MSRB REPORTS

Volume 3, Number 1 | Municipal Securities Rulemaking Board | January 1983

Congress Approves Six-Month Delay In Bond Registration

In the final moments prior to adjournment, Congress passed a bill which contains a provision delaying, for six months, the effective date of the registration provisions of the Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA). As amended, TEFRA will require that most new issues of municipal securities issued after June 30, 1983 must be solely in registered form in order to preserve their tax-exempt status.

For related information on the topic of registration, please refer to three of the notices of proposed amendments to rule G-12 in this issue of *MSRB Reports* - the exposure draft concerning delivery of registered securities on page 11, the notice of filing of amendments to the close-out procedures on page 17, and the notice of filing regarding denominations of registered securities on page 21.

In This Issue

January - March

January 23
—Effective date of amendments to rule G-12 requiring specific identification by CUSIP number

February 28
—Comments due on amendments to rule G-25 concerning prohibitions of guarantees against loss

March 15
—Comments due on amendments to rule G-12 concerning delivery of registered securities

Pending
—SEC approval of amendments to rule G-12:
- concerning confirmations with CUSIP number discrepancies
- concerning note denominations
- concerning denominations of registered securities
- concerning close-out procedures

—SEC approval of rule G-34 on CUSIP numbers
—Effective date of federal legislation requiring registration of new issue municipal securities (July 1, 1983)
—Effective date of rule G-33 provisions regarding the use of dollar price interpolation and computation of transactions at par (January 1, 1984)

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Municipal Securities Rulemaking Board

Financial Statements
as of September 30, 1982 and 1981
and
Report Thereon

Coopers & Lybrand | certified public accountants

To the Members of the
Municipal Securities Rulemaking Board

We have examined the balance sheets of the Municipal Securities Rulemaking Board as of September 30, 1982 and 1981, and the related statements of revenues and expenses and change in fund balance and changes in financial position for the years then ended. Our examinations were made in accordance with generally accepted auditing standards and, accordingly, included such tests of the accounting records and such other auditing procedures as we considered necessary in the circumstances.

In our opinion, the financial statements referred to above present fairly the financial position of the Municipal Securities Rulemaking Board as of September 30, 1982 and 1981, and the results of its operations and the changes in its financial position for the years then ended, in conformity with generally accepted accounting principles applied on a consistent basis.

Coopers & Lybrand

1800 M Street, N. W.
Washington, D. C. 20036
October 27, 1982

MUNICIPAL SECURITIES RULEMAKING BOARD
BALANCE SHEETS
September 30, 1982 and 1981

	1982	1981
ASSETS		
Cash	$ 11,456	$ 1,777
Investments (Notes 1 and 2)	1,110,571	493,045
Assessment fees receivable (Note 1)	239,619	155,034
Accrued interest receivable	37,355	7,044
Prepaid expenses	9,754	7,745
Other assets	4,890	4,091
Office furniture, equipment and leasehold improvements, at cost, less accumulated depreciation and amortization of $68,700 in 1982 and $58,429 in 1981 (Note 1)	29,413	28,346
	$1,443,058	$697,082
LIABILITIES AND FUND BALANCE		
Accounts payable	$ 13,219	$ 25,464
Accrued salaries and vacation pay	18,852	20,916
	32,071	46,380
Commitments (Note 3)		
Fund balance	1,410,987	650,702
	$1,443,058	$697,082

The accompanying notes are an integral part of these financial statements.

MUNICIPAL SECURITIES RULEMAKING BOARD

STATEMENTS OF REVENUES AND EXPENSES AND CHANGE IN FUND BALANCE

for the years ended September 30, 1982 and 1981

	1982	1981
Revenues:		
Assessment fees (Note 1)	$1,582,498	$1,257,786
Annual fees (Note 1)	182,400	178,294
Initial fees (Note 1)	15,800	12,200
Investment income	113,478	48,635
Board manuals and other	23,094	16,018
	1,917,270	1,512,933
Expenses:		
Salaries and employee benefits (Note 4)	504,309	460,236
Board and committee	276,845	325,153
Operations (Note 3)	153,207	138,663
Education and communication	194,442	166,043
Professional services	17,147	42,508
Depreciation and amortization (Note 1)	11,035	10,977
	1,156,985	1,143,580
Revenues over expenses	760,285	369,353
Fund balance, beginning of year	650,702	281,349
Fund balance, end of year	$1,410,987	$ 650,702

The accompanying notes are an integral part of these financial statements.

MUNICIPAL SECURITIES RULEMAKING BOARD
STATEMENTS OF CHANGES IN FINANCIAL POSITION
for the years ended September 30, 1982 and 1981

	1982	1981
Sources of funds:		
Operations:		
Revenues over expenses	$760,285	$369,353
Noncash expenses - depreciation and amortization	11,035	10,977
Funds provided by operations	771,320	380,330
Decrease in prepaid expenses	-	1,908
Increase in accounts payable	-	8,306
Increase in accrued salaries and vacation pay	-	1,050
	$771,320	$391,594
Uses of funds:		
Increase in cash and investments	$627,205	$292,064
Increase in assessment fees receivable	84,585	84,002
Increase in accrued interest receivable	30,311	7,044
Increase in prepaid expenses	2,009	-
Increase in other assets	799	1,356
Net additions to fixed assets	12,102	7,128
Decrease in accounts payable	12,245	-
Decrease in accrued salaries and vacation pay	2,064	-
	$771,320	$391,594

The accompanying notes are an integral part of these financial statements.

MUNICIPAL SECURITIES RULEMAKING BOARD
NOTES TO FINANCIAL STATEMENTS

1. Accounting policies

The Board was established in 1975 pursuant to authority granted by the Securities Exchange Act of 1934, as amended by the Securities Acts Amendments of 1975, as an independent, self-regulatory organization charged with rulemaking responsibility for the municipal securities industry.

Assessment fees

The underwriting assessment fee is equal to a percentage of the face amount of all municipal securities which are purchased from an issuer as part of a new issue by or through such municipal securities broker or municipal securities dealer, whether acting as principal or agent, and which have a final stated maturity of not less than two years and an aggregate par value of not less than $1,000,000. This fee amounted to .003% of all such sales during the period October 1, 1980 to March 31, 1982, and .002% of all such sales made after March 31, 1982. Effective October 1, 1982, the rate was changed to .001%. Revenue from assessment fees is recognized upon the sale of the issue and is payable within 30 days of settlement with the issuer.

Annual fees

Each municipal securities broker and municipal securities dealer is required to pay an annual fee of $100 with respect to each fiscal year of the Board in which the municipal securities broker or municipal securities dealer conducts business. This fee is due by February 15 of the fiscal year for which the fee is paid.

Initial fees

The initial fee is a one-time fee of $100 which is to be paid by every municipal securities broker or municipal securities dealer registered with the SEC.

Continued

MUNICIPAL SECURITIES RULEMAKING BOARD
NOTES TO FINANCIAL STATEMENTS

Revenue from initial fees is recognized when received by the Board.

