MSRB REPORTS

Volume 11, Number 3 | Municipal Securities Rulemaking Board | September 1991

In This Issue

Board Elects Thayer Chairman; Larson Vice Chairman

The Board has elected its Chairman and Vice Chairman for its 1992 fiscal year. Mr. Richard D. Thayer will serve as Chairman and Mr. Harry D. Larson as Vice Chairman. They begin their terms on October 1, 1991.

Mr. Thayer is President of Citizens & Southern Securities Corp. in Atlanta. Prior to assuming that position in 1990, he was Senior Vice President in charge of securities administration for the South Carolina Bank. Earlier, Mr. Thayer was with Citizens & Southern National Bank from 1980 to 1988, managing their municipal securities activities. He is a member of the Executive Committee of the American Bankers Association's Funds Management and Capital Markets Division and the Public Securities Association. Mr. Thayer received a B.A. at Ohio Dominican College.

Mr. Larson became President of First Chicago Capital Markets, Inc. in 1989, after working as President of Chemical Securities, Inc. from 1988 to 1989. Prior to that, he was Managing Director at Chemical Bank responsible for the municipal bond department for three years, after spending six years as Senior Vice President and Manager of the Municipal Bond Department at First Interstate Bank of California. Mr. Larson is a member of the Public Securities Association. He received his B.S./B.A. from Roosevelt University.

Also in This Issue

MSRB REPORTS (SSN-0277-0911) is published by the Municipal Securities Rulemaking Board, 1818 N Street, NW, Suite 800, Washington, DC 20036-2491. Editor: Thomas A. Hutton
POSTMASTER send address changes to Municipal Securities Rulemaking Board, 1818 N Street, NW, Suite 800, Washington, DC 20036-2491. Telephone (202) 223-9347 Fax (202) 872-0347

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Calendar

September 13 — Effective date of G-36 on delivery to Board of ARDs for issues sold since January 1, 1990
August 5 — Effective date of G-4 on statutory disqualifications
October 23 — Effective date of G-35 and A-16 on arbitration
October 31 — Annual fee due
December 15 — Comments due on G-12 and G-15 on automated clearance
Pending — MSIL CDI/ES subsystem
— G-15 on disclosure to customers of remuneration
— G-23 on activities of financial advisors

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Route to:

- ☒ Manager, Muni Dept.
- ☐ Underwriting
- ☒ Trading
- ☒ Sales
- ☒ Operations
- ☐ Public Finance
- ☐ Compliance
- ☐ Training
- ☐ Other

Automated Clearance and Settlement: Rules G-12 and G-15

Comments Requested

The draft amendments would require essentially all inter-dealer and DVP/RVP customer transactions to be cleared and settled within automated systems.

The Board is circulating for comment draft amendments to rules G-12(f) and G-15(d) on automated clearance and settlement. The draft amendments, if adopted, would require significant changes in clearance and settlement practices by some dealers and institutional customers. The draft amendments would not create any additional requirements with respect to retail transactions. The Board encourages interested parties to comment on the draft amendments. Written comments will be accepted until December 15, 1991.

Introduction and Summary

Since the adoption of Board rules G-12(f) and G-15(d) in 1983, the municipal securities market has made substantial progress in the transition from physical to automated clearance and settlement techniques. Today, the great majority of inter-dealer transactions and customer transactions settled on a "Delivery Versus Payment" or "Receipt Versus Payment" (DVP/RVP) basis are processed within automated clearance and settlement systems operated by clearing corporations and depositories registered with the Securities and Exchange Commission. However, for a variety of reasons, some of these transactions continue to be processed outside of the automated systems. The Board believes that, for the municipal securities market to obtain the full cost savings and efficiencies offered by the automated clearance and settlement systems, it will be necessary to include essentially all inter-dealer and DVP/RVP customer transactions within the automated systems.

As discussed below, the ongoing planning for implementation of the "Group of Thirty" (G30) goals in the United States has focused much attention, in both the corporate and municipal securities markets, on automated clearance and settlement. Although there exists controversy surrounding the impact of the G30 implementation plans on retail transactions, there has been general agreement on the need for inter-dealer and institutional customer transactions to be cleared and settled as efficiently as possible using automated systems designed for these purposes. The discussions about G30 goals in the United States have served to highlight the lack of parity between the corporate and municipal securities markets in automated clearance and settlement. The Board, therefore, believes that it is appropriate for the municipal securities market to consider at this time how to improve its use of automated clearance and settlement systems.

The draft amendments proposed by the Board would eliminate exemptions in Board rules G-12(f) and G-15(d) that currently allow certain transactions to be processed outside the automated clearance and settlement systems. The specific requirements of the draft amendments and the changes from current rules are discussed in detail below. In general, the draft amendments would have the following effects:

- All dealers in municipal securities would have to have access to the automated comparison services offered by a clearing corporation.
- All inter-dealer transactions would have to be compared through an automated comparison system unless the transaction is ineligible for automated comparison.
- All dealers would have to have access to the services of a securities depository which offers automated confirmation/affirmation and book-entry delivery services for municipal securities transactions. (Access to a depository can either be by direct membership in the depository or through a clearing agent that is a member.)
- All inter-dealer transactions in depository-eligible securities would have to be settled by book-entry delivery.
- All dealers would have to ensure that each of their customers receiving DVP/RVP privileges has access to

Comments on the draft amendments should be submitted no later than December 15, 1991, and may be directed to Harold L. Johnson, Deputy General Counsel. Written comments will be available for public inspection.

a securities depository offering confirmation/affirmation and book-entry settlement services in municipal securities.

- All DVP/RVP transactions with customers would have to be confirmed and affirmed in an automated confirmation/affirmation system operated by a depository unless the transaction is ineligible for confirmation/affirmation.
- All DVP/RVP transactions with customers in depository-eligible securities would have to be settled by book-entry delivery.

Background

Since its creation in 1975, the Board has worked toward improving the clearance and settlement of municipal securities. As set forth in section 15B of the Securities Exchange Act (Act), the Board has the responsibility to

> foster co-operation and coordination with persons engaging in ... clearing, settling, processing information with respect to, and facilitating transactions in, municipal securities.[1]

The Board's role in this area is given additional direction by section 17A of the Act[2], which mandates the creation of a national system of automated clearance and settlement of securities transactions and the elimination of the physical movement of securities certificates between dealers. Section 17A expressly includes municipal securities within its stated objectives.

Adoption of Board's automated clearance and settlement rules

In 1983, the Board adopted rules G-12(f) and G-15(d), which require, with some exceptions, inter-dealer and DVP/RVP customer transactions to be cleared and settled in automated systems operated by clearing corporations and depositories registered with the SEC. The adoption of these rules represented a crucial step in the transition of the municipal securities market from physical to automated clearance and settlement procedures and helped to bring most municipal securities transactions into the national system for clearance and settlement contemplated by section 17A of the Act.

Within rules G-12(f) and G-15(d), the Board has provided certain exemptions from the general requirement that inter-dealer and DVP/RVP customer transactions must be cleared and settled in the automated systems. First, those transactions that are not eligible for processing in the automated systems are exempt from the requirements of the rules. The Board also sought to ease the industry's transition to automation by providing certain other exemptions, which allow transactions eligible in the automated systems to be cleared and settled physically. These exceptions apply primarily to dealers and institutional customers who are not direct members of registered clearing corporations or depositories but who sometimes use clearing agents to participate indirectly in the automated systems (indirect participants). In adopting specific exemptions for indirect participants, the Board stated that indirect participants ultimately should participate fully in the automated systems.[3]

Since the adoption of rules G-12(f) and G-15(d), the Board has monitored the industry's progress in using the automated systems and has taken appropriate rulemaking action, when necessary, to facilitate use of the systems. In 1988, the Board undertook a comprehensive review of automated clearance and settlement in the municipal securities market and published its findings and conclusions in a Report to the Securities and Exchange Commission (*1988 Report*).[4] The *1988 Report* described the Board's efforts in this area and identified factors that were limiting the effectiveness and efficiency of the automated systems.

The *1988 Report* discussed whether it was time to require that all inter-dealer and DVP/RVP customer transactions eligible for inclusion in the automated clearance and settlement systems be processed within the systems. The Board concluded that the performance of the automated systems and the industry's use of the systems did not warrant such a requirement at that time, but suggested that it would take action in the future to bring about that result. In response to the Board's *1988 Report*, the Public Securities Association and The Depository Trust Company sent letters to the Board urging the Board to go forward with rulemaking that would eliminate the exemptions from the automated clearance rules. They stated that bringing all eligible inter-dealer and DVP/RVP transactions into the automated systems would increase efficiency in the clearance and settlement of municipal securities transactions.

U.S. implementation plans for Group of Thirty goals

In March 1989, the Group of Thirty (G30), a private, London-based association concerned with the safety and success of international financial systems, made nine recommendations for uniform clearance and settlement procedures for securities transactions world-wide. These goals for clearance and settlement are aimed at reducing the risks inherent in transactions that have been executed but not settled.[5] There has been an international commitment to G30 goals by securities markets world-wide, and the process of implementing G30 goals in the United States is supported by such organizations as the SEC and the Federal Reserve Board. The nine G30 recommendations include several goals relevant to the United States markets, including: (i) comparison and confirmation/affirmation of inter-dealer and institutional customer trades by one business day after trade date (T+1); (ii) settlement for regular-way securities transactions on T+3; and (iii) payment for securities transactions in same-day funds.

The U.S. Working Committee for the G30 Clearance and

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[1] Section 15B(b)(2)(C) of the Act, 15 U.S.C. Section 78o-4(b)(2)(c).
[2] 15 U.S.C. Section 78q-1.
[3] *MSRB Reports* Vol. 4, No. 4 (June 1984) at 17-18.
[4] *Automated Clearance and Settlement in the Municipal Securities Market: A Report to the Securities and Exchange Commission* (MSRB, March 31, 1988).
[5] The Group of Thirty goals and actions to implement the goals in the United States are described in *MSRB Reports*, Vol. 10, No. 4 (October 1990) at 11-18.

