50]

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[1] For purposes of this notice, the term "municipal entity" is used as defined by Section 15B(e)(8) of the Securities Exchange Act of 1934 (the "Exchange Act"), 17 CFR 240.15Ba1-1(g), and other rules and regulations thereunder.

[2] *See* Reminder Notice on Fair Practice Duties to Issuers of Municipal Securities, MSRB Notice 2009-54 (September 29, 2009); Rule G-17 Interpretive Letter – Purchase of new issue from issuer, MSRB interpretation of December 1, 1997, reprinted in MSRB Rule Book ("1997 Interpretation").

[3] Pub. L. No. 111-203 § 975, 124 Stat. 1376 (2010).

[4] *See* Interpretive Notice Concerning the Application of MSRB Rule G-17 to Underwriters of Municipal Securities (Aug. 2, 2012) (superseded upon the effective date of this notice as described below).

[5] *See* MSRB Notice 2012-38 (July 18, 2012); MSRB Notice 2013-08 (Mar. 25, 2013).

[6] The MSRB has always viewed competitive offerings narrowly to mean new issues sold by the issuer to the underwriter on the basis of the lowest price bid by potential underwriters — that is, the fact that an issuer publishes a request for proposals and potential underwriters compete to be selected based on their professional qualifications, experience, financing ideas, and other subjective factors would not be viewed as representing a competitive offering for purposes of this notice. In light of this meaning of the term "competitive underwriting," it should be clear that, although most of the examples relating to misrepresentations and fairness of financial aspects of an offering consist of situations that would only arise in a negotiated offering, Rule G-17 should not be viewed as allowing an underwriter in a competitive underwriting to make misrepresentations to the issuer or to act unfairly in regard to the financial aspects of the new issue.

[7] MSRB Rule D-9 defines the term "customer" as follows: "Except as otherwise specifically provided by rule of the Board, the term 'Customer' shall mean any person other than a broker, dealer, or municipal securities dealer acting in its capacity as such or an issuer in transactions involving the sale by the issuer of a new issue of its securities."

[8] *See* MSRB Reminds Firms of Their Sales Practice and Due Diligence Obligations When Selling Municipal Securities in the Secondary Market, MSRB Notice 2010-37 (September 20, 2010).

[9] For purposes of this notice, underwriters are only required to provide written disclosure of their applicable conflicts and are not required to make any written disclosures on the part of issuer personnel or any other parties to the transaction as part of the standard disclosures, dealer-specific disclosures, or the transaction-specific disclosures.

[10] For purposes of this notice, the term "syndicate manager" refers to the lead manager, senior manager, or bookrunning manager of the syndicate. In circumstances where an underwriting syndicate is formed, only that single syndicate manager is obligated to make the standard disclosures under this notice. In the event that there are joint-bookrunning senior managers, only one of the joint-bookrunning senior managers would be obligated under this notice to make the standard disclosures. Unless otherwise agreed to, such as pursuant to an agreement among underwriters, the joint-bookrunning senior manager responsible for maintaining the order book of the syndicate would be responsible for providing the standard disclosures. Notwithstanding the fair dealing obligation of a syndicate manager to deliver the standard disclosures under this notice, nothing herein would prohibit an underwriter from making a disclosure in order to, for example, comply with another regulatory or statutory obligation.

[11] Where an underwriting syndicate is formed, the syndicate manager has the sole responsibility hereunder for providing the standard disclosures. Consistent with this obligation placed on the syndicate manager, only the syndicate manager must maintain and preserve records of the standard disclosures in accordance with MSRB rules. Further, the MSRB acknowledges that an underwriter may not know if a syndicate will form at the time that certain disclosures are sent. In instances in which an underwriter has provided a standard disclosure prior to or concurrent with the formation of a syndicate, it shall suffice that the then-underwriter (later syndicate manager) has delivered a standard disclosure, and no affirmative statement is necessary that a disclosure is being made on behalf of any existing or future syndicate members for the syndicate manager to have met its fair dealing obligations in this regard. Notwithstanding the obligation of a syndicate manager to deliver the standard disclosures, nothing herein would prohibit, or should be construed as prohibiting, another underwriter from delivering a standard disclosure in order to, for example, comply with another regulatory or statutory obligation.

[12] Each underwriter, whether a sole underwriter, syndicate manager, or other member of the underwriting syndicate, has a fair dealing obligation under this notice to deliver transaction-specific disclosures where such underwriter has made a recommendation to an issuer regarding a financing structure or product. The fair dealing obligation to deliver such a transaction-specific disclosure, includes, but is not limited to, determining the level of disclosure required based on the type of financing structure or product recommended and a reasonable belief of the issuer's knowledge and experience regarding that particular type of financing structure or product. In such cases, as further discussed below, a sole underwriter, syndicate manager, or other member of the underwriting syndicate who has not made such a recommendation would not need to deliver transaction-specific disclosures in order to meet its fair dealing obligation under this notice.

[13] *See also* note 30 *infra*.

[14] As a threshold matter, the disclosures delivered by an underwriter to an issuer must not be inaccurate or misleading, and nothing in this notice should be construed as requiring an underwriter to make a disclosure to an issuer that is false. For example, in a private placement where a dealer acting as an agent to place securities on behalf of an issuer does not take a principal position (including not taking a "riskless principal" position) in the securities being placed, the standard disclosure relating to an "arm's length" relationship may be inapplicable and in such case may be omitted due to the agent-principal relationship between the dealer and issuer that commonly gives rise to other duties as a matter of common law or another statutory or regulatory regime — whether termed as a fiduciary or other obligation of trust. *See* Exchange Act Release No. 66927 (May 4, 2012), 77 FR 27509 (May 10, 2012) (SR-MSRB-2011-09). In certain other contexts, depending on the specific facts and circumstances, a dealer acting as an underwriter may take on, either through an agency arrangement or other

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purposeful understanding, a fiduciary relationship with the issuer. In such case, it would be appropriate for an underwriter to omit those disclosures deemed inapplicable as a result of such relationship.

A dealer acting as a placement agent in the primary offering of a new issuance of municipal securities should also consider how the scope of its activities may interact with the registration and record-keeping requirements for municipal advisors adopted by the Securities and Exchange Commission (the "Commission") under Section 15B of the Exchange Act (15 U.S.C. 78o-4), including the application of the exclusion from the definition of "municipal advisor" applicable to a dealer acting as an underwriter pursuant to Exchange Act Rule 15Ba1-1(d)(2)(i). *See* Registration of Municipal Advisors, Exchange Act Release No. 70462 (September 20, 2013), 78 FR 67467 (hereinafter, the "MA Rule Adopting Release"), at 67515 – 67516 (November 12, 2013) (available at http://www.sec.gov/rules/final/2013/34-70462.pdf) (stating: "The Commission does not believe that the underwriter exclusion should be limited to a particular type of underwriting or a particular type of offering. Therefore, if a registered broker-dealer, acting as a placement agent, performs municipal advisory activities that otherwise would be considered within the scope of the underwriting of a particular issuance of municipal securities as discussed [therein], the broker-dealer would not have to register as a municipal advisor."); *see also* the MA Rule Adopting Release, 78 FR at 67513 – 67514 (discussing activities within and outside the scope of serving as an underwriter of a particular issuance of municipal securities for purposes of the underwriter exclusion).

[15] *Id*.

[16] In many private placements, as well as in certain other types of new issue offerings, no official statement may be produced, so that, to the extent that such an offering occurs without the production of an official statement, a dealer would not be required to disclose its role with regard to the review of an official statement.

[17] For purposes hereof, a potential material conflict of interest must be disclosed if, but only if, it is *reasonably likely* to mature into an actual material conflict of interest during the course of the transaction between the issuer and the underwriter.

[18] The third-party payments to which the disclosure standard would apply are those that give rise to actual material conflicts of interest or potential material conflicts of interest only.

[19] The specific standard with respect to complex financings does not obviate a dealer's fair dealing obligation to disclose the existence of payments, values, or credits received by the underwriter or of other material conflicts of interest in connection with any negotiated underwriting, whether it be complex or routine.

[20] Absent red flags, an underwriter may reasonably rely on a written statement from an issuer official that he or she is not a party to a disclosed conflict. The reasonableness of an underwriter's reliance on such a written statement will depend on all the relevant facts and circumstances, including the facts revealed in connection with the underwriter's due diligence in regards to the transaction generally or in determining whether the underwriter itself has any actual material conflicts of interest or potential material conflicts of interest that must be disclosed.

[21] *See also* note 30 *infra*.

[22] In offerings where a syndicate is formed, the disclosure obligation for an underwriter to make its dealer-specific disclosures is triggered – if any such actual material conflicts of interest or potential material conflicts of interest must be so disclosed – when such underwriter becomes engaged as a member of the underwriting syndicate (except with regard to conflicts discovered or arising after such co-managing underwriter has been engaged). Consistent with the obligation of sole underwriters and syndicate managers, each underwriter in the syndicate must make any applicable dealer-specific disclosures discovered or arising after being engaged as an underwriter in the syndicate as soon as practicable after being discovered and with sufficient time for the issuer to fully evaluate such a conflict and its implications.

[23] For example, an actual material conflict of interest or potential material conflict of interest may not be present until an underwriter has recommended a particular financing structure. In that case, the disclosure must be provided in sufficient time before the execution of a contract with the underwriter to allow the issuer official to fully evaluate the recommendation, as described under "Required Disclosures to Issuers."

[24] The MSRB acknowledges that not all transactions proceed along the same timeline or pathway. The timeframes expressed herein should be viewed in light of the overarching goals of Rule G-17 and the purposes that the disclosures are intended to serve as further described in this notice. The various timeframes set out in this notice are not intended to establish strict, hair-trigger tripwires resulting in mere technical rule violations, so long as an underwriter acts in substantial compliance with such timeframes and meets the key objectives for providing disclosure under the notice. Nevertheless, an underwriter's fair dealing obligation to an issuer in particular facts and circumstances may demand prompt adherence to the timelines set out in this notice. Stated differently, if an underwriter does not timely deliver a disclosure and, as a result, the issuer: (i) does not have clarity throughout all substantive stages of a financing regarding the roles of its professionals, (ii) is not aware of conflicts of interest promptly after they arise and well before the issuer effectively becomes fully committed – either formally (*e.g.*, through execution of a contract) or informally (*e.g.*, due to having already expended substantial time and effort) – to completing the transaction with the underwriter, and/or (iii) does not have the information required to be disclosed with sufficient time to take such information into consideration and, thereby, to make an informed decision about the key decisions on the financing, then the underwriter generally will have violated its fair-dealing obligations under Rule G-17, absent other mitigating facts and circumstances.

[25] An underwriter delivering a disclosure in order to meet a fair dealing obligation must obtain (or attempt to obtain) proper acknowledgement. When there is an underwriting syndicate, only the syndicate manager, as the dealer responsible for delivering the standard disclosures to the issuer, must obtain (or attempt to obtain) proper acknowledgement from the issuer for such disclosures.

[26] Absent red flags, and subject to an underwriter's ability to reasonably rely on a representation from an issuer official that he or she has the authority to bind the issuer by contract with the underwriter, an underwriter may reasonably rely on a written delegation by an authorized issuer official in, among other things, the issuer's request for proposals to another issuer official to receive and acknowledge receipt of a disclosure. The reasonableness of an underwriter's reliance upon an issuer's representation as to these matters will depend on all of the relevant facts and circumstances, including the facts revealed in connection with the underwriter's due diligence in regards to the transaction generally.

[27] For purposes of this notice, the term "e-mail read receipt" means an automatic response generated by a recipient issuer official confirming that an e-mail has been opened. While an e-mail read receipt may generally be an acceptable form of an issuer's written acknowledgement under this notice, an underwriter may not rely on such an e-mail read receipt as an issuer's written acknowledgement where such reliance is unreasonable under all of the facts and circumstances, such as where the underwriter is on notice that the issuer official to whom the e-mail is addressed has not in fact received or opened the e-mail.

[28] The need for underwriters to have a reasonable basis for representations and other material information provided to issuers extends to the reasonableness of assumptions underlying the material information being provided. If an underwriter would not rely on any statements made or information provided for its own purposes, it should refrain from making the statement or providing the information to the issuer, or should provide any appropriate disclosures or other information that would allow the issuer to adequately assess the reliability of the statement or information before relying upon it. Further, underwriters should be careful to distinguish statements made to issuers that represent opinion rather than factual information and to ensure that the issuer is aware of this distinction.

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[29] As a general matter, a response to a request for proposal should not be treated as merely a sales pitch without regulatory consequence, but instead should be treated with full seriousness that issuers have the expectation that representations made in such responses are true and accurate.

[30] In the circumstance where a dealer proposing to act as an underwriter in a negotiated offering recommends a financing structure or product prior to the time at which an underwriting syndicate is formed, such dealer shall have the same obligations to make any applicable standard disclosures, as if it were a sole underwriter or syndicate manager for purposes of the obligations described under "Required Disclosure to the Issuer" (*e.g.*, to make the standard disclosure concerning the arm's-length nature of the underwriter-issuer relationship at the earliest stages of the underwriter's relationship with the issuer with respect to an issue), including complying with corresponding requirements to maintain and preserve records.

[31] If a complex municipal securities financing consists of an otherwise routine financing structure that incorporates a unique, atypical, or complex element or product and the issuer personnel have knowledge or experience with respect to the routine elements of the financing, the disclosure of material risks and characteristics may be limited to those relating to such specific element or product and any material impact such element or product may have on other features that would normally be viewed as routine.

[32] Respectively, the London Inter-bank Offered Rate (*i.e.*, "LIBOR"), the SIFMA Municipal Swap Index (*i.e.*, "SIFMA"), and Secured Overnight Financing Rate ("SOFR"). The MSRB notes that its references to LIBOR, SIFMA, and SOFR are illustrative only and non-exclusive. Any financings involving a benchmark interest rate index may be complex, particularly if an issuer is unlikely to fully understand the components of that index, its material risks, or its possible interaction with other indexes.

[33] For purposes of determining when an underwriter recommends a financing structure in a negotiated offering or recommends a complex municipal securities financing in a negotiated offering (a "Complex Municipal Securities Financing Recommendation"), the MSRB's guidance on the meaning of "recommendation" for dealers in MSRB Notice 2014-07: SEC Approves MSRB Rule G-47 on Time-of-Trade Disclosure Obligations, MSRB Rules D-15 and G-48 on Sophisticated Municipal Market Professionals, and Revisions to MSRB Rule G-19 on Suitability of Recommendations and Transactions (March 12, 2014) is applicable by analogy. For example, whether an underwriter has made a Complex Municipal Securities Financing Recommendation is not susceptible to a bright line definition but turns on the facts and circumstances of the particular situation. An important factor in determining whether a Complex Municipal Securities Financing Recommendation has been made is whether — given its content, context, and manner of presentation — a particular communication from an underwriter to an issuer regarding a financing structure or product reasonably would be viewed as a call to action or reasonably would influence an issuer to engage in a such a financing structure or product deemed a complex municipal securities financing structure. In general, the more individually tailored the underwriter's communication is to a specific issuer about a complex municipal securities financing structure, the greater the likelihood that the communication reasonably would be viewed as a Complex Municipal Securities Financing Recommendation.

[34] An underwriter must make reasonable judgments regarding whether it has recommended a financing structure or product to an issuer and whether a particular financing structure or product recommended by the underwriter to the issuer is complex, understanding that the fact that a structure or product has become relatively common in the market does not reduce its complexity. Not all negotiated offerings involve a recommendation by the underwriter(s), such as where a sole underwriter merely executes a transaction already structured by the issuer or its municipal advisor.

[35] For example, when a Complex Municipal Securities Financing Recommendation for a VRDO is made, the underwriter who recommends a VRDO should inform the issuer of the risk of interest rate fluctuations and material risks of any associated credit or liquidity facilities (*e.g.*, the risk that the issuer might not be able to replace the facility upon its expiration and might be required to repay the facility provider over a short period of time). As an additional example, if the underwriter recommends that the issuer swap the floating rate interest payments on the VRDOs to fixed rate payments under a swap, the underwriter must disclose the material financial risks (including market, credit, operational, and liquidity risks) and material financial characteristics of the recommended swap (*e.g.*, the material economic terms of the swap, the material terms relating to the operation of the swap, and the material rights and obligations of the parties during the term of the swap), as well as the material financial risks associated with the VRDO. Such disclosure should be sufficient to allow the issuer to assess the magnitude of its potential exposure as a result of the complex municipal securities financing. Such disclosures must also inform the issuer that there may be accounting, legal, and other risks associated with the swap and that the issuer should consult with other professionals concerning such risks. If the underwriter who has made a Complex Municipal Financing Securities Recommendation is affiliated with the swap dealer proposed to be the executing swap dealer, the underwriter may satisfy its disclosure obligation with respect to the swap if such disclosure has been provided to the issuer by the affiliated swap dealer or the issuer's swap or other financial advisor that is independent of such underwriter and the swap dealer, as long as the underwriter has a reasonable basis for belief in the truthfulness and completeness of such disclosure. If the issuer decides to enter into a swap with another dealer, the underwriter is not required to make disclosures with regard to that swap product under this notice. The MSRB notes that a dealer who recommends a swap or security-based swap to a municipal entity may also be subject to rules of the Commodity Futures Trading Commission or those of the Securities and Exchange Commission ("SEC").

[36] For example, a conflict of interest may exist when the underwriter who makes a Complex Municipal Securities Financing Recommendation to an issuer is also the provider, or an affiliate of the provider, of a swap used by an issuer to hedge a municipal securities offering or when an underwriter receives compensation from a swap provider for recommending the swap. *See also* "Conflicts of Interest/Payments to or from Third Parties" herein.

[37] Even a financing in which the interest rate is benchmarked to an index that is commonly used in the municipal marketplace (*e.g.*, SIFMA) may be complex to an issuer that does not understand the components of that index or its possible interaction with other indexes.

[38] *See* note 19 *supra*.

[39] Page after page of complex legal jargon in small print would not be consistent with an underwriter's fair dealing obligation under this notice.

[40] Underwriters should be able to leverage such materials for internal training and risk management purposes.

[41] Underwriters that assist issuers in preparing official statements must remain cognizant of their duties under federal securities laws. With respect to primary offerings of municipal securities, the SEC has noted, "By participating in an offering, an underwriter makes an implied recommendation about the securities." *See* Exchange Act Release No. 26100 (Sept. 22, 1988) (proposing Exchange Act Rule 15c2-12) at text following *fn.* 70. The SEC has stated that "this recommendation itself implies that the underwriter has a reasonable basis for belief in the truthfulness and completeness of the key representations made in any disclosure documents used in the offerings." Furthermore, pursuant to Exchange Act Rule 15c2-12(b)(5), an underwriter may not purchase or sell municipal securities in most primary offerings unless the underwriter has reasonably determined that the issuer or an obligated person has entered into a written undertaking to provide certain types of secondary market disclosure and has a reasonable basis for relying on the accuracy of the issuer's ongoing disclosure representations. Exchange Act Release No. 34961 (Nov. 10, 1994) (adopting continuing disclosure provisions of Exchange Act Rule 15c2-12) at text following *fn.* 52.

[42] The MSRB has previously observed that whether an underwriter has dealt fairly with an issuer for purposes of Rule G-17 is dependent upon all of the facts and circumstances of an underwriting and is not dependent solely on the price of the issue. *See* MSRB Notice 2009-54 (Sept. 29, 2009) and the 1997 Interpretation (note 2 *supra*). *See also* "Retail Order Periods" herein.

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[43] Rule G-13(b)(iii) provides: "For purposes of subparagraph (i), a quotation shall be deemed to represent a 'bona fide bid for, or offer of, municipal securities' if the broker, dealer or municipal securities dealer making the quotation is prepared to purchase or sell the security which is the subject of the quotation at the price stated in the quotation and under such conditions, if any, as are specified at the time the quotation is made."

[44] *See* 1997 Interpretation (note 2 *supra*).

[45] *See also* "Required Disclosures to Issuers" herein.

[46] Underwriters should be mindful that, depending on the facts and circumstances, such an arrangement may be inferred from a purposeful but not otherwise justified pattern of transactions or other course of action, even without the existence of a formal written agreement.

[47] *See* MSRB Interpretation on Priority of Orders for Securities in a Primary Offering under Rule G-17, MSRB interpretation of October 12, 2010, reprinted in MSRB Rule Book. The MSRB also reminds underwriters of previous MSRB guidance on the pricing of securities sold to retail investors. *See* Guidance on Disclosure and Other Sales Practice Obligations to Individual and Other Retail Investors in Municipal Securities, MSRB Notice 2009-42 (July 14, 2009).

[48] In general, a "going away" order is an order for new issue securities for which a customer is already conditionally committed. *See* Exchange Act Release No. 62715, File No. SR-MSRB-2009-17 (August 13, 2010).

[49] *See* MSRB Rule G-20 Interpretation — Dealer Payments in Connection With the Municipal Securities Issuance Process (January 29, 2007), reprinted in MSRB Rule Book.

[50] *See In the Matter of RBC Capital Markets Corporation,* Exchange Act Release No. 59439 (Feb. 24, 2009) (settlement in connection with broker-dealer alleged to have violated MSRB Rules G-20 and G-17 for payment of lavish travel and entertainment expenses of city officials and their families associated with rating agency trips, which expenditures were subsequently reimbursed from bond proceeds as costs of issuance); *In the Matter of Merchant Capital, L.L.C.,* Exchange Act Release No. 60043 (June 4, 2009) (settlement in connection with broker-dealer alleged to have violated MSRB rules for payment of travel and entertainment expenses of family and friends of senior officials of issuer and reimbursement of the expenses from issuers and from proceeds of bond offerings).

See also:

Rule G-11 Interpretations — Notice Concerning Syndicate Expenses, November 14, 1991.

- **Syndicate Expenses: Per Bond Fee for Bookrunning Expenses,** June 14, 1995.

Rule G-15 Interpretations — Notice Concerning Confirmation, Delivery and Reclamation of Interchangeable Securities, August 10, 1988.

- **Notice Concerning Stripped Coupon Municipal Securities,** March 13, 1989.

Rule G-20 Interpretation — Dealer Payments in Connection with the Municipal Securities Issuance Process, January 29, 2007.

Rule G-21 Interpretation — Interpretation on General Advertising Disclosures, Blind Advertisements and Annual Reports Relating to Municipal Fund Securities Under Rule G-21, June 5, 2007

Rule G-30 Interpretation — Interpretive Notice on Commissions and Other Charges, Advertisements and Official Statements Relating to Municipal Fund Securities, December 19, 2001.

Rule G-32 Interpretation — Notice Regarding the Disclosure Obligations of Brokers, Dealers and Municipal Securities Dealers in Connection with New Issue Municipal Securities Under Rule G-32, November 19, 1998.

Rule G-43 Interpretation — Notice to Dealers That Use the Services of Broker's Brokers, December 22, 2012.

Interpretive Letters

"Wooden tickets." This is in response to your letter of February 4, 1981 asking whether the practice of a broker-dealer using "wooden tickets" is prohibited by Board rule G-17. According to your letter, this practice refers to the mailing of confirmations of sales to customers who, in fact, have not placed orders to purchase securities. Thereafter, if any customer objects, stating that it never authorized the transaction, the sale is canceled. You state that, in some cases, customers accept the transaction and make payment.

The Board has determined that the practice by a municipal securities dealer of knowingly issuing confirmations of sales to customers who have not placed orders to purchase the bonds is a deceptive, dishonest, and unfair practice under rule G-17. *MSRB interpretation of March 3, 1981.*

Put option bonds: safekeeping, pricing. I am writing in response to your recent letter regarding issues of municipal securities with put option or tender option features, under which a holder of the securities may put the securities back to the issuer or an agent of the issuer at par on certain stated dates. In your letter you inquire generally as to the confirmation disclosure requirements applicable to such securities. You also raise several questions regarding a dealer's obligation to advise customers of the existence of the put option provision at times other than the time of sale of the securities to the customer.

Your letter was referred to a committee of the Board which has responsibility for interpreting the Board's confirmation rules, among other matters. That committee has authorized my sending you the following response.

Both rules G-12(c) and G-15, applicable to inter-dealer and customer confirmations respectively, require that confirmations of transactions in securities which are subject to put option or tender option features must indicate that fact (*e.g.*, through inclusion of the designation "puttable" on the confirmation). The date on which the put option feature first comes into effect need be stated on the confirmation only if the transaction is effected on a yield basis and the parties to the transaction specifically agree that the transaction dollar price should be computed to that date. In the absence of such an agreement, the put date need not be stated on the confirmation, and any yield disclosed should be a yield to maturity.

Of course, municipal securities brokers and dealers selling to customers securities with put option or tender option features are obligated to disclose adequately the special characteristics of these securities at the time of trade. The customer therefore should be advised of information about the put option or tender option feature at this time.

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In your letter you inquire whether a dealer who had previously sold securities with a put option or tender option feature to a customer would be obliged to contact that customer around the time the put option comes into effect to remind the customer that the put option is available. You also ask whether such an obligation would exist if the dealer held the securities in safekeeping for the customer. The committee can respond, of course, only in terms of the requirements of Board rules; the committee noted that no Board rule would impose such an obligation on the dealer.

In your letter you also ask whether a dealer who purchased from a customer securities with a put option or tender option feature at the time of the put option exercise date at a price significantly below the put exercise price would be in violation of any Board rules. The committee believes that such a dealer might well be deemed to be in violation of Board rules G-17 on fair dealer and G-30 on prices and commissions. *MSRB interpretation of February 18, 1983*.

Description provided at or prior to the time of trade. This is in response to your February 27, 1986 letter and our prior telephone conversation concerning the application of Board rules to the description of municipal securities exchanged at or prior to the time of trade. You note that it is becoming more and more common in the municipal securities secondary market for sellers, both dealers and customers, to provide only a "limited description" and CUSIP number for bonds being sold. Recently you were asked by a customer to bid on $4 million of bonds and were given the coupon, maturity date, and issuer. When you asked for more information, you were given the CUSIP number. You then bid on and purchased the bonds. After the bonds were confirmed, you discovered that the bonds were callable and that, when these bonds first came to market, they were priced to the call. You state that the seller was aware that the bonds were callable.

Your letter was referred to a Committee of the Board which has responsibility for interpreting the Board's fair practice rules. That Committee has authorized this response.

Board rule G-17 provides that

> In the conduct of its municipal securities business, *each broker, dealer, and municipal securities dealer* shall deal fairly with all persons and shall not engage in any deceptive, dishonest, or unfair practice. (emphasis added)

The Board has interpreted this rule to require that, in connection with the purchase from or sale of a municipal security to a customer, at or before execution of the transaction, a dealer must disclose all material facts concerning the transaction which could affect the customer's investment decision and not omit any material facts which would render other statements misleading. The fact that a municipal security may be redeemed in-whole, in-part, or in extraordinary circumstances prior to maturity is essential to a customer's investment decision and is one of the facts a dealer must disclose.

I note from our telephone conversation that you ask whether Board rules specify what information a customer must disclose to a dealer at the time it solicits bids to buy municipal securities. Customers are not subject to the Board's rules, and no specific disclosure rules would apply to customers beyond the application of the anti-fraud provisions of the federal securities laws. I note, however, that a municipal securities professional buying securities from a customer should obtain sufficient information about the securities so that it can accurately describe these securities when the dealer reintroduces them into the market.

In regard to inter-dealer transactions, the items of information that professionals must exchange at or prior to the time of trade are governed by principles of contract law and essentially are those items necessary adequately to describe the security that is the subject of the contract. As a general matter, these items of information may not encompass all material facts, but must be sufficient to distinguish the security from other similar issues. The Board has interpreted rule G-17 to require dealers to treat other dealers fairly and to hold them to the prevailing ethical standards of the industry. Also, dealers may not knowingly misdescribe securities to another dealer. *MSRB interpretation of April 30, 1986*.

Purchase of new issue from issuer. This is in response to your letter in which you ask whether Board rule G-17, on fair dealing, or any other rule, regulation or federal law, requires an underwriter to purchase a bond issue from a municipal securities issuer at a "fair price."

Rule G-17 states that, in the conduct of its municipal securities business, each broker, dealer and municipal securities dealer shall deal fairly with all persons and shall not engage in any deceptive, dishonest, or unfair practice. Thus, the rule requires dealers to deal fairly with issuers in connection with the underwriting of their municipal securities. Whether or not an underwriter has dealt fairly with an issuer is dependent upon the facts and circumstances of an underwriting and cannot be addressed simply by virtue of the price of the issue. For example, in a competitive underwriting where an issuer reserves the right to reject all bids, a dealer submits a bid at a net interest cost it believes will enable it to successfully market the issue to investors. One could not view a dealer as having violated rule G-17 just because it did not submit a bid that the issuer considers fair. On the other hand, when a dealer is negotiating the underwriting of municipal securities, a dealer has an obligation to negotiate in good faith with the issuer. If the dealer represents to the issuer that it is providing the best market price available on this issue, and this is not the case, the dealer may violate rule G-17. Also, if the dealer knows the issuer is unsophisticated or otherwise depending on the dealer as its sole source of market information, the dealer's duty under rule G-17 is to ensure that the issuer is treated fairly, specifically in light of the relationship of reliance that exists between the issuer and the underwriter. *MSRB interpretation of December 1, 1997*.

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See also:

Rule G-15 Interpretive Letters — Callable securities: pricing to call and extraordinary mandatory redemption features, *MSRB interpretation of February 10, 1984*.

- **Callable securities: pricing to mandatory sinking fund calls,** *MSRB interpretation of April 30, 1986*.
- **Disclosure of pricing: calculating the dollar price of partially prerefunded bonds,** *MSRB interpretation of May 15, 1986*.
- **Disclosure of investment of bond proceeds,** *MSRB interpretation of August 16, 1991*.
- **Securities description: prerefunded securities,** *MSRB interpretation of February 17, 1998*.

Rule G-21 Interpretive Letters — Disclosure obligations, *MSRB interpretation of May 21, 1998*.

- **529 college savings plan advertisements,** *MSRB interpretation of May 12, 2006*.

Rule G-17 Amendment History (since 2003)

Release No. 34-72129 (May 8, 2014), 79 FR 27662 (May 14, 2014); MSRB Notice 2014-11 (May 12, 2014)

Release No. 34-67064 (May 25, 2012), 77 FR 32704 (June 1, 2012); MSRB Notice 2012-27 (May 29, 2012)

Release No. 34-66927 (May 4, 2012), 77 FR 27509 (May 10, 2012); MSRB Notice 2012-25 (May 7, 2012)

Release No. 34-63599 (December 22, 2010), 75 FR 82199 (December 29, 2010); MSRB Notice 2010-59 (December 23, 2010)

Release No. 34-62715 (August 13, 2010), 75 FR 51128 (August 18, 2010); MSRB Notice 2010-26 (August 15, 2010)

Release No. 34-60359 (July 21, 2009), 74 FR 37079 (July 27, 2009); MSRB Notice 2009-42 (July 14, 2009)

Release No. 34-53959 (June 8, 2006), 71 FR 34654 (June 15, 2006); MSRB Notice 2006-16 (June 15, 2006)

Release No. 34-51020 (January 11, 2005), 70 FR 3079 (January 19, 2005); MSRB Notice 2005-01 (January 5, 2005)

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Rule G-18
Best Execution

(a) In any transaction in a municipal security for or with a customer or a customer of another broker, dealer, or municipal securities dealer ("dealer"), a dealer must use reasonable diligence to ascertain the best market for the subject security and buy or sell in that market so that the resultant price to the customer is as favorable as possible under prevailing market conditions. Among the factors that will be considered in determining whether a dealer has used "reasonable diligence," with no single factor being determinative, are:

(1) the character of the market for the security (e.g., price, volatility, and relative liquidity);

(2) the size and type of transaction;

(3) the number of markets checked;

(4) the information reviewed to determine the current market for the subject security or similar securities;

(5) the accessibility of quotations; and

(6) the terms and conditions of the customer's inquiry or order, including any bids or offers, that result in the transaction, as communicated to the dealer.

(b) In any transaction for or with a customer or a customer of another dealer, a dealer must not interject a third party between itself and the best market for the subject security in a manner inconsistent with paragraph (a) of this rule.

(c) The obligations described in paragraphs (a) and (b) above apply to transactions in which the dealer is acting as agent and transactions in which the dealer is acting as principal. These obligations are distinct from the fairness and reasonableness of commissions, markups or markdowns, which are governed by Rule G-30.

Supplementary Material

.01 Purpose. The principal purpose of this rule is to promote, for customer transactions, dealers' use of reasonable diligence in accordance with paragraph (a). A failure to have actually obtained the most favorable price possible will not necessarily mean that the dealer failed to use reasonable diligence.

.02 Maintenance of Adequate Resources. A dealer's failure to maintain adequate resources (*e.g.*, staff or technology) is not a justification for executing away from the best available market. The level of resources that a dealer maintains should take into account the nature of the dealer's municipal securities business, including its level of sales and trading activity.

.03 Execution of Customer Transactions. A dealer must make every effort to execute a customer transaction promptly, taking into account prevailing market conditions. In certain market conditions a dealer may need more time to use reasonable diligence to ascertain the best market for the subject security.

.04 Definition of "Market." The term "market" or "markets," for the purposes of this rule, unless the context requires otherwise, encompasses a variety of different venues, including but not limited to broker's brokers, alternative trading systems or platforms, or other counterparties, which may include the dealer itself as principal. The term is to be construed broadly, recognizing that municipal securities currently trade over the counter without a central exchange or platform. This expansive interpretation is meant both to inform dealers as to the breadth of the scope of venues that must be considered in the furtherance of their best-execution obligations and to promote fair competition among dealers (including broker's brokers), alternative trading systems and platforms, and any other venue that may emerge, by not mandating that certain trading venues have less relevance than others in the course of determining a dealer's best-execution obligations.

.05 Best Execution and Executing Brokers. A dealer's duty to provide best execution in any transaction "for or with" "a customer of another dealer" does not apply in instances when the other dealer is simply executing a customer transaction against the dealer's quote. A dealer's duty to provide best execution to customer orders received from other dealers arises only when an order is routed from another dealer to the dealer for handling and execution.

.06 Securities with Limited Quotations or Pricing Information. Although the best-execution requirements in this rule apply to transactions in all municipal securities (other than municipal fund securities), markets for municipal securities may differ dramatically. One of the areas in which a dealer must be especially diligent in ensuring that it has met its best-execution obligations is with respect to customer transactions involving securities for which there is limited pricing information or quotations available. Each dealer must have written policies and procedures in place that address how the dealer will make its best-execution determinations with respect to such a security in the absence of pricing information or multiple quotations and must document its compliance with those policies and procedures. For example, a dealer generally should seek out other sources of pricing information and potential liquidity for such a security, including other dealers that the dealer previously has traded with in the security. Additionally, a dealer generally should, in determining whether the resultant price to the customer is as favorable as possible under prevailing market conditions, analyze other data to which it reasonably has access.

.07 Customer Instructions Regarding Handling of Bids or Offers. If a dealer receives an unsolicited instruction from a customer designating a particular market for the execution of the customer's transaction, the dealer is not required to make a best-execution determination beyond the customer's specific instruction. Dealers are, however, still required to process that customer's transaction promptly and in accordance with the terms of the customer's bid or offer.

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.08 Review of Policies and Procedures and Execution Quality.

(a) A dealer must, at a minimum, conduct annual reviews of its policies and procedures for determining the best available market for the executions of its customers' transactions. While no more frequent interval is specifically required, a dealer must conduct these reviews at a frequency reasonably related to the nature of its municipal securities business, including but not limited to its level of sales and trading activity. In conducting its periodic reviews, a dealer must assess whether its policies and procedures are reasonably designed to achieve best execution, taking into account the quality of the executions the dealer is obtaining under its current policies and procedures, changes in market structure, new entrants, the availability of additional pre-trade and post-trade data, and the availability of new technologies, and to make promptly any necessary modifications to such policies and procedures as may be appropriate in light of such reviews.

(b) A dealer that routes its customers' transactions to another dealer that has agreed to handle those transactions as agent or riskless principal for the customer (*e.g.*, a clearing firm or other executing dealer) may rely on that other dealer's periodic reviews as long as the results and rationale of the review are fully disclosed to the dealer and the dealer periodically reviews how the other dealer's review is conducted and the results of the review.

.09 Exemption for Municipal Fund Securities. The provisions of this rule do not apply to transactions in municipal fund securities.

Rule G-18 Interpretations

Implementation Guidance on MSRB Rule G-18, on Best Execution

(As updated February 7, 2019)

Background

MSRB Rule G-18, establishing the first best-execution rule for transactions in municipal securities, became effective March 21, 2016. The best-execution rule requires brokers, dealers and municipal securities dealers (dealers) to use reasonable diligence to ascertain the best market for the subject security and buy or sell in that market so that the resultant price to the customer is as favorable as possible under prevailing market conditions. Related amendments to MSRB Rule G-48, on transactions with sophisticated municipal market professionals (SMMPs), and to MSRB Rule D-15, on the definition of an SMMP, exempt transactions with SMMPs from the best-execution rule. This implementation guidance provides answers to frequently asked questions about the best-execution rule and the SMMP exemption.

Use of This Document

The MSRB is providing in this document general implementation guidance on certain aspects of new Rule G-18 and amended Rules G-48 and D-15 (rules) in a question-and-answer format. This guidance is designed to support compliance with the best-execution rule and the SMMP exemption.[1] The answers are not considered rules and have neither been approved nor disapproved by the Securities and Exchange Commission (SEC).

The MSRB may update these questions and answers periodically, and any updates will include appropriate references to dates of new or modified questions and answers.

Questions and Answers Concerning Best Execution and the Exemption for Transactions with Sophisticated Municipal Market Professionals: Rules G-18, G-48 and D-15

I. Best-Execution Standard — General

I.1: Reasonable Diligence

Q: What do dealers need to do to use reasonable diligence when selling (purchasing) municipal securities out of (into) their inventory to (from) customers[2] who are not sophisticated municipal market professionals (SMMPs)?[3]

A: *Overview of Best-Execution Standard*. Section (a) of MSRB Rule G-18, on best execution, requires dealers, in any transaction for or with a customer or a customer of another dealer, to use reasonable diligence to ascertain the best market for the subject security and to buy or sell in that market so that the resultant price to the customer is as favorable as possible under prevailing market conditions. This obligation applies to transactions in which the dealer is acting as agent and transactions in which the dealer is acting as principal.[4] Section (a) includes a non-exhaustive list of factors that dealers must consider when exercising this diligence, which includes: the character of the market for the security (*e.g.*, price, volatility, and relative liquidity), the size and type of transaction, the number of markets checked, the information reviewed to determine the current market for the subject security or similar securities, the accessibility of quotations, and the terms and conditions of the customer's inquiry or order, including any bids or offers, that result in the transaction, as communicated to the dealer. A dealer must make every effort to execute a customer transaction promptly,[5] but the determination as to whether a firm exercised reasonable diligence necessarily involves a "facts and circumstances" analysis, and actions that in one instance may meet a dealer's best-execution obligation may not satisfy that obligation under another set of circumstances. The rule is designed to complement existing fair and reasonable pricing standards and improve execution quality for retail investors in municipal securities, while promoting fair competition among dealers and improving market efficiency.

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Policies and Procedures. As explained during the rulemaking process for the best-execution rule, dealers can use reasonable diligence in ascertaining the best market for a security by using sound policies and procedures and periodically reviewing and improving them. Indeed, paragraph .08 of the Supplementary Material requires the development of policies and procedures reasonably designed to achieve best execution. Paragraph .08 requires dealers to conduct, at a minimum, annual reviews of their policies and procedures for determining the best available market, assessing whether they are reasonably designed to achieve best execution, taking into account the quality of the executions the dealer is obtaining under its current policies and procedures, changes in market structure, new entrants, the availability of additional pre-trade and post-trade data, and the availability of new technologies, and to make promptly any necessary modifications of their policies and procedures in light of those reviews.6 In short, a dealer can comply with the requirement to use reasonable diligence by developing, following and maintaining policies and procedures that are themselves reasonably designed.

Rule G-18 is designed to provide sufficient flexibility to accommodate the diverse population of dealers, which can adopt policies and procedures to be reasonably related to the nature of their business, including the level of sales and trading activity and the type of customer transactions at issue, and to allow dealers to evidence that they had used reasonable diligence in a manner that is different than that used by other dealers. However, in developing policies and procedures, dealers should consider reviewing and including in their policies and procedures the existing practices of their trading operations, existing best practices within the municipal securities market (particularly those used by similarly-situated dealers), existing best practices in the corporate debt securities market with respect to compliance with FINRA Rule 5310, which requires, among other things, best execution for transactions in corporate debt securities, and any other practices they believe to be relevant. By way of example, if similarly-situated dealers in the municipal securities market typically take certain steps when purchasing municipal securities from a customer, dealers should consider whether their written policies and procedures should provide for those steps to be taken on a consistent and systematic basis.

As explained during the rulemaking process for Rule G-18, the rule is generally substantively consistent with FINRA Rule 5310, with specific tailoring to the characteristics of the municipal securities market. This substantive consistency is in recognition of the efficiencies to be gained from harmonized regulation in similar areas of the fixed income markets. Significantly, the core standard of reasonable diligence in Rule G-18(a) is stated in identical terms to the core standard in FINRA Rule 5310; however, portions of the list of factors that are considered in determining whether a firm has used reasonable diligence are different. As a result, and also in the interests of harmonized regulation, steps by a dealer that meet the reasonable diligence standard under FINRA Rule 5310 generally will be considered to meet the reasonable diligence standard under Rule G-18 in circumstances that are substantially the same. However, dealers should consider whether any additional or different steps may need to be taken to address provisions in Rule G-18 that are tailored specifically for transactions in municipal securities.

(November 20, 2015)

I.2: Best Price

Q: Does the term "best execution" (as it relates to municipal securities) mean every trade at a particular point in time must match the best price to have occurred within a short time *thereafter*?

A: As stated in paragraph .01 of the Supplementary Material to MSRB Rule G-18, "[t]he principal purpose of [the] rule is to promote, for customer transactions, dealers' use of reasonable diligence," and a "failure to have actually obtained the most favorable price possible will not necessarily mean that the dealer failed to use reasonable diligence." A trade occurring shortly after a transaction at a materially more favorable price with no significant change in market conditions or the credit worthiness of the security, however, could indicate a lack of reasonable diligence on the part of the dealer or the utilization of inadequate procedures. Such occurrences would suggest that dealers should consider, as part of their periodic review of their procedures, the inclusion of additional markets when handling future customer orders or inquiries.

(November 20, 2015)

I.3: Documentation

Q: How do dealers document reasonable diligence in compliance with the best-execution standard and does documentation need to be made for each and every transaction?

A: The issue of documentation of dealers' compliance with MSRB Rule G-18 arises in at least three areas. First, the rule requires dealers to have written policies and procedures for compliance with the rule. Second, dealers should consider documenting their periodic reviews of their written policies and procedures and the results of those reviews. Third, dealers should consider documenting their adherence to their policies and procedures generally, and paragraph .06 of the Supplementary Material specifically requires documentation of compliance with their policies and procedures with respect to securities with limited quotations or pricing information.[7] The documentation dealers should consider in the third area necessarily would depend on the content of the policies and procedures that the dealer determines to adopt. Only by way of example, recognizing this dependence on the content of the policies and procedures, a dealer could use records providing information displayed on an alternative trading system and reviewed by a trader prior to execution, records of periodic observation of traders, notations by traders and/or records of pre- and/or post-trade reviews.[8] However, these are, again,

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only examples of documentation methods, and Rule G-18 is designed to provide sufficient flexibility to accommodate the diverse population of dealers, which can adopt policies and procedures to be reasonably related to the nature of their business, including the level of sales and trading activity and the type of customer transactions at issue, and to allow dealers to demonstrate that they had used reasonable diligence in a manner that is different than that used by other dealers. Given this flexibility, some firms may choose to document their adherence to their policies and procedures on a transaction-by-transaction basis, but the MSRB recognizes that there may be reasonable alternative approaches that would satisfy the requirements of MSRB rules and be sufficient to demonstrate compliance.

(November 20, 2015)

I.4: Extreme Market Conditions

Q: How do extreme market conditions affect dealers' best-execution obligations?

A: In the potential event of extreme market conditions impacting the trading of municipal securities (*e.g.*, a shortage of liquidity and divergent prices during periods of significant ratings changes, interest rate movements or other market-wide events) dealers should consider establishing and implementing procedures that are designed to preserve the continued execution of customers' orders in a manner that is consistent with their best-execution obligations while also recognizing and limiting their exposure to extraordinary market risk. Dealers should consider the following guidelines when evaluating their best-execution procedures during extreme market conditions:

- The treatment of customer orders must remain fair, consistent and reasonable.
- To the extent that a dealer's order-handling procedures are different during extreme market conditions, it should disclose to its customers the differences in the procedures from normal market conditions and the circumstances in which it may generally activate these procedures.[9]
- Activation of procedures designed to respond to extreme market conditions may be implemented only when warranted by market conditions. Excessive activation of modified procedures on the grounds of extreme market conditions could raise best-execution concerns. Accordingly, dealers should document the basis for activation of their modified procedures.

Ultimately, it necessarily involves a facts and circumstances analysis to determine whether actions taken by dealers during extreme market conditions are consistent with the duty of best execution, but the MSRB recognizes that market conditions are an important factor in dealers' best-execution determinations.

II. Best-Execution Standard — Applicability

II.1: Applicability to Introducing Dealers

Q: Do introducing dealers that execute and clear trades through other dealers have best-execution obligations to their customers?

A: Yes. MSRB Rule G-18 applies to any transaction in a municipal security for or with a customer or a customer of another dealer, without any exception for orders that are routed to another dealer. Paragraph .08(b) of the Supplementary Material to the rule, however, provides that "[a] dealer that routes its customers' transactions to another dealer that has agreed to handle those transactions as agent or riskless principal for the customer (*e.g.*, a clearing firm or other executing dealer) may rely on that other dealer's periodic reviews [of its written policies and procedures] as long as the results and rationale of the review are fully disclosed to the dealer and the dealer periodically reviews how the other dealer's review is conducted and the results of the review." Under this provision, introducing dealers may rely on the best-execution policies and procedures of their clearing firms or other executing dealers, all of which are subject to their own best-execution obligations under the rule. An introducing dealer, however, is not relieved of its obligations to establish written policies and procedures of its own. For example, such an introducing dealer's policies and procedures could provide for the reliance on another dealer's policies and procedures and periodic reviews by the introducing dealer of the other dealer's reviews of its policies and procedures. (November 20, 2015) II.2: Inter-Dealer Trades Q: Do trades between broker-dealers have to comply with the best-execution standard? A: No. MSRB Rule G-18 applies to any transaction for or with a customer or a customer of another dealer. Paragraph .05 of the Supplementary Material to Rule G-18 provides that "[a] dealer's duty to provide best execution in any transaction 'for or with' 'a customer of another dealer' does not apply in instances when the other dealer is simply executing a customer transaction against the dealer's quote," . . . and "[a] dealer's duty to provide best execution to customer orders received from other dealers arises only when an order is routed from another dealer to the dealer for handling and execution."

(November 20, 2015)

II.2: Inter-Dealer Trades

Q: Do trades between broker-dealers have to comply with the best-execution standard?

A: No. MSRB Rule G-18 applies to any transaction for or with a customer or a customer of another dealer. Paragraph .05 of the Supplementary Material to Rule G-18 provides that "[a] dealer's duty to provide best execution in any transaction 'for or with' 'a customer of another dealer' does not apply in instances when the other dealer is simply executing a customer transaction against the dealer's quote," . . . and "[a] dealer's

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duty to provide best execution to customer orders received from other dealers arises only when an order is routed from another dealer to the dealer for handling and execution."

(November 20, 2015)

III. Reasonable Diligence Factors — Number of Markets Checked

III.1: General

Q: When effecting a customer transaction in municipal securities, how many dealers and/or markets does a dealer need to check, and how much diligence does a dealer need to conduct in order to have confidence that all appropriate dealers and/or markets are included?

A: The duty of best execution requires a dealer to use reasonable diligence. It does not require a dealer to access every available market, especially given the differences in pricing information and execution functionality offered, and there is no set number of dealers making an offer or collecting bids on behalf of a customer order, or other markets, to check that categorically qualifies as reasonable diligence for compliance with the best-execution obligation. Accordingly, a dealer does not need to post a bid-wanted simultaneously on multiple fixed income alternative trading systems (ATSs) and/or with multiple broker's brokers, though this may be warranted in some cases, or become a subscriber to every ATS. However, in general, dealers should check more than one market or expose customer orders to multiple offerings or bids, and show external offerings and bids to retail customers , which may be accomplished by the use of ATSs or broker's brokers that expose orders to multiple dealers, each of which constitutes a "market," as that term is broadly defined in paragraph .04 of the Supplementary Material.[10] For example, a dealer's policies and procedures could require that, after receiving offers or bids, the dealer must evaluate the offer or bid price versus relevant market information to determine whether any additional markets, including, but not limited to, other dealers, should be checked to perform reasonable diligence. Each dealer should consider including in its written policies and procedures how and when its trading desk exposes retail customer orders to multiple offerings or bids and shows external offerings and bids to retail customers (directly or through financial advisors). Some dealers may employ "filters," which generally refer to automated tools that allow the dealer to limit its trading, with, for example, specific parties or parties with specified attributes with which it does not want to interact. If a dealer uses filters on counterparties or filters on specific securities intended to limit accessing bids or offers in those securities, they may be used only for a legitimate purpose consistent with obtaining the most favorable executions for non-SMMP customers, and should be reviewed on a periodic basis and adjusted as needed. The dealer, accordingly, should have policies and procedures in place that govern when and how to: reasonably use filters without negatively impacting the quality of execution of non-SMMP customer transactions; periodically reevaluate their use; and determine whether to lift them upon request.[11]

Given that the rule is designed, in part, to promote fair competition among dealers, generally, a dealer's policies and procedures should facilitate competition for its customer order flow, including by eliminating practices that discourage other dealers from offering (bidding on) securities to (from) its clients. However, exposing customer order flow to other dealers, alone, is not sufficient to satisfy reasonable diligence, and dealers must also consider the non-exhaustive list of factors identified in Rule G-18(a).

(November 20, 2015)

(Updated February 7, 2019)

III.2: Use of Broker's Brokers and ATSs

Q: Under what circumstances must a dealer use a broker's broker or an ATS to demonstrate reasonable diligence in ascertaining the best market?

A: There is no categorical requirement in MSRB Rule G-18 for dealers to use a broker's broker or an ATS, and the rule is designed specifically not to favor any particular type of venue over another for dealers to meet their best-execution obligations. Paragraph .04 of the Supplementary Material construes the term "market" broadly for purposes of Rule G-18, including the rule's core provision, section (a), requiring the exercise of reasonable diligence in ascertaining the "best market" for the security. Paragraph .04 of the Supplementary Material states: "This expansive interpretation is meant both to inform dealers as to the breadth of the scope of venues that must be considered in the furtherance of their best-execution obligations and to promote fair competition among dealers (including broker's brokers), alternative trading systems and platforms, and any other venue that may emerge, by not mandating that certain trading venues have less relevance than others in the course of determining a dealer's best-execution obligations." A principal purpose of this broad and even-handed language is to tailor the definition of the critical term "market" to the characteristics of the municipal securities market and provide flexibility for future developments in both market structure and applied technology. For example, the language expressly recognizes a characteristic of the municipal securities market (*i.e.*, the role of dealer inventories in providing liquidity) by providing that the executing dealer itself, acting in a principal capacity, may be the best market for the security. Additionally, while an ATS or a broker's broker, individually, can be considered a market, each can also be a mechanism to expose customer orders to multiple dealers and, therefore, multiple markets.

As the availability of electronic systems that facilitate trading in municipal securities increases, dealers need to determine whether these systems might provide benefits to their customer order flow, particularly retail order flow, and help ensure they are meeting their obligations under Rule G-18(a)

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with respect to ascertaining the best market for their customer transactions. Similarly, pre-trade transparency, such as through electronic trading platforms, is also increasing in the municipal securities market, and dealers need to periodically analyze and determine whether incorporating pricing information available from these systems should be incorporated into their best-execution policies and procedures.

The MSRB recognizes that different markets provide different levels of price information and execution functionality, and that a dealer's analysis of the available pricing information offered by different systems may take these differences into account. Some systems, including auto-execution systems, both display prices and provide execution functionality, while other systems display prices but provide no execution functionality. Still other systems, such as request-for-quotation systems, may provide indications of interest but not display prices or provide execution functionality. As such, it is the dealers' responsibility to evaluate various markets (*e.g.*, ATSs, inter-dealer brokers, other dealers) and to establish and periodically review reasonably designed written policies and procedures addressing when and how certain markets should be checked to satisfy the requirements of the rule. Pursuant to paragraph .08(a) of the Supplementary Material, "[i]n conducting its periodic reviews, a dealer must assess whether its policies and procedures are reasonably designed to achieve best execution, taking into account the quality of the executions the dealer is obtaining under its current policies and procedures, changes in market structure, new entrants, the availability of additional pre-trade and post-trade data, and the availability of new technologies, and to make promptly any necessary modification(s) to such policies and procedures as may be appropriate in light of such reviews." As an aspect of this periodic review, dealers should review the execution quality provided by the various markets they choose to use (including the internalization of order flow), and, to the extent information is reasonably available, the execution quality of new markets or markets they do not use to determine whether to use them.[12] This review could include, for example, reviewing EMMA® data for previous executions in the subject security or similar securities.

Additionally, Rule G-18(a) provides a non-exhaustive list of factors that will be considered in determining whether a dealer has used reasonable diligence, with no single factor being determinative, including: (1) the character of the market for the security (*e.g.*, price, volatility and relative liquidity); (2) the size and type of transaction; (3) the number of markets checked; (4) the information reviewed to determine the current market for the subject security or similar securities; (5) the accessibility of quotations; and (6) the terms and conditions of the customer's inquiry or order, including any bids or offers, that result in the transaction, as communicated to the dealer. Accordingly, a dealer's policies and procedures for best execution should address how these factors will affect the dealer's municipal securities transactions with customers under various conditions.

(November 20, 2015)

(Updated February 7, 2019)

III.3: Reliance on Broker's Brokers for Pricing

Q: Is a dealer in compliance with MSRB Rule G-18 if it uses the best bid or offer obtained by a broker's broker as the only basis for the price at which the dealer executes a customer order?

A: Use of the best bid or offer obtained by a broker's broker for a particular security as the only basis for the price at which a dealer executes a customer order will not qualify categorically as reasonable diligence in compliance with Rule G-18. To the extent a dealer uses such practice alone, the dealer's policies and procedures should establish what facts and circumstances should be considered to allow the dealer to do so (*e.g.*, length of collection period used, number of offers/bids received, accessibility of quotations).

(November 20, 2015)

III.4: One ATS/Broker's Broker

Q: Can a dealer comply with MSRB Rule G-18 by exposing customer orders to an ATS or broker's broker that captures offers/bids from multiple markets?

A**:** The market for municipal securities has evolved significantly in recent years. Some dealers have reduced their inventory positions in response to market and regulatory influences and the use of electronic trading systems, including ATSs, continues to grow. In addition, transaction prices for most municipal securities are now widely available to market participants and investors. Although the amount of pre-trade pricing information (*e.g.*, bids and offers) available also has increased, it is still relatively limited as compared to equity securities and generally not readily accessible by the investing public. While new technology and communications in the municipal securities market have advanced, the market remains decentralized, with much trading still occurring primarily through individual dealers.

In light of this evolution of the municipal securities market, the MSRB encourages the use of broker's brokers, ATSs and other markets that typically provide exposure to offers/bids from multiple dealers, each of which could constitute a separate market, and it recognizes there may be facts and circumstances under which it may be sufficient for a dealer to check only one such market and satisfy the best-execution obligation. However, utilizing one ATS, one broker's broker or other similar market will not qualify categorically as reasonable diligence in compliance with Rule G-18. To the extent a dealer checks only one ATS, broker's broker or other similar market when executing customer orders, the dealer's policies and procedures should establish what facts and circumstances may allow for the checking of only one such market (*e.g.*, competitiveness of the ATS; the number of dealers, offerings

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or bids an order is generally exposed to through the ATS or broker's broker; accessibility of quotations) and what steps would be required to be taken in those situations.

(November 20, 2015)

(Updated February 7, 2019)

III.5: Only One Market

Q: How does the best-execution obligation apply when there is only one dealer (*i.e.*, only one market) offering or bidding on the subject security?

A: There is no set number of dealers making an offer or collecting bids on behalf of a customer order the checking of which categorically qualifies as reasonable diligence for compliance with the best-execution obligation, and, in general, dealers' procedures should provide for the checking of more than one market or the exposure of customer orders to multiple offers or bids (*e.g.*, use of an ATS or broker's broker). However, the MSRB recognizes there may be facts and circumstances under which it may be sufficient for a dealer to check only one market, including internal inventory only, and satisfy the best-execution obligation. In order to comply with the best-execution obligation, each dealer's written policies and procedures should address such facts and circumstances and the steps required to be taken in those scenarios. At a minimum, dealers must also consider the other factors identified in MSRB Rule G-18(a), including, but not limited to, information to determine the current market for the subject security (*e.g.*, recent trade history) and information on similar securities (*e.g.*, offerings of similar securities). If a dealer has policies and procedures in place that are reasonably designed and otherwise comply with applicable rules and follows them, it could execute an order for which there is only one available market, as long as such handling and execution also are consistent with the terms of the customer's order or inquiry as communicated to the dealer.

(November 20, 2015)

IV. Reasonable Diligence Factors — Information Reviewed to Determine the Current Market for the Subject Security or Similar Securities

IV.1: Similar Securities

Q: What constitutes a similar security?

A: The municipal securities market differs significantly from the market for equity securities and options and also can vary significantly depending on the specific municipal security at issue. For example, some municipal securities may trade frequently, be relatively more liquid and have transparent, accessible and firm quotations available. Other municipal securities do not have public quotations or frequent pricing information available, and may trade infrequently; however, some municipal securities that are less liquid also are fungible, meaning that they trade like other, similar securities, and the pricing in these similar securities can be used as a basis for determining prices in a subject security. Given the wide variety of municipal securities, it is impracticable for the MSRB to provide an exhaustive list of characteristics that qualify a bond as a "similar security" for purposes of MSRB Rule G-18. By way of example, however, issuer, source of repayment, credit rating, coupon, maturity, redemption features, sector, geographical region and tax status are some factors a dealer could use to identify municipal bonds as similar. If a dealer uses a similar securities analysis, its written policies and procedures should establish how the dealer identifies similar securities, as well as how and when to consider the market for them for the purposes of complying with the best-execution rule.

(November 20, 2015)

IV.3: Evaluated Pricing

Q: Can dealers use evaluated pricing as a component of their procedures to comply with the best-execution obligation?

A: Yes. MSRB Rule G-18(a) requires dealers to use reasonable diligence to ascertain the best market for the subject security and to buy or sell in that market so that the resultant price to the customer is as favorable as possible under prevailing market conditions. Section (a) includes a non-exhaustive list of factors that a dealer must consider when exercising this diligence, including the information reviewed to determine the current market for the subject security or similar securities. Accordingly, dealers can use a variety of data, which is not required to include, but can include, evaluated pricing as part of their written policies and procedures for best execution or the evaluation of their policies and procedures; however, such use would not categorically make those policies and procedures sufficient for compliance with Rule G-18.

(November 20, 2015)

V. Maintenance Of Adequate Resources

V.1: Appropriate Level of Resources

Q: How does a firm establish that it has the appropriate level of resources?

A: Paragraph .02 of the Supplementary Material to MSRB Rule G-18 states that "[a] dealer's failure to maintain adequate resources (*e.g.*, staff or technology) is not a justification for executing away from the best available market." Additionally, paragraph .02 states that "[t]he level of resources that a dealer maintains should take into account the nature of the dealer's municipal securities business, including its level of sales and trading activity." This provision was designed to provide flexibility to accommodate the diverse population of dealers. Accordingly, an appropriate level of resources will depend on many factors, including, but not limited to, a firm's amount of business, and dealers need to employ enough resources to assure that they can establish, implement, follow and periodically review and improve written policies and procedures reasonably designed to achieve best execution.

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(November 20, 2015)

VI. Securities with Limited Quotations or Pricing Information

VI.1: Execution Timing

Q: Are there municipal bonds that require more time for a dealer to use reasonable diligence when effecting a customer transaction, and how does a dealer demonstrate such diligence?

A: Paragraph .03 of the Supplementary Material to MSRB Rule G-18 requires dealers to make every effort to execute a customer transaction promptly, taking into account prevailing market conditions. Taking a relatively shorter time can suggest a lack of reasonable diligence to ascertain the best market, while taking a relatively longer time can suggest a failure to execute promptly. There is no specific amount of time that is too short or too long to effect a customer transaction; it necessarily will depend on the particular facts and circumstances. Paragraph .03, which is tailored for the municipal securities market and varies from the language of FINRA Rule 5310, therefore, goes on to recognize that, in certain market conditions, dealers may need more time to use reasonable diligence to ascertain the best market for the subject security. This provision clarifies that a dealer should not be considered to have failed to execute promptly in market conditions that are beyond the dealer's control that cause reasonable diligence to be more time-consuming. This provision, at the same time, is designed to temper the promptness requirement so that it does not undermine the goal of the rule to promote reasonable diligence. By way of example, such market conditions could be illiquidity or infrequent trading of the subject security, low demand for lower-rated bonds, low demand for distressed bonds and low demand for bonds with uncommon structural characteristics.

The absence or limitation of accessible quotations or pricing information is not uncommon for many municipal securities, but does not relieve a dealer of its best-execution obligations. Indeed, paragraph .06 of the Supplementary Material to Rule G-18 specifically requires dealers to have written policies and procedures in place that address how the dealer will make its best-execution determinations with respect to securities with limited quotations or pricing information and to document its compliance with those policies and procedures. Such policies and procedures could establish what bonds/market conditions are subject to any variance in the dealer's other order-handling procedures, including establishing what it means to have limited quotations or pricing information, what additional procedures, if any, are required to be followed by dealer personnel, and how such steps are to be documented. For example, these securities may require dealers to take additional steps in order to satisfy the best-execution standard, including, but not limited to, seeking out other sources of pricing information and potential liquidity, including, but not limited to, directly contacting dealers with which they previously have traded the security or that are otherwise known to trade in the security.

The MSRB recognizes that, in some instances, obtaining quotations from multiple markets could adversely affect execution quality due to delays in execution or other factors.[13] Therefore, a dealer generally should analyze other data to which it reasonably has access to determine whether it has ascertained the best market for the subject security, but its policies and procedures should also establish under what facts and circumstances it would be appropriate to obtain quotations or other pricing information from multiple markets. Additionally, if pricing information related to the subject security, such as a dealer's previous trades in the security, or other pricing information, such as a quotation from another market, is limited or unavailable, a dealer may also consider previous trades in a similar security, if that security and those previous trades constitute a reasonable basis for comparison. As with all policies and procedures related to best execution, paragraph .08 of the Supplementary Material to Rule G-18 requires dealers to periodically review these specific policies and procedures, assess whether they are reasonably designed to achieve best execution, and make promptly any necessary modifications in light of such reviews.

(November 20, 2015)

VII. Relationship To Fair Pricing

VII.1: MSRB Rule G-30

Q: How does MSRB Rule G-18, on best execution, relate to MSRB Rule G-30, on prices and commissions?

A: Rule G-18 is intended to complement, support and foster compliance with the MSRB's established substantive pricing standards, which are governed by Rule G-30, by improving execution quality for customers and promoting fair competition among dealers resulting in increased market efficiency. However, the rule makes clear that its obligations are distinct from, for example, the fairness and reasonableness of commissions, markups or markdowns.

Rule G-30 requires dealers to trade with customers at fair and reasonable prices, and to exercise diligence in establishing the market value of municipal securities and the reasonableness of their compensation. Rule G-18, on the other hand, does not contain any substantive pricing standard; it is an order-handling and transaction-execution standard, under which the goal of the dealer's reasonable diligence is to provide the customer the most favorable price possible under prevailing market conditions. Paragraph .01 of the Supplementary Material makes explicit that Rule G-18 is not an absolute "best-price" standard. The rule requires dealers to exercise reasonable diligence with the goal of obtaining the most favorable price possible under prevailing market conditions, which is accomplished through the use and periodic improvement of policies and procedures; it does not require the dealer to actually obtain the most favorable price possible in each

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transaction (although it frequently will do so through the use of reasonable diligence), and a failure to obtain the most favorable price possible in a transaction will not necessarily mean that the dealer failed to use reasonable diligence under the circumstances.

Despite the different purposes of Rules G-18 and G-30, some of the relevant factors in determining the fairness and reasonableness of prices and commissions or service charges, such as the availability of the securities and the nature of the dealer's business, may also be relevant to the application of the best-execution requirement. Further, although the best-execution rule does not itself contain any substantive standard by which the transaction price itself is to be or could be evaluated, the requirement to use reasonable diligence in the order-handling and transaction-execution process is expected to increase the probability that customers receive fair-and-reasonable prices.

(November 20, 2015)

VIII. SMMP Exemption — General

VIII.1: Qualification

Q: Does the best-execution obligation apply to all customer transactions?

A: No. However, the only variance in the requirements of MSRB Rule G-18, according to the characteristics of the customer, is codified in MSRB Rules G-48 and D-15 in the form of the SMMP exemption. Section (e) of Rule G-48, which is the consolidated MSRB rule under which all modified obligations of dealers when dealing with SMMPs are addressed, provides that the best-execution obligation under Rule G-18 does not apply to transactions with customers that are SMMPs as defined in Rule D-15.

(November 20, 2015)

VIII.2: Applicability to Non-Recommended Transactions

Q: Will the SMMP exemption from the best-execution rule apply to non-recommended transactions?

A: Yes. The applicability of the SMMP exemption to MSRB Rule G-18 is triggered by a customer's status as an SMMP, not whether or not a transaction is recommended by the dealer. However, the applicability of the exemption for any particular SMMP is controlled by the scope of the customer affirmation required by MSRB Rule D-15(c) and provided to the dealer. Specifically, paragraph .02 of the Supplementary Material to Rule D-15 provides that "[t]he customer affirmation may be given either orally or in writing, and may be given on a trade-by-trade basis, a type-of-transaction basis, a type-of-municipal-security basis (*e.g.*, general obligation, revenue, variable rate), or an account-wide basis." As such, any transaction not covered by a customer's affirmation would remain subject to the best-execution obligation.

(November 20, 2015)

VIII.3: Applicability to Transactions with Other Broker-Dealers

Q: Do dealers need to rely on the SMMP exemption to be relieved of the best-execution obligation for transactions for or with broker-dealer clients?

A: No. MSRB Rule G-18's best-execution obligation only applies to transactions for or with a customer or a customer of another dealer, and the MSRB's definition of "customer" in Rule D-9 does not include broker-dealers acting in their capacity as broker-dealers.[14] Accordingly, there is no need for dealers to rely on the SMMP exemption when executing transactions for or with other broker-dealers, and, therefore, no need for customer affirmations for those broker-dealers to qualify as SMMPs.

(November 20, 2015)

VIII.4: Existing Customer Affirmations

Q: Can dealers rely on customer affirmations based on existing MSRB Rule D-15?

A: No. As of the effective date of MSRB Rule G-18 and the amendments to MSRB Rules G-48 and D-15, a customer will not qualify as an SMMP unless it makes the broader affirmation required by Rule D-15, as amended, which addresses all of the modified dealer obligations provided in Rule G-48, including the exemption from the best-execution obligation. Accordingly, any customer affirmations based on existing Rule D-15 would be ineffective to qualify for the SMMP exemption.

(November 20, 2015)

VIII.5: Piecemeal Customer Affirmations and Waiver of Dealer Obligations

Q: Can an SMMP waive time-of-trade disclosures, but still have its trades subject to the best-execution rule?

A: No. A customer cannot waive, and a dealer is not exempt from the time-of-trade disclosure obligation, unless the customer qualifies as an SMMP.[15] In order to qualify as an SMMP, the customer's affirmation, according to MSRB Rule D-15, must be unified and speak to all of the modified dealer obligations provided in MSRB Rule G-48, including the modified obligations with respect to both time-of-trade disclosure and best execution. The MSRB has determined that, if a customer is not prepared to forgo all of the legal protections afforded by the dealer obligations that would be modified under Rule G-48 if they were an SMMP, then the customer likely does not have the sophistication necessary to qualify as an SMMP. However, the exemption from the best-execution obligation provided by Rules G-48 and D-15 does not preclude a dealer from following its best-execution policies and procedures when handling SMMP orders.

(November 20, 2015)

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VIII.6: Customer Affirmation Updates

Q: If a dealer reasonably concludes a customer is an SMMP, is the initial affirmation sufficient for all future trades for that customer, or is there a periodic update requirement for customer affirmations?

A: Although there is no explicit periodic update requirement for customer affirmations, MSRB Rule G-48 requires that dealers "reasonably conclude" a customer is an SMMP. After a certain lapse of time, it will become unreasonable for the dealer to continue to rely on the stale affirmation, and the dealer, therefore, could no longer "reasonably conclude," as required, that the customer is an SMMP.

(November 20, 2015)

VIII.7: FINRA Rule 2111

Q: Will an institutional investor's suitability form/letter in compliance with FINRA Rule 2111 satisfy the affirmation requirement to qualify as an SMMP pursuant to MSRB Rule D-15?

A: No. FINRA Rule 2111(b) and paragraph .07 of the Supplementary Material thereto provide that one element of the suitability obligation of member firms under that rule is fulfilled if the institution affirmatively indicates that it is exercising independent judgment in evaluating the member's or associated person's recommendations. This is similar to the existing exemption dealers have from the suitability requirement of MSRB Rule G-19 under MSRB Rule G-48(c). But neither FINRA Rule 2111 nor any other FINRA rule provides a similar exemption from best execution or any other obligations for its member firms comparable to those included in Rule G-48. Accordingly, a suitability form/letter limited in its terms to comply with FINRA Rule 2111 would not address the full scope of obligations that dealers would be relieved of fulfilling under the exemptions provided by Rules G-48 and D-15. Therefore, a customer will not qualify as an SMMP unless it makes the affirmation required by Rule D-15, which does address all of the modified dealer obligations provided in Rule G-48.

(November 20, 2015)

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[1] The MSRB believes the guidance in this Notice is consistent in all material respects with guidance on best execution obligations on transactions in corporate fixed income securities published by the Financial Industry Regulatory Authority (FINRA) on November 20, 2016, except where the rule or context otherwise specifically requires. The two instances where material differences exist with the FINRA guidance are with respect to (1) the review of policies and procedures and execution quality by dealers, and (2) the timeliness of executions consistent with reasonable diligence. See note 12 and accompanying text; VI.1 infra; Section 1 (The Duty of Best Execution) and Section 2 (Regular and Rigorous Review for Best Execution) of FINRA Notice to Members 15-46 (November 2015). The MSRB and FINRA will continue to work together with the goal of ensuring that their guidance on best-execution obligations remains consistent in all material respects, unless differentiation is necessary due to differences in the markets for municipal or corporate fixed income securities or their respective rules.

[2] MSRB Rule D-9 states that, "[e]xcept as otherwise specifically provided by rule of the [MSRB], the term 'customer' shall mean any person other than a broker, dealer, or municipal securities dealer acting in its capacity as such or an issuer in transactions involving the sale by the issuer of a new issue of its securities."

[3] See MSRB Rule D-15.

[4] See MSRB Rule G-18(c).

[5] See paragraph .03 of the Supplementary Material to Rule G-18.

[6] Additionally, paragraph .06 of the Supplementary Material specifically requires dealers to have written policies and procedures in place that address how they will make best-execution determinations with respect to securities with limited quotations or pricing information (and document their compliance with those policies and procedures), but dealers should consider establishing and implementing policies and procedures that address other potential market conditions or variables, such as volatility. See, *e.g.*, I.4 infra.

[7] See note 6 supra. The MSRB also notes that, pursuant to MSRB Rules G-8(a)(xx) and G-27(c), dealers are required to maintain records of written supervisory procedures reasonably designed to ensure that the conduct of their municipal securities activities and those of their associated persons are in compliance with MSRB rules and the applicable provisions of the Securities Exchange Act of 1934 (Exchange Act) and rules thereunder.

[8] See IV.2 infra.

[9] However, the disclosure of alternative order handling procedures that are unfair or otherwise inconsistent with the firm's best-execution obligations would neither correct the deficiencies with such procedures nor absolve the firm of potential best execution violations.

[10] See III.5 infra.

[11] The scope of a dealer's policies and procedures on the use of filters, as well as the periodic review and adjustment of their use, should be appropriate to the nature of the dealer's municipal securities business and, therefore, may be different than the policies and procedures used by other dealers.

[12] In adopting Rule G-18, and paragraph .08 of the Supplementary Material specifically, the MSRB did not include provisions that are contained in FINRA Rule 5310 pertaining to "regular and rigorous review of execution quality," to tailor the rule to the characteristics of the municipal securities market. Accordingly, the implementation guidance provided herein on dealers' review of execution quality differs from guidance on regular and rigorous review that has been published by FINRA.

[13] The MSRB notes that a dealer providing a price in response to a bid request or bid list presented to the dealer or other competitive bidding process would not be subject to a best-execution obligation since the dealer has not accepted a customer order for the purpose of facilitating the handling and execution of such order. This situation is analogous to paragraph .05 of the Supplementary Material to Rule G-18, which draws a distinction between those situations in which a dealer acts solely as the buyer or seller in connection with an order presented against its quote as opposed to accepting an order for handling and execution.

[14] See note 2 supra.

[15] See 15 U.S.C. 78cc(a) ("Any condition, stipulation, or provision binding any person to waive compliance with any provision of [the Exchange Act] or of any rule or regulation thereunder, or of any rule of a self-regulatory organization, shall be void.").

Rule G-18 Amendment History (since 2003)

Release No. 34-75934 (September 17, 2015), 80 FR 57410 (September 23, 2015); MSRB Notice 2015-23 (November 20, 2015)

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Release No. 34-73764 (December 5, 2014), 79 FR 73658 (December 11, 2014); MSRB Notice 2014-22 (December 8, 2014)

Release No. 34-72129 (May 8, 2014), 79 FR 27662 (May 14, 2014); MSRB Notice 2014-11 (May 12, 2014)

Release No. 34-67238 (June 22, 2012), 77 FR 38684 (June 28, 2012); MSRB Notice 2012-34 (June 25, 2012)

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Rule G-19
Suitability of Recommendations and Transactions

A broker, dealer or municipal securities dealer must have a reasonable basis to believe that a recommended transaction or investment strategy involving a municipal security or municipal securities is suitable for the customer, based on the information obtained through the reasonable diligence of the broker, dealer or municipal securities dealer to ascertain the customer's investment profile. A customer's investment profile includes, but is not limited to, the customer's age, other investments, financial situation and needs, tax status, investment objectives, investment experience, investment time horizon, liquidity needs, risk tolerance, and any other information the customer may disclose to the broker, dealer or municipal securities dealer in connection with such recommendation.

This rule shall not apply to recommendations subject to Regulation Best Interest, Rule 15l-1 under the Act ("Regulation Best Interest"). When making recommendations of securities transactions or investment strategies involving a municipal security or municipal securities to a retail customer, a bank dealer shall comply with Regulation Best Interest.

Supplementary Material

.01 General Principles. Implicit in all broker, dealer and municipal securities dealer relationships with customers and others is the fundamental responsibility for fair dealing. Sales efforts must therefore be undertaken only on a basis that can be judged as being within the ethical standards of the MSRB's rules, with particular emphasis on the requirement to deal fairly with all persons. The suitability rule is fundamental to fair dealing and is intended to promote ethical sales practices and high standards of professional conduct.

.02 Disclaimers. A broker, dealer or municipal securities dealer cannot disclaim any responsibilities under the suitability rule.

.03 Recommended Strategies. The phrase "investment strategy involving a municipal security or municipal securities" used in this rule is to be interpreted broadly and would include, among other things, an explicit recommendation to hold a municipal security or municipal securities. However, the following communications are excluded from the coverage of Rule G-19 as long as they do not include (standing alone or in combination with other communications) a recommendation of a particular municipal security or municipal securities: general financial and investment information, including (i) basic investment concepts, such as risk and return and diversification, (ii) historic differences in the return of asset classes (*e.g.*, equities, bonds, or cash) based on standard market indices, (iii) effects of inflation, (iv) estimates of future retirement income needs, (v) assessment of a customer's investment profile, and (vi) general comparisons between tax-exempt and taxable bonds and the concept of tax-equivalent yield.

.04 Customer's Investment Profile. A broker, dealer or municipal securities dealer shall make a recommendation covered by this rule only if, among other things, the broker, dealer or municipal securities dealer has sufficient information about the customer to have a reasonable basis to believe that the recommendation is suitable for that customer. The factors delineated in Rule G-19 regarding a customer's investment profile generally are relevant to a determination regarding whether a recommendation is suitable for a particular customer, although the level of importance of each factor may vary depending on the facts and circumstances of the particular case. A broker, dealer or municipal securities dealer shall use reasonable diligence to obtain and analyze all of the factors delineated in Rule G-19 unless the broker, dealer or municipal securities dealer has a reasonable basis to believe, documented with specificity, that one or more of the factors are not relevant components of a customer's investment profile in light of the facts and circumstances of the particular case.

.05 Components of Suitability Obligations. Rule G-19 is composed of three main obligations: reasonable-basis suitability, customer-specific suitability, and quantitative suitability.

(a) The reasonable-basis obligation requires a broker, dealer or municipal securities dealer to have a reasonable basis to believe, based on reasonable diligence, that the recommendation is suitable for at least some investors. In general, what constitutes reasonable diligence will vary depending on, among other things, the complexity of and risks associated with the municipal security or investment strategy and the broker, dealer or municipal securities dealer's familiarity with the municipal security or investment strategy. A broker, dealer or municipal securities dealer's reasonable diligence must provide the broker, dealer or municipal securities dealer with an understanding of the potential risks and rewards associated with the recommended municipal security or strategy and an understanding of information about the municipal security or strategy, including the information described in MSRB Rule G-47 (Time of Trade Disclosure), to the extent such information is material. The lack of such an understanding when recommending a municipal security or strategy violates the suitability rule.

(b) The customer-specific obligation requires that a broker, dealer or municipal securities dealer have a reasonable basis to believe that the recommendation is suitable for a particular customer based on that customer's investment profile, as delineated in Rule G-19.

(c) Quantitative suitability requires a broker, dealer or municipal securities dealer to have a reasonable basis for believing that a series of recommended transactions, even if suitable when viewed in isolation, are not excessive and unsuitable for the customer when taken together in light of the customer's investment profile, as delineated in Rule G-19. No single test defines excessive activity, but factors such as the turnover rate, the cost-equity ratio, and the use of in-and-

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out trading in a customer's account may provide a basis for a finding that a broker, dealer or municipal securities dealer has violated the quantitative suitability obligation.

.06 Customer's Financial Ability. Rule G-19 prohibits a broker, dealer or municipal securities dealer from recommending a transaction or investment strategy involving a municipal security or municipal securities or the continuing purchase of a municipal security or municipal securities or use of an investment strategy involving a municipal security or municipal securities unless the broker, dealer or municipal securities dealer has a reasonable basis to believe that the customer has the financial ability to meet such a commitment.

Rule G-19 Interpretations

See:

Rule G-17 Interpretation — Reminder of Customer Protection Obligations in Connection with Sales of Municipal Securities, March 30, 2007.

- **MSRB Reminds Firms of Their Sales Practice and Due Diligence Obligations when Selling Municipal Securities in the Secondary Market,** September 20, 2010.

Rule G-19 Interpretation — Bond Insurance Ratings – Application of MSRB Rules, January 22, 2008.

Rule G-21 Interpretation — Disclosure Obligation, May 21, 1998.

- **Interpretation of General Advertising Disclosures, Blind Advertisements and Annual Reports Relating to Municipal Fund Securities Under Rule G-21,** June 5, 2007.

Rule G-32 Interpretation — Notice Regarding Electronic Delivery and Receipt of Information by Brokers, Dealers and Municipal Securities Dealers, November 20, 1998.

Rule G-19 Amendment History (since 2003)

Release No. 34-95145 (June 23, 2022); 87 FR 38795 (June 29, 2022); MSRB Notice 2022-04 (June 24, 2022)

Release No. 34-89154 (June 25, 2020), 85 FR 39613 (July 1, 2020); MSRB Notice 2020-13 (June 26, 2020)

Release No. 34-71665 (March 7, 2014), 79 FR 14321 (March 13, 2014); MSRB Notice 2014-07 (March 12, 2014)

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Rule G-20
Gifts, Gratuities, Non-Cash Compensation and Expenses of Issuance

(a) *Purpose.* The purpose of this rule is to maintain the integrity of the municipal securities market and to preserve investor and public confidence in the municipal securities market, including the bond issuance process. The rule protects against improprieties and conflicts of interest that may arise when regulated entities or their associated persons give gifts or gratuities in relation to the municipal securities or municipal advisory activities of the recipients' employers.

(b) *Definitions*. For purposes of this rule, the following terms have the following meanings:

(i) "Cash compensation" means any discount, concession, fee, service fee, commission, asset-based sales charge, loan, override or cash employee benefit received in connection with the sale and distribution of municipal securities.

(ii) "Municipal advisor" shall, for purposes of this rule, have the same meaning as in Section 15B(e)(4) of the Act, 17 CFR 240.15Ba1-1(d)(1)-(4), and other rules and regulations thereunder.

(iii) "Non-cash compensation" means any form of compensation received in connection with the sale and distribution of municipal securities that is not cash compensation, including, but not limited to, merchandise, gifts and prizes, travel expenses, meals and lodging.

(iv) "Offeror" means, with respect to a primary offering of municipal securities, the issuer, any adviser to the issuer (including, but not limited to, the issuer's financial advisor, municipal advisor, bond or other legal counsel, or investment or program manager in connection with the primary offering), the underwriter of the primary offering, or any person controlling, controlled by, or under common control with any of the foregoing; provided that, with respect to a primary offering of municipal fund securities, "offeror" shall also include any person considered an "offeror" under FINRA Rules 5110, 2320, or 2341 in connection with any securities held as assets of or underlying such municipal fund securities.

(v) "Person" means a natural person.

(vi) "Primary offering" means a primary offering as defined in Securities Exchange Act Rule 15c2-12(f)(7).

(vii) "Regulated entity" means a broker, dealer, municipal securities dealer or municipal advisor, but does not include the associated persons of such entity.

(c) *General Limitation on Value of Gifts and Gratuities*. No regulated entity or any of its associated persons shall, directly or indirectly, give or provide or permit to be given or provided any thing or service of value, including gratuities, in excess of $100 per year to a person (other than an employee or partner of such regulated entity), if such payments or services are in relation to the municipal securities or municipal advisory activities of the employer of the recipient of the payment or service. For purposes of this rule the term "employer" shall include a principal for whom the recipient of a payment or service is acting as agent or representative.

(d) *Gifts and Gratuities Not Subject to General Limitation*. The general limitation of section (c) of this rule shall not apply to the following gifts, provided that they do not give rise to any apparent or actual material conflict of interest:

(i) Normal Business Dealings. Occasional gifts of meals or tickets to theatrical, sporting, and other entertainments that are hosted by the regulated entity or its associated persons, and the sponsoring by the regulated entity of legitimate business functions that are recognized by the Internal Revenue Service as deductible business expenses; provided, that such gifts shall not be so frequent or so extensive as to raise any question of propriety.

(ii) Transaction-Commemorative Gifts. Gifts that are solely decorative items commemorating a business transaction, such as a customary plaque or desk ornament (e.g., Lucite tombstone).

(iii) *De Minimis* Gifts. Gifts of *de minimis* value (e.g., pens, notepads or modest desk ornaments).

(iv) Promotional Gifts. Promotional items of nominal value displaying the regulated entity's corporate or other business logo. The value of the item must be substantially below the $100 limit of section (c) to be considered of nominal value.

(v) Bereavement Gifts. Bereavement gifts that are reasonable and customary for the circumstances.

(vi) Personal Gifts. Gifts that are personal in nature given upon infrequent life events (e.g., a wedding gift or a congratulatory gift for the birth of a child).

(e) *Prohibition of Use of Offering Proceeds*. A regulated entity that engages in municipal securities activities or municipal advisory activities for or on behalf of a municipal entity or obligated person in connection with an offering of municipal securities is prohibited from requesting or obtaining reimbursement of its costs and expenses related to the entertainment of any person, including, but not limited to, any official or other personnel of the municipal entity or personnel of the obligated person, from the proceeds of such offering of municipal securities. For purposes of this prohibition, entertainment expenses do not include ordinary and reasonable expenses for meals hosted by the regulated entity and directly related to the offering for which the regulated entity was retained.

(f) *Compensation for Services*. The general limitation of section (c) of this rule shall not apply to compensation paid as a result of contracts of employment with or compensation for services rendered by another person; provided that there is in existence prior to the time of employment or before the services are rendered a written agreement between the regulated entity and the person who is to perform such services and such

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agreement includes the nature of the proposed services, the amount of the proposed compensation and the written consent of such person's employer.

(g) *Non-Cash Compensation in Connection with Primary Offerings.* In connection with the sale and distribution of a primary offering of municipal securities, no broker, dealer or municipal securities dealer, or any associated person thereof, shall directly or indirectly accept or make payments or offers of payments of any non-cash compensation. Notwithstanding the foregoing and the general limitation of section (c) of this rule, the following non-cash compensation arrangements are permitted, provided that they are consistent with the applicable requirements of Regulation Best Interest, Rule 15l-1 under the Act:

(i) gifts that do not exceed $100 per individual per year and are not preconditioned on achievement of a sales target;

(ii) occasional gifts of meals or tickets to theatrical, sporting, and other entertainments; provided that such gifts are not so frequent or so extensive as to raise any question of propriety and are not preconditioned on achievement of a sales target;

(iii) payment or reimbursement by offerors in connection with meetings held by an offeror or by a broker, dealer or municipal securities dealer for the purpose of training or education of associated persons of a broker, dealer or municipal securities dealer, provided that:

(A) associated persons obtain the prior approval of the broker, dealer or municipal securities dealer to attend the meeting and attendance is not preconditioned by the broker, dealer or municipal securities dealer on achievement of a sales target or any other incentives pursuant to a non-cash compensation arrangement permitted by subsection (g)(iv);

(B) the location is appropriate to the purpose of the meeting, which shall mean an office of the offeror or the broker, dealer or municipal securities dealer, a facility located in the vicinity of such office, a regional location with respect to regional meetings, or a location at which a significant asset, if any, being financed or refinanced in the primary offering is located;

(C) the payment or reimbursement is not applied to the expenses of guests of the associated person; and

(D) the payment or reimbursement is not preconditioned by the offeror on achievement of a sales target or any other non-cash compensation arrangement permitted by subsection (g)(iv).

(iv) non-cash compensation arrangements between a broker, dealer or municipal securities dealer and its associated persons, or a company that controls the broker, dealer or municipal securities dealer and the associated persons of the broker, dealer or municipal securities dealer, provided that:

(A) the non-cash compensation arrangement is based on the total production of associated persons with respect to all municipal securities within respective product types distributed by the broker, dealer or municipal securities dealer;

(B) the non-cash compensation arrangement requires that the credit received for each municipal security within a municipal security product type is equally weighted; and

(C) no entity that is not an associated person of the broker, dealer or municipal securities dealer participates directly or indirectly in the organization of a permissible non-cash compensation arrangement.

(v) contributions by any person other than the broker, dealer or municipal securities dealer to a non-cash compensation arrangement between a broker, dealer or municipal securities dealer and its associated persons, provided that the arrangement meets the criteria in subsection (g)(iv).

Supplementary Material

.01 Valuations of Gifts. In general, gifts should be valued at the higher of cost or market value, exclusive of tax and delivery charges. When valuing tickets for sporting or other entertainment events, a regulated entity should use the higher of cost or face value. If gifts are given to multiple recipients, regulated entities should record the names of each recipient and calculate and record the value of the gift on a pro rata per recipient basis, for purposes of ensuring compliance with the general limitation of section (c).

.02 Aggregations of Gifts. Regulated entities must aggregate all gifts given by the regulated entity and each associated person of the regulated entity to a particular recipient that are subject to the general limitation of section (c) over the course of a year. Regulated entities must consistently aggregate all gifts on a calendar year basis, fiscal year basis, or rolling basis beginning with the first gift to any particular recipient.

.03 Promotional Gifts and "Other Business Logo." Logos of a product or service being offered by a regulated entity, for or on behalf of a client or an affiliate of that regulated entity, would constitute an "other business logo" under subsection (d)(iv). The logo of a 529 college savings plan for which a regulated entity is acting as distributor, for example, would constitute such an "other business logo."

.04 Personal Gifts. A gift that is personal in nature under subsection (d)(vi) is not subject to the general limitation of section (c) of this rule because that limitation applies only to payments or services that are in relation to the municipal securities or municipal advisory activities of the employer of the recipient. In determining whether a gift is personal in nature and not in relation to such activities of the employer of the recipient, a number of factors will be considered including, but not limited to, the nature of any preexisting personal or family relationship between the associated person giving the

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gift and the recipient and whether the associated person or the regulated entity with which he or she is associated paid for the gift. When a regulated entity bears the cost of a gift, either directly or indirectly by reimbursing an associated person, the gift will be presumed to be given in relation to the municipal securities or municipal advisory activities, as applicable, of the employer of the recipient within the meaning of the general limitation of section (c) of this rule.

.05 Applicability of State or Other Laws. Regulated entities and their associated persons may be subject to other duties, restrictions or obligations under state or other laws in this area. Nothing contained in this rule shall be deemed to supersede any more restrictive provision of state or other laws applicable to the activities of regulated entities or their associated persons.

Rule G-20 Interpretations

Dealer Payments in Connection With the Municipal Securities Issuance Process

January 29, 2007

The Municipal Securities Rulemaking Board ("MSRB") is publishing this notice to remind brokers, dealers and municipal securities dealers (collectively, "dealers") of the application of Rule G-20, on gifts, gratuities and non-cash compensation, and Rule G-17, on fair dealing, in connection with certain payments made and expenses reimbursed during the municipal bond issuance process. These rules are designed to avoid conflicts of interest and to promote fair practices in the municipal securities market.

Rule G-20, among other things, prohibits dealers from giving, directly or indirectly, any thing or service of value, including gratuities, in excess of $100 per year to a person other than an employee or partner of the dealer, if such payments or services are in relation to the municipal securities activities of the recipient's employer. The rule provides an exception from the $100 annual limit for "normal business dealings," which includes occasional gifts of meals or tickets to theatrical, sporting, and other entertainments hosted by the dealer (*i.e.*, if dealer personnel accompany the recipient to the meal, sporting or other event), legitimate business functions sponsored by the dealer that are recognized by the Internal Revenue Service as a deductible business expense, or gifts of reminder advertising. However, these "gifts" must not be "so frequent or so extensive as to raise any question of propriety." Rule G-17 provides that, in the conduct of its municipal securities activities, each dealer shall deal fairly with all persons and shall not engage in any deceptive, dishonest or unfair practice.

Dealers should consider carefully whether payments they make in regard to expenses of issuer personnel in the course of the bond issuance process, including in particular but not limited to payments for which dealers seek reimbursement from bond proceeds, comport with the requirements of these rules. Payment of excessive or lavish entertainment or travel expenses may violate Rule G-20 if they result in benefits to issuer personnel that exceed the limits set forth in the rule, and can be especially problematic where such payments cover expenses incurred by family or other guests of issuer personnel. Depending on the specific facts and circumstances, excessive payments could be considered to be gifts or gratuities made to such issuer personnel in relation to the issuer's municipal securities activities. Thus, for example, a dealer acting as a financial advisor or underwriter may violate Rule G-20 by paying for excessive or lavish travel, meal, lodging and entertainment expenses in connection with an offering (such as may be incurred for rating agency trips, bond closing dinners and other functions) that inure to the personal benefit of issuer personnel and that exceed the limits or otherwise violate the requirements of the rule.

Furthermore, dealers should be aware that characterizing excessive or lavish expenses for the personal benefit of issuer personnel as an expense of the issue may, depending on all the facts and circumstances, constitute a deceptive, dishonest or unfair practice. A dealer may violate Rule G-17 by knowingly facilitating such a practice by, for example, making arrangements and advancing funds for the excessive or lavish expenses to be incurred and thereafter claiming such expenses as an expense of the issue.

Dealers are responsible for ensuring that their supervisory policies and procedures established under Rule G-27, on supervision, are adequate to prevent and detect violations of MSRB rules in this area. The MSRB notes that state and local laws also may limit or proscribe activities of the type addressed in this notice.

By publishing this notice, the MSRB does not mean to suggest that issuers or dealers curtail legitimate expenses in connection with the bond issuance process. For example, it sometimes is advantageous for issuer officials to visit bond rating agencies to provide information that will facilitate the rating of the new issue. It is the character, nature and extent of expenses paid by dealers or reimbursed as an expense of issue, even if thought to be a com-mon industry practice, which may raise a question under applicable MSRB rules.

The MSRB encourages all parties involved in the municipal bond issuance process to maintain the integrity of this process and investor and public confidence in the municipal securities market by adhering to the highest ethical standards.

NOTE: This notice was revised effective May 6, 2016. View Notice 2015-21 (November 9, 2015).

See also:

Rule G-17 Interpretation — Interpretation on Customer Protection Obligations Relating to the Marketing of 529 College Savings Plans, August 7, 2006

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Interpretive Letters

Authorization of sales contests. Your letter of May 27, 1982 has been referred to me for response. In your letter you request an interpretation regarding the applicability of Board rule G-20 concerning gifts and gratuities to sales contests offered by an underwriter to participating members of a syndicate. Your letter asks specifically whether such sales contests are considered compensation for services as described in paragraph (c) of rule G-20, and, if they are, whether the requirements of rule G-20 imposed on agreements for the compensation of services must be met by the underwriter sponsoring the sales contest.

The Board believes that sales contests which provide gifts or payments to employees of municipal securities brokers and municipal securities dealers other than the broker or dealer sponsoring the contest constitute compensation for services as described in rule G-20(c). Consequently, the requirements of that rule must be met: that is, the sponsoring dealer must obtain

> prior to the time of employment or before the services are rendered a written agreement between the municipal securities broker or municipal securities dealer subject to this rule and the person who is to perform such services; ... such agreement [to] include the nature of the proposed services, the amount of the proposed compensation, and the written consent of such person's employer.

In the context of sales contests, agreements of the kind referred to in the rule are required between the municipal securities broker or municipal securities dealer sponsoring the contest and all contestants employed by other municipal securities brokers and municipal securities dealers. *MSRB interpretation of June 25, 1982*.

Rule G-20 Amendment History (since 2003)

Release No. 34-89154 (June 25, 2020), 85 FR 39613 (July 1, 2020); MSRB Notice 2020-13 (June 26, 2020)

Release No. 34-85699 (April 22, 2019), 84 FR 17897 (April 26, 2019); MSRB Notice 2019-11 (April 10, 2019)

Release No. 34-76381 (November 6, 2015), 80 FR 70271 (November 13, 2015); MSRB Notice 2015-21 (November 9, 2015)

Release No. 34-52555 (October 3, 2005), 70 FR 59106 (October 11, 2005); MSRB Notice 2005-52 (October 5, 2005)

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Rule G-21
Advertising by Brokers, Dealers or Municipal Securities Dealers

(a) *General Provisions.*

(i) *Definition of "Advertisement."* For purposes of this rule, the term "advertisement" means any material (other than listings of offerings) published or used in any electronic or other public media, or any written or electronic promotional literature distributed or made generally available to customers or the public, including any notice, circular, report, market letter, form letter, telemarketing script, seminar text, press release concerning the products or services of the broker, dealer or municipal securities dealer, or reprint, or any excerpt of the foregoing or of a published article. The term does not apply to preliminary official statements or official statements, but does apply to abstracts or summaries of the foregoing and other such similar documents prepared by brokers, dealers or municipal securities dealers.

(ii) *Definition of "Form Letter."* For purposes of this rule, the term "form letter" means any written letter or electronic mail message distributed to more than 25 persons within any period of 90 consecutive days.

(iii) *Content Standards.*

(A) All advertisements by a broker, dealer or municipal securities dealer must be based on the principles of fair dealing and good faith, must be fair and balanced, and must provide a sound basis for evaluating the facts in regard to any particular municipal security or type of municipal security, industry or service. No broker, dealer or municipal securities dealer may omit any material fact or qualification if the omission, in light of the context of the material presented, would cause the advertisements to be misleading.

(B) No broker, dealer or municipal securities dealer may make any false, exaggerated, unwarranted, promissory or misleading statement or claim in any advertisement.

(C) A broker, dealer or municipal securities dealer may place information in a legend or footnote only in the event that such placement would not inhibit a customer's or a potential customer's understanding of the advertisement.

(D) A broker, dealer or municipal securities dealer must ensure that statements are clear and not misleading within the context in which they are made, and that they provide balanced treatment of risks and potential benefits. An advertisement must be consistent with the risks inherent to the investment.

(E) A broker, dealer or municipal securities dealer must consider the nature of the audience to which the advertisement will be directed and must provide details and explanations appropriate to the audience.

(F) An advertisement may not predict or project performance, imply that past performance will recur or make any exaggerated or unwarranted claim, opinion or forecast; provided, however, that this paragraph (a)(iii)(F) does not prohibit:

(1) A hypothetical illustration of mathematical principles, provided that it does not predict or project the performance of an investment; and

(2) An investment analysis tool, or a written report produced by an investment analysis tool.

(G) (1) If an advertisement contains a testimonial about a technical aspect of investing, the person making the testimonial must have the knowledge and experience to form a valid opinion;

(2) If an advertisement contains a testimonial about the investment advice or investment performance of a broker, dealer or municipal securities dealer or its products, that advertisement must prominently disclose the following:

(a) The fact that the testimonial may not be representative of the experience of other customers.

(b) The fact that the testimonial is no guarantee of future performance or success.

(c) If more than $100 in value is paid for the testimonial, the fact that it is a paid testimonial.

(H) A broker, dealer or municipal securities dealer may indicate registration with the Municipal Securities Rulemaking Board in any advertisement that complies with the applicable standards of all other Board rules and that neither states nor implies that the Municipal Securities Rulemaking Board or any other corporate name or facility owned by the Municipal Securities Rulemaking Board, or any other regulatory organization endorses, indemnifies, or guarantees the broker, dealer or municipal securities dealer's business practices, selling methods, the class or type of securities offered, or any specific security.

(iv) *General Standard for Advertisements*. Subject to the further requirements of this rule relating to professional advertisements and product advertisements, no broker, dealer or municipal securities dealer shall publish or disseminate, or cause to be published or disseminated, any advertisement relating to municipal securities that such broker, dealer or municipal securities dealer knows or has reason to know contains any untrue statement of material fact or is otherwise false or misleading.

(b) *Professional Advertisements*.

(i) *Definition of "Professional Advertisement."* The term "professional advertisement" means any advertisement concerning the facilities, services or skills with respect

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to municipal securities of such broker, dealer or municipal securities dealer or of another broker, dealer, or municipal securities dealer.

(ii) *Standard for Professional Advertisements*. No broker, dealer or municipal securities dealer shall publish or disseminate, or cause to be published or disseminated, any professional advertisement that contains any untrue statement of material fact or is otherwise false or misleading.

(c) *Product Advertisements*.

(i) *Definition of "Product Advertisement."* The term "product advertisement" means any advertisement concerning one or more specific municipal securities, one or more specific issues of municipal securities, the municipal securities of one or more specific issuers, or the specific features of municipal securities.

(ii) *Standard for Product Advertisements*. No broker, dealer or municipal securities dealer shall publish or disseminate, or cause to be published or disseminated, any product advertisement that such broker, dealer, or municipal securities dealer knows or has reason to know contains any untrue statement of material fact or is otherwise false or misleading and, to the extent applicable, that is not in compliance with section (d) or (e) hereof.

(d) *New Issue Product Advertisements*. In addition to the requirements of section (c), all product advertisements for new issue municipal securities (other than municipal fund securities) shall be subject to the following requirements:

(i) *Accuracy at Time of Sale*. A syndicate or syndicate member which publishes or causes to be published any advertisement regarding the offering by the syndicate of a new issue of municipal securities, or any part thereof, may show the initial reoffering prices or yields for the securities, even if the price or yield for a maturity or maturities may have changed, provided that the advertisement contains the date of sale of the securities by the issuer to the syndicate. In the event that the prices or yields shown in a new issue advertisement are other than the initial reoffering prices or yields, such an advertisement must show the prices or yields of the securities as of the time the advertisement is submitted for publication. For purposes of this rule, the date of sale shall be deemed to be, in the case of competitive sales, the date on which bids are required to be submitted to an issuer and, in the case of negotiated sales, the date on which a contract to purchase securities from an issuer is executed.

(ii) *Accuracy at Time of Publication*. Each advertisement relating to a new issue of municipal securities shall also indicate, if applicable, that the securities shown as available from the syndicate may no longer be available from the syndicate at the time of publication or may be available from the syndicate at a price or yield different from that shown in the advertisement.

(e) *Municipal Fund Security Product Advertisements*. In addition to the requirements of section (c), all product advertisements for municipal fund securities shall be subject to the following requirements:

(i) *Required Disclosures*.

(A) *Substance and Format of Disclosure*. Except as described in paragraph (B) of this subsection (i), each product advertisement for municipal fund securities:

(1) *basic disclosure* — must include a statement to the effect that:

(a) an investor should consider the investment objectives, risks, and charges and expenses associated with municipal fund securities before investing;

(b) more information about municipal fund securities is available in the issuer's official statement;

(c) if the advertisement identifies a source from which an investor may obtain an official statement and the broker, dealer or municipal securities dealer that publishes the advertisement is the underwriter for one or more of the issues of municipal fund securities for which any such official statement may be supplied, such broker, dealer or municipal securities dealer is the underwriter for one or more issues (as appropriate) of such municipal fund securities; and

(d) the official statement should be read carefully before investing.

(2) *additional disclosures for identified products* — that refers by name (including marketing name) to any municipal fund security, issuer of municipal fund securities, state or other governmental entity that sponsors the issuance of municipal fund securities, or to any securities held as assets of municipal fund securities or to any issuer thereof, must include the following disclosures, as applicable:

(a) unless the offer of such municipal fund securities is exempt from Exchange Act Rule 15c2-12 and the issuer thereof has not produced an official statement, a source from which an investor may obtain an official statement;

(b) if the advertisement relates to municipal fund securities issued by a qualified tuition program under Internal Revenue Code Section 529, a statement to the effect that an investor should consider, before investing, whether the investor's or designated beneficiary's home state offers any state tax or other state benefits such as financial aid, scholarship funds, and protection from creditors that are only available for investments in such state's qualified tuition

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program; provided, however, that this statement shall not be required for any advertisement relating to municipal fund securities of a specific state if such advertisement is sent to, or is otherwise distributed through means that are reasonably likely to result in the advertisement being received by, only residents of such state and is not otherwise published or disseminated by the broker, dealer or municipal securities dealer, or made available by the broker, dealer or municipal securities dealer to any of its affiliates, the issuer or any of the issuer's agents with the expectation or understanding that such other parties will otherwise publish or disseminate such advertisement; and

(c) if the advertisement is for a municipal fund security that has an investment option that invests solely in a money market fund:

(i) and that money market fund is not a government money market fund, as defined in Rule 2a-7(a)(14), 17 CFR 270.2a-7(a)(14), under the Investment Company Act of 1940 or a retail money market fund, as defined in Rule 2a-7(a)(21), 17 CFR 270.2a-7(a)(21), under the Investment Company Act of 1940, statements to the effect that:

> You could lose money by investing in this investment option. Because the share price of the money market fund in which your investment option invests (the "underlying fund") will fluctuate, when you redeem your units in that investment option, those units may be worth more or less than what you originally paid for them. The underlying fund may impose a fee upon sale of those shares or may temporarily suspend the ability of the investment option to redeem shares if the underlying fund's liquidity falls below required minimums because of market conditions or other factors. An investment in the investment option is not insured or guaranteed by the Federal Deposit Insurance Corporation or any other government agency. The underlying fund's sponsor has no legal obligation to provide financial support to the underlying fund, and you should not expect that the sponsor will provide financial support to the underlying fund at any time.