Investments

Investments in securities are stated at cost which closely approximates market.

Depreciation and amortization

Depreciation of fixed assets is computed on the straight-line method over the estimated useful lives of the assets. Amortization of leasehold improvements is computed on the straight-line method over the shorter of the remaining lease period or the estimated useful life of the improvement.

2. Investments

A summary of investments is as follows:

	September 30, 1982	September 30, 1981
T. Rowe Price Prime Reserve Fund	$ 10,002	$ 76,051
Kemper Money Market Fund	18,498	116,994
Certificates of deposit	600,000	300,000
United States Treasury Bills	482,071	-
	$1,110,571	$493,045

3. Commitments

The Board leases office space under a lease agreement expiring in March 1986 at a monthly rental of $3,950, subject to an annual escalation of 3% and a proportionate share of the increase in real property taxes. The lease may be renewed, at the Board's option, for a period of 10 years, in accordance with the terms set forth in the lease agreement.

Continued

MUNICIPAL SECURITIES RULEMAKING BOARD
NOTES TO FINANCIAL STATEMENTS

Total lease expense for office space and equipment for the years ended September 30, 1982 and 1981, was $87,100 and $67,940, respectively.

4. Retirement plan

The Board has a defined-contribution retirement plan. Participation in the plan is voluntary, and all employees are eligible to participate upon attaining a minimum length of service. The Board makes contributions to an insurance company based on a percentage of the salaries of covered employees and their lengths of service. Retirement plan costs are funded as they accrue. Employees may also make voluntary contributions. Costs of the plan were approximately $27,500 in 1982 and $30,330 in 1981.

5. Income taxes

Under provisions of the Internal Revenue Code and applicable income tax regulations of the District of Columbia, the Board is exempt from taxes on income other than unrelated business income. No provision for income taxes is required as of September 30, 1982 and 1981, since the Board had no unrelated business income.

MSRB REPORTS
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Request For Comments

Route To:

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Rule G-12

Comments Requested on Proposed Amendments Regarding Delivery of Registered Securities

The Board is circulating for public comment a draft amendment to the provisions of Board rule G-12(e) regarding deliveries of registered securities. The amendment is being circulated for comment prior to further consideration by the Board and filing with the Securities and Exchange Commission.

Board rule G-12 sets forth certain practices to be followed by all municipal securities brokers and municipal securities dealers with respect to the comparison, clearance and settlement of inter-dealer transactions in municipal securities. Paragraph (e) (xiv) of the rule sets forth the standards applicable to deliveries of registered securities. These provisions include requirements on the contents and completion of assignments, releases of powers of attorney, signature guarantees, and other matters.

Subparagraphs (e) (xiv) (E) and (F) set forth certain standards governing the acceptability of deliveries of securities with certain types of registration. Subparagraph (E) generally provides that a certificate registered in the name of a party other than a natural person shall be acceptable for delivery purposes only if the transfer agent has endorsed the assignment with the statement "proper papers for transfer filed by assignor" and signed the assignment. Items (1) and (2) of subparagraph (F) specify, respectively, certain unusual types of registration (or of assignment execution) that are not acceptable for delivery purposes, and other types which are acceptable.[1] Under the current provisions of the rule, therefore, most securities registered in a "corporate name" are acceptable for delivery purposes, if the conditions stated in the rule are met. Further, securities with an unusual type of assignment execution would be acceptable for delivery purposes in certain specified circumstances.

In August 1982, Congress passed, as part of the Tax Equity and Fiscal Responsibility Act, a provision requiring that most municipal securities issued on or after January 1, 1983 be issued solely in registered form; the Congress recently amended this legislation to delay the effective date of the registration requirement to July 1, 1983. As a result of the passage of this legislation, the Board undertook a review of the application of its rules to transactions in registered securities. This review indicated a need for several amendments to Board rules, certain of which have recently been adopted by the Board.[2]

During this review the Board received comments from several members of the municipal securities industry indicating that there was significant uncertainty as to the acceptability of securities registered in "corporate name," or securities with unusual forms of registration or assignment execution. Further, certain industry members suggested that the current provisions of rules G-12(e) (xiv) (E) and (F) were not fully in accord with previously-accepted industry practice. Under previous practice, these persons indicated, securities

Letters of comment should be submitted to the Board on or before March 15, 1983, and should be sent to the attention of Donald F. Donahue, Deputy Executive Director. Written comments will be available for public inspection.

[1]Item (1) provides that a certificate is not acceptable for delivery purposes if it is registered in the name of, or has an assignment executed by, one of the following:
- a person since deceased;
- a minor;
- a receiver in bankruptcy;
- an agent;
- an attorney acting on behalf of the registered owner;
- a trustee or trustees (except as provided in item (2) or otherwise in the rule);
- an executor (except as provided in item (2)); or
- an administrator (except as provided in item (2)).

Item (1) also provides that a certificate executed with a qualification, restriction or special designation is not in deliverable form. A municipal securities broker or dealer who holds a security with one of the types of registration or assignment execution specified in item (1) would have to submit the security to the transfer agent for reregistration in a form acceptable for delivery purposes.

Item (2) specifies that a certificate with an assignment attached that is executed by one of the following is acceptable for delivery purposes:
- an individual executor;
- an individual administrator;
- an individual trustee acting under an *inter vivos* or testamentary trust;
- a guardian; or
- a custodian acting pursuant to the provisions of the Uniform Gifts to Minors Act.

[2]These amendments were filed with the Securities and Exchange Commission concurrently with the issuance of this notice.

with the types of registration or assignment execution described in subparagraphs (e) (xiv) (E) and (F) were generally deemed to be in "legal form," and, as a result, unacceptable for delivery purposes unless the parties to the transaction agreed otherwise. These persons suggested that the Board consider amending rule G-12 to adopt more stringent standards regarding deliveries of securities registered in "corporate name" or with an unusual form of registration or assignment execution. After consideration of these comments the Board has concluded that the current provisions of subparagraphs (E) and (F) of rule G-12(e) (xiv) may impose burdens on the clearance of transactions as more registered municipal securities begin to be traded in the municipal market.

The basis for the Board's concern is the difficulty of completing a transfer of securities with these types of registration or assignment execution. Transfer of a security registered in the name of an individual or a nominee can normally be accomplished by presenting the security to the transfer agent together with a properly completed assignment bearing the signature of the registered owner and an acceptable guarantee of such signature (*e.g.*, a guarantee by a commercial bank or recognized securities firm). A party seeking to transfer a security in "legal form" (*i.e.*, registered in a "corporate name" or with an unusual form of registration or assignment execution), however, typically must present not only a completed, signed and guaranteed assignment but also documents evidencing the authority of the person signing the assignment to act on behalf of the registered owner (*e.g.*, a corporate resolution and a certificate of incumbency, or a notarized copy of a will, or a notarized trust document). Further, many transfer agents require that these supporting documents must be dated within a certain period of time (*e.g.*, 60 or 90 days) before the date the securities are presented for transfer. Therefore, a person may present a security in "legal form" for transfer with all of the necessary documentation provided, and yet transfer might still be refused if the transfer agent considers the documents to be "stale-dated."