Settlement Project, which is comprised of representatives from all sectors of the securities markets, is forming an implementation plan designed to bring the corporate and municipal securities markets in the United States into conformance with the G30 goals. Although the plan is not complete, a critical element will be to ensure that inter-dealer and institutional customer transactions are processed within automated clearance and settlement systems that allow for the timely and efficient processing of trades. In April 1991, the U.S. Working Committee sent letters to the Board and to the Self-Regulatory Organizations for corporate securities markets, asking for consideration of rule changes that would require all transactions between dealers and all transactions between dealers and institutional customers to be cleared and settled in automated systems. The draft amendments being proposed by the Board essentially would accomplish this purpose.

Explanation of Draft Amendments

The draft amendments would result in a number of changes in the current requirements of rules G-12(f) and G-15(d), relating to inter-dealer and DVP/RVP customer transactions, respectively. It should be noted that the draft amendments do not address retail transactions because they are not settled on a DVP/RVP basis.

Draft amendment to rule G-12(f)(i) on inter-dealer comparison

The automated comparison process replaces the manual process of dealers exchanging and comparing paper confirmations to validate trade data on executed trades prior to settlement. Automated comparison provides a record of the trade agreement between the parties which can be processed electronically, facilitates a timely settlement of the transaction and substitutes for a written confirmation.[6] Automated comparison services are offered by three clearing corporations that are linked to each other to allow comparisons to occur between members of different clearing corporations.[7] The Board understands that all regular-way, all when-issued and most extended settlement trades are eligible for automated comparison, as long as the security involved in the transaction has a CUSIP number assigned.

Rule G-12(f)(i) currently requires dealers to use an automated comparison system for transactions meeting the following conditions:

- Each party to the transaction is a member of a registered securities clearing agency offering comparison services, or its clearing agent for the transaction is such a member; and
- The transaction is eligible for automated comparison.

The rule does not currently require dealers to have access to an automated comparison system, either directly or through a clearing agent. Under the current rule, an inter-dealer trade that is eligible for automated comparison may be compared with paper confirmations if at least one party to the transaction is not a member of a clearing corporation and does not use a clearing agent that is a member of a clearing corporation.

Under the draft amendment to rule G-12(f)(i), dealers would be required to use an automated comparison system for all inter-dealer transactions eligible for automated comparison. Thus, any dealer that does not have access to an automated comparison system, either directly or through its clearing agent, would be required to obtain access. One exception to the current rule of automated comparison for inter-dealer transactions would remain; namely, that those transactions that are ineligible for comparison in the system (*e.g.*, those involving a security with no CUSIP number) would remain exempt from the rule.

Draft amendment to rule G-15(d) on use of automated confirmation/affirmation systems for customer transactions

The automated confirmation/affirmation process allows a dealer to send a confirmation to an institutional customer electronically. The customer (or the customer's clearing agent) then can electronically "affirm" the transaction, after it receives the confirmation. This process facilitates a timely settlement of the transaction and also provides a record of the transaction, which may substitute for a paper confirmation sent to the customer.[8] Automated confirmation/affirmation services for municipal securities transactions are offered by three securities depositories that are linked to each other to allow confirmation/affirmation to occur when the parties to the transaction are members of different depositories.[9] The Board understands that the automated confirmation/affirmation systems are capable of processing any transaction in a municipal security as long as the security has a CUSIP number.

Rule G-15(d)(ii) requires a dealer to use an automated confirmation/affirmation system for a DVP/RVP customer transaction meeting the following conditions:

- The security has a CUSIP number; and,
- Each party to the transaction is a member of a registered securities clearing agency, or its clearing agent for the transaction is such a member.

Rule G-15(d)(ii) does not currently require a dealer to have

[6] Rule G-12(a) states that inter-dealer transactions compared in an automated comparison system are exempt from the requirements of G-12(c). This rule otherwise would require each dealer to send a paper confirmation containing certain information.

[7] The clearing corporations offering automated comparison services are National Securities Clearing Corporation (NSCC), Midwest Clearing Corporation and Stock Clearing Corporation of Philadelphia. NSCC is the central processor for automated comparison services.

[8] Rule G-15(a) requires the dealer to give or send to the customer a confirmation containing certain information about the securities and the transaction. In contrast to the rule for inter-dealer confirmations, dealers are not automatically exempted from the requirements of rule G-15(a) simply by using the automated system. Although a confirmation sent to a customer in an automated confirmation/affirmation system may serve as the confirmation required under rule G-15(a), the dealer must ensure that the automated confirmation contains all information required by rule G-15(a) and the interpretative notices thereunder. The dealer also must ensure that the automated confirmation is, in fact, given or sent to the customer.

[9] The depositories offering these services include Depository Trust Company (DTC), Midwest Securities Trust Company and Philadelphia Depository Trust Company. DTC is the central processor for the automated confirmation/affirmation systems.

access to an automated confirmation/affirmation system nor to ensure that each of its DVP/RVP customers has access to such a system. The rule does not apply to a DVP/RVP customer transaction if at least one of the parties to the transaction is not a depository member and that party does not use a clearing agent that is a depository member.

The draft amendment to rule G-15(d) would require that all DVP/RVP customer transactions eligible for automated confirmation/affirmation be processed in such a system. Thus, any dealer that does not currently have access to an automated confirmation/affirmation system would be required to obtain access if the dealer wishes to execute DVP/RVP customer transactions. Also, a dealer now having DVP/RVP customers who do not participate in an automated confirmation/affirmation system would be required to ensure that those customers obtain access to such a system if the dealer continues to grant DVP/RVP privileges to the customers. For dealers and customers, access to a depository could be accomplished by direct membership in a depository or by the use of a clearing agent that is a depository member.

Book-entry delivery of inter-dealer and DVP/RVP customer transactions

The three securities depositories also provide book-entry delivery services for municipal securities.[10] For a municipal security to be eligible for book-entry delivery at a depository, it must have a CUSIP number and meet the eligibility criteria of the depository. All three depositories are linked to each other so that book-entry deliveries can be accomplished between members of different depositories; however, the securities in the transaction must be eligible at each depository for this to occur. The great majority of outstanding municipal securities now are eligible at all three depositories.

Rule G-12(f)(ii) currently requires an inter-dealer transaction to be settled by book-entry delivery under the following conditions:

- The transaction has been compared in an automated comparison system;
- Each party to the transaction is a member of a registered securities depository, or its clearing agent for the transaction is such a member; and
- The securities are eligible for deposit at a depository of which both parties are members, or, if the parties are members of different depositories, the securities are eligible at each of the two depositories.

Similarly, rule G-15(d)(iii) currently requires a DVP/RVP customer transaction to be settled by book-entry delivery under the following conditions:

- Each party to the transaction is a member of a registered securities depository, or its agent for the transaction is such a member; and,
- The securities are eligible for deposit in a depository of which both parties are members, or, if the parties are members of different depositories, the securities are eligible in each of the two depositories.

Rules G-12(f)(ii) and G-15(d)(iii) do not currently require dealers to have access to the book-entry delivery services of a depository. Neither do the rules now require that dealers ensure that each of their DVP/RVP customers has access to a depository. The rules also exempt inter-dealer and DVP/RVP customer transactions from the book-entry delivery requirement if at least one of the parties to the transaction is not a depository member and does not use a clearing agent that is a depository member.

The draft amendments to rules G-12(f)(ii) and G-15(d)(iii) would require, with one very limited exception, that all inter-dealer and DVP/RVP customer transactions in depository-eligible securities be settled by book-entry delivery. Thus, as a practical matter, all dealers would have to have access to the book-entry settlement services of a depository and would have to ensure that all of their customers receiving DVP/RVP settlement privileges have access to the book-entry settlement services of a depository. Access to book-entry settlement services could be accomplished either by direct membership in a depository or by use of a clearing agent with access to a depository.

Under the draft amendments, the single exception to the requirement of book-entry settlement for depository-eligible transactions would relate to situations in which securities are eligible at some, but not all, depositories. If the securities are ineligible at the exclusive depository (or depositories) being used by one of the parties to the transaction, the draft amendments would not require book-entry delivery.[11]

The draft amendments would not require dealers to apply to depositories to make securities eligible. Thus, for new issues, the draft amendments would not necessarily require the underwriter to accomplish the initial distribution of the issue through a depository unless the underwriter chooses to do so by making the issue eligible prior to the distribution. Once an issue is made eligible at a depository, however, transactions in the issue would be subject to the requirement of book-entry delivery. Dealers also should be aware of programs underway at depositories that automatically make bearer securities eligible, based on the trade data submitted to automated comparison and automated confirmation/affirmation systems. If these programs result in a security being made depository-eligible between trade date and settlement date, the rules requiring book-entry settlement apply to the transaction.

Discussion

Except in unusual situations, the cost of clearing and settling a municipal securities transaction within automated systems is substantially lower than physically clearing and settling the same transaction. Use of automated clearance and settlement

[10] It should be noted that book-entry delivery of a security does not require that the security be in "book-entry-only," form, *i.e.*, in a form which does not allow certificates to be held by investors. Most outstanding municipal securities on deposit in depositories allow for certificates to be withdrawn for customers. "Book-entry delivery" or "book-entry settlement" merely refers to the means by which securities positions are delivered on the books of a depository -- not the features of the securities which may or may not allow certificates to be held by investors.

[11] Thus, the draft amendments would not require that dealers and DVP/RVP customers have access to all depositories to accommodate the lack of uniformity in eligibility lists at the various depositories.

systems also has proven to be an effective means of reducing the number of deliveries that are rejected or "DK'ed" on settlement date, especially during periods of high transaction volume. Although the great majority of inter-dealer and DVP/RVP customer transactions currently are cleared and settled through the automated systems, some transactions continue to be processed using mailed, paper confirmations and physical delivery of securities certificates. As a result, dealers currently cannot depend upon all eligible transactions being processed in automated systems and thus cannot achieve the full efficiencies offered by the systems.