(ii) and that money market fund is a government money market fund, as defined in Rule 2a-7(a)(14), 17 CFR 270.2a-7(a)(14), under the Investment Company Act of 1940 or a retail money market fund, as defined in Rule 2a-7(a)(21), 17 CFR 270.2a-7(a)(21), under the Investment Company Act of 1940, and that is subject to the requirements of Rule 2a-7(c)(2)(i) and/or (ii), 17 CFR 270.2a-7(c)(2)(i) and/or (ii), under the Investment Company Act of 1940 (or is not subject to the requirements of Rule 2a-7(c)(2)(i) and/or (ii), 17 CFR 270.2a-7(c)(2)(i) and/or (ii), pursuant to Rule 2a-7(c)(2)(iii), 17 CFR 270.2a-7(c)(2)(iii), under the Investment Company Act of 1940, but has chosen to rely on the ability to impose liquidity fees and suspend redemptions consistent with the requirements of Rule 2a-7(c)(2)(i) and/or (ii), 17 CFR 270.2a-7(c)(2)(i) and/or (ii), under the Investment Company Act of 1940), statements to the effect that:

> You could lose money by investing in this investment option. Although the money market fund in which your investment option invests (the "underlying fund") seeks to preserve the value of its shares at $1.00 per share, the underlying fund cannot guarantee it will do so. The underlying fund may impose a fee upon the investment option's redemption of the underlying fund's shares or the underlying fund may temporarily suspend the investment option's ability to redeem its shares if the underlying fund's liquidity falls below required minimums because of market conditions or other factors. An investment in the investment option is not insured or guaranteed by the Federal Deposit Insurance Corporation or any other government agency. The underlying fund's sponsor has no legal obligation to provide financial support to the underlying fund, and you should not expect that the sponsor will provide financial support to the underlying fund at any time.

(iii) and that money market fund is a government money market fund, as defined in Rule 2a-7(a)(14), 17 CFR 270.2a-7(a)(14), under the Investment Company Act of 1940, that is not subject to the requirements of Rule 2a-7(c)(2)(i) and/or (ii), 17 CFR

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270.2a-7(c)(2)(i) and/or (ii), under the Investment Company Act of 1940, pursuant to Rule 2a-7(c)(2)(iii), 17 CFR 270.2a-7(c)(2)(iii), under the Investment Company Act of 1940, and that has not chosen to rely on the ability to impose liquidity fees and suspend redemptions consistent with the requirements of Rule 2a-7(c)(2)(i) and/or (ii), 17 CFR 270.2a-7(c)(2)(i) and/or (ii), under the Investment Company Act of 1940, a statement to the effect that:

> You could lose money by investing in this investment option. Although the money market fund in which your investment option invests (the "underlying fund") seeks to preserve its value at $1.00 per share, the underlying fund cannot guarantee it will do so. An investment in this investment option is not insured or guaranteed by the Federal Deposit Insurance Corporation or any other government agency. The underlying fund's sponsor has no legal obligation to provide financial support to the underlying fund, and you should not expect that the sponsor will provide financial support to the underlying fund at any time.

(3) *additional disclosures concerning performance* — that includes performance data must include:

(a) a legend disclosing that the performance data included in the advertisement represents past performance; that past performance does not guarantee future results; that the investment return and the value of the investment will fluctuate so that an investor's units, when redeemed, may be worth more or less than their original cost; and that current performance may be lower or higher than the performance data included in the advertisement. Unless the advertisement includes total return quotations current to the most recent month ended seven business days prior to the date of any use of the advertisement, the legend must also identify either a toll-free (or collect) telephone number or website (that may be hyperlinked) where an investor may obtain total return quotations current to the most recent month-end for which such total return, or all information required for the calculation of such total return, is available, however an investment option that invests in a money market fund that is a government money market fund, as defined in Rule 2a-7(a)(14), 17 CFR 270.2a-7(a)(14), under the Investment Company Act of 1940 or a retail money market fund, as defined in Rule 2a-7(a)(21), 17 CFR 270.2a-7(a)(21), under the Investment Company Act of 1940 may omit the disclosure about principal value fluctuation;

(b) if a sales load or any other nonrecurring fee is charged, the maximum amount of the load or fee (current as of the date such advertisement is submitted for publication or otherwise disseminated) and, if the sales load or fee is not reflected in the performance data included in the advertisement, a statement that the performance data does not reflect the deduction of the sales load or fee and that the performance data would be lower if such load or fee were included; and

(c) to the extent that such performance data relates to municipal fund security investment options that are not held out as having the characteristics of a money market fund and to the extent applicable, the total annual operating expense ratio of such municipal fund security investment options (calculated in the same manner as the total annual fund operating expenses required to be included in the registration statement for a registered investment company, subject to paragraph (e)(ii)(A) hereof), gross of any fee waivers or expense reimbursements.

(4) *format of disclosure* — must meet the following requirements:

(a) for a print advertisement:

(i) the statements required by subparagraphs (1), (2) and (3) of this paragraph (A) must be presented in a type size at least as large as and of a style different from, but at least as prominent as, that used in the major portion of the advertisement, provided that when performance data is presented in a type size smaller than that of the major portion of the advertisement, the statements required by subparagraph (3) of this paragraph may appear in a type size no smaller than that of the performance data;

(ii) the statements required by subparagraph (3) of this paragraph must be presented in close proximity to the performance data; provided that such statements must be presented in the body of the advertisement and not in a footnote unless the performance data appears only in such footnote; and

(iii) the maximum amount of the sales load required to be disclosed pursuant to clause (3)(b) and the information required to be disclosed pursuant to clause (3)(c),

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along with the standardized performance information mandated by Securities Act Rule 482 as applicable by virtue of subsection (e)(ii) of this rule, must be presented in a prominent text box that contains only such information but which may also contain comparative performance and fee data and disclosures required under this section (e).

(b) for an advertisement delivered through an electronic medium:

(i) the legibility requirements for the statements required by subparagraphs (1), (2) and (3) of this paragraph relating to type size and style may be satisfied by presenting the statements in any manner reasonably calculated to draw investor attention to them;

(ii) if such advertisement is a radio or television advertisement, the statements required by subparagraphs (1), (2) and (3) of this paragraph must be given emphasis equal to that used in the major portion of the advertisement; and

(iii) the statements required by subparagraph (3) of this paragraph must be presented in close proximity to the performance data.

(B) *Exceptions from Certain Disclosure Requirements*. Notwithstanding any other provision of this rule, the following advertisements relating to municipal fund securities shall not be subject to the provisions of subparagraphs (1) and (2) of paragraph (e)(i)(A):

(1) *generic advertisements* — any advertisement that does not refer by name to any specific investment option or portfolio offered by an issuer of municipal fund securities, but includes the name and address of the broker, dealer or municipal securities dealer or other person sponsoring the advertisement, and that is limited to any one or more of the following:

(a) explanatory information relating to municipal fund securities generally or the nature of the issuers thereof or of the programs through which they are issued, or to services offered in connection with the ownership of such securities; or

(b) the mention or explanation of municipal fund securities of different generic types or having various investment objectives; or

(c) offers, descriptions, and explanations of various products and services not constituting a municipal fund security, provided that such offers, descriptions, and explanations do not relate directly to the desirability of owning or purchasing a municipal fund security; or

(d) invitation to inquire for further information; provided that if an official statement for municipal fund securities is to be sent or delivered in response to such inquiries and if the sponsor of the advertisement is the underwriter for one or more of the issues of municipal fund securities for which such official statement may be supplied, the advertisement must state that such broker, dealer or municipal securities dealer is the underwriter for one or more issues (as appropriate) of such municipal fund securities.

(2) *certain blind advertisements* — any advertisement that does not identify a broker, dealer or municipal securities dealer or any affiliate of a broker, dealer or municipal securities dealer and that is limited to any one or more of the following:

(a) the name of an issuer of municipal fund securities; or

(b) contact information for an issuer of municipal fund securities or for any agent of such issuer to obtain an official statement or other information; provided that, if any such agent of the issuer is a broker, dealer or municipal securities dealer or an affiliate of a broker, dealer or municipal securities dealer, no orders for municipal fund securities shall be accepted through such source unless initiated by the customer; or

(c) a logo or other graphic design of an issuer of municipal fund securities that does not directly or indirectly identify the broker, dealer or municipal securities dealer or any affiliate of the broker, dealer or municipal securities dealer; or

(d) a service mark, trademark or short slogan of the issuer's general objectives that does not constitute a call to invest in municipal fund securities.

(3) *certain form letters to existing customers* — any form letter relating to municipal fund securities distributed solely to existing customers of the broker, dealer or municipal securities dealer to whom the broker, dealer or municipal securities dealer has previously sent or caused to be sent an official statement for:

(a) any municipal fund securities of the issuer of such municipal fund securities; or

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(b) any municipal fund securities of a different issuer of municipal fund securities, provided that the advertisement includes the applicable disclosures under clause (e)(i)(A)(1)(c) and subparagraph (e)(i)(A)(2) of this rule.

(ii) *Performance Data*. Each product advertisement that includes performance data relating to municipal fund securities must present performance data in the format, and calculated pursuant to the methods, prescribed in paragraph (d) of Securities Act Rule 482 (or, in the case of a municipal fund security that the issuer holds out as having the characteristics of a money market fund, paragraph (e) of Securities Act Rule 482) and, to the extent applicable, subparagraph (e)(i)(A)(4) of this rule, provided that:

(A) *source of data* — to the extent that information necessary to calculate performance data or to determine loads, fees and expenses for purposes of clause (e)(i)(A)(3)(b) or (c) is not available from an applicable balance sheet included in a registration statement, or from a prospectus, the broker, dealer or municipal securities dealer shall use information derived from the issuer's official statement, otherwise made available by the issuer or its agents, or (when unavailable from the official statement, the issuer or the issuer's agents) derived from such other sources which the broker, dealer or municipal securities dealer reasonably believes are reliable;

(B) *period of calculation* — if the issuer first began issuing the municipal fund securities fewer than one, five, or ten years prior to the date of the submission of the advertisement for publication, such shorter period shall be substituted for any otherwise prescribed longer period in connection with the calculation of average annual total return or any similar returns;

(C) *currentness of calculation* — performance data and total annual operating expense ratio shall be calculated as of the most recent practicable date considering the type of municipal fund securities and the media through which data will be conveyed, except that any advertisement containing total return quotations will be considered to have complied with this paragraph provided that:

(1) (a) the total return quotations are current to the most recent calendar quarter ended prior to the submission of the advertisement for publication for which such performance data, or all information required for the calculation of such performance data, is available to the broker, dealer or municipal securities dealer as described in paragraph (A) of this subsection (e)(ii); and

(b) total return quotations (current to the most recent month ended seven business days prior to the date of any use of the advertisement for which such total return, or all information required for the calculation of such total return, is available to the broker, dealer or municipal securities dealer as described in paragraph (A) of this subsection (e)(ii)) are provided at the toll-free (or collect) telephone number or website identified pursuant to clause (i)(A)(3)(a) of this section (e) and the month to which such information is current is identified; or

(2) the total return quotations are current to the most recent month ended seven business days prior to the date of any use of the advertisement for which such total return, or all information required for the calculation of such total return, is available to the broker, dealer or municipal securities dealer and the month to which such information is current is identified.

(D) *12b-1-type plans* — where such calculation is required to include expenses accrued under a plan adopted under Investment Company Act Rule 12b-1, the broker, dealer or municipal securities dealer shall include all such expenses as well as any expenses having the same characteristics as expenses under such a plan where such a plan is not required to be adopted under said Rule 12b-1 as a result of Section 2(b) of the Investment Company Act of 1940;

(E) *tax-adjusted calculations* — in calculating tax-equivalent yields or after-tax returns, the broker, dealer or municipal securities dealer shall assume that any unreinvested distributions are used in the manner intended with respect to such municipal fund securities in order to qualify for any federal tax-exemption or other federally tax-advantaged treatment with respect to such distributions, provided that the advertisement must also provide a general description of how federal law intends that such distributions be used and disclose that such yield or return would be lower if distributions are not used in this manner.

(F) *applicability with respect to underlying assets* — notwithstanding any of the foregoing, this subsection (e)(ii) shall apply solely to the calculation of performance relating to municipal fund securities and does not apply to, or limit the applicability of any rule of the Commission or any other regulatory body relating to, the calculation of performance for any security held as an underlying asset of the municipal fund securities.

(iii) *Nature of Issuer and Security*. An advertisement for a specific municipal fund security must provide sufficient information to identify such specific security in a manner that is not false or misleading. An advertisement that identifies a specific municipal fund security must include the name of the issuer (or the issuer's marketing name for its issuance of municipal fund securities, together with the state of the issuer), presented in a manner no less prominent than any other entity identified in the advertisement, and must not imply that a different entity is the issuer of the municipal fund security. An advertisement must not raise an inference that, because municipal fund securities are issued under a government-

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sponsored plan, investors are guaranteed against investment losses if no such guarantee exists. If an advertisement concerns a specific class or category of an issuer's municipal fund securities (*e.g.*, A shares versus B shares; direct sale shares versus advisor shares; in-state shares versus national shares; etc.), this must clearly be disclosed in a manner no less prominent than the information provided with respect to such class or category.

(iv) *Capacity of Dealer and Other Parties*. An advertisement that relates to or describes services provided with respect to municipal fund securities must clearly indicate the entity providing those services. If any person or entity other than the broker, dealer or municipal securities dealer is named in the advertisement, the advertisement must reflect any relationship between the broker, dealer or municipal securities dealer and such other person or entity. An advertisement soliciting purchases of municipal fund securities that would be effected by a broker, dealer or municipal securities dealer or any other entity other than the broker, dealer or municipal securities dealer that publishes the advertisement must identify which entity would effect the transaction, provided that the advertisement may identify one or more such entities in general descriptive terms but must specifically name any such other entity if it is the issuer, an affiliate of the issuer, or an affiliate of the broker, dealer or municipal securities dealer that publishes the advertisement. This subsection (iv) shall not apply to any advertisement described in subparagraph (e)(i)(B)(2) of this rule.

(v) *Tax Consequences and Other Features*. Any discussion of tax implications or other benefits or features of investments in municipal fund securities included in an advertisement must not be false or misleading. In the case of an advertisement that includes generalized statements regarding tax or other benefits offered in connection with such municipal fund securities or otherwise offered under state or federal law, the advertisement also must include a generalized statement that the availability of such tax or other benefits may be conditioned on meeting certain requirements. If the advertisement describes the nature of specific benefits, such advertisement must also briefly list the substantive factors that may materially limit the availability of such benefits (such as residency, purpose for or timing of distributions, or other factors, as applicable). Such statements of conditions or limitations must be presented in close proximity to, and in a manner no less prominent than, the description of such benefits.

(vi) *Underlying Registered Securities.* If an advertisement for a municipal fund security provides specific details of a security held as an underlying asset of the municipal fund security, the details included in the advertisement relating to such underlying security must be presented in a manner that would be in compliance with any Commission or other advertising rules that would be applicable if the advertisement related solely to such underlying security; provided that details of the underlying security must be accompanied by any further statements relating to such details as are necessary to ensure that the inclusion of such details does not cause the advertisement to be false or misleading with respect to the municipal fund securities advertised. This subsection does not limit the applicability of any rule of the Commission or any other regulatory body relating to advertisements of securities other than municipal fund securities, including advertisements that contain information about such other securities together with information about municipal securities.

(vii) *Correspondence Presenting Performance Data*. Notwithstanding any other provision of this rule, all correspondence with the public that includes performance data relating to municipal fund securities must comply with the provisions of subparagraph (e)(i)(A)(3) (presented in the manner provided in subparagraph (e)(i)(A)(4)) and subsection (e)(ii) as if such correspondence were a product advertisement under this rule.

(f) *Approval by Principal*. Each advertisement subject to the requirements of this rule must be approved in writing by a municipal securities principal or general securities principal prior to first use.

(g) *Interactive Content*. Notwithstanding the requirement of section (f), interactive content that is an advertisement and that would be posted or disseminated in an interactive electronic forum is exempt from the requirement to be approved in writing by a municipal securities principal or general securities principal prior to first use.

(h) *Records.* Each broker, dealer and municipal securities dealer shall make and keep current in a separate file records of all advertisements.

Supplementary Material

.01 Investment Option. As used in Rule G-21(e), the term investment option shall have the same meaning as defined in Rule G-45(d)(vi).

.02 Contractual Financial Support Provided to Underlying Fund. Under Rule G-21(e)(i)(A)(2)(c), a dealer may omit the last sentence of the specified disclosure ("The underlying fund's sponsor has no legal obligation to provide financial support to the underlying fund, and you should not expect that the sponsor will provide financial support to the underlying fund at any time") if that disclosure is not applicable to the underlying fund under Rule 482(b)(4) pursuant to the Securities Act of 1933.

.03 Number of Persons. For purposes of Rule G-21(a)(ii), the number of "persons" for a response to a request for proposal (RFP), a request for qualifications, or similar request is determined at the entity level. Therefore, for example, if a dealer were to send a response to an RFP to a municipal entity, that municipal entity would count as one "person" no matter how many employees of the municipal entity may review the response to the RFP.

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.04 Supervision of Interactive Content. Notwithstanding Rule G-21(g), each broker, dealer and municipal securities dealer must supervise and review interactive content in the same manner in which that broker, dealer, or municipal securities dealer supervises and reviews correspondence under Rule G-27(e), on review of correspondence.

Rule G-21 Interpretations

FAQs regarding the Use of Social Media under MSRB Rule G-21, on Advertising by Brokers, Dealers or Municipal Securities Dealers, and MSRB Rule G-40, on Advertising by Municipal Advisors

July 3, 2023

The Municipal Securities Rulemaking Board (MSRB) provides these answers to frequently asked questions (FAQs) to enhance market participants' understanding of permissible and impermissible uses of social media as part of their municipal securities business or municipal advisory activities under MSRB Rule G-21, on advertising by brokers, dealers or municipal securities dealers (collectively, "dealers"), and under MSRB Rule G-40, on advertising by municipal advisors (Rule G-21, together with Rule G-40, the "advertising rules"). These FAQs can assist dealers and municipal advisors (collectively, "regulated entities") with their compliance with the MSRB's advertising rules.

In developing these FAQs, the MSRB has been mindful of the potential burden on a regulated entity if there were to be unnecessary inconsistencies between any adopted MSRB social media guidance and similar guidance issued by other regulators that may be applicable to other aspects of the regulated entity's business. To that end, and to the extent practicable, the MSRB has endeavored to align these FAQs with the social media guidance published by the U.S. Securities and Exchange Commission (SEC) and the Financial Industry Regulatory Authority, Inc. (FINRA).[1]

The FAQs discuss compliance with MSRB rules; regulated entities are reminded that they also may be subject to the rules of other financial regulators, including state regulators. Further, a regulated entity's use of social media to conduct municipal securities or municipal advisory activities is optional, and the responsibilities that follow from that social media usage are not new here. In particular, a regulated entity should consider its ability to comply with the existing recordkeeping requirements under the federal securities laws and incorporated into MSRB rules when determining whether to use social media to conduct municipal securities or municipal advisory activities and whether to permit its associated persons to use social media to conduct municipal securities or municipal advisory activities.

Background

Rule G-21 and Rule G-40, effective as of the date of these FAQs, set forth general provisions, address professional advertisements by the relevant regulated entity and require principal approval, in writing, for advertisements by regulated entities before their first use.

These FAQs were initially developed in 2019 as a result of requests for guidance regarding the use of social media by a regulated entity under MSRB Rules G-21 and G-40 and were updated thereafter. These FAQs provide the requested guidance.

Consistent with MSRB Rule D-11, references in the FAQs to a dealer, municipal advisor or regulated entity generally include the associated persons of such dealer, municipal advisor or regulated entity.[2]

Use of Social Media

1. Is social media use by a regulated entity relating to its municipal securities business or municipal advisory activities considered advertising under the MSRB's advertising rules?

Yes, depending on the facts and circumstances. With limited exceptions, any material that relates to (i) the products or services of the dealer, (ii) the services of the municipal advisor, or (iii) the engagement of a municipal advisory client by the municipal advisor, may constitute an advertisement under the MSRB's advertising rules, if it is:

- published or used in any electronic or other public media; or
- written or electronic promotional literature distributed or made generally available to either customers or municipal entities, obligated persons, municipal advisory clients or the public.

To the extent that the use of social media, including blogs, microblogs and social and professional networks, by a regulated entity is deemed advertising based on its content and distribution, that advertising would be subject to all applicable provisions of Rules G-21 and G-40. Those provisions include content standards and a requirement that an advertisement be pre-approved by a principal before its first use.

Further, dealers and municipal advisors should bear in mind that "posts" or "chats" on social media, including those deemed advertising, are subject to all other applicable MSRB rules.

Those rules include:

- MSRB Rule G-17, on conduct of municipal securities and municipal advisory activities;
- MSRB Rule G-27, on supervision;
- MSRB Rule G-44, on supervisory and compliance obligations of municipal advisors;

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- MSRB Rule G-8, on books and records to be made by brokers, dealers, municipal securities dealers, and municipal advisors; and
- MSRB Rule G-9, on retention of records.

2. Can an associated person's personal social media use be deemed "advertising" that is subject to the MSRB's advertising rules?

Potentially, yes. An associated person's personal social media use would not *per se* be advertising that is subject to the MSRB's advertising rules. Whether an associated person's personal social media use is advertising depends on whether the content of the social media relates to (i) the products or services of the dealer, (ii) the services of the municipal advisor, or (iii) the engagement of a municipal advisory client by the municipal advisor, as relevant.

- For example, an associated person of a regulated entity "posts" the following on his personal social media that is viewable by the public rather than a selected audience:

  > Let's help our children! ABC Youth Group is having a car wash to raise funds for a new basketball court on May 18th at 3:00 pm at XYZ address. Get your car washed and help out.

The content in the "post" in the above example does not relate to (i) the products or services of the dealer, (ii) the services of the municipal advisor, or (iii) the engagement of a municipal advisory client by the municipal advisor. Even though the "post" is publicly available, the "post" would not be advertising that is subject to the MSRB's advertising rules.

Similarly, an associated person may hyperlink from his or her personal social media to content on his or her dealer's or municipal advisor's social media. The "hyperlinking" by the associated person to the regulated entity's social media would not constitute an advertisement if that hyperlinked content does not relate to the matters referenced in the preceding paragraph.[3]

- For example, a "post" from associated person FGH's personal social media contains a hyperlink to an article on municipal advisor ABC's website about an animal shelter rebuilding after recent flooding. The "post" is viewable by the public.

The "post" would not be advertising that is subject to the MSRB's advertising rules. The "post," although it contains a hyperlink to a regulated entity's website, links to content that does not relate to the municipal advisory services of the municipal advisor or the engagement of a municipal advisory client by a municipal advisor.

By contrast, to the extent that an associated person of a dealer or municipal advisor engages in advertising, as defined by Rules G-21 and G-40, on his or her personal social media, that advertising would be subject to the requirements of the MSRB's advertising rules.

- For example, an associated person of ABC municipal advisor posts the following on his or her personal social networking page that is viewable by the general public:

  > I'm happy to be part of the team! ABC municipal advisor was rated the best in XYZ state for airport financings during 2017 according to DEF rating service. ABC municipal advisor has great experience in airport financings, and can help you with your next project.

The "post" would be an advertisement, as defined in Rule G-40(a)(i). The content of the electronically distributed "post" (i) promotes the expertise and experience of ABC municipal advisor and solicits inquiries about its services and (ii) is generally available to municipal entities, obligated persons, municipal advisory clients or the public. As such, even though the advertisement was "posted" on the associated person's personal social networking page, the "post" would be subject to the requirements of Rule G-40 as well as all other applicable MSRB rules. *See* question 1.

3. Do the MSRB's advertising rules apply to hyperlinked content on an independent third-party website from a regulated entity's website?

The MSRB's advertising rules would apply to hyperlinked content on an independent third-party's website from a regulated entity's website in those instances where the regulated entity either:

- involved itself in the preparation of content on that third-party website—this is known as **entanglement**;[4] or
- implicitly or explicitly approved or endorsed the content on that third-party website—this is known as **adoption**.[5]

Accordingly, if a regulated entity either becomes entangled with or adopts the hyperlinked content, the regulated entity has obligations under MSRB's advertising rules for that content.

- For example, on its website, ABC dealer states that XYZ municipal entity has a great article about the financing for its new school (ABC dealer was the underwriter for that financing), and ABC dealer provides a hyperlink to that article.

In this case, ABC dealer, by stating it was a great article, would have adopted the article on XYZ's website, and the content of that article would be subject to Rule G-21. Further, depending on the facts and circumstances, ABC may have adopted the article by linking to its specific content even without stating that the article was a great article. See question 4. A regulated entity should consider whether the context of the hyperlink and the content of the hyperlinked information together create a reasonable inference that the regulated entity has approved or endorsed the hyperlinked information.[6]

Similarly, a regulated entity may become entangled with hyperlinked content.

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- For example, CDE municipal advisor assists XYZ issuer with the preparation of a press release about a financing to build a new school. The press release discusses how the financing method will save taxpayer dollars, but does not mention CDE municipal advisor. CDE municipal advisor then posts a hyperlink on its website to the press release on XYZ issuer's website.

In this case, CDE municipal advisor, because it helped prepare the press release, would have become entangled with the press release, and the hyperlinked content would be an advertisement subject to Rule G-40.

See Question 7 for discussion regarding third-party posts.

4. What factors are relevant for a regulated entity to consider as it determines whether it has adopted the hyperlinked content on an independent third-party's website?

While non-exclusive, some factors to consider are:[7]

- **Does the context suggest that the regulated entity has approved or endorsed the hyperlinked content?** The regulated entity may want to consider its disclosure about the hyperlink and what a reader may imply by the location and presentation of the hyperlink. For example:
  - — Does the regulated entity state that it approves or endorses the prominently-featured hyperlinked content (in which case, the regulated entity would have adopted the hyperlinked content), or does the regulated entity have a portion of its website that links to recent general news articles and provides hyperlinks to the websites of various newspapers or magazines (depending on the facts and circumstances, in most cases, the regulated entity would not have adopted such content)?[8]
  - — Does the hyperlinked content indicate a degree of selective choice by the regulated entity, such as a hyperlink to a specific news article that is laudatory of the regulated entity, as compared to a hyperlink to the website of the newspaper?[9]
  - — Does the regulated entity provide an explanation about the source of a hyperlinked article and why the regulated entity is hyperlinking to it in order to avoid the inference that the regulated entity is adopting the hyperlinked content?[10]

Although a regulated entity's hyperlink to specific independent third-party content may indicate adoption of that content, if the hyperlinked content itself is not an advertisement, the regulated entity's hyperlink to that content would not be an advertisement under Rules G-21 and G-40.

- For example, ABC dealer includes a hyperlink on its website to an article regarding the importance of saving for college on an independent third-party's website. The article does not identify any particular 529 savings plan, any dealer, or any municipal security.

In this case, ABC dealer hyperlinks to an article that is purely educational. Because the hyperlinked content does not address ABC dealer or a municipal security offered through ABC dealer, the hyperlinked content would not be an advertisement, and ABC dealer's hyperlink to that content would not be an advertisement that is subject to Rule G-21.

- **Does the hyperlink create customer or municipal advisory client confusion?** The regulated entity may want to consider whether a customer or municipal advisory client would be confused and not fully appreciate that the hyperlink is to third-party content. Does the regulated entity provide disclosure to explain that the hyperlink is to third-party content?[11]
- **Is the hyperlink to content that is not controlled by the regulated entity and is the hyperlink ongoing?** When a regulated entity links to content that is hosted by an independent third-party that is not controlled or influenced by the regulated entity, that content may not be advertising subject to the MSRB's advertising rules if the hyperlink is "ongoing."

  An "ongoing" link is one which: (i) is continuously available to visitors to the regulated entity's website; (ii) visitors to the regulated entity's site have access to even though the independent third-party site may or may not contain favorable material about the regulated entity; and (iii) visitors to the regulated entity's website have access to even though the independent third-party's website may be revised.[12] A regulated entity may not have adopted the content on the independent third-party's website if the link is "ongoing."

However, where a regulated entity has become entangled with the hyperlinked content on a third-party website (to the extent that hyperlinked content otherwise meets the definition of an advertisement), that hyperlinked content would be an advertisement under Rules G-21 and G-40 and the regulated entity must consider all applicable provisions of the MSRB's advertising rules, including with respect to the hyperlinked content.[13] Therefore, a regulated entity should not include hyperlinked content on its website if there are any red flags that indicate that the hyperlinked content contains false or misleading material.[14]

5. May a regulated entity use a disclaimer alone to disclaim potential MSRB rule violations for hyperlinked content on an independent third-party website?

No, the MSRB generally would not view a disclaimer alone as sufficient to insulate a regulated entity from potential MSRB rule violations related to hyperlinked content on an independent third-party website that the regulated entity knows or has reason to know is materially false or misleading. A regulated entity that hyperlinks to content that the regulated entity knows or has reason to know is materially false or misleading may violate Rules G-17, G-21 and/or G-40.[15]

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6. Do the MSRB's advertising rules apply to linked content within independent third-party content to which a regulated entity hyperlinked?

No, Rules G-21 and G-40, in general, would not apply to linked content within content to which the regulated entity linked ("secondary links"). However, to avoid triggering the application of Rules G-21 and G-40:

- The regulated entity must not have adopted or become entangled with the content in the secondary link – *See* question 3;
- The regulated entity must have no influence or control over the content in the secondary links – *See* question 4;
- The original linked content must not be a mere vehicle for the secondary links or not rely completely on the information available in the secondary links; and
- The regulated entity must not know or have reason to know that the information contained in the secondary links contains any untrue statement of material fact or is otherwise false or misleading.[16] A regulated entity should not include a link on its website if there are any red flags that indicate that the hyperlinked website contains false or misleading content.[17]

Third-Party Posts

7. Do Rules G-21 and G-40 apply to posts by a customer, municipal entity client or another third-party (collectively, "third-party posts") on a regulated entity's or its associated person's social networking page?

In general, no. Rules G-21 and G-40 generally would not apply to posts by a third-party on a regulated entity's or its associated person's social networking page. The post would not be considered material that is published, distributed or made available by the dealer or municipal advisor.

Notwithstanding, Rules G-21 and G-40 may apply to such third-party posts under certain circumstances. For example, Rules G-21 and G-40 would apply to such posts if the dealer or municipal advisor becomes entangled with or adopts the content of such posts. *See also* question 3.

- **Entanglement.** A regulated entity becomes entangled with a post by a third-party on the regulated entity's social networking page if the regulated entity has involved itself with the preparation of the third-party content.[18] For example, a regulated entity or its associated person may become entangled with a third-party post if the regulated entity or its associated person pays for or solicits a third-party to post certain comments on the regulated entity's social networking page.
- **Adoption.** A regulated entity adopts the content of the third-party post if the regulated entity explicitly or implicitly approves or endorses the content.[19] A regulated entity or its associated person may adopt a third-party post if it "likes," "shares," or otherwise indicates approval or endorsement of the content.

See question 3 above for a discussion of hyperlinked content on an independent third-party website; *see* question 4 above for a discussion of the non-exclusive factors to consider when determining whether a regulated entity or its associated person has adopted third-party content.

8. May a municipal advisory client post positive comments about its experience with the municipal advisor on the municipal advisor's social media page without such post being a testimonial under Rule G-40?

As with question 7 above, if a municipal advisory client posts positive comments on a municipal advisor's social media page and the municipal advisor does not become entangled with or adopt that content, the municipal advisor could allow such content on its social media page. This would be true even if the municipal advisory client's comments were to include a testimonial.

If the municipal advisor paid for or solicited a municipal advisory client to post positive comments about its experience with the municipal advisor on the municipal advisor's social media page, that post would be deemed to be an advertisement by the municipal advisor that contains a testimonial within Rule G-40.

Specifically, by paying for or soliciting positive comments from a third-party, the municipal advisor would become entangled with those comments, and the posting of those third-party comments on the municipal advisor's social media page would be deemed to be an advertisement by the municipal advisor that contains a testimonial. Accordingly, the municipal advisor would need to ensure that the advertisement meets the requirements of Rule G-40 and that the requisite disclosures under Rule G 40(a)(iv)(G)(2)(b) are clearly and prominently posted to the social media page in close proximity to the testimonial.

If the municipal advisor did not pay, directly or indirectly, for the testimonial, but liked, shared or commented on a post from a third-party, the municipal advisor would have adopted those comments and the posting of those third-party comments on the municipal advisor's social media page would be deemed an advertisement by the municipal advisor that contains a testimonial. Accordingly, the municipal advisor would need to ensure that the advertisement meets the requirements of Rule G-40 and that the requisite disclosures under Rule G 40(a)(iv)(G)(2)(b) are clearly and prominently posted to the social media page in close proximity to the testimonial.

Recordkeeping

9. Must regulated entities retain records of "posts," "chats," text messages or messages sent through messaging applications related to the regulated entity's business conducted through social media?

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Yes, the MSRB's recordkeeping and record retention requirements apply to all written, including electronic, communications sent or received as well as records of advertisements under the MSRB's advertising rules.

Specifically, for dealers, Rule G-9(b)(viii)(C) requires that "all written and electronic communications received and sent, including inter-office memoranda, relating to the conduct of the activities of such municipal securities broker or municipal securities dealer with respect to municipal securities" be retained. Similarly, Rule G-9(h)(i) requires that a municipal advisor retain records, which include, among other things, originals or copies of all written and electronic communications received and sent, including inter-office memoranda, relating to municipal advisory activities.[20] Neither the technology used for the communication nor the distinction between a communication made through a device issued by the regulated entity or its associated person's personal device is determinative for this analysis. *See* questions 10 and 11 regarding supervision.

Supervision[21]

10. Should a regulated entity consider establishing policies and procedures as part of its supervisory system to address the use of social media by the regulated entity and its associated persons?

Yes, given that recordkeeping requirements apply to electronic communications, a regulated entity should establish policies and procedures to address the use by the regulated entity and its associated persons of social media.[22] As a baseline, those policies and procedures would reflect the regulated entity's permitted and/or prohibited practices. Such permitted practices may include restrictions on the use of certain technologies or the prohibition of the use of social media to engage in municipal securities business or municipal advisory activities. Further, the supervisory system for a regulated entity that permits the use of social media would address all applicable MSRB rules, including, but not limited to:

- the MSRB's advertising rules;
- Rule G-17;
- Rule G-8; and
- Rule G-9.

See question 1.

11. What are some factors that a regulated entity should consider as it develops policies and procedures about the use of social media?

As with any policy and procedure, a regulated entity's social media policies and procedures would be tailored to reflect, among other things, its size, organizational structure and the nature and scope of its municipal securities or municipal advisory activities. Social media policies and procedures are not expected to be "one size fits all."

Among the factors that a regulated entity should consider as it develops social media policies and procedures are:

Usage Restrictions. While some regulated entities may prohibit an associated person from engaging in municipal securities business or municipal advisory activities through social media, other regulated entities may permit the use of social media for such purposes. A regulated entity that permits the use of social media by its associated persons, in whole or in part, should consider providing associated persons with a clear and concise list of permitted social media for the conduct of municipal securities business or municipal advisory activities. That list also may include any restrictions to the use of particular social media (for example, a regulated entity may permit certain messaging applications to be used only for internal communications among the regulated entity and its associated persons). If applicable, a regulated entity should consider making the list of permitted social media widely available and easily accessible to its associated persons.[23]

Further, recognizing the need to have policies and procedures that are reasonably designed to ensure compliance with MSRB rules as well as with other applicable securities laws and regulations, and in light of the pace of technology innovations, a regulated entity that permits the use of social media should consider periodically reviewing its list of permitted social media. As part of that review, the regulated entity should determine whether any updates to the list of permitted social media would be warranted.[24]

Along with the list of permitted social media, the regulated entity should consider addressing the consequences of non-compliance with its social media policies and procedures.[25]

- **Training and Education.** The regulated entity's social media policies and procedures may address the training that the regulated entity will provide related to those policies and procedures. For example, will the training include an initial training as well as training that is required on a periodic basis? In addition, a regulated entity's training on social media may address various topics likely to occur such as an explanation of the differences between business and personal social media use and how the lines between business and personal social media usage could be blurred. For example, an associated person could receive a request on his or her personal social media relating to municipal securities business or municipal advisory activities. A regulated entity may want to consider how the associated person should respond to such a request.
- **Recordkeeping and Record Retention.** As noted in question 1, it is possible that social media posts relating to the regulated entity's municipal securities business or municipal advisory activities would be

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subject to the MSRB's recordkeeping and record retention rules. A regulated entity should consider its recordkeeping and record retention obligations as it designs its social media compliance policies and procedures.[26]

- **Monitoring.** As a regulated entity develops its social media policies and procedures, the regulated entity should consider how it will monitor for compliance with those policies and procedures. For example, a regulated entity may determine to more frequently monitor various social media activities based on the potential risks that the regulated entity has determined may be associated with those activities. *See* question 12 below for a discussion of various factors that the regulated entity may want to consider as it develops its policies and procedures. As a reminder, a regulated entity's supervisory procedures concerning social media should address not only the MSRB's advertising rules, but all applicable MSRB rules and other applicable federal securities laws and regulations.

12. What factors may be important in determining the effectiveness of policies and procedures concerning social media?

As noted in question 10, MSRB Rules G-27 and G-44 generally require that a regulated entity establish, implement and maintain a supervisory system that is reasonably designed to achieve compliance with MSRB rules as well as with other applicable federal securities laws and regulations. To help test whether that goal is being met with regard to its social media compliance policies and procedures, a regulated entity may want to consider the following non-exclusive factors:

- **Content standards.** A regulated entity should consider whether there are certain risks associated with content created by the regulated entity for its social media and whether that content may create regulatory issues. For example, non-solicitor municipal advisors owe a fiduciary duty to their municipal entity clients. Is the social media content consistent with that duty (*e.g.*, such as content that contains information on specific municipal advisory activity or a recommendation regarding that activity)? Further, if the social media content contains a testimonial, does that content include the requisite disclosures set forth in the MSRB's advertising rules?
- **Monitoring of third-party sites.** To the extent that the regulated entity permits the use of social networking sites, a regulated entity should consider how it will monitor for compliance with the regulated entity's social media policies and procedures on those sites.
- **Criteria for approving participation in social networking sites.** A regulated entity should consider whether to develop standards relating to social networking participation. For example, at a minimum, a regulated entity must ensure compliance with record retention requirements. As the regulated entity develops its criteria for approving the use of certain sites, the regulated entity also should address whether it has a process in place for revoking approval to participate in a particular social networking site should certain circumstances change.
- **Personal social networking sites.** A regulated entity should address whether the regulated entity or its associated persons may engage in municipal securities business or municipal advisory activities on personal social networking sites.
- **Enterprise-wide sites.** A regulated entity that is a part of a larger financial services organization should consider whether it needs to develop usage guidelines reasonably designed to prevent the larger financial services organization in organizational-wide advertisements from violating the MSRB's advertising rules.

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1 *See, e.g.*, National Examination Risk Alert, Office of Compliance Inspections and Examinations, U.S. Securities and Exchange Commission (Jan. 4, 2012) ("2012 Risk Alert"); Exchange Act Release No. 58288 (Aug. 1, 2008); FINRA Regulatory Notice 17-18 (Apr. 2017)); and FINRA Regulatory Notice 19-31 (Sep. 2019). These materials are identified for reference and such reference is not intended to suggest that regulated entities that are not subject to the guidance issued by the SEC or FINRA are responsible for compliance with that guidance. In addition, the MSRB does not intend for the guidance provided by these FAQs to modify or otherwise affect the guidance contained in the any of the referenced materials published by the SEC or FINRA.

2 Rule D-11 provides that:

> Unless the context otherwise requires or a rule of the Board otherwise specifically provides, the terms "broker," "dealer," "municipal securities broker," "municipal securities dealer," "bank dealer," and "municipal advisor" shall refer to and include their respective associated persons. Unless otherwise specified, persons whose functions are solely clerical or ministerial shall not be considered associated persons for purposes of the Board's rules.

3 For example, such hyperlinked content may include information about a charity event sponsored by the dealer or municipal advisor, a human interest article, an employment opportunity, or employer information covered by state and federal fair employment laws. *See, e.g.*, FINRA Regulatory Notice 17-18 (Apr. 2017) at 4.

4 *See, e.g.*, Exchange Act Release No. 58288 (Aug. 1, 2008) at 32, 73 FR 45862 (Aug. 7. 2008) at 45870 (the "2008 release"); Exchange Act Release No. 42728 (Apr. 28, 2000), 65 FR 25843 (May 4, 2000) at 25848 (the "2000 release").

5 *Id*.

6 2008 release at 34.

7 *See* 2008 release at 33; 2000 release at 25849.

8 *See* 2008 release at 34; 2000 release at 25849.

9 *See* 2008 release at 35.

10 *Id*.

11 *See* 2008 release at 36; 2000 release at 25849.

12 *See* FINRA Regulatory Notice 17-18 (Apr. 2017) at 5.

13 *See* MSRB Notice 2018-14 (Jun. 27, 2018).

14 *See* FINRA Regulatory Notice 11-39 (Aug. 2011) at 3.

15 *See* 2008 release at 36-37; 2000 release at 25849.

16 *See* FINRA Regulatory Notice 17-18 at Q:4; see Q:5.

17 *See* FINRA Regulatory Notice 11-39 (Aug. 2011) at 3.

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[18] *See* 2008 release at 32; 2000 release at 25848-49; FINRA Regulatory Notice 10-06 (Jan. 2010) at 7-8. The MSRB's definition of the entanglement and adoption theories is consistent with the definition of those theories set forth by the SEC and FINRA in those materials.

[19] *Id*.

[20] Rule G-8(h)(i) requires municipal advisors to make and keep current all books and records described in Rule 15Ba1-8(a) under the Exchange Act. Particularly, Rule 15Ba1-8(a)(1) requires that municipal advisors make and keep true, accurate, and current "originals or copies of all written communications received, and originals or copies of all written communications sent, by such municipal advisor (including inter-office memoranda and communications) relating to municipal advisory activities, regardless of the format of such communications."

[21] While many regulated entities may find the guidance in these FAQs useful when establishing their supervisory systems, each regulated entity should develop a supervisory system that is tailored to its own business model, recognizing that some considerations may not apply in the same manner for every firm and others may not apply at all.

[22] In part, Rules G-27(b) and Rule G-44(a) require that a regulated entity establish a supervisory system to supervise the municipal securities and municipal advisory activities of the regulated entity and its associated persons. In general, a supervisory system includes:

(i) compliance policies and procedures that describe the practices that associated persons must adhere to in order to meet the standards of conduct established by the regulated entity consistent with applicable securities laws and regulations, including MSRB rules; and

(ii) written supervisory procedures that describe the practices that the supervisory personnel follow in order to reasonably ensure that associated persons meet the standards of conduct and the regulated entity can evidence a supervisory system.

[23] *See, e.g.*, 2012 Risk Alert at 3; FINRA Regulatory Notice 07-59 (Dec. 2007) at 7.

[24] *See, e.g.*, 2012 Risk Alert at 4.

[25] *See* FINRA Regulatory Notice 07-59 (Dec. 2007) at 7; *see also* National Exam Program Risk Alert, Observations from Investment Adviser Examinations Relating to Electronic Messaging, Office of Compliance Inspections and Examinations, U.S. Securities and Exchange Commission (modified Dec. 14, 2018) available at https://www.sec.gov/files/OCIE%20Risk%20Alert%20-%20Electronic%20Messaging.pdf ("2018 Risk Alert") at 4.

[26] *See* FINRA Regulatory Notice 07-59 (Dec. 2007) at 6-7; 2018 Risk Alert at 3-4.

Interpretation on General Advertising Disclosures, Blind Advertisements and Annual Reports Relating to Municipal Fund Securities Under Rule G-21

June 5, 2007

Rule G-21, on advertising, establishes specific requirements for advertisements by brokers, dealers and municipal securities dealers ("dealers") of municipal fund securities, including but not limited to advertisements for 529 college savings plans ("529 plans"). This notice sets forth interpretive guidance under Rule G-21 with respect to time-limited broadcast advertisements, blind advertisements, and annual reports or other similar information required to be distributed under state mandates.

General Disclosures in Time-Limited Broadcast Advertisements

Rule G-21(e)(i)(A) requires certain basic disclosures to be provided in product advertisements for municipal fund securities. These disclosures are not legends requiring the inclusion of specific language. Rather, these disclosure requirements may be complied with if the substance of such information is effectively conveyed, regardless of the specific language used in the advertisement. In general, the context in which the information is provided is an important factor in determining whether the information is effectively conveyed.

These required disclosures may present challenges in the context of broadcast advertisements, such as traditional television or radio commercials with 30-second run-times or public service announcements with shorter run-times. In the context of time-limited broadcast advertisements, dealers should provide such disclosures in a manner that appropriately balances the intended message with the required disclosures. Given the unique nature of broadcast advertisements, where the oral presentation of more information can often result in a decreased likelihood that the central message of such information will be understood and retained, somewhat abbreviated forms of the required disclosures may be appropriate for such time-limited broadcast advertisements, particularly if the disclosures are made with close attention paid to ensuring that they are presented with equal prominence to the remainder of the message.

Thus, for example, in a time-limited broadcast advertisement for a non-money market 529 plan, the following language, spoken in a manner consistent with the remaining oral presentation of information, generally would satisfy the disclosure requirements of Rule G-21(e)(i)(A): "To learn about [529 plan name], its investment objectives, risks and costs, read the official statement available from [source]. Check with your home state to learn if it offers tax or other benefits for investing in its own 529 plan." Further, in a time-limited television advertisement, the source for the official statement, together with a contact telephone number or web address, generally could be displayed on screen while other portions of the disclosures are spoken. This example is intended to be illustrative and is not intended to be exclusive or to necessarily establish a baseline for disclosure.

Blind Advertisements

Under Rule G-21(e)(i)(B)(2), certain product advertisements for municipal fund securities that promote an issuer and its public purpose without promoting specific municipal fund securities or identifying a dealer or its affiliates may omit the general disclosures otherwise required under Rule G-21(e)(i)(A). Among other things, such a blind advertisement may include contact information for the issuer or an agent of the issuer to obtain an official statement or other information, provided that if such issuer's agent is a dealer or dealer affiliate, no orders may be accepted through such source unless initiated by the customer. Although the contact information

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may direct a potential customer to a dealer or its affiliate acting as agent of the issuer, the face of the advertisement may not identify such dealer or affiliate.

For example, a blind advertisement may say "call 1-800xxx-xxxx for more information" or "go to www.[state-name]-529plan.com for more information" but may not say "call [dealer name] at 1-800-xxx-xxxx for more information" or "go to www.[dealer-name]-529plan.com for more information." This provision does not preclude the person who answers a phone inquiry, or the website to which the URL links, from identifying the dealer or its affiliate, so long as such dealer or affiliate is clearly disclosed to be acting on behalf of the issuer identified in the advertisement.

If a potential customer initiates an order through the source identified in the advertisement, a distinct barrier between the providing of information and the seeking of orders must be maintained to qualify as a blind advertisement. For example, solely for purposes of Rule G-21(e)(i)(B)(2), a dealer may establish that the customer initiated the order by requiring, in the case of a telephone inquiry, that the customer be transferred from the initial dealer contact person to a different person before the customer provides any information used in connection with an order or, in the case of a web-based inquiry, that the customer navigate from the initial webpage referred to in the advertisement to another page on the same or different web site before entering any information used in connection with an order.[1] Of course, the dealer must be mindful of its obligation under Rule G-17, on fair practice, to provide to the customer, at or prior to the time of trade, all material facts about the transaction known by the dealer as well as material facts about the security that are reasonably accessible to the market, regardless of whether the transaction was recommended or whether an order may be characterized as unsolicited.[2] In addition, if the transaction is recommended, the dealer must fulfill its obligations with respect to suitability under Rule G-19, on suitability of recommendations and transactions.[3]

Required Annual Reports Excluded from Definition of Advertisement

In some cases, a dealer may be required, by state law or the rules and regulations adopted by the state or an instrumentality thereof governing a particular 529 plan or other municipal fund security program, to prepare or distribute an annual financial report or other similar information regarding such plan or program. So long as a dealer provides any such required report or information with respect to a 529 plan or other municipal fund securities program solely in the manner required by such state law or rules and regulations, such report or information will not be treated as an advertisement for purposes of Rule G-21.[4] However, the dealer would remain subject to Rule G-17, which requires that the dealer deal fairly with all persons, prohibits the dealer from engaging in any deceptive, dishonest or unfair practice and requires the dealer to provide to its customer, at or prior to the time of trade, all material facts about a transaction known by the dealer or that are reasonably accessible to the market. In addition, if such information is used in any manner beyond what is narrowly required by such law, rules or regulation, such use of the information would become subject to Rule G-21 as an advertisement.[5]

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[1] These methods are not intended to be the exclusive means by which a dealer could establish that the customer initiated the order.

[2] *See* Rule G-17 Interpretation — Interpretive Notice Regarding Rule G-17, on Disclosure of Material Facts, March 20, 2002, *reprinted in MSRB Rule Book*.

[3] *See* Rule G-17 Interpretation — Interpretation on Customer Protection Obligations Relating to the Marketing of 529 College Savings Plans, August 7, 2006, *reprinted in MSRB Rule Book*.

[4] If such information is distributed through the official statement, then it would not be considered an advertisement by virtue of the exclusion of official statements from the definition of "advertisement" in Rule G-21(a)(i).

[5] This guidance is consistent with similar guidance provided by NASD with respect to its advertising rule, Rule 2210, as applied to certain performance information and hypothetical illustrations required by state laws to be provided by dealers in connection with retirement investments and variable annuity contracts. *See* letter dated November 29, 2004, to Therese Squillacote, Chief Compliance Officer, ING Financial Advisers, LLC, from Philip A. Shaikun, Assistant General Counsel, NASD; letter dated September 30, 2002, to Sally Krawczyk, Esq., Sutherland, Asbill & Brennan, LLP, from Mr. Shaikun; and letter dated February 5, 1999, to W. Thomas Conner, Vice President, Regulatory Affairs, National Association of Variable Annuities, from Robert J. Smith, Office of General Counsel, NASD Regulation, Inc.

See also:

Rule G-30 Interpretation — Interpretive Notice on Commissions and Other Changes, Advertisements and Official Statements Relating to Municipal Fund Securities, December 19, 2001.

Interpretive Letters

Legend satisfying requirement. I refer to your letter of June 29, 1979 in which you request advice regarding rule G-21(c) on product advertisements. As you noted in your letter, the notice of approval of rule G-34 [prior rule on advertising] stated that the Board believes that the advertisements may be misleading if they show

> only a percentage rate without specifying whether it is the coupon rate or yield and, if yield, the basis on which calculated (for example, discount, par or premium securities and if discount securities, whether before-tax or after-tax yield).

You have requested advice as whether the following legend, to be used in connection with the sale of discount bonds, would be satisfactory for purposes of the rule:

> "Discount bonds may be subject to capital gains tax. Rates of such tax vary for individual taxpayers. Discount yields shown herein are gross yields to maturity."

As I previously indicated to you in our telephone conversation, the proposed legend would satisfy the requirements of rule G-21(c). *MSRB interpretation of August 28, 1979*.

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Advertisements of securities not owned. This is in response to your letter of May 5, 1982 concerning a dealer bank's advertising practices. Your letter states that the dealer bank has recently published newspaper advertisements which list specific municipal securities as "Current Offerings," and that your review of the dealer's inventory positions has disclosed that "on the date the advertisement was published the dealer held no position in four of the issues advertised and a nominal position in the fifth advertised issue." Your letter reports that the dealer stated that it was his intention to obtain the advertised issues from other dealers when customer orders were received. Your first question is whether "it is misleading and thus in violation of rule G-21, to advertise securities which the dealer does not own..."

The Board has recently considered this advertising practice and concluded that it would not violate Board rules provided that: (1) the advertisement indicates that the securities are advertised "subject to availability;" (2) the dealer placing the advertisement is not aware that the bonds are no longer available in the market; and (3) the dealer would attempt to acquire the bonds advertised if contacted by a potential customer.

Your letter also expresses concern that this type of advertising might be seriously misleading to customers since the advertisement must be prepared and the printer's proof copy approved five days in advance of the date of publication. You note that "significant changes in the market can occur over a five, or even three-day period" and that, if such market changes had occurred between submission and publication of the advertisement, the customer could be seriously misled. The Board is aware that delays occur between the time an advertisement is composed and approved for publication by a municipal securities dealer and the time it is actually published. The Board believes that inclusion in the advertisement of a statement indicating that the securities are advertised subject to change in price provides adequate notice to a potential customer that the prices and yields quoted in the advertisement may not represent market yields and prices at the time the customer contacts the dealer. *MSRB interpretation of July 1, 1982*.

Contents of advertisement: put options. Your letter dated June 15, 1981, has been referred to me for response. In your letter you mention our previous conversation regarding the appropriate definition of "put bonds", which definition your firm would like to use in advertisements offering such securities for sale. You request confirmation of the Board's views concerning the aspects of the "put option" feature on these securities that would be appropriate to cover in such a definition.

The type of "put option" issue with which the Board is familiar, and which we discussed, has a provision in the indenture which permits the holder of the securities to tender or "put" the securities back to the issuer on specified dates at par. This feature typically commences six (or more) years after the date of issuance, is exercisable only once annually (on an interest payment date), and is exercisable only upon the provision of irrevocable prior notice to the issuer (typically three or more months before the exercise date).

If I remember our conversation correctly, you indicated that the firm wished to describe a security of this type in an advertisement as having a "put option" feature, available once annually, permitting redemption of the securities at par. I suggested that, while the items of information you detailed were appropriate, it might also be advisable to mention in the advertisement the "prior notice" requirement under the option exercise procedure. It would also be helpful to make clear the irrevocable nature of such notice.

If the content of your definition of the "put option" feature goes beyond the items we discussed (for example, by indicating that the "put option" is secured by a bank letter of credit,) additional disclosures might also be appropriate. *MSRB interpretation of July 13, 1981*.

Advertising of securities subject to alternative minimum tax. This is in response to your letter concerning the application of rule G-21, on advertising, to advertisements for municipal securities subject to the alternative minimum tax (AMT). You state that advertisements for municipal securities usually note that the securities are "free from federal and state taxes." You ask whether an advertisement for municipal securities subject to AMT should note the applicability of AMT if such advertisements describe the securities as "tax exempt." The Board has considered the issue and authorized this reply.

Rule G-21(c) prohibits a broker, dealer or municipal securities dealer from publishing any advertisement concerning municipal securities which the broker, dealer or municipal securities dealer knows or has reason to know is materially false or misleading. The Board has stated that the use of the term "tax exempt" in advertisements for municipal securities connotes that the securities are exempt from all federal, state and local income taxes. If this is not true of the security being advertised, the Board has required that the use of the term "tax exempt" in an advertisement must be explained, *e.g.*, by footnote.[1] In regard to municipal securities subject to AMT, the Board has determined that advertisements for such securities that describe the securities as being exempt from federal income tax also must describe the securities as subject to AMT. *MSRB Interpretation of February 23, 1988.*

[1] Frequently asked questions concerning advertising, *MSRB Reports*, Vol. 3, No. 2 (April 1983), at 22.

Advertisements showing current yield. This is in response to your letter concerning the application of rule G-21, on advertising, to advertisements that include information on current yield of municipal securities.[1] You have asked for the Board's views whether including current yield information in advertisements for municipal securities, alone or with other yield information, would be materially misleading. You also ask if a dealer may advertise current yield if other yield information is included but is in smaller print. The Board has considered this issue and authorized this reply.

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Rule G-21 prohibits a dealer from publishing an advertisement concerning a municipal security that the dealer knows or has reason to know is materially false or misleading. The Board has stated that an advertisement showing a percentage rate of return must specify whether it is the coupon rate or the yield. The Board noted that, if a yield is presented, the advertisement must indicate the basis on which the yield is calculated.[2]

The Board frequently has stated that the yield to call or yield to maturity is the most important factor in determining the fairness and reasonableness of the price of any given transaction in municipal securities. Such yields typically are used as a basis for dealers and customers to evaluate an investment in municipal securities. The disclosure of yield to call or yield to maturity is the longstanding practice of the municipal securities industry and this practice is reflected in rule G-15(a) which requires dealers to disclose yield to call or yield to maturity on customer confirmations.[3] A customer who purchases a municipal security relying only on the current yield information disclosed in an advertisement would be confused upon receipt of the confirmation when the yield to call or yield to maturity of the security is different. Moreover, a customer would not be able to compare municipal securities advertised at a current yield with those advertised at a yield to call or yield to maturity.[4] The Board has determined that the use of current yield information in municipal securities advertisements without other yield information would be materially misleading under rule G-21. Thus, dealers may not show only current yield in municipal securities advertisements.

The Board also has determined that, while showing only current yield information in advertisements is materially misleading, if advertisements also include, at a minimum, the lowest of yield to call or yield to maturity, current yield may be used if all the information is clearly presented as discussed below. The Board notes that including yield to call or yield to maturity in municipal securities advertisements would give customers a more realistic view of the yield they can expect to receive on the investment and would enable them to compare the security advertised with other municipal securities. In addition, the yield to call or yield to maturity information would be consistent with the yield information disclosed on customer confirmations. If the yield to call is used, the call date and price also should be noted.

The Board is concerned that, even if dealers comply with this interpretation of rule G-21 and include current yield and other yield information in municipal securities advertisements, such advertisements still could be misleading due to the size of type used and the placement of the information. For example, it would not be appropriate for the type size of the current yield to be larger than other yield information. Thus, whether a particular advertisement is materially misleading requires the appropriate regulatory body, for example, an NASD District Business Conduct Committee, to consider a number of objective and subjective factors. The Board urges the regulatory authorities to continue to review advertisements on a case-by-case basis to make a determination whether any such advertisements, in fact, are misleading. *MSRB interpretation of April 22, 1988.*

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[1] Current yield is a calculation of current income on a bond. It is the ratio of the annual dollar amount of interest paid on a security to the purchase price of the security, stated as a percentage. If the securities are sold at par, the current yield equals the coupon rate on the securities. Current yield, however, does not take into account the time value of money. Thus, generally, if a bond is selling at a discount, the current yield would be less than the yield to maturity and, if the bond is selling at a premium, the current yield would be greater than the yield to maturity.

[2] Frequently Asked Questions Concerning Advertising, *MSRB Reports*, Vol. 3, No. 2 (Apr. 1983), at 21-23.

[3] Rule G-15(a)(i)(1) [currently codified at rule G-15(a)(i)(A)(5)] requires that the yield or dollar price at which the transaction was effected be disclosed on customer confirmations, with the resulting dollar price (if the transaction is done on a yield basis) or yield (if the transaction is done on a dollar basis) calculated to the lowest of dollar price or yield to call, to par option or to maturity. In cases in which the resulting dollar price or yield shown on the confirmation is calculated to call or par option, this must be stated and the call or option date and price used in the calculation must be shown.

[4] The Board also notes that some dealers have used current yield in municipal securities advertisements in an attempt to compete with municipal securities mutual funds, which often use a "current yield" in their advertisements. However, a mutual fund "yield" is not directly comparable to a municipal securities yield because a mutual fund "yield" represents historical information, while the yield on a municipal security represents a future rate of return.

Disclosure obligations. This is in response to your letters dated March 18, 1998 and March 31, 1998 in which you present an example where a dealer advertises a specific municipal security which it knows, or has reason to know, is subject to a material adverse circumstance such as a technical default. You ask whether a dealer is obligated to include disclosure information indicating that a bond is subject to additional risk in order to avoid publishing a false or misleading advertisement as prohibited by rule G-21(c). The Board reviewed your letters and has authorized this response.

Section (c) of rule G-21 provides, among other things, that no dealer shall publish any advertisement[1] concerning municipal securities which such dealer knows or has reason to know is materially false or misleading. The Board has previously interpreted the rule as not requiring that any specific statements or information be included in an advertisement but that any statement or information that is included must not be materially false or misleading. Thus, if a dealer makes a statement in an advertisement that explicitly or implicitly refers to the soundness or safety of an investment in the municipal securities described in the advertisement, such dealer must include any information necessary to ensure that the advertisement is not materially false or misleading with respect to the soundness or safety of such investment. The rule establishes a general ethical standard that provides the enforcement agencies with the flexibility that is needed to evaluate advertisements in light of what information is printed and how the information physically is presented. Thus, the enforcement

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agencies should continue to evaluate advertisements on a case-by-case basis to make a determination whether any such advertisements, in fact, are misleading.

You also ask whether the relative specificity of any such disclosure obligation that may exist depends on the level of detail provided about the municipal security. As stated above, rule G-21 does not require that any specific statements or information be included in an advertisement but that any statement or information that is included must not be materially false or misleading. Thus, the nature and extent of any disclosures or other explanatory statements that must be included in an advertisement is dependent upon the substance and form of the information presented in the advertisement.

The Board wishes to emphasize that the enforcement agencies should remain cognizant of certain other rules of the Board that may be relevant in evaluating whether a dealer's advertisement and such dealer's interactions with customers or potential customers that arise as a result of such advertisement are in conformity with Board rules. Thus, depending upon the facts and circumstances, an advertisement for a particular municipal security that on its face conforms with the requirements of rule G-21 may nonetheless be violative of rule G-17, the Board's fair dealing rule,[2] if, for example, the advertisement is designed as a "bait-and-switch" mechanism that attracts potential customers interested in an advertised security that the dealer is not in a legitimate position to sell (because of its unavailability, unsuitability or otherwise) for the primary purpose of creating a captive audience for the offering of other securities. In addition, a dealer that in fact sells the municipal securities that are described in its advertisement must fulfill its obligations under rule G-19, on suitability, and rule G-30, on pricing. *MSRB interpretation of May 21, 1998*.

[1] "Advertisement" is defined in rule G-21 as any material (other than listings of offerings) published or designed for use in the public, including electronic, media, or any promotional literature designed for dissemination to the public, including any notice, circular, report, market letter, form letter, telemarketing script or reprint or excerpt of the foregoing. The term does not apply to preliminary official statements or official statements, but does apply to abstracts or summaries of official statements, offering circulars and other such similar documents prepared by dealers.

[2] Rule G-17 requires each dealer, in the conduct of its municipal securities business, to deal fairly with all persons and prohibits the dealer from engaging in any deceptive, dishonest or unfair practice.

Advertisements on behalf of issuer. You ask whether a certain advertisement is subject to approval by a principal pursuant to rule G-21, on advertising. You state that an issuer asked the bank to act as its agent in producing the advertisement. Rule G-21 defines an advertisement as any material (other than listings of offerings) published or designed for use in the public media, or any promotional literature designed for dissemination to the public, including any notice, circular, report, market letter, form letter or reprint or excerpt of the foregoing. The term does not apply to preliminary official statements or official statements, but does apply to abstracts or summaries of official statements, offering circulars and other such similar documents prepared by dealers. Each advertisement subject to the requirements of rule G-21 must be approved in writing by a municipal securities principal or general securities principal prior to first use. The fact that a bank dealer is acting as an agent of an issuer in the production of an advertisement meeting the definition contained in rule G-21 does not relieve a bank from complying with the requirements of the rule. *MSRB interpretation of June 20, 1994*.

529 college savings plan advertisements. Thank you for your letter of April 21, 2006 in which you request interpretive guidance on the application of Rule G-21, on advertising, with respect to advertisements of 529 college savings plans. Rule G-21 was amended in 2005 by adding new section (e) relating to advertisements by brokers, dealers and municipal securities dealers ("dealers") of interests in 529 college savings plans and other municipal fund securities (collectively referred to as "municipal fund securities"). These new provisions were modeled after the provisions of Securities Act Rules 482 and 135a relating to mutual fund advertisements, with certain modifications.

The Board expects to undertake a detailed review of issues relating to the implementation of section (e) of its advertising rule in the coming months and your views will be instrumental in that review. We appreciate your interest in the operation of the rule and the commitment of your organization and your individual members to assure that investors receive appropriate disclosures. As you are aware, MSRB rules apply solely to dealers, not to issuers or other parties. The MSRB has previously stated that Rule G-21 does not govern advertisements published by issuers but that an advertisement produced by a dealer as agent for an issuer must comply with Rule G-21. Similarly, a dealer cannot avoid application of Rule G-21 merely by hiring a third party to produce and publish advertisements on its behalf.[1] Pending our detailed review of section (e) of Rule G-21, I would like to address certain basic principles under the current rule language and existing interpretive guidance that may prove helpful in the context of some of the issues you raise in your letter.[2]

Section (a) of the rule provides a broad definition of "advertisement."[3] Sections (b) through (e) of the rule establish requirements with respect to specific types of advertisements. Section (b) establishes standards for professional advertisements, which are advertisements concerning the dealer's facilities, services or skills with respect to municipal securities. Section (c) establishes general standards for product advertisements, with additional specific standards relating to advertisements for new issue debt securities set forth in Section (d) and specific standards relating to advertisements for municipal fund securities set forth in Section (e). In addition, all advertisements are subject to the MSRB's basic fair dealing rule, Rule G-17,[4] and are subject to approval by a principal pursuant to Section (f) of Rule G-21.

Where an advertisement does not identify specific securities, specific issuers of securities or specific features of securities, but merely refers to one or more broad categories of securities with respect to which the dealer provides services, the MSRB

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would generally view such advertisement as a professional advertisement under Section (b) rather than as a product advertisement. For example, if an advertisement simply states that the dealer provides investment services with respect to 529 college savings plans — without identifying any specific 529 college savings plan, specific municipal fund securities issued through a 529 college savings plan, or specific features of any such municipal fund securities — the advertisement would be subject to Section (b) of Rule G-21, rather than to Sections (c) and (e).

On the other hand, advertisements that identify specific securities, specific issuers of securities or specific features of securities generally are viewed as product advertisements under Rule G-21 and therefore would be subject to Section (c), as well as Section (d) or (e), if applicable. However, in some circumstances, an advertisement that identifies an issuer of securities without identifying its securities or specific features of such securities effectively may not constitute an advertisement of such issuer's securities and therefore would not be treated as a product advertisement under the rule, particularly if the dealer or any of its affiliates is not identified. For example, if an advertisement identifies the state or other governmental entity that operates a 529 college savings plan without identifying its municipal fund securities, the specific features of such securities or the dealer and its affiliates that may participate in the marketing of its municipal fund securities, the MSRB generally would not view such advertisement as a product advertisement subject to Sections (c) and (e) of Rule G-21.[5] *MSRB Interpretation of May 12, 2006*.

[1] The MSRB expresses no opinion at this time as to the applicability of MSRB rules to advertisements relating to municipal fund securities produced and published by issuers with funds provided directly or indirectly by a dealer.

[2] Other issues you raise in your letter will be considered during the upcoming review of Rule G-21.

[3] An advertisement is defined as any material (other than listings of offerings) published or designed for use in the public, including electronic, media, or any promotional literature designed for dissemination to the public, including any notice, circular, report, market letter, form letter, telemarketing script or reprint or excerpt of the foregoing. The term does not apply to preliminary official statements or official statements (including program disclosure documents), but does apply to abstracts or summaries of official statements, offering circulars and other such similar documents prepared by dealers. The MSRB expresses no opinion at this time as to whether the specific communications or promotional materials described in your letter would constitute advertisements under this definition.

[4] Rule G-17 requires each dealer, in the conduct of its municipal securities activities, to deal fairly with all persons and prohibits the dealer from engaging in any deceptive, dishonest or unfair practice.

[5] The advertisement may, in addition to or instead of identifying the state or other governmental entity that operates the 529 college savings plan, include the state's marketing name for such plan so long as such name does not identify the dealer or any dealer affiliates that may participate in the marketing of its municipal fund securities. Further, any contact information (such as a telephone number or Internet address) included in the advertisement should be for the state or other governmental entity and must not be for the dealer or its affiliates.

See also:

Rule G-30 Interpretive Letter — Differential re-offering prices, *MSRB interpretation of December 11, 2001*.

Rule G-21 Amendment History (since 2003)

Release No. 34-85223 (February 28, 2019), 84 FR 8141 (March 6, 2019); MSRB Notice 2019-07 (February 26, 2019)

Release No. 34-85222 (February 28, 2019), 84 FR 8132 (February 28, 2019); MSRB Notice 2019-07 (February 26, 2019)

Release No. 34-84999 (January 29, 2019), 84 FR 1525 (February 4, 2019); MSRB Notice 2019-03 (January 28, 2019)

Release No. 34-83177 (May 7, 2018), 83 FR 21794 (May 10, 2018); MSRB Notice 2018-08 (May 7, 2018)

Release No. 34-81432 (August 18, 2017), 82 FR 40199 (August 24, 2017); MSRB Notice 2017-16 (August 21, 2017)

Release No. 34-55830 (May 30, 2007), 72 FR 31122 (June 5, 2007); MSRB Notice 2007-18 (June 5, 2007)

Release No. 34-52289 (August 18, 2005), 70 FR 49699 (August 24, 2005); MSRB Notice 2005-45 (August 23, 2005)

Release No. 34-51736 (May 24, 2005), 70 FR 31551 (June 1, 2005); MSRB Notice 2005-31 (May 27, 2005)

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Rule G-22
Control Relationships

(a) *Control Relationship.* For purposes of this rule, a control relationship with respect to a municipal security shall be deemed to exist if a broker, dealer, or municipal securities dealer (or a bank or other person of which the broker, dealer, or municipal securities dealer is a department or division) controls, is controlled by, or is under common control with the issuer of the security or a person other than the issuer who is obligated, directly or indirectly, with respect to debt service on the security.

(b) *Discretionary Accounts*. No broker, dealer, or municipal securities dealer shall effect a transaction in a municipal security with or for the discretionary account of a customer if such broker, dealer, or municipal securities dealer has a control relationship with respect to such security unless such transaction has been specifically authorized by such customer.

(c) *Disclosure*. No broker, dealer, or municipal securities dealer shall effect a transaction in a municipal security with or for a customer if such broker, dealer, or municipal securities dealer has a control relationship with respect to the security unless, before entering into a contract with or for the customer for the purchase, sale, or exchange of such security, the broker, dealer, or municipal securities dealer discloses to the customer the nature of the control relationship, and if such disclosure is not made in writing, such disclosure must be supplemented by the sending of written disclosure concerning the control relationship at or before the completion of the transaction.

Rule G-22 Interpretations

See:

Rule G-32 Interpretation — Notice Regarding Electronic Delivery and Receipt of Information by Brokers, Dealers and Municipal Securities Dealers, November 20, 1998.

Interpretive Letters

Letters of credit. This is in response to your April 9, 1981, letter asking whether Board rule G-22, regarding control relationships, and G-23, regarding financial advisory agreements, would apply if a bank's issuance of a letter of credit were contingent upon its being named underwriter or manager for the issue, or if a bank issuing a letter of credit retained authority to require an issuer, in effect, to call the securities.

Rule G-22 provides that

> a control relationship with respect to a municipal security shall be deemed to exist if a broker, dealer, or municipal securities dealer (or a bank or other person of which the broker, dealer, or municipal securities dealer is a department or division) controls, is controlled by, or is under common control with the issuer of the security or a person other than the issuer who is obligated, directly or indirectly, with respect to debt service on the security.

The existence of a control relationship is a question of fact to be determined from the entire situation. Most recently, the Securities and Exchange Commission suggested that, for purposes of the Regulatory Flexibility Act, a registered broker-dealer would be deemed to be controlled by a person or entity who, among other things, has the ability to direct or cause the direction of management or the policies of the broker-dealer. Based upon the above, it is questionable whether a bank that conditions the issuance of a letter of credit upon being named an underwriter or upon a tie-in deposit arrangement should be deemed to control the issuer. Similarly, it does not appear that a bank that retains discretion under a letter of credit to cause the trustee to call the whole issue has a control relationship with the issuer.

You also ask whether under Board rule G-23 a financial advisory relationship is created if a bank conditions the issuance of a letter of credit upon being named an underwriter or upon obtaining a tie-in deposit arrangement. Under rule G-23, a financial advisory relationship is deemed to exist when a municipal securities professional provides, or enters into an agreement to provide, financial advisory services to, or on behalf of, an issuer with respect to a new issue of securities regarding such matters as the structure, timing or terms of the issue, in return for compensation or for the expectation of compensation. It does not appear that rule G-23 would apply in your example since the bank is not providing financial advisory or consulting services with respect to the structure, timing or other substantive terms of the issue. *MSRB interpretation of July 27, 1981.*

Associated person on issuer governing body. This will respond to your letter to the Municipal Securities Rulemaking Board concerning rule G-22 on disclosure of control relationships. You ask whether the rule requires a dealer to disclose to customers that an associated person of the dealer is a member of a fiveperson town council that issued the securities.

Rule G-22(c) states that a dealer may not effect a customer transaction in a municipal security with respect to which the dealer has a control relationship, unless the dealer discloses to the customer the nature of the control relationship prior to executing the transaction. Section (a) of rule G-22 defines a control relationship to exist with respect to a security if the dealer controls, is controlled by, or is under common control with the issuer of the security. This includes any control relationship with an associated person of the dealer.[1] Whether a control relationship exists in a particular case is a factual question. The Board, however, previously has stated that:

A control relationship with respect to a municipal security does not necessarily exist if an associated person of a securities professional is a member of the governing body or acts as an officer of the issuer of the security. However, if the associated person in fact controls the issuer, rule G-22 does apply.

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For example, rule G-22 applies if the associated person is the chairman of an issuing authority and, in that capacity, actually makes the decision on behalf of the issuing authority to issue securities. The rule does not apply if the associated person as chairman does not make that decision and does not have the authority alone to make the decision, or if the decision is made by a governing body of which he is only one of several members.[2]

MSRB interpretation of June 25, 1987.

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[1] Rule D-11 states that references to "brokers", "dealers", "municipal securities dealers", and "municipal securities brokers" also mean associated persons, unless the context indicates otherwise.

[2] Notice of Approval of Fair Practice Rules, October 24, 1978, at 6.

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Rule G-23
Activities of Financial Advisors

(a) *Purpose.* The purpose and intent of this rule is to establish ethical standards and disclosure requirements for brokers, dealers, and municipal securities dealers who act as financial advisors to issuers with respect to the issuance of municipal securities.

(b) *Financial Advisory Relationship.* For purposes of this rule, a financial advisory relationship shall be deemed to exist when a broker, dealer, or municipal securities dealer renders or enters into an agreement to render financial advisory or consultant services to or on behalf of an issuer with respect to the issuance of municipal securities, including advice with respect to the structure, timing, terms and other similar matters concerning such issue. For purposes of this rule, a financial advisory relationship shall not be deemed to exist when, in the course of acting as an underwriter and not as a financial advisor, a broker, dealer or municipal securities dealer renders advice to an issuer, including advice with respect to the structure, timing, terms and other similar matters concerning the issuance of municipal securities.

(c) *Agreement with Respect to Financial Advisory Relationship.* Each financial advisory relationship shall be evidenced by a writing entered into prior to, upon or promptly after the inception of the financial advisory relationship (or promptly after the creation or selection of the issuer if the issuer does not exist or has not been determined at the time the relationship commences). Such writing shall set forth the basis of compensation, if any, for the financial advisory services to be rendered, including provisions relating to the deposit of funds with or the utilization of fiduciary or agency services offered by such broker, dealer, or municipal securities dealer or by a person controlling, controlled by, or under common control with such broker, dealer, or municipal securities dealer in connection with the rendering of such financial advisory services and shall be delivered to the issuer.

(d) *Prohibition on Engaging in Underwriting Activities*.

(i) Subject to provisions of subsections (d)(ii) and (iii), no broker, dealer, or municipal securities dealer that has a financial advisory relationship with respect to the issuance of municipal securities shall acquire as principal either alone or as a participant in a syndicate or other similar account formed for the purpose of purchasing, directly or indirectly, from the issuer all or any portion of such issue, or act as agent for the issuer in arranging the placement of such issue.

(ii) Notwithstanding subsection (d)(i), a broker, dealer, or municipal securities dealer that has a financial advisory relationship with respect to the issuance of municipal securities shall not be prohibited from acting as agent for the issuer in arranging the placement of the entire issue with any state, local or federal governmental entity as part of a plan of financing by such entity for or on behalf of the issuer, but only if such broker, dealer or municipal securities dealer does not receive compensation from any person other than with respect to financial advisory services related to such placement and does not receive compensation from any person for underwriting any contemporaneous financing transaction directly or indirectly related to such issue undertaken by the state, local, or federal governmental entity with which such issue was placed.

(iii) The limitations set forth in this section (d) shall also apply to any broker, dealer, or municipal securities dealer controlling, controlled by, or under common control with the broker, dealer, or municipal securities dealer having a financial advisory relationship with respect to the issuance of municipal securities. The use of the term "indirectly" in this section (d) shall not preclude a broker, dealer, or municipal securities dealer that has a financial advisory relationship with respect to the issuance from purchasing such securities from an underwriter, either for its own trading account or for the account of customers, except to the extent that such purchase is made to contravene the purpose and intent of this rule.

(e) *Remarketing Activities*. No broker, dealer, or municipal securities dealer that has a financial advisory relationship with an issuer with respect to the issuance of municipal securities shall act as the remarketing agent for such issue; provided, however, that this section shall not prohibit such broker, dealer, or municipal securities dealer from thereafter serving as successor remarketing agent for such issue if the financial advisory relationship in connection with such issue has been terminated for a period of at least one (1) year prior to such broker, dealer, or municipal securities dealer being selected to serve as successor remarketing agent.

(f) *Applicability of State or Local Law*. Nothing contained in this rule shall be deemed to supersede any more restrictive provision of state or local law applicable to the activities of financial advisors.

Rule G-23 Interpretations

Notice on Application of Board Rules to Financial Advisory Services Rendered to Corporate Obligors on Industrial Development Bonds

May 23, 1983

In a recent letter to the Office of the Comptroller of the Currency, the staff of the Securities and Exchange Commission has taken the position that private placements of industrial development bonds ("IDBs") constitute transactions in municipal securities as defined in the Securities Exchange Act of 1934, as amended. The Municipal Securities Rulemaking Board has received a number of inquiries concerning this letter. The Board is publishing this notice for the purposes of: (1) reviewing the application of its rules to private placements of municipal securities and (2) expressing its views concerning whether certain Board rules apply to financial advisory services rendered by municipal securities dealers and brokers to corporate obligors on IDBs.

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A. Private Placements of IDBs

The Board's rules apply, of course, to all transactions in municipal securities, including securities which are IDBs. The SEC letter dealt in particular with the activities of commercial banks. That letter pointed out that if a commercial bank has a registered municipal securities dealer department, under Board rule G-1, which defines the term "separately identifiable department or division of a bank," any private placement activities of the bank in securities which are IDBs must be conducted as a part of the registered dealer department. The Board urges all bank dealers which have registered as a separately identifiable department or division to review their organizations and assure that all departments or units which engage in the private placement of IDBs are designated on the bank's Form MSD registration and other applicable bank records as part of its separately identifiable department or division. The Board also notes that such activities must be under the supervision of a person designated by the bank's board of directors as responsible for these activities. In addition, under Board rule G-3, concerning professional qualifications, persons who are engaged in privately placing municipal securities must be qualified as municipal securities representatives and be supervised with respect to that activity by a qualified municipal securities principal.

B. Financial Advisory Services Rendered to Corporate Obligors on IDBs

Board rules G-1 and G-3 provide that rendering "financial advisory or consultant services for *issuers*" is an activity to which those rules are applicable (emphasis added). Similarly, Board rule G-23, on the activities of financial advisors, applies to brokers, dealers, and municipal securities dealers who agree to render "financial advisory or consultant services to or on behalf of an *issuer*" (emphasis added). Clearly these rules are applicable to financial advisory services rendered to state or local governments and their agencies, as well as to municipal corporations. In the Board's view, however, rules G-1, G-3, and G-23 do not apply to financial advisory services which are provided to corporate obligors in connection with proposed IDB financings.

The Board wishes to emphasize that the scope of its definition of financial advisory services is limited to "advice with respect to the structure, timing, terms, and other similar matters" concerning a proposed issue.[1] If persons providing such advice to the corporate obligor on an IDB issue also participate in negotiations with prospective purchasers or are otherwise engaged in effecting placement of the issue, then, as indicated above, rules G-1 and G-3 would apply to their activities.

[Excerpts of the Commission letter follow:]

This is in response to your letter of December 1, 1981, requesting our views concerning certain activities by commercial banks in connection with industrial development bonds ("IDBs").[2] Specifically, you asked (1) whether the private placement activities of banks in IDBs involve transactions in municipal securities, (2) whether involvement in such activities alone would require such banks to register with the Commission under Section 15B of the Securities Exchange Act of 1934 (the "Exchange Act") as municipal securities dealers, (3) whether a bank that had registered a separately identifiable department or division with the Commission as a municipal securities dealer would be required to conduct such activities through such separately identifiable department or division, and (4) if such bank activities are required to be conducted in the separately identifiable department or division, whether the advisory services provided by those banks to the corporate obligor on an IDB should be regarded as advisory services provided to an issuer of municipal securities in connection with the issuance of municipal securities. Pursuant to your letter and subsequent telephone conversations, we understand the following facts to be typical of the activities in question.

A commercial bank offers private placement and financial advisory services to corporate entities on a regular and continuous basis. From time to time the bank recommends to the corporate entity that IDBs be used to raise capital. The bank advises the corporate entity regarding the terms and timing of the proposed IDB issuance, prepares the Direct Placement Memorandum describing the terms of the IDB, and contacts potential purchasers of the IDB. Such purchasers then make independent reviews of the corporate entity's financial status. The bank then obtains comments from the potential buyers and relays such comments to the corporate entity. The bank might also assist the corporate entity in subsequent negotiations with the purchasers. An industrial development authority nominally issues the IDB on behalf of the corporate entity which becomes the economic obligor on the issue.

The bank engages in these activities in order to assist the corporate obligor in the sale of the IDBs. In return for its services, the bank receives from the corporate entity either a fixed fee or a percentage of the proceeds of the sale. The bank does not purchase any of the IDBs. The bank could, however, supply "bridge loans" to the corporate entity pending receipt of the proceeds of the IDB sale. In addition, the bank might provide investors with a letter of credit committing the bank to pay any interest or principal not paid by the corporate issuer. The bank might also act as trustee or paying agent for the nominal issuer of the IDB, for which the bank would receive a set fee.

IDBS As Municipal Securities

Section 3(a)(10) of the Exchange Act defines a "security" as, among other things, "any note… bond, debenture… investment contract, …or in general, any instrument commonly known as a 'security'… " Section 3(a)(29) of the Exchange Act defines "municipal securities" to include any security which is an industrial development bond as defined in Section 103(b)(2) of the Code the interest on which is tax-exempt under Sections 103(b)(4) or 103(b)(6) of the Code. In our opinion, the private placement activities you have described involve transactions in municipal securities as defined in the Exchange Act.[3]

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Registration As Municipal Securities Dealer

Section 15B(a) of the Exchange Act makes it unlawful for any municipal securities dealer to use the mails or any instrumentality of interstate commerce to "effect any transaction in, or to induce or attempt to induce the purchase or sale of, any municipal security unless such municipal securities dealer is registered" with the Commission. Section 3(a)(30) of the Exchange Act defines "municipal securities dealer" to include a bank or a separately identifiable department or division of a bank if that bank is engaged in the business of buying and selling municipal securities for its own account other than in a fiduciary capacity, through a broker or otherwise. Banks that engage solely in private placement activities in IDBs as described by you would not be required to register as municipal securities dealers since they do not appear to be engaged in the business of buying and selling municipal securities for their own accounts, but rather appear to be acting as brokers. Section 3(a)(4) of the Exchange Act defines the term broker as "any person engaged in the business of effecting transactions in securities for the account of others, but does not include a bank." Since they are excluded from the definition of broker, banks that act solely as brokers need not register under the Exchange Act.[4]

Inclusion In Separately Identifiable Department Or Division

Section 15B(b)(2)(H) of the Exchange Act authorizes the Municipal Securities Rulemaking Board (the "MSRB") to make rules defining the term "separately identifiable department or division" ("SID") of a bank as used in Section 3(a)(30) of the Exchange Act. MSRB rule G-1 defines the SID as "that unit of the bank which conducts all the activities of the bank relating to the conduct of business as a municipal securities dealer…" The rule defines municipal securities dealer activities to include "sales of municipal securities" and "financial advisory and consultant services for issuers in connection with the issuance of municipal securities." Therefore, those banks that have registered an SID with the Commission also must conduct the private placement activities within the SID in accordance with MSRB rules…

Based upon the facts and representations set forth in your letter, it would appear that the private placement activities of banks involving IDBs, as described in your example, constitute transactions in municipal securities that, if done alone, would not require a bank to register with the Commission as a municipal securities dealer. However, such activities, when conducted by a bank municipal securities dealer that had registered a separately identifiable department or division, would be treated as municipal securities dealer activities and, therefore, would be required to be conducted in the bank's dealer department…

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[1] Rule G-23(b).

[2] You have represented that the IDBs involved would be primarily those defined in Section 103(b)(2) of the Internal Revenue Code of 1954 (the "Code"), the interest on which is tax-exempt under Sections 103(b)(4) and 103(b)(6) of the Code.

[3] This determination is based on an analysis of the specific facts as described by you. Different facts and circumstances could result in a transaction involving municipal debt instruments being treated as loan participations not subject to the federal securities laws. Such determinations can only be made on a case by case basis after a thorough examination of the context of the transaction.

[4] See letter dated February 17, 1977, from Anne E. Chafer, Attorney, Securities and Exchange Commission, to Bruce F. Golden and letter dated January 11, 1982, from Thomas G. Lovett, Attorney, Securities and Exchange Commission, to Harriet E. Munrett regarding Citytrust of Bridgeport, Connecticut.

Guidance on the Prohibition on Underwriting Issues of Municipal Securities for Which a Financial Advisory Relationship Exists Under Rule G-23

November 27, 2011

MSRB Rule G-23 establishes certain basic requirements applicable to a broker, dealer, or municipal securities dealer ("dealer") acting as a financial advisor with respect to the issuance of municipal securities. MSRB Rule G-23(d) provides that a dealer that has a financial advisory relationship with respect to the issuance of municipal securities is precluded from acquiring all or any portion of such issue, directly or indirectly, from the issuer as principal, either alone or as a participant in a syndicate or other similar account formed for that purpose. A dealer is also precluded from arranging the placement of an issue with respect to which it has a financial advisory relationship. This notice refers to both of these activities as "underwritings" and provides interpretive guidance on when a dealer may be precluded by Rule G-23(d) from underwriting an issue of municipal securities due to having served as financial advisor with respect to that issue. Rule G-23 is solely a conflicts rule. Accordingly, this notice does not address whether provision of the advice permitted by Rule G-23 would cause the dealer to be considered a "municipal advisor" under the Exchange Act and the rules promulgated thereunder.

Rule G-23(b) provides, among other things, that a financial advisory relationship shall be deemed to exist for purposes of Rule G-23 when a dealer renders or enters into an agreement to provide financial advisory or consultant services to or on behalf of an issuer with respect to the issuance of municipal securities, including advice with respect to the structure, timing, terms, and other similar matters concerning such issue or issues. Rule G-23(b) also provides, however, that a financial advisory relationship shall not be deemed to exist when, in the course of acting as an underwriter and not as a financial advisor, a dealer provides advice to an issuer, including advice with respect to the structure, timing, terms, and other similar matters concerning the issuance of municipal securities.

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Although Rule G-23(c) requires a financial advisory relationship to be evidenced by a writing, a financial advisory relationship will be deemed to exist whenever a dealer renders the types of advice provided for in Rule G-23(b), regardless of the existence of a written agreement. However, a dealer that clearly identifies itself in writing as an underwriter and not as a financial advisor from the earliest stages of its relationship with the issuer with respect to that issue (e.g., in a response to a request for proposals or in promotional materials provided to an issuer) will be considered to be "acting as an underwriter" under Rule G-23(b) with respect to that issue. The writing must make clear that the primary role of an underwriter is to purchase, or arrange for the placement of, securities in an arm's-length commercial transaction between the issuer and the underwriter and that the underwriter has financial and other interests that differ from those of the issuer. The dealer must not engage in a course of conduct that is inconsistent with an arm's-length relationship with the issuer in connection with such issue of municipal securities or the dealer will be deemed to be a financial advisor with respect to that issue and precluded from underwriting that issue by Rule G-23(d). Thus, a dealer providing advice to an issuer with respect to the issuance of municipal securities (including the structure, timing, and terms of the issue and other similar matters, when integrally related to the issue being underwritten) will not be viewed as a financial advisor for purposes of Rule G-23, if such advice is rendered in its capacity as underwriter for such issue. In addition to engaging in underwriting activities, it shall not be a violation of Rule G-23(d) for a dealer that states that it is acting as an underwriter with respect to the issuance of municipal securities to provide advice with respect to the investment of the proceeds of the issue, municipal derivatives integrally related to the issue, or other similar matters concerning the issue.

See also:

Rule D-12 Interpretation — Interpretation Relating to Sales of Municipal Fund Securities in the Primary Market, January 18, 2001.

Rule G-32 Interpretation — Notice Regarding Electronic Delivery and Receipt of Information by Brokers, Dealers and Municipal Securities Dealers, November 20, 1998.

Interpretive Letters

Financial advisory relationship: blanket agreement. I refer to your letter of December 4, 1980 and a subsequent conversation regarding the application of rule G-23(d) to the participation by your client, a municipal securities dealer, in the underwriting of securities to be issued by the County referred to in your letter (the "County").

Rule G-23(d) provides in pertinent part that no municipal securities dealer "that has a financial advisory relationship with respect to a new issue of municipal securities shall acquire as principal ... from the issuer all or any portion of such issue..." unless the dealer complies with certain specified provisions of the rule. You indicate that your client has a financial advisory agreement with the County which provides that your client will furnish financial advisory services from time to time at the County's request. You state, however, that your client was not requested to furnish financial advisory services with respect to the particular issue of securities which the County now proposes to sell and was selected by the County after responding to an advertisement for underwriters. You request our concurrence in your opinion that a financial advisory relationship with respect to the proposed new issue does not exist.

For purposes of the rule, a financial advisory relationship is deemed to exist when a "municipal securities dealer renders or *enters into an agreement to render* financial advisory or consultant services to or on behalf of an issuer with respect to a new issue or issues of municipal securities ..." (emphasis added). Therefore, where a dealer has entered into a blanket agreement to render financial advisory services, a financial advisory relationship with respect to a particular issue of securities may be presumed to exist despite the fact that the municipal securities dealer does not furnish any financial advice concerning such issue. Whether or not your client has a financial advisory relationship with respect to the proposed new issue referred to in your letter is a factual question which we are not in a position to resolve. Therefore, we are unable to concur in your opinion. *MSRB interpretation of January 5, 1981.*

Financial advisory relationship: identity of issuer. This is in response to your letter of February 27, 1981, asking whether a dealer bank which is retained by the Board of Water Governors of a water utility owned by City X to provide advice regarding the structure, timing, and terms of a new issue of mortgage revenue bonds to be issued by City X has entered into a financial advisory agreement for purposes of rule G-23. You note that the bonds would be sold at a competitive underwriting and payable from the revenues of the water utility.

Under rule G-23, a financial advisory relationship is deemed to exist when a broker, dealer, or municipal securities dealer renders or enters into an agreement to render financial advisory services *to or on behalf of an issuer* with respect to a new issue or issues of municipal securities. Based solely upon the facts contained in your letter, it appears that the Board of Water Commissioners is a political subdivision of City X. It further appears that the Board of Water Governors entered into the financial advisory agreement for the specific purpose of obtaining advice regarding the new issue of bonds on behalf of the City. Thus, the fact that City X, rather than the Board of Water Governors, actually will issue the bonds would not itself support a conclusion that the financial advisory agreement is not subject to the provisions of rule G-23. *MSRB interpretation of March 13, 1981.*

Financial advisory relationship: mortgage-related services. This is in response to your letter of March 26, 1982 requesting an opinion regarding whether Board rule G-23 concerning the activities of financial advisors applies to certain activities of [name deleted] (the "Company").

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Your letter states that the Company, a mortgage banker and wholly-owned subsidiary of [name deleted] (the "Bank"), identifies "proposed real estate development projects which it believes are economically feasible" and attempts to "arrange for the financing of such projects ..." You note that a common means of financing such projects involves the issuance and sale of tax-exempt obligations, with the proceeds of the sale being made available by the issuing entity to a mortgage approved by the Federal Housing Administration ("FHA"), which in turn provides financing secured by the FHA mortgage. You indicate that the services the Company performs in such instances include "... making the initial determination as to whether the contemplated project meets FHA criteria, negotiating with the developer regarding financing terms and conditions relating to the mortgage, contacting the issuer regarding its interest in issuing the bonds for the project, and, in certain cases where the issuer is not familiar or experienced in the area, assisting the issuer in understanding the rules and regulations of the FHA or the Development of Housing and Urban Development ..." You add that "the Company may also act as servicer of the construction loans which entails processing FHA insurance request forms, disbursing funds for completed work, etc." You state that "the Company does not provide financial advice to issuers regarding the structuring of the bond issues, or receive any fees, directly or indirectly, from issuers." You emphasize that any advice regarding the structuring of the actual bond issues is provided by the issuers' "staffs, financial advisors, bond counsel, or the underwriters of the issues." Your specific question concerns whether rule G-23 applies where the Company acts as mortgage banker and the Bank underwrites the bonds.

As you know, rule G-23(b) states that "... a financial advisory relationship shall be deemed to exist when a broker, dealer, or municipal securities dealer renders or enters into an agreement to render financial advisory or consultant services to or on behalf of an issuer with respect to a new issue or issues of municipal securities, including advice with respect to the structure, timing, terms and other similar matters concerning such issue or issues for a fee or other compensation ..." Based upon the representations contained in your letter, it would appear that the Company does not render financial advisory services to issuers with respect to new issues of municipal securities. Since the activities which you state the Company performs in the ordinary course of its mortgage banking business do not constitute financial advisory activities for the purposes of rule G-23, the rule would not apply to those financings where the Bank serves as underwriter and the Company performs its mortgage banking functions, as described. *MSRB interpretation of April 12, 1982*.

Financial advisory relationship: potential underwriter. This responds to your letter of July 20, 1983, requesting our view on the applicability of Board rule G-23 to the following situation:

Your firm, a registered municipal securities dealer, along with an architectural firm and a construction firm, plans to present to a municipality a proposal to design, build and finance a criminal justice facility. If the municipality shows interest, the team members will suggest that the municipality engage them to put together a specific, customized proposal for review. If the municipality accepts this proposal, the team will ask the municipality to execute a contract covering the additional services. This contract will provide for compensation to be paid to the firm in connection with the creation of a financing proposal. This proposal could encompass such issues as those set forth in Rule G-23(b). Further, it is the intent of the team members that a project may ultimately be brought to fruition by all or any one of the team members. Therefore, the firm may make the final financing proposal but fail to be retained by the municipality to actually finance the construction. In this event, the other two team members will proceed and the municipality will obtain another underwriter. However, it will be the firm's intent throughout the negotiation phase to ultimately be retained as the municipality's underwriter.

You express concern whether the above facts create a financial advisory relationship under rule G-23(b). Board rule G-23(b), concerning activities of financial advisors, provides that a financial advisory relationship shall be deemed to exist:

> "when a broker, dealer, or municipal securities dealer renders or enters into an agreement to render financial advisory or consultant services to or on behalf of an issuer with respect to a new issue or issues of municipal securities, …"

The rule provides, however, that a financial advisory relationship shall not be deemed to exist

> "when, *in the course of acting as an underwriter*, a municipal securities dealer renders advice to an issuer, including advice with respect to the structure, timing, terms and other similar matters concerning a new issue of municipal securities." [Emphasis added]

It does not appear that your firm would be rendering advice to the municipality "in the course of acting as an underwriter." In the beginning of the firm's relationship with the municipality, it is acting as a financial advisor, and being compensated as such. No underwriting agreement has been executed with the municipality. Therefore, based upon the representations in your letter, it appears that the firm's activities would be subject to the requirements of rule G-23. *MSRB interpretation of September 7, 1983*.

Financial advisory relationship: private placements. This is in response to your letter in which you seek clarification on certain matters related to rules G-23, on activities of financial advisors, and G-37, on political contributions and prohibitions on municipal securities business.

You ask when it is "necessary in the process of commencing preliminary work with a potential financial advisory client to enter into a formal written financial advisory contract." Rule G-23(c) states that "[e]ach financial advisory relationship

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shall be evidenced by a writing entered into prior to, upon or promptly after the inception of the financial advisory relationship (or promptly after the creation or selection of the issuer if the issuer does not exist or has not been determined at the time the relationship commences)." Rule G-23(b) states that "…a financial advisory relationship shall be deemed to exist when a broker, dealer or municipal securities dealer renders or enters into an agreement to render financial advisory or consultant services to or on behalf of an issuer with respect to a new issue or issues of municipal securities, including advice with respect to the structure, timing, terms and other similar matters concerning such issue or issues, for a fee or other compensation or in expectation of such compensation for the rendering of such services."

You ask whether you are to advise the Board by means of reporting on Form G-37/G-38 or by any other means when you commence work on subsequent financing transactions with an issuer with which your firm has an ongoing financial advisory contract. The Instructions for Completing and Filing Form G-37/G-38 provide a guideline to use in determining when to report financial advisory services on Form G-37/G-38.[1] Pursuant to these Instructions, dealers should indicate financial advisory services when an agreement is reached to provide the services. In addition, the Instructions note that dealers also should indicate financial advisory services during a reporting period when the settlement date for a new issue on which the dealer acted as financial advisor occurred during such period. There are no other requirements for reporting financial advisory services to the Board.

Finally, you ask whether rules G-23 or G-37 contain requirements concerning private placement activities. The term "municipal securities business" is defined in rule G-37 to include "the offer or sale of a primary offering of municipal securities on behalf of any issuer (*e.g.*, private placement)…" The Instructions for Completing and Filing Form G-37/G-38 provide that private placements should be indicated at least by the settlement date if within the reporting period.

With respect to rule G-23, section (d) of the rule states that no dealer that has a financial advisory relationship with respect to a new issue of municipal securities shall acquire as principal either alone or as a participant in a syndicate or other similar account formed for the purpose of purchasing, directly or indirectly, from the issuer all or any portion of such issue, or act as agent for the issuer in arranging the placement of such issue, unless various actions are taken.[2] In addition, rule G-23(g) states that each dealer subject to the provisions of sections (d), (e) or (f) of rule G-23 shall maintain a copy of the written disclosures, acknowledgments and consents required by these sections in a separate file and in accordance with the provisions of rule G-9, on preservation of records. Finally, rule G-23(h) states that, if a dealer acquires new issue municipal securities or participates in a syndicate or other account that acquires new issue municipal securities in accordance with section (d) of rule G-23, such dealer shall disclose the existence of the financial advisory relationship in writing to each customer who purchases such securities from such dealer, at or before the completion of the transaction with the customer. *MSRB interpretation of October 5, 1999.*

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[1] I have enclosed a copy of the Instructions for Completing and Filing Form G-37/G-38 as contained in the *MSRB Rule Book*. The Instructions are also contained on the Board's web site (www.msrb.org) under the link for rule G-37.

[2] These actions are: (i) if such issue is to be sold by the issuer on a negotiated basis, (A) the financial advisory relationship with respect to such issue has been terminated in writing and at or after such termination the issuer has expressly consented in writing to such acquisition or participation, as principal or agent, in the purchase of the securities on a negotiated basis; (B) the dealer has expressly disclosed in writing to the issuer at or before such termination that there may be a conflict of interest in changing from the capacity of financial advisor to purchaser of or placement agent for the securities with respect to which the financial advisory relationship exists and the issuer has expressly acknowledged in writing to the dealer receipt of such disclosure; and (C) the dealer has expressly disclosed in writing to the issuer at or before such termination the source and anticipated amount of all remuneration to the dealer with respect to such issue in addition to the compensation referred to in section (c) of rule G-23, and the issuer has expressly acknowledged in writing to the dealer receipt of such disclosure; or (ii) if such issue is to be sold by the issuer at competitive bid, the issuer has expressly consented in writing prior to the bid to such acquisition or participation.

Fairness opinions. This is in response to your letter concerning the retention of your firm by issuers to render a fairness opinion on the pricing associated with certain negotiated issues of general obligation municipal securities issued by [state deleted] governmental units. You ask whether the rendering of these fairness opinions on the pricing of municipal securities issues is a financial advisory activity which must be disclosed on Form G-37/G-38 as municipal securities business.

Rule G-23, on activities of financial advisors, states in paragraph (b) that a financial advisory relationship shall be deemed to exist when

> a broker, dealer, or municipal securities dealer renders or enters into an agreement to render financial advisory or consultant services to or on behalf of an issuer with respect to a new issue or issues of municipal securities, *including advice with respect to the* structure, timing, **terms** and other similar matters concerning such issue or issues, for a fee or other compensation or in expectation of such compensation for the rendering of such services. [Emphasis added]

Thus, the activity your firm performs on behalf of issuers of municipal securities pursuant to an agreement (*i.e.*, rendering advice with respect to the terms of a new issue) establishes that a financial advisory relationship exists between your firm and these issuers.

Rule G-37, on political contributions and prohibitions on municipal securities business, requires dealers to report municipal securities business to the Board on Form G-37/G-38. The definition of "municipal securities business" contained in rule G-37(g)(viii) includes

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the provision of financial advisory or consultant services to or on behalf of an issuer with respect to a primary offering of municipal securities in which the dealer was chosen to provide such services on other than a competitive bid basis.

Pursuant to the information contained in your letter, your firm should submit a Form G-37/G-38 during each quarter in which the firm reaches an agreement to provide the financial advisory services you described. If your firm has an on-going financial advisory arrangement with an issuer, your firm would need to list each new issue in which your firm acted as financial advisor during the quarter in which the new issue settled. I have enclosed for your information a copy of the *Rule G-37 and Rule G-38 Handbook* which includes instructions for completing and filing Form G-37/G-38. *MSRB interpretation of January 10, 1997*.

See also:

Rule G-22 Interpretive Letter — Letters of credit, *MSRB interpretation of July 27, 1981*.