In view of the difficulty of transferring securities with "corporate name" or unusual forms of registration or assignment execution, the Board believes that it may not be appropriate to require that a municipal securities broker or dealer accept these types of securities when presented as part of a delivery, unless the broker or dealer agrees to do so at the time of trade. Accordingly, the Board is proposing for comment a draft amendment to the provisions of rule G-12(e) (xiv) (E) and (F) that would have the effect of making most securities with a "corporate name" or unusual form of registration or assignment execution unacceptable for delivery purposes, absent an agreement otherwise at the time of trade.[3]

The draft amendment would require that a security be registered in the name of one of the following four types of persons or entities to be acceptable for delivery purposes:

- an individual or individuals;
- a nominee;
- a member of a registered securities association (*i.e.*, the National Association of Securities Dealers, Inc.) or a national securities exchange; or
- a fiduciary (*e.g.*, an individual executor, trustee, administrator, custodian, etc.) who is specifically named on the registered securities certificate.

Certificates registered in the name of other types of persons or entities, on which documentation in addition to the completed securities assignment would be required in order to transfer the securities, would be considered under the amendment to be in "legal form" and unacceptable for delivery purposes unless the parties to a trade agree otherwise.

The Board is of the view that the delivery standard established under the draft amendment may be more equitable to the parties to a transaction, since it would not require a purchasing dealer to accept securities which are likely to be more difficult to transfer unless the purchasing dealer has agreed to do so. Further, the draft amendment may improve the efficiency of the clearance of registered municipal securities since it would greatly reduce the need to ensure that additional documents necessary for transfer purposes have previously been filed with the transfer agent or are provided with the delivery. The Board does not believe that the draft amendment would impose significant burdens on persons seeking to sell securities with "corporate name" or unusual forms of registration since the current requirements of the rule oblige such persons to file documents with and obtain endorsements from the transfer agent for the securities. Although the draft amendment would have the effect of requiring that these persons have the securities transferred prior to delivery, this would not appear to require any more time or effort on the part of these persons, in view of the current rule's filing and endorsement requirements.

* * *

The Board requests comments on the draft amendment from participants in the municipal securities industry and other interested persons. The Board is particularly interested in comments concerning the category "member of a registered securities association or a national securities exchange," and whether this category is too broad, too narrow, or appropriate.

The text of the draft amendment follows.

December 22, 1982

Text of Draft Amendment*

Rule G-12. Uniform Practice

(a) through (d) No change.

(e) Delivery of Securities. The following provisions shall,

[3]The draft amendment is similar to a proposal made by one commentator during the initial comment period on the exposure draft of rule G-12. The Board did not believe that a provision similar to this commentator's proposal would be necessary at that time due to the limited number of registered securities then being offered in the municipal market. The board has determined to revisit this proposal in view of the great increase in the number of transactions involving registered securities that will result from implemtnation of the registration requirement.

*Underlining indicates additions; material which is lined through would be deleted.

unless otherwise agreed by the parties, govern the delivery of securities:

(i) through (xiii) No change.

(xiv) Delivery of Registered Securities.

(A) through (D) No change.

(E) Form of Registration. A certificate accompanied by the documentation required in this paragraph (xiv) shall constitute good delivery if it is registered in the name of:

(1) an individual or individuals;

(2) a nominee;

(3) a member of a registered securities association or a national securities exchange; or

(4) an individual acting as a fiduciary.

(F) Certificate in Legal Form. Good transfer of a security in legal form shall be determined only by the transfer agent for the security. A certificate in legal form shall not constitute good delivery unless identified as such 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.

~~(E) Certificate in Name of a Party Other Than a Natural Person. A certificate registered in the name of a party other than a natural person, or in a name with official designation, shall constitute good delivery only if the statement "Proper papers for transfer filed by assignor" is placed on the assignment and signed by the transfer agent.~~

~~(F) Certificate in Name of Deceased Person, Trustee, Etc.~~

~~(1) A certificate shall not constitute good delivery if executed with a qualification, restriction or special designation or if delivered in the name of, or with an assignment or power of substitution executed by a person since deceased, a minor, a receiver in bankruptcy, an agent, an attorney, or, except as provided in subparagraph (2) below, a trustee or trustees (except for trustees acting in the capacity of a board of directors of a corporation or association in which case the requirements of subparagraph (E) above shall apply), an executor, or an administrator.~~

~~(2) A certificate shall constitute good delivery with an assignment or a power of substitution executed by an individual executor or administrator, an individual trustee under an inter vivos or testamentary trust, a guardian (including committees, conservators and curators), or a custodian acting pursuant to the provisions of the Uniform Gifts to Minors Act.~~

(G) and (H) No change.

(xv) and (xvi) No change.

(f) through (l) No change.

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Rule G-25

Comments Requested on Proposed Amendments to Prohibition of Guarantees Against Loss

In August 1982, the Board published for industry comment certain draft amendments that would liberalize rule G-25(b), concerning guarantees against loss. The Board did not receive the necessary industry comments to aid its deliberations whether to adopt the draft amendment. It, therefore, is requesting written comments from interested persons concerning the effects the draft amendments would have on the municipal securities market.

Rule G-25(b) generally prohibits a municipal securities dealer from guaranteeing a customer against loss. The rule provides that "bona fide put options" and "repurchase agreements issued in the ordinary course of business" are not deemed to be guarantees against loss for purposes of the rule. The rule, which became effective in 1978, is intended in part to prevent a municipal securities representative from inducing customers to purchase or sell securities by making guarantees on behalf of the dealer which the dealer is not aware of or does not intend to honor.

The Board is considering whether to adopt amendments that would exempt from the general prohibition all guarantees furnished in connection with transactions in municipal securities, including put options, repurchase agreements, and remarketing agreements, if the terms of such guarantees are provided in writing to a customer with delivery of the final confirmation and are recorded on the dealer's books in accordance with Board rule G-8(a) (v) concerning books and records. Under the draft amendment, oral put options, repurchase or remarketing agreements, and other guarantees that are not disclosed in writing as required by the draft amendment would be deemed to be guarantees against loss prohibited by the rule. The full text of the draft amendment follows this notice.

In its earlier notice, the Board indicated that the draft amendments, by requiring that the details of all guarantees be disclosed in writing to a customer, may be effective in assuring the customer protections the rule is designed to achieve while, at the same time, allow the industry sufficient flexibility to enter into legitimate financing and other business arrangements in the conduct of municipal securities business. In this regard, the Board seeks additional information concerning the trading of these instruments including whether they are traded separately from the underlying municipal securities. Commentators should describe how these guarantees are confirmed to customers and state whether, and under what circumstances, separate consideration is charged for them.

