MSRB REPORTS

Volume 7, Number 2 | Municipal Securities Rulemaking Board | March 1987

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- ☐ Trading
- ☐ Sales
- ☒ Operations
- ☐ Public Finance
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- ☒ Training
- ☐ Other ______

EXAMINATIONS

Board Settles Claims against Training Firm

On Febraury 25, 1987, the Board and New York Stock Exchange, Inc. (NYSE) announced that they have agreed to settle their copyright infringement and other claims against Longman Financial Services Institute, Inc. (Longman) arising from Longman's alleged reproduction and distribution of copyrighted questions contained in certain professional qualifications examinations sponsored by the Board and the NYSE.

Longman is a Delaware corporation with offices throughout the nation. Longman is engaged in the business of offering training courses for persons who are preparing to take examinations to qualify for various positions in the securities industry.

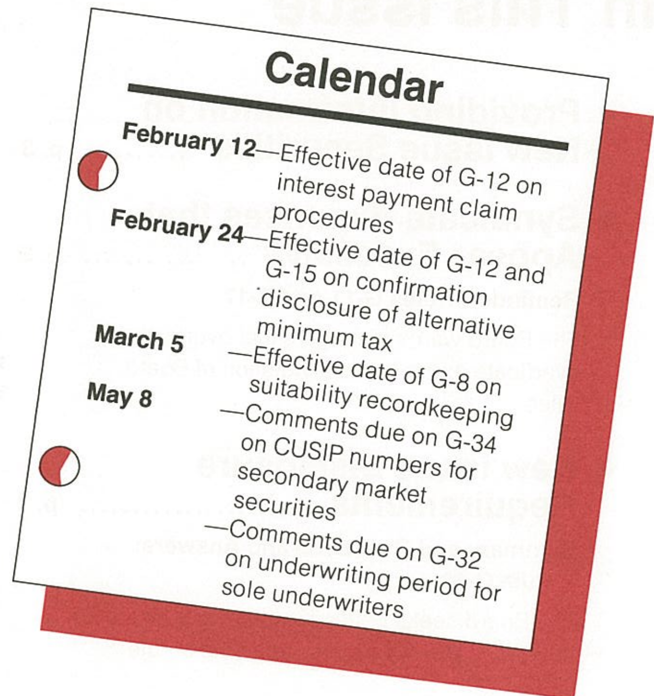
Longman, without admitting or denying the validity of the MSRB and NYSE claims, among other things, has agreed to the following:

1. not to use in any training course materials, questions and answers that are the same or substantially the same as questions appearing in any MSRB or NYSE securities qualification examination;
2. not to debrief individuals who have taken the qualification examinations in order to obtain information about the specific contents of any questions contained in MSRB or NYSE securities qualification examinations;
3. not to use questions received from another source without first obtaining a written statement from that source that the question is not the same or substantially the same as a question on a securities qualification examination.

Under the terms of the agreement, the Board and the NYSE are entitled to review the course materials Longman uses in order to check for compliance with the terms of the agreement. Longman also agreed to educate its employees and the students enrolled in its courses as to the confidential nature of the MSRB and NYSE securities qualification examinations. In addition to these and other provisions of the agreement, Longman has agreed to pay liquidated damages to the MSRB and NYSE.

February 25, 1987

Questions about this agreement may be directed to Peter H. Murray, Assistant Executive Director.



DTC Fee Revisions

From time to time, the Board publishes information about, or communications from, entities whose activities affect dealers and other participants in the municipal securities market. Recently, The Depository Trust Company (DTC) adopted revisions to its major service fees which went into effect on March 1, 1987. DTC has advised the Board that it estimates that municipal securities dealers that are direct participants of DTC should realize monthly cost reductions from these fee revisions ranging up to 14.5 percent. DTC estimates that clearing agents should realize monthly cost reductions from these fee revisions ranging up to 24 percent on their municipal securities dealers' accounts. Indirect participants in DTC should discuss the effects of the fee revisions with their clearing agents. Questions about the fee revisions should be directed to Michael Agnes, Vice President, The Depository Trust Company, (212) 709-1414.