The Board believes that requiring all eligible transactions to be processed in the automated systems would reduce the number of transactions utilizing the more expensive physical clearance and settlement techniques, reduce the possibility of settlement delays and "DK'ed" transactions, and generally provide for more efficient clearance and settlement of municipal securities transactions. The Board notes that, for these reasons, other markets, including the markets regulated by the New York Stock Exchange and the National Association of Securities Dealers, have successfully implemented rules requiring essentially all DVP/RVP customer transactions in depository-eligible securities to be processed in automated systems.[12]

Current use of the exemptions in rules G-12(f) and G-15(d)

In adopting rules G-12(f) and G-15(d) for their initial implementation, the Board did not require all eligible transactions to be included within the automated systems because it believed that a period of transition was needed. During the six years in which rules G-12(f) and G-15(d) have been in place, dealers and institutional customers increasingly have become aware of the advantages offered by the automated systems and have adapted to use of the systems. This process has been accelerated in the last four years by municipal issuers increasingly issuing their securities in "book-entry-only" (BEO) form. Today, over 50 percent of the principal amount of new issue municipal bonds comes to market in BEO form. Because these issues do not allow for physical certificates to be given to investors and thus require use of depositories, dealers and institutional customers generally have made arrangements to participate, either directly or indirectly, in securities depositories.

The Board is aware that some dealers and institutional customers historically have made use of the exemptions in rules G-12(f) and G-15(d) to make physical settlements of certain types of transactions. Examples that have been given to the Board include the following:

- Some small, institutional customers simply prefer to take custody of physical certificates and maintain them on their own premises.
- The parties to a transaction may be in the same locality, and the physical certificates held by the seller. The seller sometimes prefers to deliver the certificates locally rather than deposit the securities in a depository and make a book-entry delivery.
- An indenture trustee may request physical settlement on a DVP/RVP transaction because the trustee is purchasing securities prior to making a partial call and does not want to call certificates that it has purchased.
- An issuer may purchase its own non-callable securities to retire them. The issuer may need to destroy the physical certificates and may not wish to make payment until the physical certificates are presented.

The Board believes that instances of dealers and institutional customers requesting physical deliveries of depository-eligible securities are becoming less and less frequent. Although the Board recognizes that this may still occur to a limited extent, it is unaware of any legal or economic reasons that dictate the need for such transactions to be settled with physical certificates. In the relatively rare instances in which an institutional customer finds a need for physical certificates, the institutional customer could withdraw the certificates from a depository after a book-entry delivery is made. In addition, dealers may make physical deliveries to, or accept physical deliveries from, any customer, as long as the DVP/RVP privilege is not granted on the transaction. The Board believes that the benefits of a uniform requirement to process eligible trades in automated systems would outweigh any inconvenience such a rule might cause in isolated situations where physical securities are desired by dealer or a DVP/RVP customer.

The Board is aware that there may exist a relatively small number of DVP/RVP customers that do not currently have access to the confirmation/affirmation and book-entry settlement systems of a securities depository, either directly or through a depository member clearing agent. If adopted, the draft amendments would require these customers either to participate directly in a depository or to use a depository member clearing agent in order to continue to receive the DVP/RVP privilege. The Board believes that only a few such customers exist at this time and that institutional customers generally will prefer using the automated clearance and settlement systems, which allow securities to be easily moved within the national system of clearance and settlement.

Relationship of draft amendments to G30 implementation process

With respect to the G30 process in the United States generally, the Board has stated that it intends to facilitate improvements in the clearance and settlement systems for municipal securities, consistent with national goals. As noted above, planning for the implementation of G30 goals in the United States is still incomplete. The Board recognizes that a G30 implementation plan that will work for corporate securities transactions may not necessarily work for the municipal securities market because of the many unique features of the municipal market. The Board will continue to monitor the planning being done on G30 goals in the United States with a specific view of how these plans would affect the municipal securities market.

Although the G30 implementation plan for the United States has not yet been completed, it appears that, at a minimum, inter-

[12] *See, e.g.*, NYSE Rule 387 and NASD Uniform Practice Section 64.

dealer and institutional customer transactions will need to be processed quickly and efficiently in automated clearance and settlement systems. The discussions on the G30 implementation plan in the United States primarily have focused on how the automated systems operate for corporate equity transactions. However, the performance of the automated systems in the municipal securities market is substantially different, and in many cases, less efficient than in the equity market. Achieving an automated comparison of each inter-dealer trade by T+1, directing all institutional customer transactions into the automated clearance systems and obtaining customer affirmation on a timely basis are all areas in which the municipal securities market is substantially behind the equity market.

If the municipal securities market is to follow the corporate securities market in meeting G30 goals, it will have to make special efforts to improve the use of automated clearance systems to bring the performance level of the systems in the municipal market at least to the current level experienced in the corporate markets. Regardless of how the G30 goals are finally resolved in the United States, the Board believes that the municipal securities industry should attempt to achieve this goal. Doing so may require some changes in the historical operations practices of dealers and institutional customers and will require revisions and improvements in the automated clearance systems themselves. The Board believes that, by including all eligible transactions in the automated systems, the draft amendments would encourage dealers, clearing corporations, depositories and other necessary parties to make the appropriate commitments to make these changes.

Request for Comment

The Board requests written comments on the draft amendments. The following questions are intended as a guide to commentators in addressing issues that are of concern to the Board:

- Would the draft amendments result in more efficient clearance and settlement of municipal securities transactions?
- What kinds of inter-dealer and DVP/RVP customer transactions currently are processed outside the automated systems? What would be the cost implications of requiring these transactions to be processed within the automated systems?
- Are there DVP/RVP transactions that, for legal or economic reasons, must be cleared with a physical delivery of securities? If so, should the draft amendments make exceptions for these types of transactions?
- Are there significant numbers of customers now receiving DVP/RVP transactions who do not have access to the services of a depository? What would be the cost implications to those customers if they must establish access to a depository?
- Is the lack of uniform depository eligibility a factor in bringing more transactions into the automated clearance systems?
- Should the draft amendments also require underwriters to apply to a depository to make each new issue depository-eligible and thus require use of the automated clearance systems for new issue distributions? Would this be economical for small issues?
- What are the primary obstacles in improving performance of automated clearance and settlement systems? What would be necessary to improve comparison rates and affirmation rates?
- What should be done to make automated clearance and settlement systems at clearing corporations and depositories more efficient?

August 9, 1991

Text of Draft Amendments*

Rule G-12. Uniform Practice

(a) through (e) no change.

(f) *Use of Automated Comparison, Clearance, and Settlement Systems.*

~~(i) Notwithstanding the provisions of sections (c) and (d) of this rule, with respect to a transaction in municipal securities which are eligible for comparison through the facilities of a clearing agency registered with the Securities and Exchange Commission, if both parties to such transaction are members in one or more of such clearing agencies (and such clearing agencies are interfaced or linked for comparison purposes), each party to the transaction shall submit to its clearing agency information concerning the transaction, as required by the clearing agency's rules, for purposes of automated trade comparison. 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 use the post-original-comparison procedures provided by the registered clearing agency in connection with such transaction unti such time as the transaction is compared or final notification of a failure to compare the transaction is received from the contra-party.~~

(i) Notwithstanding the provisions of sections (c) and (d) of this rule, a transaction eligible for automated trade comparison through the facilities of a clearing agency registered with the Securities and Exchange 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. 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 use the post-original-comparison procedures provided by the registered clearing agency in

* Underlining indicates new language; strikethrough indicates deletions.

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. ~~(ii) Notwithstanding the provisions of section (e) of this rule, if a transaction submitted to one or more registered clearing agencies for comparison in accordance with paragraph (i) above has been compared successfully, and if such transaction involves municipal securities which are eligible for deposit at one or more securities depositories registered with the Securities and Exchange Commission in which both parties to the transaction are members, the parties to such transaction shall settle the transaction ny book-entry through the facilities of the depository ot through the interface or link, if any, between the depositories.~~

(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 settlement at all such depositories with which such arrangements have been made.

~~(iii) For purposes of this section (f) a municipal securities broker or municipal securities dealer who clears through an agent who is a member of a registered clearing agency or a registered securities depository shall be deemed to be a member of such registered clearing agency or a registered securities depository with respect to such transaction.~~

(g) through (l) no change.

Rule G-15. Confirmation, Clearance and Settlement of Transactions with Customers

(a) through (c) no change.

(d) *Delivery/Receipt vs. Payment Transactions.*

(i) no change.

~~(ii) No broker, dealer or municipal securities dealer who is, or whose clearing agent with respect to such transaction is, a participant in a clearing agency registered with the Securities and Exchange Commission shall effect a transaction in any municipal security to which a CUSIP number has been assigned on a delivery vs. payment or receipt vs. payment basis for the account of a customer who is, or whose agent with respect to such transaction is, a participant in such clearing agency (or in a clearing agency interfaced or otherwise linked with such clearing agency) unless the facilities of such clearing agency (or the facilities of a clearing agency interfaced or otherwise linked with such clearing agency, as necessary) are used for the confirmation and acknowledgement of such transaction.~~

(ii) Except as provided in this paragraph, 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 registered with the Securities and Exchange Commission (registered clearing agency) are used for automated confirmation and affirmation of the transaction. Each broker, dealer and municipal securities dealer executing 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 affirm transactions in an automated confirmation/affirmation system operated by a registered clearing agency; and (B) submit or cause to be submitted to a registered clearing agency all information and instructions required by the registered clearing agency for the production of a confirmation that can be affirmed by the customer or the customer's clearing agent; *provided that* a transaction that is not eligible for automated confirmation and affirmation through the facilities of a registered clearing agency shall not be subject to this paragraph (ii).