The Board further requests comments whether, and if so—how, devices such as put options entered into for legitimate financing or other business purposes can be distinguished from guarantees having a manipulative purpose. Commentators should outline some of the purposes for which these devices are being issued and the types of customers who ordinarily obtain these arrangements.

Finally, the Board seeks comments whether, if the draft amendments were adopted, rule, G-17, which prohibits municipal securities dealers from making untrue or misleading statements of material fact to customers concerning municipal securities they are considering purchasing, along with the SEC's net capital requirements, who afford adequate protection against manipulative or other guarantees a dealer does not intend to honor or otherwise cannot honor.

Commentators also should address what effect removal of the current exemptions from the general prohibition would have on the municipal securities market.

The Board encourages written comments from all interested persons on the draft amendments. Such comments will assist the Board in determining whether to adopt the draft amendments, withdraw the draft amendments, or propose narrower exemptions from the general prohibition.

December 21, 1982

Comments on the draft amendments should be directed to Angela Desmond, Deputy General Counsel, no later than February 28, 1983, and will be made available for public inspection.

* * * * *

Text of Proposed Amendment*

Rule G-25. Improper Use of Assets

(a) No change.

*Underlining indicates new language; material which is lined through would be deleted.

(b) Guaranties. No broker, dealer, or municipal securities dealer shall guarantee or offer to guarantee a customer against loss in

(i) No change.

(ii) a transaction in municipal securities with or for a customer;

~~Bona fide put options and repurchase agreements issued in the ordinary course of business shall not be deemed to be guaranties against loss.~~ unless the terms of such guarantee (including any bona fide put option, repurchase agreement and remarketing agreement) are provided in writing to the customer with delivery of the confirmation of the transaction and are recorded in accordance with rule G-8(a) (v).

(c) No change.

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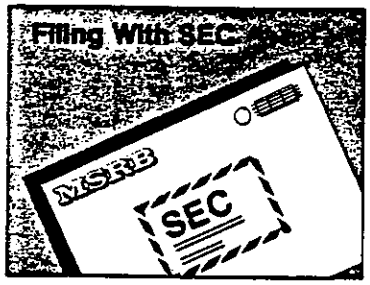

Route To:

- ☐ Manager, Muni. Dept.
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Rule G-12

Amendments Filed Concerning Close-Out Procedures

On December 22, 1982, the Board filed with the Securities and Exchange Commission amendments to the provisions of rule G-12(h) regarding close-outs of uncompleted transactions. The proposed amendments, which are substantially the same as certain amendments released for comment in exposure draft form on September 29, 1982, (1) permit use of the close-out procedure on certain reclaimed transactions, (2) provide for an extension of close-out deadlines in certain circumstances where securities have been submitted for transfer, and (3) delete a requirement for the attachment of a contra-confirmation to a notice of close-out. The proposed amendments will not be effective until they are approved by the Commission. The text of the proposed amendments follows this notice.

The specific provisions of the proposed amendments are as follows:

- **The proposed amendments permit the initiation of a close-out procedure on certain transactions reclaimed after the ninetieth business day following the original settlement date.** The provisions of rule G-12(h)(i)(E) currently specify that a close-out notice cannot be issued on a transaction after the ninetieth business day following the settlement date. However, the provisions of rule G-12(g) permit reclamations to be made for up to eighteen months after delivery for certain specified reasons, and indefinitely for other specified reasons. Therefore, the current rule does not permit a reclaiming dealer to use the close-out procedure to ensure completion of the reopened contract, if the reclamation occurs more than ninety business days after the settlement date.

The Board is aware that, in certain instances in the past, the availability of the close-out procedure would have promoted more expeditious resolution of reclaimed transactions. Accordingly, the proposed amendments make the close-out procedure available, for a short period of time, in the event that a transaction is reopened due to a reclamation of securities, for certain specified reasons, after the ninetieth business day following the settlement date. The proposed amendments permit the purchaser to initiate a close-out procedure with respect to such a transaction, in accordance with the provisions of the rule, for a period of fifteen business days following the date of reclamation. The proposed amendments also provide that such a procedure would be an initial procedure for purposes of the timing provisions specified in subparagraph (h)(i)(A).

This provision of the proposed amendments would apply, however, only if the delivery had been reclaimed pursuant to the provisions of subparagraphs (g)(iii)(C) or (g)(iii)(D) of rule G-12.[1] If the reclamation has been made for some other reason (*e.g.*, securities with mutilated coupons, or missing the legal opinion, both grounds for reclamation under subparagraph (g)(iii)(A)), the provision of the proposed amendments would not apply, and a close-out could not be initiated with respect to the reclaimed transaction after the ninetieth business day following the settlement date. Since the time periods for reclamations for other reasons are relatively brief, the Board does not believe that additional time for initiation of a close-out procedure is warranted.

Certain commentators on the September 1982 exposure draft expressed concern that the time period provided for initiation of the close-out on a reclaimed transaction was too short; the Board believes that the time period is adequate, and that these commentators may not have understood that the time period is expressed in business days, rather than calendar days. Commentators also suggested that additional time should be provided to permit the dealer receiving the reclaimed securities to obtain substitute securities. The

Questions concerning the proposed amendments may be directed to Donald F. Donahue, Deputy Executive Director.

[1] Subparagraph (g)(iii)(C) of rule G-12 provides that reclamation may be made within 18 months of a delivery for any of the following reasons:
(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;
(2) refusal to transfer or deregister by the transfer agent due to a lack of documentation required by paragraph (e)(xiv) of the rule; 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 the 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 the rule was erroneously noted on a confirmation.
Subparagraph (g)(iii)(D) provides that reclamation of a delivery may be made without any time limitation for either of the following reasons:
(1) the security delivered is reported missing, stolen, fraudulent or counterfeit; or
(2) a notice of call for less than the entire issue of securities was published on or prior to the delivery date and the securities were not identified as "called" at the time of trade.

Board believes that this concern is addressed by the provision in the proposed amendments that a close-out initiated on a reclaimed transaction is to be considered an initial close-out, which involves a longer time period between initiation and execution (ten business days as opposed to five on a second or subsequent notice).

• **The proposed amendments permit the selling dealer receiving a close-out notice which it does not retransmit to obtain an extension of time if the securities owed on the transaction are in transfer.** The current close-out rule provides an extension of time only in the event that a close-out notice is retransmitted by the selling dealer first receiving it, and no extension is provided based specifically on the reason for the selling dealer's failure to deliver. The Board has been of the view that, in most instances, the standard ten-business-day period between the initiation of a close-out and the commencement of the execution period should be sufficient to resolve any clearance problem delaying the delivery.