Rule G-23 Amendment History (since 2003)

Release No. 34-64564 (May 27, 2011), 76 FR 32248 (June 3, 2011); MSRB Notice 2011-29 (May 31, 2011)

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Rule G-24

Use of Ownership Information Obtained in Fiduciary or Agency Capacity

No broker, dealer, or municipal securities dealer having access to confidential, non-public information concerning the ownership of municipal securities that was obtained by such broker, dealer, or municipal securities dealer (or by a bank or other person of which the broker, dealer, or municipal securities dealer is a department or division) in the course of acting in a fiduciary or agency capacity for an issuer of municipal securities or for another broker, dealer, or municipal securities dealer, including but not limited to acting as a paying agent, transfer agent, registrar, or indenture trustee for an issuer or as clearing agent, safekeeping agent, or correspondent of another broker, dealer, or municipal securities dealer, shall use such information for the purpose of soliciting purchases, sales, or exchanges of municipal securities or otherwise make use of such information for financial gain except with the consent of such issuer or such broker, dealer, or municipal securities dealer or the person on whose behalf the information was given.

Rule G-24 Interpretation

See:

Rule G-32 Interpretation — Notice Regarding Electronic Delivery and Receipt of Information by Brokers, Dealers and Municipal Securities Dealers, November 20, 1998.

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Rule G-25
Improper Use of Assets

(a) *Improper Use*. No broker, dealer, or municipal securities dealer shall make improper use of municipal securities or funds held on behalf of another person.

(b) *Guaranties.* No broker, dealer, or municipal securities dealer shall guarantee or offer to guarantee a customer against loss in

(i) an account carried or introduced by such broker, dealer, or municipal securities dealer in which municipal securities are held or for which municipal securities are purchased, sold or exchanged or

(ii) a transaction in municipal securities with or for a customer.

Put options and repurchase agreements shall not be deemed to be guaranties against loss if their terms are provided in writing to the customer with or on the confirmation of the transaction and recorded in accordance with rule G-8(a)(v).

(c) *Sharing Account.* No broker, dealer, or municipal securities dealer shall share, directly or indirectly, in the profits or losses of

(i) an account of a customer carried or introduced by such broker, dealer, or municipal securities dealer in which municipal securities are held or for which municipal securities are purchased or sold or

(ii) a transaction in municipal securities with or for a customer.

Nothing herein contained shall be construed to prohibit an associated person of a broker, dealer, or municipal securities dealer from participating in his or her private capacity in an investment partnership or joint account, provided that such participation is solely in direct proportion to the financial contribution made by such person to the partnership or account.

Rule G-25 Interpretation

See:

Rule G-17 Interpretation — Notice Concerning the Application of Board Rules to Put Option Bonds, September 30, 1985.

Rule G-32 Interpretation — Notice Regarding Electronic Delivery and Receipt of Information by Brokers, Dealers and Municipal Securities Dealers, November 20, 1998.

Interpretive Letters

Letters of credit. This is in response to your letter dated August 1, 1980, requesting the Board's views on the application of rule G-25 to bank standby letters of credit issued in connection with new issues of securities which the dealer department of the bank intends to underwrite. Specifically, you have asked our views on whether such transactions would violate rule G-25(b), which generally prohibits a municipal securities dealer from guaranteeing a customer against loss in municipal securities transactions.

For the reasons discussed below, rule G-25(b) would not prohibit a municipal securities bank dealer from issuing a letter of credit which is publicly disclosed and for the benefit of all holders of the security.

Rule G-25(b) is an anti-manipulation rule which is primarily designed to prevent a municipal securities dealer from artificially stimulating the market in a security, for example, by "parking" it with a customer who has assumed no market risk. It does not appear that the issuance of a fully disclosed letter of credit provided by a bank dealer for the benefit of all bondholders could be used to serve a market manipulative purpose, even though the letter would also serve to protect the bank's own customers. Generally, such letters of credit protect bondholders from particular risks of loss, such as the inability of the issuer to make payments of principal or interest. Bondholders are not protected from general market risks, however, and, like all *bona fide* purchasers of securities, they incur gains or losses as the market price of the bonds fluctuates. Moreover, unlike the situation contemplated by rule G-25 which addresses guarantees made by dealers to their customers, the bondholders for whose benefit a letter of credit is issued would not necessarily have a customer relationship with the bank dealer issuing the letter. *MSRB interpretation of March 6, 1981*.

Indemnity agreement. This is in response to your letter dated March 18, 1981, regarding your client's (the "Bank") proposal to sell participations in industrial development bonds to one or more unit investment trusts or closed-end investment company (the "trust"), which bonds would be insured against default by the American Municipal Bond Assurance Corporation (AMBAC). Specifically you ask whether an agreement by the Bank to indemnify AMBAC to the extent of 25 percent of any losses suffered in the event of default would violate Board rule G-25(b) which generally prohibits a municipal securities dealer from guaranteeing a customer against loss in municipal securities transactions.

As you note in your letter, the Board has taken the position that a municipal securities bank dealer issuing a letter of credit which is publicly disclosed and for the benefit of all holders of the security would not violate the provisions of rule G-25(b). You state that the Bank's agreement to indemnify AMBAC would be disclosed to and, at least indirectly would be for the benefit, of all investors.

Based upon the facts contained in your letter, it appears that the proposed agreement would not be prohibited by rule G-25(b). *MSRB interpretation of March 26, 1981*.

Retroactive price adjustment for early redemption. This is in response to your letter dated January 15, 1986, regarding the application of Board rules to a plan to guarantee a minimum return to customers who purchase certain municipal securities. You note that many [state deleted] municipalities

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issue General Obligation Temporary Notes with maturities of approximately one year. The municipalities also reserve the right to redeem at par any or all of the notes at any time prior to maturity. Historically, few notes are actually redeemed prior to their stated maturity.

You state that, acting as a municipal securities dealer, you desire to bid on these notes with the intent of selling them to your customers. The notes would be sold at a premium to generate trading profits. Because the notes can be redeemed by the issuer at any time at par, it is conceivable that someone who pays a premium for the notes could incur an actual return on their investment that is extremely small — even negative.

You ask whether, under Board rules, a municipal securities dealer may sell notes as described above, with the provision that if the notes are redeemed by the issuer prior to maturity, the dealer will adjust the original purchase price retroactively to provide a minimum return to the purchaser for the time held. The minimum return would be negotiated with the purchaser and confirmed in writing at the time of purchase from the dealer. You cite the following example:

> The XYZ Bank, a municipal securities dealer, purchases from the City of Anywhere, $100,000 par value of its 6% General Obligation Temporary Notes, dated 1-1-86, maturing 1-1-87 at par, redeemable at anytime at the option of the issuer.
>
> The XYZ Bank sells the notes to its customer, the ABC Bank, for settlement 1-1-86 to yield 5.75%. Can the XYZ bank agree that if the notes are redeemed prior to maturity by the issuer, it will adjust the original price at which the ABC Bank purchased the notes to provide a minimum return of at least 5% for the time held?

Board rule G-25(b) generally prohibits a municipal securities dealer from guaranteeing a customer against loss. Under the rule, put options and repurchase agreements are not deemed to be guarantees against loss if their terms are provided in writing to the customer with or on the confirmation of the transaction and recorded in accordance with rule G-8(a)(v). The rule is anti-manipulative in purpose and was designed, in part, to prevent a dealer from artificially stimulating the market in a security by selling securities to customers who assume no market risk. In addition, rule G-25(c) prohibits a municipal securities dealer from sharing, directly or indirectly, in the profits or losses of a transaction in municipal securities with or for a customer. Finally, rule G-30 requires municipal securities dealers to effect transactions with customers at fair and reasonable prices, taking into consideration, among other matters, the price of securities of comparable quality.

The arrangement you pose may be viewed as a guarantee against loss because the dealer would guarantee the customer a minimum return on his investment. In addition, the arrangement may be viewed as a sharing of loss arising from the customer's transaction because the dealer would participate in any loss sustained by the customer when it retroactively readjusts the price of the securities downward to grant the customer the promised return. Finally, rule G-30, on prices and commissions, requires that the price charged the customer for the securities at the time of sale, without taking into account any readjustment to the price at some future date, must be fair. *MSRB interpretation of January 31, 1986.*

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Rule G-26
Customer Account Transfers

(a) *Definitions*. For purposes of this rule, the following terms have the following meanings:

(i) The term "delayed delivery asset" means an asset subject to a delayed delivery and includes when-issued securities.

(ii) The term "in-transfer asset" means an asset which has been submitted to the registrar or transfer agent for transfer and shipment to the customer at the time the transfer instruction is received by the carrying party.

(iii) The term "nontransferable asset" means an asset that is incapable of being transferred from the carrying party to the receiving party because it is:

(A) an issue in default for which the carrying party does not possess the proper denominations to effect delivery and no transfer agent is available to re-register the securities;

(B) a municipal fund security which the issuer requires to be held in an account carried by one or more specified brokers, dealers or municipal securities dealers that does not include the receiving party; or

(C) a proprietary product of the carrying party.

(iv) The term "participant in a registered clearing agency" shall mean a member of a registered clearing agency that is eligible to make use of the agency's automated customer securities account transfer capabilities.

(v) The term "registered clearing agency" shall be deemed to be a clearing agency as defined in, and registered in accordance with, the Exchange Act.

(vi) The term "safekeeping position" shall mean any security held by a carrying party in the name of the customer, including securities that are unendorsed or have a stock/bond power attached thereto.

(b) *Responsibility to Expedite Customer's Request*. When a customer whose municipal securities account is carried by a broker, dealer or municipal securities dealer (the "carrying party") wishes to transfer municipal securities account assets, in whole or in specifically designated part, to another broker, dealer or municipal securities dealer (the "receiving party") and gives authorized instructions to the receiving party, both parties must expedite and coordinate activities with respect to the transfer.

(c) *Transfer Instructions*.

(i) Parties may use Form G-26, the transfer instruction prescribed by the Board, or the transfer instructions required by a clearing agency registered with the Securities and Exchange Commission in connection with its automated customer account transfer system, or transfer instructions that are substantially similar to those required by such clearing agency, when accomplishing account transfers pursuant to this rule.

(ii) If an account, or an instruction to transfer specifically designated account assets, includes any nontransferable assets, the carrying party and/or the receiving party must provide the customer with a list of the specific assets and request, in writing and prior to or at the time of validation of the transfer instruction, further instructions from the customer with respect to the disposition of such assets. Such request shall provide the customer with the following alternative methods of disposition of nontransferable assets, if applicable:

(A) liquidation, with a specific indication of any redemption or other liquidation-related fees that may result from such liquidation (including a referral to the program disclosure or the registered representative for specific details regarding any such fees in the case of a nontransferable asset described in section (a)(iii)(B)), that those fees may be deducted from the money balance due the customer and that any remaining balance will be distributed to the customer, including the method by which it will be so distributed;

(B) retention by the carrying party for the customer's benefit;

(C) transfer, physically and directly, in the customer's name to the customer; or

(D) in the case of a nontransferable asset described in section (a)(iii)(B), transfer to another broker, dealer or municipal securities dealer, if any, which the issuer has specified as being permitted to carry such asset.

(iii) If the customer has authorized liquidation or transfer of assets deemed to be nontransferable, the carrying party must distribute the resulting money balance to the customer or initiate the transfer within five (5) business days following receipt of the customer's disposition instructions.

(d) *Transfer Procedures*.

(i) Upon receipt from the customer of an authorized transfer instruction to receive such customer's municipal securities account assets, in whole or in specifically designated part, from the carrying party, the receiving party must immediately submit such instruction to the carrying party. The carrying party must, within one business day following receipt of such instruction, validate and return the transfer instruction to the receiving party (with an attachment reflecting all positions and money balances as shown on its books) or take exception to the transfer instruction for reasons other than securities positions or money balance discrepancies and advise the receiving party of the exception taken.

(ii) The carrying party and the receiving party must promptly resolve any exceptions taken to the transfer instruction.

(e) *Validation of Transfer Instructions*.

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(i) Upon validation of an instruction to transfer municipal securities account assets in whole, the carrying party must "freeze" the account to be transferred, *i.e.*, all open orders must be cancelled and no new orders may be taken.

(ii) Upon validation of an instruction to transfer municipal securities account assets, in whole or in specifically designated part, the carrying party must return the transfer instruction to the receiving party with an attachment indicating all municipal securities positions, safekeeping positions and any money balance to be transferred as shown on the books of the carrying party. Except as hereinafter provided, the attachment must include a then-current market value for all assets so indicated. If a then-current market value for an asset cannot be determined, the asset must be valued at original cost. However, delayed delivery assets, nontransferable assets, and assets in-transfer to the customer, need not be valued, although the "delayed delivery," "nontransferable," or "in-transfer" status of such assets, respectively, must be indicated on the attachment. A carrying party must provide the description set forth in Rule G-12(c)(v)(E) with respect to any municipal security that has not been assigned a CUSIP number in an account it is to transfer.

(iii) A carrying party may not take exception to a transfer instruction, and therefore deny validation of the transfer instruction, because of a dispute over municipal securities positions or the money balance in the account to be transferred. Such alleged discrepancies notwithstanding, the carrying party must transfer the municipal securities positions and/or money balance reflected on its books for the account.

(iv) A carrying party may take exception to a transfer instruction only if:

(A) it has no record of the account on its books;

(B) the transfer instruction is incomplete;

(C) the transfer instruction contains an improper signature;

(D) additional documentation is required (*e.g.*, legal documents such as death or marriage certificate);

(E) the account is "flat" and reflects no transferable assets;

(F) the account number is invalid (*i.e.*, the account number is not on the carrying party's books); however, if the carrying party has changed the account number for purposes of internally reassigning the account, it is the responsibility of the carrying party to track the changed account number, and such reassigned account number shall not be considered invalid for purposes of fulfilling a transfer instruction;

(G) it is a duplicate request;

(H) it violates the receiving party's credit policy;

(I) it contains unrecognized residual credit assets (the receiving party cannot identify the customer);

(J) the customer rescinds the instruction (*e.g.*, the customer has submitted a written request to cancel the transfer);

(K) there is a mismatch of the Social Security Number/Tax ID (*e.g.*, the number on the transfer instruction does not correspond to that on the carrying party's records);

(L) the account title on the transfer instruction does not match that on the carrying party's records;

(M) the account type on the transfer instruction does not correspond to that on the carrying party's records;

(N) the transfer instruction is missing or contains an improper authorization (*e.g.*, the transfer instruction requires an additional customer authorization or successor custodian's acceptance authorization or custodial approval; or

(O) the customer has taken possession of the assets in the account (*e.g.*, the municipal securities account assets in question have been transferred directly to the customer).

(v) If a carrying party takes exception to a transfer instruction because the account is "flat," as provided in paragraph (iv)(E) above, the receiving party may re-submit the transfer instruction only if the most recent customer statement is attached.

(vi) The carrying party and the receiving party must promptly resolve and reverse any nontransferable assets that were not properly identified during validation. In all cases, each party shall promptly update its records and bookkeeping systems and notify the customer of the action taken.

(vii) Upon receipt of the asset validation report, the receiving party shall designate any assets that are a product of a third party (*e.g.*, municipal fund security) with which the receiving party does not maintain the relationship or arrangement necessary to receive/carry the asset for the customer's account. The carrying party, upon receipt of such designation, may treat such designated assets as nontransferable and refrain from transferring the designated assets.

(viii) After validation of the transfer instruction by the carrying party, a receiving party may reject a transfer of municipal securities account assets in whole only if the account is not in compliance with the receiving party's credit policies or minimum asset requirements. A receiving party, however, may only reject the entire account for such reasons; it may not reject only a portion of the account assets (*e.g.*, the particular assets not in compliance with the party's credit policies or minimum asset requirement) while accepting the remainder.

(f) *Completion of the Transfer*.

(i) Within three business days following the validation of a transfer instruction, the carrying party must complete the transfer of the customer's municipal securities account assets to the receiving party. The receiving party and the car-

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rying party must immediately establish fail-to-receive and fail-to-deliver contracts at the then-current market value as of the date of validation upon their respective books of account against the long/short positions in the customer's accounts that have not been physically delivered/received and the receiving party/carrying party must debit/credit the related money amount. Nontransferable assets and assets in-transfer to the customer are exempt from the requirement that fail-to-receive and fail-to-deliver contracts must be established for positions in a customer's securities account that have not been physically delivered. Zero value fail-to-receive and fail-to-deliver instructions shall be established for delayed delivery assets. The customer's account(s) shall thereupon be deemed transferred.

(ii) To the extent any assets in the account are not readily transferable, with or without penalties, such assets are not subject to the time frames required by the rule; and, if the customer has authorized liquidation of any nontransferable assets, the carrying member must distribute the resulting money balance to the customer within five business days following receipt of the customer's disposition instructions.

(g) *Transfer of Residual Positions*. Each party is required, for a minimum period of six (6) months after the transfer of municipal securities account assets in whole is completed, to transfer credit balances (both cash and securities) that occur in such transferred account assets within ten (10) business days after the credit balances accrue to the account.

(h) *Fail Contracts Established*. Any fail contracts resulting from this account transfer procedure must be closed out in accordance with Rule G-12(h).

(i) *Prompt Resolution of Discrepancies*.

(i) Any discrepancies relating to positions or money balances that exist or occur after transfer of a customer's municipal securities account assets must be resolved promptly.

(ii) The carrying party must promptly distribute to the receiving party any transferable assets that accrue to the account after the transfer of a customer's securities account assets has been effected.

(iii) When a party receives a claim notice relating to a municipal securities account transfer, the party must resolve the claim within five (5) business days from receipt of such claim or take exception to the claiming party by setting forth specific reasons for denying the claim.

(j) *Exemptions*. The Board may exempt from the provisions of this rule, either unconditionally or on specified terms and conditions, any dealer or any type of account, security or municipal security.

(k) *Participant in a Registered Clearing Agency.*

(i) When both the carrying party and the receiving party are direct participants in a clearing agency registered with the Securities and Exchange Commission offering automated customer securities account asset transfer capabilities, the municipal securities account transfer procedure, including the establishing and closing out of fail contracts, must be accomplished pursuant to the rules of and through such registered clearing agency with the exception of specifically designated municipal securities assets transferred pursuant to the submittal of a customer's authorized alternate instructions to the carrying party, indicating such intent and specifying the designated assets to be transferred. The parties must expedite all authorized municipal securities account asset transfers, whether through automated customer account transfer services (ACATS) or via other means permissible, and coordinate their activities with respect thereto.

(ii) When municipal securities account assets are transferred in whole and such registered clearing agency has the capability to transfer residual credit positions (both cash and municipal securities) that have accrued to an account after the account has been transferred (residual credit processing), such capability must be utilized for transferring residual credit positions from the carrying party to the receiving party.

(iii) When both the carrying party and the receiving party are participants in a registered clearing agency having automated customer securities account asset transfer capabilities with a facility permitting electronic transmittal of customer account asset transfer instructions, such facilities shall be used in accordance with the following:

(A) parties using such facilities shall execute an agreement specifying the rights, obligations and liabilities of all participants in or users of such facilities;

(B) customer account transfer instructions shall be transmitted in accordance with the procedures prescribed by the registered clearing agency;

(C) the transmittal of a transfer request through such electronic facilities shall constitute a representation by the receiving party that it has received a properly executed transfer instruction or other actual authority to receive the customer's municipal securities and funds;

(D) transfer instructions transmitted through such facilities shall contain the information necessary for the clearing agency and the carrying party to respond to the transfer instruction as may be specified by this rule and the clearing agency; and

(E) non-standard ACATS processing and reclaim processing shall be transmitted through such facilities, if the facility permits.

(l) *Forwarding of Copy of Form G-26 to Enforcement Authority on Request.* The carrying party shall forward a copy of each customer account transfer instruction issued pursuant to paragraph (c)(i) to the enforcement authority having jurisdiction over the carrying party member, at the request of such authority.

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Supplementary Material

.01 Customer Authorization. For purposes of this rule, customer authorization pursuant to a transfer instruction could be the customer's actual signature, or an electronic signature in a format recognized as valid under federal law to conduct interstate commerce.

.02 Written Procedures. Municipal securities dealers must establish, maintain and enforce written procedures to effect and supervise the transfer of municipal securities account assets pursuant to this rule that are reasonably designed to achieve compliance with applicable securities laws and regulations, including applicable Board rules.

.03 Transfer Fees. The party at whose instance a transfer of municipal securities is made shall pay all service charges of the transfer agent.

Rule G-26 Interpretation

See:

Rule G-32 Interpretation — Notice Regarding Electronic Delivery and Receipt of Information by Brokers, Dealers and Municipal Securities Dealers, November 20, 1998

Rule G-26 Amendment History (since 2003)

Release No. 34-85699 (April 22, 2019), 84 FR 17897 (April 26, 2019); MSRB Notice 2019-11 (April 10, 2019)

Release No. 34-81233 (July 27, 2017), 82 FR 36039 (August 2, 2017); MSRB Notice 2017-15 (July 31, 2017)

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Form G-26

Customer Account Transfer Instructions

Date:

Receiving Party

Carrying Party

Receiving Party
Account Number

Carrying Party
Account Number

Account Title

Tax ID or SS Number

To:

Receiving Party Name and Address

Please receive my entire account from the below indicated carrying party and remit to it the debit balance or accept from it the credit balance in my municipal securities account.

To:

Carrying Party Name and Address

Please transfer my entire municipal securities account to the above indicated receiving party, which has been authorized by me to make payment to you of the debit balance or to receive payment of the credit balance in my municipal securities account. I understand that to the extent any assets or instruments in my municipal securities account are not readily transferable, with or without penalties, such assets or instruments may not be transferred within the time frames required by rule G-26 of the Municipal Securities Rulemaking Board.

I understand that you will contact me with respect to the disposition of any assets in my municipal securities account that are nontransferable. If certificates or other instruments in my securities account are in your physical possession, I instruct you to transfer them in good deliverable form to enable such receiving firm to transfer them in its name for the purpose of sale, when and as directed by me.

Upon validation of this transfer instruction, I instruct you to cancel all open orders for my municipal securities account on your books.

Customer's Signature

Date

Customer's Signature
(If joint account)

Date

It is suggested that a copy of the customer's most recent account statement be attached.

Receiving Party Contact

Name

Phone Number

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Rule G-27
Supervision

(a) *Obligation to supervise*. Each broker, dealer and municipal securities dealer ("dealer") shall supervise the conduct of the municipal securities activities of the dealer and its associated persons to ensure compliance with Board rules and the applicable provisions of the Act and rules thereunder ("applicable rules").

(b) *Supervisory System*. Each dealer shall establish and maintain a system to supervise the municipal securities activities of each registered representative, registered principal, and other associated person that is reasonably designed to achieve compliance with applicable securities laws and regulations, and with applicable Board rules. Final responsibility for proper supervision shall rest with the dealer. A dealer's supervisory system shall provide, at a minimum, for the following:

(i) The establishment and maintenance of written procedures as required by sections (c), (d), (e) and (f) of this rule.

(ii) (A) *General.* The designation of one or more associated persons qualified as municipal securities principals, municipal securities sales principals and municipal fund securities limited principals in accordance with Board rules, or as general securities principals to be responsible for the supervision of the municipal securities activities of the dealer and its associated persons as required by this rule.

(B) *Written Record.* A written record of each supervisory designation and of the designated principal's responsibilities under this rule shall be maintained and updated as required under Rule G-9.

(C) *Appropriate Principal.*

(1) Each dealer shall designate a municipal securities principal as responsible for its supervision under sections (a), (b), (c), (d), (e) and (f) of this rule, except as provided in this paragraph (C).

(2) A municipal securities sales principal may be designated as responsible for supervision under paragraphs (c)(i)(B), (C) and (G) and subsection (e)(i) of this rule, to the extent the activities pertain to sales to or purchases from a customer of municipal securities.

(3) A general securities principal may be designated as responsible for supervision under paragraph (c)(i)(E) and subparagraph (c)(i)(G)(1) of this rule and under Rules G-7(b) and G-21(f).

(4) A municipal fund securities limited principal may be designated as responsible for supervision under sections (a), (b), (c), (d), (e) and (f) of this rule to the extent that the activities pertain solely to transactions in municipal fund securities.

(iii) The designation as an office of municipal supervisory jurisdiction of each location that meets the definition contained in section (g) of this rule. Each dealer shall also designate such other offices of municipal supervisory jurisdiction as it determines to be necessary in order to supervise its registered representatives, registered principals, and other associated persons with respect to their municipal securities activities in accordance with the standards set forth in this rule, taking into consideration the following factors:

(A) whether registered persons at the location engage in retail sales of municipal securities or other activities involving regular contact with public customers with respect to municipal securities;

(B) whether a substantial number of registered persons conduct municipal securities activities at, or are otherwise supervised from, such location;

(C) whether the location is geographically distant from another office of municipal supervisory jurisdiction of the dealer;

(D) whether the dealer's registered persons are geographically dispersed; and

(E) whether the municipal securities activities at such location are diverse and/or complex.

(iv) The designation of one or more appropriately registered principals in each office of municipal supervisory jurisdiction, including the main office, and one or more appropriately registered representatives or principals in each municipal branch office that is not an office of municipal supervisory jurisdiction with authority to carry out the supervisory responsibilities with respect to municipal securities assigned to that office by the dealer.

(v) The assignment of each registered person to an appropriately registered representative(s) and/or principal(s) who shall be responsible for supervising that person's municipal securities activities.

(vi) Reasonable efforts to determine that all supervisory personnel are qualified by virtue of experience or training to carry out their assigned responsibilities with respect to municipal securities.

(vii) The participation of each registered representative and registered principal, either individually or collectively, no less than annually, in an interview or meeting conducted by persons designated by the dealer at which compliance matters relevant to the municipal securities activities of the representative(s) and principal(s) are discussed. Such interview or meeting may occur in conjunction with the discussion of other matters and may be conducted at a central or regional location or at the representative's or principal's place of business.

(c) *Written supervisory procedures.*

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(i) *General provisions.* Each dealer shall adopt, maintain and enforce written supervisory procedures reasonably designed to ensure that the conduct of the municipal securities activities of the dealer and its associated persons are in compliance as required in section (a) of this rule. Such procedures shall codify the dealer's supervisory system for ensuring compliance and, at a minimum, shall establish procedures

(A) that state how a designated principal shall monitor for compliance by the dealer with all applicable rules and supervise the municipal securities activities of associated persons specified in Rule G-3(a)(i);

(B) a designated principal shall follow when a customer complaint concerning the dealer's municipal securities activities is received;

(C) for the regular and frequent review and approval by a designated principal of customer accounts introduced or carried by the dealer in which transactions in municipal securities are effected; such review shall be designed to ensure that such transactions are in accordance with all applicable rules and to detect and prevent irregularities and abuses;

(D) for the periodic review by a designated principal of each office which engages in municipal securities activities pursuant to section (d) of this rule;

(E) for the maintenance and preservation, by a designated principal, of the books and records required to be maintained and preserved by Rules G-8 and G-9 of the Board;

(F) for the supervision by a designated principal of the processing, clearance, and in the case of a non-bank dealer safekeeping of municipal securities; and

(G) for the prompt review and written approval by a designated principal of:

(1) the opening of each customer account introduced or carried by the dealer in which transactions in municipal securities may be effected; and

(2) each transaction in municipal securities on a daily basis, including each transaction in municipal securities effected with or for a discretionary account introduced or carried by the dealer.

(ii) *Provisions concerning tape recording of conversations.*

(A) Each dealer that either is notified by the applicable regulatory authority (as defined in subsection (g)(iii)) or otherwise has actual knowledge that it meets one of the criteria in paragraph (c)(ii)(H) relating to the employment history of its registered persons at a disciplined firm (as defined in subsection (g)(v)) shall establish, maintain, and enforce special written procedures for supervising the telemarketing activities with respect to municipal securities of all of its registered persons.

(B) The dealer must establish and implement the supervisory procedures required by this subsection (ii) within 60 days of receiving notice from the applicable regulatory authority or obtaining actual knowledge that it is subject to the provisions of this subsection.

A dealer that meets one of the criteria in paragraph (c)(ii)(H) for the first time may reduce its staffing levels to fall below the threshold levels within 30 days after receiving notice from the applicable regulatory authority or obtaining actual knowledge that it is subject to the provisions of paragraph (c)(ii)(H), provided the dealer promptly notifies the applicable regulatory authority in writing of its becoming subject to this rule. Once the dealer has reduced its staffing levels to fall below the threshold levels, it shall not rehire a person terminated to accomplish the staff reduction for a period of 180 days. On or prior to reducing staffing levels pursuant to this paragraph (B), a dealer must provide the applicable regulatory authority with written notice identifying the terminated person(s).

(C) The procedures required by this subsection shall include tape-recording all telephone conversations between the dealer's registered persons and both existing and potential customers with respect to municipal securities.

(D) The dealer shall establish reasonable procedures for reviewing the tape recordings made pursuant to the requirements of this subsection to ensure compliance with applicable securities laws and regulations and applicable rules. The procedures must be appropriate for the dealer's business, size, structure, and customers.

(E) All tape recordings made pursuant to the requirements of this subsection shall be retained for a period of not less than three years from the date the tape was created, the first two years in an easily accessible place. Each dealer shall catalog the retained tapes by registered person and date.

(F) Such procedures shall be maintained for a period of three years from the date that the dealer establishes and implements the procedures required by the provisions of this subsection.

(G) By the 30th day of the month following the end of each calendar quarter, each dealer subject to the requirements of this subsection shall submit to the applicable regulatory authority a report on the dealer's supervision of the telemarketing activities with respect to municipal securities of its registered persons.

(H) The following dealers shall be required to adopt special supervisory procedures over the telemarketing activities with respect to municipal securities of their registered persons:

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(1) A dealer with at least five but fewer than ten registered persons, where 40% or more of its registered persons have been associated with one or more disciplined firms in a registered capacity within the last three years;

(2) A dealer with at least ten but fewer than twenty registered persons, where four or more of its registered persons have been associated with one or more disciplined firms in a registered capacity within the last three years;

(3) A dealer with at least twenty registered persons, where 20% or more of its registered persons have been associated with one or more disciplined firms in a registered capacity within the last three years.

(4) For purposes of the calculations required in paragraph (H), dealers should not include registered persons who:

(a) have been registered for an aggregate total of 90 days or less with one or more disciplined firms within the past three years; and

(b) do not have a disciplinary history (as defined in subsection (g)(vi)).

(I) The applicable regulatory authority, upon application and pursuant to such procedures as such authority shall prescribe, may in exceptional circumstances, taking into consideration all relevant factors, exempt such dealer unconditionally or on specified terms and conditions from the requirements of this subsection (ii). A dealer seeking an exemption must file a written application within 30 days after receiving notice from the applicable regulatory authority or obtaining actual knowledge that it meets one of the criteria in paragraph (c)(ii)(H). A dealer that meets one of the criteria in paragraph (c)(ii)(H) for the first time may elect to reduce its staffing levels pursuant to the provisions of paragraph (c)(ii)(B) or, alternatively, to seek an exemption pursuant to paragraph (c)(ii)(I), as appropriate; such a dealer may not seek relief from this rule by both reducing its staffing levels pursuant to paragraph (c)(ii)(B) and requesting an exemption.

(iii) *Availability of and revisions to written supervisory procedures.* A copy of a dealer's written supervisory procedures, or the relevant portions thereof, shall be kept and maintained in each office of municipal supervisory jurisdiction and at each location where supervisory activities with respect to municipal securities are conducted on behalf of the dealer. Each dealer shall amend its written supervisory procedures as appropriate within a reasonable time after changes occur in Board or other applicable rules and as changes occur in its supervisory system, and each dealer shall be responsible for communicating amendments through its organization.

(d) *Internal Inspections*.

(i) Each dealer shall conduct a review, at least annually, of the municipal securities activities in which it engages, which review shall be reasonably designed to assist in detecting and preventing violations of, and achieving compliance with, applicable securities laws and regulations, and with applicable Board rules. Each dealer shall review the municipal securities activities of each office, which shall include the periodic examination of customer accounts to detect and prevent irregularities or abuses.

(A) Each dealer shall inspect at least annually every office of municipal supervisory jurisdiction and any municipal branch office that supervises one or more non-branch locations.

(B) Each dealer shall inspect at least every three years every municipal branch office that does not supervise one or more non-branch locations. In establishing how often to inspect each non-supervisory municipal branch office, the dealer shall consider whether the nature and complexity of the municipal securities activities for which the location is responsible, the volume of business done, and the number of associated persons assigned to the location require the non-supervisory municipal branch office to be inspected more frequently than every three years. If a dealer establishes a more frequent inspection cycle, the dealer must ensure that at least every three years, the inspection requirements enumerated in subsection (d)(ii) have been met. The non-supervisory municipal branch office examination cycle, an explanation of the factors the dealer used in determining the frequency of the examinations in the cycle, and the manner in which a dealer will comply with subsection (d)(ii) if using more frequent inspections than every three years shall be set forth in the dealer's written supervisory and inspection procedures.

(C) Each dealer shall inspect on a regular periodic schedule every non-branch location. In establishing such schedule, the dealer shall consider the nature and complexity of the municipal securities activities for which the location is responsible and the nature and extent of contact with customers. The schedule and an explanation regarding how the dealer determined the frequency of the examination schedule shall be set forth in the dealer's written supervisory and inspection procedures.

Each dealer shall retain a written record of the dates upon which each review and inspection is conducted.

(ii) An office inspection and review by a dealer pursuant to subsection (d)(i) must be reduced to a written report and kept on file by the dealer for a minimum of three years, unless the inspection is being conducted pursuant to paragraph (d)(i)(C) and the regular periodic schedule is longer than a three-year cycle, in which case the report must be kept on file at least until the next inspection report has been written. The written inspection report must also include, without limita-

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tion, the testing and verification of the dealer's policies and procedures, including supervisory policies and procedures in the following areas as they relate to municipal securities:

(A) Safeguarding of customer funds and municipal securities;

(B) Maintaining books and records;

(C) Supervision of customer accounts serviced by branch office managers;

(D) Transmittal of funds between customers and registered representatives and between customers and third parties;

(E) Validation of customer address changes; and

(F) Validation of changes in customer account information.

If a dealer does not engage in all of the activities enumerated above, the dealer must identify those activities in which it does not engage in the written inspection report and document in the report that supervisory policies and procedures for such activities must be in place before the dealer can engage in them.

(iii) An office inspection by a dealer pursuant to subsection (d)(i) may not be conducted by the branch office manager or any person within that office who has supervisory responsibilities or by any individual who is supervised by such person(s). However, if a dealer is so limited in size and resources that it cannot comply with this limitation (*e.g.*, a dealer with only one office or a dealer has a business model where small or single-person offices report directly to an office of municipal supervisory jurisdiction manager who is also considered the offices' branch office manager), the dealer may have a principal who has the requisite knowledge to conduct an office inspection perform the inspections. The dealer, however, must document in the office inspection reports the factors it has relied upon in determining that it is so limited in size and resources that it has no other alternative than to comply in this manner.

A dealer must have in place procedures that are reasonably designed to provide heightened office inspections if the person conducting the inspection reports to the branch office manager's supervisor or works in an office supervised by the branch manager's supervisor and the branch office manager generates 20% or more of the revenue of the business units supervised by the branch office manager's supervisor. For the purposes of this subsection (d)(iii) only, the term "heightened inspection" shall mean those inspection procedures that are designed to avoid conflicts of interest that serve to undermine complete and effective inspection because of the economic, commercial, or financial interests that the branch manager's supervisor holds in the associated persons and businesses being inspected. In addition, for the purpose of this subsection only, when calculating the 20% threshold, all of the revenue generated by or credited to the municipal branch office or branch office manager shall be attributed as revenue generated by the business units supervised by the branch office manager's supervisor irrespective of a dealer's internal allocation of such revenue. A dealer must calculate the 20% threshold on a rolling, twelve-month basis.

(e) *Review of Correspondence*.

(i) Supervision of Municipal Securities Representatives. Each dealer shall establish procedures for the review by a designated principal of incoming and outgoing written (*i.e.*, non-electronic) and electronic correspondence of its municipal securities representatives with the public relating to the municipal securities activities of such dealer. Such procedures must be in writing and be designed to reasonably supervise each municipal securities representative. Evidence that these supervisory procedures have been implemented and carried out must be maintained and made available, upon request, to a registered securities association or the appropriate regulatory agency.

(ii) Review of correspondence. Each dealer shall develop written procedures that are appropriate to its business, size, structure, and customers for the review of incoming and outgoing written (*i.e.*, non-electronic) and electronic correspondence with the public relating to its municipal securities activities, including review for compliance with Rule G-21(e)(vii) to the extent applicable to such dealer's business. Procedures shall include the review of incoming, written correspondence directed to municipal securities representatives and related to the dealer's municipal securities activities to properly identify and handle customer complaints and to ensure that customer funds and municipal securities are handled in accordance with the dealer's procedures. Where such procedures for the review of correspondence do not require review of all correspondence prior to use or distribution, they must include provisions for the education and training of associated persons as to the dealer's procedures governing correspondence; documentation of such education and training; and surveillance and follow-up to ensure that such procedures are implemented and adhered to.

(iii) Retention of correspondence. Each dealer shall retain correspondence of municipal securities representatives relating to its municipal securities activities in accordance with Rules G-8(a)(xx) and G-9(b)(viii) and (xiv). The names of the persons who prepared outgoing correspondence and who reviewed the correspondence shall be ascertainable from the retained records and the retained records shall be readily available, upon request, to a registered securities association or the appropriate regulatory agency.

(f) *Supervisory Control System*.

(i) Each dealer shall designate one or more principals who shall establish, maintain, and enforce a system of supervisory control policies and procedures that (A) test and verify that the dealer's supervisory procedures are reasonably designed with respect to the municipal securities activities of the dealer and its registered representatives and associated persons to achieve compliance with applicable rules and (B)

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create additional or amend supervisory procedures where the need is identified by such testing and verification. The designated principal or principals must submit to the dealer's senior management no less than annually a report detailing each dealer's system of supervisory controls, the summary of the test results and significant identified exceptions, and any additional or amended supervisory procedures created in response to the test results.

(ii) The establishment, maintenance, and enforcement of written supervisory control policies and procedures pursuant to subsection (f)(i) shall include:

(A) procedures that are reasonably designed to review and supervise the customer account activity relating to municipal securities conducted by the dealer's branch office managers, sales managers, regional or district sales managers, or any person performing a similar supervisory function.

(1) General Supervisory Requirement. A person who is either senior to, or otherwise independent of, the producing manager must perform such supervisory reviews. For purposes of this rule, an "otherwise independent" person: may not report either directly or indirectly to the producing manager under review; must be situated in an office other than the office of the producing manager; must not otherwise have supervisory responsibility over the activity being reviewed (including not being directly compensated based in whole or in part on the revenues accruing for those activities); and must alternate such review responsibility with another qualified person every two years or less.

(2) "Limited Size and Resources" Exception. If a dealer is so limited in size and resources that there is no qualified person senior to, or otherwise independent of, the producing manager to conduct the reviews pursuant to subparagraph (1) above (*e.g.*, a dealer has only one office or an insufficient number of qualified personnel who can conduct reviews on a two-year rotation), the reviews may be conducted by a principal who is sufficiently knowledgeable of the dealer's supervisory control procedures, provided that the reviews are in compliance with subparagraph (1) to the extent practicable.

(3) Notification Requirement. If a dealer determines that it must rely on the "limited size and resources" exception set forth in subparagraph (2) above to conduct any of its producing managers' supervisory reviews, the dealer must notify the applicable regulatory authority through an electronic process (or any other process prescribed by such authority) within 30 days of the date on which the dealer first relies on the exception, and annually thereafter. If a dealer subsequently determines that it no longer needs to rely on the exception to conduct any of its producing managers' supervisory reviews, the dealer must, within 30 days of ceasing to rely on the exception, notify the applicable regulatory authority by using the electronic process or any other process prescribed by such authority.

(4) Documentation Requirement. A dealer relying on subparagraph (2) above must document in its supervisory control procedures the factors used to determine that complete compliance with all of the provisions of subparagraph (1) is not possible and that the required supervisory systems and procedures in place with respect to any producing manager comply with the provisions of subparagraph (1) above to the extent practicable.

(B) procedures that are reasonably designed to review and monitor the following activities relating to municipal securities:

(1) all transmittals of funds (*e.g.*, wires or checks, etc.) or municipal securities from customers to third party accounts (*i.e.*, a transmittal that would result in a change of beneficial ownership); from customer accounts to outside entities (*e.g.*, banks, investment companies, etc.); from customer accounts to locations other than a customer's primary residence (*e.g.*, post office box, "in care of" accounts, alternate address, etc.); and between customers and registered representatives, including the hand-delivery of checks;

(2) customer changes of address and the validation of such changes of address; and

(3) customer changes of investment objectives and the validation of such changes of investment objectives.

The policies and procedures established pursuant to this paragraph (f)(ii)(B) must include a means or method of customer confirmation, notification, or follow-up that can be documented. If a dealer does not engage in all of the activities enumerated above, the dealer must identify those activities in which it does not engage in its written supervisory control policies and procedures and document in those policies and procedures that additional supervisory policies and procedures for such activities must be in place before the dealer can engage in them; and

(C) procedures that are reasonably designed to provide heightened supervision over the activities of each producing manager who is responsible for generating 20% or more of the revenue of the business units supervised by the producing manager's supervisor. For the purposes of this subsection only, the term "heightened supervision" shall mean those supervisory procedures that evidence supervisory activities that are designed to avoid conflicts of interest that serve to undermine complete and effective supervision because of the economic, commer-

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cial, or financial interests that the supervisor holds in the associated persons and businesses being supervised. In addition, for the purpose of this section only, when calculating the 20% threshold, all of the revenue generated by or credited to the producing manager or the producing manager's office shall be attributed as revenue generated by the business units supervised by the producing manager's supervisor irrespective of a dealer's internal allocation of such revenue. A dealer must calculate the 20% threshold on a rolling, twelve-month basis.

(g) *Definitions*. For purposes of this rule, the following terms have the following meanings:

(i) "Office of municipal supervisory jurisdiction" means any office of a dealer at which any one or more of the following functions take place with respect to municipal securities:

(A) order execution and/or market making;

(B) structuring of public offerings or private placements;

(C) maintaining custody of customers' funds and/or municipal securities;

(D) final acceptance (approval) of new accounts on behalf of the dealer;

(E) review and endorsement of customer orders, pursuant to subparagraph (c)(i)(G)(2) above;

(F) final approval of advertising for use by persons associated with the dealer, pursuant to Rule G-21(f); or

(G) responsibility for supervising the municipal securities activities of persons associated with the dealer at one or more other municipal branch offices of the dealer.

(ii) (A) A "municipal branch office" is any location where one or more associated persons of a dealer regularly conducts the business of effecting any transactions in, or inducing or attempting to induce the purchase or sale of any municipal security, or is held out as such, excluding:

(1) Any location that is established solely for customer service and/or back office type functions where no sales activities are conducted and that is not held out to the public as a branch office;

(2) Any location that is the associated person's primary residence; provided that

(a) Only one associated person, or multiple associated persons who reside at that location and are members of the same immediate family, conduct business at the location;

(b) The location is not held out to the public as an office and the associated person does not meet with customers at the location;

(c) Neither customer funds nor securities are handled at that location;

(d) The associated person is assigned to a designated municipal branch office, and such designated municipal branch office is reflected on all business cards, stationery, advertisements and other communications to the public by such associated person;

(e) The associated person's correspondence and communications with the public are subject to the dealer's supervision in accordance with this rule;

(f) Electronic communications (*e.g.*, e-mail) are made through the dealer's electronic system;

(g) All orders are entered through the designated municipal branch office or an electronic system established by the dealer that is reviewable at the municipal branch office;

(h) Written supervisory procedures pertaining to supervision of sales activities conducted at the residence are maintained by the dealer; and

(i) A list of the residence locations is maintained by the dealer.

(3) Any location, other than a primary residence, that is used for municipal securities activities for less than 30 business days in any one calendar year, provided the dealer complies with the provisions of clauses (ii)(A)(2)(a) through (h) above;

(4) Any office of convenience, where associated persons occasionally and exclusively by appointment meet with customers, which is not held out to the public as an office. Where such office of convenience is located on bank premises, signage necessary to comply with applicable federal and state laws, rules and regulations, and applicable rules and regulations of any self-regulatory organizations and securities and banking regulators, may be displayed and shall not be deemed "holding out" for the purposes of this section;

(5) Any location that is used primarily to engage in non-securities activities and from which the associated person(s) effects no more than 25 municipal securities transactions in any one calendar year; provided that any advertisement identifying such location also sets forth the address and telephone number of the location from which the associated person(s) conducting business at the non-branch locations are directly supervised;

(6) The floor of a registered national securities exchange where a dealer conducts a direct access business with public customers; or

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(7) A temporary location established in response to the implementation of a business continuity plan.

(B) Notwithstanding the exclusions in paragraph (ii)(A), any location that is responsible for supervising the municipal securities activities of persons associated with the dealer at one or more non-branch locations of the dealer is considered to be a municipal branch office.

(C) The term "business day" as used in paragraph (ii)(A) shall not include any partial business day provided that the associated person spends at least four hours on such business day at his or her designated municipal branch office during the hours that such office is normally open for business.

(iii) "Applicable regulatory authority" means (i) with respect to a dealer that is a member of a registered securities association, such registered securities association, and (ii) with respect to any other dealer, the appropriate regulatory agency as defined in Section 3(a)(34) of the Act.

(iv) "Registered person" means any person qualified to act as a representative, principal or limited principal pursuant to Rule G-3.

(v) "Disciplined firm" means either a dealer that, in connection with sales practices involving the offer, purchase, or sale of any security, has been expelled from membership or participation in any securities industry self-regulatory organization or is subject to an order of the Securities and Exchange Commission revoking its registration as a broker/dealer; or a futures commission merchant or introducing broker that has been formally charged by either the Commodity Futures Trading Commission or a registered futures association with deceptive telemarketing practices or promotional material relating to security futures, those charges have been resolved, and the futures commission merchant or introducing broker has been closed down and permanently barred from the futures industry as a result of those charges; or a futures commission merchant or introducing broker that, in connection with sales practices involving the offer, purchase, or sale of security futures is subject to an order of the Securities and Exchange Commission revoking its registration as a broker or dealer.

(vi) "Disciplinary history" means a finding of violation by a registered person in the past means a finding of violation by a registered person in the past five years by the Securities and Exchange Commission, a self-regulatory organization, or a foreign financial regulatory authority of one or more of the following rules (or comparable foreign provision): Sections 15(b)(4)(E) and 15(c) of the Act; Section 17(a) of the Securities Act of 1933; SEC Rules 10b-5 and 15g-1 through 15g-9; FINRA Rules 2010, 2020, 2111, 2150, 2121, 3110 (failure to supervise only), 5210 and 5230; MSRB Rules G-19, G-30, and G-37(b) and (c).

Supplementary Material

.01 Temporary Relief to Allow Remote Inspections for Calendar Year 2020; Calendar Year 2021; Calendar Year 2022; Calendar Year 2023; and Through June 30 of Calendar Year 2024.

(a) Each dealer obligated to complete an inspection of an office of municipal supervisory jurisdiction, branch office or non-branch location in calendar years 2020, 2021, 2022, 2023, and 2024 pursuant to, as applicable, subsection (d)(i)(A), (B) and (C) of this rule, subject to the requirements of this Supplementary Material .01, may satisfy such obligation by conducting the applicable inspection(s) remotely without an on-site visit to such office(s) or location(s). In accordance with this Supplementary Material .01, the applicable inspection(s) for calendar year 2020 must be completed on or before March 31, 2021; inspections for calendar year 2021 must be completed on or before December 31, 2021; inspections for calendar year 2022 must be completed on or before December 31, 2022; and inspections for calendar year 2023 must be completed on or before December 31, 2023. With respect to a dealer's obligation to conduct an inspection of an office or location in calendar year 2024, a dealer has the option to conduct those inspections remotely only through June 30, 2024, and such inspections must be conducted in accordance with subsection (d)(i)(A), (B), and (C) of this rule. Consistent with subsection (g)(ii)(A)(7) of this rule, a temporary location established in response to the implementation of a business continuity plan is not deemed an office for purposes of complying with inspection obligations.

(b) Written Supervisory Procedures for Remote Inspections. Consistent with a dealer's obligation under subsection (c)(i) of this rule, a dealer that elects to conduct each of its calendar year 2020 or calendar year 2021 inspections remotely shall amend or supplement its written supervisory procedures as appropriate to provide for remote inspections that are reasonably designed to assist in detecting and preventing violations of, and achieving compliance with, applicable securities laws and regulations, and with applicable Board rules. Reasonably designed procedures for conducting remote inspections of offices or locations should include, among other things: (1) a description of the methodology, including technologies permitted by the dealer, that may be used to conduct remote inspections; and (2) the use of other risk-based systems employed generally by the dealer to identify and prioritize for review those areas that pose the greatest risk of potential violations of applicable securities laws and regulations, and of applicable Board rules.

(c) Effective Supervisory System. The requirement to conduct inspections of offices and locations is one part of the dealer's overall obligation to establish and maintain a supervisory system as prescribed under paragraph (b) of this rule and therefore, the dealer must continue with its ongoing review of the activities and functions occurring at all offices and locations, whether or not the dealer conducts inspections remotely. Where a dealer's remote inspection of an office or

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location identifies any signs of irregularities or misconduct (i.e., "red flags"), the dealer may need to impose additional supervisory procedures for that office or location or may need to provide for more frequent monitoring of that office or location. Such monitoring may include, potentially a subsequent physical on-site visit on an announced or unannounced basis, when the dealer's operational difficulties associated with COVID-19 subside, taking into account national or locality restrictions, as appropriate, and the other business challenges a dealer is facing in light of the public health and safety concerns, make such on-site visit(s) feasible using reasonable best efforts.

(d) Documentation Requirement. In addition to the documentation requirements under subsection (d)(ii) of this rule, a dealer that elects to conduct its inspections remotely, shall make and maintain a centralized record for each of calendar years 2020, 2021, 2022, 2023 and for calendar year 2024 through June 30, 2024 only that separately identifies: (1) all offices or locations that had inspections that were conducted remotely; and (2) any offices or locations for which the dealer determined to impose additional supervisory procedures or more frequent monitoring, as provided for under paragraph (c) of this Supplementary Material .01. A dealer's documentation of the results of a remote inspection for an office or location must identify any additional supervisory procedures or more frequent monitoring for that office or location that were imposed as a result of the remote inspection.

.02 Temporary Relief for Completing Annual Compliance Meeting. Each dealer obligated to have each registered representative and registered principal complete an annual compliance interview or meeting pursuant to (b)(vii) above shall be deemed to have satisfied such obligation for calendar year 2020 if such compliance interview or meeting is completed on or before March 31, 2021.

.03 Temporary Relief for Completing Annual Supervisory Testing. Each dealer obligated to complete an annual test of its supervisory control system and report such results pursuant to (f)(i) above shall be deemed to have satisfied such obligation for calendar year 2020 if such testing and reporting is completed on or before March 31, 2021.

.04 Residential Supervisory Locations

(a) Conditions for Designation as a Residential Supervisory Location. Notwithstanding any other provisions of section (g) of Rule G-27 and subject to paragraphs (b) through (d) of this Supplementary Material, a location that is the associated person's private residence where supervisory activities are conducted, as prescribed in paragraphs (g)(i)(D) through (G) or paragraph (g)(ii)(B) of Rule G-27, shall be considered for those activities a Residential Supervisory Location ("RSL") that is a non-branch location, provided that:

(1) only one associated person, or multiple associated persons who reside at that location and are members of the same immediate family, conduct business at the location;

(2) the location is not held out to the public as an office;

(3) the associated person does not meet with customers or prospective customers at the location;

(4) any sales activity that takes place at the location complies with the conditions set forth under subparagraphs (g)(ii)(A)(2) or (3) of Rule G-27;

(5) neither customer funds nor securities are handled at that location;

(6) the associated person is assigned to a designated branch office, in accordance with Rule G-27(g)(ii), on municipal branch office, and such designated branch office is reflected on all business cards, stationery, retail communications and other communications to the public by such associated person;

(7) the associated person's correspondence and communications with the public are subject to the dealer's supervision in accordance with Rule G-27;

(8) the associated person's electronic communications (e.g., e-mail) are made through the dealer's electronic system;

(9) (A) the dealer must have a recordkeeping system to make, maintain, and preserve such records required to be made, maintained, and preserved under applicable securities laws and regulations, including applicable Board rules, and the dealer's own written supervisory procedures under Rule G-27;

(B) such records are not physically or electronically maintained and preserved at the office or location; and

(C) the dealer has prompt access to such records; and

(10) the dealer must determine that its surveillance and technology tools are appropriate to supervise the types of risks presented by each RSL. These tools may include but are not limited to:

(A) firm-wide tools such as electronic recordkeeping systems; electronic surveillance of e-mail and correspondence; electronic or other equally effective trade blotter review; regular activity-based sampling reviews; and tools for visual inspections;

(B) tools specific to carrying out supervision of such RSL based on the activities of associated persons assigned to the location, products offered, or restrictions on the activity of the RSL; and

(C) system tools such as secure network connections and effective cybersecurity protocols.

(b) Dealer Ineligibility Criteria. A dealer shall not be eligible to designate an office or location as an RSL, in accordance with this Supplementary Material, if the dealer (1) is not a member of a registered securities association or (2) fails to

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satisfy the prescribed requirements of such registered securities association relating to its member firms' eligibility for such RSL designation.

(c) Location Ineligibility Criteria. An office or location shall not be eligible for designation as an RSL in accordance with this Supplementary Material if one or more associated persons at such office or location:

(1) is a designated principal who has less than one year of direct supervisory experience with the dealer, or an affiliate or subsidiary of the dealer that is registered as a dealer or investment adviser;

(2) is functioning as a principal for a limited period in accordance with subparagraphs (b)(ii)(D), (b)(iv)(B)(4) or (c)(ii)(D) of Rule G-3;

(3) is subject to a mandatory heightened supervisory plan under the rules of a registered securities association, the Securities and Exchange Commission, or state regulatory agency;

(4) is statutorily disqualified as defined in Section 3(a)(39) of the Act, unless such disqualified person has been approved to associate with a dealer, without being subject to a mandatory heightened supervisory plan, by a registered securities association;

(5) has an event in the prior three years that required a "yes" response to any item contained in Questions 14A(1)(a) and 2(a), 14B(1)(a) and 2(a), 14C, 14D and 14E on Form U4 (Uniform Application for Securities Industry Registration or Transfer), or similar form by a registered securities association; or

(6) has been notified in writing that such associated person is now subject to any Investigation or Proceeding, as such terms are defined in the Explanation of Terms for the Form U4, by the Securities and Exchange Commission, a self-regulatory organization, or state securities commission (or agency or office performing like functions) (each, a "Regulator") expressly alleging they have failed to reasonably supervise another person subject to their supervision, with a view to preventing the violation of any provision of the Securities Act, the Exchange Act, the Investment Advisers Act, the Investment Company Act, the Commodity Exchange Act, any state law pertaining to the regulation of securities or any rule or regulation under any of such Acts or laws, or any of the rules of the Board or other self-regulatory organization, including FINRA. Notwithstanding, such office or location may be designated or redesignated as an RSL subject to the requirements of this Supplementary Material upon the earlier of: (i) the dealer's receipt of written notification from the applicable Regulator that such Investigation has concluded without further action; or (ii) one year from the date of the last communication from such Regulator relating to such Investigation.

(d) Obligation to Provide RSL List to Registered Securities Association. Each dealer that elects to designate any office or location of the dealer as an RSL pursuant to this Supplementary Material shall provide to the registered securities association of which it is a member a current list of all locations designated as RSLs by the 15th day of the month following each calendar quarter in the manner and format (e.g., through an electronic process or such other process) as required by such registered securities association.

(e) Risk Assessment. Subject to the requirements of this Supplementary Material, prior to designating an office or location as an RSL, the dealer must develop a reasonable risk-based approach to designating such office or location as an RSL, and conduct and document a risk assessment for the associated person(s) assigned to that office or location. The assessment must document the factors considered, including among others, whether each associated person at such office or location is now subject to:

(1) customer complaints, taking into account the volume and nature of the complaints;

(2) heightened supervision other than where such office or location is ineligible for RSL designation under paragraph (c)(3) of this Supplementary Material;

(3) any failure to comply with the dealer's written supervisory procedures;

(4) any recordkeeping violations; and

(5) any regulatory communications from a Regulator indicating that the associated person at such office or location may have failed reasonably to supervise another person subject to their supervision, including but not limited to, subpoenas, preliminary or routine regulatory inquiries or requests for information, deficiency letters, "blue sheet" requests or other trading questionnaires, or examinations.

The dealer must take into account any higher risk activities that take place or a higher risk associated person that is assigned to that office or location. Consistent with its obligation under Rule G-27(b), the dealer's supervisory system must take into consideration any indicators of irregularities or misconduct (i.e., "red flags") when designating an office or location as an RSL.

Red flags should also be reviewed in determining whether it is reasonable to maintain the RSL designation of such office or location in accordance with the requirements of this Supplementary Material and the dealer should consider evidencing steps taken to address those red flags where appropriate.

.05 Remote Inspections Pilot Program

(a) Scope. This Supplementary Material establishes the standards by which a dealer may participate in the Remote Inspections Pilot Program of a registered securities association of which it is a member ("Pilot Program") with respect to the required inspection of offices of municipal supervisory jurisdiction, municipal branch offices and non-branch loca-

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tions by dealers pursuant to paragraphs (d)(i)(A), (B) and (C) of Rule G-27. This Supplementary Material shall cover the required inspections of such offices or locations for a period of three years starting on July 1, 2024 and expiring on June 30, 2027 ("Pilot Period"). If this Supplementary Material is not amended to allow dealers to continue to participate in the Pilot Program with respect to their municipal securities activities should a registered securities association extend the Pilot Period or make permanent the Pilot Program, this Supplementary Material will automatically sunset on June 30, 2027, after which dealers will not be able to participate in the Pilot Program with respect to their municipal securities activities.

(b) Risk Assessment

(1) Review Standards. Subject to the requirements of this Supplementary Material, each dealer obligated to conduct an inspection of an office or location during the Pilot Period pursuant to, as applicable, paragraphs (d)(i)(A), (B) or (C) of Rule G-27, may elect to conduct the applicable inspection remotely, without an on-site visit for an office or location, when a dealer reasonably determines that the purposes of this Supplementary Material can be accomplished by conducting such required inspection remotely. Prior to electing a remote inspection for an office or location, rather than an on-site inspection, a dealer must first develop a reasonable risk-based approach to using remote inspections, and conduct and document a risk assessment for that office or location. The assessment must document the factors considered, including, among other things, the dealer's size, organizational structure, scope of business activities, number and location of the dealer's offices, the nature and complexity of the products and services offered by the dealer, the volume of business done, the number of associated persons assigned to a location, the disciplinary history of municipal securities representatives or associated persons, and any indicators of irregularities or misconduct (i.e., "red flags"), and must take into account any higher-risk activities that take place at, or higher-risk associated persons that are assigned to, that office or location. A dealer or its office or location that is ineligible for remote inspections, pursuant to paragraph (c) of this Supplementary Material, must conduct an on-site inspection of that office or location on the applicable schedule under section (d) of Rule G-27. Notwithstanding this Supplementary Material, a dealer shall remain subject to the other requirements of section (d) of Rule G-27.

(2) Other Risk Assessment Factors. In conducting the risk assessment of each office or location in accordance with paragraph (b)(1) of this Supplementary Material, a dealer shall consider, among other things, the following factors in making its risk assessment for remotely inspecting an office or location:

(A) the volume and nature of customer complaints;

(B) the volume and nature of outside business activities, particularly investment-related;

(C) the volume and complexity of products offered;

(D) the nature of the customer base, including vulnerable adult investors;

(E) whether associated persons are subject to heightened supervision;

(F) failures by associated persons to comply with the dealer's written supervisory procedures; and

(G) any recordkeeping violations.

In addition, dealers should conduct on-site inspections or make more frequent use of unannounced, on-site inspections for high-risk offices or locations, or where there are red flags, and supervisory systems must take into consideration any red flags when determining whether to conduct a remote inspection of an office or location.

(c) Eligibility Exclusions and Conditions

(1) Firm-Level Requirements

(A) With respect to firm-level requirements, a dealer shall not be eligible to conduct remote inspections of any of its offices or locations in accordance with this Supplementary Material if (i) the dealer is not a member of a registered securities association or (ii) at any time during the Pilot Period such dealer becomes ineligible to conduct remote inspections under the prescribed firm-level ineligibility criteria of such registered securities association.

(B) During the period that a dealer is participating in the Pilot Program, the dealer must satisfy the following conditions to be eligible to conduct remote inspections of any of its offices or locations in accordance with this Supplementary Material:

(i) Recordkeeping System.

(a) The dealer must have a recordkeeping system to make, maintain, and preserve such records required to be made, maintained and preserved under applicable securities laws and regulations, including applicable Board rules, and the dealer's written supervisory procedures under Rule G-27(c);

(b) The records must not be physically or electronically maintained and preserved at the office or location subject to the remote inspection; and

(c) The dealer must have prompt access to any records made by an office or location participating in the Pilot Program.

(ii) Surveillance and Technology Tools. The dealer must determine that its surveillance and technology tools are appropriate to supervise the types of risks presented by each such remotely supervised office or location. The tools may include but are not limited to:

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(a) firm-wide tools such as electronic recordkeeping systems, electronic surveillance of e-mail and correspondence, electronic trade blotters, regular activity-based sampling reviews and tools for visual inspections;

(b) tools specifically applied to such office or location based on the activities of associated persons, products offered, restrictions on the activity of the office or location (including holding out to customers and handling of customer funds or securities); and

(c) system security tools such as secure network connections and effective cybersecurity protocols.

(2) Office or Location Requirements

(A) With respect to office or location requirements, a dealer shall not be eligible to conduct remote inspections of any office or location in accordance with this Supplementary Material if at any time during the Pilot Period such office or location becomes ineligible for remote inspection under the prescribed location-level eligibility criteria of a registered securities association of which it is a member.

(B) As part of the requirement to develop a reasonably designed risk-based approach to using remote inspections, and the requirement to conduct and document a risk assessment, during the period that a dealer is participating in the Pilot Program, a specific office or location of the dealer must satisfy the following conditions to be eligible for remote inspections in accordance with this Supplementary Material:

(i) electronic communications (e.g., e-mail) are made through the dealer's electronic system;

(ii) the associated person's correspondence and communications with the public are subject to the dealer's supervision in accordance with Rule G-27(e); and

(iii) no books or records of the dealer required to be made, maintained, and preserved under applicable securities laws and regulations, including applicable Board rules, and the dealer's own written supervisory procedures under Rule G-27(c) are physically or electronically maintained and preserved at such office or location.

(d) Written Supervisory Procedures for Remote Inspections. Consistent with a dealer's obligation under Rule G-27(c), a dealer that elects to participate in the Pilot Program must establish, maintain, and enforce written supervisory procedures regarding remote inspections that are reasonably designed to detect and prevent violations of, and achieve compliance with, applicable securities laws and regulations, including applicable Board rules. Reasonably designed procedures for conducting remote inspections of offices or locations must address, among other things:

(1) the methodology, including technology, that may be used to conduct remote inspections;

(2) the factors considered in the risk assessment made for each applicable office or location pursuant to paragraph (b) of this Supplementary Material; and

(3) the use of other risk-based systems employed generally by the dealer to identify and prioritize for review those areas that pose the greatest risk of potential violations of applicable securities laws and regulations, including applicable Board rules.

(e) Effective Supervisory System. The requirement to conduct inspections of offices and locations is one part of the dealer's overall obligation to have an effective supervisory system. Therefore, the dealer must maintain its ongoing review of the activities and functions occurring at all offices and locations, whether or not the dealer conducts inspections remotely. A dealer's use of remote inspection of an office or location will be subject to the same standards for review as for other offices or locations under Rule G-27 in addition to the standard set forth in this Supplementary Material. Where a dealer's remote inspection of an office or location identifies any red flags, the dealer may need to impose additional supervisory procedures for that office or location or may need to provide for more frequent monitoring of that office or location, including potentially a subsequent on-site visit on an announced or unannounced basis.

(f) Documentation Requirement. A dealer must maintain and preserve a centralized record for each period constituting a Pilot Year, within the meaning of the Pilot Program and as defined by a registered securities association. The record must separately identify:

(1) all offices or locations that were inspected remotely; and

(2) any offices or locations for which the dealer determined to impose additional supervisory procedures or more frequent monitoring, as provided in paragraph (e) of this Supplementary Material. A dealer's documentation of the results of a remote inspection for an office or location must identify any additional supervisory procedures or more frequent monitoring for that office or location that were imposed as a result of the remote inspection, including whether an on-site inspection was conducted at such office or location.

(g) Data and Information Collection Requirement. Dealers that elect to participate in the Pilot Program and are not excluded under any of the firm-level requirements under paragraph (c)(1) of this Supplementary Material must comply with the requirements of a registered securities association, of which they are a member, with respect to the collection

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and submission of specified data and information, and in the manner and format determined by the registered securities association.

Such dealers shall establish, maintain and enforce written policies and procedures that are reasonably designed to comply with any specified data and information collection, and transmission requirements prescribed by a registered securities association of which they are a member.

(h) Election to Participate in Remote Inspections Pilot Program. Dealers eligible for participation in the Pilot Program by not having been excluded under any of the firm-level requirements under paragraph (c)(1) of this Supplementary Material shall make their election, in the manner and format as prescribed by a registered securities association, of which they are a member, to participate in the Pilot Program in accordance with this Supplementary Material. Dealers that elect to withdraw from subsequent Pilot Years (i.e., Pilot Year 2, Pilot Year 3, and Pilot Year 4, if applicable) shall withdraw in the manner and format as prescribed by a registered securities association of which they are a member.

(i) Failure to Satisfy Conditions. A dealer that fails to satisfy the conditions of this Supplementary Material, including the requirements specified by a registered securities association of which it is a member, related to the timely collection and submission of data and information shall be ineligible to participate in the Pilot Program with respect to its municipal securities activities and must conduct on-site inspections of each office and location on the required cycle in accordance with Rule G 27(d).

Rule G-27 Interpretations

Notice Concerning Supervisory Responsibility of Municipal Securities Principals and Municipal Securities Sales Principals

December 15, 1981

The Board has received questions concerning the appropriate allocation of supervisory responsibility between municipal securities principals and the new category of municipal securities sales principals. The Board recently amended its rule G-3 to permit a person associated with a securities firm whose activities with respect to municipal securities are limited to supervising sales to and purchases from customers to qualify as a "municipal securities sales principal" ("sales principal"). The Board also amended rules G-8 on recordkeeping, G-26 on the administration of customer accounts, and G-27 on supervision to permit securities firms to designate sales principals as responsible for certain supervisory functions insofar as they relate directly to transactions in municipal securities with customers.

In particular, rule G-27 concerning supervision requires municipal securities dealers to designate at least one municipal securities principal as responsible for supervising its municipal securities activities, including the municipal securities activities of branch offices or similar locations. In addition, rule G-27 permits the municipal securities dealer to designate a sales principal (*e.g.*, a branch office manager) as responsible for the "direct supervision of sales to and purchases from customers." The rule also requires that a dealer adopt written supervisory procedures which, among other matters, reflect the delegation of supervisory authority to these personnel.

As a result of these amendments, in designating under rule G-27 one or more municipal securities principals as responsible for supervising the business and activities of the firm's associated persons, a securities firm may choose to designate a qualified sales principal with limited responsibility for the direct supervision of sales to and purchases from customers. If so, the firm's written supervisory procedures may allocate responsibility to a sales principal for reviewing and approving (to the extent that they relate to sales to and purchases from customers) the suitability of the opening of, and transactions in, customer accounts, the handling of customer complaints and other correspondence, and other matters permitted by Board rule to be reviewed or approved by a sales principal. A municipal securities principal, however, must be responsible for directly supervising the firm's other municipal securities activities such as underwriting, trading, and pricing of inventories.

With respect to the relationship between a sales principal and the designated municipal securities principal, Board rule G-27 provides that a branch office manager who acts as the sales principal for his office will be responsible for the municipal securities sales activities under his direct supervision. Rule G-27 also provides that a designated municipal securities principal will be responsible for all municipal securities activities of the branch office including those that may be under the direct supervision of a sales principal. However, the branch office manager, under the particular organizational structure of a firm, may be responsible to some other designated supervisor for the discharge of his other duties.

Supervisory Procedures for the Review of Correspondence with the Public

March 24, 2000

On March 16, 2000, the Securities and Exchange Commission approved amendments to rules G-8, on books and records, G-9, on preservation of records, and G-27, on supervision.[1] The amendments will become effective on September 19, 2000. The amendments will allow brokers, dealers and municipal securities dealers ("dealers") to develop flexible supervisory procedures for the review of correspondence with the public. This notice is being issued to provide guidance to dealers on how to implement these rules.

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Background

Technology has greatly expanded how communications between dealers and their customers take place. These new means of communication (*e.g.*, e-mail, Internet) will continue to significantly affect the manner in which dealers and their associated persons conduct their business. While these changes allow timely and efficient communication with customers, prospective customers, and others, the significant changes in communications media and capacity raise questions regarding supervision, review, and retention of correspondence with the public.

In May 1996, the SEC issued an Interpretive Release on the use of Electronic Media by Broker-Dealers, Transfer Agents, and Investment Advisors for Delivery of Information.[2] That release expressed the views of the SEC with respect to the delivery of information through electronic media in satisfaction of requirements in the federal securities laws, but did not address the applicability of any self-regulatory organization ("SRO") rules. In its release the SEC did, however, strongly encourage the SROs to work with broker/dealer firms to adapt SRO supervisory review requirements governing communications with customers to accommodate the use of electronic communications.[3]

On December 31, 1997, the SEC approved proposed rule changes filed by the National Association of Securities Dealers ("NASD")[4] and the New York Stock Exchange ("NYSE")[5] to update rules governing supervision of communication with the public. NASD *Notice to Members 98-11* announced approval of the proposed rule change, provided guidance to firms on how to implement these rules and stated that the amendments to NASD Rules 3010 and 3110 would be effective on February 15, 1998. Over the next year, further amendments were made to NASD Rules 3010 and 3110. NASD Regulation received final SEC approval of amendments to Rule 3010 on November 30, 1998.[6] The rule amendments were effective on March 15, 1999.[7]

As amended, NASD Rule 3010(d)(1) provides that procedures for review of correspondence with the public relating to a member's investment banking or securities business be designed to provide reasonable supervision for each registered representative, be described in an organization's written supervisory procedures, and be evidenced in an appropriate manner. NASD Rule 3010(d)(2) requires each member to develop written policies and procedures for review of correspondence with the public relating to its investment banking or securities business tailored to its structure and the nature and size of its business and customers. These procedures must also include the review of incoming, written correspondence directed to registered representatives and related to the member's investment banking or securities business to properly identify and handle customer complaints and to ensure that customer funds and securities are handled in accordance with firm procedures.

The Board has determined to adopt substantially similar rule changes. The Board believes that conforming its rule language to the language in the NASD rules will help ensure a coordinated regulatory approach to the supervision of correspondence.

Amended Rules

Rule G-27(d)(i), as revised, provides that procedures for review of correspondence with the public relating to a dealer's municipal securities activities be designed to provide reasonable supervision for each municipal securities representative, be described in the dealer's written supervisory procedures, and be evidenced in an appropriate manner.

Rule G-27(d)(ii) requires each dealer to develop written policies and procedures for review of correspondence with the public relating to its municipal securities activities, tailored to its structure and the nature and size of its business and customers. The rule requires that any dealer that does not conduct either an electronic or manual pre-use review will be required to:

- develop appropriate supervisory procedures;
- monitor and test to ensure these policies and procedures are being implemented and complied with;
- provide education and training to all appropriate employees concerning the dealer's current policies and procedures governing correspondence, and update this training as policies and procedures are changed; and
- maintain records documenting how and when employees are educated and trained.

The rule change states that these procedures must also include the review of incoming, written correspondence directed to municipal securities representatives and related to the dealer's municipal securities activities to properly identify and handle customer complaints and to ensure that customer funds and securities are handled in accordance with the dealer's procedures.

It is the understanding and view of the Board that dealers possess the legal capacity to insist that mail addressed to their offices be deemed to be related to their businesses, even if marked to the attention of a particular associated person, if they advise associated persons that personal correspondence should not be received at their firms. Dealers, other than non-NASD member bank dealers, are reminded that SEC Rule 17a-4(b)(4) requires that "originals of all communications received . . . by such member, broker or dealer, relating to its business as such . . ." must be preserved for not less than three years.

The retention requirements of the amendments to rule G-27 cross reference rules G-8(a)(xx) and G-9(b)(viii) and (xiv) and state that the names of persons who prepared, reviewed and approved correspondence must be readily ascertainable

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from the retained records. The records must be made available, upon request, to the appropriate enforcement agency (*i.e.*, NASD or federal bank regulatory agency).

Guidelines for Supervision and Review

In adopting review procedures pursuant to rule G-27(d)(i), dealers must:

- specify, in writing, the dealer's policies and procedures for reviewing different types of correspondence;
- identify how supervisory reviews will be conducted and documented;
- identify what types of correspondence will be pre- or post-reviewed;
- identify the organizational position(s) responsible for conducting review of the different types of correspondence;
- specify the minimum frequency of the reviews for each type of correspondence;
- monitor the implementation of and compliance with the dealer's procedures for reviewing public correspondence; and
- periodically re-evaluate the effectiveness of the dealer's procedures for reviewing public correspondence and consider any necessary revisions.

In conducting reviews, dealers may use reasonable sampling techniques. As an example of appropriate evidence of review, e-mail related to the dealer's municipal securities activities may be reviewed electronically and the evidence of review may be recorded electronically.

In developing supervisory procedures for the review of correspondence with the public pursuant to rule G-27(d)(ii), each dealer must consider its structure, the nature and size of its business, other pertinent characteristics, and the appropriateness of implementing uniform firm-wide procedures or tailored procedures (*i.e.*, by specific function, office/location, individual, or group of persons).

In adopting review procedures pursuant to rule G-27(d)(ii), dealers must, at a minimum:

- specify procedures for reviewing municipal securities representatives' recommendations to customers;
- require supervisory review of some of each municipal securities representative's public correspondence, including recommendations to customers;
- consider the complaint and overall disciplinary history, if any, of municipal securities representatives and other employees (with particular emphasis on complaints regarding written or oral communications with clients); and
- consider the nature and extent of training provided municipal securities representatives and other employees, as well as their experience in using communications media (although a dealer's procedures may not eliminate or provide for minimal supervisory reviews based on an employee's training or level of experience in using communications media).

Although dealers may consider the number, size, and location of offices, as well as the volume of correspondence overall or in specific areas of the organization, dealers must nonetheless develop appropriate supervisory policies and procedures in light of their duty to supervise their associated persons. The factors listed above are not exclusive and dealers must consider all appropriate factors when developing their supervisory procedures and implementing their supervisory reviews.

Supervisory policy and procedures must also:

- provide that all customer complaints, whether received via e-mail or in written form from the customer, are kept and maintained;
- describe any dealer standards for the content of different types of correspondence; and
- prohibit municipal securities representatives' and other employees' use of electronic correspondence to the public unless such communications are subject to supervisory and review procedures developed by the dealer. For example, the Board would expect dealers to prohibit correspondence with customers from employees' home computers or through third party systems unless the dealer is capable of monitoring such communications.

The method used for conducting reviews of incoming, written correspondence to identify customer complaints and funds may vary depending on the dealer's office structure. Where the office structure permits review of all correspondence, dealers should designate a municipal securities representative or other appropriate person to open and review correspondence prior to use or distribution to identify customer complaints and funds. The designated person must not be supervised or under the control of the municipal securities representative whose correspondence is opened and reviewed. Unregistered persons who have received sufficient training to enable them to identify complaints and funds would be permitted to review correspondence.

Where the office structure does not permit the review of correspondence prior to use or distribution, appropriate procedures that could be adopted include the following:

- forwarding opened incoming written correspondence related to the dealer's municipal securities activities to a designated office, or supervising branch office, for review on a weekly basis;
- maintenance of a separate log for all checks received and securities products sold, which is forwarded to the supervising branch office on a weekly basis;

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- communication to clients that they can contact the dealer directly for any matter, including the filing of a complaint, and providing them with an address and telephone number of a central office of the dealer for this purpose; and
- branch examination verification that the procedures are being followed.

Regardless of the method used for initial review of incoming, written correspondence, as with other types of correspondence, rule G-27 would still require review by a designated principal of some of each municipal securities representative's correspondence with the public relating to the dealer's municipal securities activities. Given the complexity and cost of establishing appropriate systems for effectively reviewing electronic communications, some dealers may determine to conduct a pre-use or distribution review of all incoming and outgoing correspondence (written or electronic).

Dealers must continually assess the effectiveness of these supervisory systems. Education and training must be timely (prior to or concurrent with implementation of the policies and procedures) and must include all appropriate employees. Dealers may incorporate the required education and training on correspondence into their Continuing Education Firm Element Training Program (*see* rule G-3(h) on continuing education requirements). The requirement for training regarding correspondence may also apply to employees who are not included under the Continuing Education requirements.

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[1] *See* Exchange Act Release No. 42538 (March 16, 2000), 65 FR 15675 (March 23, 1999).

[2] *See* Securities Act Release No. 7288, Exchange Act Release No. 37182, Investment Company Act Release No. 21945, Investment Advisor Act Release No. 1562 (May 9, 1996), 61 FR 24644 (May 15, 1996) (File No. S7-13-96).

[3] *Id*.

[4] *See* Exchange Act Release No. 39510 (December 31, 1997), 63 FR 1131 (January 8, 1998).

[5] *See* Exchange Act Release No. 39511 (December 31, 1997), 63 FR 1135 (January 8, 1998).

[6] *See* Exchange Act Release No. 40723 (November 30, 1998), 63 FR 67496 (December 7, 1998).

[7] *See Notice to Members* 99-03 (January 1999).

See also:

Rule G-3 Interpretation — Notice Concerning Municipal Securities Sales Activities in Branch Affiliate and Correspondent Banks Which Are Municipal Securities Dealers, March 11, 1983.

Rule G-14 Interpretation — Build America Bonds and Other Tax Credit Bonds, April 24, 2009.

Rule G-17 Interpretations — Interpretation on Customer Protection Obligations Relating to the Marketing of 529 College Savings Plans, August 7, 2006.

- **MSRB Reminds Firms of Their Sales Practice and Due Diligence Obligations When Selling Municipal Securities in the Secondary Market,** September 20, 2010.

Rule G-21 Interpretation — Interpretation on General Advertising Disclosures, Blind Advertisements and Annual Reports Relating to Municipal Fund Securities Under Rule G-21, June 5, 2007.

Rule G-29 Interpretation — Interpretive Notice on Availability of Board Rules, May 20, 1998.

Rule G-37 Interpretation — Reminder of Obligations Under Rule G-37 on Political Contributions and Rule G-27 on Supervision when Sponsoring Meetings and Conferences Involving Issuer Officials, March 26, 2007.

Interpretive Letters

Supervisory structure. This is in response to your letter of December 31, 1986 and our subsequent telephone conversation. You note that there has been a recent reorganization within your bank. As a consequence, you, as the head of the dealer department, now will report to the bank officer who also is in charge of the trust department and the bank's investment portfolio, rather than directly to the bank's president as had been the case. You ask whether this arrangement might constitute a conflict of interest under trust regulations or otherwise under Board rules.

Board rule G-27 places an obligation upon a dealer to supervise its municipal securities activities. It requires a dealer to accomplish this objective by designating individuals with supervisory responsibility for municipal securities activities and requires the dealer to adopt written supervisory procedures to this end. The rule does not specify how a dealer should structure its supervisory procedures, provided that the dealer adopts an organizational structure which meets the intent of the rule. You should review your dealer's written supervisory procedures to ensure that they provide for the appropriate delegation of supervisory responsibilities, given the reorganization within the bank.

You noted that the individual to whom you will be reporting is presently qualified as a municipal securities representative but not as a municipal securities principal. Board rule G-3(a)(i)[*] defines a municipal securities principal as an associated person of a securities firm or bank dealer who is directly engaged in the management, direction or supervision of municipal securities activities. If, under the new reorganization, this individual will be designated with day-to-day responsibility for the management, direction or supervision of the municipal securities activities of the dealer, then he must be qualified as a municipal securities principal.

Finally, trust regulations are governed by the appropriate banking law and not by Board rules. Consequently, any concerns that you may have with respect to possible conflicts of interest with trust regulations should be directed to the appropriate bank regulatory agency. *MSRB interpretation of March 11, 1987.*

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[*] [Currently codified at rule G-3(b)(i).]

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Review and approval of transactions. This is in response to your letter requesting an interpretation of rule G-27(c)(ii)(B)[*] which requires that a [designated] principal promptly review and approve, in writing, each transaction in municipal securities. You state that your firm proposes to use a system of exception reports to review the firm's municipal securities transactions each day. Each trade will be reviewed by computer pursuant to parameters established by the Compliance Department. These parameters include the size of the order (in terms of dollars as well as a percentage of the customer's net worth), the customer's income, investment objectives and age. These parameters can be changed and fine-tuned as the situation dictates. Currently, the exception report will contain all purchases in excess of $25,000 or 10 percent of the customer's stated net worth and all sales in excess of $10,000. A review of the exception report would be conducted by a municipal securities principal. Oversight of the review process, and any required follow-up, would be conducted.

Rule G-27, on supervision, requires a dealer to supervise the municipal securities activities of its associated persons and the conduct of its business. In particular, rule G-27(c)(ii)(B)[*] requires that a [designated] principal promptly review and approve, in writing, each transaction in municipal securities. The Board believes that the requirement for written approval of *each* transaction by a [designated] principal is reasonable and necessary to promote proper supervision of the activities of municipal securities representatives. Among other purposes, these procedures enable [designated] principals to keep abreast of the firm's daily trading activity, to assess the appropriateness of mark-ups and mark-downs, and to assure that provisions for the prompt delivery of securities are being met. The exception reporting you propose would not comply with rule G-27(c)(ii)(B)[*] because it would not result in review and approval of each municipal securities transaction by a [designated] principal.[1] *MSRB interpretation of July 26, 1989.*

[1] While exception report review is not appropriate in complying with rule G-27(c)(vii)(B),[*] we understand that certain dealers, with the approval of their enforcement agencies, use exception reports in their periodic review of customer accounts required by rule G-27(c)(iii).

[*] [Currently codified at rule G-27(c)(i)(G)(2).]

NOTE: Revised to reflect subsequent amendments.

Review and approval of transactions. This is in response to your letter in which you ask several questions concerning Board rules.

[One paragraph deleted.][*]

With respect to your second question, someone qualified as both a municipal securities representative and as a municipal securities principal may review and approve his or her own transactions effected in the capacity as a representative.

With respect to your final question, rule G-27(c)(vii)(B)[†], on supervision, requires the prompt review and written approval by a designated principal of each transaction in municipal securities on a daily basis. *MSRB interpretation of June 20, 1994.*

[*] [The deleted paragraph concerned an unrelated question regarding a different Board rule and appears elsewhere in the *MSRB Rule Book*.]

[†] [Currently codified at rule G-27(c)(i)(G)(2).]

Review and approval of customer accounts. This is in response to your letter dated July 24, 1996, requesting an interpretation of rule G-27(c)(iii)[*] on written supervisory procedures.

Rule G-27(c)(iii)[*] requires that each municipal securities dealer adopt, maintain and enforce written supervisory procedures ensuring the "regular and frequent" review and approval by a designated principal of customer accounts introduced or carried by the dealer in which transactions in municipal securities are effected. The rule further states that such review shall be designed to ensure that such transactions are in accordance with all applicable rules and to detect and prevent irregularities and abuses.

Because circumstances vary from dealer to dealer, the Board has not specified a time period to define "regular and frequent" for purposes of rule G-27(c)(iii).[*] As you can see, however, the purpose of this provision is to detect and prevent irregularities and abuses that may occur in customer accounts. The Board expects dealers to establish procedures that effectively obtain this objective and that are capable of compliance. While the Board has never specifically addressed "risk-focused" methods for determining periodic account review, the Board has stated that, in determining when an account must be reviewed, a dealer might look to the volume and frequency of trading and the nature of the securities traded. The Board noted that account review guidelines based on these factors would be appropriate if they are articulated clearly in a dealer's written supervisory procedures.[1] *MSRB interpretation of August 7, 1996.*

[1] Supervision Requirements, *MSRB Reports*, Vol. 10, No. 2 (May 1990) at 6.

[*] [Currently codified at rule G-27(c)(i)(C).]

See also:

Rule G-8 Interpretive Letter — Use of electronic signatures, *MSRB interpretation of February 27, 1989.*

Rule G-37 Interpretive Letter — Solicitation of contributions, *MSRB interpretation of November 7, 1994.*

- **Supervisory procedures relating to indirect contributions: conference accounts and 527 organizations,** *MSRB interpretation of December 21, 2006.*

Rule G-27 Amendment History (since 2003)

Release No. 34-100291 (June 6, 2024), 89 FR 49950 (June 12, 2024); MSRB Notice 2024-08 (May 31, 2024)

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Release No. 34-100131 (May 14, 2024), 89 FR 43961 (May 20, 2024); MSRB Notice 2024-06 (May 10, 2024)

Release No. 34-97423 (May 2, 2023), 88 FR 29774 (May 8, 2023); MSRB Notice 2023-04 (April 27, 2023)

Release No. 34-96346 (November 17, 2022), 87 FR 71719 (November 23, 2022); MSRB Notice 2022-12 (November 16, 2022)

Release No. 34-94383 (March 9, 2022), 87 FR 14596 (March 15, 2022); MSRB Notice 2022-02 (March 1, 2022)

Release No. 34-93435 (October 27, 2021), 86 FR 60522 (November 2, 2021); MSRB Notice 2021-14 (October 26, 2021)

Release No. 34-90621 (December 9, 2020), 85 FR 81254 (December 15, 2020); MSRB Notice 2020-18 (December 2, 2020)

Release No. 34-88694 (April 20, 2020), 85 FR 23088 (April 24, 2020); MSRB Notice 2020-09 (April 9, 2020)

Release No. 34-85699 (April 22, 2019), 84 FR 17897 (April 26, 2019); MSRB Notice 2019-11 (April 10, 2019)

Release No. 34-72743 (August 1, 2014), 79 FR 46290 (August 7, 2014); MSRB Notice 2014-13 (August 4, 2014)

Release No. 56796 (November 15, 2007), 72 FR 65786 (November 23, 2007); MSRB Reports 2007-32 (November 8, 2007)

Release No. 34-56478 (September 20, 2007), 72 FR 54702 (September 26, 2007); MSRB Reports 2007-27 (September 14, 2007)

Release No. 34-55830 (May 30, 2007), 72 FR 31122 (June 5, 2007); MSRB Notice 2007-18 (June 5, 2007)

Release No. 34-55792 (May 22, 2007), 72 FR 29564 (May 29, 2007); MSRB Notice 2007-16 (May 25, 2007)

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Rule G-28

Transactions with Employees and Partners of Other Municipal Securities Professionals

(a) *Account Instructions*. No broker, dealer or municipal securities dealer shall open or maintain an account in which transactions in municipal securities may be effected for a customer who such broker, dealer or municipal securities dealer knows is employed by, or the partner of, another broker, dealer or municipal securities dealer, or for or on behalf of the spouse or minor child of such person unless such broker, dealer, or municipal securities dealer first gives written notice with respect to the opening and maintenance of such account to the broker, dealer or municipal securities dealer by whom such person is employed or of whom such person is a partner.

(b) *Account Transactions*. No broker, dealer, or municipal securities dealer shall effect a transaction in municipal securities with or for an account subject to section (a) of this rule unless such broker, dealer, or municipal securities dealer

(i) sends simultaneously to the employing broker, dealer or municipal securities dealer a duplicate copy of each confirmation sent to the customer, and

(ii) acts in accordance with any written instructions which may be provided to the broker, dealer or municipal securities dealer by an employing broker, dealer or municipal securities dealer with respect to transactions effected with or for such account.

(c) *Exemption for Municipal Fund Securities*. The provisions of this rule shall not be applicable to transactions in municipal fund securities or to accounts that are limited to transactions in municipal fund securities.

Rule G-28 Interpretations

See:

Rule G-32 Interpretation — Notice Regarding Electronic Delivery and Receipt of Information by Brokers, Dealers and Municipal Securities Dealers, November 20, 1998.

Interpretive Letter

Employer of customer's spouse. This will acknowledge receipt of your letter of January 10, 1979, requesting an interpretive opinion with respect to rule G-28 of the Municipal Securities Rulemaking Board (the "Board"). Rule G-28 requires a municipal securities dealer to take certain specified actions in connection with municipal securities transactions effected for the account of customers who are employed by, or the partner of another municipal securities dealer or for or on behalf of the spouse or minor child of such a person. I understand from a subsequent conversation which we had that your principal concern is whether a municipal securities dealer must obtain information regarding the employer of a spouse of a current customer, in view of the requirements of rule G-28.

Although rule G-28 applies to the spouse or minor child of a customer who is employed by another municipal securities dealer, there is no requirement at the present time in rule G-28 or in rule G-8, the recordkeeping rule, for a municipal securities dealer to obtain information about the employment status of spouses or minor children. Accordingly, a municipal securities dealer does not have to inquire of current customers whether their spouses are employed by another municipal securities dealer. A municipal securities dealer would have to comply with rule G-28 if the dealer actually knows that a spouse is employed by another municipal securities dealer. *MSRB interpretation of March 6, 1979*.

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Rule G-29
RESERVED

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Rule G-30
Prices and Commissions

(a) *Principal Transactions*. No broker, dealer or municipal securities dealer shall purchase municipal securities for its own account from a customer, or sell municipal securities for its own account to a customer, except at an aggregate price (including any mark-up or mark-down) that is fair and reasonable.

(b) *Agency Transactions*.

(i) Each broker, dealer and municipal securities dealer, when executing a transaction in municipal securities for or on behalf of a customer as agent, shall make a reasonable effort to obtain a price for the customer that is fair and reasonable in relation to prevailing market conditions.

(ii) No broker, dealer or municipal securities dealer shall purchase or sell municipal securities as agent for a customer for a commission or service charge in excess of a fair and reasonable amount.

Supplementary Material

.01 General Principles.

(a) Each broker, dealer or municipal securities dealer (each, a "dealer," and collectively, "dealers"), whether effecting a trade on an agency or principal basis, must exercise reasonable diligence in establishing the market value of the security and the reasonableness of the compensation received on the transaction.

(b) A dealer effecting an agency transaction must exercise the same level of care as it would if acting for its own account.

(c) A "fair and reasonable" price bears a reasonable relationship to the prevailing market price of the security.

(d) Dealer compensation on a principal transaction with a customer is considered to be a mark-up or mark-down that is computed from the prevailing market price at the time of the customer transaction, as described in Supplementary Material .06. As part of the aggregate price to the customer, the mark-up or mark-down also must be a fair and reasonable amount, taking into account all relevant factors.

(e) Reasonable compensation differs from fair pricing. A dealer could restrict its profit on a transaction to a reasonable level and still violate this rule if the dealer fails to consider market value. For example, a dealer may fail to assess the market value of a security when acquiring it from another dealer or customer and as a result may pay a price well above market value. It would be a violation of fair-pricing responsibilities for the dealer to pass on this misjudgment to another customer, as either principal or agent, even if the dealer makes little or no profit on the trade.

.02 Relevant Factors in Determining the Fairness and Reasonableness of Prices.

(a) The most important factor in determining whether the aggregate price to the customer is fair and reasonable is that the yield should be comparable to the yield on other securities of comparable quality, maturity, coupon rate, and block size then available in the market.

(b) Other factors include, but are not limited to:

(i) the best judgment of the dealer concerning the fair market value of the securities when the transaction occurs and, where applicable, of any securities exchanged or traded in connection with the transaction;

(ii) the expense involved in effecting the transaction;

(iii) that the dealer is entitled to a profit;

(iv) the total dollar amount of the transaction;

(A) To the extent that institutional transactions are often larger than retail transactions, this factor may enter into the fair and reasonable pricing of retail versus institutional transactions.

(v) the service provided in effecting the transaction;

(vi) the availability of the securities in the market;

(vii) the rating and call features of the security (including the possibility that a call feature may not be exercised);

(A) A dealer should consider the effect of information from rating agencies, both with respect to actual or potential changes in the underlying rating of a security and with respect to actual or potential changes in the rating of any bond insurance applicable to the security.

(B) A dealer pricing securities on the basis of yield to a specified call feature should consider the possibility that the call feature may not be exercised. Accordingly, the price to be paid by a customer should reflect this possibility and the resulting yield to maturity should bear a reasonable relationship to yields on securities of similar quality and maturity. Failure to price securities in this manner may constitute a violation of this rule because the price may not be "fair and reasonable" if the call feature is not exercised. That a customer in these circumstances may realize a yield greater than the yield at which the transaction was effected does not relieve a municipal securities professional of its responsibility under this rule.

(viii) the maturity of the security;

(ix) the nature of the dealer's business; and

(x) the existence of material information about a security available through EMMA or other established industry sources.

.03 Relevant Factors in Determining the Fairness and Reasonableness of Commissions or Service Charges.

(a) A variety of factors may affect the fairness and reasonableness of a commission or service charge, including:

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(i) the availability of the securities involved in the transaction;

(ii) the expense of executing or filling the customer's order;

(iii) the value of the services rendered by the dealer;

(iv) the amount of any other compensation received or to be received by the dealer in connection with the transaction;

(v) that the dealer is entitled to a profit;

(vi) the total dollar amount and price of the transaction;

(vii) the best judgment of the dealer concerning the fair market value of the securities when the transaction occurs and of any securities exchanged or traded in connection with the transaction; and

(viii) for a dealer that sells municipal fund securities, whether the dealer's commissions or other fees fall within the sales charge schedule specified in Rule 2830 of the National Association of Securities Dealers, Inc. (Such compliance with Rule 2830 may, depending upon the facts and circumstances, be a significant, though not dispositive, factor in determining whether a commission or other fee is fair and reasonable.)

.04 Fair-Pricing Responsibilities and Large Price Differentials.

(a) A transaction chain that results in a large difference between the price received by one customer and the price paid by another customer for the same block of securities on the same day, without market information or news accounting for the price volatility, raises the question as to whether each of these customers received a price reasonably related to the market value of the security, and whether the dealers effecting the customer transactions (and any broker's brokers that may have acted on behalf of such dealers) made sufficient effort to establish the market value of the security when effecting their transactions.

(b) The lack of a well-defined and active market for an issue does not negate the need for diligence in determining the market value as accurately as reasonably possible when fair-pricing obligations apply. Although intra-day price differentials for obscure and illiquid issues might generally be larger than for more well-known and liquid issues, dealers must establish market value as accurately as possible using reasonable diligence under the facts and circumstances. For example, when a dealer is unfamiliar with a security, the efforts necessary to establish its value may be greater than if the dealer is familiar with the security.

(i) A dealer may need to review recent transaction prices for the issue or transaction prices for issues with similar credit quality and features as part of its duty to use diligence to determine the market value of municipal securities. When doing this, the dealer often will need to use its professional judgment and market expertise to identify comparable securities and to interpret the impact of recent transaction prices on the value of the block of municipal securities in question.

(ii) If the features and credit quality of the issue are unknown, it also may be necessary to obtain information on these factors directly or indirectly from an established industry source. For example, the current rating or other information on credit quality, the specific features and terms of the security, and any material information about the security such as issuer plans to call the issue, defaults, etc., all may affect the market value of securities.

(c) A bid-wanted procedure is not always a conclusive determination of market value. Therefore, particularly when the market value of an issue is unknown, a dealer may need to check the results of the bid-wanted process against other objective data to fulfill its fair-pricing obligations.

.05 Pricing Irregularities on Alternative Trading Systems.

Although the duty under section (b)(i) of this rule to evaluate the prices of certain individual transactions is eliminated under Rule G-48 when they are effected for sophisticated municipal market professionals, a dealer operating an alternative trading system must, under the general duty set forth in section (b)(i), act to investigate any alleged pricing irregularities on its system brought to its attention. Accordingly, a dealer operating an alternative trading system may be in violation of section (b)(i) if it fails to take actions to address system or participant pricing abuses.

.06 Mark-Up Policy

(a) Prevailing Market Price

(i) A dealer that is acting in a principal capacity in a transaction with a customer and is charging a mark-up or mark-down must mark-up or mark-down the transaction from the prevailing market price. Presumptively for purposes of this Supplementary Material .06, the prevailing market price for a municipal security is established by referring to the dealer's contemporaneous cost as incurred, or contemporaneous proceeds as obtained, consistent with applicable MSRB rules. (See, e.g., Rule G-18).

(ii) When the dealer is selling the municipal security to a customer, other evidence of the prevailing market price may be considered only where the dealer made no contemporaneous purchases of the security or can show that in the particular circumstances the dealer's contemporaneous cost is not indicative of the prevailing market price. When the dealer is buying the municipal security from a customer, other evidence of the prevailing market price may be considered only where the dealer made no contemporaneous sales of the security or can show that in the particular circumstances the dealer's contemporaneous proceeds are not indicative of the prevailing market price.

(iii) A dealer's cost is (or proceeds are) considered contemporaneous if the transaction occurs close enough in time to the subject transaction that it would reasonably be expected to reflect the current market price for the municipal security.

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(iv) A dealer that effects a transaction in municipal securities with a customer and identifies the prevailing market price using a measure other than the dealer's own contemporaneous cost (or, in a mark-down, the dealer's own proceeds) must be prepared to provide evidence that is sufficient to overcome the presumption that such contemporaneous cost (or proceeds) provides the best measure of the prevailing market price. A dealer may be able to show that such contemporaneous cost is (or proceeds are) not indicative of prevailing market price, and thus overcome the presumption, in instances where: (A) interest rates changed after the dealer's contemporaneous transaction to a degree that such change would reasonably cause a change in municipal securities pricing; (B) the credit quality of the municipal security changed significantly after the dealer's contemporaneous transaction; or (C) news was issued or otherwise distributed and known to the marketplace that had an effect on the perceived value of the municipal security after the dealer's contemporaneous transaction.

(v) In instances where the dealer has established that the dealer's cost is (or, in a mark-down, proceeds are) not contemporaneous, or where the dealer has presented evidence that is sufficient to overcome the presumption that the dealer's contemporaneous cost (or proceeds) provides the best measure of the prevailing market price, such as those instances described in (a)(iv)(A), (B) and (C), the dealer must consider, in the order listed and subject to (a)(viii), the following types of pricing information to determine prevailing market price:

(A) Prices of any contemporaneous inter-dealer transactions in the municipal security in question;

(B) In the absence of transactions described in (A), prices of contemporaneous dealer purchases (sales) in the municipal security in question from (to) institutional accounts with which any dealer regularly effects transactions in the same municipal security; or

(C) In the absence of transactions described in (A) and (B), for actively traded municipal securities, contemporaneous bid (offer) quotations for the municipal security in question made through an inter-dealer mechanism, through which transactions generally occur at the displayed quotations.

(A dealer may consider a succeeding category of pricing information only when the prior category does not generate relevant pricing information (e.g., a dealer may consider pricing information under (B) only after the dealer has determined, after applying (A), that there are no contemporaneous inter-dealer transactions in the same security).) In reviewing the pricing information available within each category, the relative weight, for purposes of identifying prevailing market price, of such information (i.e., a particular transaction price or quotation) depends on the facts and circumstances of the comparison transaction or quotation (e.g., whether the dealer in the comparison transaction was on the same side of the market as the dealer in the subject transaction and timeliness of the information). Because of the lack of active trading in most municipal securities, it is not always possible to establish the prevailing market price for a municipal security based solely on contemporaneous transaction prices or contemporaneous quotations for the security. Accordingly, dealers may often need to consider other factors, consistent with (a)(vi) and (a)(vii) below.

(vi) In the event that, in particular circumstances, the above factors are not available, other factors that may be taken into consideration (not in any required order or combination) for the purpose of establishing the price from which a customer mark-up (mark-down) may be calculated, include but are not limited to:

- Prices, or yields calculated from prices, of contemporaneous inter-dealer transactions in a "similar" municipal security, as defined below;
- Prices, or yields calculated from prices, of contemporaneous dealer purchase (sale) transactions in a "similar" municipal security with institutional accounts with which any dealer regularly effects transactions in the "similar" municipal security with respect to customer mark-ups (mark-downs); and
- Yields calculated from validated contemporaneous inter-dealer bid (offer) quotations in "similar" municipal securities for customer mark-ups (mark-downs).

The relative weight, for purposes of identifying prevailing market price, of the pricing information obtained from the factors set forth above depends on the facts and circumstances surrounding the comparison transaction (i.e., whether the dealer in the comparison transaction was on the same side of the market as the dealer in the subject transaction, timeliness of the information, and, with respect to the final factor listed above, the relative spread of the quotations in the similar municipal security to the quotations in the subject security).

(vii) Finally, if information concerning the prevailing market price of the subject municipal security cannot be obtained by applying any of the above factors, dealers (and the regulatory agencies responsible for enforcing MSRB rules) may consider as a factor in assessing the prevailing market price of a municipal security the prices or yields derived from economic models (e.g., discounted cash flow models) that take into account measures such as reported trade prices, credit quality, interest rates, industry sector, time to maturity, call provisions and any other embedded options, coupon rate, and face value; and consider all applicable pricing terms and conventions (e.g., coupon frequency and accrual methods).

(viii) Because the ultimate evidentiary issue is the prevailing market price, isolated transactions or isolated quotations generally will have little or no weight or relevance in establishing prevailing market price. For example, in considering the pricing information described in (a)(v), a dealer may give little or no weight to pricing information derived from an isolated transaction or quotation, such as an off-market transaction. In addition, in considering yields of "similar"

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municipal securities, except in extraordinary circumstances, dealers may not rely exclusively on isolated transactions or a limited number of transactions that are not fairly representative of the yields of transactions in "similar" municipal securities taken as a whole.

(b) "Similar" Municipal Securities

(i) A "similar" municipal security should be sufficiently similar to the subject security that it would serve as a reasonable alternative investment to the investor. At a minimum, the municipal security or securities should be sufficiently similar that a market yield for the subject security can be fairly estimated from the yields of the "similar" security or securities. Where a municipal security has several components, appropriate consideration may also be given to the prices or yields of the various components of the security.

(ii) The degree to which a municipal security is "similar," as that term is used in this Supplementary Material .06, to the subject security may be determined by all relevant factors, including but not limited to the following:

(A) Credit quality considerations, such as whether the municipal security is issued by the same or similar entity, bears the same or similar credit rating, or is supported by a similarly strong guarantee or collateral as the subject security (to the extent securities of other issuers are designated as "similar" securities, significant recent information concerning either the "similar" security's issuer or subject security's issuer that is not yet incorporated in credit ratings should be considered (e.g., changes to ratings outlooks));

(B) The extent to which the spread (i.e., the spread over an applicable index or U.S. Treasury securities of a similar duration) at which the "similar" municipal security trades is comparable to the spread at which the subject security trades;

(C) General structural characteristics and provisions of the issue, such as coupon, maturity, duration, complexity or uniqueness of the structure, callability, the likelihood that the municipal security will be called, tendered or exchanged, and other embedded options, as compared with the characteristics of the subject security;

(D) Technical factors such as the size of the issue, the float and recent turnover of the issue, and legal restrictions on transferability as compared with the subject security; and

(E) The extent to which the federal and/or state tax treatment of the "similar" municipal security is comparable to such tax treatment of the subject security.