~~(iii) No broker, dealer or municipal securities dealer who is, or whose clearing agent with respect to such transaction is, a participant in a clearing agency registered with the Securities and Exchange Commission shall effect a transaction in any municipal security which is eligible for book-entry settlement through the facilities of such clearing agency on a delivery vs. payment or receipt vs. payment basis for the account of a customer who is, or whose agent with respect to such transaction is, a participant in such clearing agency (or in a clearing agency interfaced or otherwise linked with such clearing agency) unless the facilities of such clearing agency (or the facilities of a clearing agency interfaced or otherwise linked with such clearing agency, as necessary) are used for the book-entry settlement of such transaction.~~

(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 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.

(e) no change.

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Route to:

- ☒ Manager, Muni Dept.
- ☒ Underwriting
- ☐ Trading
- ☐ Sales
- ☐ Operations
- ☒ Public Finance
- ☐ Compliance
- ☐ Training
- ☐ Other

Political Contributions

Notice

The Board encourages underwriters and state and local governments to maintain the integrity of the process of selecting the parties involved in the underwriting of municipal securities.

The municipal securities market is vital to the economic health of state and local governments. Many municipal securities issuers are currently facing tremendous economic challenges. It is critical that the municipal market engender the highest degree of public confidence so that investors will provide much needed capital to these state and local governments. In this regard, the Board encourages underwriters and state and local governments to maintain the integrity of the process of selecting the parties involved in the underwriting of municipal securities.

In the municipal securities market, the payment of political contributions by an underwriter, or any other party connected with the underwriting process, to officials involved in the choice of the underwriting team may create at least the appearance that the contribution has influenced the selection of that team. The Board notes that concerns arising from the payment of political contributions are not limited to underwriters but to any party providing services to municipal securities issuers. While the Board recognizes that disclosure of political contributions is required by most state and local governmental units and that such information is publicly available, the Board is concerned that the process of selecting the underwriting team not be influenced by political contributions.

August 29, 1991

Questions about this notice may be directed to Christopher A. Taylor, Executive Director.

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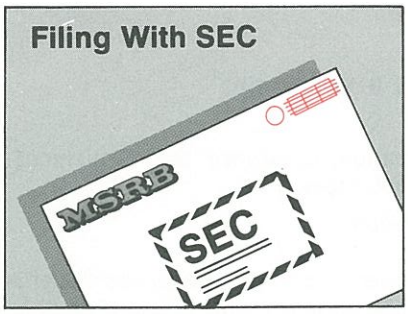

Route to:

- ☒ Manager, Muni Dept.
- ☐ Underwriting
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Disclosure to Customers of Remuneration: Rule G-15

Amendments Filed

The amendments will allow dealers, as an alternative to confirmation disclosure of the source and amount of remuneration received from a party other than the customer in agency transactions, to note on the customer's confirmation that remuneration has been or will be received and that the source and amount of such remuneration is available upon written request by the customer.

On September 6, 1991, the Board filed with the Securities and Exchange Commission proposed amendments to rule G- 15(a)(ii), on disclosure of remuneration in agency transactions. The amendments would allow dealers, as an alternative to confirmation disclosure of the source and amount of remuneration received from a party other than the customer in agency transactions, to note on the customer's confirmation that remuneration has been or will be received and that the source and amount of such remuneration is available upon written request by the customer. The amendments will become effective upon approval by the Commission. People wishing to comment on the proposed amendments should comment directly to the Commission.[1]

Background

Rule G-15(a)(ii) requires a dealer effecting a transaction as agent for the customer or as agent for both the customer and another person to note on the customer's confirmation (i) either the name of the person from whom the securities were purchased or to whom the securities were sold for the customer or a statement that this information will be furnished upon the request of the customer, and (ii) the source and amount of any commission or other remuneration received or to be received by the dealer in connection with the transaction.

The Board understands that for certain remarketing agreements, dealers may not be able to disclose the amount of the remuneration when that amount is not determined at the time of trade. This can occur, for example, when the dealer's remarketing fee, paid by the issuer, is based on a percentage of the issue's outstanding balance instead of on a per transaction basis. The Board believes that it is important for the dealer to disclose the basis of this fee, even if the exact amount is not yet determined. Thus, the Board has interpreted rule G-15(a)(ii) to allow dealers to disclose that there will be a fee and the basis of the fee. For example, the dealer would have to disclose a fee from the issuer of x% of the outstanding balance of the issue, payable quarterly.[2]

Summary of Amendments

The amendments to rule G-15(a)(ii) would allow dealers, as an alternative to confirmation disclosure of the source and amount of remuneration received from a party other than the customer in agency transactions, to note on the customer's confirmation that remuneration has been or will be received and that the source and amount of such remuneration is available upon written request by the customer. This requirement would make the rule consistent with the requirements of SEC Rule 10b-10, the SEC's confirmation disclosure rule. While Rule 10b-10 does not apply to municipal securities transactions, consistency with that Rule, whenever possible, would be useful for dealers. In order to make rule G-15(a)(ii) internally consistent, the amendments also would require written requests by customers for information regarding the identity of the person from whom the securities were purchased or to whom the securities were sold.

Summary of Comments

In March 1991, the Board solicited comments on the proposed amendments[3] and received three comment letters.[4] All commentators expressed support for the amendments, and raised additional issues for consideration. For example, one commentator questioned a prior Board interpretation in which the Board stated that, in an agency trade, if the dealer acts as the

Questions about the amendments may be directed to Jill C. Finder, Assistant General Counsel.

[1] SEC File No. SR-MSRB-91-7. Comments filed with the Commission should refer to the file number.

[2] Situations involving both fixed and variable elements to the fee paid by an issuer would require the dealer to disclose the fixed amount as well as the basis for the variable amount.

[3] *MSRB Reports*, Vol. 11, No. 1 (March 1991) at 3-4.

[4] The comment letters are available for inspection at the Boards offices.

agent for another person and not as the customer's agent, then rule G-15(a)(ii) would not apply. This commentator states that the disclosure contemplated by the amendments should apply to all investors since a "special relationship" is present in any agency transaction, one that may equal or approach that of a fiduciary relationship. The Board notes that it is the dealer's responsibility to determine in what capacity it acts in specific transactions and the dealer must disclose that capacity on customer confirmations pursuant to rule G-15(a)(i)(M). If the dealer is acting as agent only for another person and not as agent for the customer, then, as previously noted, rule G-15(a)(ii) does not apply.

Another commentator notes that because rule G-15(a)(ii) applies when a dealer privately places issues as agent, it is redundant to require the dealer to include the private placement fee on the confirmation (or to note that such remuneration has been received and will be provided to the customer upon request) because such information already is included in the customer's private placement memorandum. The Board notes that it has not previously granted exemptions to the confirmation disclosure rules based on the availability of information in official statements or private placement memoranda. Moreover, under the proposed amendments, the only notation required on the confirmation would be that a fee was received and that its source and amount are available upon the customer's written request. If the customer already has information about relevant fees, then the customer will not make such a written request.

September 6, 1991

Text of Proposed Amendment*

Rule G-15. Confirmation, Clearance and Settlement of Transactions with Customers

(a) *Customer Confirmations*

(i) No change.

(ii) 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 set forth (A) either the name of the person from whom the securities were purchased or to whom the securities were sold for the customer or a statement that this information will be furnished upon the written request of the customer, ~~and~~ (B) the amount of any remuneration received or to be received 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, and (C) 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; provided, however, that the written notification may state 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.

(iii) through (ix) No change.

(b) through (e) No change.

* Underlining indicates new language; strikethrough indicates deletions.

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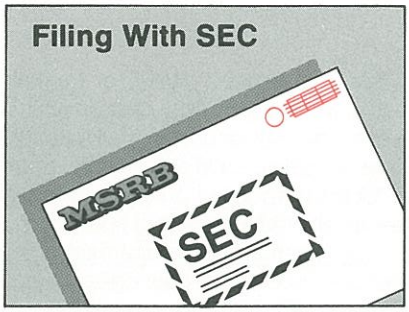

Route to:

- ☒ Manager, Muni Dept.
- ☒ Underwriting
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- ☐ Compliance
- ☐ Training
- ☐ Other

Activities of Financial Advisors: Rule G-23

Amendments Filed

The amendments will require a dealer acting as a financial advisor and placement agent for an issue to meet the same disclosure and other requirements as a dealer acting as financial advisor and negotiating the underwriting.

On September 4, 1991, the Board filed with the Securities and Exchange Commission proposed amendments to rule G-23, on activities of financial advisors. The amendments require a dealer acting as financial advisor and placement agent for an issue to meet the same disclosure and other requirements, set forth in rule G-23(d), as a dealer acting as financial advisor and negotiating the underwriting. The amendments will become effective upon approval by the Commission. Persons wishing to comment on the amendments should comment directly to the Commission.[1]

Background

Rule G-23 establishes disclosure and other requirements for dealers that act as financial advisors to issuers of municipal securities.[2] The rule is designed principally to minimize the *prima facie* conflict of interest that exists when a municipal securities dealer acts as both financial advisor and underwriter with respect to the same issue. Specifically, it requires a financial advisor to alert the issuer to the potential conflict of interest that might lead the dealer to act in its own best interest as underwriter rather than the issuer's best interest.

Among other things, rule G-23 prohibits a dealer acting as financial advisor from acquiring a negotiated issue as principal, either alone or in a syndicate, or arranging for such acquisition by a person controlling, controlled by, or under common control with such dealer, unless certain requirements are met. In these instances, rule G-23(d)(i) requires the dealer (i) to terminate the financial advisory relationship with regard to the issue; (ii) at or before such termination, to disclose in writing to the issuer that there may be a conflict of interest in changing from the capacity of financial advisor to that of purchaser of the securities and the source and anticipated amount of all remuneration to the dealer with respect to the issue; (iii) at or after such termination, to obtain the express written consent of the issuer to the acquisition or participation in the purchase; and (iv) to obtain from the issuer a written acknowledgment of the receipt of these disclosures.