In August of this year the Congress passed, as part of the Tax Equity and Financial Responsibility Act of 1982, a requirement that most new issues of municipal securities issued on or after January 1, 1983 must be made available solely in registered form; legislation passed on December 21, 1982, delays this effective date to July 1, 1983. As a result of this requirement an increasing number of transactions will involve registered securities, and dealers will be required to submit securities for transfer more frequently. Delays in the transfer process may become a more significant factor affecting the municipal clearance process, and more close-out procedures may be initiated on transactions on which the failure to deliver is caused by the need to transfer the securities. Such delays may be a particular problem during the initial period following the effectiveness of the requirement, while the industry is not yet fully acclimated to the handling of registered securities, and efficient transfer mechanisms may not yet be available on all issues of municipal securities. The Board therefore has concluded that it would be appropriate to alter the close-out process to take into account this substantial change in the manner in which the industry will be clearing securities and to provide additional time to permit the transfer process to be accomplished.

Accordingly, the proposed amendments provide that, if the selling dealer receiving an initial notice of close-out from the originating purchaser has submitted the securities which it is failing to deliver to be transferred, the selling dealer may delay the delivery deadline and the execution period specified on the notice for ten business days by advising the purchaser of the reason for its failure to deliver. The selling dealer must advise the purchaser of the reason for its failure to deliver by telephone not later than the close of business on the business day following its receipt of the telephone notice of close-out from the purchaser; the selling dealer must confirm this notice in writing, sent return receipt requested not later than the following business day, including in such notice a statement of the dates of the new delivery deadline and the new execution period, as extended by the seller's action.

This time extension, however, would be available only to the selling dealer first receiving the notice of close-out from the originating purchaser. If the notice of close-out is retransmitted to another dealer, and this third dealer is the party which has submitted the securities for transfer, the third dealer would not be able to invoke an additional time extension attributable to the fact that the securities are being transferred. The Board notes that the retransmittal of the close-out notice itself causes a five business day extension of the dates involved in the procedure, and the Board believes that providing an additional ten-day extension would unduly delay the close-out procedure and harm the purchaser's interests in accomplishing a timely completion of the contract.

The proposed amendments also provide that this time extension for securities in transfer shall be available only on close-outs initiated prior to January 1, 1985. The Board is of the view that, as more efficient transfer mechanisms become available on a wider range of municipal issues, there will be less need for additional time on a close-out procedure. The Board believes that a "sunset" date of January 1, 1985 provides sufficient time for municipal market participants to develop and ensure the adoption of efficient transfer mechanisms on most municipal issues.

In comenting on a substantially similar provision included in the September 1982 exposure draft, one industry member suggested that the proposed ten business day extension for transfer items should be available only on the initial close-out notice issued with respect to a transaction, with any subsequent notice effective in accordance with the timing provisions of the current rule. The Board believes that this suggestion is appropriate; inasmuch as the recipient of a second or subsequent close-out notice has already been provided with ample time to resolve any transfer-related problems. Accordingly, the Board has incorporated this suggestion in the proposed amendments.

Other commentators on the September 1982 exposure draft expressed the view that the extension of time for securities in transfer should also be available in the event that the close-out notice was retransmitted. These persons suggested that parties receiving retransmitted notices might also be failing to deliver securities due to transfer problems. While the Board is not unsympathetic to these commentators' concerns, the Board believes that making the extension also available in the event of a retransmittal would significantly hamper the efficient handling of a close-out procedure. Two major difficulties which municipal securities brokers and dealers had experienced with the original close-out procedure promulgated by the Board in 1977 were the need to notify parties in a sequence of transactions on which a close-out had been retransmitted of extensions of the dates on which the close-out could be executed, and the uncertainty caused by multiple time extensions applied at different times to the same close-out procedure. These aspects of the close-out process proved in practice to be cumbersome and highly confusing, and the industry strongly supported their elimination in amendments to the close-out rules adopted in May 1981. If the extension for securities in transfer were to be made available to parties receiving a retransmitted notice, it would be necessary to reinstate in the close-out rules the same confusing multiple time extensions and cumbersome notification procedures. On balance, the Board believes that it is necessary to preserve a relatively simple and efficient

close-out procedure, and not to complicate the procedure to provide for an extension for transfer on retransmitted notices.[2]

Another commentator on this aspect of the September 1982 exposure draft suggested that the initiation of the close-out process should simply be delayed in the event that securities have been submitted for transfer. The Board believes that the initiation of a close-out procedure serves to prompt action on the part of the failing dealer to address any problem causing the failure to make delivery; deferring initiation of the procedure would remove this incentive to resolve the transaction. The Board notes also that the time periods provided under the proposed amendments produce much the same result (in terms of additional time for completion of the transaction) as this commentator's proposal.

• **The proposed amendments delete the requirement that a copy of the contra-dealer's confirmation be attached to close-out notices.** The current rule requires that a dealer issuing or retransmitting a close-out notice must attach to such notice a copy of the contra-confirmation of the transaction sent by the dealer who is receiving the close-out notice. This requirement is intended in part to assist the dealer receiving the notice in identifying the transaction which is the subject of the notice.

The Board continues to be of the view that this requirement is no longer necessary. Since the relevant information regarding the transaction is required to be specified on the written close-out notice, and since a dealer receiving a telephone notice of close-out must proceed based on such telephone notice, not awaiting receipt of the written notice, the requirement to attach the contra-confirmation to the written notice does not appear to provide significant assistance in identifying the related transactions to the dealer receiving the notice. Accordingly, the proposed amendments delete the requirement for attachment of a copy of the contra-confirmation.

* * *

In addition to the three proposed amendments reflected above, the September 1982 exposure draft also contained a proposal that would have permitted a selling dealer who is unable to complete a transaction to force the purchasing dealer to close out the transaction. Although certain of the commentators supported this proposal, the Board has, on reconsideration, determined that such a provision would not be appropriate and should not be adopted. The Board has concluded that this proposal would unfairly restrict the flexibility of the purchasing dealer, who is the aggrieved party in a close-out procedure. The Board also concurs with the view expressed by other commentators, who pointed out that the proposal might at times impose a requirement on the purchaser that, through no fault of its own, it would be unable to comply with (*e.g.*, if the purchaser and seller cannot agree on a substitution of securities that would be equitable to the purchaser's customer). The Board also notes that the remedy of arbitration continues to be available to a selling dealer who believes that it has been injured due to a purchasing dealer's procrastination in executing a close-out.

* * *

The text of the proposed amendments follows.

December 22, 1982

Text of Proposed Amendments*

Rule G-12. Uniform Practice

(a) through (g) No change.

(h) Close-Out. Transactions which have been confirmed or otherwise agreed upon by both parties but which have not been completed may be closed out in accordance with this section, or as otherwise agreed by the parties.