(iii) When a municipal security's value and pricing is based substantially on, and is highly dependent on, the particular circumstances of the issuer, including creditworthiness and the ability and willingness of the issuer to meet the specific obligations of the security, in most cases other securities will not be sufficiently similar, and therefore, pricing information with respect to other securities may not be used to establish the prevailing market price.

Rule G-30 Interpretations

Interpretive Notice on Commissions and Other Charges, Advertisements and Official Statements Relating to Municipal Fund Securities

December 19, 2001

The Municipal Securities Rulemaking Board ("MSRB") has received various inquiries regarding commissions, disclosures (including delivery of disclosure materials to the MSRB) and advertisements relating to municipal fund securities, particularly in connection with sales of interests in so-called Section 529 college savings plans.[1] The nature of the commissions and other program fees that may exist with respect to municipal fund securities may differ significantly from such charges that typically may exist for traditional debt securities sold in the municipal securities market. In many cases, commissions and other fees may more closely resemble those charged in connection with investment company securities registered under the Investment Company Act of 1940 (the "Investment Company Act").[2] Although commissions and fees charged by brokers, dealers and municipal securities dealers ("dealers") effecting transactions in municipal fund securities are subject to MSRB rules, the nature and level of fees and charges collected by other parties in connection with such securities generally are not subject to regulation. However, under certain circumstances, a dealer selling municipal fund securities may be obligated to disclose to customers such fees and charges collected by other parties.

Amount of Dealer's Commissions or Service Charges

Rule G-30(b), on prices and commissions in agency transactions, prohibits dealers from selling municipal securities to a customer for a commission or service charge in excess of a fair and reasonable amount. In assessing the fairness and reasonableness of the commission or service charge, the rule permits the dealer to take into consideration all relevant factors, including the availability of the securities involved in the transaction, the expense of executing or filling the customer's order, the value of the services rendered by the dealer, and the amount of any other compensation received or to be received by the dealer in connection with the transaction. The MSRB has received inquiries as to whether the sales charge schedule set out in Rule 2830 of the National Association of Securities Dealers, Inc. ("NASD") applies to or otherwise is indicative of the levels of commissions and other fees that dealers may charge in connection with sales of municipal fund securities.

MSRB rules, not those of the NASD, apply to sales by dealers of municipal securities, including municipal fund securities. NASD Rule 2830 provides that no member firm may offer or sell shares in investment companies registered under the In-

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vestment Company Act if the sales charges are excessive. The NASD rule then sets forth various levels of aggregate sales charges to which member firms must conform, depending upon the nature of the investment company's sales charges, in order to ensure that such sales charges are not deemed excessive. The MSRB notes that the NASD derives its authority for the sales charge provisions of Rule 2830 from Section 22(b)(1) of the Investment Company Act, which expressly exempts such provisions from the limitation that Section 15A(b)(6) of the Securities Exchange Act of 1934 (the "Exchange Act") places on the NASD's ability to adopt rules that "impose any schedule or fix rates of commissions, allowances, discounts, or other fees to be charged by its members." In sharp contrast, no exemption exists from the limitations that Section 15B(b)(2)(C) of the Exchange Act places on the MSRB's ability to adopt rules that "impose any schedule or fix rates of commissions, allowances, discounts, or other fees to be charged by municipal securities brokers or municipal securities dealers." The MSRB believes that it could not, by rule or interpretation, in effect impose such a schedule for the sale of municipal fund securities.

Nonetheless, the MSRB believes that the charges permitted by the NASD under its Rule 2830 in connection with the sale of registered investment company securities may, depending upon the facts and circumstances, be a significant factor in determining whether a dealer selling municipal fund securities is charging a commission or other fee that is fair and reasonable. For example, the MSRB believes that charges for municipal fund securities transactions in excess of those permitted for comparable mutual fund shares under NASD Rule 2830 may be presumed to not meet the fair and reasonable standard under MSRB rule G-30(b), although the totality of the facts and circumstances relating to a particular transaction in municipal fund securities may rebut such presumption. Further, depending upon the specific facts and circumstances, a sales charge for a transaction in a municipal fund security that would be deemed in compliance with NASD Rule 2830 if charged in connection with a transaction in a substantially identical registered investment company security often will be in compliance with rule G-30(b).

However, the NASD schedule is not dispositive nor is it always the principal factor in determining compliance with rule G-30. The MSRB believes that the factors enunciated in rule G-30(b) and other relevant factors must be given due weight in determining whether a commission is fair and reasonable. These factors include, but are not limited to, the value of the services rendered by the dealer and the amount of any other compensation received or to be received by the dealer in connection with the transaction from other sources (such as the issuer). A dealer may not exclusively rely on the fact that its commissions fall within the NASD schedule, particularly where commission levels in the marketplace for similar municipal fund securities sold by other dealers providing similar levels of services are generally substantially lower than those charged by such dealer, taking into account any other compensation.

Disclosure of Program Fees and Charges of Other Parties

MSRB rules do not explicitly require disclosure by dealers of fees and charges received by other parties to a transaction. These can include, among other things, administrative fees of the issuer, investment adviser and other parties payable from trust assets or directly by the customer. However, depending upon the facts and circumstances, certain MSRB rules may have the practical effect of requiring some level of disclosure of such fees and charges to the extent that they are material. For example, rule G-32(a)(i) generally obligates the dealer to provide an official statement to its customer in connection with sales of municipal fund securities. Although MSRB rules do not govern the content of the disclosures included by the issuer in the official statement, the MSRB believes that an official statement prepared by an issuer of municipal fund securities that is in compliance with Exchange Act Rules 10b-5 and 15c2-12 generally would provide disclosure of any fees or other charges imposed in connection with such securities that are material to investors. The MSRB further believes that, in most respects, the disclosures provided by the issuer in the official statement would provide the dealer with the type of information it is required to disclose to customers under the MSRB's fair dealing rule, rule G-17.

Advertisements

Dealer advertisements of municipal fund securities must comply with the requirements of rule G-21.[3] This rule prohibits dealers from publishing advertisements concerning municipal securities which they know or have reason to know are materially false or misleading. The MSRB has previously stated that any use of historical yields in an advertisement would be subject to this prohibition. Thus, a dealer advertisement of municipal fund securities that refers to yield typically would require a description of the nature and significance of the yield shown in the advertisement in order to assure that such advertisement is not false or misleading. Further, depending upon the facts and circumstances, a dealer may be required to disclose information regarding a fee or other charge relating to municipal fund securities that may have a material effect on such advertised yield, to the extent that such disclosure is necessary to ensure that the advertisement is not materially false or misleading with respect to such yield.

The MSRB understands that advertisements and other sales material relating to registered investment company securities are, depending upon the nature of the advertisement, subject to the requirements of Securities Act Rule 156, on investment company sales literature, Securities Act Rule 482, on advertising by an investment company as satisfying requirements of section 10, and NASD Rule 2210, on communications with the public (including IM-2210-3, on use of rankings in investment companies advertisements and sales literature), among

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others. The MSRB notes that both Securities Act Rule 156(a) and NASD Rule 2210(d)(1)(A) include general standards for advertisements that are substantially the same as the standard set forth in MSRB rule G-21. As a result, the MSRB believes that a dealer advertisement of municipal fund securities that would be compliant with Securities Act Rules 156 and 482 if such securities were registered investment company securities also would be in compliance with MSRB rule G-21. Further, the MSRB believes that a dealer advertisement of municipal fund securities that would be compliant with NASD Rule 2210 and IM-2210-3 if such securities were registered investment company securities also would be in compliance with MSRB rule G-21.

Submission of Official Statements to the MSRB

Dealers selling municipal fund securities are subject to the requirement under rule G-36 that they submit copies of the official statement, together with completed Form G-36(OS), to the MSRB. In some cases, a dealer that has been engaged by an issuer of municipal fund securities to serve as its primary distributor ("primary distributor") has in turn entered into relationships with one or more other dealers to provide further channels for distribution. These other dealers may include dealers that effect transactions directly with customers ("selling dealers") or dealers that provide "wholesale" distribution services but do not effect transactions directly with customers ("intermediary dealers").

The MSRB believes that, regardless of whether a formal syndicate or similar account has been formed among a primary distributor, the selling dealers and any intermediary dealers in a multi-tiered distribution system for a particular offering of municipal fund securities, the primary distributor for such offering has the responsibility set forth in rule G-36(f) to undertake all actions required under the provisions of rule G-36 and the corresponding recordkeeping requirements under rule G-8(a)(xv). These obligations include, but are not limited to, the submission of official statements (including amendments and updates) and completed Form G-36(OS) to the MSRB on a timely basis. The MSRB further believes that any selling or intermediary dealers for such offering that might be considered underwriters of the securities may rely upon the primary distributor to undertake these actions to the same extent as if they had in fact formed an underwriting syndicate as described in rule G-36(f).

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[1] Section 529 college savings plans are higher education savings plan trusts established by states under section 529(b) of the Internal Revenue Code as "qualified state tuition programs" through which individuals make investments for the purpose of accumulating savings for qualifying higher education costs of beneficiaries.

[2] Municipal fund securities are exempt from the registration and other provisions of the Investment Company Act.

[3] Rule G-21 defines advertisement as any material (other than listings of offerings) published or designed for use in the public, including electronic, media or any promotional literature designed for dissemination to the public, such as notices, circulars, reports, market letters, form letters, telemarketing scripts or reprints or excerpts of the foregoing. The term does not apply to official statements but does apply to abstracts or summaries of official statements, offering circulars and other similar documents prepared by dealers.

See also:

Rule G-15 Interpretive Notice — Confirmation Disclosures and Prevailing Market Price Guidance: Frequently Asked Questions, March 19, 2018 (first published July 12, 2017)

Rule G-17 Interpretive Notices — Application of Board Rules to Transactions in Municipal Securities Subject to Secondary Market Insurance or Other Credit Enhancement Features, March 6, 1984.

- **Notice Concerning the Application of Board Rules to Put Option Bonds,** September 30, 1985.
- **Bond Insurance Ratings — Application of MSRB Rules,** January 22, 2008.
- **Guidance on Disclosure and Other Sales Practice Obligations to Individual and Other Retail Investors in Municipal Securities,** July 14, 2009.
- **MSRB Reminds Firms of Their Sales Practice and Due Diligence Obligations When Selling Municipal Securities in the Secondary Market,** September 20, 2010.
- **Rule G-43 Interpretations — Notice to Dealers That Use the Services of Broker's Brokers,** December 22, 2012.

Interpretive Letters

Differential re-offering prices. This is in response to your letter in which you ask us to provide interpretive guidance on MSRB rules G-21, G-30 and G-32 in the context of a proposed new system (the "System") to be established by your client (the "Company") for pricing and distribution of primary market municipal securities to retail investors. You provide a description of the System, including a discussion of incremental changes through various versions of the System. We have included below a brief summary of the MSRB's understanding of certain key features of the System that may be relevant in responding to your questions. **This should not be construed as meaning that the MSRB has "approved" the System, or even reviewed the System description which you provided, except for the limited purpose of addressing your specific questions on the three rules noted above. The MSRB expresses no views and has not considered whether the System as you describe it, or whether a brokerdealer using the System, would be in compliance with MSRB rules or other applicable law, rules or regulations, beyond the specific statements set forth herein on these three rules.**

As you describe it, the System consists of an internet-based electronic primary market order matching process that will provide (1) electronic notices ("Electronic Notices") to registered representatives at subscribing broker-dealer firms and (2) an ability to establish a range of acceptable reoffering prices for each order of primary market municipal securities. Registered representatives will provide to the System profiles ("Retail Inquiries") that describe the features of municipal securities that the registered representative's customers wish

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to purchase. The System will then automatically advise the registered representatives of the availability for purchase of a new municipal security issue that matches the Retail Inquiry by sending an Electronic Notice by fax or e-mail. The Company intends to register with the Securities and Exchange Commission as a broker-dealer prior to charging subscription fees for the services provided by the System. We understand that, for purposes of the System, a retail investor is characterized solely by the size of the order, rather than by the identity of an investor as a retail or institutional customer.

Municipal securities available for purchase through the System will be sold using a structure that establishes a range of acceptable retail reoffering prices. For each new issue, the underwriter and the issuer will establish a maximum and minimum yield and a maximum and minimum price to be entered into the System. For all Retail Inquiries that match the basic parameters of the issue (*e.g.*, maturity, rating, state of issuer), the System will send an Electronic Notice to each registered representative that adjusts the price to include the least of the registered representative's desired mark-up, the maximum mark-up established by the registered representative's broker-dealer firm, or the maximum issue mark-up established by the underwriter. In the System's initial stages, a registered representative may place an order for amounts up to $500,000 to purchase the securities upon receiving an Electronic Notice. You note that use of the System will permit sales of municipal securities of the same maturity and order size to different buyers at different prices.

You state that you believe that the business and operating plan for the System will be in compliance with all published MSRB rules and that broker-dealers subscribing to the System will not violate any MSRB rules by virtue of their use of the System. You request clarification regarding the applicability of certain provisions of rules G-21, G-30 and G-32 to brokerdealers using the System. As noted above, the MSRB cannot provide an "approval" of a proposed system or of its use by brokerdealers. We can, however, provide some guidance regarding your specific rule-related interpretive requests. Since the application of rules to particular factual situations is, by its nature, fundamentally dependent upon the specific facts and circumstances, you should be cognizant of the precise nature of our guidance and of the potential for seemingly small factual variances resulting in different conclusions regarding compliance with our rules.

Rule G-30, on Prices and Commissions

You ask us whether we view use of the System by broker-dealers to establish a range of reoffering prices (instead of a single reoffering price) as compliant with the requirement under rule G-30, on prices and commissions, that municipal securities prices be fair and reasonable. We cannot provide you with assurance that under all circumstances prices charged to customers by broker-dealers using the System will comply with rule G-30. However, the following discussion should provide some guidance in assessing whether broker-dealers using the System will be able to comply with rule G-30.

Rule G-30(a) provides that no broker-dealer shall sell municipal securities to a customer in a principal transaction except at a price that is fair and reasonable, taking into consideration all relevant factors.[1] The rule cites, as relevant factors, the best judgment of the broker-dealer as to the fair market value of the securities at the time of the transaction, the expense involved in effecting the transaction, the fact that the broker-dealer is entitled to a profit, and the total dollar amount of the transaction.[2] In addition, the MSRB has identified a number of other factors which might be relevant in determining the fairness and reasonableness of prices in municipal securities transactions. These additional factors include, but are not limited to, the availability of the security in the market, the price or yield of the security, the maturity of the security, and the nature of the professional's business.[3] The MSRB firmly believes that the resulting yield to the customer is the most important factor in determining the fairness and reasonableness of a price in any given transaction. The MSRB previously has stated that such yield should be comparable to the yield on other securities of comparable quality, maturity, coupon rate, and block size then available in the market.

Although a comparative yield assessment is the most important factor in determining whether a transaction price is fair and reasonable, rule G-30 states that other facts and circumstances of a specific transaction may also enter into the final determination of whether the transaction price is fair and reasonable. Thus, rule G-30 clearly contemplates the possibility that, depending upon the facts and circumstances of two contemporaneous transactions in identical securities, both transactions may be priced in compliance with rule G-30 even though the prices are not identical. It is not possible to state a specific percentage of variance between prices on contemporaneous transactions that would create a presumption of a violation of rule G-30 with respect to the higher priced transaction since a number of different factors may be relevant to the individual transactions.[4] However, the degree to which price variances may occur without raising the presumption of a rule G-30 violation generally would parallel the level of variance in the relevant factors under rule G-30 from transaction to transaction in the same security. For example, a large difference in the par value of two transactions could potentially justify a larger price difference than would a small difference in the par value of the two transactions.

The MSRB has stated that, although rule G-30 does not specifically mention new issue offering prices which may be set by the syndicate or the issuer, compliance with rule G-30 in this

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context also is determined by whether the price of a municipal security is fair and reasonable, taking into account all relevant factors.[5] As noted above, a comparative yield assessment is the most important factor in determining the fairness and reasonableness of a transaction price. Although it is the ultimate responsibility of the broker-dealer effecting a transaction with a customer to ensure that the price is in compliance with rule G-30, the issuer and underwriter may help broker-dealers using the System to avoid possible violations of rule G-30 by carefully reviewing the ranges of yields and prices entered by the underwriter into the System to ensure that the net yield to customers[6] would be comparable to that of similar securities regardless of where within the established ranges a transaction is executed by a broker-dealer using the System.

Rule G-32, on Disclosures in Connection with New Issues

You provide us with a sample of proposed language to be included in the official statement for new issue municipal securities to be sold using the System. This language indicates the lowest price at which any of the securities in the new issue are offered and also indicates a range of maximum prices at which the securities are offered based on various lot sizes of the securities sold in a particular transaction. The language further states that, subject to the practices of each broker-dealer firm in the selling group, investors may have purchased the securities at prices lower than those shown in the range of maximum prices included in the official statement. Finally, the language provides a specific dollar amount representing the total compensation paid to the underwriter as representative of the selling group. You ask us whether inclusion of such language in the official statement by issuers using the System complies with rule G-32.

Rule G-32(a)(ii) provides that, in connection with new issue municipal securities purchased by the underwriter in a negotiated sale, any broker-dealer selling such securities to a customer must deliver to the customer by no later than settlement information regarding, among other things, the underwriting spread and the initial offering price for each maturity in the issue, including maturities that are not reoffered.[7] The MSRB has stated that the obligation to disclose the underwriting spread requires that the broker-dealer disclose the difference between the initial offering price of the new issue and the amount paid by the underwriter to the issuer, expressed either in dollars or points per bond.[8] The MSRB has prohibited broker-dealers from merely disclosing to customers the offering prices and amount paid to the issuer and describing how the underwriting spread can be calculated from these figures.[9] The MSRB has stated that initial offering prices may be expressed either in terms of dollar price or yield.[10]

The MSRB recognizes that disclosure of initial offering prices and underwriting spread is more complicated in circumstances where securities of the same maturity may be offered at a number of different prices, as compared to the typical situation where each maturity is stated to be offered at a single price. The MSRB believes that, under these circumstances, the initial offering prices and underwriting spread may be expressed as a range of values.

In expressing the initial offering prices as a range of values, broker-dealers must ensure that the prices at which the securities are initially offered to customers will fall within the expressed range. At the same time, the MSRB believes that the disclosure of a range of prices must not be misleading to customers. For example, a range that implies that a market may exist at prices where in fact no transactions are likely to occur could be misleading. In addition, a range that includes prices that are not fair and reasonable for purposes of rule G-30 could mislead customers with regard to what would in fact constitute a fair and reasonable price. These and other practices arising in connection with the disclosure of a range of initial offering prices could constitute violations of rule G-17[11] and would not satisfy the disclosure obligation under rule G-32. Broker-dealers are cautioned, when using a range to disclose initial offering prices, to make such range as narrow as reasonably possible in order to avoid violations of rules G-17 and G-32. For example, if broker-dealers have established discrete price ranges for specific securities within the issue (*e.g.*, separate maturities) or for specific types of transactions (*e.g.*, different lot sizes), they should include such discrete ranges in the disclosure made to customers. The initial offering price range must be expressed either in terms of dollar prices or yields.

In expressing the underwriting spread as a range of values, the range must be no broader than would be obtained by calculating the lowest possible spread based on all of the lowest initial offering price values and the highest possible spread based on all of the highest initial offering price values. This range should be further refined based on specific information available to the broker-dealer (*e.g.*, minimum or maximum spreads agreed to between the issuer and the underwriter, fixed components of the gross spread, known levels of transactions at particular prices, etc.).[12] Broker-dealers may show this spread range either as a range of a total amount or as a listing of the components of the spread range. If components of the spread range are listed, that portion of the range which represents compensation to the underwriter must be clearly identified as such. The spread range must be expressed either in dollars or points per bond.

Rule G-21, on Advertising

You state that you do not believe that Electronic Notices constitute advertisements within the meaning of rule G-21, which sets forth certain requirements with respect to advertisements of municipal securities. An advertisement is defined as any material (other than listings of offerings) published or designed for use in the public, including electronic, media or any promotional literature designed for dissemination to the public, including any notice, circular, report, market letter, form letter, telemarketing script or reprint or excerpt of the

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foregoing. The rule covers communications that are intended to reach a broad segment of the public rather than individually tailored communications between two specific parties and communications between broker-dealers. Thus, if the use of Electronic Notices is limited in the manner you describe in your letter, it appears that such Electronic Notices would not constitute advertisements within the meaning of rule G-21. However, we express no opinion as to whether Electronic Notices might constitute advertisements if they were to be disseminated to investors.

* * *

I must emphasize once again that the guidance provided in this letter cannot be considered an "approval" of the System. Further, this guidance cannot be considered to provide or imply that broker-dealers using the System will, under all circumstances, be in compliance with the rules discussed herein. Nor can this guidance be considered to provide or imply that the operation of the System or the use of the System by broker-dealers is in compliance with any other rules of the MSRB or the laws, rules or regulations of any other entity. *MSRB interpretation of December 11, 2001.*

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[1] In the case of an agency transaction, rule G-30 prohibits a broker-dealer from selling a municipal security to a customer for a commission or service charge in excess of a fair and reasonable amount, taking into consideration all relevant factors. In addition, rule G-18, on execution of transactions, requires that a broker-dealer in an agency transaction make a reasonable effort to obtain a price for the customer that is fair and reasonable in relation to prevailing market conditions. Since we understand that broker-dealers that use the System ultimately will effect transactions with their customers on a principal basis, we do not address potential compliance issues with respect to agency transactions arising under rules G-18 and G-30.

[2] With respect to total dollar amount of a transaction, the MSRB has stated that, to the extent that institutional transactions are often larger than retail transactions, this factor may enter into the fair and reasonable pricing of retail versus institutional transactions. *See* Rule G-30 Interpretive Letter — Factors in pricing, November 29, 1993, *MSRB Rule Book* (July 1, 2001) at 163 (the "Pricing Letter").

[3] *See* Rule G-30 Interpretation — Republication of September 1980 Report on Pricing, *MSRB Rule Book* (July 1, 2001) at 161 (the "Pricing Report").

[4] Of course, the existence of a variance in the prices of two contemporaneous sale transactions in the same security would be less likely to raise a presumption that the higher priced transaction violates rule G-30 if the yields for both transactions are generally higher than for most other comparable securities in the market.

[5] *See* Pricing Letter. It is worth noting that the rules of the National Association of Securities Dealers regarding fixed-price offerings do not apply to transactions in municipal securities. The MSRB is not aware of any law or regulation which purports to require fixed-price offerings for new issue municipal securities. *See* Rule G-11 Interpretive Letter — Fixed-price offerings, March 16, 1984, *MSRB Rule Book* (July 1, 2001) at 60.

[6] The net yield to a customer is based on actual money paid by the customer, including the effect of any remuneration paid to the broker-dealer, other than certain miscellaneous transaction fees. *See* Rule G-15 Interpretation — Notice Concerning Flat Transaction Fees, June 13, 2001, *MSRB Rule Book* (July 1, 2001) at 114; Rule G-15 Interpretation — Notice Concerning Confirmation Disclosure of Miscellaneous Transaction Charges, May 14, 1990, *MSRB Rule Book* (July 1, 2001) at 113.

[7] This information may be disclosed in the official statement if it is delivered to the customer in a timely manner at or prior to settlement. This information may also be provided in a separate written statement.

[8] Spread may be shown as a single figure or as a listing of the components of the spread. If components are listed, the portion of the proceeds representing compensation to the underwriter must be clearly identified as such. *See* Rule G-32 Interpretation — Notice Regarding the Disclosure Obligations of Brokers, Dealers and Municipal Securities Dealers in Connection with New Issue Municipal Securities Under Rule G-32, *MSRB Rule Book* (July 1, 2001) at 166 (the "Disclosure Notice"); Rule G-32 Interpretive Letter — Disclosure of underwriting spread, March 9, 1981, *MSRB Rule Book* (July 1, 2001) at 173.

[9] *See* Disclosure Requirements for New Issue Securities: Rule G-32, *MSRB Reports*, Vol. 7, No. 2 (March 1987) at 11.

[10] *See* Disclosure Notice; Rule G-32 Interpretive Letter — Disclosures in connection with new issues, December 22, 1993, *MSRB Rule Book* (July 1, 2001) at 174.

[11] Rule G-17 requires broker-dealers to deal fairly with all persons and not to engage in any deceptive, dishonest or unfair practice.

[12] Of course, if the new issue has been fully sold and all initial offering prices are known at the time the disclosure information is prepared, an exact amount rather than a range should be used in disclosing the underwriting spread.

See also:

Rule G-8 Interpretive Letter — Time of receipt and execution of orders, *MSRB interpretation of April 20, 1987.*

Rule G-11 Interpretive Letter — Fixed-price offerings, *MSRB interpretation of March 16, 1984.*

Rule G-15 Interpretive Letter — Callable securities: pricing to mandatory sinking fund calls, *MSRB interpretation of April 30, 1986.*

- **Disclosure of pricing: calculating the dollar price of partially prerefunded bonds,** *MSRB interpretation of May 15, 1986.*

Rule G-17 Interpretive Letter — Put option bonds: safekeeping, pricing, *MSRB interpretation of February 18, 1983.*

Rule G-21 Interpretive Letter — Disclosure obligations, *MSRB interpretation of May 21, 1998.*

Rule G-25 Interpretive Letter — Retroactive price adjustment for early redemption, *MSRB interpretation of January 31, 1986.*

Rule G-30 Amendment History (since 2003)

Release No. 34- 79347 (November 17, 2016), 81 FR 84637 (November 23, 2016); MSRB Notice 2016-28 (November 29, 2016)

Release No. 34-72129 (May 8, 2014), 79 FR 27662 (May 14, 2014); MSRB Notice 2014-11 (May 12, 2014)

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Rule G-31
Reciprocal Dealings with Municipal Securities Investment Companies

No broker, dealer, or municipal securities dealer shall solicit transactions in municipal securities with or for the account of an investment company as defined in the Investment Company Act of 1940, as compensation or in return for sales by such broker, dealer, or municipal securities dealer of participations, shares, or units in such investment company.

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Rule G-32
Disclosures in Connection with Primary Offerings

(a) *Customer Disclosure Requirements*.

(i) No broker, dealer or municipal securities dealer shall sell, whether as an underwriter or otherwise, any offered municipal securities to a customer unless such broker, dealer or municipal securities dealer delivers to the customer by no later than the settlement of the transaction a copy of the official statement or, if an official statement is not being prepared, a written notice to that effect together with a copy of a preliminary official statement, if any.

(ii) Notwithstanding the provisions of subsection (a)(i) of this rule, the delivery obligation thereunder shall be deemed satisfied if the following conditions are met:

(A) the offered municipal securities being sold are not municipal fund securities; and

(B) the underwriter has made the submissions to EMMA required under paragraph (b)(i)(A) or (b)(i)(B)(1) of this rule; provided that the condition in this paragraph (B) shall apply solely to sales to customers by brokers, dealers and municipal securities dealers acting as underwriters in respect of the offered municipal securities being sold.

(iii) Any broker, dealer or municipal securities dealer that sells any offered municipal securities to a customer with respect to which the delivery obligation under subsection (a)(i) of this rule is deemed satisfied pursuant to subsection (a)(ii) of this rule shall provide or send to the customer, by no later than the settlement of such transaction, either:

(A) a copy of the official statement (or, if an official statement is not being prepared, a written notice to that effect together with a copy of a preliminary official statement, if any), and, in connection with offered municipal securities sold by the issuer on a negotiated basis to the extent not included in the official statement, (1) the underwriting spread, if any, (2) the amount of any fee received by the broker, dealer or municipal securities dealer as agent for the issuer in the distribution of the securities; and (3) the initial offering price for each maturity in the offering, including maturities that are not reoffered; or

(B) a notice advising the customer:

(1) how to obtain the official statement from EMMA, which notice may be combined, at the election of the broker, dealer or municipal securities dealer, with notice of the availability of the official statement from a qualified portal; and

(2) that a copy of the official statement will be provided by the broker, dealer or municipal securities dealer upon request.

If a broker, dealer or municipal securities dealer provides notice to a customer pursuant to paragraph (a)(iii)(B), such broker, dealer or municipal securities dealer shall, upon request from the customer, send a copy of the official statement to the customer, together with the information required pursuant to paragraph (a)(iii)(A) in connection with a negotiated offering to the extent not included in the official statement, within one business day of request by first class mail or other equally prompt means.

(iv) In the case of a sale by a broker, dealer or municipal securities dealer of municipal fund securities to a customer, the following additional provisions shall apply:

(A) notwithstanding the provisions of subsection (a)(i) of this rule, if a customer who participates in a periodic municipal fund security plan or a non-periodic municipal fund security program has previously received a copy of the official statement in connection with the purchase of municipal fund securities under such plan or program, a broker, dealer or municipal securities dealer that sells additional shares or units of the municipal fund securities under such plan or program to the customer will be deemed to have satisfied the delivery obligation under subsection (a)(i) of this rule if such broker, dealer or municipal securities dealer sends to the customer a copy of any new, supplemented, amended or "stickered" official statement, by first class mail or other equally prompt means, promptly upon receipt thereof; provided that, if the broker, dealer or municipal securities dealer sends a supplement, amendment or sticker without including the remaining portions of the official statement, such broker, dealer or municipal securities dealer includes a written statement describing which documents constitute the complete official statement and stating that the complete official statement is available upon request; and

(B) the broker, dealer or municipal securities dealer shall provide to the customer, by no later than the settlement of the transaction, written disclosure of the amount of any fee received by the broker, dealer or municipal securities dealer as agent for the issuer in the distribution of the municipal fund securities; provided, however, that if a broker, dealer or municipal securities dealer selling municipal fund securities provides periodic statements to the customer pursuant to Rule G-15(a)(viii) in lieu of individual transaction confirmations, this paragraph (iv)(B) shall be deemed to be satisfied if the broker, dealer or municipal securities dealer provides this information to the customer at least annually and provides information regarding any change in such fee on or prior to the sending of the next succeeding periodic statement to the customer.

(v) If two or more customers share the same address, a broker, dealer or municipal securities dealer may satisfy the delivery obligations set forth in this section (a) by complying with the requirements set forth in Rule 154 of the Securities Act of 1933, on delivery of prospectuses to investors at the

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same address. In addition, any such broker, dealer or municipal securities dealer shall comply with section (c) of Rule 154, on revocation of consent, to the extent that the provisions of paragraph (a)(iv)(A) relating to a customer who participates in a periodic municipal fund security plan or a non-periodic municipal fund security program apply.

(b) *Underwriter Submissions to EMMA*.

(i) *Official Statements, Preliminary Official Statements, and Information Concerning Exempt Offerings*.

(A) *Form G-32 Information Submission*. Except as otherwise provided in paragraph (F) of this subsection (i), the underwriter of a primary offering of municipal securities shall submit, in addition to any applicable documents and information required to be submitted pursuant to paragraphs (B) through (E) of this subsection (i), Form G-32 information relating to the offering in a timely and accurate manner as follows:

(1) *NIIDS-Eligible Primary Offerings*. For any primary offering of municipal securities that is a new issue eligible for submission of information to NIIDS under Rule G-34(a)(ii)(C), the underwriter of such offering shall submit all information required to be submitted under this paragraph (A) on Form G-32 relating to such offering at such times and in such manner as required under Rule G-34(a)(ii)(C), and the submission of such information under Rule G-34(a)(ii)(C) in a full and timely manner shall be deemed to be in compliance with the submission requirement of this subparagraph (b)(i)(A)(1); *provided, however,* that:

(a) Any items of information required to be included on Form G-32 but for which no corresponding data element then is available through NIIDS shall be submitted through EMMA on Form G-32 at such times and in such manner as required under subsection (b)(vi) of this rule and as set forth in the EMMA Dataport Manual; and

(b) Any corrections to data submitted pursuant to Rule G-34(a)(ii)(C) shall be made promptly and, to the extent feasible, in the manner originally submitted.

(2) *Primary Offerings Ineligible for NIIDS*. For any primary offering of municipal securities that is not a new issue eligible for submission of information to NIIDS under Rule G-34(a)(ii)(C) or is exempt from such submission requirement under Rule G-34(d), the underwriter of such offering shall initiate the submission of Form G-32 information relating to the offering on or prior to the date of first execution, and shall complete the submission of all information required to be submitted by Form G-32 relating to such offering at such times and in such manner as required under subsection (b)(vi) of this rule and as set forth in the EMMA Dataport Manual.

(B) *Official Statement Submission*.

(1) Except as otherwise provided in paragraph (C), (E) or (F) of this subsection (i), the underwriter of a primary offering of municipal securities shall submit the official statement for such offering to EMMA within one business day after receipt of the official statement from the issuer or its designee, but by no later than the closing date.

(2) If for any reason the official statement for a primary offering of municipal securities subject to this paragraph (B) is not submitted by the underwriter to EMMA by the closing date, the underwriter shall submit to EMMA:

(a) by no later than the closing date, notice to the effect that the official statement has not been submitted by the underwriter to EMMA by the closing date and that the official statement will be submitted to EMMA when it becomes available;

(b) within one business day after receipt from the issuer or its designee, the official statement; and

(c) the preliminary official statement or notice required pursuant to paragraph (D) of this subsection (i);

provided, however, that compliance with the requirements of this subparagraph (2) will not cure the failure to comply with subparagraph (1) of this paragraph (B).

(C) *No Official Statement Prepared for Offering Exempt from Exchange Act Rule 15c2-12*. If an official statement will not be prepared for a primary offering of municipal securities exempt from Securities Exchange Act Rule 15c2-12, the underwriter shall submit to EMMA, by no later than the closing date:

(1) notice to the effect that no official statement will be prepared; and

(2) the preliminary official statement or notice required pursuant to paragraph (D) of this subsection (i).

(D) *Preliminary Official Statement Submission*. The underwriter of a primary offering of municipal securities to which subparagraph (B)(2) or paragraph (C) of this subsection (i) applies shall submit to EMMA, by no later than the closing date, either:

(1) the preliminary official statement for such offering; or

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(2) if no preliminary official statement has been prepared for such offering, notice that no preliminary official statement has been prepared.

(E) *Exemption for Certain Limited Offerings*. The underwriter of a primary offering of municipal securities not subject to Securities Exchange Act Rule 15c2-12 by virtue of paragraph (d)(1)(i) thereof for which an official statement has been prepared shall not be required to submit the official statement or any preliminary official statement to EMMA if the underwriter:

(1) complies with the requirements of paragraph (A) of this subsection (i);

(2) submits to EMMA, by no later than the closing date:

(a) notice that such primary offering is not subject to Securities Exchange Act Rule 15c2-12 by virtue of paragraph (d)(1)(i) thereof and that an official statement has been prepared but is not being submitted to EMMA; and

(b) contact information, including mailing address, telephone number, e-mail address and name of an associated person of the underwriter from whom customers may request the official statement; and

(3) delivers the official statement to each customer purchasing the offered municipal securities from the underwriter or from any other broker, dealer or municipal securities dealer, upon request, by the later of one business day after request or the settlement of the customer's transaction.

(F) *Exemption for Certain Commercial Paper Offerings or Remarketings*. The underwriter of a primary offering of municipal securities that consists of commercial paper not subject to Securities Exchange Act Rule 15c2-12 by virtue of paragraph (d)(1)(ii) thereof or of a remarketing of municipal securities not subject to paragraphs (b)(1) through (b)(4) of Securities Exchange Act Rule 15c2-12 by virtue of paragraph (d)(5) thereof shall not be required to comply with the requirements of paragraph (A) of this subsection (i) or to submit the official statement or any preliminary official statement to EMMA if:

(1) no official statement is prepared for the offering; or

(2) the official statement used in connection with such offering:

(a) has previously been properly submitted to EMMA in connection with a prior primary offering; and

(b) has not been supplemented or amended subsequent to such prior submission.

(ii) *Advance Refunding Documents*. If a primary offering advance refunds outstanding municipal securities and an advance refunding document is prepared, each underwriter in such offering is required to provide access to such information by all market participants at the same time by submitting, no later than five business days after the closing date:

(A) the advance refunding document to EMMA; and

(B) all information required to be submitted by Form G-32 relating to the advance refunding document as required under subsection (b)(vi) of this rule and as set forth in the EMMA Dataport Manual.

(iii) *Amendments to Official Statements, Preliminary Official Statements and Advance Refunding Documents*. In the event the underwriter for a primary offering has previously submitted to EMMA an official statement, preliminary official statement or advance refunding document and such document is amended by the issuer during the primary offering disclosure period, the underwriter for such primary offering must, within one business day after receipt of the amendment from the issuer or an agent of the issuer, submit:

(A) the amendment to EMMA; and

(B) all information required to be submitted by Form G-32 relating to the amendment as required under subsection (b)(vi) of this rule and as set forth in the EMMA Dataport Manual.

(iv) *Cancellation of All or Part of Primary Offering*. In the event an underwriter provides to EMMA the documents and information referred to in subsection (i), (ii) or (iii) above, but the primary offering is later cancelled, the underwriter shall notify EMMA of this fact promptly through Form G-32. If only a portion of a primary offering is cancelled, the underwriter shall amend or supplement information submitted to EMMA to reflect such partial cancellation by no later than the closing date.

(v) *Underwriting Syndicate*. In the event a syndicate or similar account has been formed for the underwriting of a primary offering, the managing underwriter shall take the actions required under the provisions of this rule.

(vi) *Procedures for Submitting Documents and Form G-32 Information*.

(A) All official statements, preliminary official statements, advance refunding documents and amendments thereto submitted to EMMA under this rule shall be in a designated electronic format.

(B) All submissions of information required under this rule shall be made by means of Form G-32 submitted electronically to EMMA in such format and manner, and including such items of information provided at such times, as specified herein, in Form G-32 and in the EMMA Dataport Manual.

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(C) The underwriter in any primary offering of municipal securities for which a document or information is required to be submitted to EMMA under this section (b) shall submit such information in a timely and accurate manner as follows:

(1) Form G-32 information submissions pursuant to paragraph (b)(i)(A) hereof with respect to a primary offering shall be:

(a) initiated on or prior to the date of first execution with the submission of CUSIP numbers (except if such CUSIP numbers are not required under Rule G-34 and have not been assigned), initial offering prices or yields (including prices or yields for maturities designated as not reoffered), if applicable, the expected closing date, whether the issuer or other obligated persons have agreed to undertake to provide continuing disclosure information as contemplated by Securities Exchange Act Rule 15c2-12, and if there was a retail order period (as defined in Rule G-11(a)(vii)) as part of a primary offering, information indicating whether a retail order period was conducted, each date and each time (beginning and end) it was conducted, together with such other items of information as set forth in Form G-32 and the EMMA Dataport Manual; and

(b) completed by no later than the closing date, except to the extent that the provisions of subsection (b)(i) otherwise require a submission after the closing date.

Specific items of information required by Form G-32 shall be submitted at such times and in such manners as set forth in the EMMA Dataport Manual.

(2) Form G-32 information submissions pursuant to paragraph (b)(ii)(B) hereof with respect to an advance refunding shall be completed by no later than five business days after the closing date with the submission of CUSIP numbers, if any, of the advance refunded municipal securities (including any CUSIP numbers newly assigned to some or all of the advance refunded municipal securities), together with such other items of information as set forth in Form G-32 and the EMMA Dataport Manual.

(3) Form G-32 information submissions pursuant to paragraph (b)(iii)(B) hereof with respect to an amendment to a previously submitted document shall be completed by no later than one business day after receipt of such amendment from the issuer or an agent of the issuer with the submission of such items of information as set forth in Form G-32 and the EMMA Dataport Manual.

(4) Form G-32 information submissions pursuant to subsection (b)(iv) hereof with respect to a cancellation of a primary offering shall be completed:

(a) in the case of a partial cancellation, by no later than the closing date for the remaining portion of such primary offering; and

(b) in the case of a cancellation of the entire primary offering, promptly after a final determination by the issuer that such offering is cancelled, provided that such information shall be deemed to have been submitted on a timely basis if submitted within five business days after cancellation by the underwriter of its transactions with customers or other brokers, dealers and municipal securities dealers in connection with such cancelled offering.

(D) Form G-32 and any related documents shall be submitted by the underwriter or by any submission agent designated by the underwriter pursuant to procedures set forth in the EMMA Dataport Manual. The failure of a submission agent designated by an underwriter to comply with any requirement of this rule shall be considered a failure by such underwriter to so comply.

(c) *Definitions*. For purposes of this rule, the following terms have the following meanings:

(i) The term "advance refunding document" shall mean the refunding escrow trust agreement or its equivalent prepared by or on behalf of the issuer.

(ii) The term "closing date" shall mean the date of first delivery by the issuer to or through the underwriter of municipal securities sold in a primary offering.

(iii) The term "designated electronic format" shall mean portable document format, with files configured to permit documents to be saved, viewed, printed and retransmitted by electronic means. For files submitted to EMMA on or after January 1, 2010, documents in designated electronic format must be word-searchable (without regard to diagrams, images and other non-textual elements).

(iv) The term "EMMA" shall mean the Board's Electronic Municipal Market Access system, or any other electronic municipal securities information access system designated by the Board for collecting and disseminating primary offering documents and information.

(v) The term "EMMA Dataport Manual" shall mean the document(s) designated as such published by the Board from time to time setting forth the processes and procedures with respect to submissions to be made to the primary market disclosure service of EMMA by underwriters under Rule G-32(b).

(vi) The term "offered municipal securities" shall mean municipal securities that are sold by a broker, dealer or municipal securities dealer during the securities' primary

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offering disclosure period, including but not limited to municipal securities reoffered in a remarketing that constitutes a primary offering and municipal securities sold in a primary offering but designated as not reoffered.

(vii) The term "official statement" shall mean (A) for an offering subject to Securities Exchange Act Rule 15c2-12, a document or documents defined in Securities Exchange Act Rule 15c2-12(f)(3), or (B) for an offering not subject to Securities Exchange Act Rule 15c2-12, a document or documents prepared by or on behalf of the issuer that is complete as of the date delivered to the underwriter and that sets forth information concerning the terms of the proposed offering of securities. A notice of sale shall not be deemed to be an "official statement" for purposes of this rule.

(viii) The term "primary offering" shall mean an offering defined in Securities Exchange Act Rule 15c2-12(f)(7), including but not limited to any remarketing of municipal securities that constitutes a primary offering as such subsection (f)(7) may be interpreted from time to time by the Commission.

(ix) The term "primary offering disclosure period" shall mean, with respect to any primary offering, the period commencing with the first submission to an underwriter of an order for the purchase of offered municipal securities or the purchase of such securities from the issuer, whichever first occurs, and ending 25 days after the final delivery by the issuer or its agent of all securities of the issue to or through the underwriting syndicate or sole underwriter.

(x) The term "qualified portal" shall mean an Internet-based utility providing access by any purchaser or potential purchaser of offered municipal securities to the official statement for such offered municipal securities in a designated electronic format, and allowing such purchaser or potential purchaser to search for (using the nine-digit CUSIP number and other appropriate search parameters), view, print and save the official statement, at no charge, for a period beginning on the first business day after such official statement becomes available from EMMA and ending no earlier than 30 calendar days after the end of the primary offering disclosure period for such offered municipal securities; provided that any such utility shall not be a qualified portal unless notice to users that official statements are also available from EMMA and a hyperlink to EMMA are posted on the page on which searches on such utility for official statements may be conducted.

(xi) The term "date of first execution" shall mean the date on which the underwriter executes its first transactions with a customer or another broker, dealer or municipal securities dealer in any security offered in a primary offering; provided that, for offerings subject to Rule G-34(a)(ii)(C), "date of first execution" shall mean the date corresponding to the Time of First Execution as defined in Rule G-34(a)(ii)(C)(1)(b); further provided that, solely for purposes of this rule, the date of first execution shall be deemed to occur by no later than the closing date.

(xii) The term "underwriter" shall mean a broker, dealer or municipal securities dealer that is an underwriter as defined in Securities Exchange Act Rule 15c2-12(f)(8), including but not limited to a broker, dealer or municipal securities dealer that acts as remarketing agent for a remarketing of municipal securities that constitutes a primary offering.

(xiii) The term "commercial paper" shall mean municipal securities having a maturity of nine months or less issued pursuant to a commercial paper program permitting such municipal securities to be rolled over upon maturity into new commercial paper.

(xiv) The term "obligated person" shall mean an obligated person defined in Securities Exchange Act Rule 15c2-12(f)(10).

(xv) The term "NIIDS" shall have the meaning set forth in Rule G-34(a)(ii)(C)(3)(b).

Rule G-32 Interpretations

Notice Regarding the Disclosure Obligations of Brokers, Dealers and Municipal Securities Dealers in Connection with New Issue Municipal Securities Under Rule G-32

November 19, 1998

In July 1998, the Securities and Exchange Commission ("SEC") approved two sets of amendments to rule G-32, on disclosures in connection with new issues. The first set of amendments permits brokers, dealers and municipal securities dealers ("dealers") that sell new issue variable rate demand obligations qualifying for the exemption provided under subparagraph (d)(1)(iii) of Securities Exchange Act Rule 15c2-12 to deliver the preliminary official statement, rather than the final official statement, to customers by settlement.[1] The second set of amendments strengthens the rule's existing requirements regarding dissemination of official statements to dealers purchasing new issue municipal securities and incorporates a longstanding Board interpretation regarding disclosure to customers of initial offering prices in negotiated underwritings.[2] In view of these recent amendments and the continuing concerns of the Board and the enforcement agencies that some dealers may have inadequate procedures in place to ensure compliance with rule G-32,[3] the Board is publishing this notice to review the requirements of the rule and to emphasize the importance of full and timely compliance.

Purpose and Structure of Rule G-32

Rule G-32 is designed to ensure that a customer who purchases new issue municipal securities is provided with all available information relevant to his or her investment decision by settlement of the transaction. The rule obligates all dealers selling new issue municipal securities to provide to their customers purchasing the securities certain disclosure materials by settlement. To effectuate this primary obligation, the rule further obligates all dealers that sell new issue munic-

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ipal securities to other dealers, as well as the managing or sole underwriter for such securities, to provide to such purchasing dealers these disclosure materials so as to permit the purchasing dealers to comply with their primary delivery obligations to their own customers. Finally, the rule provides that a dealer that prepares an official statement in final form on behalf of an issuer while serving in the capacity of financial advisor to such issuer must make the official statement available to the underwriters promptly after the issuer approves its distribution. Compliance with each prong of the rule is crucial to ensure that the primary purpose of the rule is fulfilled.

New Issue Municipal Securities and the Underwriting Period

Rule G-32 applies to the sale of all new issue municipal securities. These are defined in section (c)(i)[*] as any municipal securities (other than commercial paper[4]) that are sold by any dealer during the issue's underwriting period. Once the underwriting period has ended for an issue of municipal securities, the requirements of rule G-32 no longer apply to transactions in such municipal securities.

The underwriting period for an issue of municipal securities begins with the first submission to the underwriters of an order from a potential customer to purchase the securities or the purchase by the underwriters of the securities from the issuer (*i.e.*, the execution of the purchase contract in a negotiated sale or the award of the securities in a competitive sale), whichever occurs first. The underwriting period ends upon delivery by the issuer of the securities to the underwriters (*i.e.*, the bond closing) if the underwriters no longer retain an unsold balance at such time. If, however, the issue is not sold out by the bond closing, the underwriting period continues until the underwriters no longer retain an unsold balance; provided that, in the case of an issue underwritten by a sole underwriter, if the bond closing has occurred and the underwriter retains an unsold balance 21 calendar days after the first submission of an order, the underwriting period nonetheless ends after such 21st day.[5]

Delivery Obligations to Customers

A dealer selling new issue municipal securities to a customer is required to deliver (not merely send) certain information to such customer prior to settlement of the transaction. The Board has previously noted that the required information will be presumed to have been delivered to the customer if it was sent at least three business days prior to settlement.[6]

Official Statements. With only two exceptions, a dealer violates section (a) of rule G-32 if it sells, either as principal or agent, a new issue municipal security to a customer but fails to deliver an official statement in final form[7] to such customer by no later than settlement of that transaction. Dealers should note that this obligation differs from the obligation imposed by SEC Rule 15c2-12(b)(4) in that rule G-32 mandates that any dealer selling new issue municipal securities (not just participating underwriters of the offering) must deliver (not just send) the official statement to the customer by settlement, regardless of whether the customer has requested a copy of the official statement.[8]

The first exception under rule G-32 arises where the issuer is not preparing an official statement in final form. In that case, the dealer must deliver to the customer by no later than settlement a written notice that an official statement in final form is not being prepared, together with a copy of a preliminary official statement, if one has been prepared.[9] This exception is **not** available in cases where the official statement in final form is in the process of being prepared but is not yet available at the time that a dealer wishes to settle a transaction with a customer. Thus, in such a case, a dealer would violate rule G-32(a) by settling a customer transaction without delivery of the official statement in final form, even if a preliminary official statement is delivered by settlement and the official statement in final form is delivered to the customer as soon as it becomes available.

The second exception applies solely to municipal securities issued in a primary offering that qualifies for the exemption set forth in SEC Rule 15c2-12(d)(1)(iii) ("Exempt VRDOs"),[10] but only if an official statement in final form is being prepared.[11] This exception permits a dealer to deliver a preliminary official statement to a customer by settlement in substitution for the official statement in final form so long as (1) the dealer provides written notice to the customer by settlement that the official statement in final form will be sent within one business day following its receipt by the dealer and (2) the dealer sends the official statement in final form to the customer within one business day of its receipt.[12] The Board believes, however, that if the official statement in final form is available in sufficient time to permit delivery to the customer by settlement, it would be in the dealer's best interest to make such delivery by settlement, as it would be required to do for any other new issue municipal securities. This would permit the dealer to satisfy its delivery obligation with a single delivery of the official statement in final form, rather than two separate deliveries of the preliminary and final official statements, thereby reducing the dealer's compliance burden.[13]

Additional Disclosures for Negotiated Underwritings. Where the underwriters have purchased an issue of municipal securities from the issuer in a negotiated sale, any dealer (not just syndicate or selling group members) selling such securities to a customer during the underwriting period is required to deliver to such customer prior to settlement, in addition to the official statement, information concerning (A) the underwriting spread;[14] (B) the amount of any fee received by such dealer as agent for the issuer in the distribution of the securities, if applicable;[15] and (C) the initial offering price for each maturity in the issue, including the initial offering price of maturities that are not reoffered.[16] The obligation to make these further disclosures may be satisfied by inclusion by the issuer of such information in the official statement in final form and the delivery of such official statement to the customer by settlement. However, should the issuer elect not

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to include any such information in the official statement or if an official statement that includes this information is not delivered to the customer by settlement, a dealer selling such securities during the underwriting period must nevertheless provide such information in writing to the customer by settlement (for example, in a confirmation or other writing delivered to the customer by settlement). For example, if a dealer delivers a preliminary official statement to a customer at settlement for a new issue Exempt VRDO and any of the required disclosure information is left blank or is noted as preliminary and subject to change (with the expectation of the information being completed or finalized in the official statement in final form to be delivered after settlement), then disclosure of such information would be required in a separate writing delivered at or prior to settlement.

Delivery Obligations to Purchasing Dealers

Dealers selling new issue municipal securities to other dealers, and dealers serving as managing or sole underwriters for such new issues, are also required to deliver the official statement and the additional disclosures for negotiated underwritings, if applicable, to dealers purchasing such securities during the underwriting period.

Obligations of Selling Dealers. If a dealer sells a new issue municipal security to another dealer, the selling dealer is obligated under rule G-32(a)[†] to send to the purchasing dealer, upon request, (i) the official statement in final form (or if no official statement in final form is being prepared, a written notice to that effect, together with a copy of a preliminary official statement, if one has been prepared) and (ii) if the underwriters originally purchased the securities from the issuer in a negotiated sale, the additional disclosures described above required in connection with a negotiated underwriting. The official statement and the additional disclosures related to negotiated underwritings, if applicable, must be sent by the selling dealer to the purchasing dealer within one business day of the purchasing dealer's request, provided that, if the official statement in final form is being prepared but has not yet been received from the issuer or its agent, then the official statement in final form and the additional disclosures must be sent no later than the business day following such receipt.[17] These items must be sent by first class mail or other equally prompt means, unless the purchasing dealer arranges some other method of delivery and pays or agrees to pay for such alternate delivery method. This obligation applies with respect to all requests to a selling dealer made by a dealer purchasing new issue municipal securities from such selling dealer during the underwriting period, even where the selling dealer did not participate as a syndicate or selling group member for the underwriting of the new issue municipal securities.

Obligations of Managing and Sole Underwriters. If an official statement in final form is prepared in connection with an issue of municipal securities, the dealer serving as managing underwriter or sole underwriter for such issue is obligated under rule G-32(b)(i)[‡] to send to any dealer purchasing such securities during the underwriting period, upon request, (i) one copy of the official statement in final form plus one additional copy per $100,000 par value purchased by such purchasing dealer for resale to customers and (ii) if the underwriters originally purchased the securities from the issuer in a negotiated sale, the required additional disclosures. Managing and sole underwriters also are required to provide purchasing dealers, upon request, with instructions on how to order copies of the official statement in final form from the printer. The official statement and the additional disclosures related to negotiated underwritings, if applicable, must be sent by the managing or sole underwriter to the purchasing dealer within one business day of the purchasing dealer's request, provided that, if the official statement in final form is being prepared but has not yet been received from the issuer or its agent,[18] then the official statement in final form and the additional disclosures must be sent no later than the business day following such receipt. These items must be sent by first class mail or other equally prompt means, unless the purchasing dealer arranges some other method of delivery and pays or agrees to pay for such alternate delivery method. This obligation applies with respect to all requests to the managing or sole underwriter made by purchasing dealers during the underwriting period, even where the managing or sole underwriter did not sell the new issue municipal securities to the purchasing dealer.

Obligations of Dealers Acting as Financial Advisors. Rule G-32(b)(ii)[#] provides that, if a dealer that acts as financial advisor to an issuer prepares an official statement in final form on behalf of such issuer, such dealer must make that official statement available to the managing or sole underwriter promptly after the issuer approves distribution of the official statement in final form. This provision is designed to ensure that, once the official statement is completed and approved by the issuer for distribution, dealers acting as financial advisors will be obligated to commence the dissemination process promptly.[19]

Implications for Inter-Dealer Dissemination. The provisions of rule G-32 relating to dissemination among dealers of official statements and the additional disclosures related to negotiated underwritings is designed to ensure that a dealer selling a new issue municipal security to a customer has a reliable and timely source for obtaining such items for delivery to the customer by settlement. In the case of a syndicate member that purchases a new issue municipal security in an underwriting, the rule, in conjunction with The Bond Market Association's Standard Agreement Among Underwriters, will effectively obligate the managing underwriter to send the official statement in final form (in the required quantity) and the additional disclosures to the syndicate member within one business day of its receipt from the issuer.[20] If for any reason such syndicate member needs to obtain a copy of the official statement more rapidly than by means of first class mail, it may arrange with the managing underwriter for delivery of the official statement by an alternate means so long as the requesting syndicate member covers the cost of such delivery.

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For a non-syndicate member that purchases a new issue municipal security from the syndicate or from any other dealer, both the dealer that sold the security to the non-syndicate member and the managing or sole underwriter is obligated, if requested by such non-syndicate member, to send the official statement in final form and the additional disclosures within one business day of such request. If for any reason such non-syndicate member needs to obtain a copy of the official statement more rapidly than by means of first class mail, it may arrange with the dealer that is fulfilling the request for delivery of the official statement by an alternate means so long as the requesting non-syndicate member covers the cost of such delivery. Dealers purchasing new issue municipal securities from another dealer are advised that the obligation of the selling dealer or of the managing or sole underwriter to send an official statement to such purchasing dealer only takes effect upon the request of the purchasing dealer. Therefore, unless the purchasing dealer already has a copy of the official statement or has an alternate source for receiving it and the additional disclosures, such dealer will need to take the affirmative step of requesting such items from the selling dealer or the managing or sole underwriter.

A dealer that sells a new issue municipal security to a customer is not relieved of its obligation to deliver by settlement the official statement in final form and the additional disclosures related to negotiated underwriters because either the dealer from which it acquired the security or the managing or sole underwriter for the issue fails to fulfill its obligation to send these items to such dealer upon request. Such dealer may need to obtain the official statement in final form from other available sources. Such other sources of official statements include, but are not limited to, the nationally recognized municipal securities information repositories, other information vendors, or the Board's Municipal Securities Information Library® (MSIL®) system.[21] Similarly, a managing or sole underwriter or a dealer selling a new issue municipal security cannot fulfill its obligation to send the official statement in final form and the additional disclosures to a purchasing dealer upon request by referring such dealer to such other sources of official statements.

Recordkeeping

Rule G-8(a)(xiii) requires that each dealer make and keep a record of all deliveries of official statements and of the additional disclosures related to negotiated underwritings made to purchasers of new issue municipal securities.[22] Although the rule does not obligate a dealer to maintain such records in any given manner, such records must provide an adequate basis for the audit of such information. To this end, NASD Regulation, Inc. has noted:

> Some firms establish a file containing a copy of the customer's new issue municipal purchase confirmation and/or a mailing label to demonstrate compliance with Rule G-8. However, NASD Regulation does not view this approach as adequately demonstrating compliance with MSRB Rule G-8. Instead, an adequate record of the delivery of new issue municipal securities disclosure information should, at a minimum, contain the following:
>
> - customer name;
> - security description;
> - settlement date(s);
> - type of disclosure sent (preliminary or final Official Statement);
> - date the required disclosure was sent;
> - and name of person(s) sending the disclosures.
>
> At times, a firm assigns the new issue municipal securities disclosure function to a third party vendor. As a result, the member [dealer] does not maintain "a record of delivery" of the new issue disclosure. Nevertheless, from a regulatory perspective, the firm remains fully responsible for disclosure. When firms have assigned the new issue disclosure function to a third party, NASD Regulation expects that the compliance review process will include, at a minimum, periodic test to assure that the new issue disclosures are being made at or before settlement.[23]

Dealers should consult with the applicable enforcement agency regarding the adequacy of their recordkeeping under rule G-8(a)(xiii).

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[1] *See MSRB Reports*, Vol. 18, No. 2 (Aug. 1998) at 15-17.

[2] *See MSRB Reports*, Vol. 18, No. 2 (Aug. 1998) at 19-21.

[3] *See MSRB Reports*, Vol. 17, No. 2 (June 1997) at 23-24; See also NASD Regulation, Inc., "Municipal Securities Update — Disclosure to Purchasers of New Issue Securities," *Regulatory & Compliance Alert*, Vol. 12, No. 3 (Sept. 1998) at 19-20.

[4] The exception for commercial paper applies solely to true commercial paper issues (*i.e.*, not to variable rate demand obligations with a nominal long maturity and having a so-called "commercial paper" mode).

[5] *See* rules G-32(c)(ii) [currently codified at rule G-32(d)(ii)] and G-11(a)(ix).

[6] *See MSRB Reports*, Vol. 7, No. 2 (March 1987) at 12.

[7] Rule G-32 defines official statement as a document prepared by the issuer or its representatives setting forth, among other matters, information concerning the issuer and the proposed issue of securities. This definition is, of necessity, broader than the definition set forth in SEC Rule 15c2-12(f)(3) for the term "final official statement" since rule G-32 applies to all issues of municipal securities (other than commercial paper issues), not just those issues subject to SEC Rule 15c2-12. However, the Board believes that, in the case of new issue municipal securities subject to SEC Rule 15c2-12, the official statement in final form for purposes of rule G-32 would be the same as the final official statement for purposes of SEC Rule 15c2-12.

[8] SEC Rule 15c2-12(b)(4) provides that an underwriter participating in an offering subject to the Rule must send a copy of the final official statement to a potential customer within one business day of a request until the earlier of (i) 90 days from the end of the underwriting period or (ii) the time when the official statement is available from a nationally recognized municipal securities information repository, but in no case less than 25 days following the end of the underwriting period.

[9] Since SEC Rule 15c2-12(3) provides that an underwriter participating in an offering subject to the Rule must contract with the issuer to receive final official statements, the Board expects that a final official statement will be

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prepared for all such offerings and therefore delivery of preliminary official statements for such issues would never satisfy the delivery obligation under rule G-32(a).

[10] A primary offering qualifies for this exemption if the municipal securities are in authorized denominations of $100,000 or more and, at the option of the holder thereof, may be tendered to the issuer or its designated agent for redemption or purchase at par value or more at least as frequently as every nine months until maturity, earlier redemption or purchase by the issuer or its designated agent.

[11] If an official statement in final form is not being prepared, then the first exception described above would apply.

[12] *See MSRB Reports*, Vol. 18, No. 2 (Aug. 1998) at 15-17. If no preliminary official statement is prepared for such issue, then the dealer must still provide written notice by settlement that an official statement in final form will be sent within one business day of receipt.

[13] In addition, ensuring that the official statement in final form, rather than merely the preliminary official statement, is in the possession of the customer by settlement may help to avoid potential liabilities that could result if there are any material differences between the preliminary official statement and the official statement in final form. The fact that rule G-32 permits a dealer to deliver the preliminary official statement, rather than the official statement in final form, to a customer by settlement in this specific situation does not in any way limit or reduce the dealer's disclosure obligations under the federal securities laws, including in particular the dealer's obligation under rule G-17 to disclose, at or before execution of a transaction, all material facts concerning the transaction which could affect the customer's investment decision and not omit any material facts which would render other statements misleading.

[14] This provision obligates a dealer to disclose the gross spread (*i.e.*, the difference between the initial offering price and the amount paid to the issuer), expressed either in dollars or points per bond. The underwriting spread may be shown either as a total amount or as a listing of the components of the gross spread. If components of the gross spread are listed, that portion of the proceeds which represents compensation to the underwriters must be clearly identified as such. For example, the Board believes that use of the terms "underwriters' discount" or "net to underwriters" would be acceptable but that the term "bond discount" is confusing and, therefore, inappropriate. *See MSRB Reports*, Vol. 7, No. 2 (March 1987) at 13.

[15] If no fee is received by the dealer for acting as an agent for the issuer in the distribution of the securities, the dealer need not affirmatively state that no such fee was received but may instead omit any statement regarding such fee.

[16] The initial offering price may be expressed either in terms of dollar price or yield.

[17] Thus, if a purchasing dealer requests a copy of the official statement in final form from a selling dealer before the issuer has delivered the official statement to the underwriters, then the obligation of the selling dealer to send the official statement is deferred until the business day after the underwriters receive the official statement from the issuer.

[18] The Board is of the view that an underwriter that prepares an official statement on behalf of an issuer would be deemed to have received the official statement from the issuer immediately upon such issuer approving the distribution of the completed official statement in final form (*i.e.*, when the issuer releases the completed official statement for distribution).

[19] The Board urges issuers that utilize the services of non-dealer financial advisors to hold such financial advisors to the same standards for prompt delivery of official statements to the underwriters.

[20] The Bond Market Association's Standard Agreement Among Underwriters provides that syndicate members must place orders for the official statement by the business day following the date of execution of the purchase contract and states that any syndicate member that fails to place such an order will be assumed to have requested the quantity required under rule G-32(b)(i) [currently codified at rule G-32(c)(i)]. *See* The Bond Market Association, *Agreement Among Underwriters — Instructions, Terms and Acceptance* (Oct. 1, 1997) at ¶ 3. Thus, except in the rare instances where an official statement in final form is completed and available for distribution on the date of sale, syndicate members will have made or have been deemed to have made their requests for official statements by the time the managing underwriter receives the official statement from the issuer, thereby obligating the managing underwriter to send the official statement to syndicate members within one business day of receipt.

[21] Municipal Securities Information Library and MSIL are registered trademarks of the Board.

[22] Rule G-9(b)(x) provides that these records must be preserved for a period of not less than 3 years.

[23] NASD Regulation, Inc., "Municipal Securities Update — Disclosure to Purchasers of New Issue Securities," *Regulatory & Compliance Alert*, Vol. 12, No. 3 (Sept. 1998) at 19-20. The views of the bank regulatory agencies regarding adequacy of any particular recordkeeping practice for the purpose of demonstrating compliance with rule G-8 may differ.

[*] [Currently codified at rule G-32(d)(i).]

[†] [Currently codified at rule G-32(b).]

[‡] [Currently codified at rule G-32(c)(i).]

[#] [Currently codified at rule G-32(c)(ii).]

Notice Regarding Electronic Delivery and Receipt of Information by Brokers, Dealers and Municipal Securities Dealers

November 20, 1998

On May 9, 1996, the Securities and Exchange Commission (the "SEC") issued an interpretative release expressing its views on the use of electronic media for delivery of information by, among others, brokers and dealers.[1] The SEC stated that brokers, dealers and others may satisfy their delivery obligations under federal securities laws by using electronic media as an alternative to paper-based media within the framework established in the SEC's October 1995 interpretive release on the use of electronic media for delivery purposes.[2] The SEC also indicated that an electronic communication from a customer to a broker or dealer generally would satisfy the requirements for written consent or acknowledgment under the federal securities laws.

The Municipal Securities Rulemaking Board (the "Board") is publishing this notice to address the use by brokers, dealers and municipal securities dealers ("dealers") of electronic media to deliver and receive information under Board rules.[3] The Board will permit dealers to transmit documents electronically that they are required or permitted to furnish to customers under Board rules provided that they adhere to the standards set forth in the SEC Releases and summarized below.[4] Dealers also may receive consents and acknowledgments from customers electronically in satisfaction of required written consents and acknowledgments. Furthermore, the Board believes that the standards applied by the SEC to communications with customers should also apply to communications among dealers and between dealers and issuers. However, although it is the Board's goal ultimately to permit dealers to make required submissions of materials to the Board electronically if possible, this notice does not affect existing

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requirements for the submission of materials to the Board, its designees and certain other entities to which information is required to be delivered under Board rules.[5]

Dealers are urged to review the SEC Releases in their entirety to ensure that they comply with all aspects of the SEC's electronic delivery requirements. Although the examples provided in the SEC Releases are based on SEC rules, the examples nonetheless provide important guidance as to the intended application of the standards set out by the SEC with respect to electronic communications.

Electronic Communications from Dealers to Customers

General. According to the standards established by the SEC, dealers may use electronic media to satisfy their delivery obligations to customers under Board rules, provided that the electronic communication satisfies the following principles:[6]

1. Notice — The electronic communication should provide timely and adequate notice to customers that the information is available electronically.[7] Since certain forms of electronic delivery may not always provide a likelihood of notice that recipients have received information that they may wish to review, dealers should consider supplementing such forms of electronic communication with a separate communication, providing notice similar to that provided by delivery in paper through the postal mail, that information has been sent electronically that the recipients may wish to review.[8]

2. Access — Customers who are provided information through electronic delivery should have access to that information comparable to the access that would be provided if the information were delivered in paper form.[9] The use of a particular electronic medium should not be so burdensome that intended recipients cannot effectively access the information provided.[10] A recipient should have the opportunity to retain the information through the selected medium (*e.g.*, by downloading or printing the information) or have ongoing access equivalent to personal retention.[11] Also, as a matter of policy, the SEC believes that a person who has a right to receive a document under the federal securities laws and chooses to receive it electronically should be provided with a paper version of the document upon specific request or if consent to receive documents electronically is revoked.[12]

3. Evidence to Show Delivery — Dealers must have reason to believe that electronically delivered information will result in the satisfaction of the delivery requirements under the federal securities laws. Dealers should consider the need to establish procedures to ensure that applicable delivery obligations are met, including recordkeeping procedures to evidence such satisfaction.[13] Such procedures should also be designed to ensure the integrity and security of information being delivered so as to ensure that it is the information that was intended to be delivered.[14] Dealers may be able to evidence satisfaction of delivery obligations, for example, by:

(1) obtaining the intended recipient's informed consent[15] to delivery through a specified electronic medium and ensuring that the recipient has appropriate notice and access;

(2) obtaining evidence that the intended recipient actually received the information, such as by an electronic mail return-receipt[16] or by confirmation that the information was accessed, downloaded, or printed; or

(3) disseminating information through certain facsimile methods (*e.g.*, faxing information to a customer who has requested the information and has provided the telephone number for the fax machine).

Personal Financial Information. The SEC has noted, and the Board agrees, that special precautions are appropriate when dealers are delivering information to customers that is specific to that particular customer's personal financial information, including but not limited to information contained on confirmations and account statements.[17] In transmitting such personal financial information, dealers should consider the following factors:

1. Confidentiality and Security — Dealers sending personal financial information through electronic means or in paper form should take reasonable precautions to ensure the integrity, confidentiality, and security of that information. Dealers transmitting personal financial information electronically must tailor those precautions to the medium used in order to ensure that the information is reasonably secure from tampering or alteration.

2. Consent — Unless a dealer is responding to a request for information that is made through electronic media or the person making the request specifies delivery through a particular electronic medium, the dealer should obtain the intended recipient's informed consent prior to delivering personal financial information electronically. The customer's consent may be made either by a manual signature or by electronic means.

Electronic Communications from Customers to Dealers

Consistent with the position taken by the SEC, dealers may rely on consents and acknowledgments received from customers by electronic means for purposes of Board rules. In relying on such communications from customers, dealers must be cognizant of their responsibilities to prevent, and the potential liability associated with, unauthorized transactions. In this regard, the SEC states, and the Board agrees, that dealers should have reasonable assurance that the communication from a customer is authentic.

Electronic Transmission of Non-Required Communications

The 1996 SEC Release states that the above standards are intended to permit dealers to comply with their delivery obligations under federal securities laws when using electronic media. While compliance with the guidelines is not manda-

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tory for the electronic delivery of non-required information that, in some cases, is being provided voluntarily to customers, the Board believes adherence to the guidelines should be considered, especially with respect to delivery of personal financial information.

Electronic Communications Among Dealers and Between Dealers and Issuers

The Board believes that the standards applied by the SEC to communications with customers should also apply to mandated communications among dealers and between dealers and issuers. Thus, a dealer that undertakes communications required under Board rules with other dealers and with issuers in a manner that conforms with the principles stated above relating to customer communications will have met its obligations with respect to such communications. In addition, a dealer may rely on consents and acknowledgments received from other dealers or issuers by electronic means for purposes of Board rules, provided that the dealer should have reasonable assurance that the communication from such other party is authentic. However, any Board rule that explicitly requires that a dealer enter into a written agreement with another party will continue to require that such agreement be in written form.[18] Financial information, as well as other privileged or confidential information, relating to another dealer or an issuer (or relating to another person or entity contained in a transmission between a dealer and another dealer or an issuer) should be transmitted using precautions similar to those used by a dealer in transmitting personal financial information to a customer.

Rules to Which this Notice Applies

Set forth below is a list of current Board rules to which dealers may apply the guidance provided in this notice. The Board believes that the list sets forth all of the rules that require or permit communications among dealers and between dealers and customers and issuers.[19] The summaries provided of the delivery obligations under the listed rules is intended for ease of reference only and are not intended to be complete statements of all the requirements under such rules.

- Rule G-8, on books and records to be made by dealers, prohibits dealers from obtaining or submitting for payment a check, draft or other form of negotiable paper drawn on a customer's checking, savings, share or similar account without the customer's express written authorization.
- Rule G-10, on delivery of investor brochure, requires dealers to deliver a copy of the investor brochure to a customer upon receipt of a complaint by the customer.
- Rule G-11, on sales of new issue municipal securities dur-ing the underwriting period, requires certain communications between senior syndicate managers and other members of the syndicate.[20]
- Rule G-12, on uniform practice, provides for confirmation of inter-dealer transactions and certain other inter-dealer communications.[21]
- Rule G-15, on confirmation, clearance and settlement of transactions with customers, provides for confirmation of transactions with customers and the provision of additional information to customers upon request.[22]
- Rule G-19, on suitability of recommendations and transactions and discretionary accounts, requires that dealers obtain certain information from their customers in connection with transactions and recommendations and also receive customer authorizations with respect to discretionary account transactions.
- Rule G-22, on control relationships, requires certain disclosures from a dealer effecting a transaction for a customer in municipal securities with respect to which such dealer has a control relationship and customer authorization of such transaction with respect to discretionary accounts.
- Rule G-23, on activities of financial advisors, requires that, under certain circumstances, dealers acting as financial advisors to issuers provide various disclosures to issuers and customers and receive certain consents and acknowledgments from issuers.[23]
- Rule G-24, on use of ownership information obtained in fiduciary or agency capacity, requires a dealer seeking to use for its own purposes information obtained while acting in a fiduciary or agency capacity for an issuer or other dealer to receive consents to the use of such information.
- Rule G-25, on improper use of assets, provides that put options and repurchase agreements will not be deemed to be guaranties against loss if their terms are provided in writing to customers with or on the transaction confirmation.
- Rule G-26, on customer account transfers, provides for written notice from customers requesting account transfers between dealers and the use of Form G-26 to effect such transfer.[24]
- Rule G-28, on transactions with employees and partners of other municipal securities professionals, requires that a dealer opening an account for a customer who is an employee or partner of another dealer must provide notice and copies of confirmations to such other dealer and permits such other dealers to provide instructions for handling of transactions with such customer.
- Rule G-29, on availability of Board rules, provides that dealers must make available to customers for examination promptly upon request a copy of the Board's rules required to be kept in their offices.[25]
- Rule G-32, on disclosures in connection with new issues, requires dealers selling new issue municipal securities to customers to deliver official statements[26] and certain

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other information by settlement and requires selling dealers, managing underwriters and certain dealers acting as financial advisors to deliver such materials to dealers purchasing new issue municipal securities, upon request.[27]

- Rule G-34, on CUSIP numbers and new issue requirements, requires underwriters to communicate information regarding CUSIP numbers and initial trade date to syndicate and selling group members.[28]
- Rule G-38, on consultants, requires dealers to provide certain information to issuers regarding consulting arrangements.[29]
- Rule G-39, on telemarketing, prohibits certain telemarketing calls without the prior consent of the person being called.[30]

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[1] *See* Securities Act Release No. 7288, Exchange Act Release No. 37182 (May 9, 1996), 61 FR 24644 (May 15, 1996) (the "1996 SEC Release").

[2] *See* Securities Act Release No. 7233, Exchange Act Release No. 36345 (October 6, 1995), 60 FR 53458 (October 13, 1995) (the "1995 SEC Release" and, together with the 1996 SEC Release, the "SEC Releases").

[3] This notice has been filed with the SEC as File No. SR-MSRB-98-12.

[4] The Board also reminds dealers that the SEC indicated in the 1996 SEC Release that dealers may fulfill their obligation to deliver to customers, upon request, preliminary official statements and final official statements in connection with primary offerings of municipal securities subject to SEC Rule 15c2-12 by electronic means, subject to the guidelines set forth in the 1996 SEC Release. *See* 1996 SEC Release at note 47.

[5] For example, this notice does not apply to any requirements that dealers supply the Board with written information pursuant to Board rules A-12, A-14, A-15, G-36, G-37 and G-38. The Board has begun the planning process for electronic submission of information required under rule A-15 and of Form G-37/G-38 under rules G-37 and G-38. At such time as electronic submission becomes available, the Board will publish notice thereof and of the procedures to be used for such submission. Although submission of Forms G-36(OS) and G-36(ARD) under rule G-36 could also be made electronically by means similar to those which the Board may develop for Form G-37/G-38, such electronic submission is complicated by the requirement that Forms G-36(OS) and G-36(ARD) be accompanied by an official statement or advance refunding document, as appropriate. Given the current debate and lack of consensus among the various sectors of the municipal securities industry regarding electronic formatting of disclosure materials, and since the Board does not have the authority to dictate the format of issuer documents, the Board believes that any further action regarding electronic submissions under rule G-36 should await resolution of these issues. Finally, the Board does not at this time anticipate permitting electronic submission of information required under rules A-12 and A-14 since such information must be accompanied by payment of certain required fees.

Electronic submission of information under rule G-14 will continue to be governed by rule G-14 and associated Transaction Reporting Procedures. In addition, this notice does not alter the current submission standards applicable to the Board's Continuing Disclosure Information (CDI) System of the Municipal Securities Information Library® (MSIL®) system. The Municipal Securities Information Library and MSIL are registered trademarks of the Board.

Furthermore, submission of information to the Board's designees or certain other designated entities under Board rules must continue to be done in accordance with the procedures established by such designees or other entities. Board rules in which such requirements currently appear include rules G-7 (with respect to information required to be filed with the appropriate enforcement agencies), G-12 and G-15 (with respect to information to be submitted to registered clearing agencies and registered securities depositories), G-26 (with respect to customer account transfer instructions (other than Form G-26) required by registered clearing agencies), G-34 (with respect to information to be submitted to the Board's designee for assignment of CUSIP numbers and to registered securities depositories) and G-37 (with respect to application to the appropriate enforcement agencies for exemptions from the ban on municipal securities business).

[6] Dealers that structure their deliveries in accordance with the principles set forth in this notice can be assured, except where otherwise noted, that they have satisfied their delivery obligations under Board rules. However, as the SEC stated in the 1995 SEC Release, the three enumerated principles are not the only factors relevant to determining whether the legal requirements pertaining to delivery of documents have been satisfied. Consistent with the SEC's view, the Board believes that, if a dealer develops a method of electronic delivery that differs from the principles discussed herein, but provides assurance comparable to paper delivery that the required information will be delivered, that method may satisfy delivery obligations. *See* 1995 SEC Release, text following note 22. For example, a dealer can satisfy its obligation to send a confirmation to a customer under rule G-15 by electronic means in a manner that meets the principles set forth in this notice. In addition, dealers may continue to deliver confirmations electronically through the OASYS Global system established by Thomson Financial Services, Inc. on the conditions described in the Board's *Notice Concerning Use of the OASYS Global Trade Confirmation System to Satisfy Rule* G-15(a), dated June 6, 1994, without specifically complying with the principles described in this notice. *See MSRB Reports*, Vol. 14, No. 3 (June 1994) at 37. *See also* 1996 SEC Release, note 38, and 1995 SEC Release, note 12. Also, rule G-29 provides that dealers must make available to customers for examination promptly upon request a copy of the Board's rules required to be kept in their offices. Dealers may continue to comply with such requirement by giving customers access to the rules either in printed form or by viewing the rules on screen from the Board's Internet web site (www.msrb.org) or from software products produced by other companies. *See Interpretive Notice on Availability of Board Rules*, dated May 20, 1998, in *MSRB Reports*, Vol. 18, No. 2 (August 1998) at 37.

[7] *See* 1996 SEC Release, text at note 20.

[8] *See* 1996 SEC Release, text at note 21, and 1995 SEC Release, text at note 23. The SEC notes, for example, that if information is provided by physically delivering material (such as a diskette or CD-ROM) or by electronic mail, such communication itself generally should be sufficient notice. However, if information is made available electronically through a passive delivery system, such as an Internet web site, separate notice would be necessary to satisfy the delivery requirements unless the dealer can otherwise evidence that delivery to the customer has been satisfied. 1996 SEC Release, note 21.

[9] The SEC states that, regardless of whether information is delivered in paper form or by electronic means, it should convey all material and required information. For example, if a paper document is required to present information in a certain order, then the information delivered electronically should be in substantially the same order. 1996 SEC Release, text at note 14.

[10] The SEC notes, for example, that if a customer must proceed through a confusing series of ever-changing menus to access a required document so that it is not reasonable to expect that access would generally occur, this procedure would likely be viewed as unduly burdensome. In that case, the SEC would deem delivery not to have occurred unless delivery otherwise could be shown. 1995 SEC Release, note 24.

[11] *See* 1996 SEC Release, note 22 and accompanying text, and 1995 SEC Release, notes 25-26 and accompanying text.

[12] *See* 1996 SEC Release, note 17 and accompanying text, and 1995 SEC Release, note 27 and accompanying text.

[13] *See* 1996 SEC Release, text following note 22, and 1995 SEC Release, note 22 and text at note 28. The Board is of the view that dealers that choose to deliver information to customers electronically should consider establishing systems and procedures for providing paper copies or using alternate electronic means in a timely manner should the primary electronic media fail for any reason.

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[14] *See* 1996 SEC Release, text at note 25, and 1995 SEC Release, note 22. Dealers also should consider the need for systems and procedures to deter or detect misconduct by firm personnel in connection with the delivery of information, whether by electronic or paper means. 1996 SEC Release, text at note 16.

[15] In order for a consent to be an informed consent, the SEC has stated that the consent should specify the electronic medium or source through which the information will be delivered and the period during which the consent will be effective, describe the information that will be delivered using such means, and disclose the potential for the customer to incur costs in accessing the information. *See* 1996 SEC Release, note 23, and 1995 SEC Release, note 29.

[16] To the extent that material is distributed as an attachment to an electronic mail transmission, dealers must have a reasonable basis for believing that the attachment will in fact be transmitted along with the electronic mail transmission and that the attachment will be received by the recipient in an accessible format.

[17] In addition, the Board believes that other information that is privileged or confidential, regardless of whether such information is financial in nature, should be accorded the same precautions as is personal financial information.

[18] For example, the written agreements required under rules G-20(c), G-23(c) and G-38(b) must continue to be entered into in paper form.

[19] Unless otherwise provided in connection with the adoption by the Board of any new rules or amendments to existing rules that require or permit communications among dealers and between dealers and customers, issuers and others, the guidance provided in this notice would also apply to any such communications.

[20] Rule G-11 also requires that syndicate members furnish certain information to others, upon request. The Board believes that, solely for purposes of this requirement under rule G-11, such information may be provided to others by electronic means so long as the standards established in this notice with respect to electronic deliveries to customers are met.

[21] *See*, however, note 5 above with respect to information to be submitted to registered clearing agencies and registered securities depositories.

[22] *See*, however, note 5 above with respect to information to be submitted to registered clearing agencies and registered securities depositories. *See also* note 6 above regarding alternate electronic means previously reviewed by the Board.

[23] *See*, however, note 18 above and accompanying text regarding the written agreement to be entered into between a dealer acting as financial advisor and the issuer.

[24] *See*, however, note 5 above with respect to use of customer account transfer instructions (other than Form G-26).

[25] *See* note 6 above regarding alternate electronic means previously reviewed by the Board.

[26] The Board believes that dealers must be particularly cautious in delivering official statements by electronic means since they may present special challenges in ensuring that they are received by customers and other dealers without material omissions or distortions in formatting (for example, tables in which data is more than negligibly misaligned) that may cause such materials not to meet the standard for electronically transmitted information comparable to information delivered in paper form. *See* note 9 above and accompanying text.

[27] The Board believes that, to the extent that rule G-32(b)(i) [currently codified at rule G-32(c)(i)] obligates a managing or sole underwriter to provide, upon request, multiple copies of the official statement to a dealer with respect to new issue municipal securities sold by such dealer to customers, such obligation must continue to be met with paper copies of the official statement unless the purchasing dealer has consented to electronic delivery of the official statement in lieu of delivery of multiple paper copies. Compare 1995 SEC Release, example 11.

[28] *See*, however, note 5 above with respect to information to be submitted to the Board's designee with respect to CUSIP number assignment and to registered securities depositories.

[29] *See*, however, note 18 above and accompanying text regarding the written agreement to be entered into between a dealer and its consultant and note 5 above with respect to submission of Form G-37/G-38 to the Board.

[30] Although the person receiving such telemarketing call may in many cases not be a customer, the Board believes that, solely for purposes of this provision of rule G-39, such consent may be accepted by the dealer by electronic means so long as the standards established in this notice with respect to electronic communications from customers to dealers are met.

Interpretation on the Application of Rules G-32 and G-36 to New Issue Offerings Through Auction Procedures

March 26, 2001

Traditionally, brokers, dealers and municipal securities dealers ("dealers") have underwritten new issue municipal securities through syndicates in which one dealer serves as the managing underwriter. In some cases, a single dealer may serve as the sole underwriter for a new issue. Typically, these underwritings are effected on an "all-or-none" basis, meaning that the underwriters bid on the entire new issue. In addition, new issues are occasionally sold to two or more underwriters that have not formed a syndicate but instead each underwriter has purchased a separate portion of the new issue (in effect, each underwriter serving as the sole underwriter for its respective portion of the new issue).

In the primary market in recent years, some issuers have issued their new offerings through an electronic "auction" process that permits the taking of bids from both dealers and investors directly. In some cases, these bids may be taken on other than an all-or-none basis, with bidders making separate bids on each maturity of a new issue. The issuer may engage a dealer as an auction agent to conduct the auction process on its behalf. In addition, to effectuate the transfer of the securities from the issuer to the winning bidders and for certain other purposes connected with the auction process, the issuer may engage a dealer to serve in the role of settlement agent or in some other intermediary role.

Although the Municipal Securities Rulemaking Board (the "MSRB") has not examined all forms that these auction agent, settlement agent or other intermediary roles (collectively referred to as "dealer-intermediaries") may take, it believes that in most cases such dealer-intermediary is effecting a transaction between the issuer and each of the winning bidders. The MSRB also believes that in many cases such dealer-intermediary may be acting as an underwriter, as such term is defined in Rule 15c2-12(f)(8) under the Securities Exchange Act of 1934, as amended (the "Exchange Act").[1] A dealer-intermediary that is effecting transactions in connection with such an auction process has certain obligations under rule G-32. If it is also an underwriter with respect to an offering, it has certain additional obligations under rules G-32 and G-36.

Application of Rule G-32, on Disclosures in

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Connection with New Issues

Rule G-32(a) generally requires that any dealer (*i.e.*, not just the underwriter) selling municipal securities to a customer during the issue's underwriting period must deliver the official statement in final form, if any, to the customer by settlement of the transaction. Any dealer selling a new issue municipal security to another dealer is obligated under rule G-32(b) to send such official statement to the purchasing dealer within one business day of request. In addition, under rule G-32(c), the managing or sole underwriter for new issue municipal securities is obligated to send to any dealer purchasing such securities (regardless of whether the securities were purchased from such managing or sole underwriter or from another dealer), within one business day of request, one official statement plus one additional copy per $100,000 par value of the new issue municipal securities sold by such dealer to customers. Where multiple underwriters underwrite a new issue without forming an underwriting syndicate, each underwriter is considered a sole underwriter for purposes of rule G-32 and therefore each must undertake the official statement delivery obligation described in the preceding sentence.

If a dealer-intermediary is involved in an auction or similar process of primary offering of municipal securities in which all or a portion of the securities are sold directly to investors that have placed winning bids with the issuer, the dealer-intermediary is obligated under rule G-32(a) to deliver an official statement to such investors by settlement of their purchases. If all or a portion of the securities are sold to other dealers that have placed winning bids with the issuer, the dealer-intermediary is obligated under rule G-32(b) to send an official statement to such purchasing dealers within one business day of a request. Further, to the extent that the dealer-intermediary is an underwriter, such dealer-intermediary typically would have the obligations of a sole underwriter under rule G-32(c) to distribute the official statement to any other dealer that subsequently purchases the securities during the underwriting period and requests a copy. Any dealer that has placed a winning bid in a new issue auction would have the same distribution responsibility under rule G-32(c), to the extent that it is acting as an underwriter.

The MSRB views rule G-32 as permitting one or more dealer-intermediaries involved in an auction process to enter into an agreement with one or more other dealers that have purchased securities through a winning bid in which the parties agree that one such dealer (*i.e.*, a dealer-intermediary or one of the winning bidders) will serve in the role of managing underwriter for purposes of rule G-32. In such a case, such single dealer (rather than all dealers individually) would have the responsibility for distribution of official statements to the marketplace typically undertaken by a managing or sole underwriter under rule G-32(c).[2] Such an agreement may be entered into by less than all dealers that have purchased securities through the auction process. All dealers that agree to delegate this duty to a single dealer may rely on such delegation to the same extent as if they had in fact formed an underwriting syndicate.

Application of Rule G-36, on Delivery of Official Statements, Advance Refunding Documents and Forms G-36(OS) and G-36(ARD) to the MSRB

Rule G-36 requires that the managing or sole underwriter for most primary offerings send the official statement and Form G-36(OS) to the MSRB within certain time frames set forth in the rule. In addition, if the new issue is an advance refunding and an advance refunding document has been prepared, the advance refunding document and Form G-36(ARD) also must be sent to the MSRB by the managing or sole underwriter. Where multiple underwriters underwrite an offering without forming an underwriting syndicate, the MSRB has stated that each underwriter would have the role of sole underwriter for purposes of rule G-36 and therefore each would have a separate obligation to send official statements, advance refunding documents and Forms G-36(OS) and G-36(ARD) to the MSRB.[3]

To the extent that the dealer-intermediary in an auction or similar process of primary offering of municipal securities is an underwriter for purposes of the Exchange Act, such dealer-intermediary would have obligations under rule G-36. If all or a portion of the securities are sold directly to investors that have placed winning bids with the issuer, the dealer-intermediary would be obligated to send the official statement and Form G-36(OS) (as well as any applicable advance refunding document and Form G-36(ARD)) to the MSRB with respect to the issue or portion thereof purchased by investors. If all or a portion of the securities are sold to other dealers that have placed winning bids with the issuer, the dealer-intermediary and each of the purchasing dealers (to the extent that they are underwriters for purposes of the Exchange Act) also typically would be separately obligated to send such documents to the MSRB with respect to the issue or portion thereof purchased by dealers.

To avoid duplicative filings under rule G-36, the MSRB believes that one or more dealer-intermediaries involved in an auction process may enter into an agreement with one or more other dealers that have purchased securities through a winning bid in which the parties agree that one such dealer (*i.e.*, a dealer-intermediary or one of the winning bidders) will serve in the role of managing underwriter for purposes of rule G-36. In such a case, such single dealer (rather than all dealers individually) would have the responsibility for sending the official statement, advance refunding document and Forms G-36(OS) and G-36(ARD) to the MSRB.[4] Such an agreement may be entered into by less than all dealers that have purchased securities. All dealers that agree to delegate this duty to a single dealer may rely on such delegation to the same extent as if they had in fact formed an underwriting syndicate.

[1] Questions regarding whether an entity acting in an intermediary role is effecting a transaction or whether a dealer acting in such an intermediary role for a particular primary offering of municipal securities would constitute an underwriter should be addressed to staff of the Securities and Exchange Commission.

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[2] Each dealer that is party to this agreement would be required to inform any dealer seeking copies of the official statement from such dealer under rule G-32(c) of the identity of the dealer that has by agreement undertaken this obligation or, in the alternative, may fulfill the request for official statements. In either case, the dealer would be required to act promptly so as either to permit the dealer undertaking the distribution obligation to fulfill its duty in a timely manner or to provide the official statement itself in the time required by the rule. Such agreement would not affect the obligation of a dealer that sells new issue securities to another dealer to provide a copy of the official statement to such dealer upon request as required under rule G-32(b), nor would it affect the obligation to deliver official statements to customers as required under rule G-32(a).

[3] *See* Rule G-36 Interpretive Letter — Multiple underwriters, MSRB interpretation of January 30, 1998, *MSRB Rule Book* (January 1, 2001) at 189.

[4] The dealer designated to act as managing underwriter for purposes of rule G-36 would be billed the full amount of any applicable underwriting assessment due under rule A-13, on underwriting and transaction assessments. Such dealer would be permitted, in turn, to bill each other dealer that is party to the agreement for its share of the assessment.

Non-Material Amendments to Official Statements for Municipal Fund Securities[*]

May 14, 2002

The MSRB understands that an issuer [of municipal fund securities] may make minor modifications to the official statement in order to correct typographical or grammatical errors, or to make such other modifications that the issuer may deem to be immaterial. If the issuer has acknowledged in writing to the primary distributor that it does not consider such modification to be material to investors and does not believe that such modification is required to make the statements in the official statement not misleading, then the modification need not be sent by a dealer to a customer that has previously received the official statement, notwithstanding the provisions of Rule G-32(a)(i).[1] The primary distributor must maintain the issuer's written acknowledgement under Rule G-8(a)(xiii), relating to records concerning deliveries of official statements. The primary distributor must send all amendments, regardless of materiality, to the MSRB under Rule G-36.

[*] [This interpretation is an excerpt from "Application of Fair Practice and Advertising Rules to Municipal Fund Securities," May 14, 2002. The remaining portions of the 2002 interpretation have been superseded by other interpretations and rule changes.]

[1] Rule G-32(a)(i) requires delivery of an official statement to a customer purchasing municipal fund securities by settlement of the transaction. In the case of a repeat purchaser who has already received the official statement, dealers generally are required to deliver any amendments or supplements to the official statement in connection with subsequent purchases of the securities. [footnote has been renumbered]

Rule G-32 Interpretation — Notice Regarding Electronic Delivery and Receipt of Information by Municipal Advisors

October 13, 2017

In November 1998, the MSRB published an interpretation about the use of electronic media to deliver and receive information by brokers, dealers and municipal securities dealers under Board rules (the "1998 interpretation"). Since that time, the MSRB has been granted rulemaking authority over municipal advisors, and in the exercise of that authority, the MSRB has been developing a comprehensive regulatory framework for municipal advisors.

The Board believes that the use of electronic media to deliver and receive information under Board rules also is important for municipal advisors, and extends the guidance provided in the 1998 interpretation, as relevant, to municipal advisors. ***See*** Rule G-32 Interpretation — Notice Regarding Electronic Delivery and Receipt of Information by Brokers, Dealers and Municipal Securities Dealers (November 20, 1998).

See also:

Rule D-12 Interpretation — Interpretation Relating to Sales of Municipal Fund Securities in the Primary Market, January 18, 2001.

Rule G-14 Interpretation — Build America Bonds and Other Tax Credit Bonds, April 24, 2009.

Rule G-15 Interpretation — Notice Concerning Stripped Coupon Municipal Securities, March 13, 1989.

Rule G-17 Interpretation — Interpretation on Customer Protection Obligations Relating to the Marketing of 529 College Savings Plans, August 7, 2006.

Interpretive Letters

Furnishing of official statements: duplication of copies. [It] is the Board's position that if an official statement is made available by an issuer, it is incumbent upon municipal securities dealers to see that their customers receive copies of the official statement. A municipal securities dealer cannot avoid the rule on the grounds that the issuer did not supply a sufficient number of official statements for distribution. The dealer in such a case has to bear the burden of reproducing the official statement. *MSRB interpretation of March 7, 1979*.

NOTE: The above letter refers to the text of rule G-32 as in effect prior to amendments effective on August 30, 1985.

Disclosure of underwriting spread. As you know, Board rule G-32 provides that a dealer selling new issue municipal securities must furnish its customers with certain information at or prior to sending final money confirmations. Under subparagraph (a)(ii) of the rule, in the case of a negotiated sale, the dealer must furnish certain specified information about the underwriting arrangements, including the "underwriting spread." The Board has interpreted this provision to require that the gross spread (*i.e.*, the difference between the initial reoffering prices and the amount paid to the issuer) be shown. The Board has also indicated that the gross spread may be expressed either in dollars or in points per bond.

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The Board recently issued an interpretation of rule G-32(a)(ii) to the effect that the underwriting spread may be expressed either as a total amount or as a listing of the components of the gross spread. Thus, for example, the following disclosure would meet the requirements of the rule:

Application of Proceeds

Construction Costs	$120,000,000
Underwriter's discount[1]	2,500,000
Legal expenses	200,000
Printing and Miscellaneous expenses	300,000
Principal amount of bonds	123,000,000

Should you have any questions concerning this interpretation, please call me. *MSRB interpretation of March 9, 1981.*

NOTE: The above letter refers to the text of rule G-32 as in effect prior to amendments effective on August 30, 1985.

[1] If a dealer expresses the underwriting spread as a listing of the components of the gross spread, that portion of the proceeds which represents compensation to the underwriters must, in the Board's view, be clearly identified as such. Thus, use of the terms "underwriter's discount" or "net to underwriters" would be acceptable; the term "bond discount," however, is confusing and is, therefore, inappropriate.

Current Refundings. This is in response to your letter of July 10, 1991. You note that, pursuant to recently adopted amendments to rule G-36, underwriters are required to deliver advance refunding documents (*i.e.*, escrow agreements) to the Board. You state that, under Section 149(d)(5) of the Internal Revenue Code of 1986, as amended, an advance refunding issue is one which will be issued more than 90 days before the redemption of the refunded bonds. Escrow deposits customarily are made of U.S. government obligations or other highly-rated securities which are sufficient to pay principal and interest to retire the bonds being refunded over some period of time. You note, however, that for current refundings, there also are short-term escrows established for periods of less than 90 days which involve the investment of bond proceeds in permitted defeasance securities until the first permitted redemption date. You ask whether it is necessary to file Form G-36(ARD) and the related documents when the escrow period is less than 90 days. The Board has reviewed your request and has authorized this response.

Rule G-36 requires underwriters, among other things, to provide advance refunding documents to the Board. The purpose of this requirement is so these documents will be available through the Board's Municipal Securities Information Library™ (MSIL™) system,[1] to the holders of the refunded issues, as well as dealers and customers effecting transactions in such issue. In general, municipal securities industry participants consider advance refunding issues as those issued more than 90 days before the redemption of the refunded bonds. The current refunding issues you describe would not be considered advance refunding issues.

Thus, rule G-36 does not require underwriters to provide the Board with escrow agreements for current refundings. *MSRB interpretation of August 8, 1991.*

NOTE: In 2009, the MSRB amended and consolidated Rule G-36, on delivery of official statements, advance refunding documents and forms G-36(OS) and G-36(ARD) and Rule G-32, on disclosures in connection with new issues, into Rule G-32, on disclosures in connection with primary offerings. *See* Release No. 34-59966 (May 21, 2009), 102 FR 25790 (May 29, 2009). Effective May 10, 2021, this notice expressly shall apply to analogous interpretive issues under Rule G-32, on disclosures in connection with primary offerings.

[1] Municipal Securities Information Library and MSIL are trademarks of the Board.

Disclosures in connection with new issues. This is in response to your November 30, 1993 letter requesting interpretive guidance regarding Board rule G-32(a)(ii)(C). That provision requires dealers in connection with a negotiated sale of new issue municipal securities to disclose "the initial offering price for each maturity in the issue that is offered or to be offered in whole or in part by the underwriters." You inquired as to whether the term "initial offering price" as used in this provision could be stated in terms of yield. The Board has reviewed your request and authorized this response.

Rule G-32 requires dealers selling new issue municipal securities to provide certain written information to customers. In connection with new negotiated issues, paragraph (a)(ii) of the rule requires that this written information include the underwriting spread, the amount of any fee received by a dealer as agent for the issuer in the distribution of the securities for each maturity in the issue that is offered or to be offered in whole or in part by the underwriters, and the initial offering price of each maturity.[1]

With respect to the "initial offering price," the Board has concluded that this price may be expressed either in terms of dollar price or yield. Since customer confirmations generally must show both dollar price and yield, the Board believes that either form of "initial offering price" would provide customers with the requisite comparative data about the relationship between the initial offering price and the price of the securities being purchased. *MSRB interpretation of December 22, 1993.*

[1] If this information is stated in the official statement, compliance can be achieved by delivering the official statement to the customer, prior to settlement, as is required, in any case, by rule G-32(a)(i). However, if the information is not in the official statement, this information must be delivered no later than the settlement of the transaction.

See also:

Rule G-15 Interpretive Letter — Callable securities: pricing to call and extraordinary mandatory redemption features, *MSRB interpretation of February 10, 1984.*

Rule G-30 Interpretive Letter — Differential re-offering prices, *MSRB interpretation of December 11, 2001.*

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Rule G-32 Amendment History (since 2003)

Release No. 34-91175 (February 22, 2021), 86 FR 11817 (February 26, 2021); MSRB Notice 2021-04 (February 17, 2021)

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Rule G-33
Calculations

(a) *Accrued Interest*. Accrued interest shall be computed in accordance with the following formula:

$$\text{Interest} = \text{Rate x Par Value of Transaction} \times \frac{\text{Number of Days}}{\text{Number of Days in Year}}$$

For purposes of this formula, the "number of days" shall be deemed to be the number of days from the previous interest payment date (from the dated date, in the case of first coupons) up to, but not including, the settlement date. The "number of days" and the "number of days in year" shall be counted in accordance with the requirements of section (e) below.

(b) *Interest-Bearing Securities*.

(i) *Dollar Price*. For transactions in interest-bearing securities effected on the basis of yield the resulting dollar price shall be computed in accordance with the following provisions:

(A) *Securities Paying Interest Solely at Redemption.* Except as otherwise provided in this section (b), the dollar price for a transaction in a security paying interest solely at redemption shall be computed in accordance with the following formula:

$$P = \left[\frac{RV + \left(\frac{DIR}{B} \cdot R\right)}{1 + \left(\frac{DIR - A}{B} \cdot Y\right)}\right] - \left[\frac{A}{B} \cdot R\right]$$

For purposes of this formula the symbols shall be defined as follows:

"A" is the number of accrued days from the beginning of the interest payment period to the settlement date (computed in accordance with the provisions of section (e) below);

"B" is the number of days in the year (computed in accordance with the provisions of section (e) below);

"DIR" is the number of days from the issue date to the redemption date (computed in accordance with the provisions of section (e) below);

"P" is the dollar price of the security for each $100 par value (divided by 100);

"R" is the annual interest rate (expressed as a decimal);

"RV" is the redemption value of the security per $100 par value (divided by 100); and

"Y" is the yield price of the transaction (expressed as a decimal).

(B) *Securities with Periodic Interest Payments*. Except as otherwise provided in this section (b), the dollar price for a transaction in a security with periodic interest payments shall be computed as follows:

(1) for securities with one coupon period or less to redemption, the following formula shall be used:

$$P = \left[\frac{\frac{RV}{100} + \frac{R}{M}}{1 + \left(\frac{E - A}{E} \cdot \frac{Y}{M}\right)}\right] - \left[\frac{A}{B} \cdot R\right]$$

For purposes of this formula the symbols shall be defined as follows:

"A" is the number of accrued days from the beginning of the interest payment period to the settlement date (computed in accordance with the provisions of section (e) below);

"B" is the number of days in the year (computed in accordance with the provisions of section (e) below);

"E" is the number of days in the interest payment period in which the settlement date falls (computed in accordance with the provisions of section (e) below);

"M" is the number of interest payment periods per year standard for the security involved in the transaction;

"P" is the dollar price of the security for each $100 par value (divided by 100);

"R" is the annual interest rate (expressed as a decimal);

"RV" is the redemption value of the security per $100 par value; and

"Y" is the yield price of the transaction (expressed as a decimal).

(2) for securities with more than one coupon period to redemption, the following formula shall be used:

$$P = \left[\frac{RV}{\left(1 + \frac{Y}{M}\right)_{exp\ N - 1 + \frac{E - A}{E}}}\right] + \left[\sum_{K=1}^{N} \frac{100 \cdot \frac{R}{M}}{\left(1 + \frac{Y}{M}\right)_{exp\ K - 1 + \frac{E - A}{E}}}\right] - \left[100 \cdot \frac{A}{B} \cdot R\right]$$

For purposes of this formula the symbols shall be defined as follows:

"A" is the number of accrued days from beginning of the interest payment period to the settlement date (computed in accordance with the provisions of section (e) below);

"B" is the number of days in the year (computed in accordance with the provisions of section (e) below);

"E" is the number of days in the interest payment period in which the settlement date falls (computed in accordance with the provisions of section (e) below);

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"M" is the number of interest payment periods per year standard for the security involved in the transaction;

"N" is the number of interest payments (expressed as a whole number) occurring between the settlement date and the redemption date, including the payment on the redemption date;

"P" is the dollar price of the security for each $100 par value;

"R" is the annual interest rate (expressed as a decimal);

"RV" is the redemption value of the security per $100 par value; and

"Y" is the yield price of the transaction (expressed as a decimal).