Summary of Amendments

Currently, rule G-23(d) does not apply to a dealer that acts as both financial advisor and placement agent for a new negotiated issue.[3] The amendments require a dealer acting as financial advisor and placement agent for an issue to meet the same requirements, set forth in rule G-23(d), as a dealer acting as financial advisor and negotiating the underwriting. The Board believes that there is effectively no difference between the two activities[4] and the disclosure and other requirements of rule G-23(d) should apply to minimize the potential conflict of interest that exists when a dealer acts as both financial advisor and placement agent with respect to the same issue.

A dealer acting as placement agent performs many of the same functions as an underwriter even though one is performed on a principal basis and the other on an agency basis. In both instances, the dealer negotiates the best available rate for the issuer. The compensation to the dealer is very similar whether it is a placement fee or an underwriting fee and, in larger deals, the placement agency fee may well be the equivalent of a negotiated underwriting spread.

The Board has determined that the execution of a placement

Questions about the amendments may be directed to Ronald W. Smith, Legal Assistant.

[1] SEC File No. SR-MSRB-91-6. Comments filed with the Commission should refer to the file number.

[2] Rule G-23 does not apply to "independent" financial advisors, *i.e.*, those advisors that are not associated with a broker, dealer or municipal securities dealer. The rule also does not apply when, in the course of acting as an underwriter, a municipal securities dealer renders financial advice to an issuer, including advice with respect to the structure, timing, terms and other similar matters concerning a new issue of municipal securities.

[3] As noted above, however, if the dealer places the bonds with a person controlling, controlled by, or under common control with the dealer, rule G-23(d) would apply.

[4] Typically bank dealer financial advisors place issues of municipal revenue bonds because banking laws prohibit banks from underwriting such bonds.

agent agreement which sets forth the compensation for the placement agent will comply with the requirements of rule G-23(d)(i)(C), which requires the dealer to disclose to the issuer the source and anticipated amount of all remuneration to the dealer with respect to the issue, in addition to the basis of compensation for the financial advisory services rendered. In addition, the amendments make the customer disclosure provisions of rule G-23(g) applicable to a dealer acting as financial advisor and placement agent for an issue.

Summary of Comments

In October 1990, the Board solicited comments on the amendments in an exposure draft and received three comment letters.[5] Only one commentator dealt substantively with the amendments. This commentator stated that there is no potential conflict of interest when a financial advisor serves as the placement agent. It noted that there is a difference when one acts as principal as an underwriter and when one acts as placement agent for an issuer. It stated that a placement agent takes no underwriting risk and merely serves as the agent of the issuer in negotiation with the ultimate investor. It noted that the financial advisor collects no money from the investor and is merely a conduit fulfilling, in the strictest sense, its agency role. It believes that, in serving the role as placement agent for an issuer, the financial advisor need not resign its position as financial advisor and that there is no conflict of interest in fulfilling the contractual obligation to the issuer.

This commentator also stated that placing the same requirements on placement agents and negotiated underwriters would eliminate the savings to an issuer, particularly with regard to small issues and short-term issues. It noted that it has been successful in acting as a placement agent in situations where, as financial advisor, it has been unable to find an underwriter with an interest in pursuing the transaction.

As noted above, the Board believes that there is effectively no difference between the two activities and that rule G-23 should apply to private placements as it applies to negotiated underwritings because of the potential conflict of interest of the dealer in changing its role from financial advisor to placement agent. The compensation to the dealer is very similar whether it is a placement fee or an underwriting fee and, in larger deals, the placement agency fee may well be the equivalent of a negotiated underwriting spread. The amendments do not prohibit a dealer from placing an issue when it is the financial advisor for the issue, but the amendments do require that the dealer terminate the financial advisory relationship with regard to the issue and make certain disclosures.

September 4, 1991

Text of Proposed Amendments*

Rule G-23. Activities of Financial Advisors

(a) through (c) no change.

(d) *Underwriting Activities*. No broker, dealer, or municipal securities 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 ~~arrange for such acquisition or participation by a person controlling, controlled by, or under common control with such broker, dealer, or municipal securities dealer~~, unless

(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 broker, dealer, or municipal securities 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 broker, dealer, or municipal securities dealer receipt of such disclosure; and

(C) the broker, dealer, or municipal securities dealer has expressly disclosed in writing to the issuer at or before such termination the source and anticipated amount of all remuneration to the broker, dealer, or municipal securities dealer with respect to such issue in addition to the compensation referred to in section (c) of this rule, and the issuer has expressly acknowledged in writing to the broker, dealer, or municipal securities 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.

The limitations and requirements 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. The use of the term "indirectly" in this section (d) shall not preclude a broker, dealer, or municipal securities dealer who has a financial advisory relationship with respect to a new issue of municipal securities 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) through (h) No change.

[5] *MSRB Reports*, Vol. 10, No. 4 at 5-7 (October 1990). The comment letters are available for inspection at the Board's offices.

* Underlining indicates new language; strikethrough indicates deletions.

MSRB REPORTS

Volume 11, Number 3 September 1991

Notice of Approval

Route to:

- [X] Manager, Muni Dept.
- [ ] Underwriting
- [ ] Trading
- [ ] Sales
- [ ] Operations
- [ ] Public Finance
- [X] Compliance
- [ ] Training
- [ ] Other

Arbitration Changes: Rules G-35 and A-16

Amendments Approved

The amendments conform the provisions of the Board's arbitration code to recent amendments to the Uniform Code approved by SICA.

On September 23, 1991, the Securities and Exchange Commission approved amendments to rule G-35, the Board's Arbitration Code, and rule A-16, on arbitration fees and deposits.[1] The amendments will become effective on October 23, 1991. The amendments will apply only to cases filed on and after the effective date.

Summary of Amendments

A Uniform Code of Arbitration (Uniform Code) has been developed by the Securities Industry Conference on Arbitration (SICA), which is composed of representatives of the Board, nine other self-regulatory organizations (SROs), four public members and the Securities Industry Association. The Uniform Code, as implemented by the various SROs, has established a uniform system of arbitration procedures throughout the securities industry. The amendments are intended to conform the provisions of the Board's arbitration code, contained in rule G-35, and arbitration fees and deposits, contained in rule A-16, to recent amendments to the Uniform Code approved by SICA.

Party Service to Pleadings

Currently, when a claim is filed, the Board's arbitration staff distributes copies of such claims, as well as responsive pleadings, to the parties and the arbitrators. Sections 5, 34 and 35 have been amended to require that, after the claim has been filed with the Director of Arbitration, the parties shall deliver directly to each other all responsive pleadings. The amendments require that sufficient copies of the pleadings for the arbitrators also be filed with the Director of Arbitration. These amendments should cause arbitration documents to be distributed more quickly, and will relieve some of the administrative burden on the Board's staff in terms of time spent photocopying and distributing documents. The staff will continue to serve the initial claim and will monitor the exchange of responsive pleadings, notifying the parties, when appropriate, of any delinquencies in the filing of such pleadings. The Board believes that such amendments will result in more efficient case administration.

Adjournments

Section 20 currently permits arbitrators to adjourn any hearing, and any person requesting an adjournment after arbitrators have been appointed is required to pay a fee, equal to the deposit of costs, which shall not exceed $100. The amendments require that the amount of the adjournment fee equal the initial deposit of hearing session fees for the first adjournment request, and twice the initial deposit of hearing session fees, not to exceed $1,000, for a second or subsequent adjournment request. In addition, upon receiving a third request for adjournment, the amendments permit the arbitrators to dismiss the arbitration without prejudice to the claimant. These amendments are intended to discourage frivolous requests for adjournment, thereby reducing delays and encouraging more efficient use of the arbitration process.

Fees and Deposits

Rule A-16 sets forth the Board's schedule of arbitration fees and deposits. While the Board largely subsidizes its arbitration program, arbitration fees are intended to defray at least some of the Board's costs of administration. The Board has not increased these fees since July 1987. Rule A-16 currently requires claimants to file an initial deposit. This deposit ranges

Questions about this notice may be directed to James McCabe, Director of Arbitration or Ronald W. Smith, Legal Assistant.

[1] SEC Release No. 34-29721.

from $15 for claims of $1,000 or less, to $1,000 for claims above $500,000. If multiple hearing sessions are required, the arbitrators may require any of the parties to make additional deposits per session, in an amount no greater than the initial deposit. The arbitrators, in their award, may determine the amount chargeable to the parties as forum fees and by whom such fees will be paid. Depending on the amount of the claim, forum fees also can range from $15 to $1,000 per hearing session. Amounts deposited by a party are applied against fees, if any. If the fees are not assessed against a party who has made a deposit, then the deposit will be refunded.

The amendments provide for two new fee schedules—one for customer claims, and a higher fee schedule for dealer claims. Any party filing a claim (including any counterclaim, third-party claim or cross-claim) now would be required to pay a non-refundable filing fee, as well as a hearing session deposit which varies with the amount in dispute. For claims initiated by a customer, the filing fee would range from $15 for claims of $1,000 or less, to $300 for claims over $5,000,000. The customer's hearing session deposit would range from $15 for claims of $1,000 or less (whether simplified, *i.e.*, decided without a hearing, or involving a hearing before one arbitrator), to $1,500 for claims over $5,000,000 involving a hearing before three arbitrators. For claims initiated by an industry member, the filing fee would be $500 for all claims, and the hearing session deposit would range from $75 for simplified claims under $1,000 to $1,500 for claims over $5,000,000 involving a hearing before three arbitrators. Consistent with the current rule, the amendments permit the arbitrators to decide how much to charge the parties for forum fees. The amendments also provide that the arbitrators, in their award, may direct a party to reimburse another party for any non-refundable filing fee it has paid to the Board.

The non-refundable filing fee is intended to recoup a greater portion of the Board's administrative costs relating to claims processing. The hearing session deposit is intended to offset the Board's actual hearing costs. By requiring filing fees in addition to hearing session deposits, the revised fee schedules allocate the costs of arbitration more equitably among users of the forum.

Technical Changes

The amendments also include several technical changes involving word changes or clarification, and correction of typographical and grammatical errors.

September 23, 1991

Text of Amendments*

Rule G-35. Arbitration

Sections 1 through 4. No change.