(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 in accordance with this paragraph (i), the purchaser shall, not earlier than the fifth business day following the settlement date, notify the seller by telephone of the purchaser's intention to close out the transaction. The purchaser shall state that unless the transaction is completed by a specified date and time, which shall not be earlier than the close of the tenth business day following the date the telephonic notice is given (the fifth business day, in the case of a second or subsequent notice), the transaction may be closed out in accordance with this section at any time during the period of time, which shall not be more than five business days, specified by the purchaser for such purpose. The purchaser shall immediately thereafter send, return receipt requested, a written notice of close-out to the seller. Such notice shall contain the information specified in item (1) of subparagraph (C) below. ~~and shall be accompanied by a copy of the seller's confirmation of the transaction to be closed out or other written evidence of the contract between the parties.~~

(B) (1) Retransmittal. [as in current rule—no substantive change.]

(2) Transfer of Securities. If a selling dealer receiving an initial notice of close-out which has not been retransmitted has timely submitted the securities owed on the transaction to the registrar or transfer agent for transfer, the selling dealer may, upon notice to the purchaser, extend the dates for close-out by ten business days. The selling dealer must provide such notice by telephone, not later than the first business day following its

[2] The Board also suspects that much of the concern with respect to the need for an extension for transfer on retransmitted close-outs may be directed at transfer delays resulting from several transfers to obtain smaller denominations from a single large-denomination certificate. These transfer problems will be substantially remedied by another amendment to rule G-12 filed concurrently with the amendments to the close-out rules. This amendment would eliminate for a period of time the standard use of large-denomination certificates in the clearance and settlement of transactions in registered municipal securities.

*Underlining indicates new language; material which is lined through would be deleted.

receipt of the telephone notice of close-out, and must immediately thereafter send, return receipt requested, a written confirmation of such notice, stating the dates for close-out as extended due to such notice. The provisions of this item (2) of subparagraph (B) shall not apply to any notice of close-out initiated on or after January 1, 1985.

(C) and (D) No change.

(E) Close-Out Not Completed. If a close-out pursuant to a notice of close-out is not completed in accordance with the terms of the notice and the provisions of this rule, the notice shall expire. Additional close-out notices may be issued, provided that a close-out procedure with respect to a transaction may not be initiated later than the ninetieth business day following the settlement date of such transaction, regardless of the number of close-out notices issued. Notwithstanding the foregoing, in the case of a transaction on which a delivery of securities has been reclaimed pursuant to the provisions of subparagraphs (g)(iii)(C) or (g)(iii)(D) of this rule and which remains uncompleted, the purchaser may initiate a close-out procedure with respect to such transaction at any time during a period of fifteen business days following the date of reclamation. Such procedure shall be considered an initial procedure for purposes of subparagraph (A) above.

(F) and (G) No change.

(i) through (l) No change.

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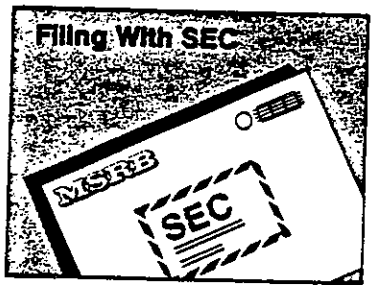

Route To:

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Rule G-12

Amedments Filed Regarding Denominations of Registered Securities

On December 22, 1982, the Board filed with the Securities and Exchange Commission an amendment to the provisions of rule G-12(e) regarding denominations of securities certificates. The proposed amendment provides that, with respect to registered securities issued on or after January 1, 1983, certificates in denominations of $5,000 shall be considered standard for delivery purposes until January 1, 1985. The proposed amendment will not be effective until it is approved by the Commission; the text of the proposed amendment follows this notice.

* * *

Background

Board rule G-12 sets forth certain practices to be followed by all municipal securities brokers and municipal securities dealers with respect to the comparison, clearance and settlement of inter-dealer transactions in municipal securities. Among other matters, the rule specifies the certificate denomination sizes which are considered to be standard for delivery purposes. With respect to securities in registered form, rule G-12(e)(v)(B) currently specifies certificate denominations in multiples of $1,000 not to exceed $100,000 as standard for delivery purposes. Registered certificates in alternative denominations, such as $500 or $250,000 per certificate, are not acceptable for delivery purposes unless specific agreement to this effect is reached at the time of trade.

In December 1980 the Congress enacted legislation requiring that mortgage revenue municipal securities issued on or after January 1, 1982 be issued solely in registered form. In mid-1982, as an increasing number of registered mortgage revenue securities began to be traded in the municipal market, the Board began to receive comments from municipal securities brokers and dealers that the use of registered securities certificates in denominations larger than the traditional $5,000 denomination was causing a significant increase in the number of transactions that failed to be completed on settlement date.

The recently-enacted Tax Equity and Fiscal Responsibility Act of 1982 ("TEFRA"), as amended by Congress on December 21, 1982, will extend the registration requirement to substantially all long-term municipal securities (*i.e.*, municipal securities maturing in more than one year) issued on or after July 1, 1983. Members of the municipal securities industry generally have expressed concern to the Board that the clearance problems resulting from the use of large-denomination registered certificates will be significantly more burdensome for municipal securities brokers and dealers when all new issues are exclusively in registered form. Industry representatives have suggested that the Board consider rule changes that would resolve these problems.

The clearance problems identified by industry commentators result from the need to obtain certificate denominations in a size that will permit a municipal securities dealer to satisfy its delivery obligations. Secondary market trading in municipal securities often involves a dealer purchasing a single large block of securities which is subsequently sold to investors or other dealers in several smaller lots. If the dealer receives large-denomination registered securities certificates in settlement of the large-block purchase, the dealer often must submit the large denomination certificates for transfer in order to obtain the smaller denomination certificates necessary to satisfy its delivery obligations. Further, a secondary market transaction between dealers is often part of a sequence of such transactions, with the possibility existing that at several points in the sequence transfers to obtain alternative denominations will be necessary.

Questions concerning the proposed amendment may be directed to Donald F. Donahue, Deputy Executive Director.

Experience has indicated that the transfer processes for registered mortgage revenue securities may often be inefficient, with transfer items frequently taking several weeks to complete. As a result of this inefficiency and the frequent need to submit securities for transfer in order to obtain alternative denominations, many dealers fail to complete secondary market transactions in these registered securities for some period of time after settlement date, until certificates of the proper denomination have been obtained from the transfer agent. If several transfers to obtain alternative denominations are necessary in a single sequence of transactions, the clearance delays caused by transfer inefficiencies can become even more extensive.

With the implementation of a registration requirement applicable to substantially all long-term municipal securities the number of clearance problems attributable to inef-

ficiencies in the process of transferring securities to obtain alternative denominations may significantly increase. Each year a large number of small municipal issues are brought to market: it appears questionable whether organizations capable of providing efficient transfer services will be employed as transfer agents on such issues during the initial phase of the registration requirement. Further, several states have laws requiring that governmental officials serve as the registrars for municipal issuers; past experience indicates that such persons may not process transfer items as expeditiously as is necessary to permit efficient clearance. Until these laws are amended, issuers in these states will be required by statute to use transfer agents which historically have not proven to be consistently efficient. These considerations clearly suggest that efficient transfer services may not be available on many municipal issues during the initial period following the implementation of the registration requirement. To the extent that the use of large-denomination registered securities certificates necessitates the frequent transfer of securities to obtain alternative, smaller denominations, any such inefficiencies would produce substantial delays in the clearance and settlement of transactions.