For purposes of this formula the symbol "exp" shall signify that the preceding value shall be raised to the power indicated by the succeeding value; for purposes of this formula the symbol "K" shall signify successively each whole number from "1" to "N" inclusive; for purposes of this formula the symbol "sigma" shall signify that the succeeding term shall be computed for each value "K" and that the results of such computations shall be summed.

(ii) *Yield*. Yields on interest-bearing securities shall be computed in accordance with the following provisions:

(A) *Securities Paying Interest Solely at Redemption*. The yield of a transaction in a security paying interest solely at redemption shall be computed in accordance with the following formula:

$$Y = \left[\frac{\left(RV + \left(\frac{DIR}{B} \bullet R\right)\right) - \left(P + \left(\frac{A}{B} \bullet R\right)\right)}{P + \left(\frac{A}{B} \bullet R\right)}\right] \bullet \left[\frac{B}{DIR - A}\right]$$

For purposes of this formula the symbols shall be defined as follows:

"A" is the number of accrued days from the beginning of the interest payment period to the settlement date (computed in accordance with the provisions of section (e) below);

"B" is the number of days in the year (computed in accordance with the provisions of section (e) below);

"DIR" is the number of days from the issue date to the redemption date (computed in accordance with the provisions of section (e) below);

"P" is the dollar price of the security for each $100 par value (divided by 100);

"R" is the annual interest rate (expressed as a decimal);

"RV" is the redemption value of the security per $100 par value (divided by 100); and

"Y" is the yield on the investment if the security is held to redemption (expressed as a decimal).

(B) *Securities with Periodic Interest Payments*. The yield of a transaction in a security with periodic interest payments shall be computed as follows:

(1) for securities with one coupon period or less to redemption, the following formula shall be used:

$$Y = \left[\frac{\left(\frac{RV}{100} + \frac{R}{M}\right) - \left(P + \left(\frac{A}{E} \bullet \frac{R}{M}\right)\right)}{P + \left(\frac{A}{E} \bullet \frac{R}{M}\right)}\right] \bullet \left[\frac{M \bullet E}{E - A}\right]$$

For purposes of this formula the symbols shall be defined as follows:

"A" is the number of accrued days from the beginning of the interest payment period to the settlement date (computed in accordance with the provisions of section (e) below);

"E" is the number of days in the interest payment period in which the settlement date falls (computed in accordance with the provisions of section (e) below);

"M" is the number of interest payment periods per year standard for the security involved in the transaction;

"P" is the dollar price of the security for each $100 par value (divided by 100);

"R" is the annual interest rate (expressed as decimal);

"RV" is the redemption value of the security per $100 par value; and

"Y" is the yield on the investment if the security is held to redemption (expressed as a decimal).

(2) for securities with more than one coupon period to redemption, the formula set forth in item (2) of subparagraph (b)(i)(B) shall be used.

(c) *Discounted Securities*.

(i) *Dollar Price*. For transactions in discounted securities, the dollar price shall be computed in accordance with the following provisions:

(A) The dollar price of a discounted security, other than a discounted security traded on a yield-equivalent basis, shall be computed in accordance with the following formula:

$$P = [RV] - \left[DR \bullet RV \bullet \frac{DSM}{B}\right]$$

For purposes of this formula the symbols shall be defined as follows:

"B" is the number of days in the year (computed in accordance with the provisions of section (e) below);

"DR" is the discount rate (expressed as a decimal);

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"DSM" is the number of days from the settlement date of the transaction to the maturity date (computed in accordance with the provisions of section (e) below);

"P" is the dollar price of the security for each $100 par value; and "RV" is the redemption value of the security per $100 par value.

(B) The dollar price of a discounted security traded on a yield-equivalent basis shall be computed in accordance with the formula set forth in subparagraph (b)(i)(A).

(ii) *Return on Investment*. The return on investment for a discounted security shall be computed in accordance with the following provisions:

(A) The return on investment for a discounted security, other than a discounted security traded on a yield-equivalent basis, shall be computed in accordance with the following formula:

$$IR = \left[\frac{RV - P}{P}\right] \cdot \left[\frac{B}{DSM}\right]$$

For purposes of this formula the symbols shall be defined as follows:

"B" is the number of days in the year (computed in accordance with the provisions of section (e) below);

"DSM" is the number of days from the settlement date of the transaction to the maturity date (computed in accordance with the provisions of section (e) below);

"IR" is the annual return on investment if the security is held to maturity (expressed as a decimal);

"P" is the dollar price of the security for each $100 par value; and

"RV" is the redemption value of the security per $100 par value.

(B) The yield of a discounted security traded on a yield-equivalent basis shall be computed in accordance with the formula set forth in subparagraph (b)(ii)(A).

(d) *Standards of Accuracy; Truncation*.

(i) *Intermediate Values*. All values used in computations of accrued interest, yield, and dollar price shall be computed to not less than ten decimal places.

(ii) *Results of Computations*. Results of computations shall be presented in accordance with the following:

(A) Accrued interest shall be truncated to three decimal places, and rounded to two decimal places immediately prior to presentation of total accrued interest amount on the confirmation;

(B) Dollar prices shall be truncated to three decimal places immediately prior to presentation of dollar price on the confirmation and computation of extended principal; and

(C) Yields shall be truncated to four decimal places, and rounded to three decimal places, provided, however, that for purposes of confirmation display as required under rule G-15(a) yields accurate to the nearest .05 percentage points shall be deemed satisfactory.

Numbers shall be rounded, where required, in the following manner: if the last digit after truncation is five or above, the preceding digit shall be increased to the next highest number, and the last digit shall be discarded.

(e) *Day Counting*.

(i) *Day Count Basis*. Computations under the requirements of this rule shall be made on the basis of a thirty-day month and a three-hundred-sixty-day year, or, in the case of computations on securities paying interest solely at redemption, on the day count basis selected by the issuer of the securities.

(ii) *Day Count Formula*. For purposes of this rule, computations of day counts on the basis of a thirty-day month and a three-hundred-sixty-day year shall be made in accordance with the following formula.

$$\text{Number of Days} = (Y2 - Y1)\ 360 + (M2 - M1)\ 30 + (D2 - D1)$$

For purposes of this formula the symbols shall be defined as follows:

"M1" is the month of the date on which the computation period begins;

"D1" is the day of the date on which the computation period begins;

"Y1" is the year of the date on which the computation period begins;

"M2" is the month of the date on which the computation period ends;

"D2" is the day of the date on which the computation period ends; and

"Y2" is the year of the date on which the computation period ends.

For purposes of this formula, if the symbol "D2" has a value of "31," and the symbol "D1" has a value of "30" or "31," the value of the symbol "D2" shall be changed to "30." If the symbol "D1" has a value of "31," the value of the symbol "D1" shall be changed to "30." For purposes of this rule time periods shall be computed to include the day specified in the rule for the beginning of the period but not to include the day specified for the end of the period.

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Rule G-33 Interpretations

Notice of Interpretation Concerning Price Calculation for Securities with an Initial Non-Interest Paying Period: Rule G-33

August 25, 1986

The Board has adopted a method for calculating the price of securities for which there are no scheduled interest payments for an initial period, generally for several years, after which periodic interest payments are scheduled. These securities, known by such names as "Growth and Income Securities," and "Capital Appreciation/Future Income Securities," function essentially as "zero coupon" securities for a period of time after issuance, accruing interest which is payable only upon redemption. On a certain date after issuance ("the interest commencement date"), the securities begin to accrue interest for semi-annual payment.

In March 1986, the Board published for comment a proposed method of calculating price from yield for such securities.[1] The Board received five comments on the proposed method, four expressing support for the method and one expressing no opinion. The commentators generally noted that the proposed method appeared to be accurate and could be used on bond calculators commonly available in the industry. The Board has adopted the proposed method of calculation, set forth below, as an interpretation of rule G-33 on calculations.

The general formula for calculating the price of securities with periodic interest payments is contained in rule G-33(b)(i)(B)(2). For securities with periodic payments, but with an initial non-interest paying period, this formula also is used.[2] For settlement dates occurring prior to the interest commencement date the price is computed by means of the following two-step process. First, a hypothetical price of the securities at the interest commencement date is calculated using the interest commencement date as the hypothetical settlement date,[3] the interest rate ("R" in the formula) for the securities during the interest payment period and the yield ("Y" in the formula) at which the securities are sold. This hypothetical price is computed to not less than six decimal places, and then is used as the redemption value ("RV" in the formula) in a second calculation using the G-33(b)(i)(B)(2) formula, with the interest commencement date as the redemption date, the actual settlement date for the transaction as the settlement date, and a value of zero for R, the interest rate. The resultant price, using the formula in G-33(b)(i)(B)(2), is the correct price of the securities.[4]

The price of such securities for settlement dates occurring after the interest commencement date, of course, should be calculated as for any other securities with periodic interest payments.[5]

[1] *MSRB Reports*, Vol. 6, No. 2 (March 1986) at 13.

[2] This interpretation is not meant to apply to securities which have a long first coupon period, but which otherwise are periodic interest paying securities.

[3] For settlement dates less than 6 months to the hypothetical redemption date, the formula in rule G-33(b)(ii)(B)(1) should be used in lieu of the formula in rule G-33(b)(ii)(B)(2).

[4] Rule G-12(c)(v)(I) and G-15(a)(i)(I) [currently codified at rule G-15(a)(i)(A)(5)(c)] require that securities be priced to the lowest of price to call, price-to-par option, or price to maturity. Thus, the redemption date used for this calculation method should be the date of an "in whole" refunding call if this would result in a lower dollar price than a computation to maturity.

[5] The formula in G-33(b)(i)(B)(1) should be used for calculations in which settlement date is 6 months or less to redemption date.

Interpretive Notice on Rule G-33 on Calculations for Securities with Periodic Interest Payments

February 23, 2016

Rule G-33 generally requires that brokers, dealers, and municipal securities dealers ("dealers") effecting transactions in municipal securities compute yields and dollar prices in accordance with the formulas prescribed.

Prior to an amendment effective February 23, 2016, Rule G-33(b)(i)(B)(2) and, by reference, (b)(ii)(B)(2), provided that, for interest-bearing municipal securities with periodic interest payments and more than six months to redemption, dealers compute the dollar price or yield using a formula that accounted for the present value of all future coupon payments and a semi-annual payment of interest. The formula in Rule G-33(b)(i)(B)(2) now provides a more precise pricing calculation when computing yields and dollar prices on securities with periodic interest payments and more than one coupon payment to redemption. Under the amended pricing formula, rather than presuming a semi-annual interest payment, the formula requires factoring in the actual interest payment frequency of the security (*e.g.*, monthly, quarterly or annually).

The compliance date for Rule G-33, as amended, is July 18, 2016.

Prior to July 18, 2016, a dealer will be deemed to be in compliance with Rules G-33(b)(i)(B)(2) and G- 33(b)(ii)(B)(2) if calculating dollar price or yield for interest-bearing municipal securities with periodic interest payments and more than six months to redemption using the actual interest payment frequency rather than assuming a semi-annual payment. Beginning July 18, 2016, the compliance date for Rule G-33, as amended, all dealers will be required to factor in the actual interest payment frequency in calculating dollar price and yield for such securities.

See also:

Rule G-17 Interpretation — Transactions in Municipal Securities with Non-Standard Features Affecting Price/Yield Calculations, June 12, 1995.

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Interpretive Letters

Day counting: securities dated on the 15th of a month. I am writing in response to your letter of May 26, 1982 in which you inquire as to the correct day count for calculation purposes on a security which is dated on the 15th of a month and pays interest on the first of a following month. In your letter you pose the example of a security dated on June 15, 1982 and paying interest on July 1, 1982, and you inquire whether the July 1, 1982 coupon on such security should have a value of 15 or 16 days of accrued interest.

As you know, Board rule G-33 provides the following formula for use on computations of day counts on securities calculated on a "30/360" day basis:

Number of days =
(Y2 - Y1) 360 + (M2 - M1) 30 + (D2 - D1)

In this formula, the variables "Yl," "M1," and "D1" are defined as the year, month, and day, respectively, of the date on which the computation period begins (June 15, 1982, in your example), and "Y2,a" "M2," and "D2" as the year, month, and day of the date on which the computation period ends (July 1, 1982, in your example). In the situation you present, therefore, the number of days in the period would correctly be computed as follows:

Number of days =
(1982 - 1982) 360 + (7 - 6) 30 + (1 - 15)

or

Number of days = (0) 360 + (1) 30 + (- 14)

or

Number of days = 0 + 30 + (- 14)

or

Number of days = 16 days

If figured correctly, therefore, the coupon for such a period should have a value of 16 days of accrued interest. If the coupon is for a longer period of time, this particular portion of that longer period would still correctly be counted as 16 days (*e.g.*, the day count on a coupon for the period June 15 to September 1 would correctly be figured as 76 days, consisting of 16 days for the period June 15 to July 1, and 30 days each for the months of July and August).

The error of computing the day count for such a period as 15 days apparently arises from an assumption that, on a security dated on the 15th of a month, accrued interest is owed only for the "second half" of that month. In reality, of course, the 15th of a month is not the first day of the "second half" of that month, but rather is the last day of the "first half" of that month (since a 30-day month consists of two 15-day half-months, the first half being from the 1st to the 15th, and the second half being from the 16th to the 30th). Again, it can clearly be seen that the correct day count for such a period is 16 days. *MSRB interpretation of June 2, 1982*.

Day counting: day counts on notes. As I indicated in my letter of October 4, your September 27 letter regarding the inclusion on a customer confirmation of information with respect to the day count method used on a transaction was referred to the Board for its consideration at the December meeting. In your letter you noted that Board rule G-33 on calculations requires that

> [c]omputations under the requirements of [the] rule shall be made on the basis of a thirty-day month and a three-hundred-sixty-day year, or, in the case of computations on securities paying interest solely at redemption, on the day count basis selected by the issuer of the securities.

You indicated that your bank has recently experienced problems with transactions in municipal notes ("securities paying interest solely at redemption") on which the issuer has selected a day count basis other than the traditional "30/360" basis, with the problems resulting from one party to the transaction using an incorrect day count method. You suggested that this type of problem could be partially alleviated by requiring that a municipal securities dealer selling a security on which an unusual day count method is used specify the day count method on the confirmation of the transaction.

The Board shares your concern that a failure to identify the day count method used on a particular security may subsequently cause problems in completing a transaction. Therefore, the Board believes that the parties to a transaction should exchange information at the time of trade concerning any unusual day count method used on the securities involved in the transaction. Since the party selling the securities is more likely to be aware of the unusual day count, it would be desirable that sellers take steps to ensure that they advise the contra-parties on transactions of the method to be used.

The Board does not, however, believe that it would be appropriate to require that this information be stated on the confirmation. The Board reached this determination based on its perception that the space available on the confirmation for the details of the securities description is quite limited and its belief that information regarding the day count method may not be sufficiently material to warrant its inclusion in the securities description. *MSRB interpretation of December 9, 1982*.

Rule G-33 Amendment History (since 2003)

Release No. 34-77316 (March 8, 2016), 81 FR 13426 (March 14, 2016); MSRB Notice 2016-08 (February 23, 2016)

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Rule G-34
CUSIP Numbers, New Issue, and Market Information Requirements

(a) *New Issue Securities*.

(i) *Assignment and Affixture of CUSIP Numbers*.

(A) Except as otherwise provided in this section (a) and section (d), a broker, dealer or municipal securities dealer acting as an underwriter in a new issue of municipal securities, and a municipal advisor advising the issuer with respect to a competitive sale of a new issue of municipal securities, shall apply in accordance with the procedures of the designee to the designee of the Board for assignment of a CUSIP number or numbers to such new issue, as follows:

(1) The underwriter in a negotiated sale shall make an application by no later than the time that pricing information for the issue is finalized. Such application for CUSIP number assignment shall be made at a time sufficient to ensure final CUSIP number assignment occurs prior to the formal award of the issue.

(2) The underwriter in a competitive sale for which no CUSIP numbers have been pre-assigned shall make an application immediately after receiving notification of the award from the issuer. The underwriter in a competitive sale shall ensure that CUSIP numbers are assigned prior to disseminating the Time of First Execution required under paragraph (a)(ii)(C) of this Rule G-34.

(3) A municipal advisor advising the issuer with respect to a competitive sale of a new issue of municipal securities for which no CUSIP numbers have been pre-assigned, shall make an application for CUSIP numbers at a time sufficient to ensure final CUSIP number assignment occurs prior to the award of the issue.

(4) In making applications for CUSIP number assignment, the underwriter or municipal advisor shall provide the information required by the designee of the Board for such application.

(5) Any changes to information identified in subparagraph (a)(i)(A)(4) and included in an application for CUSIP number assignment shall be provided to the Board's designee as soon as they are known but no later than a time sufficient to ensure final CUSIP number assignment occurs prior to disseminating the time of first execution required under subparagraph (a)(ii)(C)(1)(b) of this Rule G-34.

(B) The information required by subparagraph (i)(A)(4) of this section (a) shall be provided in accordance with the provisions of this paragraph. The application shall include a copy of a notice of sale, official statement, legal opinion, or other similar documentation prepared by or on behalf of the issuer, or portions of such documentation, reflecting the information required by subparagraph (i)(A)(4) of this section (a). Such documentation may be submitted in preliminary form if no final documentation is available at the time of application. In such event the final documentation, or the relevant portions of such documentation, reflecting any changes in the information required by subparagraph (i)(A)(4) of this section (a) shall be submitted when such documentation becomes available. If no such documentation, whether in preliminary or final form, is available at the time application for CUSIP number assignment is made, such copy shall be provided promptly after the documentation becomes available.

(C) The provisions of subsection (i) of this section (a) shall not apply with respect to any new issue of municipal securities on which CUSIP numbers have been preassigned by the designee of the Board or on which the issuer or a person acting on behalf of the issuer has submitted an application for assignment of a CUSIP number or numbers.

(D) In the event that the proceeds of the new issue will be used, in whole or in part, to refund an outstanding issue or issues of municipal securities in such a way that part but not all of the outstanding issue or issues previously assigned a single CUSIP number is to be refunded to one or more redemption date(s) and price(s) (or all of an outstanding issue is to be refunded to more than one redemption date and price), the broker, dealer or municipal securities dealer shall apply in writing to the designee of the Board for a reassignment of a CUSIP number to each part of the outstanding issue refunded to a particular redemption date and price and shall provide to the designee of the Board the information required by the designee of the Board.

(E) The underwriter, prior to the delivery of a new issue of municipal securities to any other person, shall affix to, or arrange to have affixed to, the securities certificates of such new issue the CUSIP number assigned to such new issue. If more than one CUSIP number is assigned to the new issue, each such number shall be affixed to the securities certificates of that part of the issue to which such number relates.

(F) A broker, dealer or municipal securities dealer acting as an underwriter of a new issue of municipal securities, or a municipal advisor advising the issuer with respect to a competitive sale of a new issue, which is being purchased directly by a bank, any entity directly or indirectly controlled by the bank or under common control with the bank, other than a broker, dealer or municipal securities dealer registered under the Securities Exchange Act of 1934, or a consortium of such entities; or by a municipal entity with funds that are, at least in part, proceeds of, or fully or partially secure or pay, the

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purchasing entity's issue of municipal obligations (*e.g.*, state revolving fund or bond bank), may elect not to apply for assignment of a CUSIP number or numbers if the underwriter or municipal advisor reasonably believes (*e.g.*, by obtaining a written representation) that the present intent of the purchasing entity or entities is to hold the municipal securities to maturity or earlier redemption or mandatory tender.

(ii) *Application for Depository Eligibility and Dissemination of New Issue Information*. Each underwriter shall carry out the following functions:

(A) Except as otherwise provided in this paragraph (ii)(A) and section (d), the underwriter shall apply to a securities depository registered with the Securities and Exchange Commission, in accordance with the rules and procedures of such depository, to make such new issue depository-eligible. The application required by this paragraph (ii)(A) shall be made as promptly as possible, but in no event later than one business day after award from the issuer (in the case of a competitive sale) or one business day after the execution of the contract to purchase the securities from the issuer (in the case of a negotiated sale). In the event that the full documentation and information required to establish depository eligibility is not available at the time the initial application is submitted to the depository, the underwriter shall forward such documentation as soon as it is available; provided, however, this paragraph (ii)(A) of this rule shall not apply to:

(1) an issue of municipal securities that fails to meet the criteria for depository eligibility at all depositories that accept municipal securities for deposit; or

(2) any new issue maturing in 60 days or less; or

(3) a new issue of municipal securities purchased directly by a bank, any entity directly or indirectly controlled by the bank or under common control with the bank, other than a broker, dealer or municipal securities dealer registered under the Securities Exchange Act of 1934, or a consortium of such entities; or by a municipal entity with funds that are, at least in part, proceeds of, or fully or partially secure or pay, the purchasing entity's issue of municipal obligations (*e.g.*, state revolving fund or bond bank), from an issuer in which an underwriter reasonably believes (*e.g.*, by obtaining a written representation) that the present intent of the purchasing entity or entities is to hold the municipal securities to maturity or earlier redemption or mandatory tender.

(B) Prior to acting as underwriter for a new issue of municipal securities eligible for submission to NIIDS:

(1) each broker, dealer or municipal securities dealer must register to use NIIDS with DTCC and shall test its capability to use NIIDS by successfully submitting two test new issues using the NIIDS Web Interface; and

(2) each broker, dealer or municipal securities dealer that plans to establish computer-to-computer connections with NIIDS (either directly or through a vendor) shall test its capability to use NIIDS by successfully submitting two test new issues using computer-to-computer connections.

(C) The underwriter of a new issue of municipal securities, which has been made depository eligible pursuant to paragraph (ii)(A) above, shall communicate information about the new issue in accordance with the requirements of this paragraph (a)(ii)(C) to ensure that other brokers, dealers and municipal securities dealers have timely access to information necessary to report, compare, confirm, and settle transactions in the new issue and to ensure that registered securities clearing agencies receive information necessary to provide comparison, clearance and depository services for the new issue; provided, however, that this paragraph (a)(ii)(C) shall not apply to commercial paper.

(1) The underwriter shall ensure that the following information is submitted to NIIDS in the manner described in the written procedures for system users and that changes or corrections to submitted information are made as soon as possible:

(a) the time of formal award.

(i) For purposes of this paragraph (a)(ii)(C), the "time of formal award" means:

(A) for competitive issues, the later of the time the issuer announces the award or the time the issuer notifies the underwriter of the award, and

(B) for negotiated issues, the later of the time the contract to purchase the securities from the issuer is executed or the time the issuer notifies the underwriter of its execution.

(ii) If the underwriter and issuer have agreed in advance on a time of formal award, that time may be submitted to NIIDS in advance of the actual time of formal award.

(b) the time of first execution.

(i) For purposes of this paragraph (a)(ii)(C), the "time of first execution" means the time the underwriter plans to execute its first transactions in the new issue.

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(ii) The underwriter shall designate a time of first execution that is:

(A) for new issues consisting of variable rate instruments for which transactions occurring on the first day of trading are expected to settle on a same-day or next-day basis, any time after all information required by paragraph (a)(ii)(C) has been transmitted to NIIDS; or

(B) for all other new issues, no less than two business hours after all information required by paragraph (a)(ii)(C) has been transmitted to NIIDS; provided that the time of first execution may be designated as 9:00 A.M. Eastern Time or later on the RTRS business day following the day on which all information required by paragraph (a)(ii)(C) has been transmitted to NIIDS without regard to whether two business hours have elapsed.

(c) All other information identified as required for "Trade Eligibility" in NIIDS.

(2) The underwriter shall ensure that all information identified in this paragraph (a)(ii)(C) is transmitted to NIIDS no later than two business hours after the time of formal award. For purposes of this paragraph (a)(ii)(C):

(a) "business hours" shall include only the hours from 9:00 A.M. to 5:00 P.M. Eastern Time on an RTRS business day.

(b) "RTRS business day" shall have the meaning set forth in Rule G-14 RTRS Procedures subsection (d)(ii).

(3) For purposes of paragraphs (B) and (C) of this subsection (a)(ii):

(a) "DTCC" means The Depository Trust and Clearing Corporation, a securities clearing agency registered with the Commission providing depository services for municipal securities.

(b) "NIIDS" means the New Issue Information Dissemination Service, an automated, electronic system operated by DTCC as part of its underwriting eligibility request platform, UW Source, that receives comprehensive new issue information for municipal securities on a market-wide basis for the purposes of establishing depository eligibility and immediately re-disseminating such information to information vendors supplying formatted municipal securities information for use in automated trade processing systems.

(D) The underwriter of any new issue of municipal securities consisting of commercial paper shall, as promptly as possible, announce each item of information listed below in a manner reasonably designed to reach market participants that may trade the new issue. All information shall be announced no later than the time of the first execution of a transaction in the new issue by the underwriter.

(1) the CUSIP number or numbers assigned to the issue and descriptive information sufficient to identify the CUSIP number corresponding to each part of the issue assigned a specific CUSIP number; and

(2) the time of formal award as defined in subparagraph (a)(ii)(C)(1)(a).

(E) For any new issue of municipal securities eligible for comparison through the automated comparison facilities of a registered clearing agency under section (f) of rule G-12, the underwriter shall provide the registered securities clearing agency responsible for comparing when, as and if issued transactions with:

(1) final interest rate maturity information about the new issue as soon as it is available; and

(2) the settlement date of the new issue as soon as it is known and shall immediately inform the registered clearing agency of any changes in such settlement date.

(iii) *Underwriting Syndicate*. In the event a syndicate or similar account has been formed for the purchase of a new issue of municipal securities, the managing underwriter shall take the actions required of the underwriter under the provisions of this section (a).

(iv) *Limited Use of NRO Designation*. From and after the time of initial award of a new issue of municipal securities, a broker, dealer or municipal securities dealer may not use the term "not reoffered" or other comparable term or designation without also including the applicable price or yield information about the securities in any of its written communications, electronic or otherwise, sent by it or on its behalf. For purposes of this subsection (iv), the "time of initial award" means the earlier of (A) the time of formal award as defined in subparagraph (a)(ii)(C)(1)(a), or (B) if applicable, the time at which the issuer initially accepts the terms of a new issue of municipal securities subject to subsequent formal award.

(b) *Secondary Market Securities*.

(i) Each broker, dealer, or municipal securities dealer that, in connection with a sale or an offering for sale of part of a maturity of an issue of municipal securities, acquires or arranges for the acquisition of a transferable instrument applicable to such part which alters the security or source of payment of such part shall apply in writing to the Board or its designee for the assignment of a CUSIP number to designate the part of the maturity of the issue which is the subject of the

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instrument when traded with the instrument attached. Such instruments shall include (A) insurance with respect to the payment of debt service on such portion, (B) a put option or tender option, (C) a letter of credit or guarantee, or (D) any other similar device. This paragraph (i) shall not apply with respect to any part of an outstanding maturity of an issue of municipal securities with respect to which a CUSIP number that is applicable to such part when traded with an instrument which alters the security or source of payment of such part has already been assigned.

(ii) Each broker, dealer or municipal securities dealer, in connection with a sale or an offering for sale of part of a maturity of an issue of municipal securities which is assigned a CUSIP number that no longer designates securities identical with respect to all features of the issue listed in items (a) through (h) of subparagraph (a)(i)(A)(4) of this rule, shall apply in writing to the Board or its designee for a new CUSIP number or numbers to designate the part or parts of the maturity which are identical with respect to items (a) through (h) of subparagraph (a)(i)(A)(4).

(iii) The broker, dealer or municipal securities dealer shall make the application required under this section (b) as promptly as possible, and shall provide to the Board or its designee:

(A) the previously assigned CUSIP number;

(B) all information on the features of the maturity of the issue listed in items (a) through (h) of subparagraph (a)(i)(A)(4) of this rule and documentation of the features of such maturity sufficient to evidence the basis for CUSIP number assignment; and,

(C) if the application is based on an instrument affecting the source of payment or security for a part of a maturity of an issue, information on the nature of the instrument, including the name of any party obligated with respect to debt service under the terms of such instrument and documentation sufficient to evidence the nature of the instrument.

(c) *Variable Rate Security Market Information*.

(i) Auction Rate Securities.

(A) Auction Rate Securities Data.

(1) Each broker, dealer or municipal securities dealer that submits an order directly to an Auction Agent for its own account or on behalf of another account to buy, hold or sell an Auction Rate Security through the auction process ("program dealer") shall report, or ensure the reporting of, the following information about the auction rate security and concerning the results of the auction to the Board:

(a) CUSIP number;

(b) Interest rate produced by the auction process and designation of whether the interest rate is a maximum rate, all hold rate, or rate set by auction;

(c) Identity of all program dealers that submitted orders, including but not limited to hold orders;

(d) Date and time of the auction;

(e) Length of time, in days, that the interest rate produced by the auction process is applicable;

(f) Minimum denomination;

(g) Minimum and maximum rates, if any, applicable at the time of the auction or, if not calculable as of the time of auction, indication that such rate or rates are not calculable.

(h) Date and time the interest rate determined as a result of the auction process was communicated to program dealers;

(i) Aggregate par amount of orders to sell at any interest rate and aggregate par amount of such orders that were executed;

(j) Interest rate(s) and aggregate par amount(s) of orders to hold at a specific interest rate and aggregate par amount of such orders that were successfully held;

(k) Interest rate(s) and aggregate par amount(s) of orders to buy and aggregate par amount of such orders that were executed;

(l) Interest rate(s), aggregate par amount(s), and type of order — either buy, sell or hold — for a program dealer for its own account and aggregate par amounts of such orders, by type, that were executed; and

(m) Interest rate(s), aggregate par amount(s), and type of order — either buy, sell or hold — for an issuer or conduit borrower for such auction rate security.

(2) Information identified in paragraph (c)(i)(A) shall be provided to the Board by no later than 6:30 P.M. Eastern Time on the date on which an auction occurs if such date is an RTRS business day as defined in Rule G-14 RTRS Procedures subsection (d)(ii). In the event that any item of information identified in subparagraph (c)(i)(A)(1) is not available by the deadline in this subparagraph (c)(i)(A)(2), such item shall be provided to the Board as soon as it is available. In the event that an auction occurs on a non-RTRS business day, the information identified in subparagraph (c)(i)(A)(1) shall be reported by no later than 6:30 P.M. Eastern Time on the next RTRS business day.

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(3) A program dealer may designate an agent to report the information identified in subparagraph (c)(i)(A)(1) to the Board, provided that an auction agent may submit information on behalf of a program dealer absent such designation by the program dealer. The failure of a designated agent to comply with any requirement of this subsection (c)(i) shall be considered a failure by such program dealer to so comply; provided that if an auction agent has, within the time periods required under subparagraph (c)(i)(A)(2), reported the information required under subparagraph (c)(i)(A)(1), the program dealer may rely on the accuracy of such information if the program dealer makes a good faith and reasonable effort to cause the auction agent to correct any inaccuracies known to the program dealer.

(4) For Auction Rate Securities in which there are multiple program dealers, each program dealer must only report for items (i) through (m) of the items of information identified in subparagraph (c)(i)(A)(1) information reflective of the program dealer's involvement in the auction. A designated agent as described in subparagraph (c)(i)(A)(3) reporting results of an auction on behalf of multiple program dealers must report for items (i) through (m) of the items information identified in subparagraph (c)(i)(A)(1) information reflective of the aggregate of all such program dealers' involvement in the auction for which the designated agent is making a report. A program dealer may rely on the reporting of information by an auction agent as provided in subparagraph (c)(i)(A)(3) if the auction agent has undertaken to report, and the program dealer does not have reason to believe that the auction agent is not accurately reporting, all items of information identified in subparagraph (c)(i)(A)(1), to the extent applicable, for an auction that is reflective of all program dealers that were involved in the auction.

(5) Information reported to the Board pursuant to this subsection (c)(i) shall be submitted in the manner described in the written procedures for SHORT system users and changes to submitted information must be made as soon as possible.

(6) Every broker, dealer or municipal securities dealer that submits an order to a program dealer on behalf of an issuer or conduit borrower for such auction rate securities shall disclose at the time of the submission of such order that the order is on behalf of an issuer or conduit borrower for such auction rate securities.

(B) Auction Rate Securities Documents.

(1) Each program dealer shall submit to the Board current documents setting forth auction procedures and interest rate setting mechanisms associated with an outstanding auction rate security for which it acts as a program dealer by no later than September 22, 2011 and shall submit to the Board any future, subsequently amended or new versions of such documents no later than five business days after they are made available to the program dealer.

(2) All submissions of documents required under subparagraph (c)(i)(B)(1) shall be made by electronic submissions to the SHORT system in a designated electronic format (as defined in Rule G-32) at such time and in such manner as specified herein and in the SHORT System Users Manual.

(ii) Variable Rate Demand Obligations.

(A) Variable Rate Demand Obligations Data.

(1) Each remarketing agent for a variable rate demand obligation shall report the following information to the Board about the variable rate demand obligation applicable at the time of and concerning the results of an interest rate reset:

(a) CUSIP number;

(b) Interest rate and designation of whether the interest rate is a maximum rate, set by formula or set by the remarketing agent;

(c) Identity of the remarketing agent;

(d) Date and time of the interest rate reset;

(e) Effective date and length of time, in days, that the interest rate is applicable;

(f) Minimum denomination;

(g) Length of Notification Period;

(h) Minimum and maximum rates, if any, applicable at time of the interest rate reset or, if not calculable as of the time of interest rate reset, indication that such rate or rates are not calculable;

(i) Identity of liquidity provider, type and expiration date of each liquidity facility applicable to the variable rate demand obligation;

(j) Identity of the agent of the issuer to which bondholders may tender their security ("tender agent"); and

(k) Aggregate par amount, if any, of the variable rate demand obligation held by a liquidity provider(s) (par amount held as "bank bonds"), and aggregate par amount, if any, of the variable rate demand obligation held by parties other than a liquidity provider(s), including the par amounts held by the remarketing agent and by investors.

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(2) Information identified in subparagraph (c)(ii)(A)(1) shall be provided to the Board by no later than 6:30 P.M. Eastern Time on the date on which an interest rate reset occurs if such date is an RTRS business day as defined in Rule G-14 RTRS Procedures subsection (d)(ii). In the event that any item of information identified in subparagraph (c)(ii)(A)(1) is not available by the deadline in this subparagraph (c)(ii)(A)(2), such item shall be provided to the Board as soon as it is available provided that items (i) through (k) of the information identified in subparagraph (c)(ii)(A)(1) shall reflect the information available to the remarketing agent as of the date and time of the interest rate reset. In the event that an interest rate reset occurs on a non-RTRS business day, the information identified in subparagraph (c)(ii)(A)(1) shall be reported by no later than 6:30 P.M. Eastern Time on the next RTRS business day.

(3) A remarketing agent may designate an agent to report the information identified in subparagraph (c)(ii)(A)(1) to the Board. The failure of a designated agent to comply with any requirement of this paragraph (c)(ii) shall be considered a failure by such remarketing agent to so comply.

(4) Information reported to the Board pursuant to this subsection (c)(ii) shall be submitted in the manner described in the written procedures for SHORT system users and changes to submitted information must be made as soon as possible.

(B) Variable Rate Demand Obligations Documents.

(1) Each remarketing agent shall use best efforts to obtain and shall submit to the SHORT system the current versions of the following documents detailing provisions of liquidity facilities associated with the variable rate demand obligation for which it acts as a remarketing agent by no later than September 22, 2011 and shall submit to the SHORT system any future, subsequently amended or new versions of such documents no later than five business days after they are made available to the remarketing agent:

(a) Stand-by bond purchase agreement;

(b) Letter of credit agreement; and

(c) any other document that establishes an obligation to provide liquidity.

(2) All submissions of documents required under this rule shall be made by electronic submissions to the SHORT system in a designated electronic format (as defined in Rule G-32) at such time and in such manner as specified herein and in the SHORT System Users Manual.

(3) In the event that a document described in subparagraph (c)(ii)(B)(1) is not able to be obtained through the best efforts of the remarketing agent, the remarketing agent shall submit notice to the SHORT system that such document will not be provided at such times as specified herein and in the SHORT System Users Manual.

(d) *Exemptions*. The provisions of this rule shall not apply to an issue of municipal securities (or for the purpose of section (b) any part of an outstanding maturity of an issue) which (i) does not meet the eligibility criteria for CUSIP number assignment or (ii) consists entirely of municipal fund securities.

(e) *Definitions*. For purposes of this rule, the following terms have the following meanings:

(i) The term "auction agent" shall mean the agent responsible for conducting the auction process for auction rate securities on behalf of the issuer or other obligated person with respect to such securities and that receives orders from brokers, dealers and municipal securities dealers.

(ii) The term "auction rate security" shall mean municipal securities in which the interest rate resets on a periodic basis under an auction process conducted by an auction agent.

(iii) The term "notification period" shall mean the specified advance notice period during which an investor in a variable rate demand obligation has the option to put the issue back to the trustee, tender agent or other agent of the issuer or obligated person.

(iv) The term "program dealer" shall mean each broker, dealer or municipal securities dealer that submits an order directly to an auction agent for its own account or on behalf of another account to buy, hold or sell an auction rate security through the auction process.

(v) The term "remarketing agent" shall mean, with respect to variable rate demand obligations, the broker, dealer or municipal securities dealer responsible for reselling to new investors securities that have been tendered for purchase by a holder.

(vi) The term "SHORT system" shall mean the Short-term Obligation Rate Transparency System, a facility operated by the Board for the collection and public dissemination of information and documents about securities bearing interest at short-term rates.

(vii) The term "underwriter" shall mean an underwriter as defined in Securities Exchange Act Rule 15c2-12(f)(8) and includes a dealer acting as a placement agent.

(viii) The term "variable rate demand obligation" shall mean securities in which the interest rate resets on a periodic basis with a frequency of up to and including every nine months, where an investor has the option to put the issue back to the trustee, tender agent or other agent of the issuer or obligated person at any time, typically within a notification period, and a broker, dealer or municipal securities dealer

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acts as a remarketing agent responsible for reselling to new investors securities that have been tendered for purchase by a holder.

Supplementary Material

.01 Board's Designee. In 1983, the Board designated the CUSIP Service Bureau (currently known as CUSIP Global Services) as its designee to assign CUSIP numbers to new issues of municipal securities.

Rule G-34 Interpretations

Notice Concerning CUSIP Numbers for Callable Multi-Series GOs: Rule G-34

November 13, 1989

Rule G-34 requires underwriters and dealers participating in the placement of a new issue of municipal securities to ensure that an application is made for CUSIP numbers for the new issue.[1] The CUSIP Service Bureau assigns CUSIP numbers to reflect the differences in securities that are relevant to trading and investment decisions.[2] In addition, Board rules G-12 and G-15 require that CUSIP numbers appear on confirmations of transactions and that the securities delivered on those transactions match the CUSIP numbers appearing on the confirmations.[3]

Recently, certain questions have arisen about the proper method for assignment of CUSIP numbers to certain general obligation securities that have been issued in multiple series. In these issues, the issuer uses the proceeds from each series to fund a separate project, but the project itself offers bondholders no additional security for payment beyond that provided by the full faith and credit of the issuer. Securities within multiple series may be identical with respect to dated date, maturity, security and source of payment. However, an individual series may be called, in whole or part, at the option of the issuer, based on the series designation. In addition, the securities are subject to certain mandatory redemption features, which are exercisable by series and which are dependent upon the status of the project funded by the series.

Underwriters have encountered confusion as to whether each series within these issues should be assigned separate CUSIP numbers or whether the CUSIP number assignment for the issues should ignore the series designation. The Board wishes to clarify that, because of the possibility that the securities will be subject to early redemption by series designation, separate CUSIP numbers for each series are required.

The Board previously has indicated that a designation of multiple "purposes" for general obligation debt does not require separate CUSIP numbers for each purpose if the securities otherwise are identical.[4] Accordingly, there are a number of outstanding multi-series general obligation issues which are assigned one CUSIP number for each maturity and which are traded, cleared, and settled without regard to series designation. While the Board does not wish to change this general rule, it believes that separate CUSIP number assignment is required for those multi-series issues which can be called by series. The Board notes that the probability of a partial or "in-whole" redemption of a series has the potential to become a significant factor to investors and that it therefore is necessary to preserve distinctions among the various series when trading, clearing and settling these securities.

The Board has consulted with the CUSIP Service Bureau in this matter and the Service Bureau has agreed to assign separate CUSIP numbers to multi-series general obligation issues which can be called by series. Dealers serving as underwriters for these issues therefore should not request the Service Bureau to ignore the series designation when assigning numbers to these issues.

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[1] The rule applies to all issues eligible for CUSIP number assignment. This includes nearly all new issue securities over three months in maturity.

[2] CUSIP numbers are assigned to municipal issues by their issuer title, dated date, interest rate, and maturity date. Municipal securities which are identical as to these four elements are assigned different numbers if there is a further distinction between the securities involving any of the following:

(1) the call features (*i.e.*, whether or not securities are callable, date or terms of call feature, etc.);

(2) any limitation of the pledge on a general obligation bond (*e.g.*, limited tax versus full faith and credit);

(3) any distinction in the secondary security or the source of payment of a revenue bond;

(4) the identity of any entity, besides the issuer, obligated on the debt service of the securities (*e.g.*, two pollution control revenue bonds secured by different corporate obligors); and

(5) any distinction in the secondary security or the source of payment of a general obligation bond.

[3] Certain exceptions to these rules exist for securities which have not been assigned CUSIP numbers and instances in which the CUSIP number on a confirmation and the CUSIP number assigned to securities differ only because of a transposition or transcription error.

[4] *See MSRB Reports* Vol. 2, No. 1, (January 1982), p. 3. Of course, if specific portions of a general obligation issue are additionally backed by the revenues from various issuer activity or proceeds from various projects (so-called "double-barreled" issues), separate CUSIP numbers are required to reflect these distinctions.

See also:

Rule G-32 Interpretation — Notice Regarding Electronic Delivery and Receipt of Information by Brokers, Dealers and Municipal Securities Dealers, November 20, 1998.

Interpretive Letter

See:

Rule G-15 Interpretive Letter — Securities description: revenue securities, *MSRB interpretation of December 1, 1982*.

Rule G-34 Amendment History (since 2003)

Release No. 34-95602 (August 25, 2022), 87 FR 53526 (August 31, 2022); MSRB Notice 2022-08 (August 26, 2022)

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Release No. 34-82321 (December 14, 2017), 82 FR 60433 (December 20, 2017); MSRB Notice 2017-25 (December 15, 2017)

Release No. 34-68472 (December 19, 2012), 77 FR 76146 (December 26, 2012); MSRB Notice 2012-64 (December 24, 2012)

Release No. 34-67908 (September 21, 2012, 77 FR 59427 (September 27, 2012); MSRB Notice 2012-48 (September 24, 2012)

Release No. 34-62755 (August 20, 2010), 75 FR 52793 (August 27, 2010); MSRB Notice 2010-31 (August 26, 2010)

Release No. 34-59212 (January 7, 2009), 74 FR 1741 (January 13, 2009); MSRB Notice 2009-04 (January 9, 2009)

Release No. 34-58016 (June 25, 2008), 73 FR 37518 (July 1, 2008); MSRB Notice 2008-28 (June 27, 2008)

Release No. 34-57750 (May 1, 2008), 73 FR 25815 (May 7, 2008); MSRB Notice 2008-22 (May 2, 2008)

Release No. 34-51000 (January 7, 2005), 70 FR 2684 (January 14, 2005); MSRB Notice 2005-03 (January 12, 2005)

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Rule G-35
Arbitration

Arbitration Involving Bank Dealers.

As of January 1, 1998, every bank dealer (as defined in rule D-8) shall be subject to the Financial Industry Regulatory Authority's (FINRA) Code of Arbitration Procedure for Customer Disputes and Code of Arbitration Procedure for Industry Disputes, as appropriate, for every claim, dispute or controversy arising out of or in connection with the municipal securities activities of the bank dealer acting in its capacity as such. For purposes of this rule, each bank dealer shall be subject to, and shall abide by, FINRA's Code of Arbitration Procedure for Customer Disputes and Code of Arbitration Procedure for Industry Disputes, as appropriate, including any amendments thereto, as if the bank dealer were a "member" of FINRA.

Rule G-35 Interpretation

See:

Rule G-17 Interpretation — Notice of Interpretation Requiring Dealers to Submit to Arbitration as a Matter of Fair Dealing, March 6, 1987.

Rule G-35 Amendment History (since 2003)

Release No. 34-85699 (April 22, 2019), 84 FR 17897 (April 26, 2019); MSRB Notice 2019-11 (April 10, 2019)

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Rule G-36
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Rule G-37
Political Contributions and Prohibitions on Municipal Securities Business and Municipal Advisory Business

(a) *Purpose.* The purpose and intent of this rule are to ensure that the high standards and integrity of the municipal securities market are maintained, to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to perfect a free and open market and to protect investors, municipal entities, obligated persons and the public interest by:

(i) prohibiting brokers, dealers and municipal securities dealers (collectively, "dealers") from engaging in municipal securities business and municipal advisors from engaging in municipal advisory business with municipal entities if certain political contributions have been made to officials of such municipal entities; and

(ii) requiring dealers and municipal advisors to disclose certain political contributions, as well as other information, to allow public scrutiny of such political contributions, the municipal securities business of dealers and the municipal advisory business of municipal advisors.

(b) *Ban on Municipal Securities Business or Municipal Advisory Business; Excluded Contributions*.

(i) *Two-Year Ban*.

(A) *Brokers, Dealers and Municipal Securities Dealers*. No dealer shall engage in municipal securities business with a municipal entity within two years after a contribution to an official of such municipal entity with dealer selection influence, as defined in paragraph (g)(xvi)(A) of this rule, made by the dealer; a municipal finance professional of the dealer; or a political action committee controlled by either the dealer or a municipal finance professional of the dealer.

(B) *Municipal Advisors.* No municipal advisor (excluding a municipal advisor third-party solicitor) shall engage in municipal advisory business with a municipal entity within two years after a contribution to an official of such municipal entity with municipal advisor selection influence, as defined in paragraph (g)(xvi)(B) of this rule, made by the municipal advisor; a municipal advisor professional of the municipal advisor; or a political action committee controlled by either the municipal advisor or a municipal advisor professional of the municipal advisor.

(C) *Municipal Advisor Third-Party Solicitors*.

(1) *Municipal Advisor Third-Party Solicitors*. No municipal advisor third-party solicitor shall engage in municipal advisory business with a municipal entity within two years after a contribution to an official of such municipal entity with dealer selection influence, municipal advisor selection influence or investment adviser selection influence, as defined in paragraph (g)(xvi)(A), (B) or (C) of this rule, as applicable, made by the municipal advisor third-party solicitor; a municipal advisor professional of the municipal advisor third-party solicitor; or a political action committee controlled by either the municipal advisor third-party solicitor or a municipal advisor professional of the municipal advisor third-party solicitor.

(2) *Regulated Entity Clients of a Municipal Advisor Third-Party Solicitor*. If a contribution is made by a municipal advisor third-party solicitor; a municipal advisor professional of the municipal advisor third-party solicitor; or a political action committee controlled by either the municipal advisor third-party solicitor or a municipal advisor professional of the municipal advisor third-party solicitor, the following shall apply.

(a) In the case of an engagement of the municipal advisor third-party solicitor by a dealer to solicit a municipal entity on behalf of the dealer, if the contribution is made to an official of a municipal entity with dealer selection influence, the prohibition on municipal securities business in paragraph (b)(i)(A) of this rule shall apply to the retaining dealer for two years following the contribution.

(b) In the case of an engagement of the municipal advisor third-party solicitor by a municipal advisor to solicit a municipal entity on behalf of the municipal advisor, if the contribution is made to an official of a municipal entity with municipal advisor selection influence, the prohibition on municipal advisory business in paragraph (b)(i)(B) of this rule shall apply to the retaining municipal advisor for two years following the contribution.

(D) *Cross-Bans for Dealer-Municipal Advisors*. In the case of a regulated entity that is both a dealer and a municipal advisor (a "dealer-municipal advisor"), the prohibition on municipal securities business in subsection (b)(i) of this rule shall also apply in the case of a contribution to an official of a municipal entity with dealer selection influence by a municipal advisor professional of the dealer-municipal advisor or a political action committee controlled by a municipal advisor professional of the dealer-municipal advisor; and the prohibition on municipal advisory business in subsection (b)(i) of this rule shall also apply in the case of a contribution to an official of a municipal entity with municipal advisor selection influence by a municipal finance professional of the dealer-municipal advisor or a political action committee controlled by a municipal finance professional of the dealer-municipal advisor.

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(E) *Orderly Transition Period*. A dealer or municipal advisor that is engaging in municipal securities business or municipal advisory business with a municipal entity and during the period of the engagement becomes subject to a prohibition under subsection (b)(i) of this rule may, notwithstanding such prohibition, continue to engage in the municipal securities business or municipal advisory business (except soliciting), as applicable, to allow for an orderly transition to another entity to engage in such business and, where applicable, to allow a municipal advisor to act consistently with its fiduciary duty to the municipal entity; provided, however, that such transition period must be as short a period of time as possible and that the prohibition under subsection (b)(i) of this rule shall be extended by the duration of the orderly transition period.

(ii) *Excluded Contributions*. A contribution to an official of a municipal entity will not subject a dealer or municipal advisor to a ban on business under subsection (b)(i) of this rule if the contribution meets the specific conditions of an exclusion set forth below.

(A) *Voting Right/De Minimis Contribution*. The contribution is made by a municipal finance professional or municipal advisor professional who is entitled to vote for the official of the municipal entity and the contribution and any other contribution made to the official of the municipal entity by such person in total do not exceed $250 per election.

(B) *Contributions Made Before Becoming a Dealer Solicitor or Municipal Advisor Solicitor.* The contribution is made by a natural person who: (1) at the time of the contribution was not a municipal finance professional or municipal advisor professional; (2) became and is a municipal finance professional, or municipal advisor professional, or both, solely on the basis of being a dealer solicitor and/or municipal advisor solicitor; and (3) since becoming a municipal finance professional and/or municipal advisor professional has not solicited the municipal entity; provided, however, that this non-solicitation condition is not required for this exclusion after two years have elapsed since the making of the contribution.

(C) *Contributions Made by Certain Persons More Than Six Months Before Becoming a Municipal Finance Professional or Municipal Advisor Professional.* The contribution is made by a person who is either or both of the following: (1) a municipal finance professional solely based on activities as a municipal finance principal, dealer supervisory chain person, or dealer executive officer, and the contribution was made more than six months before becoming a municipal finance professional or; (2) a municipal advisor professional solely based on activities as a municipal advisor principal, municipal advisor supervisory chain person, or municipal advisor executive officer, and the contribution was made more than six months before becoming a municipal advisor professional.

(c) *Prohibition on Soliciting and Coordinating Contributions and Payments*.

(i) *Contributions*. No dealer or municipal finance professional of the dealer shall solicit any person (including but not limited to any affiliated entity of the dealer) or political action committee to make any contribution, or coordinate any contributions, to an official of a municipal entity with dealer selection influence with which municipal entity the dealer is engaging, or is seeking to engage in municipal securities business. No municipal advisor or municipal advisor professional of the municipal advisor shall solicit any person (including but not limited to any affiliated entity of the municipal advisor) or political action committee to make any contribution, or coordinate any contributions, to an official of a municipal entity with municipal advisor selection influence with which municipal entity the municipal advisor is engaging, or is seeking to engage in municipal advisory business. In the case of a municipal advisor thirdparty solicitor, the prohibition on soliciting and coordinating contributions in this subsection (c)(i) shall apply to the solicitation or coordination of contributions to an official of a municipal entity with dealer selection influence, municipal advisor selection influence or investment adviser selection influence, as defined in paragraph (g)(xvi)(A), (B), or (C) of this rule, as applicable, by the municipal advisor third-party solicitor, or any municipal advisor professional of the municipal advisor third-party solicitor. In the case of a dealer-municipal advisor, the prohibition on soliciting and coordinating contributions in this subsection (c)(i) shall apply to the solicitation or coordination of contributions to an official of a municipal entity with dealer selection influence or an official of a municipal entity with municipal advisor selection influence by the dealer-municipal advisor, any municipal finance professional of the dealer-municipal advisor and any municipal advisor professional of the dealer-municipal advisor.

(ii) *Payments*. No dealer, municipal advisor, municipal finance representative, municipal advisor representative, dealer solicitor, municipal advisor solicitor, municipal finance principal or municipal advisor principal shall solicit any person (including but not limited to any affiliated entity of the dealer or municipal advisor) or political action committee to make any payment, or coordinate any payments, to a political party of a state or locality where the dealer or municipal advisor is engaging, or is seeking to engage in municipal securities business or municipal advisory business, as applicable.

(d) *Prohibition on Circumvention of Rule*. No dealer, municipal advisor, municipal finance professional or municipal advisor professional shall, directly or indirectly, through or by any other person or means, do any act which would result in a violation of sections (b) or (c) of this rule.

(e) *Required Disclosure to Board*.

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(i) Each regulated entity must submit to the Board by the last day of the month following the end of each calendar quarter (these dates correspond to January 31, April 30, July 31 and October 31) Form G-37 containing, in the prescribed format, the following information:

(A) for any contribution to an official of a municipal entity (other than a contribution made by a municipal finance professional, municipal advisor professional, nonMFP executive officer or non-MAP executive officer of the regulated entity to an official of a municipal entity for whom such person is entitled to vote if all contributions by such person to such official of a municipal entity, in total, do not exceed $250 per election) and payments to political parties of states and political subdivisions (other than a payment made by a municipal finance professional, municipal advisor professional, non-MFP executive officer or non-MAP executive officer of the regulated entity to a political party of a state or a political subdivision in which such person is entitled to vote if all payments by such person to such political party, in total, do not exceed $250 per year) made by the persons and entities described in subparagraph (e)(i)(A)(2) below:

(1) listing by state, the name and title (including any city/county/state or political subdivision) of each official of a municipal entity and political party that received a contribution or payment during such calendar quarter;

(2) the contribution or payment amount made and the contributor category for such contributions or payments during such calendar quarter, as specified below:

(a) If a regulated entity, the identity of the contributor as a dealer and/or municipal advisor (disclose all applicable categories);

(b) If a natural person, the identity of the contributor as a municipal finance professional, municipal advisor professional, non-MFP executive officer or non-MAP executive officer of the regulated entity (disclose all applicable categories); or

(c) If a political action committee, the identity as a political action committee controlled by the regulated entity or any municipal finance professional or municipal advisor professional of the regulated entity;

(B) for any contribution to a bond ballot campaign (other than a contribution made by a municipal finance professional, municipal advisor professional, non-MFP executive officer or non-MAP executive officer of the regulated entity to a bond ballot campaign for a ballot initiative with respect to which such person is entitled to vote if all contributions by such person to such bond ballot campaign, in total, do not exceed $250 per ballot initiative) made by the persons and entities described in subparagraph (e)(i)(B)(2) below:

(1) listing by state, the official name of each bond ballot campaign receiving a contribution during such calendar quarter, and the jurisdiction (including city/county/state or political subdivision) by or for which municipal securities, if approved, would be issued;

(2) the contribution amount (which, in the case of in-kind contributions, must include both the value and the nature of the goods or services provided, including any ancillary services provided to, on behalf of, or in furtherance of the bond ballot campaign), the specific date on which the contribution was made, and the contributor category for such contributions during such calendar quarter as specified below:

(a) If a regulated entity, the identity of the contributor as a dealer and/or municipal advisor (disclose all applicable categories);

(b) If a natural person, the identity of the contributor as a municipal finance professional, municipal advisor professional, non-MFP executive officer or non-MAP executive officer of the regulated entity (disclose all applicable categories); or

(c) If a political action committee, the identity as a political action committee controlled by the regulated entity or any municipal finance professional or municipal advisor professional of the regulated entity;

(3) the full name of the municipal entity and full issue description of any primary offering resulting from the bond ballot campaign to which a contribution required to be disclosed pursuant to paragraph (e)(i)(B) of this rule has been made, or to which a contribution has been made by a municipal finance professional, municipal advisor professional, non-MFP executive officer or non-MAP executive officer during the period beginning two years prior to such person acquiring such status that would have been required to be disclosed if such person had acquired such status at the time of such contribution and the reportable date of selection on which the regulated entity was selected to engage in the municipal securities business or municipal advisory business, reported in the calendar quarter in which the closing date for the issuance that was authorized by the bond ballot campaign occurred; and

(4) any payment or reimbursement, related to any contribution to any bond ballot campaign received by the regulated entity or any of its municipal finance professionals or municipal advisor professionals from any third party that are required to be

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disclosed pursuant to paragraph (e)(i)(B) of this rule, including the amount paid and the name of the third party making such payment or reimbursement.

(C) listing by state, the municipal entities with which the regulated entity has engaged in municipal securities business or municipal advisory business during such calendar quarter, along with the type of municipal securities business or municipal advisory business, and, in the case of municipal advisory business engaged in by a municipal advisor third-party solicitor, the listing of the type of municipal advisory business shall be accompanied by the name of the third party on behalf of which business was solicited and the nature of the business solicited (municipal securities business, municipal advisory business and/or investment advisory services—disclose all applicable categories);

(D) any information required to be included on Form G-37 for such calendar quarter pursuant to subsection (e)(iii) of this rule;

(E) such other identifying information required by Form G-37; and

(F) whether any contribution listed in this subsection (e)(i) of this rule is the subject of an automatic exemption pursuant to section (j) of this rule, and the date of such automatic exemption.

The Board shall make public a copy of each Form G-37 received from any regulated entity.

(ii) No regulated entity shall be required to submit Form G-37 to the Board for any calendar quarter in which either:

(A) such regulated entity has no information that is required to be reported pursuant to paragraphs (e)(i)(A) through (D) of this rule for such calendar quarter; or

(B) such regulated entity has not engaged in municipal securities business or municipal advisory business, but only if such regulated entity:

(1) had not engaged in municipal securities business or municipal advisory business during the seven consecutive calendar quarters immediately preceding such calendar quarter; and

(2) has submitted to the Board completed Form G-37x setting forth, in the prescribed format, (a) a certification to the effect that such regulated entity did not engage in municipal securities business or municipal advisory business during the eight consecutive calendar quarters immediately preceding the date of such certification, (b) certain acknowledgments as are set forth in said Form G-37x regarding the obligations of such regulated entity in connection with Forms G-37 and G-37x under subsection (e)(ii) of this rule and Rule G-8(a)(xvi) or Rule G-8(h)(iii), as applicable, and (c) such other identifying information required by Form G-37x; provided, however, that if a regulated entity has engaged in municipal securities business or municipal advisory business subsequent to the submission of Form G-37x to the Board, such regulated entity shall be required to submit a new Form G-37x to the Board in order to again qualify for an exemption under this clause (B). The Board shall make public a copy of each Form G-37x received from any regulated entity.

(iii) If a regulated entity engages in municipal securities business or municipal advisory business during any calendar quarter after not having reported on Form G-37 the information described in paragraph (e)(i)(A) of this rule for one or more contributions or payments made during the two-year period preceding such calendar quarter solely as a result of paragraph (e)(ii)(B) of this rule, such regulated entity shall include on Form G-37 for such calendar quarter all such information (including year and calendar quarter of such contribution(s) or payment(s)) not so reported during such two-year period.

(iv) A regulated entity that submits Form G-37 or Form G-37x to the Board shall submit an electronic version of such form to the Board in such format and manner specified in the current *Instructions for Forms G-37, G-37x and G-38t*.

(f) *Voluntary Disclosure to Board*. The Board will accept additional information related to contributions made to officials of municipal entities and bond ballot campaigns and payments made to political parties of states and political subdivisions voluntarily submitted by regulated entities or others, provided that such information is submitted otherwise in accordance with section (e) of this rule.

(g) *Definitions*.

(i) "Regulated entity" means a dealer or municipal advisor and "regulated entity," "dealer" and "municipal advisor" exclude the entity's associated persons.

(ii) "Municipal finance professional" means:

(A) any "municipal finance representative" - any associated person primarily engaged in municipal securities representative activities, as defined in Rule G-3(a)(i), other than sales activities with natural persons;

(B) any "dealer solicitor" - any associated person who is a municipal solicitor as defined in paragraph (g)(xiii)(A) of this rule;

(C) any "municipal finance principal" - any associated person who is both (1) a municipal securities principal or a municipal securities sales principal; and (2) a supervisor of any municipal finance representative (as defined in paragraph (g)(ii)(A) of this rule) or dealer solicitor (as defined in paragraph (g)(ii)(B) of this rule);

(D) any "dealer supervisory chain person" - any associated person who is a supervisor of any municipal finance principal up through and including, in the case of

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a dealer other than a bank dealer, the Chief Executive Officer or similarly situated official and in the case of a bank dealer, the officer or officers designated by the board of directors of the bank as responsible for the day-to-day conduct of the bank's municipal securities dealer activities, as required by Rule G- 1(a)(1)(A); or

(E) any "dealer executive officer" — any associated person who is a member of an executive or management committee (or similarly situated official) of a dealer (or, in the case of a bank dealer, the separately identifiable department or division of the bank, as defined in Rule G-1(a)); provided, however, that if the persons described in this paragraph are the only associated persons of the dealer meeting the definition of municipal finance professional, the dealer shall be deemed to have no municipal finance professionals.

Each person designated by dealer as a municipal finance professional pursuant to Rule G-8(a)(xvi) is deemed to be a municipal finance professional and shall retain this designation for one year after the last activity or position which gave rise to the designation.

(iii) "Municipal advisor professional" means:

(A) any "municipal advisor representative" — any associated person engaged in municipal advisor representative activities, as defined in Rule G-3(d)(i)(A);

(B) any "municipal advisor solicitor" — any associated person who is a municipal solicitor (as defined in paragraph (g)(xiii)(B) of this rule) (or in the case of an associated person of a municipal advisor third-party solicitor, paragraph (g)(xiii)(C) of this rule);

(C) any "municipal advisor principal" — any associated person who is both: (1) a municipal advisor principal (as defined in Rule G-3(e)(i)); and (2) a supervisor of any municipal advisor representative (as defined in paragraph (g)(iii)(A) of this rule) or municipal advisor solicitor (as defined in paragraph (g)(iii)(B) of this rule);

(D) any "municipal advisor supervisory chain person" — any associated person who is a supervisor of any municipal advisor principal up through and including, in the case of a municipal advisor other than a bank municipal advisor, the Chief Executive Officer or similarly situated official, and, in the case of a bank municipal advisor, the officer or officers designated by the board of directors of the bank as responsible for the day-to-day conduct of the bank's municipal advisory activities, as required by 17 CFR 240.15Ba1-1(d)(4)(i); or

(E) any "municipal advisor executive officer" — any associated person who is a member of the executive or management committee (or similarly situated official) of a municipal advisor (or, in the case of a bank municipal advisor, the separately identifiable department or division of the bank as defined in Section 15B(e)(4) of the Act and 17 CFR 240.15Ba1-1(d)(4)(i) thereunder); provided, however, that if the persons described in this paragraph are the only associated persons of the municipal advisor meeting the definition of municipal advisor professional, the municipal advisor shall be deemed to have no municipal advisor professionals.

Each person designated by the municipal advisor as a municipal advisor professional pursuant to Rule G-8(h)(iii) is deemed to be a municipal advisor professional and shall retain this designation for one year after the last activity or position which gave rise to the designation.

(iv) "Bank municipal advisor" means a municipal advisor that is a bank or a separately identifiable department or division of the bank as defined in Section 15B(e)(4) of the Act and 17 CFR 240.15Ba1-1(d)(4)(i) thereunder.

(v) "Bond ballot campaign" means any fund, organization or committee that solicits or receives contributions to be used to support ballot initiatives seeking authorization for the issuance of municipal securities through public approval obtained by popular vote.

(vi) "Contribution" means any gift, subscription, loan, advance, or deposit of money or anything of value made:

(A) to an official of a municipal entity:

(1) for the purpose of influencing any election for federal, state or local office;

(2) for payment of debt incurred in connection with any such election; or

(3) for transition or inaugural expenses incurred by the successful candidate for state or local office; or

(B) to a bond ballot campaign:

(1) for the purpose of influencing (whether in support of or opposition to) any ballot initiative seeking authorization for the issuance of municipal securities through public approval obtained by popular vote;

(2) for payment of debt incurred in connection with any such ballot initiative; or

(3) for payment of the costs of conducting any such ballot initiative. (ii)(vii) The term "issuer "Issuer" means the governmental issuer specified in section Section 3(a)(29) of the Act.

(vii) "Issuer" means the governmental issuer specified in Section 3(a)(29) of the Act.

(viii) "Municipal advisor" means a municipal advisor that is registered or required to be registered under Section 15B of the Act and the rules and regulations thereunder.

(ix) "Municipal advisory business" means those activities that would cause a person to be a municipal advisor as defined in Section 15B(e)(4) of the Act, 17 CFR 240.15Ba1-1(d)(1)-(4) and other rules and regulations thereunder, including: (A) the provision of advice to or on behalf of a

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municipal entity or an obligated person with respect to municipal financial products or the issuance of municipal securities, including advice with respect to the structure, timing, terms, and other similar matters concerning such financial products or issues and (B) the solicitation of a municipal entity or obligated person, within the meaning of Section 15B(e)(9) of the Act and the rules and regulations thereunder.

(x) "Municipal advisor third-party solicitor" means a municipal advisor that is currently soliciting a municipal entity, is engaged to solicit a municipal entity, or is seeking to be engaged to solicit a municipal entity for direct or indirect compensation, on behalf of a dealer, municipal advisor or investment adviser (as defined in Section 202(a)(11) of the Investment Advisers Act of 1940) that does not control, is not controlled by, or is not under common control with the municipal advisor undertaking such solicitation.

(xi) "Municipal entity" has the meaning specified in Section 15B(e)(8) of the Act and the rules and regulations thereunder.

(xii) "Municipal securities business" means:

(A) the purchase of a primary offering (as defined in Rule A-13(f)) of municipal securities from a municipal entity on other than a competitive bid basis (*e.g.*, negotiated underwriting);

(B) the offer or sale of a primary offering of municipal securities on behalf of any municipal entity (*e.g.*, private placement);

(C) the provision of financial advisory or consultant services to or on behalf of a municipal entity with respect to a primary offering of municipal securities in which the dealer was chosen to provide such services on other than a competitive bid basis; and

(D) the provision of remarketing agent services to or on behalf of a municipal entity with respect to a primary offering of municipal securities in which the dealer was chosen to provide such services on other than a competitive bid basis.

(xiii) "Municipal solicitor" means:

(A) an associated person of a dealer who solicits a municipal entity for municipal securities business on behalf of the dealer;

(B) an associated person of a municipal advisor who solicits a municipal entity for municipal advisory business on behalf of the municipal advisor; or

(C) an associated person of a municipal advisor third-party solicitor who solicits a municipal entity on behalf of a dealer, municipal advisor or investment adviser (as defined in Section 202(a)(11) of the Investment Advisers Act of 1940) that does not control, is not controlled by, or is not under common control with such municipal advisor third-party solicitor.

(xiv) "Non-MAP executive officer" means an associated person in charge of a principal business unit, division or function or any other person who performs similar policy making functions for the municipal advisor (or, in the case of a bank municipal advisor, the separately identifiable department or division of the bank, as defined in Section 15B(e)(4) of the Act and 17 CFR 240.15Ba1-1(d)(4)(i) thereunder), but does not include any municipal advisor professional, as defined in subsection (g)(iii) of this rule; provided, however, that if no associated person of the municipal advisor meets the definition of municipal advisor professional, the municipal advisor shall be deemed to have no non-MAP executive officers. Each person listed by the municipal advisor as a non-MAP executive officer pursuant to Rule G- 8(h)(iii) is deemed to be a non-MAP executive officer.

(xv) "Non-MFP executive officer" means an associated person in charge of a principal business unit, division or function or any other person who performs similar policy making functions for the dealer (or, in the case of a bank dealer, the separately identifiable department or division of the bank, as defined in Rule G-1(a)), but does not include any municipal finance professional, as defined in subsection (g)(ii) of this rule; provided, however, that if no associated person of the dealer meets the definition of municipal finance professional, the dealer shall be deemed to have no non-MFP executive officers. Each person listed by the dealer as a non-MFP executive officer pursuant to Rule G- 8(a)(xvi) is deemed to be a non-MFP executive officer.

(xvi) "Official of such municipal entity" or "official of a municipal entity," without further specification, means any person who meets the definition of at least one of paragraphs (g)(xvi)(A), (g)(xvi)(B), or (g)(xvi)(C) of this rule.

(A) "Official of a municipal entity with dealer selection influence" or "official of such municipal entity with dealer selection influence" means any person (including any election committee for such person) who was, at the time of the contribution, an incumbent, candidate or successful candidate: (1) for elective office of the municipal entity which office is directly or indirectly responsible for, or can influence the outcome of, the hiring by the municipal entity of a dealer for municipal securities business; or (2) for any elective office of a state or of any political subdivision, which office has authority to appoint any person who is directly or indirectly responsible for, or can influence the outcome of, the hiring by a municipal entity of a dealer for municipal securities business.

(B) "Official of a municipal entity with municipal advisor selection influence" or "official of such municipal entity with municipal advisor selection influence" means any person (including any election committee for such person) who was, at the time of the contribution, an incumbent, candidate or successful candidate: (1) for elective office of the municipal entity which office is directly or indirectly responsible for, or can influence the

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outcome of, the hiring by the municipal entity of a municipal advisor for municipal advisory business; or (2) for any elective office of a state or of any political subdivision, which office has authority to appoint any person who is directly or indirectly responsible for, or can influence the outcome of, the hiring by a municipal entity of a municipal advisor for municipal advisory business.

(C) "Official of a municipal entity with investment adviser selection influence" or "official of such municipal entity with investment adviser selection influence" means any person (including any election committee for such person) who was, at the time of the contribution, an incumbent, candidate or successful candidate: (1) for elective office of the municipal entity, which office is directly or indirectly responsible for, or can influence the outcome of, the hiring by the municipal entity of an investment adviser (as defined in Section 202(a)(11) of the Investment Advisers Act of 1940) for investment advisory services; or (2) for any elective office of a state or of any political subdivision, which office has authority to appoint any person who is directly or indirectly responsible for, or can influence the outcome of, the hiring by a municipal entity of an investment adviser for investment advisory services.

(xvii) "Payment" means any gift, subscription, loan, advance, or deposit of money or anything of value.

(xviii) "Reportable date of selection" means the date of the earliest to occur of: (A) the execution of an engagement letter; (B) the receipt of formal notification (provided either in writing or orally) from or on behalf of the municipal entity that the dealer or municipal advisor has been selected to engage in municipal securities business or municipal advisory business; or, (C) solely in the case of a dealer, the execution of a bond purchase agreement.

(xix) "Solicit," or "soliciting," except as used in section (c) of this rule, means to make, or making, respectively, a direct or indirect communication with a municipal entity for the purposes of obtaining or retaining an engagement by the municipal entity of a dealer, municipal advisor or investment adviser (as defined in Section 202(a)(11) of the Investment Advisers Act of 1940) for municipal securities business, municipal advisory business or investment advisory services; provided, however, that it does not include advertising by a dealer, municipal advisor or investment adviser.

(h) *Operative Terms*. The prohibitions under this rule on engaging in municipal securities business and municipal advisory business, shall result from a contribution and be of the scope and length of time as provided under Rule G-37 as in effect at the time that such contribution is made.

(i) *Application for Exemption*. Upon application, a registered securities association with respect to a dealer that is a member of such association, or the appropriate regulatory agency as defined in Section 3(a)(34) of the Act with respect to any other dealer, may, conditionally or unconditionally, exempt such dealer from a prohibition on municipal securities business in subsection (b)(i) of this rule. Upon application, a registered securities association with respect to a municipal advisor that is a member of such association, or the Commission, or the Commission's designee, with respect to any other municipal advisor, may, conditionally or unconditionally, exempt such municipal advisor from a prohibition on municipal advisory business in subsection (b)(i) of this rule. In determining whether to grant such exemption, among other factors, the following shall be considered:

(i) whether such exemption is consistent with the public interest, the protection of investors, municipal entities and obligated persons and the purposes of this rule;

(ii) whether regulated entity (A) prior to the time the contribution(s) which resulted in such prohibition was made, had developed and instituted procedures reasonably designed to ensure compliance with this rule; (B) prior to or at the time the contribution(s) which resulted in such prohibition was made, had no actual knowledge of the contribution(s); (C) has taken all available steps to cause the contributor involved in making the contribution(s) which resulted in such prohibition to obtain a return of the contribution(s); and (D) has taken such other remedial or preventive measures, as may be appropriate under the circumstances, and the nature of such other remedial or preventive measures directed specifically toward the contributor who made the relevant contribution and all employees of the regulated entity;

(iii) whether, at the time of the contribution, the contributor was a municipal finance professional or a municipal advisor professional or otherwise an employee of the regulated entity, or was seeking such employment, or was a municipal advisor professional or otherwise an employee of a municipal advisor third-party solicitor engaged by the regulated entity or was seeking such employment;

(iv) the timing and amount of the contribution which resulted in the prohibition;

(v) the nature of the election (e.g, federal, state or local); and

(vi) the contributor's apparent intent or motive in making the contribution which resulted in the prohibition, as evidenced by the facts and circumstances surrounding such contribution.

(j) *Automatic Exemptions*.

(i) A regulated entity that is prohibited from engaging in municipal securities business or municipal advisory business with a municipal entity pursuant to subsection (b)(i) of this rule as a result of a contribution made by a municipal finance professional or a municipal advisor professional, or a municipal advisor professional of a municipal advisor third-party solicitor on behalf of such regulated entity may exempt itself from such prohibition, subject to subsection (j)(ii) and subsection (j)(iii) of this rule, upon satisfaction of the following requirements: (A) the regulated entity must have

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discovered the contribution which resulted in the prohibition within four months of the date of such contribution; (B) such contribution must not have exceeded $250; and (C) the contributor must obtain a return of the contribution within 60 calendar days of the date of discovery of such contribution by the regulated entity.

(ii) A regulated entity is entitled to no more than two automatic exemptions per 12-month period.

(iii) A regulated entity may not execute more than one automatic exemption relating to contributions by the same person regardless of the time period.

Rule G-37 Interpretations

Questions and Answers Concerning Political Contributions and Prohibitions on Municipal Securities Business: Rule G-37

I. Persons/Entities Subject to the Rule

I.1

Q: To whom does Rule G-37 apply?

A: In general, Rule G-37 applies to brokers, dealers and municipal securities dealers (collectively referred to as dealers), municipal finance professionals, and PACs controlled by the dealer or any municipal finance professional. In addition, the recordkeeping and disclosure provisions apply to non-MFP executive officers of the dealer.

(May 24, 1994)

II. Prohibition on Engaging in Municpal Securities Business (Rule G-37(b))

II.1

Q: What actions would cause a dealer to be prohibited from engaging in municipal securities business with an issuer?

A: Rule G-37(b) prohibits a dealer from engaging in municipal securities business with an issuer within two years after any contribution to an official of such issuer made by: (i) the dealer, (ii) any municipal finance professional associated with such dealer; or (iii) any PAC controlled by the dealer or any municipal finance professional.

(May 24, 1994)

II.2

Q: Is there an exception to this prohibition on engaging in municipal securities business?

A: There is one exception to Rule G-37(b). The prohibition does not apply if the only contributions to officials of issuers are made by municipal finance professionals entitled to vote for such officials, and provided such contributions, in total, are not in excess of $250 by each such municipal finance professional to each official of such issuer, per election.

(May 24, 1994)

II.3

Q: What is the municipal securities business that a dealer would be banned from engaging in with an issuer if certain political contributions are made to officials of such issuers?

A: The term "municipal securities business" is defined in Rule G-37(g)(vii) to encompass certain activities of dealers, such as acting as negotiated underwriters (as managing underwriter or as syndicate member), financial advisors and consultants, placement agents, and negotiated remarketing agents. The rule does not prohibit a dealer from engaging in competitive underwritings or competitive remarketing services for the issuer.

(May 24, 1994)

II.4

Q: If a non-MFP executive officer makes a contribution to an official of an issuer, is the dealer prohibited from engaging in municipal securities business with that issuer?

A: No. The prohibition section applies only to contributions made by the dealer, its municipal finance professionals, or any PAC controlled by the dealer or any of its municipal finance professionals. The definition of non-MFP executive officer does not include any municipal finance professional. However, contributions by non-MFP executive officers are subject to the reporting/disclosure provisions of the rule. In addition, pursuant to section (d), dealers are prohibited from using non-MFP executive officers (as well as any other person or entity) as a conduit for making contributions to officials of issuers.

(May 24, 1994)

II.5

Q: Would a dealer be prohibited from engaging in municipal securities business with a state agency, whose board members are appointed by the governor, if the dealer makes contributions to the governor?

A: Yes, the definition of "official of an issuer" in Rule G-37(g)(vi) includes any person who was, at the time of the contribution, an incumbent, candidate or successful candidate for any elective office of a state or of any political subdivision, which office has authority to appoint any person who is directly or indirectly responsible for, or can influence the outcome of, the hiring of a broker, dealer or municipal securities dealer for municipal securities business by an issuer.

(May 24, 1994, revised October 30, 2003)

II.6

Q: May a municipal finance professional who is entitled to vote for an issuer official make contributions to pay for such official's transition or inaugural expenses without causing a prohibition on municipal securities business with the issuer?

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A: Yes, under certain conditions. The *de minimis* exception allows a municipal finance professional to contribute up to $250 per candidate per election if the municipal finance professional is entitled to vote for that issuer official. The *de minimis* exception is keyed to an election cycle; therefore, if a municipal finance professional contributed $250 to the general election of an issuer official, the municipal finance professional would not be able to make any contributions to pay for transition or inaugural expenses without causing a prohibition on municipal securities business with the issuer. If a municipal finance professional made no contributions to an issuer official prior to the election, then the municipal finance professional may, if entitled to vote for the candidate, contribute up to $250 to pay for transition or inaugural expenses and payment of debt incurred in connection with the election without causing a prohibition on municipal securities business.

(September 9, 1997)

II.7

Q: Are any payments made to issuer officials, other than political contributions, covered by the rule?

A: No. However, any other payments may be subject to rule G-20 on gifts and gratuities.

(May 24, 1994)

Primary, State Caucus or Convention

II.8

Q: If an issuer official is involved in a primary election prior to the general election, may a municipal finance professional who is entitled to vote for such official contribute $250 to the issuer official's primary as well as general election?

A: Yes, the municipal finance professional could contribute up to $500 to each such official (*i.e.*, $250 per election).

(May 24, 1994)

II.9

Q: If the locality in which the incumbent or candidate is seeking election as an issuer official holds a convention or caucus (instead of a primary election) prior to the general election, may a municipal finance professional entitled to vote in that locality contribute $250 to the incumbent or candidate's convention or caucus election campaign, as well as $250 to the incumbent or candidate's general election, without causing a ban on municipal securities business with the issuer?

A: Yes, if the issuer official has been qualified to be considered at the state caucus or convention.

(June 15, 1995)

MFP as Incumbent or Candidate

II.10

Q: If a municipal finance professional also is an incumbent or candidate for political office in a municipality in which the municipal finance professional's employer (*i.e.*, the dealer) conducts municipal securities business, must the dealer terminate the municipal finance professional or are there any restrictions on the kind of business a dealer can engage in with that issuer?

A: No. However, the dealer, any municipal finance professional and any PAC controlled by the dealer or municipal finance professional must ensure that the dealer does not engage in municipal securities business with the issuer if contributions (other than the *de minimis* contributions allowed under section (b)) are made to an official of the issuer. The municipal finance professional who is an incumbent or candidate for office is not limited to contributing the *de minimis* amount to his or her own campaign in such instances.

(May 24, 1994)

Attendance at Fund-Raising Dinner

II.11

Q: May a dealer continue to engage in municipal securities business with an issuer if a municipal finance professional pays for and attends a fund-raising dinner for a candidate who is seeking election to a position as an official of such issuer?

A: A municipal finance professional who contributes funds in this instance would subject the dealer to a prohibition on municipal securities business with the issuer unless the municipal finance professional is entitled to vote for such candidate and any contributions do not exceed $250 to such candidate per election. In addition, any municipal finance professional who attends the dinner for the purpose of soliciting contributions by others for the issuer official would violate Rule G-37's prohibition on soliciting contributions. *See also* Rule G-37(c).

(May 24, 1994)

Two-Year Look Back

II.12

Q: A municipal finance professional (*i.e.*, a municipal investment banker subject to the two year look back) was associated with dealer X at the time he made a contribution which resulted in the dealer being prohibited from engaging in municipal securities business with the issuer. Then, less than two years after making the contribution, the municipal finance professional becomes associated with dealer Y. Is dealer Y also subject to the prohibition on business?

A: Both dealers are subject to the prohibition for two years from the date the municipal finance professional made the contribution. Of course, dealer Y's prohibition on business only begins when the municipal finance professional becomes associated with that dealer.

(May 24, 1994, revised October 30, 2003)

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II.13

Q: Prior to becoming associated with any dealer, a person makes a contribution to an issuer official. Less than two years after making the contribution, that person becomes a municipal finance professional (*i.e.,* a municipal investment banker subject to the two year look back). Would the hiring dealer be prohibited from engaging in municipal securities business with that issuer?

A: Yes. Rule G-37 attempts to sever any connection between the making of contributions and the awarding of municipal securities business by prohibiting the dealer from engaging in municipal securities business with the issuer for two years from the date the contribution was made. As noted above, the dealer's prohibition on business would begin when the municipal finance professional becomes associated with that dealer. Thus, if the individual was hired, for example, six months after making the contribution, then the dealer's prohibition on business would extend for one and one half years.

(May 24, 1994, revised October 30, 2003)

II.14

Q: If a dealer hires an individual as a retail sales person, would the contributions made by that person prior to being hired subject the dealer to the two-year prohibition on municipal securities business?

A: The rule's two-year prohibition is triggered by contributions by dealers, municipal finance professionals, and political action committees controlled by a dealer or a municipal finance professional. If a retail sales person is not a municipal finance professional and does not become a municipal finance professional within two years after making a contribution to an issuer official, then such contributions will not trigger the ban on business. However, if the retail sales person is, or within two years becomes, a municipal finance professional (*e.g.*, by solicitation of officials of an issuer), then contributions made by that person will subject the hiring dealer to the two-year ban on business. A retail sales person would not be considered to be a municipal finance professional solely because of his or her municipal securities retail sales activities. (*See* Rule G-37(g)(iv)).

(December 7, 1994, revised October 30, 2003)

II.15

Q: A person is associated with a dealer in a non-municipal finance professional capacity, and makes a contribution to an issuer official. Less than two years after making the contribution, that person becomes a municipal finance professional (*i.e.,* a municipal investment banker subject to the two year look back). Would the dealer be prohibited from engaging in a negotiated underwriting with that issuer?

A: Yes, the dealer is subject to the prohibition for two years from the date the contribution was made.

(May 24, 1994, revised October 30, 2003)

II.16

Q: A person is associated with a dealer in a non-municipal finance professional capacity and makes a political contribution to an official of an issuer for whom such person is not entitled to vote. Less than two years after such person made the contribution, the dealer merges with another dealer and, solely as a result of the merger, that person becomes a municipal finance professional of the surviving dealer. Would the surviving dealer be prohibited from engaging in municipal securities business with that issuer?

A: Yes. Rule G-37 would prohibit the surviving dealer from engaging in municipal securities business with the issuer for two years from the date the contribution was made. Of course, the surviving dealer's prohibition on business would only begin when the person who made the contribution becomes a municipal finance professional of the surviving dealer.

The Board notes, however, that Rule G-37 was not intended to prevent mergers in the municipal securities industry or, once a merger is consummated, to seriously hinder the surviving dealer's municipal securities business if the merger was not an attempt to circumvent the letter or spirit of rule G-37. Thus, the dealer may wish to seek an exemption from the ban on business pursuant to Rule G-37(i) from its appropriate regulatory authority.

(June 29, 1998, revised October 30, 2003)

Refund of Inadvertent Contribution

II.17

Q: A disgruntled municipal finance professional made a contribution purposely to subject the dealer to the two-year prohibition on business. When the contribution is discovered by the dealer, a refund of the contribution is requested and obtained. Is the dealer still banned from engaging in business with that issuer? In addition, does the contribution have to be disclosed on Form G-37?

A: Rule G-37(b) prohibits a dealer from engaging in municipal securities business with an issuer within two years after any contribution to an official of such issuer by any municipal finance professional associated with such dealer if the contribution does not meet the *de minimis* exemption. Section (i) of the rule provides a procedure whereby dealers may seek relief from the appropriate enforcement agency of the rule G-37 prohibition on business. In determining whether to grant such an exemption, one of the factors the enforcement agency will consider is whether the dealer has taken all available steps to obtain a return of the contribution. Even if a refund of the contribution has been obtained, dealers are required to seek an exemption from the ban on business. In addition, dealers also must disclose the contribution on Form G-37. Dealers may wish to indicate on the form (and in their own records) that a refund of the contribution was obtained. *See* Rule G-37(i).

(August 18, 1994)

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Volunteer Work

II.18

Q: Is a municipal finance professional prohibited from performing volunteer work on an issuer official's behalf?

A: Rule G-37 is not intended to prohibit or restrict municipal finance professionals from engaging in personal volunteer work. However, soliciting and bundling of contributions would invoke application of the rule. In addition, if the municipal finance professional uses the dealer's resources (*e.g.*, a political position paper prepared by dealer personnel) or incurs expenses in the conduct of such volunteer work (*e.g.*, hosting a reception), then the value of such resources or expenses would constitute a contribution. Personal expenses incurred by the municipal finance professional in the conduct of such volunteer work, which expenses are purely incidental to such work and unreimbursed by the dealer (*e.g.*, cab fares and personal meals), would not constitute a contribution.

(May 24, 1994)

Dealer Resources

II.19

Q: If an employee of a dealer is donating his or her time to an issuer official's campaign, does the dealer have to disclose this as a contribution to such official? In addition, would the fact that the employee is taking a leave of absence from the dealer cause a different result?

A: An employee of a dealer generally can donate his or her time to an issuer official's campaign without this being viewed as a contribution by the dealer to the official, as long as the employee is volunteering his or her time during non-work hours, or is using previously accrued vacation time or the dealer is not otherwise paying the employee's salary (*e.g.*, an unpaid leave of absence).

(August 18, 1994)

Making Contributions to Issuer Officials on Behalf of Other Persons

II.20

Q: A municipal finance professional signs a check drawn on a joint account, which is owned by the municipal finance professional and another person, and submits it to an issuer official as a contribution along with a writing which states that the contribution is being made solely by the other holder of the joint account. Would any portion of this contribution be attributable to the municipal finance professional under Rule G-37?

A: If a municipal finance professional signs a check, whether the check was drawn on a joint account or not, and submits it as a contribution to an issuer official, then the municipal finance professional is deemed to have made the full contribution, regardless of any writing accompanying the check that provides or directs otherwise. Moreover, if this amount exceeds, or does not qualify for, the *de minimis* exception, then by making such a contribution the municipal finance professional will trigger the rule's ban on business thereby prohibiting his dealer/employer from engaging in municipal securities business with the particular issuer for two years.

(February 16, 1996)

II.21

Q: If a municipal finance professional and another person (*e.g.*, her spouse) both sign a check drawn on their joint account and submit the check to an issuer official as a contribution, would the contribution amount be attributable equally between them (*i.e.*, 50% to each person) for purposes of Rule G-37?

A: Yes. If a municipal finance professional and any other person both sign a check drawn on their joint account and submit it to an issuer official as a contribution, then each person is deemed to have made half of the contribution, regardless of any writing accompanying the check that provides or directs otherwise.

(February 16, 1996)

Making Contributions to a Candidate Who Later Loses the Election

II.22

Q: If a municipal finance professional made a political contribution which was not subject to the *de minimis* exception to an issuer official candidate who subsequently did not win the election, is the dealer banned from engaging in municipal securities business with that issuer (*i.e.*, the governmental entity)?

A: Yes. Rule G-37 defines the term "official of such issuer" or "official of an issuer" as "any person (including any election committee for such person) who was, at the time of the contribution, an incumbent, **candidate** or successful candidate: (A) for elective office of the issuer which office is directly or indirectly responsible for, or can influence the outcome of, the hiring of a broker, dealer or municipal securities dealer for municipal securities business by the issuer; or (B) for any elective office of a state or of any political subdivision, which office has authority to appoint any official(s) of an issuer, as defined in subparagraph (A), above." It is clear from the rule that, at the time the contribution is made, if the recipient of that contribution is an "official of an issuer," then the dealer is subject to the two-year ban on business with the issuer, regardless of whether the candidate wins or loses the election. Any other result would mean that municipal finance professionals could make contributions to issuer officials, but the ban on business would not be triggered (if at all) until election results were known.

(February 16, 1996)

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III. Indirect Contributions (Rule G-37(d))

Contributions by Spouses and Household Members

III.1

Q: Are contributions to issuer officials by municipal finance professionals' spouses and household members covered by the rule?

A: No, unless these contributions are directed by the municipal finance professional, which is prohibited by section (d) of the rule.

(May 24, 1994)

III.2

Q: If a municipal finance professional directs a retail sales person (who is not a municipal finance professional) to make a political contribution to an issuer official, would this trigger the rule's two-year prohibition on business with that issuer?

A: Yes. Section (d) of the rule prohibits municipal finance professionals (and dealers) from using any person or means to do, directly or indirectly, any act which would violate the rule. In other words, a municipal finance professional is prohibited from using a sales person (or any other person not otherwise subject to the rule) as a conduit to circumvent the rule. Thus, contributions made, directly or indirectly, by a municipal finance professional (or a dealer) to an issuer official will subject the dealer to the rule's two-year prohibition on municipal securities business with that issuer. In addition to triggering the prohibition, the municipal finance professional in this case has violated section (d) of the rule.

(December 7, 1994)

Political Parties

III.3

Q: Are contributions to national, state or local political parties covered by the rule?

A: Any such contributions would not trigger the prohibition on business portion of the rule (section (b)) unless such entities are used as a conduit to indirectly contribute to an issuer official, which is prohibited by section (d) of the rule. However, contributions to state or local political parties must be recorded under Rule G-8(a)(xvi) and disclosed in summary form under Rule G-37(e), except for those contributions which meet the *de minimis* exemption. See also Rule G-37(e).

(May 24, 1994)

Contributions to a Non-Dealer Associated PAC and Payments to a State or Local Political Party

III.4

Q: Could contributions to a non-dealer associated PAC or payments to a state or local political party lead to a ban on municipal securities business with an issuer under Rule G-37?

A: Rule G-37(d) prohibits a dealer and any municipal finance professional from doing any act indirectly which would result in a violation of the rule if done directly by the dealer or municipal finance professional. A dealer would violate Rule G-37 by doing business with an issuer after providing money to any person or entity when the dealer knows that such money will be given to an official of an issuer who could not receive such a contribution directly from the dealer without triggering the rule's prohibition on business. For example, in certain instances, a non-dealer associated PAC or a local political party may be soliciting funds for the purpose of supporting a limited number of issuer officials. Depending upon the facts and circumstances, contributions to the PAC or payments to the political party might well result in the same prohibition on municipal securities business as would a contribution made directly to the issuer official.

(August 6, 1996)

III.5

Q: If a dealer receives a fund raising solicitation from a nondealer associated PAC or a political party with no indication of how the collected funds will be used, can the dealer make contributions to the non-dealer associated PAC or payments to the political party without causing a ban on municipal securities business?

A: Dealers should inquire of the non-dealer associated PAC or political party how any funds received from the dealer would be used. For example, if the non-dealer associated PAC or political party is soliciting funds for the purpose of supporting a limited number of issuer officials, then, depending upon the facts and circumstances, contributions to the PAC or payments to the political party might well result in the same prohibition on municipal securities business as would a contribution made directly to the issuer official.

(August 6, 1996)

Making Payments to a National Political Party for its Non-Federal Account (Rule G-37(e))

III.6

Q: If a national political party accepts payments in which contributors have designated that their payments be deposited into the account for a state or local political party, must the dealer record such payments and report them on Form G-37?

A: Yes. Rule G-37 requires that dealers record and report payments made to state and local political parties and the ultimate recipient in the above scenario is a state or local political party so designated by the contributor.

(February 16, 1996)

Supervisory Procedures Relating to Indirect Contributions

III.7

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Q: Is a broker, dealer or municipal securities dealer ("dealer") required to have written supervisory procedures reasonably designed to ensure compliance with Rule G-37(d), on indirect contributions and solicitations, with regard to payments to political parties and PACs by a dealer or its municipal finance professionals ("MFPs")?

A: Yes. The relevant portion of the MSRB's supervision rule, Rule G-27(c), provides that, "Each dealer shall adopt, maintain and enforce written supervisory procedures reasonably designed to ensure that the conduct of the municipal securities activities of the dealer and its associated persons are in compliance [with MSRB rules]."

Rule G-37(d) provides that: "No broker, dealer or municipal securities dealer or any municipal finance professional of the broker, dealer or municipal securities dealer shall, directly or indirectly, through or by any other person or means, do any act which would result in a violation of sections (b) or (c) of this rule." While Rule G-37 was adopted to deal specifically with contributions made to officials of issuers by dealers and municipal finance professionals, and political action committees ("PACs") controlled by dealers or MFPs, this section of the rule also prohibits MFPs and dealers from using conduits — such as, but not limited to parties, PACs, affiliates, consultants, lawyers or spouses — to contribute indirectly to an issuer official if such MFP or dealer can not give directly to the issuer without triggering the ban on business.

In order to ensure compliance with Rule G-27(c) as it relates to payments to political parties or PACs and Rule G-37(d), each dealer must adopt, maintain and enforce written supervisory procedures reasonably designed to ensure that neither the dealer nor its MFPs are using payments to political parties and non-dealer controlled PACs to contribute indirectly to an official of an issue.[1] For example, a dealer's written supervisory procedures might provide that, if the dealer or any of its MFPs want to make payments to political parties or PACs, the dealer must perform adequate due diligence prior to allowing political party or PAC payments by the dealer or its MFPs to reasonably ensure that neither the dealer nor its MFPs are using payments to political parties or non-dealer controlled PACs to contribute indirectly to an official of an issuer.[2] Such due diligence also might include inquiring about and documenting the intent or motive in making the payment, whether the party payment or PAC contribution was solicited by anyone, and if so, the identification of the person soliciting the party payment and a record of written solicitations. This information will assist the dealer in determining whether the facts and circumstances surrounding the payment support the reason given for making the payment.

In addition, to ensure compliance with Rule G-37(d) in connection with contributions by dealers or MFPs to non-controlled (but affiliated) PACs,[3] the dealer might adopt information barriers between any affiliated PACs and the dealer or its MFPs. Examples of such information barrier provisions might include such things as:

- a prohibition on the dealer or MFPs from recommending, nominating, appointing or approving the management of affiliated PACs;
- a prohibition on sharing the affiliated PAC's meeting agenda, meeting schedule, or meeting minutes;
- a prohibition on identification of prior affiliated PAC contributions, planned PAC contributions or anticipated PAC contributions;
- a prohibition on directly providing or coordinating information about prior negotiated municipal securities business, solicited municipal securities business, and planned solicitations of municipal securities business; and
- other such information barriers as the firm deems appropriate to effectively monitor conflicting interests and prevent abuses.

These examples are not exclusive and are only suggestions for supervisory procedures that dealers could consider. Each dealer is required under Rule G-27, on supervision, to evaluate its own circumstances and develop written supervisory procedures reasonably designed to ensure that the conduct of the municipal securities activities of the dealer and its associated persons are in compliance with Rule G-37, on indirect violations.

(September 22, 2005)

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[1] In addition, pursuant to MSRB Rule G-8(a)(xx), on Records Concerning Compliance with Rule G-27, each dealer must maintain and keep current the records required under Rules G-27(c) and G-27 (d).

[2] *See* Rule G-37 Questions and Answers Nos. III. 4 and III.5, *reprinted in* MSRB Rule Book.

[3] For the purposes of this guidance the term "affiliated PAC" means a PAC controlled by an affiliated entity of a dealer. An "affiliated entity" is an entity that controls, is controlled by or is under common control with the dealer.

III.8

Q: Is a dealer required to have written supervisory procedures in place to ensure compliance with Rule G-37(d) if the dealer only allows the dealer or its municipal finance professionals ("MFPs") to make political party payments to "housekeeping", "conference" or "overhead" type accounts of a political party?

A: Yes. There is no safe harbor under Rule G-37 for payments to "housekeeping", "conference" or "overhead" type political party accounts. The dealer must have adequate supervisory procedures reasonably designed to prevent a violation of Rule G-37(d), on indirect political contributions, even when the payments are being made to a "housekeeping", "conference" or "overhead" type account. While the political party itself may prohibit direct contributions to issuer official candidates from "housekeeping" accounts, payments to these accounts might be used for political party events that are focused to benefit a specific candidate or a small number of candidates. Additionally, because money is fungible, a payment made to

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a fund earmarked for non-issuer official elections might "free up" other money to support the candidacy of specific issuer officials.

The need for dealers to adopt adequate written supervisory procedures to prevent indirect violations via "housekeeping", "conference" or "overhead" type political party accounts is especially important in light of media and other reports that issuer agents have informed dealers and MFPs that, if they are prohibited from contributing directly to an issuer official's campaign, they should contribute to an affiliated party's "housekeeping" account. In addition, NASD staff has informed the MSRB that some firms make contributions to "housekeeping" accounts or PAC's with explicit instructions accompanying the payment that the specific payment is not to be used for the benefit of one or a limited number of issuer officials. The MSRB does not consider such "preemptive" disclosures or instructions sufficient to meet the dealer's obligation to perform due diligence to reasonably ensure that the payment to the political party or PAC is not being made to circumvent the requirements of Rule G-37.

(September 22, 2005)

IV. Definitions (Rule G-37(g))

Contribution

IV.1

Q: How is the term "contribution" defined in Rule G-37?

A: The term "contribution" is defined in Rule G-37(g)(i) to mean any gift, subscription, loan, advance, or deposit of money or anything of value made: (i) for the purpose of influencing any election for federal, state or local office; (ii) for payment of debt incurred in connection with any such election; or (iii) for transition or inaugural expenses incurred by the successful candidate for state or local office.

(May 24, 1994)

IV.2

Q: Is Rule G-37 applicable to contributions given to officials of issuers who are seeking election to federal office, such as the House of Representatives, the Senate or the Presidency?

A: Yes. Rule G-37(g)(i) defines "contribution" as, among other things, any gift, subscription, loan, advance, or deposit of money or anything of value made for the purpose of influencing any election for federal, state or local office.

(June 15, 1995)

IV.3

Q: Does Rule G-37 encompass all contributions to candidates for federal office?

A: No. Rule G-37 encompasses, for federal offices, only those contributions to an official of an issuer who is seeking election to a federal office.

(May 24, 1994)

IV.4

Q: Are contributions to bond ballot campaigns subject to the requirements of Rule G-37?

A: Such political contributions are subject to the disclosure requirements of Rule G-37(e) (other than contributions made by a municipal finance professional or a non-MFP executive officer to a bond ballot campaign for a ballot initiative with respect to which such person is entitled to vote if all contributions by such person to such bond ballot campaign, in total, do not exceed $250 per ballot initiative). Although such contributions will not result in a ban on municipal securities business under Rule G-37(b), as with all MSRB rules, failure to comply with requirements of the rule (*i.e.*, by failing to disclose such contributions) may subject dealers to fines and other disciplinary actions by the Securities and Exchange Commission, Financial Industry Regulatory Authority, or other appropriate regulatory agencies.

(May 24, 1994, revised February 25, 2010)

Charitable Donations

IV.5

Q: Would a charitable donation to an organization made by a dealer at the request of an issuer official meet the definition of "contribution" in Rule G-37?

A: No. Charitable donations are not considered political contributions for purposes of Rule G-37 and therefore are not covered by the rule.

(May 24, 1994)

Municipal Finance Professional

IV.6

Q: Who is considered a municipal finance professional?

A: To determine if a particular person is a municipal finance professional, first determine whether the person is an "associated person" of a dealer (other than a bank dealer) under Section 3(a)(18) of the Securities Exchange Act of 1934 (Act), or an associated person of a bank dealer under Section 3(a)(32) of the Act. Then determine whether the associated person fits within one of the four categories listed in the definition of municipal finance professional under Rule G-37.

Under Section 3(a)(18) of the Act, "associated person of a broker or dealer" is defined as:

- Any partner, officer, director, or branch manager (or any person occupying a similar status or performing similar functions);
- Any person directly or indirectly controlling, controlled by, or under common control with the dealer;
- Or any employee of such broker or dealer, except those whose functions are solely clerical or ministerial.

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Under Section 3(a)(32) of the Act, "person associated with a municipal securities dealer" when used with respect to a municipal securities dealer which is a bank or a division or department of a bank means:

- Any person directly engaged in the management, direction, supervision, or performance of any of the municipal securities dealer's activities with respect to municipal securities; and
- Any person directly or indirectly controlling such activities or controlled by the municipal securities dealer in connection with such activities.

Under Rule G-37(g)(iv), a municipal finance professional is defined as:

1. Any associated person primarily engaged in municipal representative activities pursuant to Rule G-3(a)(i) (such activities include underwriting, trading, sales, financial advisory and consultant services, research or investment advice on municipal securities, or any other activities which involve communication, directly or indirectly, with public investors relating to the activities listed in this paragraph), provided, however, that sales activities with natural persons shall not be considered to be municipal securities representative activities for purposes of Rule G-37(g)(iv);
2. Any associated person who solicits "municipal securities business" as defined in Rule G-37 (which includes negotiated underwriting activities, private placement activities, negotiated remarketing services, financial advisory and consultant services);
3. Any associated person who is both (i) a municipal securities principal or a municipal securities sales principal and (ii) a supervisor of any persons described in paragraphs 1 or 2 above;
4. Any associated person who is a supervisor of the associated persons described in paragraph 3 above, up through and including: (i) for dealers that are not bank dealers, the CEO or similarly situated official; and (ii) for bank dealers, the officer or officers designated by the bank's board of directors as responsible for the day-to-day conduct of the bank's dealer activities.
5. For dealers other than bank dealers: any associated person who is a member of the executive or management committee, or similarly situated officials, if any. For bank dealers: any member of the executive or management committee of the separately identifiable department or division of the bank, as defined in Rule G-1, if any. However, if the only associated persons meeting the definition of municipal finance professional are those described in this paragraph 5, the broker, dealer or municipal securities dealer shall be deemed to have no municipal finance professionals.

Each person listed by the dealer as a municipal finance professional is deemed to be such for purposes of Rule G-37.

(May 24, 1994, revised October 30, 2003)

IV.7

Q: Does the definition of municipal finance professional include all registered representatives?

A: No. The definition of municipal finance professional includes, among others, any associated person primarily engaged in municipal representative activities pursuant to Rule G-3(a)(i), but excludes sales activities with natural persons.

(May 24, 1994, revised October 30, 2003)

IV.8

Q: Does the definition of municipal finance professional include any associated person who solicits municipal securities business, even if this solicitation activity is a very small portion of the associated person's work?