Section 5. Initiation of Proceedings.

Except as otherwise provided herein, an arbitration proceeding under this Arbitration Code shall be instituted as follows:

(a) *Statement of Claim*

The claimant shall file with the Director of Arbitration ~~three~~ an executed ~~copies of the~~ Submission Agreement, ~~and three copies of the~~ a statement of claim of the controversy in dispute, together with the documents in support of the claim, and the required deposit under rule A-16. Sufficient additional copies of the Submission Agreement and the statement of claim and supporting documents shall be provided to the Director of Arbitration for each party and each arbitrator. The statement of claim ~~should~~ shall specify the relevant facts and the remedies sought. The Director of Arbitration shall endeavor to serve promptly by mail or otherwise on the respondent(s) ~~or respondents~~ one copy of the Submission Agreement and one copy of the statement of claim.

(b) *Answer—Defenses, Counterclaims, and/or Cross-Claims*

(1) ~~The respondent or respondents shall, w~~Within 20 business days from of receipt ~~of~~ the statement of claim, ~~service, file~~ the respondent(s) shall serve each party with an executed Submission Agreement and a copy of the respondent's answer. Respondent's executed Submission Agreement and answer shall also be filed with the Director of Arbitration ~~one executed Submission Agreement and one copy of the answer~~ with sufficient additional copies for the arbitrator(s) along with any deposit required under rule A-16. The answer shall specify all available defenses and relevant facts that will be relied upon at hearing and may set forth any related counterclaim the respondent(s) ~~or respondents~~ may have against the claimant, any cross-claim the respondent(s) may have against any other named respondent(s), and any third-party claim against any other party or person based upon any existing claim, dispute, or controversy to arbitration under this Arbitration Code.

(2)(i) A respondent, responding claimant, cross-claimant, cross-respondent or third-party respondent who pleads only a general denial as an answer may, upon objection by a party, in the discretion of the arbitrators, be barred from presenting any facts or defenses at the time of the hearing.

(ii) A respondent, responding claimant, cross-claimant, cross-respondent or third-party respondent who fails to specify all available defenses and relevant facts in such party's answer, may, upon objection by a ~~the adversary~~ party, in the discretion of the arbitrators, be barred from presenting such ~~the~~ facts or defenses not included in such party's answer at the hearing.

(iii) A respondent, responding claimant, cross-claimant, cross-respondent or third-party respondent who fails to file an answer within 20 business days from receipt of service of a claim, ~~or~~ unless

* Underlining indicates additions; strikethrough indicates deletions.

the time to answer has been extended pursuant to subsection (5) ~~(e)~~ below may, in the discretion of the arbitrators, be barred from presenting any matter, arguments or defenses at the hearing.

(3) ~~(e) If the respondent or respondents interpose a third-party claim, the Director of Arbitration shall endeavor to serve promptly by mail or otherwise a copy of the third-party claim, together with a copy of the Submission Agreement, on such third party who shall respond in the manner provided for response to the statement of claim.~~ The respondent(s) shall serve each party with a copy of any third-party claim. The third-party claim shall also be filed with the Director of Arbitration with sufficient additional copies for the arbitrator(s) along with any deposit required under rule A-16. Third-party respondents shall answer in the manner provided for response to the claim, as provided in paragraphs (b)(1)-(2) above.

(4) ~~(d) The Director of Arbitration shall endeavor to serve promptly by mail or otherwise on the claimant a copy of the answer, counterclaim, third-party claim or other responsive pleading, if any. The claimant may within ten business days of receipt of a counterclaim file a reply to the counterclaim with the Director of Arbitration who will serve a copy of the reply on the respondent or respondents.~~ The claimant shall serve each party with a reply to a counterclaim within 10 business days of receipt of an answer containing a counterclaim. The reply shall also be filed with the Director of Arbitration with sufficient additional copies for the arbitrator(s).

(5) ~~(e)~~ The time period to file any pleading, whether such be denominated as a claim, answer, counterclaim, cross-claim, reply, or third-party pleading, may be extended for such further periods as may be granted by the Director of Arbitration.

(c) *Service and Filing with the Director of Arbitration*

(1) Service may be effected by mail or other means of delivery. Service and filing are accomplished on the date of mailing either by first-class postage pre-paid or by means of overnight mail service or, in the case of other means of service, on the date of delivery. Filing with the Director of Arbitration shall be made on the same date as service on a party.

(2) If a broker, dealer or municipal securities dealer and a person associated with the broker, dealer or municipal securities dealer are named parties to an arbitration proceeding at the time of the filing of the statement of claim, service on the person associated with the broker, dealer or municipal securities dealer may be made on the associated person or on the broker, dealer or municipal securities dealer, which shall perfect service upon the associated person. If the broker, dealer or municipal securities dealer does not undertake to represent the associated person, the broker, dealer or municipal securities dealer shall serve the associated person with the statement of claim, shall advise all parties and the Director of Arbitration of that fact, and shall provide such associated person's current address.

(d) ~~(f)~~ (1) through (3) No change.

Sections 6 through 9. No change.

Section 10. *Settlements*

All settlements upon any matters ~~submitted~~ shall be at the election of the parties.

Section 11. No change.

Section 12. *Designation of Number of Arbitrators and Definitions of Industry and Public Arbitrators*

(a) *Controversies Involving Persons Other Than Brokers, Dealers or Municipal Securities Dealers*

(1) In all arbitration matters in which a person other than a broker, dealer or municipal securities dealer is involved and where the matter in controversy exceeds the amount of $30,000, or where the matter in controversy does not involve or disclose a money claim or the amount of damages cannot be readily ascertained at the time of commencement of the proceeding, the Director of Arbitration shall appoint an arbitration panel which shall consist of no less than three nor more than five arbitrators, at least a majority of whom shall be public arbitrators as defined in paragraph (c), below, unless ~~such~~ the person other than the broker, dealer or municipal securities dealer requests a panel consisting of at least a majority of industry arbitrators as defined in paragraph (c), below.

(2) No change.

(b) and (c) No change.

Sections 13 through 19. No change.

Section 20. *Adjournments*

(a) No change.

(b) A party requesting an adjournment after arbitrators have been appointed shall, if ~~said~~ an adjournment is granted, ~~shall pay~~ deposit a fee equal to the ~~deposit of costs but not more than $100~~ initial deposit of hearing session fees under rule A-16 for the first adjournment and twice the initial deposit of such hearing session fees, not to exceed $1,000, for a second or subsequent adjournment requested by that party. The arbitrators may waive the deposit of this fee or in their award may direct the return of this adjournment fee.

(c) Upon receiving a third request consented to by all parties for an adjournment, the arbitrators may dismiss the arbitration without prejudice to the claimant filing a new arbitration.

Section 21. No change.

Section 22. *Discovery*

(a) and (b) No change.

(c) *Pre-hearing Exchange*

At least 10 days prior to the first scheduled hearing date, all parties shall serve on each other copies of documents in their possession and identify witnesses they intend to present at the hearing. The arbitrators may exclude from

the arbitration any documents not exchanged or witnesses not identified at that time. This paragraph does not require service of copies of documents or identification of witnesses which parties may use for cross-examination or rebuttal.

(d) and (e) No change.

Sections 23 through 32. No change.

Section 33. *Fees, Deposits ~~Costs~~ and Expenses of Arbitration*

The Board has ~~shall~~ established and from time to time shall modify a schedule of arbitration fees and deposits, as set forth in rule A-16, ~~amend, modify, and maintain maximum and minimum fees or other charges~~ to defray the expenses of arbitration~~, which shall be published in schedule form and maintained on file with the Director of Arbitration and available to all interested parties~~.

Section 34. *Simplified Arbitration for Small Claims Relating to Transactions with Customers*

(a) No change.

(b) The ~~customer ("~~claimant~~")~~ shall file with the Director of Arbitration an ~~one~~ executed ~~copy of a~~ Submission Agreement and a ~~one~~ copy of the ~~a~~ statement of claim ~~upon~~ of the controversy in dispute, and the required deposit, together with documents in support of the claim. Sufficient additional copies of the Submission Agreement and the statement of claim and supporting documents shall be provided to the Director of Arbitration for each party and the arbitrator. The statement of claim shall specify the relevant facts, the remedies sought and whether or not a hearing is demanded.

(c) The claimant shall ~~deposit $15 if the amount in controversy is $1,000 or less, $25 if the amount is more than $1,000 but does not exceed $2,500, $100 if the amount in controversy is more than $2,500 but does not exceed $5,000, or $200 if the amount in controversy is more than $5,000 but does not exceed $10,000~~ pay a non-refundable filing fee and shall remit a hearing session deposit as specified in rule A-16 upon filing of the Submission Agreement. The final disposition of this fee or deposit shall be determined by the arbitrator.

(d) The Director of Arbitration shall endeavor to serve promptly by mail or otherwise on the respondent(s) one copy of the Submission Agreement and one copy of the ~~S~~statement of ~~C~~claim. ~~The respondent shall w~~Within 20 calendar days from receipt of the statement of claim, the respondent(s) shall serve each party with an executed Submission Agreement and a copy of respondent's answer ~~service file with the Director of Arbitration one executed copy of the Submission Agreement and one copy of an answer, together with supporting documents~~. Respondent's executed Submission Agreement and answer shall also be filed with the Director of Arbitration with sufficient additional copies for the arbitrator(s) along with any deposit required under rule A-16. The answer shall designate all available defenses to the claim and may set forth any related counterclaim and/or related third-party claim the respondent(s) may have against the claimant or any other person. ~~The term "related counterclaim" for the purposes of this provision means a counterclaim related to a customer's account or accounts with a broker, dealer or municipal securities dealer.~~ If the respondent(s) has interposed a third-party claim, the ~~Director of Arbitration shall endeavor to serve promptly by mail or otherwise a copy of the third-party claim together with a copy of the Submission Agreement on such third-party who shall respond in the manner herein provided for response to the claim. If the respondent files a related counterclaim exceeding $10,000, the arbitrator may refer the claim, counterclaim and/or third-party claim, if any, to a panel of arbitrators, the size and composition of which shall be determined in accordance with section 12 hereof, or, he may dismiss the counterclaim and/or third-party claim without prejudice to the counterclaimant and/or third-party claimant pursuing the counterclaim or third-party claim in a separate proceeding.~~ respondent(s) shall serve the third-party respondent with an executed Submission Agreement, a copy of respondent's answer containing the third-party claim, and a copy of the original claim filed by the claimant. The third-party respondent shall respond in the manner herein provided for response to the claim. If the respondent(s) files a related counterclaim exceeding $10,000, the arbitrator may refer the claim, counterclaim and/or third-party claim, if any, to a panel of three (3) or five (5) arbitrators in accordance with section 12(a) of this Code, or the arbitrator may dismiss the counterclaim and/or third-party claim without prejudice to the counterclaimant(s) and/or third-party claimant(s) pursuing the counterclaim and/or third-party claim in a separate proceeding. The costs to the claimant under either proceeding shall in no event exceed the total amount specified in rule A-16.