The Board believes that any such delays in the clearance of transactions would impose serious burdens on municipal securities brokers and dealers, both in increased financing costs on fail transactions and transfer items and also in higher net capital charges for "aged" fails[1] and increases in reservable items under the Commission's customer protection rule.[2] The Board is concerned that these burdens may be so severe as to force certain municipal securities brokers or dealers to curtail or cease their municipal securities activities. Further, the Board recognizes that the significant clearance delays that would result from transfer inefficiencies may also have onerous effects on investors in municipal securities, who would be less able to trade investment portfolios for short-term gains or otherwise dispose of assets shortly after their acquisition if clearance delays prevent them from obtaining securities for a significant period of time. Similarly, the provision of inefficient transfer arrangement on a new issue may well cause an increase in the interest costs on the issue; to the extent that municipal securities brokers and dealers and investors are likely to experience serious clearance problems as a result of such inefficiencies, the increase in interest costs would be higher. Accordingly, the Board has concluded that it is appropriate to amend rule G-12 in order to minimize these burdens on the clearance process during the initial implementation period of the registration requirement.

The Proposed Amendment

The proposed amendment would revise the provisions of rule G-12(e)(v)(B) regarding standard denominations of registered securities certificates to specify that, with respect to registered securities issued on or after January 1, 1983, certificates of $5,000 denomination must be delivered on transactions settled prior to January 1, 1985 (if the parties of the transaction do not agree otherwise). By making the standard denomination for registered securities certificates the same as that currently standard for bearer certificates (which is also the denomination that has become the standard multiple for trading purposes), the proposed amendment will eliminate the need for transfers of securities solely in order to have a large-denomination certificate "broken up" into the smaller denominations needed by a dealer to satisfy its delivery obligations. The elimination of these types of transfers will, in the Board's view, significantly lessen the likelihood of substantial delays in the clearance and settlement of transactions.

The proposed amendment is not, by its terms, applicable to deliveries of securities issued prior to January 1, 1983, the originally-scheduled effective date of the registration provisions of TEFRA. The Board is aware that many persons who have purchased registered mortgage revenue securities currently hold these securities in large denomination certificates. The Board does not believe that it would be appropriate now to impose a new delivery standard for these securities. Accordingly, the proposed amendment would not apply to registered securities issued prior to January 1, 1983.

The Board has included in the proposed amendment a provision that, as of a "sunset" date of January 1, 1985, the designation of $5,000 denomination certificates as standard on deliveries of registered securities will lapse, and the larger denomination certificates permitted under the current rule will again be acceptable for delivery purposes. As noted previously, the Board has adopted the proposed amendment due to its concern that transfer arrangements on many issues may be significantly inefficient during the initial implementation of the registration requirement, and that the existing requirements of the rule would, as a result, impose a serious burden on the municipal securities industry during this period. The Board recognizes, however, that, for a variety of reasons, the use of $5,000 denomination certificates cannot be viewed as a long-term solution to the problems caused by transfer agent inefficiency. For example, the use of small denomination certificates necessitates that issuers print, and pay for, a much larger number of certificates at the time of issuance, to make provision for future transfers of securities. Similarly, smaller denomination certificates will increase the costs for transferring securities, and for the handling and safekeeping of securities. For these reasons, the Board views the requirement for the use of small denomination certificates set forth in the proposed amendment as an interim measure, necessary for the short term, until efficient transfer mechanisms come into use for most municipal issues, but undesirable for the long term, given the additional costs it will cause. Accordingly, the Board has included a specific "sunset" date in the proposed amendment. The Board believes that a "sunset" date of January 1, 1985 provides sufficient time for municipal market participants to develop and ensure the adoption of efficient transfer mechanisms on most municipal issues.

• • •

[1]Under Commission rule 15c3-1 a fail-to-deliver transaction in municipal securities is considered to be an "aged" fail as of twenty-one business days after the settlement date. A fail-to-receive transaction is considered to be "aged" as of thirty days after the settlement date.

[2]These latter increases in net capital and Reserve Formula requirements would, of course, only affect municipal securities brokers and dealers which are securities firms.

The text of the proposed amendment follows.

December 22, 1982

Text of Proposed Amendment*

Rule G-12. Uniform Practice

(a) through (d) No change.

(e) Delivery of Securities. The following provisions shall, unless otherwise agreed by the parties, govern the delivery of securities:

(i) through (iv) No change.

(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; provided, however, that registered bonds issued after January 1, 1983 shall be delivered in denominations of $5,000 par value until January 1, 1985.

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) through (xvi) No change.

(f) through (l) No change.

*Underlining indicates additions. The text reflects another proposed amendment currently on file with the Commission

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Questions & Answers

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Rule G-32

Frequently Asked Questions Concerning Disclosures in Connection with New Issues

* * * * *

Official Statement Delivery Requirements

GENERAL

Q: **Does the Board have any requirements governing the mailing of official statements to customers?**

A: Yes. Municipal securities brokers and dealers are required to send a copy of the official statement, if one is voluntarily prepared by the issuer or its representative, to any customer purchasing new issue municipal securities during the underwriting period. Further, dealers must provide copies of the official statement to other dealers purchasing new issue securities during that time upon request.

Q: **Is there any obligation for a municipal securities dealer to prepare an offering document if no official statement is prepared by the issuer?**

A: Rule G-32 requires that a municipal securities dealer furnish an offering statement only if one *voluntarily* is prepared by an issuer. Accordingly, there is no obligation for a dealer to deliver any document if an issuer does not furnish an official statement.

Q: **What should we do if the final official statement is not ready in time to send with the final confirmation?**

A: The rule states that in the event a final official statement is not ready by that time, a preliminary official statement, if any, should be sent and the final promptly must be sent as soon as it becomes available to the municipal securities broker or dealer.

Q: **Does the rule restrict us from bidding on an issue if we know in advance that there will not be an official statement issued?**

A: No, the rule prescribes delivery requirements if the issuer provides an official statement, but does not restrict the municipal securities dealer from bidding on an issue if the dealer knows in advance that the issuer does not plan to prepare an official statement.

Q: **If I am not a member of a new issue underwriting syndicate, and I sell securities of that new issue to a customer during the underwriting period, am I required to send that customer a copy of the final official statement?**

A: Yes.

Q: **We are putting together an official statement on a competitive offering we are involved in. Are we required to put in both the coupons and the offering yields on the front page of the final official statement?**

A: The Board has no rules governing the contents of official statements.

Q: **What is a new issue municipal security?**

A: The rule defines new issue municipal securities as securities of a new issue that are sold by a municipal securities broker or dealer to a customer during the underwriting period (as defined in rule G-11).