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Providing Information on New Issue Securities

The Board understands that syndicate managers often utilize wire communications to provide information about a new issue and its distribution to syndicate members and other dealers. The Board has received information about one case in which the securities description provided by the manager on a wire communication was inaccurate and syndicate members, as well as other dealers and information processors, used the description to develop the securities descriptions placed on confirmations of transactions in the new issue. The Board cautions syndicate managers to describe securities accurately on their syndicate wires. The securities description on a wire communication is particularly important when the wire is used to confirm transactions with syndicate members. Dealers also should be aware that the descriptions on their confirmations or contract sheets govern their reclamation rights and should ensure that such descriptions are accurate.

March 10, 1987

Questions about this notice may be directed to Diane G. Klinke, Deputy General Counsel.

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Syndicate Expenses that Appear Excessive: Rules G-11 and G-17

Reminder

The Board warns managers that overstating syndicate expenses is a violation of Board rules.

Rule G-11(h)(i) requires that a senior syndicate manager, at or before final settlement of a syndicate account, furnish to the syndicate members "an itemized statement setting forth the nature and amount of all actual expenses incurred on behalf of the syndicate." A major goal of rule G-11(h)(i) is to ensure the accountability of managers for their handling of syndicate funds. In a January 1984 notice concerning this provision, the Board stated that expense items must be described so as to make the expenditures readily understandable by syndicate members and generalized categories of expenses will be deemed to be not in compliance with the rule if they do not portray adequately the nature of the expense.[1] Subsequently, in response to claims that certain managers may have been charging excessive fees for designated sales, the Board specifically warned managers to take care in determining actual syndicate expenses. The Board stated that managers may violate rule G-17, on fair dealing, if the expenses charged to syndicate members bear no relation to or otherwise overstate the actual expenses incurred on behalf of the syndicate.[2]

The Board has received a number of complaints concerning the amount of syndicate expenses charged by managers for many new issue municipal securities. It appears that in some instances syndicate managers may be charging syndicate members expenses that are overstated or excessive, particularly with respect to computer charges and clearance fees.

The Board wishes to reiterate that its rules prohibit managers from overstating actual syndicate expenses. The Board has asked the NASD and the bank regulatory agencies in their examinations of municipal securities dealers to emphasize enforcement of rules G-11(h)(i) and G-17 as they pertain to syndicate expenses by seeking substantiation of syndicate expenses that appear unreasonable or excessive. As the enforcement agencies review accounting practices in this area, the Board will discuss with them whether more precise accounting information should be required of managers under rule G-11.

March 3, 1987

Questions about this notice may be directed to Diane G. Klinke, Deputy General Counsel.

[1]Notice Concerning Disclosure of Syndicate Expenses (January 12, 1984) *MSRB Manual* (CCH) ¶3551 at 3957–8.
[2]Notice Concerning Syndicate Managers Charging Excessive Fees for Designated Sales (July 29, 1985) *MSRB Manual* (CCH) ¶3581 at 4855.

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New Issue Disclosure Requirements: Rule G-32

Summary and Questions and Answers

The Board seeks better compliance with the new issue disclosure requirements of rule G-32.

Rule G-32 prohibits a dealer from selling during the underwriting period new issue municipal securities to a customer unless the dealer delivers to the customer by settlement of the transaction a copy of the final official statement if one is prepared by or on behalf of the issuer or if no official statement is prepared a written statement to that effect. In the case of a negotiated sale of new issue securities, a dealer also must deliver certain written information about the underwriting arrangements. These disclosure requirements apply to all dealers that sell new issue securities during the underwriting period whether or not they are members of a syndicate. The rule also requires financial advisors and managing underwriters to make the final official statement available in a timely manner and specifies the minimum number of official statements a manager must be prepared to provide to dealers that pruchase the new issue securities. Finally, rule G-8(a) (xiii) requires a dealer to maintain records of deliveries of rule G-32 disclosures.