A: Yes. Even if an associated person is not "primarily engaged in municipal representative activities," that associated person can be considered a municipal finance professional if he or she solicits municipal securities business, as defined in Rule G-37 (such business includes negotiated underwriting activities, private placement activities, negotiated remarketing services, financial advisory and consultant services).

(May 24, 1994)

IV.9

Q: Does the definition of municipal finance professional include anyone other than an associated person of the dealer, for example, consultants, lawyers or spouses of municipal finance professionals?

A: No. Municipal finance professionals must be associated persons of the dealer. Of course, if a dealer or a municipal finance professional seeks indirectly to make contributions to issuer officials through consultants, lawyers or spouses, such contributions would result in the dealer being prohibited from engaging in municipal securities business with the issuer for two years from the date of such contributions.

(May 24, 1994)

Finder's Fee

IV.10 & IV.11 Deleted

IV.12

Q: Is a "finder's fee" solely cash compensation?

A: No. Such compensation, for example, may take the form of: (i) an unusually large allocation of bonds to a particular sales person; (ii) sales credits; or (iii) any other kind of remuneration.

(December 7, 1994)

IV.13 Deleted

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Supervisors

IV.14

Q: A sales representative at a branch office solicits municipal securities business for the dealer. Such activity results in that person becoming a "municipal finance professional" under Rule G-37(g)(iv)(B). Would that person's branch manager also be considered a municipal finance professional?

A: Yes. Rule G-37(g)(iv)(C) provides that the definition of municipal finance professional includes, among others, any associated person who is both a (i) municipal securities principal or a municipal securities sales principal and (ii) a supervisor of any associated person who solicits municipal securities business (or who is primarily engaged in municipal securities representative activities). If a sales person is soliciting municipal securities business, then the supervisor of that person (*i.e.*, the branch manager) also is included within the definition of municipal finance professional. Branch managers are included within the definition of municipal finance professional in the circumstances described above.

(March 22, 1995, revised October 30, 2003)

Designation Period for Municipal Finance Professionals

IV.15

Q: Rule G-37(g)(iv) states that each person designated a municipal finance professional shall retain this designation for one year after the last activity or position which gave rise to the designation. If a dealer terminates a municipal finance professional's employment, and that person is no longer associated in any way with the dealer (including any affiliated entities of the dealer), must the dealer continue to designate that person a "municipal finance professional" for recordkeeping and reporting purposes under Rules G-37(g)(iv) and G-8(a)(xvi)?

A: No. If a municipal finance professional is no longer employed by the dealer, and is not an "associated person" of the dealer, then the dealer is not required to designate that person a municipal finance professional and the dealer may cease its recordkeeping and reporting obligations with respect to that person.

(August 6, 1996, revised October 30, 2003)

IV.16

Q: If a municipal finance professional is transferred from a firm's dealer department to another non-municipal department, such as the corporate department, must the dealer continue to designate this person a municipal finance professional for recordkeeping and reporting purposes?

A: If a municipal finance professional is transferred to another department within the same firm (such as corporate, equities, etc.) and remains an "associated person" of the dealer, the dealer must continue to designate this person a municipal finance professional for one year from the date of the last activity or position which gave rise to this designation and must continue its recordkeeping and reporting obligations under Rules G-37 and G-8. It is incumbent upon each dealer to determine whether the person is an associated person pursuant to Section 3(a)(18) of the Securities Exchange Act of 1934. If so, then in addition to recordkeeping and reporting obligations, dealers should be mindful that any contributions made by this associated person during the one-year designation period (other than contributions that qualify for the rule's $250 *de minimis* exception) will subject the dealer to the rule's ban on municipal securities business for two years from the date of such contribution. Of course, the ban can only be triggered if the person previously was a municipal finance professional.

(August 6, 1996, revised October 30, 2003)

IV.17

Q: A municipal finance professional resigns from a dealer, but still remains an associated person of the dealer (*e.g.*, by retaining a position in the dealer's holding company). May the dealer cease designating this person a municipal finance professional for purposes of the recordkeeping and reporting requirements under Rules G-37 and G-8? In addition, may this person make contributions to issuer officials without causing the dealer to be banned from municipal securities business with such issuers?

A: If a person is no longer a municipal finance professional because he or she has left the dealer's employ, but nevertheless remains an associated person of the dealer, then the dealer must continue to designate this person a municipal finance professional for one year from the last activity or position which gave rise to such designation. Moreover, any contributions by this associated person (other than those that qualify for the *de minimis* exception under Rule G-37(b)) will subject the dealer to the rule's ban on municipal securities business for two years from the date of the contribution.

(August 6, 1996, revised October 30, 2003)

IV.18

Q: In making the determination of which associated persons of a dealer meet the definitions of municipal finance professional and non-MFP executive officer, is it correct to designate all the executives of the dealer (*e.g.*, President, Executive Vice Presidents) under the category of non-MFP executive officers?

A: No. In making the determination of whether someone is a municipal finance professional or non-MFP executive officer, one must review the activities of the individual and not his or her title. Rule G-37(g)(iv) defines the term "municipal finance professional" as:

(A) any associated person primarily engaged in municipal securities representative activities, as defined in Rule G-3(a)(i), provided, however, that sales activities with

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natural persons shall not be considered to be municipal securities representative activities for purposes of this subparagraph (A);

(B) any associated person who solicits municipal securities business, as defined in paragraph (vii);

(C) any associated person who is both (i) a municipal securities principal or a municipal securities sales principal and (ii) a supervisor of any persons described in subparagraphs (A) or (B);

(D) any associated person who is a supervisor of any person described in subparagraph (C) up through and including, in the case of a broker, dealer or municipal securities dealer other than a bank dealer, the Chief Executive Officer or similarly situated official and, in the case of a bank dealer, the officer or officers designated by the board of directors of the bank as responsible for the day-to-day conduct of the bank's municipal securities dealer activities, as required pursuant to Rule G-1(a); or

(E) any associated person who is a member of the broker, dealer or municipal securities dealer (or, in the case of a bank dealer, the separately identifiable department or division of the bank, as defined in Rule G-1) executive or management committee or similarly situated officials, if any; provided, however, that, if the only associated persons meeting the definition of municipal finance professional are those described in this subparagraph (E), the broker, dealer or municipal securities dealer shall be deemed to have no municipal finance professionals.

Rule G-37(g)(v) defines the term "non-MFP executive officer" as:

> an associated person in charge of a principal business unit, division or function or any other person who performs similar policy making functions for the broker, dealer or municipal securities dealer (or, in the case of a bank dealer, the separately identifiable department or division of the bank, as defined in Rule G-1), **but does not include any municipal finance professional**, as defined in paragraph (iv) of this section (g); provided, however, that, if no associated person of the broker, dealer or municipal securities dealer meets the definition of municipal finance professional, the broker, dealer or municipal securities dealer shall be deemed to have no non-MFP executive officers. [emphasis added]

Dealers should first review the activities of their associated persons to determine whether they are municipal finance professionals, and then, once that list of individuals has been established, conduct a review of the remaining associated persons to determine whether they are non-MFP executive officers. Dealers should pay close attention to those associated persons who are soliciting municipal securities business and, thus, will be considered municipal finance professionals.

(September 9, 1997, revised October 30, 2003 and June 8, 2006)

Non-MFP Executive Officer

IV.19

Q: Who is a non-MFP "executive officer?"

A: Pursuant to Rule G-37(g)(v), a non-MFP executive officer is defined as any associated person in charge of a principal business unit, division or function, or any other person who performs similar policy making functions for the dealer (or, in the case of a bank dealer, the separately identifiable department or division of the bank, as defined in Rule G-1), but does not include any municipal finance professional.

(May 24, 1994)

IV.20

Q: In a bank with a separately identifiable dealer department, who would be considered a non-MFP executive officer?

A: For most bank dealer departments which deal only in municipal securities, there are no individuals who meet the definition of non-MFP executive officer within Rule G-37.

(August 18, 1994)

Official of an Issuer

IV.21

Q: How is the term "official of an issuer" defined in Rule G-37?

A: Rule G-37(g)(vi) defines the term "official of an issuer" to mean "any person (including any election committee for such person) who was, at the time of the contribution, an incumbent, candidate or successful candidate: (A) for elective office of the issuer which office is directly or indirectly responsible for, or can influence the outcome of, the hiring of a broker, dealer or municipal securities dealer for municipal securities business by the issuer; or (B) for any elective office of a state or of any political subdivision, which office has authority to appoint any person who is directly or indirectly responsible for, or can influence the outcome of, the hiring of a broker, dealer or municipal securities dealer for municipal securities business by an issuer. Thus, contributions to certain state-wide executive or legislative officials would be included within the prohibition on engaging in municipal securities business.

(May 24, 1994, revised October 30, 2003)

IV.22

Q: How can a dealer determine whether an incumbent or candidate for a particular elective office will be able to award or influence the awarding of municipal securities business? For example, in many states, such influence is found in executive branch elected officials, not legislative branch officials.

A: The dealer must review the scope of authority of the particular **office** at issue, whether executive or legislative branch, not the individual, to determine whether influence over the awarding of municipal securities business is present.

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(May 24, 1994)

IV.23

Q: An incumbent was seeking re-election as an issuer official but she lost the election. She is now soliciting money to pay for the debt incurred in connection with this election. Would there be a prohibition on engaging in municipal securities business with the issuer if a dealer or a municipal finance professional provides money for the payment of this debt?

A: No, under certain conditions. If the incumbent is out of office at the time she is soliciting money to pay for the election debt, then she is no longer considered to be within the definition of "official of an issuer" and any monies given for the payment of debt incurred in connection with the election in this instance is not subject to Rule G-37. If the incumbent still holds her issuer official position at the time she is soliciting money to pay for the election debt, then, if a municipal finance professional contributed $250 to her during the general election, the municipal finance professional would **not** be able to make any contributions for the payment of debt without causing a prohibition on municipal securities business with the issuer. If a municipal finance professional made no contributions to the incumbent prior to the election, then the municipal finance professional **may**, if entitled to vote for the candidate, contribute up to $250 for the payment of debt incurred in connection with the election while the incumbent is still in office without causing a prohibition on municipal securities business. A dealer may **not** contribute any monies towards the payment of debt while the incumbent is still in office without causing a prohibition on municipal securities business with the issuer.

(September 9, 1997)

Dealer-Controlled PAC

IV.24

Q: What is a "dealer-controlled" PAC?

A: Each dealer must determine whether a PAC is dealer controlled. For dealers, other than bank dealers, one may assume that any PAC of the dealer would be considered a dealer-controlled PAC for purposes of Rule G-37. For bank dealers, it will depend upon whether the dealer or anyone from the dealer department has the ability to direct or cause the direction of the management or the policies of the PAC.

(May 24, 1994)

V. Scope of Waiver Provision in Rule G-37(i)

V.1

Q: If an enforcement agency grants an exemption from a ban on municipal securities business pursuant to Rule G-37(i), may this exemption be applied retroactively so that any municipal securities business engaged in after the ban had gone into effect but prior to the date on which the exemption was granted would not be viewed as a Rule G-37 violation?

A: Rule G-37(i) allows the enforcement agencies to exempt a dealer from a ban on municipal securities business. It is the Board's view that such an exemption is only effective as of the date of the exemption. Rule G-37(i) does not contain a provision allowing for the retroactive application of the exemption. Thus, a dealer would violate Rule G-37 if, prior to the date of the exemption, the dealer engaged in municipal securities business with an issuer while subject to a ban with this issuer because of a political contribution. As with any violation of a Board rule, the enforcement agencies have discretion in determining the type and extent of enforcement action appropriate for such violation, in light of the specific facts and circumstances. If an enforcement agency has granted an exemption to a dealer from the ban on municipal securities business, the facts and circumstances considered by such agency in granting the exemption could appropriately also be considered (together with any other relevant facts and circumstances) in determining what, if any, enforcement action should be taken against such dealer if it had engaged in municipal securities business after the ban on such business became effective but prior to the date on which the exemption was granted.

(March 1, 2000)

VI. Recordkeeping and Reporting (Rules G-37(e), G-8 and G-9)

VI.1

Q: If a dealer has instituted an internal voluntary ban on political contributions, is the dealer still subject to the recordkeeping requirements?

A: Yes. The Board amended Rule G-8 and G-9, on recordkeeping and record retention, respectively, to require each dealer to maintain records of certain information. This recordkeeping is designed to assist dealers in determining whether or not they may engage in business with a particular issuer, as well as to facilitate compliance with, and enforcement of, Rule G-37.

(May 24, 1994)

VI.2

Q: Rule G-8 requires dealers to record all issuers with which the dealer has engaged in municipal securities business. The term "issuer" includes the issuer of a separate security as defined in SEC Rule 3b-5(a) under the Act. In the context of industrial revenue bond issues, for example, the issuer of a separate security is a private corporation, not a government entity. Must we record these "issuers"?

A: No. Such private corporations, which are not an agency or instrumentality of a state or any political subdivision, need not be recorded. Of course, dealers are required to record the governmental issuer in these situations, for both taxable and tax-exempt municipal securities.

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(December 7, 1994)

VI.3

Q: What are the reporting requirements under rule G-37?

A: Dealers are required to submit Form G-37/G-38 to the MSRB by the last day of the month following the end of each calendar quarter. These submission dates correspond to January 31, April 30, July 31 and October 31 of each year. There is no fixed time frame for submission of Form G-37x. However, if a dealer wishes to rely on the Form G-37x exemption from the Form G-37/G-38 submission requirement for a particular calendar quarter, Form G-37x must be submitted by no later than the submission deadline for such quarter.

(May 24, 1994, revised October 30, 2003)

VI.4

Q: Under what circumstances must Form G-37/G-38 be filed with the Board?

A: Form G-37/G-38 must be submitted to the Board for a calendar quarter if ANY one of the following occurred: (i) reportable political contributions or payments to political parties were made during the reporting period, unless the dealer has previously submitted Form G-37x and the submission remains effective; (ii) the dealer engaged in municipal securities business during the reporting period; or (iii) the dealer used consultants during the reporting period (*i.e.*, new or continuing relationship with consultants).

(May 24, 1994, revised October 30, 2003)

VI.5

Q: Does a dealer have to complete the section of Form G-37/G-38 concerning issuers with whom the dealer has engaged in municipal securities business if the only municipal securities related business engaged in during the reporting period was as a selling group member?

A: No. Rule G-37 does not define "municipal securities business" to include selling group member activities.

(May 24, 1994)

VI.6

Q: Which contributions must be disclosed to the Board on Form G-37/G-38?

A: Those contributions which are required to be recorded pursuant to rule G-8(a)(xvi). These include (i) the contributions, direct or indirect, to officials of an issuer and to political parties of states and political subdivisions made by the dealer and each PAC controlled by the dealer (or controlled by any municipal finance professional of such dealer); (ii) the contributions, direct or indirect, to officials of an issuer made by each municipal finance professional and non-MFP executive officer, however, such records need not reflect any contribution made by a municipal finance professional or non-MFP executive officer to officials of an issuer for whom such person is entitled to vote if the contributions by each such person, in total, are not in excess of $250 to any official of an issuer, per election; and (iii) the contributions, direct or indirect, to political parties of states and political subdivisions made by all municipal finance professionals and non-MFP executive officers, however, such records need not reflect those contributions made by any municipal finance professional or non-MFP executive officer to a political party of a state or political subdivision in which such persons are entitled to vote if the contributions by each such person, in total, are not in excess of $250 per political party, per year; (iv) the contributions, direct or indirect, to bond ballot campaigns made by the dealer and each PAC controlled by the dealer (or controlled by any municipal finance professional of such dealer); and (v) the contributions, direct or indirect, to bond ballot campaigns made by each municipal finance professional and non-MFP executive officer, however, such records need not reflect any contributions made by a municipal finance professional or non-MFP executive officer to a bond ballot campaign for a ballot initiative with respect to which such person is entitled to vote if the contributions by such person, in total, are not in excess of $250 to any bond ballot campaign, per ballot initiative.

(May 24, 1994, revised February 25, 2010)

VI.7

Q: May non-dealers (*e.g.*, attorneys, independent financial advisors) voluntarily submit information on political contributions and other activities to the Board?

A: Yes, as long as the filing procedures are followed.

(May 24, 1994)

VI.8

Q: Will the Forms G-37 submitted to the Board be available for public review?

A: Yes. The Forms G-37/G-38 and Forms G-37x submitted to the Board are posted on the Board's website for viewing (www.msrb.org).

(May 24, 1994, revised June 14, 2010)

VI.9

Q: May a holding company submit to the Board one Form G-37/G-38 reflecting information for various dealers within the control of the holding company?

A: No. A separate Form G-37/G-38 must be submitted for each dealer.

(February 16, 1996)

VI.10

Q: Rule G-37(e) requires, among other things, that dealers submit information to the Board on Form G-37/G-38 about the municipal securities business in which they engaged. Is information about the municipal securities business engaged in required to be submitted by all syndicate and selling group members, or is it only the responsibility of the manager(s) to submit such information on behalf of the syndicate?

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A: All manager(s) and syndicate members (excluding selling group members) must separately report the municipal securities business in which they engaged.

(September 9, 1997)

VI.11

Q: Are dealers required to identify the type of contributor (*i.e.* dealer, dealer controlled PAC, MFP, MFP controlled PAC, or non-MFP executive officer) when completing Form G-37/G-38?

A: Yes. Rule G-37(e)(i)(2) requires dealers to report to the Board on its Form G-37/G-38 the contribution or payment amount made **and** the contributor category of each of the following persons and entities making such contributions or payments during each calendar quarter: the broker, dealer or municipal securities dealer; each municipal finance professional; each non-MFP executive officer; and each political action committee controlled by the broker, dealer or municipal securities dealer or by any municipal finance professional. It is not sufficient to list contributors as "employee" or "registered representative." For each contribution listed on the Form G-37/G-38, one of the specified contributor categories must be identified.

(February 25, 2004)

VI.12

Q: How should contributions to officials of issuers who are seeking federal office be reported on Form G-37/G-38?

A: Under Rule G-37, contributions given to officials of issuers who are seeking election to federal office, such as the U.S. House of Representatives, Senate or the Presidency, must be reported on the dealer's quarterly Form G-37/G-38 unless they meet the *de minimis* exception. When reporting these contributions, dealers must report information identifying the issuer official. Firms may additionally report information identifying the federal office sought. For example, if a sitting Governor of a state were running for a seat in the U.S. House of Representatives, and the Governor is an "official of an issuer," the form must list the state where the official is serving as Governor, and the Governor's complete name and title. Dealers may also report the federal office sought by the issuer official.

(February 25, 2004)

Interpretation of Prohibition on Municipal Securities Business Pursuant to Rule G-37

February 21, 1997

Recently, dealers have raised questions regarding how the prohibition on municipal securities business in rule G-37, on political contributions and prohibitions on municipal securities business, applies to certain situations. Rule G-37 prohibits any dealer from engaging in municipal securities business with an issuer within two years after any contribution to an official of such issuer made by: (i) the dealer; (ii) any municipal finance professional associated with such dealer; or (iii) any political action committee controlled by the dealer or any municipal finance professional.[1] If a municipal finance professional makes a political contribution to an issuer official for whom he is not entitled to vote, the dealer is prohibited from engaging in municipal securities business with that issuer for two years. The Board has been asked whether the prohibition on municipal securities business extends to certain services provided under contractual agreements with an issuer that pre-date the contribution. The Board is issuing the following interpretation of the prohibition on municipal securities business pursuant to rule G-37.

"New" Municipal Securities Business

A dealer subject to a prohibition on municipal securities business with an issuer may not enter into any new contractual obligations with that issuer for municipal securities business.[2] The Board adopted rule G-37 in an effort to sever any connection between the making of political contributions and the awarding of municipal securities business. The Board believes that the problems associated with political contributions — including the practice known as "pay-to-play" — undermine investor confidence in the municipal securities market, which confidence is crucial to the long-term health of the market, both in terms of liquidity and capital-raising ability.

Pre-Existing Issue-Specific Contractual Undertakings

The Board believes that it is consistent with the intent of rule G-37 that a dealer subject to a prohibition on municipal securities business with an issuer be allowed to continue to execute certain issue-specific contractual obligations in effect prior to the date of the contribution that caused the prohibition. For example, if a bond purchase agreement was signed prior to the date of the contribution, a dealer may continue to perform its services as an underwriter on the issue. Also, if an issue-specific agreement for financial advisory services was in effect prior to the date of the contribution, the dealer may continue in its role as financial advisor for that issue. In the same manner, a dealer may act as remarketing agent or placement agent for an issue and also may continue to underwrite a commercial paper program as long as the contract to perform these services was in effect prior to the date of the contribution. Subject to the limitations noted below, these activities are not considered new municipal securities business and thus can be performed by dealers under a prohibition on municipal securities business with the issuer.

Dealers also have asked questions regarding certain terms in contracts to provide on-going municipal securities business that allow for additional services or compensation. For example, a dealer may have an agreement to provide remarketing services for a municipal securities issue, the terms of which allow the issuer to change the "mode" of the outstanding bonds from variable to a fixed rate of interest or from Rule 2a-7 eligible to non-Rule 2a-7 eligible.[3] Generally, the per bond fee increases if the dealer sells fixed rate municipal securities or non-money market fund securities. Also, an

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agreement to underwrite a commercial paper program may include terms for increasing the size of the program. While the per bond fee probably does not increase if more commercial paper is underwritten, the amount of money paid to the dealer does increase. The Board views the provisions in existing contracts that allow for changes in the services provided by the dealer or compensation paid by the issuer as new municipal securities business and, therefore, rule G-37 precludes a dealer subject to a prohibition on municipal securities business from performing such additional functions or receiving additional compensation.

Non-Issue Specific Contractual Undertakings

Dealers also at times enter into long-term contracts with issuers for municipal securities business, *e.g.*, a five-year financial advisory agreement. If a contribution is given after such a non-issue-specific contract is entered into that results in a prohibition on municipal securities business, the Board believes the dealer should not be allowed to continue with the municipal securities business, subject to an orderly transition to another entity to perform such business. This transition should be as short a period of time as possible and is intended to give the issuer the opportunity to receive the benefit of the work already provided by the dealer and to find a replacement to complete the work, as needed.

* * *

The Board recognizes that there is a great variety in the terms of agreements regarding municipal securities business and that the interpretation noted above may not adequately deal with all such agreements. Thus, the Board is seeking comment on how a prohibition on municipal securities business pursuant to rule G-37 affects contracts for municipal securities business entered into with issuers prior to the date of the contribution triggering the prohibition on business. In particular, the Board is seeking comment on other examples whereby a dealer may be contractually obligated to perform certain activities after the date of the triggering contribution. If other examples are provided, the Board would like comments on how these situations should be addressed pursuant to rule G-37.

Based upon the comments received on this notice, the Board may issue additional interpretations or amend the language of rule G-37.

[1] The only exception to rule G-37's absolute prohibition on municipal securities business is for certain contributions made to issuer officials by municipal finance professionals. Contributions by such persons to officials of issuers do not invoke application of the prohibition on business if (i) the municipal finance professional is entitled to vote for such official and (ii) contributions by such municipal finance professional do not exceed, in total, $250 to each official, per election.

[2] The term "municipal securities business" is defined in the rule to encompass certain activities of dealers, such as acting as negotiated underwriters (as managing underwriter or as syndicate member), financial advisors, placement agents and negotiated remarketing agents. The rule does not prohibit dealers from engaging in business awarded on a competitive bid basis.

[3] SEC Rule 2a-7 under the Investment Company Act of 1940 defines eligible securities for inclusion in money market funds.

Application of Rule G-37 to Presidential Campaigns of Issuer Officials

March 23, 1999

In response to numerous calls on this subject, the Board wishes to reiterate its position on the application of rule G-37, on political contributions and prohibitions on municipal securities business, to Presidential campaigns of issuer officials. The Board directs persons interested in contributing to an issuer official's Presidential campaign to the *MSRB Interpretation of May 31, 1995* (the "1995 Interpretive Letter").[1]

Rule G-37, among other things, prohibits a broker, dealer or municipal securities dealer ("dealer") from engaging in municipal securities business with an issuer within two years after any contribution to an official of an issuer made by the dealer; any municipal finance professional associated with the dealer; or any political action committee controlled by the dealer or any municipal finance professional. In the 1995 Interpretive Letter, the Board noted that rule G-37 is applicable to contributions given to officials of issuers who seek election to federal office, such as the Presidency. The Board also explained that the only exception to rule G-37's absolute prohibition on business is for certain contributions made to issuer officials by municipal finance professionals.[2] Specifically, contributions by such persons to officials of issuers would not invoke application of the prohibition if the municipal finance professional is entitled to vote for such official, and provided that any contributions by such municipal finance professional do not exceed, in total, $250 to each official, per election. In the example of an issuer official running for President, any municipal finance professional in the country can contribute the *de minimis* amount to the official's Presidential campaign without causing a ban on municipal securities business with that issuer.

The Board previously has stated that, if an issuer official is involved in a primary election prior to the general election, a municipal finance professional who is entitled to vote for such official may contribute up to $250 for the primary election and $250 for the general election to each such official.[3] In the context of a Presidential campaign, the Board notes that the $250 *de minimis* amount applies to the entire primary process, up through and including the national party convention. While rule G-37 allows a municipal finance professional to then contribute another $250 to the party candidate's general election campaign fund, the Board understands that a Presidential candidate who has accepted public funding for the general election is prohibited under federal law from accepting any contributions to further his or her general election campaign.

Finally, the Board also notes that rule G-37(c) provides that no dealer or municipal finance professional shall solicit any person or political action committee to make any contribu-

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tions, or shall coordinate any contributions, to an official of an issuer with which the dealer is engaging or is seeking to engage in municipal securities business.

[1] The 1995 Interpretive Letter is reprinted in *MSRB Rule Book* (January 1, 1999) at 201-203. It also is available from the *MSRB Rules/Interpretive Letters* section of the Board's Web site at www.msrb.org.

[2] The term "municipal finance professional" is a defined term in rule G-37(g)(iv). The Board wishes to remind dealers that the term is broader than persons directly involved in municipal securities activities and may include certain supervisors, including in the case of a broker, dealer or municipal securities dealer other than a bank dealer, the Chief Executive Officer, and in the case of a bank dealer, the officer or officers designated by the board of directors of the bank as responsible for the day-to-day conduct of the bank's municipal securities dealer activities. It also may include members of the dealer's executive or management committee or similarly situated officials. *See* Question and Answer number 2 dated May 24, 1994, reprinted in *MSRB Rule Book* (January 1, 1999) at 192; *MSRB Reports*, Vol. 14, No. 3 (June 1994) at 13; Question and Answer number 3 dated September 9, 1997, reprinted in *MSRB Rule Book* (January 1, 1999) at 199. The Questions and Answers also are available from the *MSRB Rules/Interpretive Notice* section of the Board's Web site at www.msrb.org.

[3] *See* Question and Answer number 10 dated May 24, 1994, reprinted in *MSRB Rule Book* (January 1, 1999) at 192; *MSRB Reports*, Vol. 14, No. 3 (June 1994) at 13. The Question and Answer also is available from the *MSRB Rules/Interpretive Notice* section of the Board's Web site at www.msrb.org.

Activities by Dealers and Municipal Finance Professionals During Transition Periods for Elected Issuer Officials

November 29, 2001

The MSRB has received inquiries on the applicability of rule G-37 to certain activities by dealers and municipal finance professionals relating to the transition period during which an issuer official has won an election but has not yet taken office. The definition of "contribution" in rule G-37(g)(i) includes any gift, subscription, loan, advance, or deposit of money or anything of value made for transition or inaugural expenses incurred by the successful candidate.

The MSRB stated in a Question and Answer Notice dated May 24, 1994 (Q&A number 24) that rule G-37 is not intended to prohibit or restrict municipal finance professionals from engaging in personal volunteer work; however, if the municipal finance professional uses the dealer's resources (*e.g.*, a political position paper prepared by dealer personnel) or incurs expenses in the conduct of such volunteer work (*e.g.*, hosting a reception), then the value of such resources or expenses would constitute a contribution. In addition, personal expenses incurred by the municipal finance professional in the conduct of such volunteer work, which expenses are purely incidental to such work and unreimbursed by the dealer (*e.g.*, cab fares and personal meals), would not constitute a contribution. In a Question and Answer Notice dated August 18, 1994 (Q&A number 3), the MSRB stated that an employee of a dealer generally can donate his or her time to an issuer official's campaign without this being viewed as a contribution by the dealer to the official, as long as the employee is volunteering his or her time during non-work hours, or is using previously accrued vacation time or the dealer is not otherwise paying the employee's salary (*e.g.*, an unpaid leave of absence). Thus, rule G-37 does not prohibit a municipal finance professional from serving on an issuer official's transition team or performing other transition-related activities; however, as noted above, the use of dealer resources in connection with such activity would be considered a contribution by the dealer to the issuer official thereby resulting in the dealer being prohibited from engaging in municipal securities business with the issuer for two years.

The MSRB also recognizes that dealers and their municipal finance professionals may solicit issuer officials for municipal securities business during the transition period prior to these officials taking office. In the course of making such solicitations, dealers may sometimes prepare and present materials such as financing plans and economic development studies. The provision of these types of materials to an issuer official during the transition period would not constitute contributions under rule G-37 if performed as part of a solicitation for municipal securities business.

Finally, in a Question and Answer Notice dated September 9, 1997 (Q&A number 1), the MSRB addressed whether a municipal finance professional who is entitled to vote for an issuer official may make contributions to pay for such official's transition or inaugural expenses without causing a prohibition on municipal securities business with the issuer. If a municipal finance professional contributed $250 to the general election of an issuer official, the municipal finance professional would not be able to make any contributions to pay for transition or inaugural expenses without causing a prohibition on municipal securities business with the issuer. If a municipal finance professional made no con-tributions to an issuer official prior to the election, then the municipal finance professional may, if entitled to vote for the candidate, contribute up to $250 to pay for transition or inaugural expenses and payment of debt incurred in connection with the election without causing a prohibition on municipal securities business.

Interpretation on the Effect of a Ban on Municipal Securities Business Under Rule G-37 Arising During a Pre-Existing Engagement Relating to Municipal Fund Securities

April 2, 2002

Rule G-37, on political contributions and prohibitions on municipal securities business, prohibits any broker, dealer or municipal securities dealer (a "dealer") from engaging in municipal securities business with an issuer within two years after any contribution (other than certain *de minimis* contributions) to an official of such issuer made by: (i) the dealer; (ii) any municipal finance professional associated with such dealer; or (iii) any political action committee controlled by the dealer or any municipal finance professional. The Municipal Securities Rulemaking Board ("MSRB") has received

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inquiries regarding the effect of a ban on municipal securities business with an issuer arising from a contribution made after a dealer has entered into a long-term contract to serve as the primary distributor of the issuer's municipal fund securities.

In an interpretive notice published in 1997 (the "1997 Interpretation"), the MSRB stated that a dealer subject to a prohibition on municipal securities business with an issuer is allowed to continue to execute certain issue-specific contractual obligations in effect prior to the date of the contribution that caused the prohibition.[1] For example, dealers that had already executed a contract with the issuer to serve as underwriter or financial advisor for a new issue of debt securities prior to the contribution could continue in these capacities.

The 1997 Interpretation also addressed certain types of ongoing, non-issue-specific municipal securities business that a dealer may have contracted with an issuer to perform prior to the making of a contribution that causes a prohibition on municipal securities business with the issuer. For example, the MSRB noted that a dealer may act as remarketing agent for an outstanding issue of municipal securities or may continue to underwrite a specific commercial paper program so long as the contract for such services was in effect prior to the contribution. The MSRB stated that these activities are not considered new municipal securities business and may be performed by dealers that are banned from municipal securities business with an issuer. The MSRB further stated, however, that provisions in existing contracts that allow for changes in the services provided by the dealer or compensation paid by the issuer would be viewed by the MSRB as new municipal securities business and, therefore, rule G-37 would preclude a dealer subject to a ban on municipal securities business from performing such additional functions or receiving additional compensation. The MSRB cited two examples of these types of provisions. The first involved a contract to serve as remarketing agent for a variable rate issue that might permit a fixed rate conversion, with a concomitant increase in the per bond compensation. The second example involved an agreement to underwrite a commercial paper program that might include terms for increasing the size of the program, with no increase in per bond fees but an increase in overall compensation resulting from the larger outstanding balance of commercial paper. In both cases, the MSRB viewed the exercise of these provisions as new municipal securities business that would be banned under the rule.

In the 1997 Interpretation, the MSRB recognized that there is great variety in the terms of agreements regarding municipal securities business and that its guidance in the 1997 Interpretation may not adequately deal with all such agreements. The MSRB sought input on other situations where contracts obligate dealers to perform various types of activities after the date of a contribution that triggers a ban on municipal securities business and stated that additional interpretations might be issued based upon such input.

The MSRB understands that dealers typically are selected by issuers to serve as primary distributors of municipal fund securities on terms that differ significantly from those of a dealer selected to underwrite an issue of debt securities. Issuers generally enter into long-term agreements (in many cases with terms of ten years or longer) with the primary distributor of municipal fund securities for services that include the sale in a continuous primary offering of one or more categories or classes of the securities issued within the framework of a single program of investments.[2] In addition, an issuer may often engage a particular dealer to serve as the primary distributor of its municipal fund securities as part of a team of professionals that includes the dealer's affiliated investment management firm, which is charged with managing the investment of the underlying portfolios.

The MSRB believes that the guidance provided in the 1997 Interpretation, although appropriate for the circumstances discussed therein, may not be adequate to address the unique features of municipal fund securities programs. For example, so long as a program realizes net in-flows of investor cash, the size of an offering of municipal fund securities will necessarily increase over time. Under most compensation arrangements in the market, any net in-flow of cash generally would result in an increase in total compensation, causing any new sales of municipal fund securities that exceed redemptions to be considered new municipal securities business under the 1997 Interpretation. Also, the addition by the issuer of a new category of investments (*e.g.*, a new portfolio in an aged-based Section 529 college savings plan created for children born in the most recent year) could be considered a new offering from which such dealer might be banned, even where such new category may have been clearly contemplated at the outset of the dealer's engagement. Further, the MSRB understands that the repercussions to an issuer of municipal fund securities or investors in such securities of a sudden change in the primary distributor (and possible concurrent change in the investment manager) resulting from a ban on municipal securities business arising during the term of an existing arrangement often will be significantly greater than in the case of an underwriting or other primary market activity relating to the typical debt offering. Issuers could be faced with redesigning existing programs and investors may need to establish new relationships with different dealers in order to maintain their investments.

As a result, the MSRB believes that further interpretive guidance is necessary in this area. The MSRB is of the view that, where a dealer has become subject to a ban on municipal securities business with an issuer of municipal fund securities with which it is currently serving as primary distributor, any continued sales of existing categories of municipal fund securities for such issuer during the duration of the ban would not be considered new municipal securities business if the basis for determining compensation does not change during that period, even if total compensation increases as a result of net in-flows of cash. Further, the MSRB believes that any

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changes in the services to be provided by the dealer to the issuer throughout the duration of the ban that are contemplated under the pre-existing contractual arrangement (*e.g.*, the addition of new categories of securities within the framework of the existing program) would not be considered new municipal securities business so long as such changes do not result in: (1) an increase in total compensation received by the dealer for services performed for the duration of the ban (whether paid during the ban or as a deferred payment after the ban); or (2) in an extension of the term of the dealer in its current role.

[1] *See* Rule G-37 Interpretation — Interpretation on Prohibition on Municipal Securities Business Pursuant to Rule G-37, February 21, 1997, *MSRB Rule Book* (January 2002) at 232.

[2] The various categories generally reflect interests in funds having different allocations of underlying investments. For example, a so-called Section 529 college savings plan may offer one category that represents investments primarily in equity securities and another in debt securities, or may have categories where the allocation shifts from primarily equity securities to primarily debt or money market securities as the number of years remaining until the beginning of college decreases. In the case of state and local government pools, the types of securities in the underlying portfolios may be allocated so as to create one category of short-term "money market" like investments (*i.e.*, with net asset value maintained at approximately $1 per share) and another with a longer timeframe and fluctuating net asset value.

Notice Concerning Indirect Rule Violations: Rules G-37 and G-38

August 6, 2003

The Municipal Securities Rulemaking Board's ("MSRB" or Board") statutory mandate is to protect investors and the public interest in connection with dealers' activities in the municipal securities market. The municipal securities market is one of the world's leading securities markets. Investors hold approximately $1.6 trillion worth of municipal securities — either through direct ownership or through investment in institutional portfolios. These investors provide much needed capital to more than 50,000 state and local governments. Maintaining municipal market integrity is an exceptionally high priority for the Board as it seeks to foster a fair and efficient municipal securities market through dealer regulation.

In 1994, the MSRB adopted Rule G-37 in an effort to remove the real or perceived conflict of interest of issuers who receive political contributions from dealers and award municipal securities business to such dealers. As noted by the Court reviewing Rule G-37, "[u]nderwriters' campaign contributions self-evidently create a conflict of interest in state and local officials who have power over municipal securities contracts and a risk that they will award the contracts on the basis of benefit to their campaign chests rather than to the governmental entity."[1] Pay-to-play harms the integrity of the underwriter selection process.

In general, Rule G-37 prohibits brokers, dealers and municipal securities dealers ("dealers") from engaging in municipal securities business with issuers if certain political contributions have been made to officials of such issuers; prohibits dealers and municipal finance professionals ("MFP") from soliciting or bundling contributions to an official of an issuer with which the dealer is engaging or seeking to engage in municipal securities business; and requires dealers to record and disclose certain political contributions, as well as other information, to allow public scrutiny of political contributions and the municipal securities business of a dealer. The rule also seeks to ensure that payments made to political parties by dealers, MFPs, and political action committees ("PAC") not controlled by the dealer or MFP do not represent attempts to make indirect contributions to issuer officials in contravention of Rule G-37 by requiring dealers to record and disclose all payments made to state and local political parties.[2] The party payment disclosure requirements were intended to assist in severing any connection between payments to political parties (even if earmarked for expenses other than political contributions) and the awarding of municipal securities business.[3]

Although Rule G-37 initially included certain limited disclosure requirements for consultants used by dealers to obtain municipal securities business, in 1996, the MSRB adopted a separate Rule G-38, on consultants, to prevent persons from circumventing Rule G-37 through the use of consultants. Rule G-38 currently requires dealers who use consultants[4] to evidence the consulting arrangement in writing, to disclose, in writing, to an issuer with which it is engaging or seeking to engage in municipal securities business information on consulting arrangements relating to such issuer, and to submit to the Board, on a quarterly basis, reports of all consultants used by the dealer, amounts paid to such consultants, and certain political contribution and payment information from the consultant.

The impact of Rules G-37 and G-38 has been very positive. The rules have altered the political contribution practices of municipal securities dealers and opened discussion about the political contribution practices of the entire municipal industry.

While the Board is pleased with the success of these rules, it also is concerned with increasing signs that individuals and firms subject to the rules may be seeking ways around Rule G-37 through payments to political parties or non-dealer controlled PACs that find their way to issuer officials, significant political contributions by dealer affiliates (*e.g.*, bank holding companies and affiliated derivative counterparty subsidiaries) to both issuer officials and political parties, contributions by associated persons of the dealer who are not MFPs and by the spouses and family members of MFPs to issuer officials, and the use of consultants who make or bundle political contributions. In addition to dealer and dealer-related giving, the Board is also concerned about media and other reports regarding significant giving by other market participants, including independent financial advisors, swap advisors, swap counterparties, investment contract providers and public finance lawyers.

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The MSRB is mindful that Rule G-37's prohibitions involve sensitive constitutional issues and is reluctant to significantly broaden the scope of the rule. The rule was constructed and will continue to be reviewed with full regard for and consideration of an individual's right to participate fully in our political processes. The Board, however, wishes to remind dealers that Rule G-37, as currently in effect, covers indirect as well as direct contributions to issuer officials, and to alert dealers that it has expressed its concern to the entities that enforce the Board's rules that some of the increased political giving may indicate a rise in indirect Rule G-37 violations. While Rule G-37 was adopted to deal specifically with contributions made to officials of issuers by dealers and MFPs, and PACs controlled by dealers or MFPs, the rule also prohibits MFPs and dealers from using conduits — be they parties, PACs, consultants, lawyers, spouses or affiliates — to contribute indirectly to an issuer official if such MFP or dealer can not give directly to the issuer without triggering the ban on business. The MSRB will continue to work with the enforcement agencies to identify and halt abusive practices. If, at a later date, the Board learns of specific problematic dealer practices that it believes must be addressed more directly, the Board may proceed with additional rulemaking relating to Rules G-37 and G-38.

The Board strongly believes that pay-to-play undermines the integrity of the municipal securities industry. Such practices are regulated not only by the specific parameters of Rule G-37, but also by the fair practice principles embodied in the MSRB's Rule G-17, on fair dealing. Similarly, the MSRB reminds issuers and dealers that the SEC has previously advised that, with respect to primary offering disclosure, increased attention needs to be directed at disclosure of potential conflicts of interest and material financial relationships among issuers, advisors and underwriters, including those arising from political contributions.[5] These issuer conflicts of interest can and do arise not only from contributions made by municipal securities dealers, but also from payments by unregulated municipal securities market participants.

The costs of political campaigns are skyrocketing across the country. The MSRB is aware of reports that elected officials, or persons acting on behalf of elected officials, are putting pressure on dealers and MFPs to find ways to contribute to the costs associated with political campaigns. The Board also recognizes that there is significant political giving that is not by, or directed by, municipal securities dealers. Thus, the MSRB wishes to encourage state and local governments to take a fresh look at these issues and see whether their policies and procedures should be revised to help maintain the integrity of the underwriting process. The Board believes that it is critical that the municipal market engender the highest degree of public confidence so that investors will continue to provide much needed capital to state and local governments.

[1] *Blount v. SEC*, 61 F. 3d 938 (D.C. Cir. 1995), *cert. denied*, 116 S. Ct. 1351 (1996).

[2] If a dealer or MFP is considering contributing funds to a non-dealer associated PAC or political party, Rule G-37 requires that the dealer or MFP "should inquire of the non-dealer associated PAC or political party how any funds received from the dealer or MFP would be used." *See Questions and Answers Notice: Rule G-37, No. 2* (August 6, 1996), reprinted in *MSRB Rule Book*.

[3] *See* Securities and Exchange Act Release No. 35446 (SEC Order Approving Proposed Rule Change by the Municipal Securities Rulemaking Board Relating to Rule G-37 on Political Contributions and Prohibitions on Municipal Securities Business, and Rule G-8, on Recordkeeping) (March 6, 1995).

[4] Rule G-38 (a)(i) defines the term "consultant" as any person used by a dealer to obtain or retain municipal securities business through direct or indirect communication by such person with an issuer on the dealer's behalf where the communication is undertaken by such person in exchange for, or with the understanding of receiving, payment from the dealer or any other person.

[5] *See* SEC Release No. 33-7049; 34-33741 (Statement of the Commission Regarding Disclosure Obligations of Municipal Issuers and Others) (March 17, 1994).

Reminder of Obligations Under Rule G-37 on Political Contributions and Rule G-27 on Supervision When Sponsoring Meetings and Conferences Involving Issuer Officials

March 26, 2007

The Municipal Securities Rulemaking Board ("Board" or "MSRB") is publishing this notice to remind brokers, dealers and municipal securities dealers ("dealers") of the possible application of Rule G-37, on political contributions and prohibitions on municipal securities business, when dealers sponsor meetings and conferences where issuer officials are invited to attend or are featured speakers. Dealers are responsible for ensuring that their supervisory policies and procedures established under Rule G-27, on supervision, are adequate to prevent and detect violations of MSRB rules. Thus, it is incumbent on dealers to have appropriate supervisory procedures in place to review the nature of, and activities surrounding, the types of events discussed in this notice to ensure that Rule G-37 is not violated, directly or indirectly.

Rule G-37, in general, prohibits dealers from engaging in municipal securities business with issuers for a two-year period if certain political contributions have been made to officials of such issuers by the dealer or a municipal finance professional ("MFP") (other than certain *de minimis* contributions), and requires dealers to record and disclose certain political party payments and municipal securities business to assist in severing the connection between contributions and the awarding of municipal securities business. The rule also includes, among other things, a prohibition on dealers and their MFPs from (1) soliciting any person (including, but not limited to, any affiliated entity of the dealer) or political action committee ("PAC") to make any contribution, or (2) coordinating any contributions to an official of an issuer with which the dealer is engaging or seeking to engage in business. Dealers and MFPs are prohibited from, directly or indirectly, through

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or by any other person or means, doing any act which would result in violation of the rule's ban on business or prohibition on soliciting and coordinating (bundling) contributions.

A dealer sponsoring a meeting or conference where an issuer official is invited to attend or is a featured speaker should be mindful of the parameters of Rule G-37, including the prohibition on soliciting and coordinating contributions. For example, if the issuer official (or his/her staff) solicits contributions in connection with the event, or dealer personnel solicit or coordinate contributions, such activities may constitute fundraising activities.[1] If a determination is made, based on the particular facts and circumstances, that the event is a fundraising event for the issuer official, then expenses incurred by the dealer for hosting the event may be deemed a contribution, thereby triggering the two-year ban on municipal securities business with that issuer. Such expenses may include, but are not limited to, the cost of the facility; the cost of refreshments; any expenses paid for administrative staff; and the payment or reimbursement of any of the issuer official's expenses for the event.[2]

The dollar amount of an expense incurred by the dealer for hosting the event is not dispositive of whether that expense constitutes a contribution and therefore triggers the ban on municipal securities business under Rule G-37. If, depending on the particular facts and circumstances, the event is a fundraising event, then any expense incurred by the dealer may be deemed a contribution to the issuer official, thereby triggering the two-year ban on municipal securities business with that issuer.

By publishing this notice, the MSRB is not suggesting that dealers curtail their legitimate hosting or sponsoring of meetings or conferences where issuer officials are invited to attend or are featured speakers. However, dealers should consider carefully the true nature of such events and the possible application of Rule G-37 if the meeting or conference involves fundraising activities in support of an issuer official.

In addition to dealers' Rule G-37 obligations, Rule G-27, on supervision, requires that dealers supervise the conduct of their municipal securities activities, and that of their associated persons, to ensure compliance with MSRB rules, and that dealers adopt, maintain and enforce written supervisory procedures reasonably designed to ensure such compliance. It is therefore incumbent on dealers to have appropriate supervisory procedures in place to review the nature of, and activities surrounding, the types of events discussed in this notice to ensure that Rule G-37 is not violated, directly or indirectly. Dealers should therefore take appropriate steps to ensure that such events are not fundraising events by, among other things, ensuring that: (i) contributions are not solicited by the issuer official or his/her staff; (ii) any attendee contact information provided by the dealer is not used by the issuer official or his/her staff to solicit contributions; and (iii) contributions are not solicited, coordinated or made by dealer personnel in connection with the event.[3]

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[1] The MSRB has previously stated that "Dealers may not engage in municipal securities business with issuers if they or their municipal finance professionals en-gage in any kind of fundraising activities for officials of such issuers…." See Securities Exchange Act Release No. 33868 (April 7, 1994), 59 FR 17621 (April 13, 1994). *See also Questions and Answers Concerning Political Contributions and Prohibitions on Municipal Securities Business: Rule G-37* (May 24, 1994), reprinted in *MSRB Rule Book; MSRB Interpretation of November 7, 1994 (Solicitation of Contributions), reprinted in MSRB Rule Book; MSRB Interpretation of May 31, 1995 (Campaign for Federal Office),* reprinted in *MSRB Rule Book*.

The MSRB has stated, however, that MFPs are "free to, among other things, solicit votes or other assistance for such an issuer official so long as the solicitation does not constitute a solicitation or coordination of contributions for the official." In upholding the constitutionality of Rule G-37, the United States Court of Appeals for the District of Columbia Circuit observed that "municipal finance professionals are not in any way restricted from engaging in the vast majority of political activities, including making direct expenditures for the expression of their views, giving speeches, soliciting votes, writing books, or appearing at fundraising events." *Blount v. SEC*, 61 F.3d 938, 948 (D.C. Cir. 1995), *cert. denied*, 116 S. Ct. 1351 (1996). However, the MSRB has stated that hosting or paying to attend a fundraising event may constitute a contribution subject to section (b) of the rule. *See* Question and Answers II.11 and II.18 (May 24, 1994; *See also MSRB Interpretation of May 31, 1995 (Campaign for Federal Office),* reprinted in *MSRB Rule Book*.

[2] Other amounts paid to issuer officials (such as honoraria) may be subject to Rule G-20 on gifts, gratuities and non-cash compensation, to the extent such payments are in relation to the issuer's municipal securities activities.

[3] Although Rule G-37(c) prohibits MFPs from soliciting or coordinating contributions, the MSRB has previously stated that "Whether a municipal finance professional is permitted by section (c) of the rule to indicate to third parties that someone is a 'great candidate' or to provide a list of third parties for the candidate to call would be dependent upon all the facts and circumstances surrounding such action. The facts and circumstances that may be relevant for this purpose may include, among any number of other factors, whether the municipal finance professional has made an explicit or implicit reference to campaign contributions in his or her conversations with third parties whom the candidate may contact and whether the candidate contacts such third parties seeking campaign contributions. However, the totality of the facts and circumstances surrounding any particular activity must be considered in determining whether such activity may constitute a solicitation of contributions for purposes of section (c) of the rule. Therefore, the Board cannot prescribe an exhaustive list of precautions that would assure that no violation of this section would occur as a result of such activity." *See MSRB Interpretive Notice on Solicitation of Contributions* (May 21, 1999), reprinted in *MSRB Rule Book*.

Reminder Regarding the Application of Rule G-37 to Federal Election Campaigns of Issuer Officials

September 11, 2008

In 1999, the Municipal Securities Rulemaking Board (MSRB) published a notice on the application of Rule G-37, on political contributions and prohibitions on municipal securities business, to Presidential campaigns of issuer officials.[1] In general, the notice described a 1995 interpretive letter[2] in which the Board noted that Rule G-37 is applicable to contributions given to an **official of an issuer**[3] who seeks election to federal office, such as the Presidency. The Board also explained that the only exception to Rule G-37's absolute prohibition on business is for certain contributions made to issuer officials by municipal finance professionals. Specifically, contributions by such persons to an official of an issuer would not invoke application of the prohibition if the municipal finance

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professional is entitled to vote for such official, and provided that any contributions by such municipal finance professional do not exceed, in total, $250 to each official, per election. In the example of an issuer official running for President, any municipal finance professional in the country can contribute the *de minimis* amount to the official's Presidential campaign without causing a ban on municipal securities business with that issuer. Finally, the Board noted that a Presidential candidate who has accepted public funding for the general election is prohibited under federal law from accepting any contributions to further his or her general election campaign. In these circumstances, federal law allows individuals to contribute to the candidate's compliance fund, which uses the contributions solely for legal and accounting services to ensure compliance with federal law and not for campaign activities. Thus, any municipal finance professional in the country can contribute the *de minimis* amount to an issuer official's compliance fund without causing a ban on municipal securities business with that issuer. This would apply if the issuer official runs for President or Vice President.

The MSRB wishes to remind dealers that these concepts also apply to an issuer official who campaigns for **any** federal office. For example, any municipal finance professional residing in a state in which an issuer official is campaigning for a statewide federal office may contribute the *de minimis* amount to the official's campaign without causing a ban on municipal securities business with that issuer. The MSRB does not opine whether any particular individual is or is not an issuer official.

The MSRB also wishes to remind dealers to be aware of the Rule G-37 issues involving indirect rule violations and contributions to non-dealer associated political action committees and payments to political parties, which issues have been the subjects of previous notices and interpretive Questions and Answers.[4]

[1] *See* Application of Rule G-37 to Presidential Campaigns of Issuer Officials reprinted in *MSRB Rule Book* (January 1, 2008) at 246-247. The notice is also available from the *MSRB Rules/Interpretive Notices* section of the MSRB's website at www.msrb.org.

[2] *See* MSRB Interpretation of May 31, 1995, reprinted in *MSRB Rule Book* (January 1, 2008) at 251-253. The letter is also available from the *MSRB Rules/Interpretive Letters* section of the MSRB's website at www.msrb.org.

[3] The term "official of an issuer" is defined in Rule G-37(g)(vi) as any person (including any election committee for such person) who was, at the time of the contribution, an incumbent, candidate or successful candidate: (A) for elective office of the issuer which office is directly or indirectly responsible for, or can influence the outcome of, the hiring of a broker, dealer or municipal securities dealer for municipal securities business by the issuer; or (B) for any elective office of a state or of any political subdivision, which office has authority to appoint any person who is directly or indirectly responsible for, or can influence the outcome of, the hiring of a broker, dealer or municipal securities dealer for municipal securities business by an issuer.

[4] *See* Notice Concerning Indirect Rule Violations: Rules G-37 and G-38, reprinted in *MSRB Rule Book* (January 1, 2008) at 248-249; Rule G-37 Questions and Answers Nos. III.4 and III.5 regarding contributions to a non-dealer associated PAC and payments to a state or local political party, reprinted in *MSRB Rule Book* (January 1, 2008) at 240; and Rule G-37 Question and Answer No. III.7 regarding supervisory procedures relating to indirect contributions, reprinted in *MSRB Rule Book* (January 1, 2008) at 240-241. The notice and Questions and Answers are also available on the MSRB's website at www.msrb.org.

Build America Bonds and Other Tax Credit Bonds: Application of Rule G-37 to Solicitations of Issuers

June 9, 2009

On April 24, 2009, the Municipal Securities Rulemaking Board (the "MSRB") published Notice 2009-15 on Build America Bonds and Other Tax Credit Bonds (the "April 2009 Notice"). In the April 2009 Notice, the MSRB explained that Build America Bonds and the other tax credit bonds described in the April 2009 Notice are municipal securities and are, therefore, subject to MSRB rules, including Rule G-37 on political contributions.

The MSRB understands that, for the purpose of obtaining municipal securities business as defined in Rule G-37,[1] personnel from the taxable desk of brokers, dealers, or municipal securities dealers ("dealers"), or personnel from other departments or divisions of dealers that do not traditionally engage in municipal securities business, may participate in presentations to potential issuers of Build America Bonds or other tax credit bonds in response to requests for proposals or in other pre-selection meetings with such potential issuers to discuss the structuring, pricing, sales, and distribution of taxable bonds. Dealers are reminded that such participation generally will make those personnel "municipal finance professionals" under Rule G-37(g)(iv)(B), because the personnel are considered to have solicited municipal securities business.[2]

Pursuant to Rule G-37(b)(ii), political contributions made by such personnel to an official of the issuer solicited by such personnel within the two years prior to the solicitation would need to be examined by the dealer to determine whether the two-year ban on municipal securities business imposed by Rule G-37(b)(i) is triggered by the solicitation.[3] By engaging in solicitation activities, such personnel would become municipal finance professionals and subsequent political contributions to issuer officials by such personnel would also be subject to Rule G-37.

[1] Rule G-37(g)(vii) defines municipal securities business as "(A) the purchase of a primary offering (as defined in rule A-13(f)) of municipal securities from the issuer on other than a competitive bid basis (*e.g.*, negotiated underwritings); or (B) the offer or sale of a primary offering of municipal securities on behalf of any issuer (*e.g.*, private placement); or (C) the provision of financial advisory or consultant services to or on behalf of an issuer with respect to a primary offering of municipal securities in which the dealer was chosen to provide such services on other than a competitive bid basis; or (D) the provision of remarketing agent services to or on behalf of an issuer with respect to a primary offering of municipal securities in which the dealer was chosen to provide such services on other than a competitive bid basis."

[2] Any associated person of a dealer who solicits municipal securities business is a municipal finance professional pursuant to Rule G-37(g)(iv)(B), regardless of whether such associated person engages in any other municipal securities activities for the dealer. Pursuant to Rule G-37(g)(ix)

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and Rule G-38(b)(i), solicitation of municipal securities business consists of any direct or indirect communication with an issuer for the purpose of obtaining or retaining municipal securities business.

Once a dealer has been selected to engage in the underwriting of the new issue, communications with the issuer necessary to undertake that engagement are not considered solicitations for purposes of Rule G-37. *See* Rule G-38 Interpretation — Interpretive Notice on the Definition of Solicitation Under Rules G-37 and G-38 (June 8, 2006).

[3] Thus, if a municipal finance professional has made a political contribution to an official of an issuer, other than a "*de minimis*" contribution under Rule G-37(b), during the preceding two years, the dealer would be banned from engaging in municipal securities business with such issuer if the municipal finance professional were to participate in the solicitation of such business. Political contributions made by a municipal finance professional to an issuer official for whom such municipal finance professional is entitled to vote are considered *de minimis* and would not result in a ban on municipal securities business if such contributions, in total, did not exceed $250 per election.

Guidance on Dealer-Affiliated Political Action Committees Under Rule G-37

December 12, 2010

Since 1994, the Municipal Securities Rulemaking Board ("MSRB") has sought to eliminate pay-to-play practices in the municipal securities market through its Rule G-37, on political contributions and prohibitions on municipal securities business.[1] Under the rule, certain contributions to elected officials of municipal securities issuers made by brokers, dealers and municipal securities dealers ("dealers"), municipal finance professionals ("MFPs") associated with dealers, and political action committees ("PACs") controlled by dealers and their MFPs ("dealer-controlled PACs")[2] may result in prohibitions on dealers from engaging in municipal securities business with such issuers for a period of two years from the date of any triggering contributions.

Rule G-37 requires dealers to record and disclose certain contributions to issuer officials, state or local political parties, and bond ballot campaigns, as well as other information, on Form G-37 to allow public scrutiny of such contributions and the municipal securities business of a dealer. In addition, dealers and MFPs generally are prohibited from soliciting others (including affiliates of the dealer or any PACs) to make contributions to officials of issuers with which the dealer is engaging or seeking to engage in municipal securities business, or to political parties of a state or locality where the dealer is engaging or seeking to engage in municipal securities business. Dealers and MFPs also are prohibited from circumventing Rule G-37 by direct or indirect actions through any other persons or means.[3]

Due to changes in the financial markets since the adoption of Rule G-37, many dealers and MFPs have become affiliated with a broad range of other entities in increasingly diverse organizational structures. Some of these affiliated entities (including but not limited to banks, bank holding companies, insurance companies and investment management companies) have formed or otherwise maintain relationships with PACs ("affiliated PACs") and other political organizations, many of which may make contributions to issuer officials. Such relationships raise questions regarding the extent to which affiliated PACs may effectively be controlled by dealers or their MFPs and thereby constitute dealer-controlled PACs whose contributions are subject to Rule G-37. Further, such relationships raise concerns regarding whether the contributions of such affiliated PACs, even if not viewed as dealer-controlled PACs, may be used by dealers or their MFPs to circumvent Rule G-37 as indirect contributions for the purpose of obtaining or retaining municipal securities business.

The MSRB remains concerned that individuals and firms subject to Rule G-37 may seek ways around the rule through payments to and contributions by affiliated PACs that benefit issuer officials. When evaluating whether contributions made by affiliated PACs may be subject to the provisions of Rule G-37, the MSRB emphasizes that dealers should first determine whether such affiliated PAC would be viewed as a dealer-controlled PAC. If an affiliated PAC is determined to be a dealer-controlled PAC, then its contributions to issuer officials would subject the dealer to the ban on municipal securities business and its contributions to issuer officials, state or local political parties, and bond ballot campaigns would be subject to disclosure under Rule G-37. Even if the affiliated PAC is determined not to be a dealer-controlled PAC, the dealer still must consider whether payments made by the dealer or its MFPs to such affiliated PAC could ultimately be viewed as an indirect contribution under Rule G-37(d) if, for example, the affiliated PAC is being used as a conduit for making a contribution to an issuer official.

The MSRB wishes to provide guidance regarding the factors that may result in an affiliated PAC being viewed as controlled by the dealer or an MFP of the dealer and thereby being treated as a dealer-controlled PAC for purposes of Rule G-37. The MSRB also wishes to ensure that the industry is cognizant of prior MSRB guidance regarding the potential for payments to and contributions by affiliated PACs to constitute indirect contributions under the rule.

Indicators of Control by Dealers and MFPs

Soon after adoption of Rule G-37, the MSRB stated that each dealer must determine whether a PAC is dealer controlled, with any PAC of a non-bank dealer assumed to be a dealer-controlled PAC.[4] The MSRB has also stated that the determination of whether a PAC of a bank dealer[5] is a dealer-controlled PAC would depend upon whether the bank dealer or anyone from the bank dealer department has the ability to direct or cause the direction of the management or the policies of the PAC.[6] Such ability to direct or cause the direction of the management or the policies of a PAC also would be indicative of control of such PAC by a non-bank dealer or any of its MFPs, although it would not be the exclusive indicator of such control. While this guidance establishes basic principles with regard to making a determination of control, it does not set out an exhaustive list of circumstances under which a PAC may or may not be viewed as dealer or MFP controlled.

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The specific facts and circumstances regarding the creation, management, operation and control of a particular PAC must be considered in making a determination of control with respect to such PAC.

Creation of PAC. In general, a dealer or MFP involved in the creation of a PAC would continue to be viewed as controlling such PAC unless and until such dealer or MFP becomes wholly disassociated in any direct or indirect manner with the PAC. Thus, any PAC created by a dealer, acting either in a sole capacity or together with other entities or individuals, would be presumed to be a dealer-controlled PAC. This presumption continues at least as long as the dealer or any MFP of the dealer retains any formal or informal role in connection with such PAC, regardless of whether such dealer or MFP has the ability to direct or cause the direction of the management or policies of the PAC. This presumption also would continue for so long as any associated person of the dealer (either an individual, whether or not an MFP, or an affiliated company directly or indirectly controlling, controlled by or under common control with the dealer) has the ability to direct or cause the direction of the management or policies of the PAC. In effect, a dealer could not attempt to treat a PAC it created and then spun off to the control of an affiliated company as not being a dealer-controlled PAC. However, depending on the totality of the facts and circumstances, a PAC originally created by a dealer in which the dealer or its MFPs no longer retain any role, and with respect to which any other affiliates retain only very limited non-control roles, could be viewed as no longer controlled by the dealer.

Similarly, a PAC created by any person associated with the dealer at the time the PAC was created, acting either in a sole capacity or together with other entities or individuals, would be presumed to be controlled by such person. Such presumption continues at least for so long as such person retains any formal or informal role in connection with such PAC, regardless of whether any such person has the ability to direct or cause the direction of the management or policies of the PAC. This presumption also would continue for so long as any other person associated with the same dealer as the creator of the PAC has the ability to direct or cause the direction of the management or policies of the PAC. Although such PAC may not be viewed as being subject to Rule G-37 as an MFP-controlled PAC when originally created if such person was not then an MFP, if the person creating the PAC, or any other associated person with the ability to direct or cause the direction of the management or policies of such PAC, is or later becomes an MFP, such PAC would be deemed an MFP-controlled PAC.[7]

Management, Funding and Control of PAC. Beyond the role of the dealer, MFP or other person in creating a PAC and maintaining an ongoing association with such PAC, the ability to direct or cause the direction of the management or the policies of a PAC is also important. Strong indicators of management and control are not mitigated by the fact that such dealer, MFP or other person does not have exclusive, predominant or "majority" control of the PAC, its management, its policies, or its decisions with regard to making contributions. For example, the fact that a dealer or MFP may only have a single vote on a governing board or other decision-making or advisory board or committee of a PAC, and therefore does not have sole power to cause the PAC to take any action, would not obviate the status of such dealer or MFP as having control of the PAC, so long as the dealer or MFP has the ability, alone or in conjunction with other similarly empowered entities or individuals, to direct or cause the direction of the management or the policies of the PAC. In essence, it is possible for a single PAC to be viewed as controlled by multiple different dealers if the control of such PAC is shared among such dealers, although the presumption of control may be rebutted as described below.

The level of funding provided by dealers and their MFPs to a PAC may also be indicative of control. A PAC that receives a majority of its funding from a single dealer (including the collective contributions of its MFPs and employees) or a single MFP is conclusively presumed to be controlled by such dealer or MFP, regardless of the lack of any of the other indicia of control described in this notice. Another important factor is the size or frequency of contributions by a dealer or MFP,[8] viewed in light of the size and frequency of contributions made by other contributors not affiliated in any way with such dealer or MFP. For example, a limited number of small contributions freely made by employees of a dealer to an affiliated PAC (*i.e.,* not directed by the dealer and not part of an automated or otherwise dealer-organized program of contributions) would not, by itself, automatically raise a presumption of dealer control so long as the collective contributions by the dealer or its employees is not significant as compared to the total funding of the affiliated PAC, subject to consideration of the other relevant facts and circumstances. In addition, contributions made by a dealer or MFP to an affiliated PAC could raise a stronger inference of *de facto* dealer or MFP control than when such contributions were made to non-affiliated PACs.

However, even where a dealer or MFP is not viewed as controlling a PAC under the principles described above, dealers should remain mindful of the potential for leveraging the contribution activities of affiliated PACs in soliciting municipal securities business in a way that could raise a presumption of dealer or MFP control. For example, an MFP's references to the contributions made by an affiliated PAC during solicitations of municipal securities business could, depending on the facts and circumstances, serve as evidence of coordination of such PAC's activities with the dealer or MFP that could, together with other facts, be indicative of direct or indirect control of the PAC by such dealer or MFP. Such control could be found even in circumstances where the dealer or its MFPs have not made contributions to the affiliated PAC.[9]

Of course, the presumptions described above may be rebutted, depending upon the totality of facts and circumstances. Considerations that may serve to rebut such presumptions may include whether the dealer or person creating the PAC:

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(i) participates with a broad-based group of other entities and/or individuals in creating the PAC, (ii) at no time undertakes any direct or indirect role (and, in the case of a dealer, no person associated with the dealer undertakes any direct or indirect role) in leading the creation of the PAC or in directing or causing the direction of the management or the policies of the PAC, and/or (iii) provides funding for such PAC (and, in the case of a dealer, its associated persons collectively provide funding for such PAC) that is not substantially greater than the typical funding levels of other participants in the PAC who do not undertake a direct or indirect role in leading the creation of the PAC or in directing or causing the direction of the management or the policies of the PAC.

Indirect Contributions Through Bank PACs or Other Affiliated PACs

As noted above, if an affiliated PAC is determined not to be a dealer-controlled PAC, a dealer must still consider whether payments made by the dealer or its MFPs to such affiliated PAC could be viewed as an indirect contribution that would become subject to Rule G-37 pursuant to section (d) thereof. The MSRB has provided extensive guidance on such indirect contributions, noting in 1996 that, depending on the facts and circumstances, contributions to a non-dealer associated PAC that is soliciting funds for the purpose of supporting a limited number of issuer officials might result in the same prohibition on municipal securities business as would contributions made directly to the issuer official.[10] The MSRB also noted that dealers should make inquiries of a non-dealer associated PAC that is soliciting contributions in order to ensure that contributions to such a PAC would not be treated as an indirect contribution.[11]

The MSRB also has previously provided guidance in 2005 with regard to supervisory procedures[12] that dealers should have in place in connection with payments to a non-dealer associated PAC or a political party to avoid indirect rule violations of Rule G-37(d). In such guidance, the MSRB stated that, in order to ensure compliance with Rule G-27(c) as it relates to payments to political parties or PACs and Rule G-37(d), each dealer must adopt, maintain and enforce written supervisory procedures reasonably designed to ensure that neither the dealer nor its MFPs are using payments to political parties or non-dealer controlled PACs to contribute indirectly to an official of an issuer.[13] Among other things, dealers might seek to establish procedures requiring that, prior to the making of any contribution to a PAC, the dealer undertake certain due diligence inquiries regarding the intended use of such contributions, the motive for making the contribution and whether the contribution was solicited. Further, in order to ensure compliance with Rule G-37(d), dealers could consider establishing certain information barriers between any affiliated PACs and the dealer and its MFPs.[14] Dealers that have established such information barriers should review their adequacy to ensure that the affiliated entities' contributions, payments or PAC disbursement decisions are neither influenced by the dealer or its MFPs, nor communicated to the dealers and the MFPs.

The MSRB subsequently noted that the 2005 guidance did not establish an obligation to put in place the specific procedures and information barriers described in the guidance so long as the dealer in fact has and enforces other written supervisory procedures reasonably designed to ensure that the conduct of the dealer and its MFPs are in compliance with Rule G-37(d).[15] Thus, for example, when information regarding past or planned contributions of an affiliated PAC is or may be available to or known by the dealer or its MFPs, the dealer might establish and enforce written supervisory procedures that prohibit the dealer or MFP from providing information to issuer personnel regarding past or anticipated affiliated PAC contributions.

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1 Rule G-37 defines municipal securities business as: (i) the purchase of a primary offering of municipal securities from an issuer on other than a competitive bid basis; (ii) the offer or sale of a primary offering of municipal securities on behalf of an issuer; (iii) the provision of financial advisory or consultant services to or on behalf of an issuer with respect to a primary offering of municipal securities in which the dealer was chosen to provide such services on other than a competitive bid basis; or (iv) the provision of remarketing agent services to or on behalf of an issuer with respect to a primary offering of municipal securities in which the dealer was chosen to provide such services on other than a competitive bid basis.

2 The MSRB has previously stated that the matter of control depends upon whether or not the dealer or the MFP has the ability to direct or cause the direction of the management or policies of the PAC (MSRB Question & Answer No. IV. 24 — Dealer Controlled PAC).

3 Rule G-37(d) provides that no broker, dealer or municipal securities dealer or any municipal finance professional shall, directly or indirectly, through or by any other person or means, do any act which would result in a violation of sections (b) or (c) of the rule. Section (b) relates to the ban on business and Section (c) relates to the prohibition on soliciting and coordinating contributions.

4 *See* Rule G-37 Question & Answer No. IV.24 (May 24, 1994).

5 MSRB Rule D-8 defines a bank dealer as a municipal securities dealer which is a bank or a separately identifiable department or division of a bank.

6 *See* Rule G-37 Question & Answer No. IV.24 (May 24, 1994).

7 However, a PAC created by an individual acting in his or her formal capacity as an officer, employee, director or other representative of a dealer, regardless of whether such individual is an MFP, would be deemed a dealer-controlled PAC rather than a PAC controlled by the individual.

8 A dealer or an MFP may make sufficiently large or frequent contributions to a PAC so as to obtain effective control over the PAC, depending on the totality of facts and circumstances.

9 *See* Rule G-37 Question & Answer No. III.7 (September 22, 2005) for a discussion of potential indirect contributions through affiliated PACs.

10 *See* Rule G-37 Question & Answer No. III.4 (August 6, 1996).

11 *See* Rule G-37 Question & Answer No. III.5 (August 6, 1996).

12 Rule G-27, on supervision, provides in section (c) that each dealer shall adopt, maintain and enforce written supervisory procedures reasonably designed to ensure that the conduct of the municipal securities activities of the dealer and its associated persons are in compliance with MSRB rules.

13 *See* Rule G-37 Question & Answer No. III.7 (September 22, 2005).

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[14] The potential information barriers described in the guidance include: i) a prohibition on the dealer or MFP from recommending, nominating, appointing or approving the management of affiliated PACs; ii) a prohibition on sharing the affiliated PAC's meeting agenda, meeting schedule, or meeting minutes; iii) a prohibition on identification of prior affiliated PAC contributions, planned PAC contributions or anticipated PAC contributions; iv) a prohibition on directly providing or coordinating information about prior negotiated municipal securities businesses, solicited municipal securities business, and planned solicitations of municipal securities business; and v) other such information barriers as the firms deems appropriate to monitor conflicting interest and prevent abuses effectively.

[15] *See* Rule G-37 Interpretive Letter — Supervisory procedures relating to indirect contributions; conference accounts and 527 organizations (December 21, 2006).

See also:

Rule D-12 Interpretation — Interpretation Relating to Sales of Municipal Fund Securities in the Primary Market, January 18, 2001.

Rule G-38 Interpretation — Interpretive Notice on the Definition of Solicitation Under Rules G-37 and G-38, June 8, 2006

Interpretive Letters

Solicitation of contributions. This is in response to your letter dated September 29, 1994 regarding rule G-37, on political contributions and prohibitions on municipal securities business. You review a situation regarding a municipal finance professional's participation in a fundraising event for a certain state official. You seek guidance on two matters. First, you inquire whether the activities of the municipal finance professional in connection with this fundraiser constitute a violation of the solicitation prohibition in rule G-37(c). Second, you inquire that, if a violation of rule G-37(c) occurred, would such violation subject your firm to a two-year ban on municipal securities business with the state. The Board has reviewed your letter and authorized this response.

Rule G-37(b) prohibits dealers from engaging in municipal securities business with an issuer within two years after any contribution to an official of such issuer made by: (i) the dealer; (ii) any municipal finance professional associated with such dealer; or (iii) any political action committee controlled by the dealer or municipal finance professional.[1] Rule G-37(c) provides that no dealer or any municipal finance professional shall solicit any person or political action committee to make any contribution, or shall coordinate any contributions, to an official of an issuer with which the dealer is engaging or is seeking to engage in municipal securities business.

With regard to your first inquiry, the Board is not the appropriate authority to determine whether in this instance the municipal finance professional's activities amounted to a solicitation of contributions in violation of rule G-37(c). While the Board has authority to adopt rules concerning transactions in municipal securities effected by brokers, dealers and municipal securities dealers, it has no enforcement authority over dealers; that authority is vested with the National Association of Securities Dealers, Inc. (NASD) for securities firms. Whether a particular activity should be characterized as a solicitation of a contribution and a violation of the rule is fact specific, and further inquiry and investigation may be appropriate prior to a determination of violation. The Board believes that it is more appropriate for the NASD to make such inquiries and determinations. Your letter has been forwarded to the NASD for its review.

The Board believes, however, that if a dealer's or a municipal finance professional's name appears on fundraising literature for an issuer official for which the dealer is engaging or seeking to engage in municipal securities business, there is a presumption that such activity is a solicitation by the named party.

With regard to your second inquiry, a violation of rule G-37(c) does not trigger a two-year ban on engaging in municipal securities business with an issuer. If the NASD finds a violation of rule G-37(c) has occurred, the NASD will determine the appropriate sanction.

Finally, rule G-27, on supervision, requires each dealer to adopt, maintain and enforce written supervisory procedures reasonably designed to ensure compliance with Board rules, including rule G-37. In view of the significant penalties associated with rule G-37, including a two-year ban on municipal securities business with an issuer in certain cases, effective compliance procedures are essential. We recognize that some dealers may focus their compliance procedures on the areas in the rule concerning certain political contributions. Rule G-37 has other important provisions, however, such as the prohibition against certain solicitations and the recordkeeping and reporting requirements. Given the situation presented in your letter, your firm may wish to review its procedures to determine whether they are sufficient to ensure compliance with all provisions of rule G-37. *MSRB Interpretation of November 7, 1994*.

[1] The prohibition does not apply if the only contributions to officials of issuers are made by municipal finance professionals entitled to vote for such officials, and provided, such contributions, in total, are not in excess of $250 by each such municipal finance professional to each official of such issuer, per election.

Campaign for federal office. This is in response to your letter dated May 5, 1995, concerning the application of the Board's rule G-37 to a campaign for President of the United States. You ask specifically about the application of rule G-37 to contributions to Governor [name deleted] presidential campaign. The Board reviewed your letter at its May 18-19, 1995 meeting and has authorized this response.

As you know, rule G-37, among other things, prohibits any broker, dealer or municipal securities dealer (dealer) from engaging in municipal securities business with an issuer within two years after any contribution to an official of such issuer made by: (i) the dealer; (ii) any municipal finance professional associated with such dealer; or (iii) any political action committee controlled by the dealer or any municipal finance professional. The only exception to rule G-37's absolute prohibition on business is for certain contributions made to issuer officials by municipal finance professionals. Specifically, con-

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tributions by such persons to officials of issuers would not invoke application of the prohibition if the municipal finance professional is entitled to vote for such official, and provided that any contributions by such municipal finance professional do not exceed, in total, $250 to each official, per election. Rule G-37(g)(i) defines the term "contribution" as any "gift, subscription, loan, advance, or deposit of money or anything of value made: (A) for the purpose of influencing any election for federal, state or local office..."

The Board previously has clarified that rule G-37 does not encompass all contributions to candidates for federal office. Rather, for federal office, the rule encompasses only those contributions to a current issuer official who is seeking election to federal office.[1]

You ask whether the Governor of [a state] is an "official of an issuer" for purposes of rule G-37. Rule G-37(g)(vi) defines the term "official of an issuer" as "any person (including any election committee for such person) who was the time of the contribution, an incumbent, candidate or successful candidate: (A) for elective office of the issuer which office is directly or indirectly responsible for, or can influence the outcome of, the hiring of a broker, dealer or municipal securities dealer for municipal securities business by the issuer; or (B) for any elective office of a state or of any political subdivision, which office has authority to appoint any official(s) of an issuer..." as defined above. The Board has not provided any exemptions from, or exception to, the definition "official of an issuer" as set forth in rule G-37.

The Board does not make determinations concerning whether a particular individual meets the definition of "official of an issuer." The Board believes that because such determinations may involve particular issues of fact, such decisions must generally be the dealer's responsibility. The Board has, however, provided guidance in this area by recommending that dealers review the scope of authority conferred upon the particular office (and not the individual) to determine whether the office is directly or indirectly responsible for, or can influence the outcome of, the hiring of a dealer for municipal securities business.[2] For example, a state may have certain issuing authorities whose boards of directors are appointed by the governor. In such circumstances, the Board previously has stated that it intended to include the governor as an official of the issuer.[3]

You ask whether rule G-37 applies to candidates for President of the United States. As noted above, the term "contribution" as defined in rule G-37(g)(i) includes payments "for the purpose of influencing any election for **federal**, state or local office." [Emphasis added]. Thus, rule G-37 is applicable to contributions given to officials of issuers who seek election to federal office, such as the House of Representatives, the Senate or the Presidency.

You ask whether rule G-37 unfairly impinges upon Governor [name deleted] equal protection and freedom of speech and association rights in the context of the Presidential election since he is, at this time, the only candidate with respect to whom those covered by the rule face "disqualification" from municipal securities business for making contributions. You also state that rule G-37 violates the First Amendment rights of association or speech by limiting the ability of municipal finance professionals to contribute to Governor [name deleted] presidential campaign. In its order approving rule G-37, the Securities and Exchange Commission stated that:

> any resulting hardship to candidates for federal office who are currently local officials is not a reason for eliminating these requirements. The MSRB cannot overlook potential conflicts of interest solely because there are candidates for the same federal office who do not face the same conflicts. In any event, the resulting burden to current local officials does not appear to be significant.[4]

The Board believes that rule G-37 is not the product of governmental action and is not subject to Constitutional review. However, as you may be aware, these issues currently are pending before the D.C. Court of Appeals.

You ask whether the creation of the District of Columbia Financial Responsibility and Management Assistance Authority means that the President of the United States is an "official of an issuer" and that all candidates for President now fall under rule G-37. Rule G-37(g)(vi) defines "official of an issuer" as "any person ... who was, at the time of the contribution, an incumbent, candidate or successful candidate: (A) *for elective office of the issuer* which office is directly or indirectly responsible for, or can influence the outcome of, the hiring of a broker, dealer or municipal securities dealer for municipal securities business by the issuer; or (B) for any elective office of a state or political subdivision, which office has authority to appoint any official(s) of an issuer." [Emphasis added]. The President does not hold an elective office of an "issuer" of municipal securities. In addition, the President is not, and would not become, an issuer official by virtue of his authority to appoint members to the D.C. Financial Responsibility and Management Assistance Authority because the Presidency is not an elective office of a state or political subdivision.

You ask a number of questions concerning what activities are permissible by those individuals covered by the rule. You ask whether the $250 *de minimis* contribution exception in rule G-37 applies to Presidential candidates. As noted previously, the only exception to rule G-37's absolute prohibition on business is for certain contributions made to issuer officials by municipal finance professionals. Specifically, contributions by such persons to officials of issuers would not invoke application of the prohibition if the municipal finance professional is entitled to vote for such official, and provided that any contributions by such municipal finance professional do not exceed, in total, $250 to each official, per election. The Board previously has stated that, if an issuer official is involved in a primary election prior to the general election, the municipal finance professional who is entitled to vote for such official may contribute up to $250 for the primary election and $250 for the general election to each such official.[5]

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[Two paragraphs deleted.][6]

You ask whether an individual covered by rule G-37 may raise money from others on behalf of Governor [name deleted]. Rule G-37(c) provides that no dealer or any municipal finance professional shall solicit any person or political action committee to make any contribution, or shall coordinate any contributions, to an official of an issuer with which the dealer is engaging or is seeking to engage in municipal securities business. A violation of rule G-37(c) does not trigger a two-year ban on engaging in municipal securities business with an issuer; however, if the appropriate enforcement agency finds that a violation of rule G-37(c) has occurred, the enforcement agency will determine the appropriate sanction.[7] You ask whether the *de minimis* exception applies to solicited and bundled contributions of $250 and less. Solicitations of contributions are prohibited by the rule (for those covered); therefore, there is no *de minimis* exception.

You ask whether a covered individual may hold a party in his home for a Presidential candidate if contributions are raised at the party. The Board has stated that rule G-37 is not intended to restrict municipal finance professionals from engaging in personal volunteer work.[8] Personal expenses incurred by the municipal finance professional in the conduct of such volunteer work, which expenses are purely incidental to such work and unreimbursed by the dealer (*e.g.*, cab fares and personal meals), would not constitute a contribution. However, the expenses incurred for hosting a party to solicit contributions would be viewed as a contribution.[9] The Board also has stated that if a dealer's or a municipal finance professional's name appears on fundraising literature for an issuer official for which the dealer is engaging or seeking to engage in municipal securities business then there is a presumption that such activity is a solicitation by the dealer or municipal finance professional in violation of section (c) of the rule.[10]

Finally, you ask whether spouses and eligible children of covered personnel may contribute to a Presidential candidate. The Board has stated that contributions to issuer officials by municipal finance professionals' spouses and household members are not covered by rule G-37 unless these contributions are directed by the municipal finance professional, which is prohibited by section (d) of the rule.[11] *MSRB interpretation of May 31, 1995*.

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[1] *See MSRB Reports*, Vol. 14, No. 3 (June 1994) at 14.

[2] *Id*.

[3] *See MSRB Reports*, Vol. 14, No. 4 (August 1994) at 24.

[4] *See* Securities Exchange Act Release No. 33868 (April 7, 1994) at 41-42; 59 FR 17621.

[5] *See MSRB Reports*, Vol. 14, No. 3 (June 1994) at 13.

[6] An interpretation on determining whether a municipal finance professional is "entitled to vote" for an issuer official was withdrawn by the Board in January 1996. The Board has issued a revised interpretation of "entitled to vote" which states that a municipal finance professional is "entitled to vote" for an issuer official if the municipal finance professional's principal residence is in the locality in which the issuer official seeks election. In such instances, a municipal finance professional is able to make a *de minimis* contribution without resulting in a ban on municipal securities business. For example, if an issuer official is a governor running for re-election, anyone residing in that state may make a *de minimis* contribution to the official without causing a ban on municipal securities business with that issuer. In the example of an issuer official running for President, anyone in the country can contribute the *de minimis* amount to the official's Presidential campaign. The Securities and Exchange Commission approved this revision on February 16, 1996. *See MSRB Reports*, Vol. 16. No. 1 (January 1996) at 31-34.

[7] The enforcement agencies are: for securities firms, the National Association of Securities Dealers; and for bank dealers, the Federal Deposit Insurance Corporation, the Federal Reserve Board, or the Office of the Comptroller of the Currency.

[8] *See MSRB Reports*, Vol. 14, No. 3 (June 1994) at 15.

[9] *Id*.

[10] *See MSRB Reports*, Vol. 14, No. 5 (December 1994) at 17.

[11] *See MSRB Reports*, Vol. 14, No. 3 (June 1994) at 15.

Solicitation of contributions. This is in response to your letter in which you summarize your understanding of our telephone conversation relating to section (c) of rule G-37, on political contributions and prohibitions on municipal securities business. As I noted during our conversation, the Board's rules, including rule G-37, apply solely to brokers, dealers and municipal securities dealers ("dealers"). The Board's rulemaking authority, granted under Section 15B of the Securities Exchange Act of 1934, does not extend to issuers of municipal securities. Thus, rule G-37 does not impose any obligations upon issuers or officials of issuers. Although the Board appreciates your interest in not placing dealers and their associated persons in a position to violate their obligations under the rule, it is ultimately the responsibility of such dealers and associated persons, in consultation with appropriate compliance personnel, to ensure compliance with Board rules.

As you know, rule G-37(c) provides that no dealer or municipal finance professional shall solicit any person or political action committee to make any contribution, or shall coordinate any contributions, to an official of an issuer with which the dealer is engaging or is seeking to engage in municipal securities business. The Board has previously stated that this provision would:

> prohibit a dealer and any municipal finance professional from soliciting ... any other person or entity, to make contributions to an official of an issuer with which the dealer engages or is seeking to engage in municipal securities business or to coordinate (*i.e.*, bundle) contributions. … [*] [M]unicipal finance professionals may volunteer their personal services in other ways to political campaigns.[1]

You had sought guidance regarding what activities would be covered by this provision of the rule. As you noted in your letter, I had indicated that the term "solicit" is not explicitly defined for purposes of section (c) of the rule. I had stated that whether a particular activity can be characterized as a solicitation of a contribution for purposes of section (c) is dependent upon the facts and circumstances surrounding such activity. I had noted, however, that the rule does not prohibit

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or restrict municipal finance professionals from engaging in personal volunteer work, unless such work constituted solicitation or bundling of contributions for an official of an issuer with which the municipal finance professional's dealer is engaging or seeking to engage in municipal securities business.[2] Municipal finance professionals are therefore free to, among other things, solicit votes or other assistance for such an issuer official so long as the solicitation does not constitute a solicitation or coordination of contributions for the official.[3]

Whether a municipal finance professional is permitted by section (c) of the rule to indicate to third parties that someone is a "great candidate" or to provide a list of third parties for the candidate to call would be dependent upon all the facts and circumstances surrounding such action. The facts and circumstances that may be relevant for this purpose may include, among any number of other factors, whether the municipal finance professional has made an explicit or implicit reference to campaign contributions in his or her conversations with third parties whom the candidate may contact and whether the candidate contacts such third parties seeking campaign contributions. However, the totality of the facts and circumstances surrounding any particular activity must be considered in determining whether such activity may constitute a solicitation of contributions for purposes of section (c) of the rule. Therefore, the Board cannot prescribe an exhaustive list of precautions that would assure that no violation of this section would occur as a result of such activity. *MSRB interpretation of May 21, 1999*.

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[1] *MSRB Reports*, Vol. 14, No. 3 (June 1994) at 5. *See* Securities Exchange Act Release No. 33868 (April 7, 1994), 59 FR 17621 (April 13, 1994). *See also Questions and Answers Concerning Political Contributions and Prohibitions on Municipal Securities Business: Rule G-37*, May 24, 1994, reprinted in *MSRB Rule Book; MSRB Interpretation of November 7, 1994*, reprinted in *MSRB Rule Book; MSRB Interpretation of May 31, 1995,* reprinted in *MSRB Rule Book*. Furthermore, the Board stated in its filing of the rule with the Securities and Exchange Commission that the rule's "anti-solicitation and anti-bundling proscriptions are intended to prohibit covered parties from: (i) soliciting others, including spouses and family members, to make contributions to issuer officials; and (ii) coordinating, or soliciting others to coordinate, contributions to issuer officials in order to influence the awarding of municipal securities business." SEC File No. SR-MSRB-94-2.

[2] *See Question and Answer No. 24*, May 24, 1994, reprinted in *MSRB Rule Book; Question and Answer No. 3*, August 18, 1994, reprinted in *MSRB Rule Book*. In addition, if the municipal finance professional used dealer resources or incurred expenses that could be considered contributions in the course of undertaking such volunteer work, the ban on municipal securities business under section (b) of the rule could be triggered.

[3] In upholding the constitutionality of rule G-37, the United States Court of Appeals for the District of Columbia Circuit observed that "municipal finance professionals are not in any way restricted from engaging in the vast majority of political activities, including making direct expenditures for the expression of their views, giving speeches, soliciting votes, writing books, or appearing at fundraising events." *Blount v. SEC*, 61 F.3d 938, 948 (D.C. Cir. 1995), *cert. denied*, 116 S. Ct. 1351 (1996). However, the Board has stated that hosting or paying to attend a fundraising event may constitute a contribution subject to section (b) of the rule. *See Questions and Answers Nos. 24 and 29*, May 24, 1994, reprinted in *MSRB Rule Book*.

[*] [Sentence deleted to reflect current rule provisions.]

Municipal finance professional: supervisor. This is in response to your inquiry seeking guidance regarding the possible classification as a municipal finance professional under rule G-37 of a Taxable Department Head at your firm. You stated that the Taxable Department Head is the direct supervisor of a Branch Manager and this Branch Manager manages a sales representative who has solicited municipal securities business from an issuer. You state that it is clear that the Branch Manager and the sales representative are both municipal finance professionals. However, you further state that the Taxable Department Head has delegated all Public Finance/Municipal oversight responsibilities to the Public Finance Department Head for the Taxable Department Head's personnel. You ask whether, under these circumstances, the Taxable Department Head would be considered a municipal finance professional under rule G-37 as a result of his or her supervisory position.

The term "municipal finance professional" is defined in rule G-37(g)(iv). Clauses (C) and (D) of the definition set forth the basis for considering an associated person of a dealer to be a municipal finance professional as a result of his or her supervisory position. Clause (C) includes any associated person who is *both* (i) either a municipal securities principal or municipal securities sales principal and (ii) a supervisor of any associated person either primarily engaged in municipal securities representative activities or who solicits municipal securities business (referred to herein as a "primary municipal securities supervisor"). Clause (D) includes any associated person who is a supervisor of a primary municipal securities supervisor up through and including (in the case of a non-bank dealer) the Chief Executive Officer or similarly situation official (referred to herein as a "secondary municipal securities supervisor").

Unlike in the case of a primary municipal securities supervisor, a secondary municipal securities supervisor is *not* required to be a municipal securities principal or municipal securities sales principal. The status of a secondary municipal securities supervisor as a municipal finance professional is not conditioned on the areas in which such supervisor has responsibility over a primary municipal securities supervisor, so long as such secondary municipal securities supervisor retains some degree of supervisory responsibility (whether or not relating to municipal securities activities) over the primary municipal securities supervisor. *MSRB interpretation of November 23, 1999*.

Financial advisor to conduit borrower. This is in response to your letter concerning rule G-37, on political contributions and prohibitions on municipal securities business. You state that your firm served as financial advisor to the underlying borrower, not the governmental issuer, for a certain issue of municipal securities. You ask whether you are required to report this financial advisory activity on Form G-37/G-38.

Rule G-37(g)(vii) defines the term "municipal securities business" to include "the provision of financial advisory or consultant services to or on behalf of an issuer with respect

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to a primary offering of municipal securities in which the dealer was chosen to provide such services on other than a competitive bid basis." If the financial advisory services your firm provided were to the underlying borrower and not "to or on behalf of an issuer,"[1] then your firm was not engaging in "municipal securities business" and these financial advisory services are not required to be reported on Form G-37/G-38. *MSRB interpretation of January 23, 1997.*

[1] Rule G-37(g)(ii) defines "issuer" as the governmental issuer specified in section 3(a)(29) of the Securities Exchange Act.

Supervisory procedures relating to indirect contributions: conference accounts and 527 organizations. This is in response to your request for confirmation that donations to segregated conference accounts of organizations such as the Democratic Governors Association (DGA) and Republican Governors Association (RGA) do not constitute contributions to an official of an issuer within the meaning of Rule G-37(b) without an intent to use the conference accounts as a device for contributing to the election activities of individual governors or other officials of issuers. You describe both organizations as independent, voluntary political organizations constituted under Section 527 of the Internal Revenue Code to raise money for political activities. You note that the organizations' activities have the primary purpose of influencing gubernatorial elections but also seek to conduct policy conferences and work-shops to help their members and other interested parties to understand and participate in public policy questions that confront state governments. You state that all Democratic governors are members of the DGA and all Republican governors are members of the RGA.

You further note that each organization has a wide variety of accounts into which it receives funds from individuals, organizations and other entities, with some accounts used to provide financial support to gubernatorial candidates and other accounts (including conference accounts) used exclusively to fund policy conferences. You state that the conference accounts are segregated from accounts that provide financial support to gubernatorial candidates and that neither organization permits transfers of funds from their conference accounts to any of their other accounts, including their administrative accounts. You represent that both organizations follow a standard practice of honoring any request by a donor to place donated funds in a conference account and that they have further committed to provide, upon a donor's request, written confirmation prior to accepting a donation that the donated funds will be allocated to the conference account.

The MSRB cannot provide confirmation regarding the status under Rule G-37 of payments to any particular organization or account of such organization as such a determination requires an analysis of, among other things, the specific facts and circumstances of each individual payment, the written supervisory procedures of the broker, dealer or municipal securities dealer ("dealer"), and the efforts of the dealer to enforce such procedures. However, this letter reviews guidance previously provided by the MSRB that may assist you in undertaking such an analysis.

Under Rule G-37, on political contributions and prohibitions on municipal securities business, contributions to officials of an issuer by a dealer, a municipal finance professional ("MFP") of the dealer, or a political action committee ("PAC") controlled by the dealer or an MFP can result in the dealer being banned from municipal securities business with such issuer for a period of two years.[1] Section (d) of Rule G-37 provides, in part, that no dealer or MFP shall, directly or indirectly, through or by any other person or means, do any act which would result in a violation of the ban on municipal securities business.

The MSRB has previously provided guidance regarding the potential for payments made to political parties, PACs or others to constitute indirect contributions to issuer officials for purposes of Rule G-37(d). In guidance published in 1996, the MSRB stated that a dealer would violate Rule G-37 by doing municipal securities business with an issuer after providing money to any person or entity when the dealer knows that such money will be given to an official of an issuer who could not receive such a contribution directly from the dealer without triggering the rule's prohibition on municipal securities business. Further, depending on the specific facts and circumstances, a payment to a PAC or political party that is soliciting funds for the purpose of supporting a limited number of issuer officials might result in the same prohibition on municipal securities business as would a contribution made directly to an issuer official.[2] In such circumstances, dealers should inquire of the PAC or political party how any funds received from the dealer would be used.[3]

In 2005, the MSRB published guidance on dealers' written supervisory procedures under Rule G-27, on supervision, relating to compliance with Rule G-37(d). The MSRB noted that each dealer must adopt, maintain and enforce written supervisory procedures reasonably designed to ensure that neither the dealer nor its MFPs are using payments to political parties and non-dealer controlled PACs to contribute indirectly to an official of an issuer.[4] Please note that the scope of Rule G-37(d) is not limited to the use of political parties and PACs as possible conduits for indirect contributions to issuer officials and, therefore, the need for such supervisory procedures would apply in connection with dealer and MFP payments to other types of political organizations as well, including but not limited to organizations constituted under Section 527 of the Internal Revenue Code.

The 2005 guidance on supervisory procedures included examples of certain provisions that dealers might include in their written supervisory procedures to ensure compliance with Rule G-37(d). The MSRB stated that such examples are not exclusive and are only suggestions, and that each dealer is required to evaluate its own circumstances and develop written supervisory procedures reasonably designed to ensure that the conduct of the municipal securities activities of the

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dealer and its associated persons are in compliance with Rule G-37(d).[5] Thus, a dealer need not include the specific supervisory procedures described in the 2005 guidance in order to meet its obligation under Rule G-27(c) so long as the dealer in fact has, and enforces, other written supervisory procedures reasonably designed to ensure that the conduct of the municipal securities activities of the dealer and its associated persons are in compliance with Rule G-37(d).

The MSRB also has stated that payments to "housekeeping," "conference" or "overhead" accounts of political parties are not safe harbors under Rule G-37 and that a dealer's written supervisory procedures designed to ensure compliance with Rule G-37(d) must take into account such payments. The MSRB noted that "preemptive" instructions accompanying payments to housekeeping accounts of political parties stating that such payments are not to be used for the benefit of one or a limited number of issuer officials are not considered sufficient to meet the dealer's obligations with regard to ensuring that the payment is not being made to circumvent the requirements of Rule G-37.[6] Although payments to housekeeping, conference or overhead accounts are not safe harbors and preemptive instructions are not by themselves sufficient to establish compliance with Rule G-37(d), procedures permitting payments to political parties and other political organizations only if made to these types of accounts and/or requiring preemptive instructions regarding the use of such payments may be elements in a supervisory program that, together with other appropriate procedures, could adequately ensure compliance with Rule G-37(d), depending on the specific facts and circumstances. *MSRB Interpretation of December 21, 2006*.

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[1] MFPs may make certain *de minimis* contributions to issuer officials without triggering the ban on business.

[2] *See* Rule G-37 Question and Answer No. III.4 (August 6, 1996), *reprinted in MSRB Rule Book*.

[3] *See* Rule G-37 Question and Answer No. III.5 (August 6, 1996), *reprinted in MSRB Rule Book*.

[4] *See* Rule G-37 Question and Answer No. III.7 (September 22, 2005) ("Q&A-III.7"), *reprinted in MSRB Rule Book*.

[5] *See* Q&A-III.7.

[6] *See* Rule G-37 Question and Answer No. III.8 (September 22, 2005), *reprinted in MSRB Rule Book*.

Payments to non-political accounts of political organizations. This is in response to your request for clarification that language relating to the "fungibility" of money included in Question and Answer No. III.8 dated September 22, 2005 (the "2005 Q&A")[1] under Rule G-37, on political contributions and prohibitions on municipal securities business, was not intended to be construed to prohibit all contributions to political committees, political parties, political action committees ("PACs") and other political entities or committees within the meaning of Section 527 of the Internal Revenue Code (collectively, "political organizations") that might themselves make contributions to officials of issuers.

Rule G-37 does not prohibit contributions to political organizations or issuer officials. Rather, contributions to officials of an issuer by a broker, dealer or municipal securities dealer ("dealer"), a municipal finance professional ("MFP") of the dealer, or a PAC controlled by the dealer or any of its MFPs can result in the dealer being banned from engaging in municipal securities business with such issuer for a period of two years under section (b) of the rule.[2] Further, if a dealer is currently engaged in, or seeking to become engaged in, municipal securities business with an issuer, then such dealer and its MFPs are prohibited from soliciting or coordinating contributions to officials of such issuer under section (c) of the rule. Section (d) of Rule G-37 provides, in part, that no dealer or MFP shall, directly or indirectly, through or by any other person or means, do any act which would result in a violation of section (b) or (c) of the rule.

The MSRB has previously provided guidance regarding the potential for payments made to political organizations or other third parties to constitute indirect contributions to issuer officials for purposes of Rule G-37(d). In guidance published in 1996, the MSRB stated that a dealer would violate Rule G-37 by doing municipal securities business with an issuer after providing money to any person or entity when the dealer knows that such money will be given to an official of an issuer who could not receive such a contribution directly from the dealer without triggering the rule's prohibition on municipal securities business. Further, depending on the specific facts and circumstances, a payment to a political organization that is soliciting funds for the purpose of supporting a limited number of issuer officials might result in the same prohibition on municipal securities business as would a contribution made directly to an issuer official.[3] In such circumstances, dealers should inquire of the political organization how any funds received from the dealer would be used.[4]

In 2005, the MSRB published guidance, as a companion to the 2005 Q&A (the "2005 Companion Guidance"), to the effect that each dealer must adopt, maintain and enforce written supervisory procedures under Rule G-27, on supervision, reasonably designed to ensure that neither the dealer nor its MFPs are using payments to political organizations to contribute indirectly to an official of an issuer.[5] This guidance also included examples of certain provisions that dealers might include in their written supervisory procedures to ensure compliance with Rule G-37(d). In a subsequent interpretive letter (the "2006 Interpretation"),[6] the MSRB stated that such examples are not exclusive and are only suggestions, and that each dealer is required to evaluate its own circumstances and develop written supervisory procedures reasonably designed to ensure that the conduct of the municipal securities activities of the dealer and its associated persons are in compliance with Rule G-37(d). Thus, a dealer need not include the specific supervisory procedures described in the guidance in order to meet its obligation under Rule G-27 so long as the dealer in fact has, and enforces, other written supervisory procedures

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reasonably designed to ensure that the conduct of the municipal securities activities of the dealer and its associated persons are in compliance with Rule G-37(d).

In the 2005 Q&A, the MSRB stated that payments to housekeeping, conference or overhead accounts of political organizations (referred to herein, together with any other similar accounts, as "nonpolitical accounts") are not safe harbors under Rule G-37 and that a dealer must have adequate supervisory procedures reasonably designed to prevent a violation of Rule G-37(d) even when payments are being made to non-political accounts of political organizations. The MSRB noted that "preemptive" instructions accompanying payments to non-political accounts of political organizations stating that the payments are not to be used for the benefit of one or a limited number of issuer officials are not considered sufficient to meet the dealer's obligations with regard to ensuring that such payments are not being made to circumvent the requirements of Rule G-37. Among other things, the MSRB stated that "because money is fungible, a payment made to a fund earmarked for non-issuer official elections might 'free up' other money to support the candidacy of specific issuer officials." Thus, merely limiting contributions to such non-political accounts, or merely providing preemptive instructions regarding the use of funds, does not automatically avoid the possibility of an indirect contribution under Rule G-37(d). However, as the MSRB noted in the 2006 Interpretation, procedures permitting payments to political organizations only if made to non-political accounts and/or requiring preemptive instructions regarding the use of such payments may be elements in a supervisory program that, together with other appropriate procedures, could adequately ensure compliance with Rule G-37(d), depending on the specific facts and circumstances.

The fungibility language used in the 2005 Q&A makes clear, and the 2006 Interpretation confirms, that a dealer may not satisfy its obligation to adopt and enforce written supervisory procedures to prevent violations of Rule G-37(d) merely by limiting payments to non-political accounts of political organizations since such payments may "free up" other money that would otherwise have been used to fund such political accounts to now be used to support the candidacy of specific issuer officials. Thus, the guidance provided in the 2005 Q&A, the 2005 Companion Guidance, and the 2006 Interpretation, as well as the MSRB's prior guidance with respect to Rule G-37(d), is relevant for any payment to a political organization, whether such payment is provided without restriction as to its use (referred to herein as an "unrestricted payment") or is made to a non-political account. The fungibility language in the 2005 Q&A serves to illustrate that, in many cases, it may be reasonably foreseeable that moneys provided to nonpolitical accounts could result in indirect contributions to issuer officials under Rule G-37(d) much in the same way as unrestricted payments. As a result, the types of procedures (including but not limited to any due diligence procedures) that would apply to unrestricted payments generally also should apply when payments are made to non-political accounts of political organizations.[7]

The fungibility language does not, however, cause all payments to political organizations that make contributions to issuer officials to trigger the ban on municipal securities business under Rule G-37. Rather, as described above, it places payments to non-political accounts on relatively equal footing with unrestricted payments to political organizations regarding the need for dealers to adopt and enforce written supervisory procedures reasonably designed to ensure that neither the dealer nor its MFPs are using payments to political organizations to contribute indirectly to an official of an issuer in circumvention of the rule's ban on municipal securities business.[8] The procedures adopted by dealers with respect to Rule G-37(d) must be designed to address such possible circumvention, regardless of whether it is through unrestricted payments or through payments to non-political accounts. *MSRB Interpretation of September 25, 2007*

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[1] *See* Rule G-37 Question and Answer No. III.8 (September 22, 2005), *reprinted in MSRB Rule Book*.