(e) ~~The Director of Arbitration shall endeavor to serve promptly by mail or otherwise on the claimant~~ All parties shall serve on all other parties and the Director of Arbitration, with sufficient additional copies for the arbitrator(s), a copy of the answer, counterclaim, third-party claim, amended claim, or other responsive pleading, if any. The claimant, if a counterclaim is asserted against him, shall within ~~ten~~ 10 calendar days ~~file a statement of reply to any counterclaim with the Director of Arbitration who will serve a copy of the statement of reply on the respondent or, if the amount of the counterclaim exceeds the amount of the claim, either file a statement of reply as contemplated herein or file a statement withdrawing the claim.~~ either (i) serve on each party and on the Director of Arbitration, with sufficient additional copies for the arbitrator(s), a reply to any counterclaim, or (ii) if the amount of the counterclaim exceeds the claim, shall have the right to file a statement withdrawing the claim. If the claimant withdraws the claim, ~~files a statement of withdrawal,~~ the proceedings ~~will~~ shall be discontinued without prejudice to the rights of the parties.

(f) through (l) No change.

Section 35. *Simplified Arbitration for Small Claims Relating to Intra-Industry Transactions*

(a) No change.

(b) The claimant shall file with the Director of Arbitration an ~~three~~ executed ~~copies of a~~ Submission Agreement and a copy ~~three copies~~ of the ~~a~~ statement of claim of the controversy in dispute, and the required deposit under rule A-16, together with documents in support of the claim. Sufficient additional copies of the Submission Agreement and the statement of claim and supporting documents shall be provided to the Director of Arbitration for each party and the arbitrator. The statement of claim ~~should~~ shall specify the relevant facts, the remedies sought and whether or not a hearing is requested. ~~The Director of Arbitration shall endeavor to serve promptly by mail or otherwise on the respondent or respondents one copy of the Submission Agreement and statement of claim.~~

(c) The Director of Arbitration shall endeavor to serve promptly by mail or otherwise on the respondent(s) one copy of the Submission Agreement and one copy of the statement of claim. ~~The respondent or respondents shall, w~~Within 20 business days from ~~of~~ receipt of the statement of claim, the respondent(s) shall serve each party with an executed Submission Agreement and a copy of respondent's answer ~~service, file with the Director of Arbitration one executed Submission Agreement and one copy of the answer, together with supporting documents~~. Respondent's executed Submission Agreement and answer shall also be filed with the Director of Arbitration with sufficient additional copies for the arbitrator(s) along with any deposit required under rule A-16. The answer shall ~~contain~~ designate all available defenses to the claim, state whether or not a hearing is requested, and may set forth any related counterclaim and/or related third-party claim the respondent(s) ~~or respondents~~ may have against the claimant ~~and any third-party claim against~~ or any other ~~party or~~ person ~~upon any existing claim, dispute or controversy subject to arbitration under this Arbitration Code~~. If the respondent(s) has interposed a third-party claim, the respondent(s) shall serve the third-party respondent with an executed Submission Agreement, a copy of respondent's answer containing the third-party claim, and a copy of the original claim filed by the claimant. The third-party respondent shall respond in the manner herein provided for response to the claim. If the respondent(s) files a related counterclaim exceeding $10,000, the arbitrator may refer the claim, counterclaim and/or third-party claim, if any, to a panel of three (3) or five (5) arbitrators in accordance with section 12(b) of this Code, or the arbitrator may dismiss the counterclaim and/or third-party claim without prejudice to the counterclaimant(s) and/or third-party claimant(s) pursuing the counterclaim and/or third-party claim in a separate proceeding. The costs to the claimant under either proceeding shall in no event exceed the total amount specified in rule A-16.

~~(d) If the respondent or respondents interpose a third-party claim, the Director of Arbitration shall endeavor to serve promptly by mail or otherwise a copy of the third-party claim, together with a copy of the Submission Agreement, on such third party who shall respond in the manner provided for response to the statement of claim. If the respondent or respondents file a related counterclaim exceeding $10,000, the arbitrator may refer the claim, counterclaim and/or third-party claim, if any, to a panel of arbitrators, the size and composition of which shall be determined in accordance with section 12 hereof, or he may dismiss the counterclaim or third-party claim without prejudice to the counterclaimant or third-party claimant in a separate proceeding.~~

(d) ~~(e) The Director of Arbitration shall endeavor to serve promptly by mail or otherwise on the claimant~~ All parties shall serve on all other parties and the Director of Arbitration, with sufficient additional copies for the arbitrator(s), a copy of the answer, counterclaim, third-party claim, amended claim, or other responsive pleading, if any. The claimant, if a counterclaim is asserted against him, shall within ~~ten~~ 10 business days ~~of receipt of a counterclaim file a reply to the counterclaim with the Director of Arbitration who will serve a copy of the reply on the respondent or respondents. If the amount of the counterclaim exceeds the amount of the claim, the claimant shall either file a reply as contemplated herein, or file a statement withdrawing the claim.~~ either (i) serve on each party and on the Director of Arbitration, with sufficient additional copies for the arbitrator(s), a reply to any counterclaim, or (ii) if the amount of the counterclaim exceeds the claim, shall have the right to file a statement withdrawing the claim. If the claimant withdraws the claim ~~files a statement of withdrawal~~, the proceedings ~~will~~ shall be discontinued without prejudice to the rights of the parties.

(e) ~~(f)~~ The claim, dispute or controversy shall be submitted to a single industry arbitrator ~~who shall be associated with a broker, dealer or municipal securities dealer~~. Unless a party requests a hearing, or the arbitrator calls a hearing, the arbitrator shall decide the claim, dispute or controversy solely upon the pleadings and evidence submitted by the parties. If a hearing is necessary, the time and place of the hearing shall be determined in accordance with the provisions of section 16 hereof.

(g) and (h) Relettered (f) and (g).

(h) ~~(i)~~ Upon the request of the arbitrator, the Director of Arbitration shall appoint two additional arbitrators to the panel which shall decide the matter in controversy. Each additional arbitrator shall also be an industry arbitrator ~~associated with a broker, dealer or municipal securities dealer~~.

(i) ~~(j)~~ Except as otherwise provided herein, all provisions of this Arbitration Code, other than those contained in section

34, shall be applicable to the arbitration of small claims relating to intra-industry transactions pursuant to this section 35.

Section 36. No change.

Rule A-16. Arbitration Fees and Deposits

~~(1) Except as provided in section 34 of rule G-35, at the time of filing the Submission Agreement, the claimant shall deposit the amount indicated below unless such deposit is specifically waived by the Director of Arbitration.~~

~~Amount in Dispute (Exclusive of interest and expenses)~~	~~Deposit~~
~~$1,000 or less~~	~~$15~~
~~Above $1,00 but not exceeding $2,500~~	~~$25~~
~~Above $2,500 but not exceeding $5,000~~	~~$100~~
~~Above $5,000 but not exceeding $10,000~~	~~$200~~
~~Above $10,000 but not exceeding $50,000~~	~~$400~~
~~Above $50,000 but not exceeding $100,000~~	~~$500~~
~~Above $100,000 but not exceeding $500,000~~	~~$750~~
~~Above $500,000~~	~~$1,000~~

~~If the amount in dispute is $10,000 or less no additional deposits shall be required despite the number of hearing sessions. If the amount in dispute is above $10,000 and multiple sessions are required, the arbitrators may require any of the parties to make additional deposits for each additional session. In no event shall the aggregate amount deposited per session exceed the amount of the initial deposit at the rates above set forth.~~

~~(2) The arbitrators, in their award, may determine the amount chargeable to the parties as forum fees (fees) and shall determine by whom such fees shall be borne. If the amount in dispute is $10,000 or less, total fees to the parties shall not exceed the amount deposited. If the amount in dispute is above $10,000 but does not exceed $50,000, the maximum fee shall be $400 per session. If the amount in dispute is above $50,000 but does not exceed $100,000, the maximum fee shall be $500 per session. If the amount in dispute is above $100,000 but does not exceed $500,000, the maximum fee shall be $750 per session. If the amount in dispute is above $500,000, the maximum fee shall be $1,000 per session. In no event shall the fees assessed by the arbitrators exceed $1,000 per session. Amounts deposited by a party shall be applied against fees, if any. If the fees are not assessed against a party who has made a deposit, the deposit will be refunded.~~

~~(3) If the dispute, claim or controversy does not involve or disclose a money claim, the amount to be deposited by the claimant shall be $100 or such amount as the Director of Arbitration or the panel of arbitrators may require, but shall not exceed $1,000.~~

~~(4) Any matter submitted and thereafter settled or withdrawn prior to the commencement of the first hearing session shall entitle the parties to a refund of all but $50 of the amount deposited. This section shall not apply to claims filed under section 34 of Rule G-35, the Arbitration Code.~~

~~(5) Any matter submitted and thereafter settled or withdrawn subsequent to the commencement of the first session may be subject to such refund of assessed deposits, if any, as the panel of arbitrators may determine.~~

~~(6) The arbitrators may assess costs in any matter settled or withdrawn subsequent to the commencement of the first session.~~

(a) At the time of filing a claim, counterclaim, third-party claim or cross-claim, a party shall pay a non-refundable filing fee and hearing session deposit to the Board in the amounts indicated in the schedules below, unless such fee or deposit is specifically waived by the Director of Arbitration.