Q: **Is there any fixed number of days as a cutoff on the mailing of official statements under the Board's rules?**

A: No. Official statements must be provided to any customer to whom you sell securities of a new issue during the underwriting period. The "underwriting period" is defined in rule G-11 as ending with the later of the sale of the last securities out of the syndicate account, or the delivery of the securities to the syndicate by the issuer. In terms of mailing, you must mail the official statement no later than the time the final money confirmation is sent. If an official statement is not available by that time, you should send the preliminary official statement, and follow up with the final official statement when it becomes available.

Q: **If the syndicate has closed and the syndicate no longer retains any unsold securities (bonds paid for and delivered), am I required to furnish an official offering statement?**

A: No.

APPLICATION TO ALL TYPES OF MUNICIPAL SECURITIES

Q: **Do the disclosure requirements of rule G-32 apply to new issues of tax-exempt notes as well as bonds?**

A: Yes. Rule G-32 does not make any distinction between bonds and notes.

Q: **Is this requirement the same for G.O. issues and revenue issues?**

A: Yes.

Q: **Does rule G-32 apply to the situation where securities are privately placed?**

A: Yes. The Board has determined that the rule should apply in such circumstances, even if there is technically no syndicate.

DEFINITION OF OFFICIAL STATEMENT, AVAILABILITY OF OFFICIAL STATEMENT

Q: **Under rule G-32, will a document largely prepared by an underwriter be considered an official statement?**

A: Rule G-32 defines the term "official statement" to mean a document prepared by an issuer or its representative. Accordingly, if the document were issued by the issuer or by the underwriter on the issuer's behalf, the document would be an official statement for purposes of the rule.

Q: **When is an official statement needed on sales of "when issued" securities?**

A: If an official statement is voluntarily provided by the issuer of the securities, and securities are sold to a customer during the underwriting period, the official statement must be provided to the customer at or before sending the final money confirmation.

Q: **I understand that if an official statement in final form is not available at the time the final money confirmation is sent, I must furnish the customer with a copy of the official statement in preliminary form at that time and a copy of the final official statement promptly after it becomes available. When is an official statement in final form "available"?**

A: An official statement in final form is "available" when the issuer has provided a copy or copies to the underwriters. "Availability" does not refer to whether a sufficient number of copies of official statements are available nor to when they are furnished by the syndicate to others purchasing the securities. Once the issuer makes the final official statement available, the requirements of G-32 become applicable.

Q: **What if an issuer supplies a firm with an insufficient quantity of official statements?**

A: The obligation of a dealer to furnish a copy of the official statement to each of his customers is not relieved by the failure of the issuer to supply a sufficient number of copies of an official statement. In such cases, it is incumbent upon the dealer to see to the reproduction of the official statement, at his own expense.

Q: **An issuer prepared a preliminary official statement but later, on advice of counsel, decided not to put out a final official statement. What are our responsibilities?**

A: The underwriter would be responsible for advising his customers of any characteristics of the issue that are materially different from those described in the preliminary official statement. It might also be useful to advise customers that no final disclosure statement is being disseminated.

Q: **Is there any prohibition against using a summary of an official statement?**

A: Rule G-32 specifically permits the use of a summary of an official statement.

Q: **Is it permissible to send customers a photocopy of the front page of the official statement during the pre-sale period and subsequently provide the official statement in its entirety at the time of sending the confirmation?**

A: The only requirement of the Board's rule is that you send a copy of the final official statement at or before the time of sending the final money confirmation. Rule G-32 would not prevent you from sending other material prior to that time.

Q: **If you mail out a letter to a list of customers soliciting interest in the new issue, and a particular customer inquires as a result of your letter, but subsequently does not purchase the securities, are you required to send him an official statement?**

A: No.

* * * * *

Disclosure to Customers in Connection with Negotiated Underwritings

GENERAL

Q: **In a negotiated underwriting, are we required to furnish any information to customers?**

A: Yes. The dealer must disclose the initial offering prices on all of the maturities of the issue and the amount of any fee received from the issuer in the distribution.

Q: **Does the disclosure of underwriting spread on negotiated new issues have to be in the official statement?**

A: No. The disclosures can be provided in a separate document.

Q: **We have purchased an issue at a competitive sale and sold out part of the issue pre-sale to a bank customer. We have not disclosed the offering price of these securities on the official statement which is merely stating that they are "not reoffered." Does rule G-32 speak to this?**

A: No; rule G-32 requires disclosure to customers of underwriting spread and initial offering price for securities purchased in a negotiated sale only.

DISCLOSURE OF UNDERWRITING SPREAD

Q: **What is "underwriting spread" for purposes of rule G-32?**

A: Rule G-32 requires that the gross spread be disclosed (*i.e.*, the difference between the price paid to the issuer and the initial reoffering price). A dealer may also include information about expenses, if it wishes to explain to the customer that the gross spread does not constitute the profit actually realized by the dealer.

Q: **If we received no fee for acting as an agent to the issuer in the distribution of securities, must this fact be stated?**

A: No.

Q: **Under rule G-32, do dealers who are not members of the syndicate have to disclose the underwriting spread in a negotiated sale to their customers?**

A: Rule G-32 provides that municipal securities dealers must disclose the information specified in the rule to all customers to whom securities are sold during the underwriting period. This applies to both members and non-member dealers. A non-member dealer is therefore required to disclose the underwriting spread to its customers.

Q: **Some official statements state the price paid to the issuer and that the spread is the difference between that and the offering prices on the front—is that acceptable?**

A: No—amount of spread must be given, either in gross dollars or points or in dollars or points per bond.

Q: **Is it permissible to describe the underwriting spread as the "underwriter's discount"?**

A: Yes, this terminology is acceptable.

Q: **Is the following format acceptable disclosure of the underwriting spread:**

underwriter's discount	**$xxx**
printing and other issuance expenses	**$yyy**

A: No. The underwriting spread must be disclosed on a gross basis, and not net of any expenses. It would be permissible to say that the underwriter's discount is "x plus y" of which "y" is devoted to printing and other issuance expenses, but the total underwriting spread must be shown.

Q: **Will a statement to the following effect satisfy the requirements of rule G-32 relating to the disclosure of the underwriting spread in a negotiated sale:**

"The underwriting spread is 3.476 points."

A: Yes.

Q: **Since we have to provide reoffering prices, is it permissible to provide the price paid to the issuer and let the customer figure the spread?**

A: No. The spread must be disclosed directly, either in gross dollars or in dollars or points per bond.

DISCLOSURE OF INITIAL REOFFERING PRICES

Q: **Does G-32 require any other disclosures?**

A: Yes. In connection with a negotiated sale, the rule requires disclosure of the initial offering price for each maturity that is offered for sale by the syndicate.

Q: **In a negotiated sale, where some maturities are sold out pre-sale, may the official statement, in disclosing the initial offering prices, merely indicate that those maturities are not reoffered?**

A: No. The Board has taken the position that the initial offering price for each maturity must be disclosed whether or not a particular maturity is reoffered.