[2] Certain *de minimis* contributions made by MFPs to issuer officials do not trigger this ban on engaging in municipal securities business.

[3] *See* Rule G-37 Question and Answer No. III.4 (August 6, 1996), *reprinted in MSRB Rule Book*.

[4] *See* Rule G-37 Question and Answer No. III.5 (August 6, 1996), *reprinted in MSRB Rule Book*.

[5] *See* Rule G-37 Question and Answer No. III.7 (September 22, 2005), *reprinted in MSRB Rule Book*.

[6] *See* Rule G-37 Interpretive Letter — Supervisory procedures relating to indirect contributions: conference accounts and 527 organizations, *reprinted in MSRB Rule Book*.

[7] As noted above, the 2006 Interpretation observed that limiting payments solely to non-political accounts of political organizations may itself serve as one of the elements in a supervisory program that, together with other appropriate procedures, could adequately ensure compliance with Rule G-37(d), depending on the specific facts and circumstances.

[8] As you note in your letter, section (d) of Rule G-37 was adopted by the MSRB to prohibit dealers and their MFPs from using other persons or entities as conduits to circumvent Rule G-37's prohibitions. *See* Exchange Act Release No. 33482 (January 14, 1994), 59 FR 3389 (January 21, 1994). *See also* Exchange Act Release No. 33868 (April 7, 1994), 59 FR 17621 (April 13, 1994).

Rules G-37 and G-38 Interpretive Letter — Solicitation activity on behalf of affiliated company. This is in response to your April 29, 2009 letter seeking guidance regarding Municipal Securities Rulemaking Board ("MSRB") Rule G-38, on solicitation of municipal securities business, and MSRB Rule G-37, on political contributions and prohibitions on municipal securities business. Your letter relates to the formation of a joint venture broker-dealer ("JV B-D") by two existing broker-dealers (the "legacy firms"). You state that JV B-D will not engage in municipal securities business[1] and that the employees of JV B-D will not retain their employment status with the legacy firms, but will be associated persons of both legacy firms.

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Specifically, you request guidance on the following two issues: (i) whether the employees of the JV B-D may solicit municipal securities business, under Rule G-38, on behalf of the legacy firms; and (ii) whether an employee who solicits municipal securities business on behalf of one of the legacy firms will be considered a municipal finance professional ("MFP")[2] solely of the legacy firm on whose behalf the MFP solicits municipal securities business under Rule G-37, rather than of both legacy firms. The Board has reviewed your letter and authorized this response.

JV B-D Employee Solicitation of Municipal Securities Business on Behalf of Legacy Firms: You ask whether employees of JV B-D, who are the prior employees of the legacy firms, may solicit municipal securities business on behalf of such firms under Rule G-38. Rule G-38(a) prohibits a broker, dealer or municipal securities dealer ("dealer") from providing, directly or indirectly, payment to any person who *is not* an affiliated person[3] of the dealer for a solicitation of municipal securities business on behalf of such dealer.

You state that JV B-D will be controlled by the legacy firms and, as such, should be viewed as an affiliated company[4] of the legacy firms. Under Rule G-38, if JV B-D is controlled by the legacy firms, JV B-D and its employees should be viewed as affiliates of the legacy firms. Based on the control relationships you describe, Rule G-38 will not be violated if employees of JV B-D are paid by a legacy firm for a solicitation of municipal securities business on behalf of such legacy firms.

JV B-D Employee Status as Municipal Finance Professional for Legacy Firm on Behalf of Which the Employee Has Solicited Municipal Securities Business: You also ask whether an employee of JV B-D who solicits municipal securities business on behalf of one of the legacy firms will be considered an MFP solely of the legacy firm on whose behalf the employee solicits municipal securities business, rather than of both legacy firms. Rule G-37(g)(iv)(B) defines MFP, in relevant part, as any associated person (including, but not limited to, any affiliated person of the dealer, as defined in Rule G-38) who solicits municipal securities business (a "solicitor MFP"). You note that this language does not expressly limit MFP status to the dealer on whose behalf the municipal securities business was solicited.

The MSRB is of the view that implicit in the concept of a solicitor MFP, as set forth in Rule G-37(g)(iv)(B), is the notion that an associated person who solicits municipal securities business on behalf of a dealer becomes an MFP of such dealer.[5] Although an individual who solicits municipal securities business on behalf of one dealer with which he or she is associated thereby becomes an MFP of such dealer, the solicitation does not by itself result in the individual becoming an MFP of a different dealer with which such individual may be associated but for which he or she has not solicited municipal securities business. Rather, such individual would have to undertake a solicitation or another activity described in Rule G-37(g)(iv) on behalf of the second dealer in order to become an MFP of such second dealer.

The MSRB notes that Rule G-38(b)(i) defines solicitation broadly to mean, any direct or indirect communication with an issuer for the purpose of obtaining or retaining municipal securities business. The MSRB has previously provided guidance regarding the types of communications that are viewed as solicitations of municipal securities business.[6] Depending upon specific facts and circumstances, a direct solicitation of municipal securities business by an individual on behalf of a dealer with which such individual is associated (the "directly-benefited dealer") might also be considered an indirect solicitation of business on behalf of another dealer with which such individual is associated (the "indirectly-benefited dealer"). In conversations with issuers or other third parties, the individual must clearly indicate for which dealer he or she is soliciting business. For example, an individual who describes to issuer personnel two or more affiliated dealers as leading underwriting firms in that issuer's state but only explicitly asks such personnel to hire one dealer (*i.e.*, the directly-benefited dealer) would likely be considered to have indirectly solicited business on behalf of the other dealer as well (*i.e.*, the indirectly-benefited dealer). An important factor in determining whether a direct solicitation on behalf of a directly-benefited dealer could also be considered an indirect solicitation on behalf of an indirectly-benefited dealer is whether the individual solely identifies his or her affiliation with the directly-benefited dealer or also identifies an affiliation with the other dealer.[7] To the extent that multiple dealers are identified directly or indirectly, dealers would need to take extra precautions to ensure that the solicited issuer personnel understand that the solicitation is solely on behalf of the directly-benefited dealer and that the identification of the other firm is limited and does not serve to promote the other firm.[8] In circumstances similar to those described in this letter, dealers should have in place effective procedures to ensure that the solicitations for municipal securities business are tracked in a way that will properly classify individuals making solicitations as MFPs of the appropriate dealer. *MSRB interpretation of June 23, 2009*.

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[1] Rule G-37 defines municipal securities business as the purchase of a primary offering of municipal securities from an issuer on other than a competitive bid basis; or the offer or sale of a primary offering of municipal securities on behalf of any issuer; or the provision of financial advisory or consultant services to or on behalf of an issuer with respect to a primary offering of municipal securities in which the broker, dealer or municipal securities dealer ("dealer") was chosen to provide such services on other than a competitive bid basis; or the provision of remarketing agent services to or on behalf of an issuer with respect to a primary offering of municipal securities in which the dealer was chosen to provide such services on other than a competitive bid basis.

[2] Rule G-37(g)(iv) defines municipal finance professional as: (A) any associated person primarily engaged in municipal securities representative activities, as defined in Rule G-3(a)(i), provided, however, that sales activities with natural persons shall not be considered to be municipal securities representative activities; (B) any associated person (including but not limited to any affiliated person of the dealer, as defined in Rule G-38)

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who solicits municipal securities business; (C) any associated person who is both (i) a municipal securities principal or a municipal securities sales principal and (ii) a supervisor of any persons described in (A) or (B) above; (D) any associated person who is a supervisor of any person described in (C) above up through and including, in the case of a dealer other than a bank dealer, the Chief Executive Officer or similarly situated official and, in the case of a bank dealer, the officer or officers designated by the board of directors of the bank as responsible for the day-to-day conduct of the bank's municipal securities dealer activities, as required pursuant to Rule G-1(a); or (E) any associated person who is a member of the dealer (or, in the case of a bank dealer, the separately identifiable department or division of the bank, as defined in Rule G-1) executive or management committee or similarly situated officials, if any.

[3] Rule G-38 defines an affiliated person of a dealer as any person who is a partner, director, officer, employee or registered person of the dealer (or, in the case of a bank dealer, any person occupying a similar status or performing similar functions for the bank dealer) **or of an affiliated company of the dealer.**

[4] Rule G-38 defines an affiliated company of the dealer as any entity directly or indirectly controlling, controlled by, or under common control with the broker, dealer or municipal securities dealer whose activities with respect to the dealer or with respect to any other affiliated company of the dealer are not limited solely to the solicitation of municipal securities business.

[5] Thus, the requirements of Rule G-37 would apply to the activities of such an individual as an associated person of the dealer on whose behalf the solicitation was made. In addition, other MSRB rules of fair practice and professionalism also would apply to such individual's solicitation and other municipal securities activities undertaken on behalf of such dealer. *See* Exchange Act Release No. 51561 (April 15, 2005), 70 FR 20782 (April 21, 2005) (proposing File No. SR-MSRB-2005-04); Exchange Act Release No. 52278 (August 17, 2005), 70 FR 49342 (August 23, 2005) (approving File No. SR-MSRB-2005-04).

[6] *See* MSRB Notice 2006-15 (June 15, 2006).

[7] In this regard, dealers should consider both oral and written statements, including but not limited to business cards and marketing materials, provided to solicited issuer personnel.

[8] For example, if the individual's firm name incorporates significant elements of two affiliated dealers' firm names, such individual would need to take extra precautions to ensure that a direct solicitation on behalf of the directly-benefited dealer does not also serve as an indirect solicitation on behalf of the other dealer.

See also:

Rule G-23 Interpretive Letters — Fairness Opinions, *MSRB interpretation of January 10, 1997.*

- **Financial advisory relationship: private placements,** *MSRB interpretation of October 5, 1999.*

Instructions for Forms G-37 and G-37x

Instructions for completing Form G-37 and G-37x can be found on the MSRB's website (www.msrb.org). Click on the link entitled Political Contributions Information and then click on the link to the instructions.

Effective August 17, 2016, all Form G-37 and Form G-37x submissions must be made electronically through EMMA Dataport (dataport.emma.msrb.org). Submissions by fax or paper submissions will not be accepted.

Rule G-37 Amendment History (since 2003)

Release No. 34-76763 (December 23, 2015), 80 FR 81710 (December 30, 2015); MSRB Notice 2016-06 (February 27, 2016)

Release No. 34-76653 (December 15, 2015), 80 FR 79386 (December 21, 2015)

Release No. 34-69249 (March 28, 2013), 78 FR 20156 (April 3, 2013); MSRB Notice 2013-09 (April 1, 2013)

Release No. 34-62830 (September 2, 2010), 75 FR 54930 (September 9, 2010); MSRB Notice 2010-30 (August 25, 2010)

Release No. 34-62322 (June 17, 2010), 75 FR 36148 (June 24, 2010); MSRB Notice 2010-17 (June 14, 2010)

Release No. 34-61647 (March 4, 2010), 75 FR 11603 (March 11, 2010); MSRB Notice 2010-04 (February 26, 2010)

Release No. 34-61381 (January 20, 2010), 75 FR 4126 (January 26, 2010); MSRB Notice 2010-01 (January 22, 2010)

Release No. 34-53960 (June 8, 2006), 71 FR 34655 (June 15, 2006); MSRB Notice 2006-15 (June 15, 2006)

Release No. 34-53961 (June 8, 2006), 71 FR 34653 (June 15, 2006); MSRB Notice 2006-15 (June 15, 2006)

Release No. 34-52496 (September 22, 2005), 70 FR 56944 (September 29, 2005); MSRB Notice 2005-50 (September 26, 2005)

Release No. 34-51952 (June 30, 2005), 70 FR 39836 (July 11, 2005); MSRB Notice 2005-33 (June 2, 2005)

Release No. 34-49368 (March 5, 2004), 69 FR 11687 (March 11, 2004); MSRB Notice 2004-08 (February 25, 2004)

Release No. 34-47721 (April 23, 2003), 68 FR 23170 (April 30, 2003); MSRB Notice 2003-16 (April 30, 2003)

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FORM G-37 **MSRB**

Name of Regulated Entity: _____

Report Period: _____

I. CONTRIBUTIONS made to officials of a municipal entity (list by state)

State	Complete name, title (including any city/county/state or other political subdivision) of municipal entity official	Contributions by each contributor category (*i.e.*, for purposes of this form, dealer, dealer controlled PAC, municipal finance professional, municipal finance professional controlled PAC, non-MFP executive officer, municipal advisor, municipal advisor controlled PAC, municipal advisor professional, municipal advisor professional controlled PAC, and non-MAP executive officer). For each contribution, list contribution amount and contributor category (disclose all applicable categories for each contributor). (For example, $500 contribution by non-MFP executive officer) If any contribution is the subject of an automatic exemption pursuant to Rule G-37(j), list amount of contribution and date of such automatic exemption.

II. PAYMENTS made to political parties of states or political subdivisions (list by state)

State	Complete name (including any city/county/state or other political subdivision) of political party	Payments by each contributor category

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III. CONTRIBUTIONS made to bond ballot campaigns (list by state)

A. Contributions

State	Official name of bond ballot campaign and jurisdiction (including city/county/state or other political subdivision) for which municipal securities would be issued and the name of the entity issuing the municipal securities	Contributions, including the specific date the contributions were made, by each contributor category

B. Reimbursement for Contributions

List below any payments or reimbursements, related to any disclosed bond ballot contribution, received by each dealer, municipal finance professional, non-MFP executive officer, municipal advisor, municipal advisor professional, or non-MAP executive officer from any third party, including the amount paid and the name of the third party making such payments or reimbursements.

IV. MUNICIPAL ENTITIES with which the regulated entity has engaged in municipal securities business or municipal advisory business (list by state)

A. Municipal Securities Business

State	Complete name of municipal entity and city/county	Type of municipal securities business (negotiated underwriting, private placement, financial advisor, or remarketing agent)

B. Municipal Advisory Business

State	Complete name of municipal entity and city/county	Type of municipal advisory business (advice or solicitation) (and in the case of municipal advisory business engaged in by a municipal advisor third-party solicitor, the name of the third party on behalf of which business was solicited and the nature of the business solicited (municipal securities business, municipal advisory business or investment advisory services))

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C. Ballot-Approved Offerings

Full name of the municipal entity and full issue description of any primary offering resulting from the bond ballot campaign to which each contributor category has made a contribution and the reportable date of selection on which the regulated entity was selected to engage in the municipal securities business or municipal advisory business.

Full Name of Municipal Entity	Full Issue Description	Reportable Date of Selection

Signature: _____ **Date:** _____
(must be officer of regulated entity)

Name: _____

Address: _____

Phone: _____

Submit to the Municipal Securities Rulemaking Board a completed form quarterly by due date (specified by the MSRB)

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FORM G-37x **MSRB**

Name of Regulated Entity:

_____

The undersigned, on behalf of the regulated entity identified above, does hereby certify that such regulated entity did not engage in "municipal securities business" or "municipal advisory business" (in each case, as defined in Rule G-37) during the eight full consecutive calendar quarters ending immediately on or prior to the date of this Form G-37x.

The undersigned, on behalf of such regulated entity, does hereby acknowledge that, notwithstanding the submission of this Form G-37x to the MSRB, such regulated entity will be required to:

(1) submit Form G-37 for each calendar quarter unless it has met all of the requirements for an exemption set forth in Rule G-37(e)(ii) for such calendar quarter;

(2) undertake the recordkeeping obligations set forth in Rule G-8(a)(xvi) or Rule G-8(h)(iii), as applicable, at such time as it no longer qualifies for the relevant exemption(s) set forth in Rule G-8(a)(xvi)(M) and/or Rule G-8(h)(iii)(M);

(3) undertake the disclosure obligations set forth in Rule G-37(e), including in particular the disclosure obligations under paragraph (e)(iii) thereof, at such time as it no longer qualifies for the exemption set forth in Rule G-37(e)(ii)(B); and

(4) submit a new Form G-37x in order to again meet the requirements for the exemption set forth in Rule G-37(e)(ii)(B) in the event that the regulated entity has engaged in municipal securities business or municipal advisory business subsequent to the date of this Form G-37x and thereafter wishes to qualify for the exemption.

Signature: _____ **Date:** _____
(must be officer of regulated entity)

Name: _____ **Phone:** _____

Address: _____

Submit to the Municipal Securities Rulemaking Board

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Rule G-38
Solicitation of Municipal Securities Business

(a) *Prohibited Payments*. No broker, dealer or municipal securities dealer may provide or agree to provide, directly or indirectly, payment to any person who is not an affiliated person of the broker, dealer or municipal securities dealer for a solicitation of municipal securities business on behalf of such broker, dealer or municipal securities dealer.

(b) *Definitions*. For purposes of this rule, the following terms shall have the following meanings:

(i) The term "solicitation" means a direct or indirect communication by any person with an issuer for the purpose of obtaining or retaining municipal securities business.

(ii) The term "affiliated person of the broker, dealer or municipal securities dealer" means any person who is a partner, director, officer, employee or registered person of the broker, dealer or municipal securities dealer (or, in the case of a bank dealer, any person occupying a similar status or performing similar functions for the bank dealer) or of an affiliated company of the broker, dealer or municipal securities dealer.

(iii) The term "affiliated company of the broker, dealer or municipal securities dealer" means any entity directly or indirectly controlling, controlled by, or under common control with the broker, dealer or municipal securities dealer whose activities with respect to the broker, dealer or municipal securities dealer or with respect to any other affiliated company of the broker, dealer or municipal securities dealer are not limited solely to the solicitation of municipal securities business.

(iv) The term "registered person" means any associated person of the broker, dealer or municipal securities dealer duly qualified in one or more categories of qualification under Rule G-3 or duly qualified and registered in one or more categories of registration under the rules of a registered securities association.

(v) The terms "issuer," "municipal securities business" and "payment" shall have the meanings set forth in Rule G-37(g).

Rule G-38 Interpretations

Interpretive Notice on the Definition of Solicitation Under Rules G-37 and G-38

June 8, 2006

Municipal Securities Rulemaking Board ("MSRB") Rule G-38, on solicitation of municipal securities business, defines "solicitation" as any direct or indirect communication with an issuer for the purpose of obtaining or retaining municipal securities business. This definition is important for purposes of determining whether payments made by a broker, dealer or municipal securities dealer ("dealer") to persons who are not affiliated persons of the dealer are prohibited under Rule G-38.[1] In addition, the definition is central to determining whether communications by dealer personnel would result in such personnel being considered municipal finance professionals ("MFPs") of the dealer for purposes of Rule G-37, on political contributions and prohibitions on municipal securities business. This notice provides interpretive guidance relating to the status of certain types of communications as solicitations for purposes of Rules G-37 and G-38.

Purpose of Communication

The concept of solicitation under Rules G-37 and G-38 includes as a central element the notion that the communication occurs with the purpose of obtaining or retaining municipal securities business. The determination of whether a particular communication is a solicitation is dependent upon the specific facts and circumstances relating to such communication. As a general proposition, any communication made under circumstances reasonably calculated to obtain or retain municipal securities business for the dealer may be considered a solicitation unless the circumstances otherwise indicate that the communication does not have the purpose of obtaining or retaining municipal securities business. This notice provides examples of circumstances in which a communication may or may not be considered a solicitation. These examples are illustrative only and are not the only instances in which a solicitation may be deemed to have or have not occurred.

Limited Communications with Issuer Representative

If an issuer representative asks an affiliated person of a dealer whether the dealer has municipal securities capabilities, such affiliated person generally would not be viewed as having solicited municipal securities business if he or she provides a limited affirmative response, together with either providing the issuer representative with contact information for an MFP of the dealer or informing the issuer representative that dealer personnel who handle municipal securities business will contact him or her. Similarly, if an issuer representative is discussing governmental cash flow management issues with an affiliated person of a dealer who concludes, in his or her professional judgment, that an appropriate means of addressing the issuer's needs may be through an issue of municipal securities, the affiliated person generally would not be viewed as having solicited business if he or she provides a limited communication to the issuer representative that such alternative may be appropriate, together with either providing the issuer representative with contact information for an MFP or informing the issuer representative that dealer personnel who handle municipal securities business will contact him or her.

In the examples above, if the affiliated person receives compensation such as a finder's or referral fee for such business or if the affiliated person engages in other activities that could be deemed a solicitation with respect to such business (for example, attending presentations of the dealer's municipal finance capabilities or responding to a request for proposals), the affiliated person generally would be viewed as having solicited the municipal securities business. The MSRB has

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long regarded receipt of a finder's fee for bringing municipal securities business to the dealer and activities such as attending presentations to issuer personnel of the dealer's municipal finance capabilities or responding to issuer requests for proposals as presumptively constituting solicitations of municipal securities business and does not view this notice as altering such presumption.

Promotional Communication

The MSRB understands that an affiliated person of a dealer may provide information to potential clients and others regarding the general capabilities of the dealer through either oral or written communications. Any such communication that is not made with the purpose of obtaining or retaining municipal securities business would not be considered a solicitation. Thus, depending upon the specific facts and circumstances, a communication that merely lists the significant business lines of a dealer without further descriptive information and which does not give the dealer's municipal securities practice a place of prominence within such listing generally would not be considered a solicitation unless the facts and circumstances indicate that it was aimed at obtaining or retaining municipal securities business. To the extent that a communication, such as a dealer brochure or other promotional materials, contains more than a mere listing of business lines, such as brief descriptions of each business line (including its municipal securities capabilities), determining whether such communication is a solicitation depends upon whether the facts and circumstances indicate that it was undertaken for the purpose of obtaining or retaining municipal securities business. The nature of the information provided and the manner in which it is presented are relevant factors to consider. Although no single factor is necessarily controlling in determining whether a communication was undertaken for the purpose of obtaining or retaining municipal securities business, the following considerations, among others, may often be relevant: (i) whether the municipal securities practice is the only business line included in the communication that would reasonably be of interest to an issuer representative; (ii) whether the portions of the communication describing the dealer's municipal securities capabilities are designed to garner more attention than other portions describing different business lines; (iii) whether the communication contains quantitative or qualitative information on the nature or extent of the dealer's municipal securities capabilities that is promotional in nature (*e.g.*, quantitative or qualitative rankings, claims of expertise, identification of specific transactions, language associated with "puffery," etc.); and (iv) whether the dealer is currently seeking to obtain or retain municipal securities business from the issuer.

Work-Related Communications

Communications that are incidental to undertaking tasks to complete municipal securities business for which the dealer has already been engaged generally would not be solicitations. For example, if a dealer has engaged an independent contractor as a cash flow consultant to provide expert services on a negotiated underwriting for which the dealer has already been selected and the contractor communicates with the issuer on cash flow matters relevant to the financing, such communication would not be a solicitation under Rule G-38. Similarly, if a dealer has already been selected to serve as the underwriter for an airport financing and a non-MFP affiliated person of the dealer who normally works on airline corporate matters is used to provide his or her expertise to complete the financing, communications in this regard by the affiliated person with the issuer would not be a solicitation under Rule G-38. In addition, the fact that the work product of persons such as those described above may be used by MFPs of the dealer in their solicitation activities would not make the producer of the work product a solicitor unless such person personally presents his or her work to the issuer in connection with soliciting the municipal securities business.

Communications with Conduit Borrowers

The MSRB understands that dealers often work closely with private entities on their capital and other financing needs. In many cases, this work may evolve into a conduit borrowing through a conduit issuer. Although the ultimate obligor on such a financing is the private entity, if the dealer acts as underwriter for a financing undertaken through a conduit issuer on other than a competitive bid basis, it is engaging in municipal securities business for purposes of Rule G-37. The selection of the underwriter for such a financing frequently is made by the conduit borrower. While in many cases conduit issuers have either formal procedures or an informal historical practice of accepting the dealer selected by the conduit borrower, some conduit issuers may set minimum standards that dealers must meet to qualify to underwrite a conduit issue, and other conduit issuers may have a slate of dealers selected by the conduit issuer from which the conduit borrower chooses the underwriter for its issue. Still other conduit issuers may defer to the conduit borrower's selection of lead underwriter but may require the underwriting syndicate to include additional dealers selected by the issuer or selected by the conduit borrower from a slate of issuer-approved underwriters, often with the purpose of ensuring participation by local dealers or historically disadvantaged dealers. A smaller number of conduit issuers retain more significant control over which dealers act as underwriters, either by making the selection for the conduit borrower or by considering the conduit borrower's selection to be merely a suggestion which in some cases the conduit issuer does not follow. However, in virtually all cases, the conduit issuer will maintain ultimate power to control which dealer underwrites a conduit issue since the conduit issuer has discretion to withhold its agreement to issue the securities through any particular dealer.

From a literal perspective, any communication by a dealer with a conduit borrower that is intended to cause the borrower to select the dealer to serve as underwriter for a conduit issue could be considered a solicitation of municipal securities business. This is because the conduit borrower

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eventually communicates its selection of the dealer to act as underwriter to the conduit issuer for approval. This series of communications would, by its terms, constitute an indirect communication by the dealer through the conduit borrower to the conduit issuer for the purpose of obtaining or retaining municipal securities business.

However, the MSRB believes that a dealer's communication with a conduit borrower generally should not be deemed an indirect solicitation of the issuer unless a reasonable nexus can be established between the making of contributions to officials of the conduit issuer within the meaning of Rule G-37 and the selection of the underwriter for such conduit financing. A determination of whether such a reasonable nexus could exist depends on the specific facts and circumstances.

Further, if an affiliated person of a dealer who is providing investment banking services and corporate financing advice to a private company concludes, in his or her professional judgment, that an appropriate financing alternative may be a conduit financing, a limited communication to the company by the affiliated person that such financing alternative may be appropriate, together with the provision to the company of contact information for an MFP of the dealer, generally would not be presumed to be a solicitation. Alternatively, the affiliated person could inform the company that dealer personnel who handle municipal securities business will contact it. In addition, if a dealer has already been selected by the conduit borrower to serve as the underwriter for a conduit financing and a non-MFP affiliated person of the dealer communicates with the conduit borrower in furtherance of the financing, such communications by the affiliated person would not be a solicitation under Rule G-38.

Communications by Non-Affiliated Professionals

So long as non-affiliated persons providing legal, accounting, engineering or other professional services in connection with specific municipal securities business are not being paid directly or indirectly by a dealer for communicating with an issuer for the purpose of obtaining or retaining municipal securities business for the dealer (*i.e.*, they are paid solely for their provision of legal, accounting, engineering or other professional services with respect to the business), they would not become subject to Rule G-38. Dealers are reminded that the term "payment" as used in Rules G-37 and G-38 refers to anything of value and can, depending on the specific facts and circumstances, include quid pro quo arrangements whereby a non-affiliated person solicits municipal securities business for the dealer in exchange for being hired by the dealer to provide other unrelated services.

[1] The term "affiliated person" is defined in Rule G-38(b)(ii).

Interpretive Letters

See also:

Rule G-37 Interpretive Letter — Solicitation activity on behalf of affiliated company, *MSRB interpretation of June 23, 2009*.

Rule G-38 Amendment History (since 2003)

Release No. 34-85699 (April 22, 2019), 84 FR 17897 (April 26, 2019); MSRB Notice 2019-11 (April 10, 2019)

Release No. 34-53961 (June 8, 2006), 71 FR 34653 (June 15, 2006); MSRB Notice 2006-15 (June 15, 2006)

Release No. 34-52278 (August 17, 2005), 70 FR 49342 (August 23, 2005); MSRB Notice 2005-44 (August 18, 2005)

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Rule G-39
Telemarketing

(a) *General Telemarketing Requirements*. No broker, dealer or municipal securities dealer shall initiate any outbound telephone call to:

(i) *Time of Day Restriction*. Any residence of a person before the hour of 8:00 a.m. or after 9:00 p.m. (local time at the called party's location), unless

(A) the broker, dealer or municipal securities dealer has an established business relationship with the person pursuant to paragraph (n)(xii)(A),

(B) the broker, dealer or municipal securities dealer has received that person's express prior consent, or

(C) the person called is a broker, dealer or municipal securities dealer;

(ii) *Firm-Specific Do-Not-Call List*. Any person that previously has stated that he or she does not wish to receive any outbound telephone calls made by or on behalf of the broker, dealer or municipal securities dealer; or

(iii) *National Do-Not-Call List*. Any person who has registered his or her telephone number on the Federal Trade Commission›s national do-not-call registry.

(iv) *Compliance with Other Requirements*. This rule does not affect the obligation of any broker, dealer or municipal securities dealer that engages in telemarketing to comply with relevant state and federal laws and rules, including, but not limited to, the Telemarketing and Consumer Fraud and Abuse Prevention Act codified at 15 U.S.C. 6101 – 6108, as amended, the Telephone Consumer Protection Act codified at 47 U.S.C. 227, and the rules of the Federal Communications Commission relating to telemarketing practices and the rights of telephone consumers codified at 47 CFR 64.1200.

(b) *National Do-Not-Call List Exceptions*. A broker, dealer or municipal securities dealer making outbound telephone calls will not be liable for violating paragraph (a)(iii) if:

(i) *Established Business Relationship Exception*. The broker, dealer or municipal securities dealer has an established business relationship with the recipient of the call. A person's request to be placed on the broker, dealer or municipal securities dealer's firm-specific do-not-call list terminates the established business relationship exception to the national do-not-call list provision for that broker, dealer or municipal securities dealer even if the person continues to do business with the broker, dealer or municipal securities dealer;

(ii) *Prior Express Written Consent Exception.* The broker, dealer or municipal securities dealer has obtained the person's prior express written consent. Such consent must be clearly evidenced by a signed, written agreement (which may be obtained electronically under the Electronic Signatures in Global and National Commerce Act, 15 U.S.C. 7001, et seq. ("E-Sign Act")) between the person and the broker, dealer or municipal securities dealer, which states that the person agrees to be contacted by the broker, dealer or municipal securities dealer and includes the telephone number to which the calls may be placed; or

(iii) *Personal Relationship Exception.* The broker, dealer or municipal securities dealer making the call has a personal relationship with the recipient of the call.

(c) *Safe Harbor Provision*. A broker, dealer or municipal securities dealer making outbound telephone calls will not be liable for violating paragraph (a)(iii) if the broker, dealer or municipal securities dealer demonstrates that the violation is the result of an error and that as part of the broker, dealer or municipal securities dealer's routine business practice, it meets the following standards:

(i) *Written procedures.* The broker, dealer or municipal securities dealer has established and implemented written procedures to comply with the national do-not-call rules;

(ii) *Training of personnel*. The broker, dealer or municipal securities dealer has trained its personnel, and any entity assisting in its compliance, in the procedures established pursuant to the national do-not-call rules;

(iii) *Recording.* The broker, dealer or municipal securities dealer has maintained and recorded a list of telephone numbers that it may not contact; and

(iv) *Accessing the national do-not-call database*. The broker, dealer or municipal securities dealer uses a process to prevent outbound telephone calls to any telephone number on any list established pursuant to the do-not-call rules, employing a version of the national do-not-call registry obtained from the administrator of the registry no more than 31 days prior to the date any call is made, and maintains records documenting this process.

(d) *Procedures.* Prior to engaging in telemarketing, a broker, dealer or municipal securities dealer must institute procedures to comply with paragraph (a). Such procedures must meet the following minimum standards:

(i) *Written policy.* Brokers, dealers and municipal securities dealers must have a written policy for maintaining a do-not-call list.

(ii) *Training of personnel engaged in telemarketing*. Personnel engaged in any aspect of telemarketing must be informed and trained in the existence and use of the do-not-call list.

(iii) *Recording, disclosure of do-not-call requests*. If a broker, dealer or municipal securities dealer receives a request from a person not to receive calls from that broker, dealer or municipal securities dealer, the broker, dealer or municipal securities dealer must record the request and place the person's name, if provided, and telephone number on the firm's do-not-call list at the time the request is made. Brokers, dealers and municipal securities dealers must honor a person's do-not-call request within a reasonable time from the date such request is

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made. This period may not exceed 30 days from the date of such request. If such requests are recorded or maintained by a party other than the broker, dealer or municipal securities dealer on whose behalf the outbound telephone call is made, the broker, dealer or municipal securities dealer on whose behalf the outbound telephone call is made will be liable for any failures to honor the do-not-call request.

(iv) *Identification of sellers and telemarketers*. A broker, dealer or municipal securities dealer making an outbound telephone call must provide the called party with the name of the individual caller, the name of the broker, dealer or municipal securities dealer, an address or telephone number at which the broker, dealer or municipal securities dealer may be contacted, and that the purpose of the call is to solicit the purchase of securities or related service. The telephone number provided may not be a 900 number or any other number for which charges exceed local or long distance transmission charges.

(v) *Affiliated persons or entities*. In the absence of a specific request by the person to the contrary, a person's do-not-call request shall apply to the broker, dealer or municipal securities dealer making the call, and will not apply to affiliated entities unless the consumer reasonably would expect them to be included given the identification of the caller and the product being advertised.

(vi) *Maintenance of do-not-call lists.* A broker, dealer or municipal securities dealer making outbound telephone calls must maintain a permanent record of a person's request not to receive further calls.

(e) *Wireless Communications*. The provisions set forth in this rule are applicable to brokers, dealers and municipal securities dealers making outbound telephone calls to wireless telephone numbers.

(f) *Outsourcing Telemarketing*. If a broker, dealer or municipal securities dealer uses another appropriately registered or licensed entity or person to perform telemarketing services on its behalf, the broker, dealer or municipal securities dealer remains responsible for ensuring compliance with all provisions contained in this rule.

(g) *Caller Identification Information*.

(i) Any broker, dealer or municipal securities dealer that engages in telemarketing must transmit or cause to be transmitted the telephone number, and, when made available by the broker, dealer or municipal securities dealer's telephone carrier, the name of the broker, dealer or municipal securities dealer, to any caller identification service in use by a recipient of an outbound telephone call.

(ii) The telephone number so provided must permit any person to make a do-not-call request during regular business hours.

(iii) Any broker, dealer or municipal securities dealer that engages in telemarketing is prohibited from blocking the transmission of caller identification information.

(h) *Unencrypted Consumer Account Numbers*. No broker, dealer or municipal securities dealer shall disclose or receive, for consideration, unencrypted consumer account numbers for use in telemarketing. The term "unencrypted" means not only complete, visible account numbers, whether provided in lists or singly, but also encrypted information with a key to its decryption. This paragraph shall not apply to the disclosure or receipt of a customer's billing information to process a payment pursuant to a telemarketing transaction.

(i) *Submission of Billing Information*. For any telemarketing transaction, a broker, dealer or municipal securities dealer must obtain the express informed consent of the person to be charged and to be charged using the identified account.

(i) In any telemarketing transaction involving preacquired account information and a free-to-pay conversion feature, the broker, dealer or municipal securities dealer must:

(A) obtain from the customer, at a minimum, the last four digits of the account number to be charged;

(B) obtain from the customer an express agreement to be charged and to be charged using the account number pursuant to paragraph (i)(i)(A); and

(C) make and maintain an audio recording of the entire telemarketing transaction.

(ii) In any other telemarketing transaction involving preacquired account information not described in paragraph (i)(i), the broker, dealer or municipal securities dealer must:

(A) identify the account to be charged with sufficient specificity for the customer to understand what account will be charged; and

(B) obtain from the customer an express agreement to be charged and to be charged using the account number identified pursuant to paragraph (i)(ii)(A).

(j) *Abandoned Calls*.

(i) No broker, dealer or municipal securities dealer shall "abandon" any outbound telephone call. An outbound call is "abandoned" if a called person answers it and the call is not connected to a broker, dealer or municipal securities dealer within two seconds of the called person's completed greeting.

(ii) A broker, dealer or municipal securities dealer shall not be liable for violating paragraph (j)(i) if:

(A) the broker, dealer or municipal securities dealer employs technology that ensures abandonment of no more than three percent of all outbound telephone calls answered by a person, measured over the duration of a single calling campaign, if less than 30 days, or separately over each successive 30-day period or portion thereof that the campaign continues;

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(B) the broker, dealer or municipal securities dealer, for each outbound telephone call placed, allows the telephone to ring for at least 15 seconds or four rings before disconnecting an unanswered call;

(C) whenever a broker, dealer or municipal securities dealer is not available to speak with the person answering the outbound telephone call within two seconds after the person's completed greeting, the broker, dealer or municipal securities dealer promptly plays a recorded message that states the name and telephone number of the broker, dealer or municipal securities dealer on whose behalf the call was placed; and

(D) the broker, dealer or municipal securities dealer retains records establishing compliance with paragraph (j)(ii)

(k) *Prerecorded Messages.*

(i) No broker, dealer or municipal securities dealer shall initiate any outbound telephone call that delivers a prerecorded message other than a prerecorded message permitted for compliance with the call abandonment safe harbor in paragraph (j)(ii)(C) unless:

(A) the broker, dealer or municipal securities dealer has obtained from the recipient of the call an express agreement, in writing, that:

(1) the broker, dealer or municipal securities dealer obtained only after a clear and conspicuous disclosure that the purpose of the agreement is to authorize the broker, dealer or municipal securities dealer to place prerecorded calls to such person;

(2) the broker, dealer or municipal securities dealer obtained without requiring, directly or indirectly, that the agreement be executed as a condition of opening an account or purchasing any good or service;

(3) evidences the willingness of the recipient of the call to receive calls that deliver prerecorded messages by or on behalf of a specific broker, dealer or municipal securities dealer; and

(4) includes such person's telephone number and signature (which may be obtained electronically under the E-Sign Act);

(B) the broker, dealer or municipal securities dealer allows the telephone to ring for at least 15 seconds or four rings before disconnecting an unanswered call; and within two seconds after the completed greeting of the person called, plays a prerecorded message that promptly provides the disclosures in paragraph (d)(iv), followed immediately by a disclosure of one or both of the following:

(1) for a call that could be answered by a person, that the person called can use an automated interactive voice and/or keypress-activated opt-out mechanism to assert a firm-specific do-not-call request pursuant to the broker, dealer or municipal securities dealer's procedures instituted under paragraph (d)(iii) at any time during the message. The mechanism must:

(a) automatically add the number called to the broker, dealer or municipal securities dealer's firm-specific do-not-call list;

(b) once invoked, immediately disconnect the call; and

(c) be available for use at any time during the message;

(2) for a call that could be answered by an answering machine or voicemail service, that the person called can use a toll-free telephone number to assert a firm-specific do-not-call request pursuant to the broker, dealer or municipal securities dealer's procedures instituted under paragraph (d)(iii). The number provided must connect directly to an automated interactive voice or keypress-activated opt-out mechanism that:

(a) automatically adds the number called to the broker, dealer or municipal securities dealer's firm-specific do-not-call list;

(b) immediately thereafter disconnects the call; and

(c) is accessible at any time throughout the duration of the telemarketing campaign; and

(C) the broker, dealer or municipal securities dealer complies with all other requirements of this rule and other applicable federal and state laws.

(ii) Any call that complies with all applicable requirements of paragraph (k) shall not be deemed to violate paragraph (j).

(l) *Credit Card Laundering.* Except as expressly permitted by the applicable credit card system, no broker, dealer or municipal securities dealer shall:

(i) present to or deposit into, the credit card system for payment, a credit card sales draft generated by a telemarketing transaction that is not the result of a telemarketing credit card transaction between the cardholder and the broker, dealer or municipal securities dealer;

(ii) employ, solicit, or otherwise cause a merchant, or an employee, representative or agent of the merchant, to present to or to deposit into the credit card system for payment, a credit card sales draft generated by a telemarketing transaction that is not the result of a telemarketing credit card transaction between the cardholder and the merchant; or

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(iii) obtain access to the credit card system through the use of a business relationship or an affiliation with a merchant, when such access is not authorized by the merchant agreement or the applicable credit card system.

(m) *Exemption*. Outbound telephone calls from a broker, dealer, or municipal securities dealer to a business entity, government, or political subdivision, agency, or instrumentality of a government are exempt from this rule, other than sections (a)(ii) and (d)(i)-(iii), (v) and (vi).

(n) *Definitions*.

For purposes of this rule:

(i) The term "account activity" shall include, but not be limited to, purchases, sales, interest credits or debits, charges or credits, dividend payments, transfer activity, securities receipts or deliveries, and/or journal entries relating to securities or funds in the possession or control of the broker, dealer or municipal securities dealer.

(ii) The term "acquirer" means a business organization, financial institution, or an agent of a business organization or financial institution that has authority from an organization that operates or licenses a credit card system to authorize merchants to accept, transmit, or process payment by credit card through the credit card system for money, goods or services, or anything else of value.

(iii) The term "billing information" means any data that enables any person to access a customer's or donor's account, such as a credit or debit card number, a brokerage, checking, or savings account number, or a mortgage loan account number. A "donor" means any person solicited to make a charitable contribution. A "charitable contribution" means any donation or gift of money or any other thing of value, for example a transfer to a pooled income fund.

(iv) The term "broker, dealer or municipal securities dealer of record" refers to the broker, dealer or municipal securities dealer identified on a customer's account application for accounts held by the issuer's agent for municipal fund securities.

(v) The term "caller identification service" means a service that allows a telephone subscriber to have the telephone number, and, where available, name of the calling party transmitted contemporaneously with the telephone call, and displayed on a device in or connected to the subscriber's telephone.

(vi) The term "cardholder" means a person to whom a credit card is issued or who is authorized to use a credit card on behalf of or in addition to the person to whom the credit card is issued.

(vii) The term "credit" means the right granted by a creditor to a debtor to defer payment of debt or to incur debt and defer its payment.

(viii) The term "credit card" means any card, plate, coupon book, or other credit device existing for the purpose of obtaining money, property, labor, or services on credit.

(ix) The term "credit card sales draft" means any record or evidence of a credit card transaction.

(x) The term "credit card system" means any method or procedure used to process credit card transactions involving credit cards issued or licensed by the operator of that system.

(xi) The term "customer" means any person who is or may be required to pay for goods or services offered through telemarketing.

(xii) The term "established business relationship" means a relationship between a broker, dealer or municipal securities dealer and a person if:

(A) the person has made a financial transaction or has a security position, a money balance, or account activity with the broker, dealer or municipal securities dealer or at a clearing firm that provides clearing services to such broker, dealer or municipal securities dealer within the eighteen months immediately preceding the date of an outbound telephone call;

(B) the broker, dealer or municipal securities dealer is the broker, dealer or municipal securities dealer of record for an account of the person within the eighteen months immediately preceding the date of an outbound telephone call; or

(C) the person has contacted the broker, dealer or municipal securities dealer to inquire about a product or service offered by the broker, dealer or municipal securities dealer within the three months immediately preceding the date of an outbound telephone call.

A person's established business relationship with a broker, dealer or municipal securities dealer does not extend to the broker, dealer or municipal securities dealer's affiliated entities unless the person would reasonably expect them to be included. Similarly, a person's established business relationship with a broker, dealer or municipal securities dealer's affiliate does not extend to the broker, dealer or municipal securities dealer unless the person would reasonably expect the broker, dealer or municipal securities dealer to be included.

(xiii) The term "free-to-pay conversion" means, in an offer or agreement to sell or provide any goods or services, a provision under which a customer receives a product or service for free for an initial period and will incur an obligation to pay for the product or service if he or she does not take affirmative action to cancel before the end of that period.

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(xiv) The term "merchant" means a person who is authorized under a written contract with an acquirer to honor or accept credit cards, or to transmit or process for payment credit card payments, for the purchase of goods or services or a charitable contribution.

(xv) The term "merchant agreement" means a written contract between a merchant and an acquirer to honor or accept credit cards, or to transmit or process for payment credit card payments, for the purchase of goods or services or a charitable contribution.

(xvi) The term "outbound telephone call" means a telephone call initiated by a telemarketer to induce the purchase of goods or services or to solicit a charitable contribution from a donor.

(xvii) The term "person" means any individual, group, unincorporated association, limited or general partnership, corporation, other business entity, government, or political subdivision, agency, or instrumentality of a government.

(xviii) The term "personal relationship" means any family member, friend, or acquaintance of the broker, dealer or municipal securities dealer making an outbound telephone call.

(xix) The term "preacquired account information" means any information that enables a broker, dealer or municipal securities dealer to cause a charge to be placed against a customer's or donor's account without obtaining the account number directly from the customer or donor during the telemarketing transaction pursuant to which the account will be charged.

(xx) The term "telemarketer" means any person who, in connection with telemarketing, initiates or receives telephone calls to or from a customer or donor.

(xxi) The term "telemarketing" means consisting of or relating to a plan, program, or campaign involving at least one outbound telephone call pertaining to municipal securities or municipal financial products, for example cold-calling. The term does not include the solicitation of sales through the mailing of written marketing materials, when the person making the solicitation does not solicit customers by telephone but only receives calls initiated by customers in response to the marketing materials and during those calls takes orders only without further solicitation. For purposes of the previous sentence, the term "further solicitation" does not include providing the customer with information about, or attempting to sell, anything promoted in the same marketing materials that prompted the customer's call.

Rule G-39 Interpretation

See:

Rule G-32 Interpretation — Notice Regarding Electronic Delivery and Receipt of Information by Brokers, Dealers and Municipal Securities Dealers, November 20, 1998.

Rule G-39 Amendment History (since 2003)

Release No. 34-69635 (May 24, 2013), 78 FR 32483 (May 30, 2013); MSRB Notice 2013-12 (May 29, 2013)

Release No. 34-51533 (April 12, 2005), 70 FR 20196 (April 18, 2005); MSRB Notice 2005-20 (March 23, 2005)

Release No. 34-49127 (January 26, 2004), 69 FR 4548 (January 30, 2004); MSRB Notice 2004-05 (February 2, 2004)

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Rule G-40
Advertising by Municipal Advisors

(a) *General Provisions.*

(i) *Definition of "Advertisement."* For purposes of this rule, the term "advertisement" means any material (other than listings of offerings) published or used in any electronic or other public media, or any written or electronic promotional literature distributed or made generally available to municipal entities, obligated persons, municipal advisory clients or the public, including any notice, circular, report, market letter, form letter, telemarketing script, seminar text, press release concerning the services of the municipal advisor or the engagement of a municipal advisory client (as defined in paragraph (a)(iii)(B)), or reprint, or any excerpt of the foregoing or of a published article. The term does not apply to preliminary official statements, official statements, preliminary prospectuses, prospectuses, summary prospectuses or registration statements, but does apply to abstracts or summaries of the foregoing and other such similar documents prepared by municipal advisors.

(ii) *Definition of "Form Letter."* For purposes of this rule, the term "form letter" means any written letter or electronic mail message distributed to more than 25 persons within any period of 90 consecutive days.

(iii) *Definition of Municipal Advisory Client*. For the purposes of this rule, the term municipal advisory client shall include either:

(A) a municipal entity or obligated person for whom the municipal advisor engages in municipal advisory activities, as defined in Rule G-42(f)(iv) or

(B) a municipal advisor, or investment adviser (as defined under section 202 of the Investment Advisers Act of 1940) on behalf of whom the municipal advisor undertakes a solicitation of a municipal entity or obligated person, as defined in Rule 15Ba1-1(n), 17 CFR 240.15Ba1-1(n), under the Act.

(iv) *Content Standards.*

(A) All advertisements by a municipal advisor, must be based on the principles of fair dealing and good faith, must be fair and balanced, and must provide a sound basis for evaluating the facts in regard to any particular municipal security or type of municipal security, municipal financial product, industry, or service. No municipal advisor may omit any material fact or qualification if the omission, in light of the context of the material presented, would cause the advertisements to be misleading.

(B) No municipal advisor may make any false, exaggerated, unwarranted, promissory or misleading statement or claim in any advertisement.

(C) A municipal advisor may place information in a legend or footnote only in the event that such placement would not inhibit a municipal advisory client's or potential municipal advisory client's understanding of the advertisement.

(D) A municipal advisor must ensure that statements are clear and not misleading within the context in which they are made, and that they provide balanced treatment of risks and potential benefits. An advertisement must be consistent with the risks inherent to the municipal financial product or the issuance of the municipal security.

(E) A municipal advisor must consider the nature of the audience to which the advertisement will be directed and must provide details and explanations appropriate to the audience.

(F) An advertisement may not predict or project performance, imply that past performance will recur or make any exaggerated or unwarranted claim, opinion or forecast; provided, however, that this paragraph (a)(iv)(F) does not prohibit:

(1) A hypothetical illustration of mathematical principles, provided that it does not predict or project the performance of a municipal financial product; and

(2) An investment analysis tool, or a written report produced by an investment analysis tool.

(G) Testimonials.

(1) Definition of "Testimonial." For purposes of this rule, the term "testimonial" means a statement of a person's or entity's experience concerning the municipal advisor or concerning the municipal advisory services rendered by the municipal advisor.

(2) A municipal advisor may, directly or indirectly, publish, circulate or distribute an advertisement which includes or refers, directly or indirectly, to a testimonial if the following conditions are met:

(a) The person or entity making the testimonial has the knowledge and experience to make a statement concerning their experience with the municipal advisor or with the municipal advisory services rendered by the municipal advisor.

(b) If an advertisement contains a testimonial of any kind concerning the municipal advisor or concerning the municipal advisory services rendered by the municipal advisor, that advertisement must clearly and prominently disclose the following:

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(i) That the testimonial was given by a current municipal advisory client or given by a person or entity other than a current municipal advisory client.

(ii) The fact that the testimonial may not be representative of the experience of other clients.

(iii) The fact that the testimonial is no guarantee of future performance or success.

(iv) If more than $100 in total value in cash or non-cash compensation is paid for the testimonial, (a) the fact that it is a paid testimonial; and (b) a brief statement by the municipal advisor of any material conflicts of interest on the part of the person or entity providing the testimonial resulting from the municipal advisor's relationship with such person or entity.

(3) A municipal advisor may not provide any compensation for a testimonial to a person or entity, directly or indirectly, of more than $1000 in total value in cash or non-cash compensation during the preceding 12 months.

(H) A municipal advisor may indicate registration with the Municipal Securities Rulemaking Board in any advertisement that complies with the applicable standards of all other rules of the Board and that neither states nor implies that the Municipal Securities Rulemaking Board or any other corporate name or facility owned by the Municipal Securities Rulemaking Board, or any other regulatory organization endorses, indemnifies, or guarantees the municipal advisor's business practices, services, skills, or any specific municipal security or municipal financial product.

(v) *General Standard for Advertisements*. Subject to the further requirements of this rule relating to professional advertisements, no municipal advisor shall publish or disseminate, or cause to be published or disseminated, any advertisement relating to municipal securities or municipal financial products that such municipal advisor knows or has reason to know contains any untrue statement of material fact or is otherwise false or misleading.

(b) *Professional Advertisements*.

(i) *Definition of "Professional Advertisement."* The term "professional advertisement" means any advertisement concerning the facilities, services or skills with respect to the municipal advisory activities of the municipal advisor or of another municipal advisor.

(ii) *Standard for Professional Advertisements*. No municipal advisor shall publish or disseminate, or cause to be published or disseminated, any professional advertisement that contains any untrue statement of material fact or is otherwise false or misleading.

(c) *Approval by Principal*. Each advertisement subject to the requirements of this rule must be approved in writing by a municipal advisor principal, as defined in Rule G-3(e)(i), prior to first use and, with respect to an advertisement that includes a testimonial, such approval must also be based on a reasonable belief that the testimonial complies with the requirements under Rule G-40(a)(iv)(G).

(d) *Interactive Content*. Notwithstanding the requirement of section (c), interactive content that is an advertisement and that would be posted or disseminated in an interactive electronic forum is exempt from the requirement to be approved in writing by a municipal advisor principal prior to first use.

(e) *Records.* Each municipal advisor shall make and keep current in a separate file, records of all advertisements and records of any compensation provided to a person or entity, directly or indirectly, for a testimonial.

Supplementary Material

.01 Number of Persons. For purposes of Rule G-40(a)(ii), the number of "persons" for a response to a request for proposal (RFP), a request for qualifications, or similar request is determined at the entity level. Therefore, for example, if a municipal advisor were to send a response to an RFP to a municipal entity, that municipal entity would count as one "person" no matter how many employees of the municipal entity may review the response to the RFP.

.02 Supervision of Interactive Content. Notwithstanding Rule G-40(d), each municipal advisor shall establish, implement, and maintain a system to supervise the municipal advisory activities of the municipal advisor and its associated persons, including any municipal advisory activities conducted through an interactive electronic forum that involve interactive content, that is reasonably designed to achieve compliance with applicable securities laws and regulations, including applicable Board rules as set forth in Rule G-44(a), on supervisory system.

.03 Clear and Prominent Disclosures. In order for disclosures to be clear and prominent, the disclosures must be at least as prominent in the advertisement as the testimonial. Specifically, such disclosures should appear close to the associated testimonial statement with the same prominence so that the statement and disclosures are read at the same time, rather than referring the reader to somewhere else in the advertisement to view the disclosures.

Rule G-40 Interpretations

See:

Rule G-21 Interpretive Notice – FAQs regarding the Use of Social Media under MSRB Rule G-21, on Advertising by Brokers, Dealers or Municipal Securities Dealers, and MSRB Rule G-40, on Advertising by Municipal Advisors, July 3, 2023

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Rule G-40 Amendment History (since 2003)

Release No. 34-97483 (May 11, 2023), 88 FR 31562 (May 17, 2023); MSRB Notice 2023-05 (May 15, 2023)

Release No. 34-85223 (February 28, 2019), 84 FR 8141 (March 6, 2019); MSRB Notice 2019-07 (February 26, 2019)

Release No. 34-85222 (February 28, 2019), 84 FR 8132 (February 28, 2019); MSRB Notice 2019-07 (February 26, 2019)

Release No. 34-84999 (January 29, 2019), 84 FR 1525 (February 4, 2019); MSRB Notice 2019-03 (January 28, 2019)

Release No. 34-83177 (May 7, 2018), 83 FR 21794 (May 10, 2018); MSRB Notice 2018-08 (May 7, 2018)

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Rule G-41

Anti-Money Laundering Compliance Program

Every broker, dealer or municipal securities dealer shall establish and implement an anti-money laundering compliance program reasonably designed to achieve and monitor ongoing compliance with the requirements of the Bank Secrecy Act, 31 U.S.C. 5311, et seq. ("BSA"), and the regulations thereunder. A broker, dealer or municipal securities dealer that establishes and implements an anti-money laundering compliance program that is in compliance with the rules, regulations or requirements governing the establishment and maintenance of anti-money laundering programs of the registered securities association of which the broker, dealer or municipal securities dealer is a member (*e.g.*, FINRA Rule 3310) or the appropriate regulatory agency as defined in Section 3(a)(34) of the Act (*e.g.*, 12 C.F.R. 21.21 (OCC); 12 C.F.R. 208.63 (FRB); 12 C.F.R. 326.8 (FDIC)) or, if applicable, the Office of Thrift Supervision (12 C.F.R. 563.177) will be deemed to be in compliance with Section 5318(h)(1) of the BSA and the regulations promulgated thereunder for purposes of this Rule.

Rule G-41 Amendment History (since 2003)

Release No. 34-85699 (April 22, 2019), 84 FR 17897 (April 26, 2019); MSRB Notice 2019-11 (April 10, 2019)

Release No. 34-51620 (April 27, 2005), 70 FR 22952 (May 3, 2005); MSRB Notice 2005-14 (March 4, 2005)

Release No. 34-48169 (July 11, 2003), 68 FR 42793 (July 18, 2003); MSRB Notice 2003-28 (July 16, 2003)

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Rule G-42
Duties of Non-Solicitor Municipal Advisors

(a) *Standards of Conduct.*

(i) A municipal advisor to an obligated person client shall, in the conduct of all municipal advisory activities for that client, be subject to a duty of care.

(ii) A municipal advisor to a municipal entity client shall, in the conduct of all municipal advisory activities for that client, be subject to a fiduciary duty that includes a duty of loyalty and a duty of care.

(b) *Disclosure of Conflicts of Interest and Other Information.* A municipal advisor must, prior to or upon engaging in municipal advisory activities, provide to the municipal entity or obligated person client full and fair disclosure in writing of:

(i) all material conflicts of interest, including:

(A) any affiliate of the municipal advisor that provides any advice, service, or product to or on behalf of the client that is directly related to the municipal advisory activities to be performed by the disclosing municipal advisor;

(B) any payments made by the municipal advisor, directly or indirectly, to obtain or retain an engagement to perform municipal advisory activities for the client;

(C) any payments received by the municipal advisor from a third party to enlist the municipal advisor's recommendation to the client of its services, any municipal securities transaction or any municipal financial product;

(D) any fee-splitting arrangements involving the municipal advisor and any provider of investments or services to the client;

(E) any conflicts of interest arising from compensation for municipal advisory activities to be performed that is contingent on the size or closing of any transaction as to which the municipal advisor is providing advice; and

(F) any other actual or potential conflicts of interest, of which the municipal advisor is aware after reasonable inquiry, that could reasonably be anticipated to impair the municipal advisor's ability to provide advice to or on behalf of the client in accordance with the standards of conduct of section (a) of this rule, as applicable.

If a municipal advisor concludes that it has no known material conflicts of interest based on the exercise of reasonable diligence by the municipal advisor, the municipal advisor must provide a written statement to the client to that effect.

(ii) any legal or disciplinary event that is material to the client's evaluation of the municipal advisor or the integrity of its management or advisory personnel.

Information regarding legal or disciplinary events may be disclosed for purposes of this subsection by identification of the specific type of event and specific reference to the relevant portions of the municipal advisor's most recent Forms MA or MA-I filed with the Commission if the municipal advisor provides detailed information specifying where the client may electronically access such forms.

(c) *Documentation of Municipal Advisory Relationship*. A municipal advisor must evidence each of its municipal advisory relationships by a writing or writings created and delivered to the municipal entity or obligated person client prior to, upon or promptly after the establishment of the municipal advisory relationship. The writing(s) must be dated and include, at a minimum,

(i) the form and basis of direct or indirect compensation, if any, for the municipal advisory activities to be performed;

(ii) the information required to be disclosed by section (b) of this rule;

(iii) a description of the specific type of information regarding legal and disciplinary events requested by the Commission on Form MA and Form MA-I, which includes information about any criminal actions, regulatory actions, investigations, terminations, judgments, liens, civil judicial actions, customer complaints, arbitrations and civil litigation, and detailed information specifying where the client may electronically access the municipal advisor's most recent Form MA and each most recent Form MA-I filed with the Commission;

(iv) the date of the last material change or addition to the legal or disciplinary event disclosures on any Form MA or Form MA-I filed with the Commission by the municipal advisor and a brief explanation of the basis for the materiality of the change or addition;

(v) the scope of the municipal advisory activities to be performed and any limitations on the scope of the engagement;

(vi) the date, triggering event, or means for the termination of the municipal advisory relationship, or, if none, a statement that there is none; and

(vii) any terms relating to withdrawal from the municipal advisory relationship.

(d) *Recommendations and Review of Recommendations of Other Parties.* If a municipal advisor makes a recommendation of a municipal securities transaction or municipal financial product to a municipal entity or obligated person client, it must have a reasonable basis to believe that the recommended municipal securities transaction or municipal financial product is suitable for the client, based on the information obtained through the reasonable diligence of the municipal advisor. If the review of a recommendation of another party is requested by the municipal entity or obligated person client and within the scope of the engagement, the municipal advisor must determine, based on the information

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obtained through the reasonable diligence of such municipal advisor, whether the municipal securities transaction or municipal financial product is or is not suitable for the client. In addition, the municipal advisor must inform the client of:

(i) the municipal advisor's evaluation of the material risks, potential benefits, structure, and other characteristics of the recommended municipal securities transaction or municipal financial product;

(ii) the basis upon which the municipal advisor reasonably believes that the recommended municipal securities transaction or municipal financial product is, or (as may be applicable in the case of a review of a recommendation) is not, suitable for the client; and

(iii) whether the municipal advisor has investigated or considered other reasonably feasible alternatives to the recommended municipal securities transaction or municipal financial product that might also or alternatively serve the client's objectives.

(e) *Specified Prohibitions*.

(i) A municipal advisor is prohibited from:

(A) receiving compensation that is excessive in relation to the municipal advisory activities actually performed;

(B) delivering an invoice for fees or expenses for municipal advisory activities that is materially inaccurate in its reflection of the activities actually performed or the personnel that actually performed those activities;

(C) making any representation or the submission of any information that the municipal advisor knows or should know is either materially false or materially misleading due to the omission of a material fact about the capacity, resources or knowledge of the municipal advisor, in response to requests for proposals or qualifications or in oral presentations to a client or prospective client, for the purpose of obtaining or retaining an engagement to perform municipal advisory activities;

(D) making, or participating in, any fee-splitting arrangement with underwriters on any municipal securities transaction as to which it has provided or is providing advice, and any undisclosed fee-splitting arrangements with providers of investments or services to a municipal entity or obligated person client of the municipal advisor; and

(E) making payments for the purpose of obtaining or retaining an engagement to perform municipal advisory activities other than: (1) payments to an affiliate of the municipal advisor for a direct or indirect communication with a municipal entity or obligated person on behalf of the municipal advisor where such communication is made for the purpose of obtaining or retaining an engagement to perform municipal advisory activities; (2) reasonable fees paid to another municipal advisor registered as such with the Commission and the Board for making such a communication as described in subparagraph (e)(i)(E)(1); and (3) payments that are permissible "normal business dealings" as described in Rule G-20.

(ii) Except as provided for in paragraph .14 of the Supplementary Material of this rule, a municipal advisor to a municipal entity client, and any affiliate of such municipal advisor, is prohibited from engaging with the municipal entity client in a principal transaction that is the same, or directly related to the, issue of municipal securities or municipal financial product as to which the municipal advisor is providing or has provided advice to the municipal entity client.

(f) *Definitions*.

(i) "Advice" shall, for purposes of this rule, have the same meaning as in Section 15B(e)(4)(A)(i) of the Act, 17 CFR 240.15Ba1-1(d)(1)(ii) and other rules and regulations thereunder.

(ii) "Affiliate of the municipal advisor" shall mean, for purposes of this rule, any person directly or indirectly controlling, controlled by, or under common control with such municipal advisor.

(iii) "Municipal advisor" shall, for purposes of this rule, have the same meaning as in Section 15B(e)(4) of the Act, 17 CFR 240.15Ba1-1(d)(1)-(4) and other rules and regulations thereunder; provided that it shall exclude a person that is otherwise a municipal advisor solely based on activities within the meaning of Section 15B(e)(4)(A)(ii) of the Act and rules and regulations thereunder or any solicitation of a municipal entity or obligated person within the meaning of Section 15B(e)(9) of the Act and rules and regulations thereunder.

(iv) "Municipal advisory activities" shall, for purposes of this rule, mean those activities that would cause a person to be a municipal advisor as defined in subsection (f)(iii) of this rule.

(v) A "municipal advisory relationship" shall, for purposes of this rule, be deemed to exist when a municipal advisor enters into an agreement to engage in municipal advisory activities for a municipal entity or obligated person. The municipal advisory relationship shall be deemed to have ended on the date which is the earlier of (i) the date on which the municipal advisory relationship has terminated pursuant to the terms of the documentation of the municipal advisory relationship required in section (c) of this rule or (ii) the date on which the municipal advisor withdraws from the municipal advisory relationship.

(vi) "Municipal entity" shall, for purposes of this rule, have the same meaning as in Section 15B(e)(8) of the Act, 17 CFR 240.15Ba1-1(g) and other rules and regulations thereunder.

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(vii) "Obligated person" shall, for purposes of this rule, have the same meaning as in Section 15B(e)(10) of the Act, 17 CFR 240.15Ba1-1(k) and other rules and regulations thereunder.

(viii) "Official statement" shall, for purposes of this rule, have the same meaning as in Rule G- 32(d)(vii).

(ix) "Principal transaction" shall mean, for purposes of this rule, when acting as principal for one's own account, a sale to or a purchase from the municipal entity client of any security or entrance into any derivative, guaranteed investment contract, or other similar financial product with the municipal entity client.

Supplementary Material

.01 Duty of Care. Municipal advisors must exercise due care in performing their municipal advisory activities. The duty of care includes, but is not limited to, the obligations discussed in this paragraph .01. A municipal advisor must possess the degree of knowledge and expertise needed to provide the municipal entity or obligated person client with informed advice. A municipal advisor also must make a reasonable inquiry as to the facts that are relevant to a client's determination as to whether to proceed with a course of action or that form the basis for any advice provided to the client. A municipal advisor must undertake a reasonable investigation to determine that it is not basing any recommendation on materially inaccurate or incomplete information. Among other matters, a municipal advisor must have a reasonable basis for:

(a) any advice provided to or on behalf of a client;

(b) any representations made in a certificate that it signs that will be reasonably foreseeably relied upon by the client, any other party involved in the municipal securities transaction or municipal financial product, or investors in the municipal entity client's securities or securities secured by payments from an obligated person client; and

(c) any information provided to the client or other parties involved in the municipal securities transaction in connection with the preparation of an official statement for any issue of municipal securities as to which the municipal advisor is advising.

.02 Duty of Loyalty. Municipal advisors must fulfill a duty of loyalty in performing their municipal advisory activities for municipal entity clients. The duty of loyalty includes, but is not limited to, the obligations discussed in this paragraph .02. A municipal advisor must deal honestly and with the utmost good faith with a municipal entity client and act in the client's best interests without regard to the financial or other interests of the municipal advisor. A municipal advisor must not engage in municipal advisory activities for a municipal entity client if it cannot manage or mitigate its conflicts of interest in a manner that will permit it to act in the municipal entity's best interests.

.03 Action Independent of or Contrary to Advice. If a municipal entity or obligated person client of a municipal advisor elects a course of action that is independent of or contrary to advice provided by the municipal advisor, the municipal advisor is not required on that basis to disengage from the municipal advisory relationship.

.04 Limitations on the Scope of the Engagement. Nothing contained in this rule shall be construed to permit the municipal advisor to alter the standards of conduct or impose limitations on any of the duties prescribed herein. If requested or expressly consented to by the municipal entity or obligated person client, however, a municipal advisor may limit the scope of the municipal advisory activities to be performed to certain specified activities or services. If the municipal advisor engages in a course of conduct that is inconsistent with any such agreed upon limitations, it may result in negating the effectiveness of such limitations.

.05 Conflicts of Interest. Disclosures of conflicts of interest by a municipal advisor to its municipal entity or obligated person client must be sufficiently detailed to inform the client of the nature, implications and potential consequences of each conflict. Such disclosures also must include an explanation of how the municipal advisor addresses or intends to manage or mitigate each conflict.

.06 Relationship Documentation. During the term of the municipal advisory relationship, the writing(s) required by section (c) of this rule must be promptly amended or supplemented to reflect any material changes or additions, and the amended writing(s) or supplement must be promptly delivered to the client. This amendment and supplementation requirement applies to any changes and additions that are discovered, or should have been discovered, based on the exercise of reasonable diligence by the municipal advisor. The information described in subsection (c)(ii) of this rule is not required if the municipal advisor previously fully complied with the requirements of section (b) of this rule to disclose conflicts of interest and other information and subsection (c)(ii) would not require the disclosure of any materially different information than that previously disclosed to the client.

.07 Inadvertent Advice. A municipal advisor is not required to comply with sections (b) and (c) of this rule if the municipal advisor meets all of the following requirements. In the event that a municipal advisor inadvertently engages in municipal advisory activities for a municipal entity or obligated person and does not intend to continue the municipal advisory activities or enter into a municipal advisory relationship, the municipal advisor must, as promptly as possible after discovery of the provision of inadvertent advice, provide a document to such municipal entity or obligated person that is dated and includes:

(a) a disclaimer that the municipal advisor did not intend to provide advice and that, effective immediately, it has ceased engaging in municipal advisory activities with respect to that

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municipal entity or obligated person in regard to all transactions and municipal financial products as to which advice was inadvertently provided;

(b) a notification that such municipal entity or obligated person should be aware that the disclosure of material conflicts of interest and other information required by section (b) of this rule has not been provided;

(c) an identification of all of the advice that was inadvertently provided, based on a reasonable investigation; and

(d) a request that the municipal entity or obligated person acknowledge receipt of the document.

A municipal advisor utilizing this alternative must promptly conduct a review of its written supervisory and compliance policies and procedures to ensure they are reasonably designed to prevent the provision of inadvertent advice to municipal entities and obligated persons. The use of this alternative has no effect on the applicability of any provisions of this rule other than sections (b) and (c) or any other legal requirements applicable to municipal advisory activities.

.08 Applicability of State or Other Laws and Rules. Municipal advisors may be subject to fiduciary or other duties under state or other laws. Nothing contained in this rule shall be deemed to supersede any more restrictive provision of state or other laws applicable to municipal advisory activities. In addition, the specific prohibition in subsection (e)(ii) of this rule shall not apply to an acquisition as principal, either alone or as a participant in a syndicate or other similar account formed for the purpose of purchasing, directly or indirectly, from an issuer all or any portion of an issuance of municipal securities on the basis that the municipal advisor provided advice as to the issuance because that is a type of transaction that is addressed and prohibited in certain circumstances by Rule G-23.

.09 Suitability. A determination of whether a municipal securities transaction or municipal financial product is suitable must be based on numerous factors, as applicable to the particular type of client, including, but not limited to, the client's financial situation and needs, objectives, tax status, risk tolerance, liquidity needs, experience with municipal securities transactions or municipal financial products generally or of the type and complexity being recommended, financial capacity to withstand changes in market conditions during the term of the municipal financial product or the period that municipal securities to be issued in the municipal securities transaction are reasonably expected to be outstanding and any other material information known by the municipal advisor about the client and the municipal securities transaction or municipal financial product, after reasonable inquiry.

.10 Know Your Client. A municipal advisor must use reasonable diligence, in regard to the maintenance of the municipal advisory relationship, to know and retain the essential facts concerning the client and concerning the authority of each person acting on behalf of such client. The facts "essential" to "knowing a client" include those required to:

(a) effectively service the municipal advisory relationship with the client;

(b) act in accordance with any special directions from the client;

(c) understand the authority of each person acting on behalf of the client; and

(d) comply with applicable laws, regulations and rules.

.11 Excessive Compensation. Depending on the specific facts and circumstances of the engagement, a municipal advisor's compensation may be so disproportionate to the nature of the municipal advisory activities performed as to constitute an unfair practice in violation of Rule G-17. Among the factors relevant to whether a municipal advisor's compensation is disproportionate to the nature of the municipal advisory activities performed are the municipal advisor's expertise, the complexity of the municipal securities transaction or municipal financial product, whether the fee is contingent upon the closing of the municipal securities transaction or municipal financial product, the length of time spent on the engagement and whether the municipal advisor is paying any other relevant costs related to the municipal securities transaction or municipal financial product.

.12 529 College Savings Plans, ABLE Programs and Other Municipal Fund Securities. This rule applies equally to municipal advisors to sponsors or trustees of 529 college savings plans, ABLE programs (*i.e.*, a program established and maintained by a state, or an agency or instrumentality thereof, to implement the Stephen Beck, Jr., Achieving a Better Life Experience Act of 2014), and other municipal fund securities. All references in this rule to an "official statement" include the disclosure document for a 529 college savings plan or an ABLE program and the investment circular or information statement for a local government investment pool.

.13 Principal Transactions - Other Similar Financial Products. For purposes of subsection (f)(ix) of this rule, which defines the term "principal transaction," the phrase "other similar financial product" includes a bank loan, but only if it is in an aggregate principal amount of $1,000,000 or more and it is economically equivalent to the purchase of one or more municipal securities.

.14 Principal Transactions - Exception for Transactions in Specified Fixed Income Securities. Engaging in a principal transaction with a municipal entity client is not specifically prohibited under subsection (e)(ii) of this rule if:

(a) the municipal advisor is a broker-dealer registered under Section 15 of the Act, and each account as to which the municipal advisor relies on this paragraph .14 is a brokerage account subject to the Act, and the rules thereunder, and the rules of the self-regulatory organization(s) of which it is a member, and is an account as to which the municipal advisor exercises no investment discretion (as defined in Section 3(a)(35) of the Act), except investment discretion granted by a municipal entity client on a temporary or limited basis;

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(b) neither the municipal advisor, nor any affiliate of the municipal advisor, is providing or has provided advice to the municipal entity client as to an issue of municipal securities or a municipal financial product that is directly related to the principal transaction (other than advice as to another principal transaction under circumstances meeting all the requirements of this paragraph .14);

(c) the principal transaction is a sale to or a purchase from the municipal entity client of any U.S. Treasury security, agency debt security, or corporate debt security (as defined in paragraph .15 of the Supplementary Material) and does not involve municipal escrow investments (as defined in 17 CFR 240.15Ba1-1(h)); and

(d) the municipal advisor either: (1) discloses to the municipal entity client in writing before the completion of the transaction the capacity in which the municipal advisor is acting and obtains the consent of the municipal entity client to such transaction or (2) executes the transaction under circumstances meeting all of the following requirements:

(A) neither the municipal advisor nor any of its affiliates are the issuer of, or, at the time of the sale, an underwriter (as defined in 17 CFR 240.15c2-12(f)(8)) of, the security;

(B) the municipal entity client has executed a written, revocable consent prospectively authorizing the municipal advisor directly or indirectly to act as principal for its own account in selling any security to or purchasing any security from the municipal entity client, so long as such written consent is obtained after written disclosure to the municipal entity client explaining: the circumstances under which the municipal advisor directly or indirectly may engage in principal transactions; the nature and significance of conflicts with its municipal entity client's interests as a result of the transactions; and how the municipal advisor addresses those conflicts;

(C) the municipal advisor, prior to the execution of each principal transaction, informs the municipal entity client, orally or in writing, of the capacity in which it may act with respect to such transaction and obtains consent from the municipal entity client, orally or in writing, to act as principal for its own account with respect to such transaction;

(D) the municipal advisor sends a written confirmation at or before completion of each such transaction that includes, in addition to the information required by 17 CFR 240.10b-10 or Rule G-15, a conspicuous, plain English statement informing the municipal entity client that the municipal advisor disclosed to the client prior to the execution of the transaction that the municipal advisor may be acting in a principal capacity in connection with the transaction, the municipal entity client authorized the transaction, and the municipal advisor sold the security to, or bought the security from, the municipal entity client for its own account;

(E) the municipal advisor sends to the municipal entity client, no less frequently than annually, written disclosure containing a list of all transactions that were executed in the client's account in reliance upon subsection (d)(2) of this paragraph .14, and the date and price of such transactions; and

(F) each written disclosure required by subsection (d)(2) of this paragraph .14 includes a conspicuous, plain English statement that the municipal entity client may revoke the written consent referred to in paragraph (d)(2)(B) of this paragraph .14 without penalty at any time by written notice to the municipal advisor.

This paragraph .14 shall not be construed as relieving in any way a municipal advisor from acting in the best interest of its municipal entity clients, nor shall it relieve the municipal advisor from any obligation that may be imposed by other applicable provisions of the federal securities laws and state law.

.15 Terms Relating to the Exception in Paragraph .14. For purposes of paragraph .14 and this paragraph .15 of the Supplementary Material:

(a) "agency" means a U.S. executive agency as defined in 5 U.S.C. 105 that is authorized to issue debt directly or through a related entity, such as a government corporation, or to guarantee the repayment of principal and/or interest of a debt security issued by another entity. The term excludes the U.S. Department of the Treasury in the exercise of its authority to issue U.S. Treasury securities;

(b) "agency debt security" means a debt security (i) issued or guaranteed by an agency, or (ii) issued or guaranteed by a government-sponsored enterprise, including a securitized product that is issued by an agency or a government-sponsored enterprise, or, for which, the principal or interest (or both) is guaranteed by an agency or a government-sponsored enterprise;

(c) "corporate debt security" means a debt security that is U.S. dollar-denominated and issued by a U.S. or foreign private issuer and, if a "restricted security" as defined in 17 CFR 230.144(a)(3), sold pursuant to 17 CFR 230.144A, but does not include a money market instrument;

(d) "government-sponsored enterprise" has the same meaning as defined in 2 U.S.C. 622(8);

(e) "money market instrument" means a debt security that at issuance has a maturity of one calendar year or less, or, if a discount note issued by an agency or a government-sponsored enterprise, a maturity of one calendar year and one day or less;

(f) "securitized product" means a security collateralized by any type of financial asset, such as a loan, a lease, a mortgage, or a secured or unsecured receivable, and includes, but is not limited to, an asset-backed security, a synthetic asset-backed security, and any residual tranche or interest of any security specified above, which tranche or interest is considered a debt security; and

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(g) "U.S. Treasury security" means a security issued by the U.S. Department of the Treasury to fund the operations of the federal government or to retire such outstanding securities.

Rule G-42 Interpretations

Duties of Non-Solicitor Municipal Advisors in Conduit Financing Scenarios

July 13, 2017

The MSRB is providing interpretive guidance to address the applicability of Rule G-42, which establishes core standards of conduct for municipal advisors[1] that engage in municipal advisory activities,[2] other than municipal advisory solicitation activities (for purposes of this guidance and Rule G-42, "municipal advisors"), in the area of conduit financing. Using various scenarios, the guidance discusses a municipal advisor's relationship(s) with, and duties and obligations owed to, a municipal entity issuer, an obligated person that is a conduit borrower,[3] or both, in connection with the issuance of municipal securities for the conduit borrower. For purposes of this guidance, the MSRB assumes that the conduit borrower is not a municipal entity, as defined in Section 15B(e)(8) of the Exchange Act, except in the final section of the guidance entitled, "When a Conduit Borrower is also a Municipal Entity."

A few broad principles should be noted. First, institutions that are often conduit borrowers, such as large universities, may choose to issue debt securities directly without the involvement of a municipal entity issuer. The exemption from registration under the Securities Act of 1933 ("Securities Act")[4] may be based on Section 3(a)(4)[5] or Regulation D under the Securities Act,[6] rather than on Section 3(a)(2).[7] In such cases, there may be no municipal security, and Rule G-42 would not apply. In cases where there is a private placement "tail" (*i.e.*, a non-municipal security) side-by-side with the issuance of a tax-exempt municipal security, the advice and the activities a municipal advisor engages in regarding the tax-exempt security, including any conduct or communication to fulfill the municipal advisor's duties and obligations under Rule G-42, may have an impact or consequences for the municipal advisor with respect to its negotiations or other activities related to the non-municipal security (*e.g.*, the disclosure to the client of a material conflict of interest as required under Rule G-42(b)).

Second, the scenarios described below may involve advice given to both the municipal entity issuer and the conduit borrower. Rule G-42 provides that a fiduciary duty is owed only to a municipal entity, and a duty of care is owed to both the municipal entity and the conduit borrower. If an issue arises as to an activity that involves only the duty of care, such as inquiry as to the facts that provide the basis for advice provided to the client, the duty owed may be the same to both the municipal entity and the conduit borrower. Other issues, however, may involve the duty of loyalty owed the municipal entity as part of the municipal advisor's fiduciary duty, and thus the municipal advisor's obligation to the issuer may be higher (or different) than the duty owed the conduit borrower.

Initially, the MSRB provides interpretive guidance regarding the applicability of Rule G-42 when an issuer hires a municipal advisor to provide advice directly to a conduit borrower ("First Scenario"). The MSRB then considers whether an issuer may retain a municipal advisor (either for a specific transaction, or on a long-term basis), and then provide advice that the issuer obtains from the municipal advisor, in connection with a specific issuance of municipal securities, indirectly through the issuer, to the conduit borrower in connection with the issuance ("Second Scenario"). In a third scenario, the MSRB considers whether a conduit borrower may retain a municipal advisor that, as a practical matter, will also provide advice to an issuer on which the issuer will rely, in cases where the issuer chooses not to retain a separate municipal advisor, and, in such circumstances, whether the municipal advisor must provide the issuer the disclosures set forth in Rule G-42 ("Third Scenario"). The MSRB also provides interpretive guidance regarding the application of Rule G-42 to an issuer and a conduit borrower when the issuer and the conduit borrower retain the same municipal advisor to provide advice regarding an issuance ("Fourth Scenario"). Finally, in a fifth scenario ("Fifth Scenario"), the MSRB interprets the applicability of Rule G-42 to a scenario involving two natural persons, A and B, who are employees or otherwise associated persons of a registered municipal advisor, where A is retained by the issuer to provide municipal advisory services to the issuer, and B is retained by the conduit borrower to provide municipal advisory services to the conduit borrower.

Section 1: First Scenario

In the First Scenario, the MSRB considers the applicability of Rule G-42, when, in connection with a specific issuance of municipal securities, an issuer hires a municipal advisor to provide advice directly to a conduit borrower. (For purposes of the First Scenario, the MSRB assumes that the municipal advisor does not provide municipal advisory services to the issuer. Instead, consistent with the issuer's intent, the municipal advisor is retained for, and in fact, provides municipal advisory services solely to or on behalf of the conduit borrower.)

Under Rule G-42, a municipal advisor may provide municipal advisory services directly to a conduit borrower, in connection with an issuance of municipal securities by an issuer, if the municipal advisor is retained and compensated by the issuer. Whether a person (in this case, the municipal advisor retained by the issuer) is a municipal advisor to the issuer, another person (in this case, the conduit borrower), or both and therefore is subject to Rule G-42, is activity-based and turns on whether the person is providing advice or otherwise engaging in municipal advisory activities for or on behalf of the recipient. Although the First Scenario focuses on the payment of compensation by the issuer, the existence or non-existence of compensation is not a factor in determining whether the

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municipal advisor is a municipal advisor to the issuer or to the conduit borrower.[8] In addition, the fact that, as to the conduit borrower, the municipal advisor is paid compensation by a third party is also not a factor in determining if the municipal advisor is a municipal advisor to the conduit borrower.

In the First Scenario, the municipal advisor engages in municipal advisory activities solely for or on behalf of the conduit borrower, and is subject to the requirements of Rule G-42. The municipal advisor is required to comply with all the provisions of Rule G-42 as to the conduit borrower,[9] and the rule applies in all respects to the municipal advisor in its relationship with the conduit borrower, except provisions applicable solely to a municipal entity client.

The threshold question regarding the application of Rule G-42 to the municipal advisor in its relationship to the issuer is whether the Securities and Exchange Commission (SEC) would interpret the facts and circumstances of the First Scenario — where the issuer does not receive the municipal advisory services, and the services are in fact provided solely to and on behalf of the conduit borrower – as the municipal advisor engaging (as a legal matter) in municipal advisory activities also to or on behalf of the issuer.

The Exchange Act definition of municipal advisor includes a person that "[p]rovides advice[10] to *or on behalf of* [emphasis added] a municipal entity or obligated person with respect to municipal financial products or the issuance of municipal securities, including advice with respect to the structure, timing, terms, and other similar matters concerning such financial products or issues."[11] The SEC has stated that the determination of "whether a person provides advice to or on behalf of a municipal entity or an obligated person regarding municipal financial products or the issuance of municipal securities depends on all the relevant facts and circumstances."[12] The meaning of the phrase "on behalf of" in the context of the First Scenario and more broadly, whether a person is engaged in municipal advisory activities for or on behalf of another person and is a municipal advisor to such person are interpretive issues that are solely within the jurisdiction of the SEC. Requests for interpretation regarding such issues should be directed to the SEC's Office of Municipal Securities.

If, in the First Scenario, the activities of the municipal advisor with the issuer are not interpreted by the SEC to mean that the municipal advisor is also a municipal advisor to the issuer, then the municipal advisor would not be required to comply with Rule G-42 with respect to the issuer. For example, the municipal advisor would not be required by Rule G-42 to provide disclosures of conflicts of interest, if any existed, to the issuer.

Although compensation is not a factor in determining whether a person is a municipal advisor to a particular party (except as to a solicitor municipal advisor), the MSRB believes that, in the First Scenario, the compensation paid by the issuer to the municipal advisor for services for a conduit borrower may present a material conflict of interest, requiring the municipal advisor to make full and fair disclosure of such conflict in writing to the conduit borrower. Rule G-42 requires a municipal advisor to disclose all material conflicts of interest under Rule G-42(b)(i). (Such requirements are also incorporated in Rule G-42(c)). The requirement is not limited to actual material conflicts of interest. As provided in Rule G-42(b)(i)(F), for example, the municipal advisor must disclose potential material conflicts of interest that the municipal advisor becomes aware of after reasonable inquiry, that could reasonably be anticipated to impair the municipal advisor's ability to provide advice to or on behalf of the client in accordance with the applicable standards of conduct under the Rule – the duty of care, and if applicable, the duty of loyalty. In this scenario, the client is the conduit borrower and the municipal advisor owes its client the duty of care as provided in Rule G 42(a)(i) and SM .01.[13] Even if the compensation paid by the issuer to the municipal advisor is not viewed as an actual material conflict of interest by the municipal advisor, the municipal advisor must carefully consider if such payments give rise to a potential material conflict of interest. In the MSRB's view, the payments from the issuer to the municipal advisor may create a relationship between the municipal advisor and the issuer, that even if not a municipal advisor-client relationship, generally would give rise to a potential material conflict of interest that could reasonably be anticipated to impair the municipal advisor's ability to provide advice to or on behalf of the conduit borrower in accordance with the standards of Rule G-42(a). Before making any such disclosures to the conduit borrower, the municipal advisor should consider the guidance set forth in SM .05. Under SM .05, when a municipal advisor is required to make disclosures of material conflicts of interest, including those required under Rule G-42(b)(i)(F), the municipal advisor's disclosures must be sufficiently detailed to inform the conduit borrower of the nature, implications and potential consequences of each conflict, and must also include an explanation of how the municipal advisor addresses or intends to manage or mitigate each conflict.

Finally, the relationship between the issuer and the municipal advisor, however characterized or limited, may create other compliance concerns under Rule G-42. For example, in some cases, the issuer, although not the client, may wish to provide policy direction or instructions to the municipal advisor regarding the issuance of the municipal securities. If the issuer communicates, explicitly or implicitly, an instruction or direction which the municipal advisor follows and which inhibited or limited the municipal advisor's ability to fulfill its duties and obligations to the conduit borrower client under Rule G-42, the municipal advisor would violate the rule.

Section 2: Second Scenario

The MSRB has been asked to provide guidance regarding a scenario where a municipal advisor is engaged in municipal advisory activities as directed by an issuer and for such issuer, pursuant to an explicit arrangement or agreement, and the municipal advisor "indirectly" also provides advice to a conduit

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borrower, because the issuer provides to the conduit borrower the advice the issuer receives from the municipal advisor. For purposes of this Second Scenario, the MSRB assumes that the municipal advisor is aware of the flow of information from the issuer to the conduit borrower.

To assess whether the municipal advisor owes duties to the conduit borrower when the municipal advisor provides advice to the issuer that then flows through to the conduit borrower, again, a threshold question must be answered: Is the municipal advisor also engaged in municipal advisory activities for or on behalf of the conduit borrower because the conduit borrower is receiving, through the issuer, some or all of the advice that was provided by the municipal advisor to the issuer, establishing a municipal advisory relationship between the municipal advisor and the conduit borrower?

As set forth above, the SEC has stated that the determination of "whether a person provides advice to or on behalf of a municipal entity or an obligated person regarding municipal financial products or the issuance of municipal securities depends on all the relevant facts and circumstances,"[14] and whether a person is engaged in municipal advisory activities for or on behalf of another person and is a municipal advisor to such person are interpretive issues that are solely within the jurisdiction of the SEC.[15]

If, in the Second Scenario, the transfer of advice from the issuer to the conduit borrower is interpreted by the SEC to mean that the municipal advisor is engaged in municipal advisory activities for or on behalf of the conduit borrower, the municipal advisor must comply with the requirements of Rule G-42 with respect to the issuer and the conduit borrower. This dual representation may raise several compliance issues.

Rule G-42 distinguishes the duties and obligations that a municipal advisor owes to an issuer client (*i.e.*, a municipal entity) from those owed to a conduit borrower client in two provisions. First, in the conduct of all municipal advisory activities for and on behalf of an issuer client, a municipal advisor is subject to a fiduciary duty as provided in Rule G-42(a)(ii). The fiduciary duty is more specifically described as a requirement to act in accordance with a duty of loyalty[16] and a duty of care,[17] as described in, respectively, SM .02 and SM .01. In contrast and as discussed above, when the municipal advisor's client is a conduit borrower, the municipal advisor owes a duty of care to the client as provided in Rule G-42(a)(i) and SM .01, but not a duty of loyalty. Second, in connection with a municipal advisor's municipal advisory activities for and on behalf of an issuer client, a municipal advisor, and any affiliate of the municipal advisor, is prohibited from engaging in certain principal transactions with the issuer, as provided in Rule G-42(e)(ii).[18] This specific prohibition does not apply to a municipal advisor when its client is a conduit borrower. However, all other provisions and protections in Rule G-42 apply in the same manner to a municipal advisor whether its client is an issuer (*i.e.*, a municipal entity) or a conduit borrower. For example, municipal advisors must provide the same timely disclosures of material conflicts of interest and material legal and disciplinary events in the earliest stages of their dealings with their conduit borrower clients as they provide to their municipal entity clients (and supplement such disclosures as necessary during the relationship). Similarly, municipal advisors have the same obligations to an issuer client and a conduit borrower to provide written documentation of the municipal advisory relationship (and supplement such documentation as necessary during the relationship). Also, if a municipal advisor makes a recommendation of a municipal securities transaction to either type of client, the municipal advisor must have a reasonable basis to believe that the recommended municipal securities transaction is suitable for the client.

The MSRB believes that a municipal advisor's dual representation of an issuer and a conduit borrower with respect to the same issuance raises at least two types of compliance issues and concerns. First, the differing standards and other distinctions that Rule G-42 makes between issuer clients and conduit borrower clients will require a municipal advisor to consider whether, in every aspect of its conduct and representation, the municipal advisor acts in compliance with the more stringent standard applicable to its issuer client, and also fulfills its duties and obligations to its conduit borrower client. Moreover, under Rule G-42, compliance concerns and issues may require greater diligence to identify and address, because although certain duties and obligations are specified in Rule G-42(a)(i) and (ii) and SM. 01 and SM .02, generally, all of the specific duties or obligations that fall under the broad umbrella of the fiduciary duty cannot be specifically enumerated. Among other things, the MSRB cannot anticipate and identify all the situations that may arise in a particular offering, and, as a result, the rule cannot provide explicit instruction or guidance to a municipal advisor to an issuer, regarding what acts must be taken (or avoided) or what must be communicated (or not communicated) to an issuer to comply fully with the municipal advisor's fiduciary duty. Similarly, all duties and obligations that a municipal advisor owes to a conduit borrower under the duty of care in a particular offering also cannot be specifically enumerated for the same reasons.

Further, when compliance issues or concerns arise, whether the duty owed is a fiduciary duty (a duty of loyalty and a duty of care) or a duty of care, under Rule G-42 and SM .04, the standards of conduct applicable to the municipal advisor and, except as provided in SM .04, the duties and obligations owed to the municipal advisor's client(s), cannot be eliminated, diminished or modified by disclosure, mutual agreement or otherwise. SM .04 makes clear that nothing in the rule shall be construed to permit a municipal advisor to alter the standards of conduct or impose limitations on any of the duties prescribed in Rule G-42. For example, in various requests for guidance, the MSRB was asked, regarding dual representations, if the MSRB could confirm a municipal advisor engaged in dual representations could continue its representation of both clients if full and fair disclosures of any conflicts of interest or other issues were made to both clients. Gener-

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ally, disclosure alone would not be sufficient for a municipal advisor to ensure, in all facts and circumstances, that a municipal advisor would be in compliance with all the duties and obligations owed to one or both clients, including, as to a fiduciary, the obligation of a municipal advisor not to "engage in municipal advisory activities for a municipal entity client if it cannot manage or mitigate its conflicts of interest in a manner that will permit it to act in the municipal entity's best interests."[19] However, certain limitations may be placed on the scope of a municipal advisory relationship with a client, and the ability to do so is not limited to dual representation scenarios. Under SM .04, if requested or expressly consented to by a client, a municipal advisor may limit the scope of the municipal advisory activities to be performed to certain specified activities or services. (The effectiveness of any such specified limitation of the scope of municipal advisory activities may be negated, however, if the municipal advisor then engages in a course of conduct that is inconsistent with the specified limitations.)

In the Second Scenario and any other scenario involving a dual representation, before entering into the dual representation, a municipal advisor must determine if it is possible to meet its duties and obligations to both clients under Rule G-42. The municipal advisor must determine it can comply with Rule G-42 when the duties and obligations owed to one client, the issuer, are more stringent and more difficult to fulfill, than those duties and obligations that the municipal advisor owes to the second client, the conduit borrower. Among other things, the duty of loyalty owed to the issuer requires a municipal advisor to act in the best interests of the issuer client without regard to the financial or other interests of the municipal advisor. The municipal advisor must consider whether it will be able to act consistently with this standard during the entire engagement while also providing municipal advisory services to the conduit borrower client, without putting its interests or the interests of the conduit borrower, before or above those of the issuer client, including not providing any advantages or benefits to itself or any other client to the loss or detriment of the issuer, including any financial loss or lost opportunity.

In addition, as discussed above, in all municipal advisory relationships, a municipal advisor must identify and disclose to its client material conflicts of interest, after reasonable inquiry, and such disclosures must be sufficiently detailed to inform the client of the nature, implications and potential consequences of each conflict. In the MSRB's view, conflicts of interest are, in most cases, inherent in a dual representation, although they may not always be material. In a dual representation, the MSRB believes that such conflicts of interest should be identified prior to or upon engaging in municipal advisory activities with each client. Further, in the MSRB's view, the potential for an identified, but non-material conflict to become a material conflict of interest during the dual representation is great enough that the municipal advisor will have an obligation to make an initial disclosure pursuant to Rule G-42(b)(i)(F), of the facts and circumstances of the dual representation, how such dual representation is a potential material conflict of interest and the risk that such conflict could reasonably be anticipated to impair the municipal advisor's ability to dually represent both clients in accordance with the standards of conduct under Rule G-42(a).[20] Further, for each client, the municipal advisor must include an explanation of how the municipal advisor addresses or intends to manage or mitigate each conflict, as provided in SM .05.

However, because the municipal advisor owes a fiduciary duty to one client but not the other, if any material conflict of interest is identified that the municipal advisor cannot manage or mitigate in a manner that will permit the municipal advisor to act in the issuer's best interests, the municipal advisor must not engage in, or must cease engaging in, the municipal advisory activities for the issuer. Practically, this would require the municipal advisor to terminate the relationship with the issuer, or act to eliminate the material conflict of interest. For example, if such conflicts derive from the municipal advisor's relationship with the conduit borrower, as an alternative to terminating its relationship with the issuer, the municipal advisor may be able to eliminate such material conflicts by amending or terminating its relationship with the conduit borrower. The MSRB notes that, in either scenario, the municipal advisor's elimination of its conflicts of interest, by terminating its relationship with the issuer, or by amending or terminating its municipal advisory relationship with the conduit borrower, may create both legal and related business issues. If termination of the municipal advisory relationship with the issuer or the conduit borrower is required, among other things, the termination may have a detrimental impact on the schedule or costs of completing the issuance, or impair the terminated client's ability to obtain informed advice. For these reasons, municipal advisors are cautioned to determine before or upon beginning a dual representation how either municipal advisory relationship would be modified or terminated if the municipal advisor is no longer able to comply with its Rule G-42 obligations in a dual representation. Among other things, a municipal advisor may wish to consider if, prior to finalizing the initial documentation of the municipal advisory relationship as required in Rule G-42(c), the municipal advisor should negotiate the specific terms and conditions that would apply to a future termination of a municipal advisory relationship with either of the clients. As required by Rule G-42(c), if specific terms regarding termination are agreed upon, such terms must be incorporated in the writing(s) that document the municipal advisory relationship.[21]

An example of a difficult circumstance for the municipal advisor to resolve arises when, for example, a major university or hospital chain is engaged in multiple conduit financings in different jurisdictions around the country. The conduit borrower may have developed a certain type of financing to fit within its own broader financing plan, such as consistently structured variable rate securities. One state education authority, which is approached by the university conduit borrower,

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may, however, have a strong policy against the issuance of variable rate debt. The municipal advisor should bring the conflict to both parties at the earliest possible stage in the financing and make a determination whether it can advise both parties and fulfill its obligations under Rule G-42.

The MSRB also cautions municipal advisors that neither the facts and circumstances characterizing an issuance involving an issuer and a conduit borrower, nor the duties and obligations under Rule G-42 as applied to a relationship, are static or fixed. The requirements of Rule G-42 apply at any time during which municipal advisory activities are engaged in for or on behalf of an issuer or a conduit borrower, and with equal rigor throughout the representation. For example, although the standards of conduct do not change, as facts and circumstances change, a municipal advisor must assess if, under such changed circumstances, there are specific acts, duties or obligations that are not enumerated under Rule G-42 that must be performed or attended to arising from the broad duty of care and, if applicable, duty of loyalty.[22] Rule G-42 also incorporates protections for municipal advisory clients in certain key provisions, which are based on the recognition that key facts and circumstances may change (*i.e.*, the continuing obligation to provide promptly to a client amended or supplemental information in writing, regarding any changes and additions in the relationship documentation, such as amendments or supplements needed regarding the material conflicts of interest disclosures, or the disclosures regarding certain legal and disciplinary events).

Changes in the facts and circumstances regarding the municipal securities issuance, or in the municipal advisory relationships with an issuer, a conduit borrower or both may require the municipal advisor to review if such changes may affect its ability to continue the dual representation and fully comply with Rule G-42. Even if an issuer, a conduit borrower and a municipal advisor believe at the beginning of the dual representation that the issuer and conduit borrower will be in agreement on all major issues that may arise during the course of the issuance, the interests and goals of each client may diverge later. Either the issuer, the conduit borrower, or both, may develop substantially divergent views on issues material to the issuance. Municipal advisors considering dual representation should assess initially the extent to which the interests and goals of the issuer and the conduit borrower are the same or substantially similar and make reassessments periodically thereafter.

Although challenging, in certain circumstances, the MSRB believes that it may be possible for a municipal advisor to provide municipal advisory services to an issuer and, in the manner described in the Second Scenario, indirectly, to engage in municipal advisory activities for or on behalf of a conduit borrower and remain in compliance with Rule G-42. Specifically, the circumstances where dual representation as described in the Second Scenario may be most feasible are those where the interests of the issuer and the conduit borrower are aligned. This may occur when the issuer is created to finance a specific project for the benefit of a metropolitan area, or in instances where the issuer applies a policy-neutral or hands-off approach to proposed projects, provided that such projects and the related financings comply with fundamental legal requirements for issuance. In such circumstances where an issuer and a conduit borrower have a complete or substantially complete convergence of interests and goals, or where the issuer's concerns are somewhat limited and related for the most part to determining that an issuance will fully comply with the applicable legal and regulatory requirements, it may be possible for the municipal advisor to deal honestly and with the utmost good faith and act in the best interests of the issuer without regard to the financial or other interests of the municipal advisor (including the municipal advisor's financial or other interest arising from its relationship with the conduit borrower) as required under the duty of loyalty, and also meet its obligations to both clients under the duty of care. It also may be possible for the municipal advisor, which by the very status of its dual representation creates a potential material conflict of interest that must be disclosed in the initial disclosures made pursuant to Rule G-42(b), to manage or mitigate this and any other of "its conflicts of interest in a manner that will permit it to act in the municipal entity's best interests," as required under SM .02.

Conversely, where there is not a substantially complete convergence of interests and goals of the issuer and the conduit borrower, or when the shared interests and goals of the issuer and the conduit borrower at the beginning of the issuance process diverge during the course of the issuance, it may not be possible for a municipal advisor to fulfill its duties of loyalty and care to its municipal entity client, and also provide, under the duty of care, the appropriate expert professional advice to the conduit borrower and otherwise fulfill its obligations to the conduit borrower that arise under the duty of care. Although dual representation is possible, for every action taken during an issuance, it is incumbent upon a municipal advisor to assess and determine, as to each client, if such actions comply with the standards of conduct and other requirements under Rule G-42.

Given the broad scope of the duty of care and the broader and more strict obligations arising in a fiduciary relationship, the MSRB concludes that it may be possible for a municipal advisor in the Second Scenario to engage in dual representations for or on behalf of both an issuer and a conduit borrower, but the municipal advisor will face a number of challenges in such situations. Moreover, the challenges to fully and completely comply with its obligations to each client will be heightened in lengthier and more complex engagements.

Section 3: Third, Fourth and Fifth Scenarios

The Third, Fourth and Fifth Scenarios raise the same compliance issues and concerns under Rule G-42 as discussed in the First and Second Scenarios. In the Third Scenario, the municipal advisor, an issuer and a conduit borrower expressly recognize that the municipal advisor is retained by and pro-

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vides municipal advisory services for the conduit borrower and, also, as a practical matter, provides advice to the issuer, on which the issuer relies.[23] Although in the Third Scenario, the conduit borrower, rather than the issuer compensates the municipal advisor, all the compliance and regulatory issues arising regarding Rule G-42 are the same as those discussed above regarding the Second Scenario.

In relation to the Third Scenario, municipal advisors also have requested guidance regarding the municipal advisor's responsibilities to the issuer when the municipal advisor is retained and compensated by the conduit borrower. For example, does the municipal advisor have a fiduciary responsibility to the issuer to whom advice is being provided, and is the municipal advisor required to provide disclosures of conflicts of interest to the issuer? If the provision of such advice to the issuer means, under SEC rules, that the provider is a municipal advisor to the issuer, then the municipal advisor would be a fiduciary to the issuer and subject to all the duties and obligations under Rule G-42. Thus, the municipal advisor would be required, among other things, to comply with the requirements to make disclosures of material conflicts of interest as provided in Rule G-42(b), and to provide such conflicts of interest disclosures as part of the relationship documentation as provided in Rule G-42(c).

The Fourth Scenario is another scenario in which a municipal advisor is engaged in a dual representation of an issuer and a conduit borrower. Rule G-42 would apply in the Fourth Scenario in the same manner as it applies in the Second Scenario.

The Fifth Scenario is also an example of dual representation by one municipal advisor of an issuer and a conduit borrower regarding the same issuance of municipal securities and, thus, raises the same issues regarding the municipal advisor's compliance with Rule G-42 that are discussed for the Second Scenario. The duties and obligations of Rule G-42 run not only from a municipal advisor firm's associated persons but also from the municipal advisor firm to the issuer and the conduit borrower. Although, in the Fifth Scenario, one employee is designated to act on behalf of the issuer and a second is designated to act on behalf of the conduit borrower, the employees are agents of their employer, a single municipal advisor firm. In the MSRB's view, therefore, how Rule G-42 applies in the Fifth Scenario does not differ in any material respect from the Second, Third and Fourth Scenarios. In a dual representation, and, in particular, a dual representation purposefully established from the beginning of the issuance, a municipal advisor firm having the capacity to do so is likely to rely on the services of more than one of its associated persons, whether structured to work in coordination as one team, or separately.

Section 4: When a Conduit Borrower is also a Municipal Entity

In the discussion above regarding the five scenarios, the MSRB assumes that, in dual representations, the issuer client is a municipal entity, and the second client, the conduit borrower, is not. As discussed above, because under the Exchange Act and Rule G-42, a municipal advisor owes more rigorous obligations and duties to a municipal entity client — that is, a fiduciary duty — than are owed to a conduit borrower, in certain scenarios involving dual representation, a municipal advisor may find it difficult, or not possible, to fully comply with its obligations to both clients under Rule G-42.