Where multiple hearing sessions are required, the arbitrator(s) may require any of the parties to make additional hearing deposits for each additional hearing session. In no event shall the amount deposited by all parties per hearing session exceed the amount of the hearing deposit made by any party under the schedules below.

(b) A hearing session is any meeting between the parties and the arbitrator(s), including a pre-hearing conference with an arbitrator, which lasts four hours or less. The forum fee for a pre-hearing conference with an arbitrator shall be the amount set forth in the schedules below as a hearing session deposit for a hearing with a single arbitrator.

(c) The arbitrator(s), in the award, shall determine the amounts chargeable to the parties as forum fees and shall determine who shall pay such forum fees. Forum fees chargeable to the parties shall be assessed on a per hearing session basis, and the aggregate for each hearing session may equal but shall not exceed the amount of the largest initial hearing deposit deposited by any party, except in a case where claims have been joined subsequent to filing in which case hearing session fees shall be computed as provided in paragraph (d). The arbitrator(s) may determine in the award that a party shall reimburse to another party any non-refundable filing fee it has paid. If a customer is assessed forum fees in connection with an industry claim, forum fees assessed against the customer shall be based on the hearing deposit required under the industry claims schedule for the amount awarded to industry parties to be paid by the customer and not based on the size of the industry claim. No fees shall be assessed against a customer in connection with an industry claim that is dismissed; however, in cases where there is also a customer claim, the customer may be assessed forum fees based on the customer claim under the procedure set out above. Amounts deposited by a party shall be applied against forum fees, if any. In addition to forum fees, the arbitrator(s) may determine in the award the amount of costs incurred pursuant to sections 20, 22, 23, and 27 of rule G-35 and, unless applicable law directs otherwise, other costs and expenses of the parties and arbitrator(s) which are within the scope of the agreement of the parties. The arbitrator(s) shall determine by whom such costs shall be borne. If the hearing session fees are not assessed against a party who had made a hearing deposit, the hearing deposit will be refunded unless the arbitrator(s) determine otherwise.

(d) For claims filed separately which are subsequently joined or consolidated under section 5(d) of rule G-35, the hearing

deposit and forum fees assessable per hearing session after joinder or consolidation shall be based on the cumulative amount in dispute. The arbitrator(s) shall determine by whom such fees shall be borne.

(e) If the dispute, claim, or controversy does not involve, disclose, or specify a money claim, the non-refundable filing fee shall be $250 and the hearing session deposit to be remitted by a party shall be $600 or such greater or lesser amount as the Director of Arbitration or the arbitrator(s) may require, but shall not exceed $1,000.

(f) The Board shall retain the total initial amount deposited as hearing session deposits by all the parties in any matter submitted and settled or withdrawn within eight business days of the first scheduled hearing session other than a pre-hearing conference.

(g) Any matter submitted and thereafter settled or withdrawn subsequent to the commencement of the first hearing session, including a pre-hearing conference with an arbitrator, shall be subject to an assessment of forum fees and costs incurred pursuant to sections 20, 22, 23, and 27 of rule G-35 based on hearing sessions held and scheduled within eight business days after the Board receives notice that the matter has been settled or withdrawn. The arbitrator(s) shall determine by whom such forum fees and costs shall be borne.

(h) *Schedule of Fees.*

For purposes of the schedule of fees, the term "claim" includes claims, counterclaims, third-party claims, and cross-claims. Any such claim made by a customer is a customer claim. Any such claim made by a broker, dealer or municipal securities dealer or associated person of a broker, dealer or municipal securities dealer is an industry claim.

Customer Claimant

Amount in Dispute (Exclusive of Interest and Expenses)	Claim Filing Fee		Hearing Session Deposit	
	Simplified[1]		One Arb.[2]	Three+Arbs.[3]
$.01-$1,000	$15	$15	$15	NA
$1,000.01-$2,500	$25	$25	$25	NA
$2,500.01-$5,000	$50	$75	$100	NA
$5,000.01-$10,000	$75	$75	$200	NA
$10,000.01-$30,000	$100	NA	$300	$400
$30,000.01-$50,000	$120	NA	$300[4]	$400
$50,000.01-$100,000	$150	NA	$300[4]	$500
$100,000.01-$500,000	$200	NA	$300[4]	$750
$500,000.01-$5,000,000	$250	NA	$300[4]	$1,000
Over $5,000,000	$300	NA	$300[4]	$1,500

Industry Claimant

Amount in Dispute (Exclusive of Interest and Expenses)	Claim Filing Fee		Hearing Session Deposit	
	Simplified[5]		One Arb.[6]	Three+Arbs.[7]
$.01-$1,000	$500	$75	$300	NA
$1,000.01-$2,500	$500	$75	$300	NA
$2,500.01-$5,000	$500	$75	$300	NA
$5,000.01-$10,000	$500	$75	$300	NA
$10,000.01-$30,000	$500	NA	$300	$600
$30,000.01-$50,000	$500	NA	$300[8]	$600
$50,000.01-$100,000	$500	NA	$300[8]	$600
$100,000.01-$500,000	$500	NA	$300[8]	$750
$500,000.01-$5,000,000	$500	NA	$300[8]	$1,000
Over $5,000,000	$500	NA	$300[8]	$1,500

[1] Simplified Arbitration (Without Hearing)
[2] One Arbitrator (Per Hearing Session)
[3] Three of more Arbitrators (Per Hearing Session)
[4] Prehearing Conferences Only
[5] Simplified Arbitration (Without Hearing)
[6] One Arbitrator (Per Hearing Session)
[7] Three or more Arbitrators (Per Hearing Session)
[8] Prehearing Conferences Only

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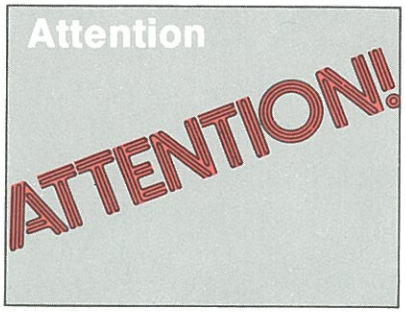

Route to:

- ☒ Manager, Muni Dept.
- ☒ Underwriting
- ☐ Trading
- ☒ Sales
- ☐ Operations
- ☒ Public Finance
- ☒ Compliance
- ☐ Training
- ☐ Other

Letters of Interpretation

Rule G-15(a). 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, 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, by Diane G. Klinke, General Counsel.

Rule G-36. 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,* to the holders of the refunded issues, as well as dealers and customers effecting transactions in such issues. 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, by Diane G. Klinke, General Counsel.

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* MUNICIPAL SECURITIES INFORMATION LIBRARY and MSIL are trademarks of the Board.

MSRB REPORTS

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Notice of Approval

Route to:

- ☒ Manager, Muni Dept.
- ☐ Underwriting
- ☐ Trading
- ☐ Sales
- ☐ Operations
- ☐ Public Finance
- ☒ Compliance
- ☐ Training
- ☐ Other

Statutory Disqualifications: Rule G-4

Amendments Approved

The technical amendments correct a cross-reference to recently enacted amendments to section 3(a)(39) of the Securities Exchange Act.

On August 5, 1991, the Securities and Exchange Commission approved a technical amendment to rule G-4, on statutory disqualifications.[1] The amendments correct a cross-reference contained within rule G-4 to recently enacted amendments to section 3(a)(39) of the Securities Exchange Act (the "Act"). The amendments became effective upon approval by the Commission.

Summary of Amendments

Rule G-4(a), on statutory disqualifications, disqualifies firms and individuals from participating in the municipal securities business if they are barred or suspended from membership in an exchange or in the National Association of Securities Dealers, Inc. (NASD) by reason of certain "statutory disqualifications" as defined in the Act, or for a violation of NASD or exchange rules concerning just and equitable principles of trade.

In November 1990, President Bush signed into law the Securities Acts Amendments of 1990 (the "1990 Amendments"). Among other things, the 1990 Amendments amend section 3(a)(39) of the Act, concerning statutory disqualification from self-regulatory organizations, and expand, by incorporation, the list of findings that result in the statutory disqualification. The 1990 Amendments re-letter subparagraphs (D) and (E) of section 3(a)(39) of the Act as subparagraphs (E) and (F), respectively, and add new subparagraph (D), which includes among the conditions that result in statutory disqualification findings by certain foreign entities. In addition, subparagraph (F), which by cross-reference to section 15(b)(4)(G) of the Act makes persons convicted of specified felonies and misdemeanors related to financial matters subject to statutory disqualification, adds "any other felony" to the list of crimes that warrant special review.

The amendments to rule G-4 correct the cross-reference to section 3(a)(39) of the Act contained within rule G-4 to correspond with the recently enacted amendments to the Act. The amendments also contain technical word changes.

August 5, 1991

Text of Amendments*

Rule G-4. Statutory Disqualifications

(a) Except as otherwise provided in sections (b) and (c) of this rule, no ~~municipal securities~~ 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 ~~municipal securities~~ 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) No change.

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

(b) A ~~municipal securities~~ broker, dealer or municipal securities

Questions about this notice may be directed to Ronald W. Smith, Legal Assistant.

[1] SEC Release No. 34-29523.

* Underlining indicates additions; strokethrough indicates deletions.

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 ~~municipal securities~~ broker, dealer or municipal securities dealer or natural person in accordance with such standards and procedures as are set forth in rule 19h-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 ~~municipal securities~~ 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 ~~municipal securities~~ 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 ~~municipal securities~~ broker, dealer or municipal securities dealer or natural person.

MSRB REPORTS
Volume 11, Number 3 September 1991

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