The requirements of rule G-32 summarized above incorporate substantial revisions which went into effect on September 30, 1985, and which were adopted by the Board after more than a year's deliberations and consultations with the industry and other interested persons.[1] The revisions are designed to ensure that customers purchasing, and dealers selling, new issue securities have access to the most complete disclosure document about the new issue, which should contain all material information about the issuer and the securities relevant to a customer's investment decision. The revisions also seek to balance somewhat the costs of preparing and disseminating official statements borne by syndicates and other municipal securities dealers.

The Board believes that rule G-32 provides important protections for investors in new issue municipal securities. Particularly today, when many issues of municipal securities have complex put, call and other novel features, it is critical that investors and dealers alike have access to the disclosure document about the issue that is authorized by the issuer.

Information about Lack of Compliance

The Board is concerned that dealers may not be complying with rule G-32. Official statements now are prepared for most issues of municipal securities, particularly those of $1 million par value or more. Yet, the Board understands from investors—both individual and institutional—that official statements often may not be delivered by settlement of their transactions in new issue securities even though official statements have been authorized by the issuers. In many instances, official statements apparently are not being delivered at all, even when a customer specifically requests one. The Board has learned that even syndicate members may not have access to official statements from the manager in violation of the provisions of the rule. Dealers and others candidly have stated that completion and printing of final official statements often is given a low priority by underwriters and financial advisors. It also appears that many public finance personnel are not knowledgeable about the requirements of rule G-32 and other Board rules that affect their activities.[2]

As a result of these concerns, the Board has asked the National Association of Securities Dealers, Inc. and the bank regulatory agencies to emphasize compliance with rule G-32. If enforcement efforts do not result in improved dissemination of official statements and other rule G-32 disclosures, the Board will consider adopting more stringent requirements. These might include prohibiting settlement by managers and other dealers of transactions with customers in new issue securities for which an official statement has been authorized except upon delivery of the final official

Questions about this notice may be directed to Angela Desmond, General Counsel.

[1]The Board published for comment draft amendments in March 1984, and revised draft amendments in June 1984. In September 1984, the Board adopted amendments to rules G-32, G-8 and G-9 which were filed with the Securities and Exchange Commission on October 23, 1984. At its December 1984 meeting, after considering additional comments concerning these amendments, the Board determined to withdraw the amendments from the Commission pending further consideration by the Board. On March 11, 1985, the Board filed with the Commission final amendments to rules G-32, G-8 and G-9 which were approved on August 30, 1985, and which became effective on September 30, 1985.

[2]For example, rule G-34 requires dealers to arrange for the assignment of CUSIP numbers before trading begins in a new issue.

statement.

Summary of Rule G-32 Provisions

Below is a summary of the requirements of rule G-32. All dealers should review the rule to make sure that personnel are familiar with the requirements and are complyng with the rule. To aid dealers in educating personnel about the rule, the full text of rule G-32 and recently published questions and answers about rule G-32 follow this notice.

Definition of New Issue Securities

New issue municipal securities are defined as securities of an issuer that are sold by a dealer during the underwriting period. The term underwriting period is defined in rule G-11(a) (ix) as the period commencing with the first submission to a syndicate of an order for the purchase of new issue municipal securities or the purchase of such securities from the issuer, whichever first occurs, and ending when the issuer delivers the securities to the syndicate or the syndicate no longer retains an unsold balance of securities, whichever last occurs.

Rule G-32 applies to all new issues of municipal securities except tax-exempt commercial paper.

Definition of Official Statement

An official statement is defined as a document prepared by an issuer or its representative stating, among other things, information concerning the issuer and the proposed issue of securities. Rule G-32 requires that a municipal securities dealer deliver an official statement only if one is voluntarily prepared by or on behalf of the issuer. A dealer does not have to prepare an offering document if no official statement is prepared by the issuer.

Preparation of Official Statements

Responsibilities of Managing Underwriters

When a managing underwriter prepares the final official statement on behalf of the issuer, it must ensure that the final version is printed in sufficient time and in sufficient numbers to permit dealers to deliver them to customers by settlement of their transactions. Specifically the final official statement must be printed no later than two business days prior to the date the securities are delivered by a manager to the syndicate members. Managing underwriters must prepare enough official statements to provide each dealer that purchases the new issue, upon request, an official statement and one additional official statement per $100,000 par value of the new issue securities purchased.