The MSRB recognizes that, at times, both the issuer and the conduit borrower are municipal entities, and, in this discussion, a conduit borrower that is a municipal entity is referred to as a municipal entity conduit borrower. In such cases, a municipal advisor that provides advice to or on behalf of the issuer and the municipal entity conduit borrower would owe the more rigorous duties required of a fiduciary to both clients equally (*e.g.*, the municipal advisor would be required, in all contexts, to deal honestly and with the utmost good faith with the issuer and the municipal entity conduit borrower, and, as to each, to act in the client's best interests without regard to the financial or other interests of the municipal advisor).

Before undertaking such a dual engagement, the municipal advisor must assess its ability to comply with Rule G-42, including the proscription in Rule G-42, SM .02, which prohibits a municipal advisor from engaging in municipal advisory activities for a client if the municipal advisor could not manage or mitigate its conflicts of interest in a manner that would permit the municipal advisor to act in the best interests of the client. In addition, if the dual representation were undertaken, the municipal advisor's assessment of its ability to fully comply with Rule G-42, including SM .02, should be carefully considered at the beginning of the dual representation and thoughtfully re-considered periodically during the course of the dual engagement. In the MSRB's view, the facts and circumstances wherein a municipal advisor would be able to fully comply with Rule G-42, including all obligations as a fiduciary to each municipal entity, are not likely to occur frequently.

> *This interpretive guidance is intended for use only as a resource. It does not describe all provisions of Rule G-42. In addition, the MSRB has adopted other rules and interpretations that may be applicable to the conduct described in the five scenarios.*

[1] This guidance is limited to persons that are municipal advisors as defined in Section 15B(e)(4) of the Securities Exchange Act of 1934 ("Exchange Act"), and the relevant rules and regulations promulgated pursuant to the Exchange Act ("Exchange Act rules"), but excludes municipal advisors engaged solely in the undertaking of a solicitation of a municipal entity or an obligated person, for compensation, on behalf of certain third parties ("solicitor municipal advisors"), because Rule G-42 does not apply to solicitor municipal advisors. *See* Exchange Act Release No. 70462 (September 20, 2013), 78 FR 67467 (November 12, 2013) ("Order Adopting SEC Final Rule") (the Exchange Act rules and regulations referred to above include,

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but are not limited to, Exchange Act Rules 15Ba1-1 through 15Ba1-8. *See also* Section 15B(e)(4)(A)(ii); Exchange Act Rule 15Ba1-1(d)(1)(i) (the term "municipal advisor" includes solicitors of obligated persons); Section 15B(e)(9) of the Exchange Act (definition of "solicitation of a municipal entity or obligated person"); and Order Adopting SEC Final Rule, 78 FR 67467, at n. 138 and n. 408.

[2] In Exchange Act Rule 15Ba1-1(e), the term "municipal advisory activities" means "(1) [p]roviding advice to or on behalf of a municipal entity or obligated person with respect to municipal financial products or the issuance of municipal securities, including advice with respect to the structure, timing, terms, and other similar matters concerning such financial products or issues; or (2) [s]olicitation of a municipal entity or an obligated person." Further, the Rule provides that, in the absence of an exclusion or an exemption, these activities would cause a person to be a municipal advisor.

[3] Although the term "conduit borrower" is not specifically defined in the Exchange Act, a conduit borrower in a municipal securities issuance, such as a private university, non-profit hospital, private corporation, or a public hospital or public university, is a type of "obligated person." See Order Adopting SEC Final Rule, at 67483, n. 200 (the term obligated person can include entities acting as conduit borrowers, such as private universities and non-profit hospitals).

The term, "obligated person," is defined in Exchange Act Section 15B(e)(10) to mean:

any person, including an issuer of municipal securities, who is either generally or through an enterprise, fund, or account of such person, committed by contract or other arrangement to support the payment of all or part of the obligations on the municipal securities to be sold in an offering of municipal securities.

Generally, for purposes of this guidance, the terms "obligated person" and "conduit borrower" have the same meaning. In addition, for this guidance, both terms exclude a municipal entity acting as an issuer of municipal securities.

[4] 15 U.S.C. 77a *et seq.*

[5] 15 U.S.C. 77c(a)(4).

[6] 17 CFR 230.500 – 508.

[7] 15 U.S.C. 77c(a)(2).

[8] *See* Order Adopting SEC Final Rule, at 67477 (the SEC concluded that compensation should not factor into a determination of whether a person must register (or be registered) as a municipal advisor, except in connection with solicitor municipal advisors; in such cases, the person *must be* compensated for such solicitation activity to be required to register (or be registered) as a municipal advisor).

[9] These requirements include, but are not limited to: complying with the broad obligations under the duty of care under Rule G-42(a)(i) and Supplemental Material ("SM") .01 under the rule in all aspects of the municipal advisor's municipal advisory relationship with the conduit borrower; making the required disclosures to the conduit borrower regarding material conflicts of interest and material legal and disciplinary events (and updating them as necessary) as set forth in Rule G-42(b) and SM .05; providing relationship documentation to the conduit borrower (and updating the documentation as necessary) as provided in Rule G-42(c) and SM .05 and SM .06; if making a recommendation to the conduit borrower, or if reviewing a recommendation from the issuer or another party to the conduit borrower, following the requirements of Rule G-42(d) and SM .09 and SM .10; and not engaging in the specifically prohibited conduct as outlined in Rule G-42(e)(i) and SM .11.

[10] In the Order Adopting SEC Final Rule, the SEC provided guidance to interpret "advice" as that term is used in the definition of municipal advisor and related terms. See Order Adopting SEC Final Rule, at 67471 (providing examples of communications that are excluded from the term "advice") and 67478 - 80 (SEC guidance regarding the meaning of "advice," statement that the SEC does not believe that the term "advice" is susceptible to a bright-line definition). Jurisdiction to resolve the interpretive issue of whether "advice" has been provided, based on the facts and circumstances, lies with the SEC.

[11] *See* Exchange Act Section 15B(e)(4)(A)(i).

[12] *See* Order Adopting SEC Final Rule, at 67479.

[13] SM .01 of Rule G-42 sets forth core principles regarding the duty of care a municipal advisor owes to all clients, whether issuers or conduit borrowers. The duty of care includes, but is not limited to, the specific duties enumerated in the rule. For example, to fulfill its obligations under the duty of care, the municipal advisor must, among other things: possess the degree of knowledge and expertise needed to provide the client with informed advice; make a reasonable inquiry as to the facts that are relevant to a client's determination as to whether to proceed with a course of action or that form the basis for advice provided to the client; and undertake a reasonable investigation to determine that it is not basing any recommendation on materially inaccurate or incomplete information. Also, a municipal advisor must have a reasonable basis for any advice provided to or on behalf of a client; any representations made in a certificate that it signs that will be reasonably foreseeably relied upon by the client, any other party involved in the municipal securities transaction, or investors in the issuer's securities or municipal securities secured by payments from the conduit borrower client; and any information provided to the client or other parties involved in the municipal securities transaction in connection with the preparation of an official statement for any issue of municipal securities as to which the municipal advisor is advising. For example, to make a recommendation that complies with the duty of care, prior to making a recommendation, a municipal advisor is required to determine if the recommended municipal securities transaction is suitable, based on numerous factors, as applicable to the particular type of client. Various factors are set forth in SM .09 and include, but are not limited to: the client's financial situation and needs, objectives, tax status, risk tolerance, liquidity needs, the client's experience with, in this scenario, the issuance of municipal securities and related municipal securities transactions, the client's experience with municipal securities issuance and related municipal securities transactions of the type and complexity being recommended, the client's financial capacity to withstand changes in market conditions during the period that the municipal securities to be issued are reasonably expected to be outstanding and any other material information known by the municipal advisor about the client and the municipal securities issuance, after reasonable inquiry.

[14] *See* Order Adopting SEC Final Rule, at 67479.

[15] *See supra* notes 10-12, and accompanying text.

[16] SM .02 of Rule G-42 sets forth core principles regarding the duty of loyalty owed to the issuer. Under SM .02, the duty of loyalty includes, but is not limited to, the duties and obligations to "deal honestly and with the utmost good faith with a municipal entity client and act in the client's best interests without regard to the financial or other interests of the municipal advisor." In addition, "[a] municipal advisor must not engage in municipal advisory activities for a municipal entity client if it cannot manage or mitigate its conflicts of interest in a manner that will permit it to act in the municipal entity's best interests."

[17] *See* n. 13, *supra.*

[18] Additional information and requirements regarding the specific prohibition in Rule G 42(e)(ii) are set forth in SM .13, SM .14 and SM .15.

[19] More specifically, requestors asked if the MSRB would confirm that full and fair disclosure of any conflicts of interest or other issues would address any concerns under the Rule with the result that there would be no unmanageable conflict of interest or issue that would prevent a municipal advisor from advising both an issuer and a conduit borrower (or two advisors from the same firm from representing, separately, an issuer and the related conduit borrower) as required under SM .02.

[20] The MSRB believes that a conflict of interest arises in a dual representation described in the Second Scenario as it does in the First Scenario, when a municipal advisor provides municipal advisory services to a conduit borrower and the payment for such services is provided by a third-party, such as an issuer, in that such circumstances often can create or foster divided loyalties. In both cases, the MSRB believes that the potential that such

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conflicts of interest, which are present at the onset of such relationship(s), may later become material conflicts of interest requires, at a minimum, that such conflict(s) be disclosed initially to the client(s) pursuant to Rule G-42(b)(i)(F).

[21] Rule G-42(c)(vi) requires that the written documentation of the municipal advisory relationship include, in writing, "the date, triggering event, or means for the termination of the municipal advisory relationship, or, if none, a statement that there is none." Rule G 42(c)(vii) requires that the written documentation include "any terms relating to withdrawal from the municipal advisory relationship."

[22] As noted above, all of the municipal advisor's obligations and duties cannot be specifically enumerated or identified at the beginning of the dual representation. Instead, the duties and obligations under either standard of conduct will unfold during the dual representation.

[23] The Third Scenario is limited to situations where an issuer chooses not to retain a separate municipal advisor. However, changing the facts and circumstances of the Third Scenario to include the retention of another municipal advisor by the issuer is not conclusive in determining if Rule G-42 would apply to the municipal advisor retained by the conduit borrower in its conduct with the issuer. If the municipal advisor retained by the conduit borrower provides municipal advisory services indirectly or, as a practical matter, to the issuer, and if the SEC interprets such conduct as engaging in municipal advisory activity for or on behalf of the issuer, the provision of such advice makes Rule G-42 applicable to the provider, except where the provider is subject to an exclusion or an exemption (from the definition of municipal advisor), such as the Independent Registered Municipal Advisor exemption provided under Exchange Act Rule 15Ba1-1(d)(3)(vi).

Rule G-42 Amendment History (since 2003)

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Rule G-43
Broker's Brokers

(a) *Duty of Broker's Broker*.

(i) Each dealer acting as a "broker's broker" with respect to the execution of a transaction in municipal securities for or on behalf of another dealer shall make a reasonable effort to obtain a price for the dealer that is fair and reasonable in relation to prevailing market conditions. The broker's broker must employ the same care and diligence in doing so as if the transaction were being done for its own account.

(ii) A broker's broker that undertakes to act for or on behalf of another dealer in connection with a transaction or potential transaction in municipal securities must not take any action that works against that dealer's interest to receive advantageous pricing.

(iii) A broker's broker will be presumed to act for or on behalf of the seller in a bid-wanted for municipal securities, unless both the seller and bidders agree otherwise in writing in advance of the bid-wanted.

(b) *Conduct of Bid-Wanteds.* A broker's broker will satisfy its obligation under subsection (a)(i) of this rule with respect to a bid-wanted if it conducts that bid-wanted as follows:

(i) Unless otherwise directed by the seller, a broker's broker must make a reasonable effort to disseminate a bid-wanted widely (including, but not limited to, the underwriter of the issue and prior known bidders on the issue) to obtain exposure to multiple dealers with possible interest in the block of securities, although no fixed number of bids is required.

(ii) If securities are of limited interest (*e.g.*, small issues with credit quality issues and/or features generally unknown in the market), the broker's broker must make a reasonable effort to reach dealers with specific knowledge of the issue or known interest in securities of the type being offered.

(iii) Notwithstanding subsection (a)(ii) of this rule, each bid-wanted must have a deadline for the acceptance of bids, after which the broker's broker must not accept bids or changes to bids. That deadline may be either (A) a precise (or "sharp") deadline or (B) an "around time" deadline that ends upon the earliest of: (1) the time the seller directs the broker's broker to sell the securities to the current high bidder, (2) the time the seller informs the broker's broker that the bonds will not be sold in that bid-wanted, or (3) the end of the trading day as publicly posted by the broker's broker prior to the bid-wanted.

(iv) If the high bid received in a bid-wanted is above or below the predetermined parameters of the broker's broker and the broker's broker believes that the bid may have been submitted in error, the broker's broker may contact the bidder prior to the deadline for bids to determine whether its bid was submitted in error, without having to obtain the consent of the seller. If the high bid is within the predetermined parameters but the broker's broker believes that the bid may have been submitted in error, the broker's broker must receive the oral or written permission of the seller before it may contact the bidder to determine whether its bid was submitted in error.

(v) If the high bid received in a bid-wanted is below the predetermined parameters of the broker's broker, the broker's broker must disclose that fact to the seller, in which case the broker's broker may still effect the trade, if the seller acknowledges such disclosure either orally or in writing.

(c) *Policies and Procedures.*

(i) A broker's broker must adopt and comply with policies and procedures pertaining to the operation of bid-wanteds and offerings for municipal securities, which at a minimum:

(A) require the broker's broker to disclose the nature of its undertaking for the seller and bidders in bid-wanteds and offerings;

(B) require the broker's broker to disclose the manner in which the broker's broker will conduct bid-wanteds and offerings;

(C) require the broker's broker to be compensated on the basis of commissions or other economically similar basis and to provide the seller and bidders with a copy of its commission or other economically similar schedules for transactions, with such schedules reflecting at a minimum the maximum charge that the broker's broker could impose on a given transaction;

(D) if the winning high bidder's bid or the cover bid in a bid-wanted has been changed, require the broker's broker to disclose the change to the seller prior to execution and provide the seller with the original and changed bids;

(E) if a broker's broker allows customers (as defined in Rule D-9) or affiliates (as defined in Rule G-11(a)(x)) to place bids, require the disclosure of that fact to both sellers and bidders in writing and require disclosure to the seller if the high bid in a bid-wanted or offering is from a customer or an affiliate of the broker's broker; provided, however, that the broker's broker is not required to disclose the name of the customer or affiliate;

(F) if the broker's broker wishes to conduct a bid-wanted in accordance with section (b) of this rule, require the broker's broker to adopt predetermined parameters for such bid-wanted, disclose such predetermined parameters prominently on its website in advance of the bid-wanted in which they are used, and periodically test such predetermined parameters to determine whether they have identified most bids that did not represent the fair market value of municipal securities that were the subject of bid-wanteds to which the predetermined parameters were applied;

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(G) describe in detail the manner in which it will satisfy its obligation under subsection (a)(i) of this rule in the case of offerings and bid-wanteds not conducted in accordance with section (b) of this rule;

(H) prohibit the broker's broker from maintaining municipal securities in any proprietary or other accounts, other than for clearance and settlement purposes;

(I) prohibit self-dealing by the broker's broker;

(J) prohibit a broker's broker from encouraging bids that do not represent the fair market value of municipal securities that are the subject of a bid-wanted or offering;

(K) prohibit a broker's broker from giving preferential information to bidders in bid-wanteds, including but not limited to, "last looks," directions to a specific bidder that it should "review" its bid or that its bid is "sticking out";

(L) prohibit a broker's broker from changing a bid price or offer price without the bidder's or seller's respective permission;

(M) prohibit a broker's broker from failing to inform the seller of the highest bid in a bid-wanted or offering;

(N) prohibit a broker's broker from accepting a changed bid or a new bid from a bidder in the same bid-wanted after the broker's broker has selectively informed that bidder whether its bid is the high bid ("being used") in the bid-wanted; and

(O) subject to the provisions of sections (b), if applicable, and paragraph (c)(i)(N) of this rule, prohibit the broker's broker from providing any person other than the seller (which may receive all bid prices) and the winning bidder (which may only receive notice that its bid is the winning bid) with information about bid prices, until the bid-wanted has been completed, unless the broker's broker makes such information available to all market participants on an equal basis at no cost, together with disclosure that any bids may not represent the fair market value of the securities, and discloses publicly that it will make such information public.

(ii) The broker's broker must disclose the policies and procedures adopted pursuant to subsection (c)(i) of this rule to sellers of, and bidders for, municipal securities in writing at least annually and post such policies and procedures in a prominent position on its website.

(d) *Definitions*.

(i) "Bidder" means a potential buyer in a bid-wanted or offering.

(ii) "Bid-wanted" means an auction for the sale of municipal securities in which:

(A) the seller does not specify a minimum or desired price for the securities that are the subject of the auction at the commencement of the auction;

(B) the identities of the bidders and the seller are not disclosed prior to the conclusion of the auction, other than to the broker's broker;

(C) bidders must submit bids for the auctioned securities to the broker's broker; and

(D) the seller decides whether to accept the winning bid.

(iii) "Broker's broker" means a dealer, or a separately operated and supervised division or unit of a dealer, that principally effects transactions for other dealers or that holds itself out as a broker's broker. A broker's broker may be a separate company or part of a larger company.

An alternative trading system, registered as such with the Commission, is not a broker's broker for purposes of this rule if, with respect to its municipal securities activities:

(A) it utilizes only automated and electronic means to communicate with bidders and sellers in a systematic and non-discretionary fashion (with the exception of communications that are solely clerical or ministerial in nature and communications that occur after a trade has been executed);

(B) all of the customers (as defined in Rule D-9) of the alternative trading system, if any, are sophisticated municipal market professionals; and

(C) the alternative trading system adopts, and complies with, policies and procedures that, at a minimum,

(1) require the alternative trading system to disclose the nature of its undertaking for the seller and bidders in bid-wanteds and offerings;

(2) require the alternative trading system to disclose the manner in which it will conduct bid-wanteds and offerings; and

(3) prohibit the alternative trading system from engaging in the conduct described in paragraphs (H)-(O) of subsection (c)(i) of this rule.

(iv) For purposes of paragraph (c)(i)(O) of this rule, a bid-wanted for a municipal security will be considered "completed" when either of the following occurs: (A) the security is traded, whether through the broker's broker or otherwise or (B) the broker's broker is notified by the seller that the security will not trade;

(v) "Cover bid" means the next best bid after the winning bid.

(vi) "Dealer" means broker, dealer, or municipal securities dealer.

(vii) For purposes of this rule, "offering" means a process for the sale of municipal securities in which:

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(A) the seller specifies a minimum or desired price for the securities as part of the offering, at the offering's commencement;

(B) the identities of the seller and the bidders are not disclosed prior to the conclusion of the offering; and

(C) a broker's broker negotiates between the seller and the bidders to arrive at a price acceptable to the parties.

(viii) "Predetermined parameters" means formulaic parameters based on objective pricing criteria that are: (A) reasonably designed to identify most bids that may not represent the fair market value of municipal securities that are the subject of bid-wanteds to which they are applied, (B) determined by the broker's broker in advance of the acceptance of bids in such bid-wanteds, and (C) systematically applied to all bids in such bid-wanteds. Predetermined parameters may not be based on bids submitted in the bid-wanted to which they are applied (*e.g.*, cover bids). A broker's broker may establish different predetermined parameters for different types of municipal securities.

(ix) For purposes of this rule, "seller" means the selling dealer, or potentially selling dealer, in a bid-wanted or offering and does not include the customer of a selling dealer.

(x) For purposes of Rule G-43 only, a security will be considered to have "traded" through a broker's broker when it has been purchased by the broker's broker from the seller and sold to the bidder by the broker's broker, as an intermediary.

Rule G-43 Interpretations

Notice to Dealers That Use the Services of Broker's Brokers

December 22, 2012

Introduction

In view of the important role that broker's brokers play in the provision of secondary market liquidity for municipal securities owned by retail investors, MSRB Rule G-43 sets forth particular rules to which broker's brokers are subject. Rule G-43(a)(i) provides:

Each dealer acting as a "broker's broker"[1] with respect to the execution of a transaction in municipal securities for or on behalf of another dealer shall make a reasonable effort to obtain a price for the dealer that is fair and reasonable in relation to prevailing market conditions. The broker's broker must employ the same care and diligence in doing so as if the transaction were being done for its own account.[2]

In guidance on broker's brokers issued in 2004,[3] the MSRB noted the role of some broker's brokers in large intra-day price differentials of infrequently traded municipal securities with credits that were relatively unknown to most market participants, especially in the case of "retail" size blocks of $5,000 to $100,000. In certain cases, differences between the prices received by the selling customers as a result of a broker's broker bid-wanted and the prices paid by the ultimate purchasing customers on the same day were 10% or more. After the securities were purchased from the broker's broker, they were sold to other dealers in a series of transactions until they eventually were purchased by other customers. The abnormally large intra-day price differentials were attributed in major part to the price increases found in the inter-dealer market occurring after the broker's brokers' trades.

Rule G-43 addresses the role of broker's brokers, including their role in such a series of transactions. It is the role of the broker's broker to conduct a properly run bid-wanted or offering and thereby satisfy its duty to make a reasonable effort to obtain a price for the dealer that is fair and reasonable in relation to prevailing market conditions. The MSRB believes that a bid-wanted or offering conducted in the manner provided in Rule G-43 will be an important element in the establishment of a fair and reasonable price for municipal securities in the secondary market. This notice addresses the roles of other transaction participants, specifically the brokers, dealers, and municipal securities dealers ("dealers") that sell, and bid for, municipal securities in bid-wanteds and offerings conducted by broker's brokers. Those selling dealers ("sellers") and bidding dealers ("bidders") also have pricing duties under MSRB rules and their failure to satisfy those duties could negate the reasonable efforts of a broker's broker to achieve fair pricing.

Duties of Bidders

Rule G-13(b)(i) provides that, in general, "no broker, dealer or municipal securities dealer shall distribute or publish, or cause to be distributed or published, any quotation relating to municipal securities, unless the quotation represents a bona fide bid[4] for, or offer of, municipal securities by such broker, dealer or municipal securities dealer." Rule G-13(b)(ii) provides that "[n]o broker, dealer or municipal securities dealer shall distribute or publish, or cause to be distributed or published, any quotation relating to municipal securities, unless the price stated in the quotation is based on the best judgment of such broker, dealer or municipal securities dealer of the fair market value of the securities which are the subject of the quotation at the time the quotation is made."

Dealers that submit bids to broker's brokers that they believe are below the fair market value of the securities or that submit "throw-away" bids to broker's brokers do so in violation of Rule G-13. While bidders are entitled to make a profit, Rule G-13 does not permit them to do so by "picking off" other dealers at off-market prices. Throw-away bids, by definition, violate Rule G-13, because throw-away bids are arrived at without an analysis by the bidder of the fair market value of the municipal security that is the subject of the bid. A conclusion by the bidder that a security must be worth "at least that much," without any knowledge of the security or comparable securities and without any effort to analyze the security's value is not based on the best judgment of such bidder of the

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fair market value of the securities within the meaning of Rule G-13(b)(ii). When the MSRB first proposed Rule G-13, it explained in a February 24, 1977 letter from Frieda Wallison, Executive Director and General Counsel, MSRB, to Lee Pickard, Director, Division of Market Regulation, Securities and Exchange Commission that, among the activities that Rule G-13 was designed to prevent was the placing of a bid that is "pulled out of the air," which is another way to describe a throw-away bid.

Furthermore, when a dealer's bid is accepted and a transaction in the securities is executed, that transaction price (and accordingly the bid itself) will be disseminated within the meaning of Rule G-13(a)(i) on the MSRB's Electronic Municipal Market Access (EMMA®) platform within 15 minutes after the time of trade. At that point, if the bid is off-market, it will create a misperception in the municipal marketplace of the true fair market value of the security. The fact that the bid price that wins a bid-wanted or offering may well not represent the true fair market value of the security is evidenced by the trade activity observed by enforcement agencies following such auctions. Enforcement agencies have informed the MSRB that they continue to observe the same kinds of series of transactions in municipal securities that prompted the MSRB's 2004 pricing guidance. They have also informed the MSRB about their observations of other trading patterns that indicate some market participants may misuse the role of the broker's broker in the provision of secondary market liquidity and may cause retail customers who liquidate their municipal securities by means of broker's brokers to receive unfair prices.

Duties of Sellers

Dealers that use the services of broker's brokers to sell municipal securities for their customers also have significant fair pricing duties under Rule G-30 when they act as a principal. As the MSRB noted in its request for comment on Draft Rule G-43,[5]

the information about the value of municipal securities provided to a selling dealer by a broker's broker is only one factor that the dealer must take into account in determining a fair and reasonable price for its customer. In fact, in 2004, the National Association of Securities Dealers ("NASD") announced that it had fined eight dealers for relying solely on prices obtained in bid-wanteds conducted by broker's brokers, which the NASD found to be significantly below fair market value.[6] In that same year, the MSRB said that "particularly when the market value of an issue is not known, a dealer . . . may need to check the results of the bid wanted process against other objective data to fulfill its fair pricing obligations . . . ."

Under those circumstances where broker's brokers seeks to satisfy their fair pricing obligations in bid-wanteds conducted pursuant to Rule G-43(b), Rule G-43(b)(v) provides for notice by broker's brokers to sellers when bids in bid-wanteds are below predetermined parameters that are designed to identify possible off-market bids (e.g., those based on yield curves, pricing services, recent trades reported to the MSRB's RTRS System, or bids received by broker's brokers in prior bid-wanteds or offerings). Once a seller has received such notice, it must direct the broker's broker as to whether to execute the trade at that price. That notice by the broker's broker and required action on the part of the seller should put the seller on notice that it must take additional steps to ascertain whether the high bid provided to it by the broker's broker is, in fact, a fair and reasonable price for the securities. Rule G-30 mandates that the seller, if acting as a principal, must not buy municipal securities from its customer at a price that is not fair and reasonable (taking any mark-down into account), taking into consideration all relevant factors, including those listed in the rule.

The MSRB notes that Rule G-8(a)(xxv)(E) requires broker's brokers to keep records when they have provided the seller with the notice described in Rule G-43(b)(v). Among the required records are the full name of the person at the seller who received the notice, the direction given by the seller firm following the notice, and the full name of the person at the seller who provided that direction.

Rule G-43(b)(i) permits a broker's broker to limit the audience for a bid-wanted at the selling dealer's direction, a practice sometimes referred to as "screening" or "filtering," because the MSRB recognizes that there may be legitimate reasons for this practice. However, the MSRB notes that such screening may reduce the likelihood that the high bid represents a fair and reasonable price. Selling dealers should, therefore, be able to demonstrate a reason that is not anti-competitive (e.g., credit, legal, or regulatory concerns), rather than trying to eliminate access by a competitor, for directing broker's brokers to screen certain bidders from the receipt of bid-wanteds or offerings. For example, a selling dealer might maintain a list of the firms it would be unwilling to accept as a counterparty and the reasons why.

The MSRB recognizes that there may be circumstances under which customers may need to liquidate their municipal securities quickly and that there are limitations on the ability of a bid-wanted or offering to achieve a price that is comparable to recent trade prices under certain circumstances, particularly in view of its timing and the presence or absence of regular buyers in the marketplace. Nevertheless, the MSRB urges sellers not to assume that their customers need to liquidate their securities immediately without inquiring as to their customers' particular circumstances and discussing with their customers the possible improved pricing benefit associated with taking additional time to liquidate the securities.

Rule G-17 requires dealers, in the conduct of their municipal securities activities, to deal fairly with all persons and to not engage in any deceptive, dishonest, or unfair practice. Broker's brokers have informed the MSRB that many dealers place bid-wanteds and offerings with broker's brokers with no intention of selling the securities through the broker's brokers. Some have noted that shortly thereafter they see the same securities purchased by dealers for their own accounts

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at prices that exceed the high bid obtained by the broker's brokers by only a very small amount. Other dealers have told the MSRB that they are skeptical of many of the bid-wanteds they see, because they think the bid-wanteds are only being used for price discovery by the selling dealers and are not real. Accordingly, in many cases, they do not bid. This use of broker's brokers solely for price discovery purposes harms the bid-wanted and offering process by reducing bidders, thereby reducing the likelihood that the high bid in a bid-wanted will represent the fair market value of the securities. Additionally, it causes broker's brokers to work without reasonable expectation of compensation. For those reasons, depending upon the facts and circumstances, the use of bid-wanteds solely for price discovery purposes may be an unfair practice within the meaning of Rule G-17.

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[1] Rule G-43(d)(iii) defines a "broker's broker" as "a dealer, or a separately operated and supervised division or unit of a dealer, that principally effects transactions for other dealers or that holds itself out as a broker's broker." Certain alternative trading systems are excepted from the definition of "broker's broker."

[2] A bid-wanted conducted in accordance with Rule G-43(b) will satisfy the pricing obligation of a broker's broker.

[3] MSRB Notice 2004-3 (January 26, 2004).

[4] Rule G-13(b)(iii) provides that:

> a quotation shall be deemed to represent a "bona fide bid for, or offer of, municipal securities" if the broker, dealer or municipal securities dealer making the quotation is prepared to purchase or sell the security which is the subject of the quotation at the price stated in the quotation and under such conditions, if any, as are specified at the time the quotation is made.

[5] MSRB Notice 2011-18 (February 24, 2011).

[6] *See* http://www.finra.org/Newsroom/NewsReleases/2004/P011465.

Rule G-43 Amendment History (since 2003)

Release No. 34-67238 (June 22, 2012), 77 FR 38684 (June 28, 2012); MSRB Notice 2012-34 (June 25, 2012)

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Rule G-44
Supervisory and Compliance Obligations of Municipal Advisors

(a) *Supervisory System*. Each municipal advisor shall establish, implement, and maintain a system to supervise the municipal advisory activities of the municipal advisor and its associated persons that is reasonably designed to achieve compliance with applicable securities laws and regulations, including applicable Board rules ("applicable rules"). Final responsibility for proper supervision shall rest with the municipal advisor. A municipal advisor's supervisory system shall provide, at a minimum, for the following:

(i) *Written Supervisory Procedures.* The establishment, implementation, maintenance and enforcement of written supervisory procedures that are reasonably designed to ensure that the conduct of the municipal advisory activities of the municipal advisor and its associated persons are in compliance with applicable rules. The written supervisory procedures shall be promptly amended to reflect changes in applicable rules and as changes occur in the municipal advisor's supervisory system, and such procedures and amendments shall be promptly communicated to all associated persons to whom they are relevant based on their activities and responsibilities.

(ii) *Appropriate Principal.* The designation of one or more municipal advisory principals to be responsible for the supervision required by this rule.

(b) *Compliance Processes*. Each municipal advisor shall have in place and implement processes to establish, maintain, review, test and modify written compliance policies and written supervisory procedures reasonably designed to achieve compliance with applicable rules, and shall conduct, no less frequently than annually, a review of the compliance policies and supervisory procedures.

(c) *Chief Compliance Officer*. Each municipal advisor shall designate one individual to serve as its chief compliance officer.

(d) *Annual Certification*. Each municipal advisor shall have its chief executive officer(s) (or equivalent officer(s)) certify in writing annually that the municipal advisor has in place processes to establish, maintain, review, test and modify written compliance policies and written supervisory procedures reasonably designed to achieve compliance with applicable rules. This requirement, however, shall not apply to municipal advisors that are subject to a substantially similar certification requirement of Financial Industry Regulatory Authority with respect to all applicable rules.

(e) *Exemption for Federally Regulated Banks*. A municipal advisor that is a bank or separately identifiable department or division of a bank as defined in Securities Exchange Act Rule 15Ba1-1(d)(4) shall, to the extent it engages in municipal advisory activities in the exercise of any fiduciary powers as defined in 12 C.F.R. Section 9.2(g) or substantially identical powers, be exempt from this rule and Rule G-8(h)(v)(A)-(E) if such municipal advisor certifies in writing annually that it is, with respect to such activities, subject to federal supervisory and compliance obligations and books and records requirements that are substantially equivalent to the supervisory and compliance obligations of this rule and the books and records requirements of Rule G-8(h)(v)(A)-(E).

(f) *Definition*. "Municipal advisor," for purposes of this rule, shall mean a person registered or required to be registered as a municipal advisor under section 15B of the Act and rules and regulations thereunder.

Supplementary Material

.01 Municipal Fund Securities. This rule applies equally to municipal advisors to sponsors or trustees of 529 college savings plans, ABLE programs (*i.e.*, a program established and maintained by a state, or an agency or instrumentality thereof, to implement the Stephen Beck, Jr., Achieving a Better Life Experience Act of 2014), and other municipal fund securities.

.02 Written Supervisory Procedures. A municipal advisor's written supervisory procedures shall take into consideration, among other things, the advisor's size; organizational structure; nature and scope of municipal advisory activities; number of offices; the disciplinary and legal history of its associated persons; the likelihood that associated persons may be engaged in relevant outside business activities; and any indicators of irregularities or misconduct (*i.e.*, "red flags"). In the case of a municipal advisor with any associated persons permitted under all applicable law to supervise their own activities, the written supervisory procedures must address the manner in which, in the absence of separate supervisory personnel, such procedures are nevertheless reasonably designed to achieve compliance with applicable rules.

.03 Small Municipal Advisors. A municipal advisor with few personnel, or even only one associated person, can have a sufficient supervisory system under this rule. The rule allows the designation of one person to be responsible for supervision, and allows the tailoring of written supervisory procedures based on, among other things, an advisor's size.

.04 Appropriate Principal. Designated supervisory principals must be vested with the authority to carry out the supervision for which they are responsible and have sufficient knowledge, experience and training to understand and effectively discharge their responsibilities. They also must have the authority to implement the established written supervisory procedures and take any other action necessary to fulfill their responsibilities. Even if not so designated, whether a person has responsibility for supervision under this rule depends on whether, under the facts and circumstances of a particular case, that person has the requisite degree of responsibility, ability or authority to affect the conduct of the employee whose behavior is at issue.

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.05 Review of Compliance Policies and Supervisory Procedures. The reviews under paragraph (b) of this rule should, at a minimum, consider any compliance matters that arose since the previous review, any changes in the municipal advisory activities of the municipal advisor or its affiliates, and any changes in applicable rules that might suggest a need to revise the written compliance policies or supervisory procedures. Although paragraph (b) specifically requires reviews to be conducted at least annually, municipal advisors should consider the need, in order to comply with all of the other requirements of this rule, for interim reviews.

.06 Chief Compliance Officer. A chief compliance officer has a unique and integral role in the administration of a municipal advisor's compliance processes. A chief compliance officer is a primary advisor to the municipal advisor on its overall compliance scheme and the policies and procedures that the municipal advisor adopts in order to comply with applicable rules. To fulfill this role, a chief compliance officer should have competence in the process of (1) gaining an understanding of the services and activities that need to be the subject of written compliance policies and written supervisory procedures; (2) identifying the applicable rules and standards of conduct pertaining to such services and activities based on experience and/or consultation with others; (3) developing, or advising other business persons charged with the obligation to develop, policies and procedures that are reasonably designed to achieve compliance with applicable rules and standards of conduct; and (4) developing programs to test compliance with the municipal advisor's policies and procedures. It is the intention of this rule to foster regular and significant interaction between senior management and the chief compliance officer regarding the municipal advisor's comprehensive compliance program. The chief compliance officer may be a principal of the firm or a non-employee of the firm. If a non-employee, then the person designated as chief compliance officer must have the competence described above and the municipal advisor retains ultimate responsibility for its compliance obligations.

.07 Responsibility for Compliance Functions. The chief compliance officer, and any compliance officers that report to the chief compliance officer, shall have responsibility for and perform the compliance functions contemplated by this rule. Nothing in this rule, however, is intended to limit or discourage the participation by any of the employees of the municipal advisor in any aspect of the municipal advisor's compliance program.

.08 Ability of Chief Compliance Officer to Hold Other Positions. The requirement to designate a chief compliance officer does not preclude that person from holding any other positions within the municipal advisor, including serving in any position in senior management or being designated as a supervisory principal, provided that person can discharge the duties of chief compliance officer in light of all of the responsibilities of any other positions.

.09 Effect of Annual Certification on Business Line Responsibility. The Board recognizes that supervisors with business line responsibility are accountable for the discharge of a municipal advisor's compliance policies and written supervisory procedures. The signatory to the certification required by this rule is certifying only as to having processes in place to establish, maintain, review, test and modify the municipal advisor's written compliance and supervisory policies and procedures and the execution of this certification and any consultation rendered in connection with such certification does not by itself establish business line responsibility.

.10 Temporary Relief for Completing Annual Certification. Each municipal advisor obligated to have its Chief Executive Officer(s) (or equivalent officer(s)) complete an annual certification that the firm has in place processes to establish, maintain, review, test and modify the municipal advisor's written compliance and supervisory policies and supervisory procedures pursuant to G-44(d) above shall be deemed to have satisfied such obligation for calendar year 2020, if such certification is completed on or before March 31, 2021.

Rule G-44 Amendment History (since 2003)

Release No. 34-88694 (April 20, 2020), 85 FR 23088 (April 24,2020); MSRB Notice 2020-09 (April 9, 2020)

Release No. 34-78622 (August 22, 2016), 81 FR 58989 (August 26, 2016); MSRB Notice 2016-20 (August 12, 2016)

Release No. 34-73415 (October 23, 2014), 79 FR 64423 (October 29, 2014); MSRB Notice 2014-19 (October 24, 2014)

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Rule G-45
Reporting of Information on Municipal Fund Securities

(a) *Form G-45 Reporting Requirements*. Each underwriter of a primary offering of municipal fund securities that are not interests in local government investment pools shall report to the Board the information relating to such offering required by Form G-45 by no later than 60 days following the end of each semi-annual reporting period ending on June 30 and December 31 and in the manner prescribed in the Form G-45 procedures below and as set forth in the Form G-45 Manual; provided, however, that performance data shall be reported annually by no later than 60 days following the end of the reporting period ending on December 31. Each submitter shall indicate on Form G-45 the identity of each underwriter that has identified itself as such and on whose behalf the information is submitted.

(b) *Form G-45 Reporting Procedures*.

(i) All submissions of information required under this rule shall be made by means of Form G- 45 submitted in a designated electronic format to the Board in such manner, and including such items of information, as specified herein, in Form G-45 and in the Form G-45 Manual.

(ii) Form G-45 shall be submitted by the underwriter or by any submission agent designated by the underwriter pursuant to the procedures set forth in the Form G-45 Manual. The failure of a submission agent designated by the underwriter to comply with any requirement of this rule shall be considered a failure by such underwriter to so comply.

(c) *Form G-45 Manual*. The Form G-45 Manual is comprised of the specifications for reporting of information required under this rule, the user guide for submitting Form G-45, and other information relevant to reporting under this rule. The Form G-45 Manual is located at www.msrb.org and may be updated from time to time with additional guidance or revisions to existing documents.

(d) *Definitions*.

(i) The term "asset class" shall mean domestic equities, international equities, fixed income products, commodities, insurance products, bank products, cash or cash equivalents or other product types.

(ii) The term "benchmark" shall mean an established index or a blended index that combines the benchmarks for each of the underlying mutual funds or other investments held by an investment option during the relevant time period weighted according to the allocations of those underlying mutual funds or other investments and adjusted to reflect any changes in the allocations and the benchmarks during the relevant time period.

(iii) The term "contributions" shall mean all deposits into the plan or investment option but shall not include reallocations.

(iv) The term "designated electronic format" shall mean the format specified in the Form G-45 Manual.

(v) The term "distributions" shall mean the withdrawal of funds from a plan or investment option, but shall not include reallocations.

(vi) The term "investment option" shall mean an option, as described in a plan disclosure document or supplement thereto, available to account owners in a plan to which funds may be allocated.

(vii) The term "marketing channel" shall mean the manner by which municipal fund securities that are not local government investment pools are sold to the public, such as through a broker, dealer or municipal securities dealer that has a selling agreement with an underwriter (commonly known as "advisor-sold") or through a website, or toll-free telephone number or other direct means (commonly known as "direct-sold").

(viii) The term "performance" shall mean total returns of the investment option expressed as a percentage, net of all generally applicable fees and costs.

(ix) The term "plan" shall mean a college savings plan or program established by a state, or agency or instrumentality of a state, to operate as a Qualified Tuition Program in accordance with Section 529 of the Internal Revenue Code.

(x) The term "program manager" shall mean an entity that enters into a contract directly with the trustee of the plan to provide, directly or indirectly through service providers, investment advisory and management services, administration and accounting functions, and/or marketing and other services related to the day-to-day operation of the plan.

(xi) The term "primary offering" shall mean an offering defined in Securities Exchange Act Rule 15c2-12(f)(7).

(xii) The term "reallocation" shall mean the withdrawal of funds from one investment option in a plan and deposit of the same funds into one or more investment options in the same plan, such as where an account owner selects a different investment option or funds are moved from one age-band to another as beneficiaries approach college age.

(xiii) The term "underlying investment" shall mean a registered investment company, unit investment trust, or other investment product in which an investment option invests.

(xiv) The term "underwriter" shall mean a broker, dealer or municipal securities dealer that is an underwriter, as defined in Securities Exchange Act Rule 15c2-12(f)(8), of municipal fund securities that are not local government investment pools.

Rule G-45 Amendment History (since 2003)

Release No. 34-85699 (April 22, 2019), 84 FR 17897 (April 26, 2019); MSRB Notice 2019-11 (April 10, 2019)

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Release No. 34-84809 (December 12, 2018), 83 FR 64907 (December 18, 2018); MSRB Notice 2018-31 (December 13, 2018)

Release No. 34-78622 (August 22, 2016), 81 FR 58989 (August 26, 2016); MSRB Notice 2016-20 (August 12, 2016)

Release No. 34-75454 (July 15, 2015), 80 FR 43148 (July 21, 2015); MSRB Notice 2015-09 (June 30, 2015)

Release No. 71598 (February 21, 2014), 79 FR 11161 (February 27, 2014); MSRB Notice 2014-03 (February 24, 2014)

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Rule G-46
Duties of Solicitor Municipal Advisors

(a) *Definitions*.

(i) "Compensation" means any cash, in-kind or non-cash remuneration, including but not limited to merchandise, gifts, travel expenses, meals and lodging.

(ii) "Excluded communications" means (A) advertising by a dealer, municipal advisor, or investment adviser; (B) direct or indirect communications with an obligated person if such obligated person is not acting in the capacity of an obligated person; (C) direct or indirect communications with an obligated person made for the purpose of obtaining or retaining an engagement that is not in connection with the issuance of municipal securities or with respect to municipal financial products; and (D) direct or indirect communications made for the purpose of obtaining or retaining an engagement for or in connection with municipal financial products that are investment strategies to the extent that those investment strategies are not plans or programs for the investment of the proceeds of municipal securities or the recommendation of and brokerage of municipal escrow investments.

(iii) "Solicitation" means a direct or indirect communication with a municipal entity or obligated person made by a solicitor municipal advisor, for direct or indirect compensation, on behalf of a municipal advisor or investment adviser that does not control, is not controlled by, or is not under common control with the solicitor municipal advisor for the purpose of obtaining or retaining an engagement by a municipal entity or obligated person of a municipal advisor for or in connection with municipal financial products or the issuance of municipal securities or of an investment adviser to provide investment advisory services to or on behalf of a municipal entity; provided, however, that it does not include excluded communications, as defined in Rule G-46(a)(ii).

(iv) "Solicited entity" means any municipal entity (as defined in Section 15B(e)(8) of the Act, 17 CFR 240.15Ba1-1(g) and other rules and regulations thereunder) or obligated person (as defined in Section 15B(e)(10) of the Act, 17 CFR 240.15Ba1-1(k) and other rules and regulations thereunder) the solicitor municipal advisor has solicited, is soliciting or intends to solicit within the meaning of Sections 15B(e)(4)(A)(ii) and (e)(9) of the Act and the rules and regulations thereunder.

(v) "Solicitor client" means the municipal advisor or investment adviser on behalf of whom the solicitor municipal advisor undertakes a solicitation within the meaning of Sections 15B(e)(4)(A)(ii) and (e)(9) of the Act and the rules and regulations thereunder.

(vi) "Solicitor municipal advisor" means, for purposes of this rule, a municipal advisor within the meaning of Section 15B(e)(4) of the Act, 17 CFR 240.15Ba1-1(d)(1)-(4) and other rules and regulations thereunder; provided, that it shall exclude a person that is otherwise a municipal advisor solely based on activities within the meaning of Section 15B(e)(4)(A)(i) of the Act and the rules and regulations thereunder.

(vii) A "solicitor relationship" shall, for purposes of this rule, be deemed to exist when a municipal advisor enters into an agreement to undertake a solicitation of a municipal entity or obligated person within the meaning of Section 15B(e)(9) of the Act and the rules and regulations thereunder. The solicitor relationship shall be deemed to have ended on the date which is the earlier of (i) the date on which the solicitor relationship has terminated pursuant to the terms of the documentation of the solicitor relationship required in section (c) of this rule or (ii) the date on which the solicitor municipal advisor withdraws from the solicitor relationship.

(b) *Disclosure to Solicitor Clients*. A municipal advisor must, prior to or upon engaging in municipal advisory activities, provide to the solicitor client full and fair disclosure in writing of:

(i) all material conflicts of interest; and

(ii) any legal or disciplinary event that would be material to a reasonable solicitor client's evaluation of the solicitor municipal advisor or the integrity of its management or advisory personnel.

As an alternative to providing a narrative description of any legal or disciplinary events required to be disclosed under Rule G-46(b)(ii) above, information regarding such events may be disclosed for purposes of this subsection by: (i) in the case of solicitor municipal advisors that are also registered broker-dealers or investment advisers, identification of the specific type of event and specific reference to the relevant portions of the solicitor municipal advisor's Form BD or Form ADV if the solicitor municipal advisor provides detailed information specifying where the client may electronically access such forms or (ii) in the case of all other solicitor municipal advisors, identification of the specific type of event and specific reference to the relevant portions of the solicitor municipal advisor's most recent Forms MA or MA-I filed with the Commission if the solicitor municipal advisor provides detailed information specifying where the client may electronically access such forms.

(c) *Documentation of the Solicitor Relationship*. A solicitor municipal advisor must evidence each of its solicitor relationships by a writing or writings created and delivered to the solicitor client prior to, upon or promptly after the establishment of the solicitor relationship. The writing(s) must be dated and include, at a minimum:

(i) a description of the solicitation activities to be engaged in by the solicitor municipal advisor on behalf of the solicitor client (including the scope of the agreed-upon activities and a statement that the scope of the solicitation is anticipated to include the solicitation of municipal entities and/or obligated persons);

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(ii) the terms and amount of the compensation to be received by the solicitor municipal advisor for such activities; and

(iii) the date, triggering event, or means for the termination of the relationship, or, if none, a statement that there is none; and

(iv) any terms relating to withdrawal from the relationship.

(d) *Representations to Solicited Entities.*

(i) A solicitor municipal advisor is prohibited from making a representation that the solicitor municipal advisor knows or should know is either materially false or materially misleading due to the omission of a material fact about the capacity, resources or knowledge of the solicitor client.

(ii) A solicitor municipal advisor must have a reasonable basis for any material representations it makes to a solicited entity regarding the capacity, resources or knowledge of the solicitor client.

(e) *Disclosures to Solicited Entities*. A solicitor municipal advisor must disclose to any solicited entity all material facts about the solicitation within the timing and in the manner described in section (f) of this rule. This includes, but is not limited to, an obligation to disclose the following:

(i) Role and Compensation Disclosures. A solicitor municipal advisor must disclose to any solicited entity:

(A) the name of the solicitor municipal advisor;

(B) the name of the solicitor client;

(C) the type of business being solicited (i.e., municipal advisory business or investment advisory services);

(D) the material terms of the solicitor municipal advisor's compensation arrangement with the solicitor client, including a description of the compensation provided or to be provided, directly or indirectly, to the solicitor municipal advisor for such solicitation;

(E) payments made by the solicitor municipal advisor to another solicitor municipal advisor (including an affiliate, but not an employee) to facilitate the solicitation, regardless of characterization of the payment; and

(F) the following statements:

(1) In connection with its solicitation activities as a municipal advisor, a solicitor municipal advisor does not owe a fiduciary duty under Section 15B(c)(i) of the Exchange Act or MSRB rules to the entities that it solicits and is not required by those provisions to act in the best interests of such entities without regard to the solicitor municipal advisor's own financial or other interests. However, in connection with such solicitation activities, a solicitor municipal advisor is required to deal fairly with all persons, including both solicited entities and the solicitor municipal advisor's clients; and

(2) A solicitor municipal advisor's primary role is to solicit the solicited entity on behalf of certain third-party regulated entities and the solicitor municipal advisor will be compensated for its solicitation services by the solicitor municipal advisor's client.

(ii) Conflicts Disclosures. A solicitor municipal advisor must disclose any material conflicts of interest, including, but not limited to the fact that, because the solicitor municipal advisor is compensated for its solicitation efforts, it has an incentive to recommend its clients, resulting in a material conflict of interest. The solicitor municipal advisor also must disclose any material conflicts of interest, of which the solicitor municipal advisor is aware after reasonable inquiry, that could reasonably be anticipated to impair the solicitor municipal advisor's ability to solicit the solicited entity in accordance with its duty of fair dealing.

(iii) Solicitor Client Disclosures. A solicitor municipal advisor must provide to the solicited entity the following information regarding the solicitor client:

(A) the type of information that is generally available on Form MA (in the case of a municipal advisor client) or Form ADV, Part 2 (in the case of an investment adviser client); and

(B) a description of how the solicited entity can obtain a copy of the solicitor client's Form MA or Form ADV, Part 2, as applicable.

(f) *Timing and Manner of Disclosures to Solicited Entities*. Any disclosures required under section (e) of this rule must be made in writing and comply with the following:

(i) First Communication. The disclosures must be delivered at the time of the first communication, as that term is used in the definition of "solicitation" under Rule G-46(a)(iii), with a solicited entity (or an intermediary in connection with an indirect solicitation) on behalf of a specific solicitor client, as specified below:

(A) Direct Solicitations. The disclosures must be provided to the solicited entity representative with whom such communication is made.

(B) Indirect Solicitations. The disclosures must be provided to the intermediary with whom such communication is made.

(ii) Solicitor Client Engagement with Solicited Entity. If the solicitation results in a solicited entity engaging a solicitor client for investment advisory services or municipal advisory services, all disclosures required by Rule G-46(e) must be provided at the time that such engagement documentation is delivered to the solicited entity or promptly thereafter, even if such disclosures were already provided at the time of the first communication. Disclosures required by this paragraph (f)(ii) may be provided by either the solicitor client or the solicitor municipal advisor, but must be made to an official of the solicited entity that: (1) the solicitor municipal advisor (or, the solicitor client, if the solicitor client

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provides such disclosures) reasonably believes has the authority to bind the solicited entity by contract; and (2) is not a party to a disclosed conflict.

(g) *Specified Prohibitions*. A solicitor municipal advisor is prohibited from:

(i) delivering an invoice for fees or expenses for municipal advisory activities that is materially inaccurate in its reflection of the activities actually performed or the personnel that actually performed those activities; and

(ii) making payments for the purpose of obtaining or retaining an engagement to perform municipal advisory activities other than: (1) payments to an affiliate of the solicitor municipal advisor for a direct or indirect communication with a municipal entity or obligated person on behalf of the solicitor municipal advisor where such communication is made for the purpose of obtaining or retaining an engagement to perform municipal advisory activities; (2) reasonable fees paid to another municipal advisor registered as such with the Commission and the Board for making such a communication as described in Rule G-46(g)(ii)(1) above; and (3) payments that are permissible "normal business dealings" as described in Rule G-20.

Supplementary Material

.01 Reasonable Basis for Representations. While a solicitor municipal advisor must have a reasonable basis for the representations described in Rule G-46(d), the solicitor municipal advisor is not required to actively seek out every piece of information that may be relevant to such representation. For example, a solicitor municipal advisor soliciting a municipal entity on behalf of an investment advisor to perform investment advisory services should have reviewed the investment adviser's Form ADV and should have met with a knowledgeable representative of the investment adviser on one or more occasions to better understand its business and to ask any relevant questions.

.02 Fair Dealing and Fiduciary Duty. Solicitor municipal advisors, like all municipal advisors, must comply with Rule G-17, on conduct of municipal securities and municipal advisory activities. As a result, like all municipal advisors, solicitor municipal advisors must deal fairly with all persons, including solicited entities and solicitor clients and must not engage in any deceptive, dishonest or unfair practice. Unlike non-solicitor municipal advisors, whose clients may include municipal entities, solicitor clients are the third-party financial professionals on whose behalf solicitor municipal advisors conduct solicitations. As a result, in connection with their solicitation activities, solicitor municipal advisors do not owe a fiduciary duty under Exchange Act Section 15B(c)(i) or MSRB rules to either their solicitor clients or the municipal entity clients that they solicit and are not required by those provisions to act in their clients' best interest without regard to the solicitor municipal advisor's own financial or other interests. However, solicitor municipal advisors may be subject to fiduciary or other duties under state or other laws. Nothing contained in this rule shall be deemed to supersede any more restrictive provision of state or other laws applicable to municipal advisory activities. Additionally, as described further in SM .03 below, a solicitor municipal advisor may also engage in non-solicitation municipal advisory activity. In that event, the requirements of Rule G-42 will apply with respect to such activity and a fiduciary duty will apply with respect to the municipal entity clients of the municipal advisor.

.03 Relationship to Rule G-42. Municipal advisors should be mindful that one may be, simultaneously, both a solicitor municipal advisor for purposes of Rule G-46 and a non-solicitor municipal advisor for purposes of Rule G-42. For example, a municipal advisor may provide "advice" as defined in Rule G-42 to a municipal entity (the "advisory engagement") and separately may act as a solicitor municipal advisor with respect to that same municipal entity or another municipal entity as contemplated in this Rule G-46 (the "solicitor municipal advisor engagement"). As a result, the municipal advisor would be subject to Rule G-42 with respect to the advisory engagement and would be subject to Rule G-46 with respect to the solicitor municipal advisor engagement. Municipal advisors should evaluate the activity undertaken with respect to each engagement to determine which rule governs (Rule G-42 or Rule G-46) and ensure the written supervisory procedures required under Rule G-44 reflect such.

.04 Documentation of Compensation and Compensation Disclosure. Rule G-46(c)(ii) and (e)(i)(D) both require written disclosures pertaining to a solicitor's compensation. With respect to the obligation under section (c)(ii), the documentation(s) must clearly describe the structure of the compensation arrangement and the amount of compensation paid or to be paid. For example, a solicitor municipal advisor that will be paid on the basis of a flat or fixed fee must disclose the amount of the flat fee, if known and/or calculable at the time of the documentation. If the precise dollar amount is not known at the time, the documentation should disclose how such compensation will be calculated. As another example, if the compensation arrangement calls for a percentage of fees collected from the referred clients, then the documentation should state so and describe what that percentage is. The disclosures required under section (e)(i)(D) require disclosure of at least this same information, to the extent material. However, Rule G-46(e)(i)(D) may require the disclosure of additional information, depending on the facts and circumstances. For example, if the solicitor municipal advisor receives indirect compensation for the solicitation, information pertaining to the indirect compensation also must be disclosed.

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Rule G-47
Time of Trade Disclosure

(a) No broker, dealer, or municipal securities dealer shall sell a municipal security to a customer, or purchase a municipal security from a customer, whether unsolicited or recommended, and whether in a primary offering or secondary market transaction, without disclosing to the customer, orally or in writing, at or prior to the time of trade, all material information known about the transaction, as well as material information about the security that is reasonably accessible to the market.

(b) Definitions.

(i) "Established industry sources" shall include the MSRB's Electronic Municipal Market Access ("EMMA"®) system, rating agency reports, and other sources of information relating to municipal securities transactions generally used by brokers, dealers, and municipal securities dealers that effect transactions in the type of municipal securities at issue.

(ii) "Material information": Information is considered to be material if there is a substantial likelihood that the information would be considered important or significant by a reasonable investor in making an investment decision.

(iii) "Reasonably accessible to the market" shall mean that the information is made available publicly through established industry sources.

Supplementary Material

.01 Manner and Scope of Disclosure.

(a) The disclosure obligation includes a duty to give a customer a complete description of the security, including a description of the features that likely would be considered significant by a reasonable investor, and facts that are material to assessing the potential risks of the investment.

(b) The public availability of material information through EMMA, or other established industry sources, does not relieve brokers, dealers, and municipal securities dealers of their obligation to make the required time of trade disclosures to a customer.

(c) A broker, dealer, or municipal securities dealer may not satisfy its disclosure obligation by directing a customer to an established industry source or through disclosure in general advertising materials.

(d) Whether the customer is purchasing or selling the municipal securities may be a consideration in determining what information is material.

.02 Electronic Trading Systems. Brokers, dealers, and municipal securities dealers operating electronic trading or brokerage systems have the same time of trade disclosure obligations as other brokers, dealers, and municipal securities dealers.

.03 Disclosure Obligations in Specific Scenarios. The following examples describe information that may be material in specific scenarios and require time of trade disclosures to a customer. This list is not exhaustive and other information may be material to a customer in these and other scenarios.

(a) *Variable rate demand obligations*. A description of the basis on which periodic interest rate resets are determined and the role of the remarketing agent.

(b) *Auction rate securities.* Features of the auction process that likely would be considered significant by a reasonable investor and the basis on which periodic interest rate resets are determined. Additional facts that may also be considered material are the duration of the interest rate reset period, information on how the "all hold" and maximum rates are determined, any recent auction failures, and other features of the security found in the official documents of the issue.

(c) *Credit risks and ratings*. The credit rating or lack thereof, credit rating changes, credit risk of the municipal security, and any underlying credit rating or lack thereof.

(d) *Credit or liquidity enhanced securities.* The identity of any credit enhancer or liquidity provider, terms of the credit facility or liquidity facility, and the credit rating of the credit provider or liquidity provider, including potential rating actions (e.g., downgrade).

(e) *Insured securities*. The fact that a security has been insured or arrangements for insurance have been initiated, the credit rating of the insurance company, and information about potential rating actions with respect to the bond insurance company.

(f) *Original issue discount bonds*. The fact that a security bears an original issue discount since it may affect the tax treatment of a municipal security.

(g) *Securities sold below the minimum denomination*. The fact that a sale of a quantity of municipal securities is below the minimum denomination authorized by the bond documents and the potential adverse effect on liquidity of a customer position below the minimum denomination. See also Rule G-15(f).

(h) *Securities with non-standard features*. Any non-standard feature of a municipal security. Additionally, if price/yield calculations are affected by anomalies due to a non-standard feature, this also may be material information about the transaction that must be disclosed to the customer.

(i) *Bonds that prepay principal.* The fact that the security prepays principal and the amount of unpaid principal that will be delivered on the transaction.

(j) *Callable securities*. The fact that a municipal security may be redeemed prior to maturity in-whole, in-part, or in extraordinary circumstances, including sinking fund calls and bonds subject to detachable call features.

(k) *Put option and tender option bonds*. Information concerning the put option or tender option features.

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(l) *Stripped coupon securities.* Facts concerning the underlying securities which materially affect the stripped coupon instruments. The unusual nature of these securities and their tax treatment warrants special efforts to provide written disclosures.

(m) *The investment of bond proceeds*. Information on the investment of bond proceeds.

(n) *Issuer's Intent to Prerefund*. An issuer's intent to prerefund an issue.

(o) *Failure to make continuing disclosure filings*. Discovery that an issuer has failed to make filings required under its continuing disclosure agreements.

.04 Processes and Procedures. Brokers, dealers, and municipal securities dealers must implement processes and procedures reasonably designed to ensure that material information regarding municipal securities is disseminated to registered representatives who are engaged in sales to and purchases from a customer.

Rule G-47 Interpretation

Interpretive Notice Regarding Rule G-47, on Time of Trade Disclosure — Disclosure of Market Discount

November 22, 2016

Overview

MSRB Rule G-47, on time of trade disclosure, requires brokers, dealers and municipal securities dealers (collectively, "dealers") to disclose to their customers, at or prior to the time of trade, all material information known about the transaction, as well as material information about the municipal security that is reasonably accessible to the market. The MSRB has previously provided interpretive guidance, now codified in supplementary material to Rule G-47, on specific types of information that is material where specific scenarios occur and requires time of trade disclosure. Rule G-47, however, emphasizes that this list of specific disclosures is not exhaustive, and that other information may be material to a customer and required to be disclosed. The MSRB is publishing this notice to state its interpretation that the fact that a municipal security bears market discount is material information that must be disclosed to a customer under Rule G-47.

Market Discount

When a municipal security is acquired in the secondary market for less than par value, the security may have "market discount." The amount of market discount is equal to the excess, if any, of the stated redemption price at maturity over the basis of the security immediately after its purchase by the investor. Market discount occurs when the value of a municipal security declines after its issue date — which often may occur due to a rise in interest rates. The fact that a municipal security bears market discount may significantly affect its tax treatment. Under federal tax law, for bonds purchased after April 30, 1993, the market discount is taxed at the investor's ordinary income tax rate, rather than the capital gains rate.[1]

Original Issue Discount Bonds. Market discount is calculated differently for original issue discount (OID) bonds. An OID bond is a bond that was sold at the time of issue at a price that included an original issue discount. The original issue discount is the amount by which the bond's stated redemption price at maturity exceeded its public offering price at the time of its original issuance and, for a tax-exempt municipal security, is generally treated as tax-exempt interest.[2]

Market discount exists for an OID bond when the bond is acquired in the secondary market for less than its revised or adjusted issue price. The revised or adjusted issue price for an OID bond is equal to the bond's original issue price plus the accrued OID up to the date of purchase. The amount of market discount is equal to the excess, if any, of the revised issue price over the basis of the bond immediately after its purchase by the investor.

De Minimis Rule. Bonds with a de minimis amount of market discount are subject to more favorable tax treatment than bonds with a non-de minimis amount of market discount. Under the de minimis rule, if the amount of market discount is less than one-fourth of 1% (.0025) of the stated redemption price of the bond multiplied by the number of complete years from the date of purchase to the date of maturity, the market discount is de minimis and is generally taxed as a capital gain, rather than ordinary income.

Market Discount Disclosure at or Prior to Time of Trade

As noted, Rule G-47 requires dealers to disclose to their customers, at or prior to the time of trade, "all material information known about the transaction, as well as material information about the security that is reasonably accessible to the market."[3] This disclosure obligation applies whether the transaction is unsolicited or recommended, and whether it is a primary offering or secondary market transaction. Information is considered to be material under Rule G-47 if there is a substantial likelihood that the information would be considered important or significant by a reasonable investor in making an investment decision. The MSRB has previously stated, and codified as supplementary material to Rule G-47, that the fact that a municipal security bears an original issue discount is material information that dealers are obligated to disclose, because it may affect the tax treatment of the security.[4] Significantly, in explaining this interpretation of the MSRB's rules, the MSRB noted that appropriate disclosure of a security's original issue discount feature should assist customers in computing the market discount or premium on their transaction. The MSRB also noted its concern that, absent adequate disclosure of a security's original issue discount status, an investor might not be aware that all or a portion of his or her investment return represented by accretion of the discount

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is tax-exempt, and might therefore, for example, sell the security at an inappropriately low price (*i.e.*, a price not reflecting the tax-exempt portion of the discount).

Similarly, the MSRB is concerned that, absent adequate disclosure that a security has market discount, an investor might not be aware that all or a portion of his or her investment return represented by accretion of the market discount is taxable as ordinary income, and therefore might, for example, purchase the securities at an inappropriately high price (*i.e.*, a price not reflecting the potentially higher tax rate applicable to the discount). The existence of market discount may impact an investor's decision to purchase or sell an affected bond or determination of what price to pay or accept for such bond. As a result, the MSRB believes that the fact that a security has market discount is material information that is required to be disclosed to a customer under Rule G-47 at or prior to the time of trade.

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[1] Tax treatment and the amount of market discount and original issue discount (if any) are determined in accordance with the provisions of the Internal Revenue Code and the rules and regulations of the Internal Revenue Service.

[2] For more information about original issue discount bonds, *see* MSRB, About Original Issue Discount Bonds, available at: http://www.msrb.org/msrb1/pdfs/Original-Issue-DiscountBonds.pdf.

[3] MSRB Rule G-47(a). However, under MSRB Rule G-48, on transactions with sophisticated municipal market professionals, a dealer is relieved of the obligation to disclose to a sophisticated municipal market professional or SMMP material information that is reasonably accessible to the market. *See* Rule G-48(a). Accordingly, dealers do not have an obligation to disclose to SMMPs the existence of market discount.

[4] *See* MSRB Rule G-47, Supplementary Material .03(f); *see also* Interpretive Reminder Notice Regarding Rule G-17, on Disclosure of Material Facts—Disclosure of Original Issue Discount Bonds (January 5, 2005); Rules G-12 and G-15, Comments Requested on Draft Amendments on Original Issue Discount Securities, MSRB Reports, Vol. 4, No. 6 (May 1994) at 7.

Rule G-47 Amendment History (since 2003)

Release No. 34-97218 (March 29, 2023), 88 FR 20004 (April 4, 2023); MSRB Notice 2023-03 (March 30, 2023)

Release No. 34-71665 (March 7, 2014), 79 FR 14321 (March 13, 2014); MSRB Notice 2014-07 (March 12, 2014)

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Rule G-48

Transactions with Sophisticated Municipal Market Professionals

A broker, dealer, or municipal securities dealer's obligations to a customer that it reasonably concludes is a Sophisticated Municipal Market Professional, or SMMP, as defined in Rule D-15, shall be modified as follows:

(a) *Time of Trade Disclosure*. The broker, dealer, or municipal securities dealer shall not have any obligation under Rule G-47 to ensure disclosure of material information that is reasonably accessible to the market.

(b) *Transaction Pricing*. The broker, dealer, or municipal securities dealer shall not have any obligation under Rule G-30(b)(i) to take action to ensure that transactions meeting all of the following conditions are effected at fair and reasonable prices:

(i) the transactions are non-recommended secondary market agency transactions;

(ii) the broker, dealer, or municipal securities dealer's services with respect to the transactions have been explicitly limited to providing anonymity, communication, order matching, and/or clearance functions; and

(iii) the broker, dealer, or municipal securities dealer does not exercise discretion as to how or when the transactions are executed.

(c) *Suitability*. When making a recommendation subject to Rule G-19 and not Regulation Best Interest, Rule 15l-1 under the Act, a broker, dealer, or municipal securities dealer shall not have any obligation under Rule G-19 to perform either (i) a customer-specific suitability analysis or (ii), unless the broker, dealer, or municipal securities dealer has actual control or de facto control of the SMMP's account, a quantitative suitability analysis.

(d) *Bona Fide Quotations*. The broker, dealer, or municipal securities dealer disseminating an SMMP's "quotation" as defined in Rule G-13, which is labeled as such, shall apply the same standards regarding quotations described in Rule G-13(b) as if such quotations were made by another broker, dealer, or municipal securities dealer.

(e) *Best Execution.* The broker, dealer, or municipal securities dealer shall not have any obligation under Rule G-18 to use reasonable diligence to ascertain the best market for the subject security and buy or sell in that market so that the resultant price to the SMMP is as favorable as possible under prevailing market conditions.

Rule G-48 Interpretation

Interpretive Notice on the Application of MSRB Rules to Transactions in Managed Accounts

December 1, 2016

Background

Representatives of brokers, dealers and municipal securities dealers (collectively, "dealers") have increasingly inquired about the application of certain Municipal Securities Rulemaking Board (MSRB) rules to managed accounts in which a registered investment adviser ("RIA") is exercising discretion to buy and sell municipal securities on behalf of the account holder. Specifically, dealers have asked whether, with respect to these transactions, they are expected to:

1) Provide the time-of-trade disclosures required by MSRB Rule G-47 to the ultimate investor, who is the account holder (*i.e.*, the RIA's client), particularly if the dealer does not know the identity of the investor; and

2) Obtain a customer affirmation from such an investor for purposes of qualifying the person, separately, as a sophisticated municipal market professional ("SMMP") under MSRB Rule D-15, and owing the modified obligations under MSRB Rule G-48, on transactions with SMMPs, if the RIA is itself an SMMP.[1]

This notice provides background information on the relevant rules, analyzes the questions presented and provides interpretive guidance in response.

Relevant Rules

The principal rules relevant to these interpretive questions are Rules G-47, D-15, and G-48.

MSRB Rule G-47 — Time of Trade Disclosure

Rule G-47 sets forth the general time-of-trade disclosure obligation applicable to dealers. Specifically, pursuant to Rule G-47, a dealer cannot sell municipal securities to a customer, or purchase municipal securities from a customer, without disclosing to the customer, at or prior to the time of trade, all material information known about the transaction and material information about the security that is reasonably accessible to the market. The rule applies regardless of whether the transaction is unsolicited or recommended, occurs in a primary offering or the secondary market, and is a principal or agency transaction. The disclosure can be made orally or in writing.

Information is "material" if there is a substantial likelihood that the information would be considered important or significant by a reasonable investor in making an investment decision. The rule defines "reasonably accessible to the market" as information that is made available publicly through "established industry sources."[2] Finally, the rule defines "established industry sources" as including EMMA, rating agency reports, and other sources of information generally used by dealers that effect transactions in the type of municipal securities at issue. Under these standards, "material information" encompasses a complete description of the security, which includes a description of the features that would likely be considered significant by a reasonable investor, and facts that are material to assessing potential risks of the investment.

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MSRB Rule D-15 — Sophisticated Municipal Market Professional

Rule D-15 defines the set of customers that may be SMMPs as (1) a bank, savings and loan association, insurance company, or registered investment company; (2) an RIA; or (3) any other person or entity with total assets of at least $50 million. To qualify as an SMMP under the rule, the dealer must have a reasonable basis to believe the customer is capable of independently evaluating investment risks and market value, in general and with respect to particular transactions and investment strategies in municipal securities. In addition, the customer is required to affirm that it is exercising independent judgment in evaluating the quality of execution of the customer's transactions by the dealer. Further, the customer is required to affirm that it is exercising independent judgment in evaluating the transaction price in non-recommended agency secondary market transactions where the dealer's services are explicitly limited to providing anonymity, communication, order matching and/or clearance functions, and the dealer does not exercise discretion as to how or when the transactions are executed. Finally, the customer is required to affirm that it has timely access to "material information" available publicly from "established industry sources" as those terms are defined in Rule G-47. The customer affirmation may be given orally or in writing, and may be given on a transaction-by-transaction basis, a type-of-municipal security basis, an account-wide basis or a type-of-transaction basis.

Importantly, the definition of SMMP under Rule D-15 is not self-executing, nor are the contingencies for its application solely controlled by the dealer. Rather, classification as an SMMP requires the customer to make the affirmation noted above. Consequently, any customer, even if otherwise qualifying as an SMMP, could choose not to make the affirmation in order to obtain the benefits of those obligations that otherwise would be modified (*e.g.*, best execution). Overall, the customer affirmation requirement is designed to ensure that SMMPs have affirmatively and knowingly agreed to forgo certain protections under MSRB rules.

MSRB Rule G-48 — Transactions with Sophisticated Municipal Market Professionals

Rule G-48 addresses modified obligations of dealers when dealing with SMMPs. It relieves dealers of the time-of-trade disclosure obligation under Rule G-47 for information reasonably accessible to the market, the pricing obligations under MSRB Rule G-30 under certain circumstances,[3] the customer-specific suitability obligation under MSRB Rule G-19,[4] certain obligations with respect to the dissemination of quotations under MSRB Rule G-13,[5] and the best-execution obligation under Rule G-18.[6]

Interpretive Guidance

The rules referenced above, including Rule G-48 on certain modified obligations, are, or relate to the application of, various investor/customer protections. As such, a threshold approach to the interpretive questions is to focus on who the dealer's customer is, and, thus, to whom the dealer owes these protections when an RIA has full discretion over investor clients' accounts.

According to past guidance, there are facts and circumstances under which the MSRB considers the RIA, and not the underlying investors, to be the dealer's customer. When an independent investment adviser (including an RIA) purchases securities from one dealer and instructs that dealer to make delivery of the securities to other dealers where the investment adviser's clients have accounts, and the identities of individual account holders are not given to the delivering dealer, the investment adviser is the customer of the dealer and must be treated as such for recordkeeping and other regulatory purposes.[7] Accordingly, in those scenarios, the dealer does not have any customer obligations to the underlying investors.

Even if the underlying investors are, or are considered to be, customers of the dealer, the MSRB interprets Rule G-48 to mean, under certain circumstances, that the obligations modified by that rule are modified with respect to the underlying investors, as well as the RIA that is an SMMP. Specifically, when an investor has granted an RIA full discretion to act on the investor's behalf for all transactions in an account, the RIA has effectively become that investor for purposes of the application of Rule G-48 when engaging in transactions with the dealer. Therefore, if that RIA is an SMMP, to whom the dealers' obligations are modified under Rule G-48, then, for purposes of complying with the rules addressed in Rule G-48, the dealer should not be required to satisfy any greater or additional obligations with respect to the ultimate investor who holds that account. When the MSRB included RIAs in the set of customers that may be SMMPs, it was, of course, aware that RIAs typically act on behalf of third-party clients. It would have been anomalous for Rule G-48 to modify the dealers' obligations to an RIA that is an SMMP, only essentially to re-impose them on the dealer with respect to the underlying investors who have given the RIA full discretion to act on their behalf.

This interpretation, under which dealer obligations to certain investors would be modified, is supported by the existence (where the conditions of the interpretation are met) of substantially similar federal and/or state obligations. For example, RIAs registered with the SEC are subject to the Investment Advisers Act of 1940 ("Advisers Act") and the rules thereunder, including a fiduciary duty extending to all services undertaken on behalf of clients.[8] Obligations flowing from the fiduciary duty, include, but are not limited to, the requirements to:

- Provide full disclosure of material facts, including conflicts of interest and disciplinary events and precarious financial condition;[9]
- Give suitable advice;[10]
- Have a reasonable basis for recommendations;[11] and

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- Meet best-execution obligations.[12]

These and other investor protections provided by the regulatory regime under the Advisers Act reduce the need for the similar investor protections provided by time-of-trade disclosure, customer-specific suitability, best execution and the other obligations required by MSRB rules but modified under Rule G-48.[13] Additionally, where an investor has affirmatively and in writing authorized the RIA to exercise full discretion in the investor's account, the investor has delegated decision-making authority over what to buy and sell in the account. Finally, the MSRB notes that, where the RIA is an SMMP, the RIA has affirmed and the dealer has a reasonable basis to believe that the RIA has the sophistication to obviate the need for the protections flowing from the obligations modified under Rule G-48, which the MSRB believes is also indicative of the RIA's ability to provide similar protections to its clients when a dealer is not required to do so. When combining the investor protections afforded by substantially similar federal or state regulatory requirements for RIAs, the full discretionary power affirmatively provided to an RIA, and the RIA's status as an SMMP, there is sufficient protection afforded to the account holders, who are the RIA's clients, and, therefore, for purposes of the application of the rules modified by Rule G-48, dealers do not owe these underlying account holders any greater or additional obligations than those which apply to the RIA.[14]

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[1] Although the specific inquiries focused on the applicability of Rule G-47, MSRB Rule G-18, on best execution, and the exemption from Rule G-18 when executing transactions for or with an SMMP, this interpretive guidance applies to all the modified obligations under Rule G-48, as discussed herein.

[2] The public availability of material information through the MSRB's Electronic Municipal Market Access (EMMA®) system, or other established industry sources, does not relieve dealers of their disclosure obligations, and dealers may not satisfy the disclosure obligation by directing customers to established industry sources or through disclosure in general advertising materials.

[3] The pricing obligations under Rule G-30 are modified only when the transactions are non-recommended secondary market agency transactions; the dealer's services with respect to the transactions have been explicitly limited to providing anonymity, communication, order matching, and/or clearance functions; and the dealer does not exercise discretion as to how or when the transactions are executed.

[4] The customer-specific suitability obligation requires that a dealer have a reasonable basis to believe that the recommendation is suitable for a particular customer based on that customer's investment profile. *See* Supplementary Material .05(b) to Rule G-19. Rule G-48 does not relieve dealers of the obligations regarding reasonable-basis and quantitative suitability. *See* Supplementary Material .05(a) and (c) to Rule G-19.

[5] As modified by Rule G-48, if a dealer is disseminating a quotation on behalf of an SMMP, the dealer shall have no reason to believe the quotation does not represent a bona fide bid for, or offer of, municipal securities, or that the price stated in the quotation is not based on the best judgment of the fair market value of the securities of the SMMP, and no dealer shall knowingly misrepresent a quotation relating to municipal securities made by any SMMP.

[6] Under Rule G-18, in any transaction for or with a customer or a customer of another dealer, a dealer must use reasonable diligence to ascertain the best market for the subject security and buy or sell in that market so that the resultant price to the customer is as favorable as possible under prevailing market conditions

[7] *See* MSRB Notice 2003-20 (May 23, 2003); Interpretive Notice on Recordkeeping (Jul. 29, 1977).

[8] *See* SEC Study on Investment Advisers and Broker-Dealers (January 2011) at 21 ("The Supreme Court has construed Advisers Act Section 206(1) and (2) as establishing a federal fiduciary standard governing the conduct of advisers.") ("IA-BD Study"). *See also* SEC v. Capital Gains Research Bureau, Inc., 375 U.S. 180, 194 (1963); Transamerica Mortgage Advisors, Inc., 444 U.S. 11, 17 (1979) ("[T]he Act's legislative history leaves no doubt that Congress intended to impose enforceable fiduciary obligations.").

[9] *See* IA-BD Study at 22 ("[A]n adviser must fully disclose to its clients all material information that is intended 'to eliminate, or at least expose, all conflicts of interest which might incline an investment adviser—consciously or unconsciously—to render advice which was not disinterested.'").

[10] "To fulfill the obligation, an adviser must make a reasonable determination that the investment advice provided is suitable for the client based on the client's financial situation and investment objectives." Id. at 27-28.

[11] "[A]n investment adviser has 'a duty of care requiring it to make a reasonable investigation to determine that it is not basing its recommendations on materially inaccurate or incomplete information.'" Id. at 28.

[12] For accounts in which investment advisers exercise discretion, they generally have the responsibility to select dealers to execute client trades. Id. "In meeting this obligation, an adviser must seek to obtain the execution of transactions for each of its clients in such a manner that the client's total cost or proceeds in each transaction are the most favorable under the circumstances." Id. "An investment adviser should 'periodically and systematically' evaluate the execution it is receiving for clients." Id. at 29

[13] The MSRB also believes that state rules and regulations for investment advisers offer similar protections that support the MSRB's interpretations here. Although the requirements are not uniform, "[s]tates generally impose requirements upon state-registered investment advisers that are similar to those under the Advisers Act." Id. at 85. *See also* Scott J. Lederman, Hedge Fund Regulation (2d Ed.), Ch. 17. State Advisory Regulation, 17-3 (Nov. 2012) ("State securities regulators generally impose requirements on state-registered advisers that are similar to those found in the Advisers Act. However, state regulation often contains additional requirements not found at the federal level.").

[14] The MSRB notes that implicit in this interpretation is the expectation of dealers' compliance with all existing recordkeeping requirements associated with the various conditions for the interpretation's applicability.

Rule G-48 Amendment History (since 2003)

Release No. 34-95145 (June 23, 2022); 87 FR 38795 (June 29, 2022); MSRB Notice 2022-04 (June 24, 2022)

Release No. 34–93261 (October 5, 2021), 86 FR 56741 (October 12, 2021); MSRB Notice 2021-13 (October 6, 2021)

Release No. 34-89154 (June 25, 2020), 85 FR 39613 (July 1, 2020); MSRB Notice 2020-13 (June 26, 2020)

Release No. 34-75934 (September 17, 2015), 80 FR 57410 (September 23, 2015); MSRB Notice 2015-23 (November 20, 2015)

Release No. 34-73764 (December 5, 2014), 79 FR 73658 (December 11, 2014); MSRB Notice 2014-22 (December 8, 2014)

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Release No. 34-72129 (May 8, 2014), 79 FR 27662 (May 14, 2014); MSRB Notice 2014-11 (May 12, 2014)

Release No. 34-71665 (March 7, 2014), 79 FR 14321 (March 13, 2014); MSRB Notice 2014-07 (March 12, 2014)

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MSRB DEFINITIONAL RULES

Rule D-1
General

Unless the context otherwise specifically requires, the terms used in the rules of the Municipal Securities Rulemaking Board shall have the respective meanings set forth in the Securities Exchange Act of 1934 (15 U.S.C. § 78a et seq.) and the rules and regulations of the Securities and Exchange Commission thereunder.

Rule D-2
"Act"

The term "Act" shall mean the Securities Exchange Act of 1934, as from time to time amended.

Rule D-3
"Commission"

The term "Commission" shall mean the Securities and Exchange Commission.

Rule D-4
"Board"

The term "Board" shall mean the Municipal Securities Rulemaking Board.

Rule D-5
"Member"

The term "Member" shall mean a member of the Board.

Rule D-6
"Whole Board"

The term "Whole Board" shall mean the total number of members of the Board provided for in the administrative rules of the Board without regard to vacancies.

Rule D-7
"Proposed Rules and Rules of the Board"

The term "Rule" shall mean a rule which the Board shall have adopted within the scope of its authority under section 15B of the Act, which shall have become effective in accordance with section 19(b) of the Act or which shall have been amended by the Commission pursuant to section 19(c) of the Act. The term "Proposed Rule" shall mean a rule of the Board prior to the time when the same shall have become effective in accordance with section 19(b) of the Act.

Rule D-8
"Bank Dealer"

The term "Bank Dealer" shall mean a municipal securities dealer which is a bank or a separately identifiable department or division of a bank as defined in rule G-1 of the Board.

Rule D-9
"Customer"

Except as otherwise specifically provided by rule of the Board, the term "Customer" shall mean any person other than a broker, dealer, or municipal securities dealer acting in its capacity as such or an issuer in transactions involving the sale by the issuer of a new issue of its securities.

MSRB Interpretation

Excerpt from Notice of Approval of Fair Practice Rules

October 24, 1978

Rule D-9 codifies, as a definitional rule of general application, the definition of the term "customer" presently set forth in various Board rules. Employees and other associated persons of brokers, dealers and municipal securities dealers would, under this definition, be "customers" with respect to transactions affected for their personal accounts. An issuer would be a "customer" within the meaning of the rule except in the case of a sale by it of a new issue of its securities.

Rule D-10
"Discretionary Account"

The term "Discretionary Account" shall mean the account of a customer carried or introduced by a broker, dealer, or municipal securities dealer with respect to which such broker, dealer, or municipal securities dealer is authorized to determine what municipal securities will be purchased, sold or exchanged by or for the account.

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Rule D-10 Interpretation

Excerpt from Notice of Approval of Fair Practice Rules

October 24, 1978

Rule D-10 defines a discretionary account as an account for which a municipal securities professional has been authorized to determine what municipal securities will be purchased, sold or exchanged by or for the account. The definition covers accounts for which a municipal securities professional exercises discretionary authority from time to time, as well as accounts in which the customer sometimes, but not always, makes investment decisions. Under rule D-10, a discretionary account will not be deemed to exist if the professional's discretion is limited to the price at which, or the time at which, an order given by a customer for a definite amount of a specified security is executed. The definition relates to discretion concerning what municipal securities will be purchased, sold or exchanged, rather than when or at what price such transactions may occur.

Rule D-11
"Associated Persons"

Unless the context otherwise requires or a rule of the Board otherwise specifically provides, the terms "broker," "dealer," "municipal securities broker," "municipal securities dealer," "bank dealer," and "municipal advisor" shall refer to and include their respective associated persons. Unless otherwise specified, persons whose functions are solely clerical or ministerial shall not be considered associated persons for purposes of the Board's rules.

Rule D-11 Interpretation

Excerpt from Notice of Approval of Fair Practice Rules

October 24, 1978

Rule D-11 is designed to eliminate the need to make specific reference to personnel of securities firms and bank dealers in each Board rule that applies both to the organization and its personnel.

The term "associated person" in rule D-11 has the same meaning as set forth in section 3(a)(18) and 3(a)(32) of the Act, except that clerical and ministerial personnel are excluded from the definition for purposes of the Board's rules, unless otherwise specified. Although the statutory definitions of associated persons include individuals and organizations in a control relationship with the securities professional, the context of the fair practice rules indicates that such rules will ordinarily not apply to persons who are associated with securities firms and bank dealers solely by reason of a control relationship.

Rule D-11 Amendment History (since 2003)

Release No. 34-63308 (November 12, 2010), 75 FR 70335 (November 17, 2010); MSRB Notice 2010-47 (November 1, 2010)

Rule D-12
"Municipal Fund Security"

The term "Municipal Fund Security" shall mean a municipal security issued by an issuer that, but for the application of Section 2(b) of the Investment Company Act of 1940, would constitute an investment company within the meaning of Section 3 of the Investment Company Act of 1940.

Rule D-12 Interpretation

Interpretation Relating to Sales of Municipal Fund Securities in the Primary Market

January 18, 2001

The Municipal Securities Rulemaking Board (the "Board") has learned that sales of certain interests in trust funds held by state or local governmental entities may be effected by or through brokers, dealers or municipal securities dealers ("dealers"). In particular, the Board has reviewed two types of state or local governmental programs in which dealers may effect transactions in such interests: pooled investment funds under trusts established by state or local governmental entities ("local government pools")[1] and higher education savings plan trusts established by states ("higher education trusts").[2] In response to a request of the Board, staff of the Division of Market Regulation of the Securities and Exchange Commission (the "SEC") has stated that "at least some interests in local government pools and higher education trusts may be, depending on the facts and circumstances, 'municipal securities' for purposes of the [Securities] Exchange Act [of 1934]."[3] Any such interests that may, in fact, constitute municipal securities are referred to herein as "municipal fund securities." To the extent that dealers effect transactions in municipal fund securities, such transactions are subject to the jurisdiction of the Board pursuant to Section 15B of the Securities Exchange Act of 1934 (the "Exchange Act").

With respect to the applicability to municipal fund securities of Exchange Act Rule 15c2-12, relating to municipal securities disclosure, staff of the SEC's Division of Market Regulation has stated:

> [W]e note that Rule 15c2-12(f)(7) under the Exchange Act defines a "primary offering" as including an offering of municipal securities directly or indirectly by or on behalf of an issuer of such securities. Based upon an analysis of programs that have been brought to our attention, it appears that interests in local government pools or higher education trusts generally are offered only by direct purchase from the issuer. Accordingly, we would

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> view those interests as having been sold in a "primary offering" as that term is defined in Rule 15c2-12. If a dealer is acting as an "underwriter" (as defined in Rule 15c2-12(f)(8)) in connection with that primary offering, the dealer may be subject to the requirements of Rule 15c2-12.[4]

Rule 15c2-12(f)(8) defines an underwriter as "any person who has purchased from an issuer of municipal securities with a view to, or offers or sells for an issuer of municipal securities in connection with, the offering of any municipal security, or participates or has a direct or indirect participation in any such undertaking, or participates or has a participation in the direct or indirect underwriting of any such undertaking."[5]

Consistent with SEC staff's view regarding the sale in primary offerings of municipal fund securities, dealers acting as underwriters in primary offerings of municipal fund securities generally would be subject to the requirements of rule G-36, on delivery of official statements, advance refunding documents and Forms G-36(OS) and G-36(ARD) to Board or its designee. Thus, unless such primary offering falls within one of the stated exemptions in Rule 15c2-12, the Board expects that the dealer would receive a final official statement from the issuer or its agent under its contractual agreement entered into pursuant to Rule 15c2-12(b)(3).[6] Such final official statement should be received from the issuer in sufficient time for the dealer to send it, together with Form G-36(OS), to the Board within one business day of receipt but no later than 10 business days after any final agreement to purchase, offer, or sell the municipal fund securities, as required under rule G-36(b)(i).[7] "Final official statement," as used in rule G-36(b)(i), has the same meaning as in Rule 15c2-12(f)(3), which states, in relevant part:

> The term *final official statement* means a document or set of documents prepared by an issuer of municipal securities or its representatives that is complete as of the date delivered to the Participating Underwriter(s) and that sets forth information concerning the terms of the proposed issue of securities; information, including financial information or operating data, concerning such issuers of municipal securities and those other entities, enterprises, funds, accounts, and other persons material to an evaluation of the Offering; and a description of the undertakings to be provided pursuant to paragraph (b)(5)(i), paragraph (d)(2)(ii), and paragraph (d)(2)(iii) of this section, if applicable, and of any instances in the previous five years in which each person specified pursuant to paragraph (b)(5)(ii) of this section failed to comply, in all material respects, with any previous undertakings in a written contract or agreement specified in paragraph (b)(5)(i) of this section.[8]

The Board understands that issuers of municipal fund securities typically issue and deliver the securities continuously as customers make purchases, rather than issuing and delivering a single issue on a specified date. As used in Board rules, the term "underwriting period" with respect to an offering involving a single dealer (*i.e.*, not involving an underwriting syndicate) is defined as the period (A) commencing with the first submission to the dealer of an order for the purchase of the securities or the purchase of the securities from the issuer, whichever first occurs, and (B) ending at such time as the following two conditions both are met: (1) the issuer delivers the securities to the dealer, and (2) the dealer no longer retains an unsold balance of the securities purchased from the issuer or 21 calendar days elapse after the date of the first submission of an order for the securities, whichever first occurs.[9] Since an offering consisting of securities issued and delivered on a continuous basis would not, by its very nature, ever meet the first condition for the termination of the underwriting period, such offering would continuously remain in its underwriting period.[10] Further, since rule G-36(d) requires a dealer that has previously provided an official statement to the Board to send any amendments to the official statement made by the issuer during the underwriting period, such dealer would remain obligated to send to the Board any amendments made to the official statement during such continuous underwriting period. However, in view of the increased possibility that an issuer may change the dealer that participates in the sale of its securities during such a continuous underwriting period, the Board has determined that rule G-36(d) would require that the dealer that is at the time of an amendment then serving as underwriter for securities that are still in the underwriting period send the amendment to the Board, regardless of whether that dealer or another dealer sent the original official statement to the Board.

In addition, municipal fund securities sold in a primary offering would constitute new issue municipal securities for purposes of rule G-32, on disclosures in connection with new issues, so long as the securities remain in their underwriting period. Rule G-32 generally requires that a dealer selling a new issue municipal security to a customer must deliver the official statement in final form to the customer by settlement of such transaction. Thus, a dealer effecting transactions in municipal fund securities that are sold during a continuous underwriting period would be required to deliver to the customer the official statement by settlement of each such transaction. However, in the case of a customer purchasing such securities who is a repeat purchaser, no new delivery of the official statement would be required so long as the customer has previously received it in connection with a prior purchase and the official statement has not been changed from the one previously delivered to that customer.[11]

Certain other implications arise under Board rules as a result of the status, in the view of SEC staff, of sales of municipal fund securities as primary offerings. For example, dealers are reminded that the definition of "municipal securities business" under rule G-37, on political contributions and prohibitions on municipal securities business, and rule G-38, on consultants, includes the purchase of a primary offering from the issuer on other than a competitive bid basis or the offer or sale of a primary offering on behalf of any issuer. Thus, a

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dealer's transactions in municipal fund securities may affect such dealer's obligations under rules G-37 and G-38. In addition, rule G-23, on activities of financial advisors, applies to a dealer's financial advisory or consultant services to an issuer with respect to a new issue of municipal securities.

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[1] The Board understands that local government pools are established by state or local governmental entities as trusts that serve as vehicles for the pooled investment of public moneys of participating governmental entities. Participants purchase interests in the trust and trust assets are invested in a manner consistent with the trust's stated investment objectives. Investors generally do not have a right to control investment of trust assets. *See generally* National Association of State Treasurers, Special Report: Local Government Investment Pools (July 1995); Standard & Poor's Fund Services, Local Government Investment Pools (May 1999).

[2] The Board understands that higher education trusts generally are established by states under section 529(b) of the Internal Revenue Code as "qualified state tuition programs" through which individuals make investments for the purpose of accumulating savings for qualifying higher education costs of beneficiaries. Individuals purchase interests in the trust and trust assets are invested in a manner consistent with the trust's stated investment objectives. Investors do not have a right to control investment of trust assets. *See generally* College Savings Plans Network, Special Report on State and College Savings Plans (1998).

[3] Letter dated February 26, 1999 from Catherine McGuire, Chief Counsel, Division of Market Regulation, SEC, to Diane G. Klinke, General Counsel of the Board, in response to letter dated June 2, 1998 from Diane G. Klinke to Catherine McGuire, *published as* Municipal Securities Rulemaking Board, SEC No-Action Letter, Wash. Serv. Bur. (CCH) File No.032299033 (Feb. 26, 1999) (the "SEC Letter").

[4] SEC Letter.

[5] The definition of underwriter excludes any person whose interest is limited to a commission, concession, or allowance from an underwriter or dealer not in excess of the usual and customary distributors' or sellers' commission, concession, or allowance.

[6] Section (b)(3) of Rule 15c2-12 requires that a dealer serving as a Participating Underwriter in connection with a primary offering subject to the Rule contract with an issuer of municipal securities or its designated agent to receive copies of a final official statement at the time and in the quantities set forth in the Rule.

[7] If a primary offering of municipal fund securities is exempt from Rule 15c2-12 (other than as a result of being a limited offering as described in section (d)(1)(i) of the Rule) and an official statement in final form has been prepared by the issuer, then the dealer would be expected to send the official statement in final form, together with Form G-36(OS), to the Board under rule G-36(c)(i).

[8] Dealers seeking guidance as to whether a particular document or set of documents constitutes a final official statement for purposes of rule G-36(b)(i) should consult with SEC staff to determine whether such document or set of documents constitutes a final official statement for purposes of Rule 15c2-12.

[9] See rule G-32(c)(ii)(B). If approved by the SEC, the proposed rule change will redesignate this section as rule G-32(d)(ii)(B).

[10] Similarly, an offering involving an underwriting syndicate and consisting of securities issued and delivered on a continuous basis also would remain in its underwriting period under the definition thereof set forth in rule G-11(a)(ix).

[11] This is equally true for other forms of municipal securities for which a customer has already received an official statement in connection with an earlier purchase and who proceeds to make a second purchase of the same securities during the underwriting period. Furthermore, in the case of a repeat purchaser of municipal securities for which no official statement in final form is being prepared, no new delivery of the written notice to that effect or of any official statement in preliminary form would be required so long as the customer has previously received it in connection with a prior purchase. However, if an official statement in final form is subsequently prepared, the customer's next purchase would trigger the delivery requirement with respect to such official statement. Also, if an official statement which has previously been delivered is subsequently amended during the underwriting period, the customer's next purchase would trigger the delivery requirement with respect to such amendment.

Interpretation Relating to Sales of Interests in ABLE Programs in the Primary Market

April 12, 2016

The Municipal Securities Rulemaking Board (the "Board") has learned that sales of certain interests in accounts held by states, or agencies or instrumentalities thereof (the "state"), may be effected through brokers, dealers or municipal securities dealers (collectively, "dealers"). The Board understands that such accounts may be established by states to implement qualified ABLE programs under Section 529A of the Internal Revenue Code of 1986, as amended.[1] In response to a request of the Board, staff of the Office of Municipal Securities at the Securities and Exchange Commission (the "SEC") has stated that "at least some interests in ABLE accounts . . . may be 'municipal securities' as defined in Section 3(a)(29) of the [Securities] Exchange Act [of 1934], depending on the facts and circumstances, including without limitation, the extent to which an ABLE account offered through an ABLE Program is a direct obligation of, or obligation guaranteed as to principal or interest by, a State or any agency or instrumentality thereof."[2]

Any such interest may, in fact, constitute interests in municipal fund securities, as defined by MSRB Rule D-12. To the extent that dealers effect transactions in municipal fund securities, such transactions are subject to the jurisdiction of the Board pursuant to Section 15B of the Securities Exchange Act of 1934, as amended (the "Exchange Act").[3]

With respect to the applicability to municipal fund securities of Exchange Act Rule 15c2-12,[4] relating to municipal securities disclosure, staff of the Office of Municipal Securities has stated:

> [W]e note that Rule 15c2-12(f)(7) under the Exchange Act defines a "primary offering" as including an offering of municipal securities directly or indirectly by or on behalf of an issuer of such securities. Based upon your letter and communications with MSRB staff, it is our understanding that interests in ABLE Programs generally are offered only by direct purchase from the issuer. Accordingly, we would view those interests as having been sold in a "primary offering" as that term is defined in Rule 15c2-12. If a dealer is acting as an "underwriter" (as defined in Rule 15c2- 12(f)(8)) in connection with that primary offering, the dealer may be subject to the requirements of Rule 15c2-12.[5]

Consistent with the SEC staff's views, dealers effecting transactions in ABLE programs may be subject to all MSRB rules, unless such dealers are specifically exempted from any of

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those rules, because those dealers would be effecting transactions in municipal fund securities. In particular, dealers acting as underwriters with respect to the sale of interests in ABLE programs may be subject to the requirements of (i) MSRB Rule G-32, on disclosures in connection with primary offerings, and the requirement to submit official statements through the MSRB's Electronic Municipal Market Access (EMMA®) system[6] pursuant to Rule G- 32(b) and (ii) MSRB Rule G-45, on reporting of information on municipal fund securities, and the requirement to submit information on Form G-45 pursuant to Rule G-45(a).

Further, in 1999, the SEC staff provided guidance to the Board that (i) interests in higher education trusts established by states ("529 college savings plans") may be municipal securities, depending on the facts and circumstances, under the Exchange Act and (ii) such interests appear to have been sold in a "primary offering" as defined under Rule 15c2-12 pursuant to the Exchange Act so that a dealer acting as an underwriter (defined in Rule 15c2-12(f)(8)) in connection with that primary offering may be subject to the requirements of Rule 15c2-12.[7] In addition, the SEC determined that interests offered by such 529 college savings plans are municipal securities under Section 3(a)(29) of the Exchange Act.[8] In response to the SEC staff's guidance and the SEC's determination, the Board published interpretive guidance relating to the sale of interests in 529 college savings plans by dealers. All interpretive guidance under MSRB rules applicable to the sale of interests in 529 college savings plans also would apply to the sale of interests in ABLE programs, as relevant.

The Board anticipates that it will publish guidance to address particular issues, including Rule G-45, applicable to the sale of interests in ABLE programs by dealers.

[1] Section 529A of the Internal Revenue Code of 1986, as amended, was enacted pursuant to the Stephen Beck, Jr. Achieving a Better Life Experience Act of 2014 (the "ABLE Act").

[2] Letter dated March 31, 2016 from Jessica S. Kane, Director, Office of Municipal Securities, U.S. Securities and Exchange Commission to Robert A. Fippinger, Esq., Chief Legal Officer, Municipal Securities Rulemaking Board, in response to letter dated December 31, 2015 from Robert A. Fippinger to Jessica S. Kane available at http://www.sec.gov/info/municipal/msrb-letter-033116-interests-in-able-accounts.pdf [footnote omitted].

[3] 15 U.S.C. §78o-4.

[4] 17 CFR 240.15c2-12.

[5] *See* supra n.2.

[6] EMMA is a registered trademark of the MSRB.

[7] Letter dated February 26, 1999 from Catherine McGuire, Chief Counsel, Division of Market Regulation, U.S. Securities and Exchange Commission to Diane G. Klinke, General Counsel, Municipal Securities Rulemaking Board, in response to letter dated June 2, 1998 from Diane G. Klinke to Catherine McGuire, published as Municipal Securities Rulemaking Board, SEC No-Action Letter, Wash. Serv. Bur. (CCH) File No. 03229033 (Feb. 26, 1999).

[8] Exchange Act Release No. 70462 (Sept. 20, 2013), 78 FR 67468, 67472-73 (Nov. 12, 2013).

Rule D-13
"Municipal Advisory Activities"

Except as otherwise specifically provided by rule of the Board, "municipal advisory activities" means the activities described in Section 15B(e)(4)(A)(i) and (ii) of the Act and the rules and regulations promulgated thereunder.

Rule D-13 Amendment History (since 2003)

Release No. 34-74384 (February 26, 2015), 80 FR 11706 (March 4, 2015); MSRB Notice 2015-04 (March 2, 2015)

Release No. 34-63308 (November 12, 2010), 75 FR 70335 (November 17, 2010); MSRB Notice 2010-47 (November 1, 2010)

Rule D-14
"Appropriate Regulatory Agency"

With respect to a broker, dealer, or municipal securities dealer, "appropriate regulatory agency" has the meaning set forth in section 3(a)(34) of the Act. With respect to municipal advisors, "appropriate regulatory agency" means the Commission

Rule D-14 Amendment History (since 2003)

Release No. 34-63308 (November 12, 2010), 75 FR 70335 (November 17, 2010); MSRB Notice 2010-47 (November 1, 2010)

Rule D-15
"Sophisticated Municipal Market Professional"

The term "sophisticated municipal market professional" or "SMMP" is defined by three essential requirements: the nature of the customer; a determination of sophistication by the broker, dealer or municipal securities dealer ("dealer"); and an affirmation by the customer; as specified below.

(a) *Nature of the Customer*. The customer must be:

(1) a bank, savings and loan association, insurance company, or registered investment company;

(2) an investment adviser registered either with the Commission under Section 203 of the Investment Advisers Act of 1940 or with a state securities commission (or any agency or office performing like functions); or

(3) any other person or entity with total assets of at least $50 million.

(b) *Dealer Determination of Customer Sophistication*. The dealer must have a reasonable basis to believe that the customer is capable of evaluating investment risks and market value independently, both in general and with regard to particular transactions and investment strategies in municipal securities.

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(c) *Customer Affirmation*. The customer must affirmatively indicate that it:

(1) is exercising independent judgment in evaluating:

(A) the recommendations of the dealer;

(B) the quality of execution of the customer's transactions by the dealer; and

(C) the transaction price for non-recommended secondary market agency transactions as to which (i) the dealer's services have been explicitly limited to providing anonymity, communication, order matching and/or clearance functions and (ii) the dealer does not exercise discretion as to how or when the transactions are executed; and

(2) has timely access to material information that is available publicly through established industry sources as defined in Rule G-47(b)(i) and (ii).

Supplementary Material

.01 Reasonable Basis Analysis. As part of the reasonable basis analysis, the broker, dealer or municipal securities dealer should consider the amount and type of municipal securities owned or under management by the customer.

.02 Customer Affirmation. The customer affirmation may be given either orally or in writing, and may be given on a trade-by-trade basis, a type-of-transaction basis, a type-of-municipal-security basis (*e.g.*, general obligation, revenue, variable rate), or an account-wide basis.

Rule D-15 Interpretation

See:

Rule G-48 Interpretation — Interpretive Notice on the Application of MSRB Rules to Transactions in Managed Accounts, December 1, 2016.

Rule D-15 Amendment History (since 2003)

Release No. 34-75934 (September 17, 2015), 80 FR 57410 (September 23, 2015); MSRB Notice 2015-23 (November 20, 2015)

Release No. 34-73764 (December 5, 2014), 79 FR 73658 (December 11, 2014); MSRB Notice 2014-22 (December 8, 2014)

Release No. 34-71665 (March 7, 2014), 79 FR 14321 (March 13, 2014); MSRB Notice 2014-07 (March 12, 2014)