Responsibilities of Financial Advisors

If a dealer acting as the financial advisor prepares an official statement on behalf of an issuer, but is not responsible for printing it, the financial advisor must deliver the final version to the managing underwriter promptly after the award is made so that the managing underwriter can complete printing at least two business days prior to the date it delivers the securities to the syndicate members. If the financial advisor is responsible for printing the final official statement, it must prepare sufficient copies of the final version and deliver them to the managing underwriter no later than two business days before the date the manager delivers the securities to the syndicate member. A financial advisor must prepare enough official statements to enable the managing underwriter to provide each dealer, upon request, with an official statement and one additional official statement per $100,000 par value of the new issue securities purchased.

Delivery of Official Statements to Customers

A municipal securities dealer must deliver a final official statement to its customer by settlement of a transaction in new issue municipal securities. If a dealer does not have sufficient copies of an official statement, it must reproduce the official statement at its own expense and furnish an official statement to each customer by settlement of their transaction.

If an issuer only prepares a preliminary official statement, a dealer must deliver the preliminary version along with a written notice that no final official statement will be prepared. If no official statement will be prepared by or on behalf of an issuer, a dealer must disclose that fact in writing by settlement of the transaction.

The Board has interpreted the requirement that the rule G-32 disclosures be provided to a customer by settlement of the transaction to presume that disclosures sent at least three business days prior to settlement have been received by a customer.

Delivery of Official Statements to Dealers

A managing underwriter must provide, upon request, to a dealer (including a syndicate member) that has purchased the new issue municipal securities one copy of the official statement and one additional official statement per $100,000 par value of the new issue purchased. The rule also requires a manager to provide instructions how to obtain additional official statements from the printer to any dealer seeking additional copies of the document.

A dealer that sells new issue securities to another dealer must furnish the official statement promptly upon request of the purchasing dealer. Thus, a dealer that purchases new issue securities can obtain the official statement either from the selling dealer or directly from the managing underwriter.

Disclosures in Connection with Negotiated Underwritings

In a negotiated underwriting a dealer selling new issue securities to customers also is required to disclose in writing the following information about the underwriting arrangements:

(1) the underwriting spread;
(2) the amount of any fee received by the dealer as agent for the issuer in the distribution of the securities; and
(3) the initial offering price for each maturity in the issue that is offered or to be offered in-whole or in-part by the underwriter.

The managing underwriter must prepare and provide the underwriting disclosures according to the requirements applicable to official statements. Dealers must deliver the underwriting disclosures to customers by settlement of their transactions in new issue securities and to purchasing dealers promptly upon request. These disclosures may be included in the official statement.

Recordkeeping—Rules G-8(a) (xiii) and G-9(b) (x)

A dealer must maintain an up-to-date record of deliveries of rule G-32 disclosures for not less than three years. The

rule permits a dealer to determine how to maintain records of the deliveries.

March 10, 1987

Text of Rule

Rule G-32. Disclosures in Connection with New Issues.

(a) *Disclosure Requirements.* No broker, dealer or municipal securities dealer shall sell, whether as principal or agent, any new issue municipal securities to a customer unless such broker, dealer or municipal securities dealer delivers to the customer no later than the settlement of the transaction:

(i) a copy of the official statement in final form prepared by or on behalf of the issuer or if a final official statement will not be prepared by or on behalf of the issuer a written notice to that effect; and

(ii) in connection with a negotiated sale of new issue municipal securities, the following information concerning the underwriting arrangements:

(A) the underwriting spread;

(B) the amount of any fee received by the broker, dealer or municipal securities dealer as agent for the issuer in the distribution of the securities; and

(C) the initial offering price for each maturity in the issue that is offered or to be offered in whole or in part by the underwriters.

In the event an official statement in final form will not be prepared by or on behalf of the issuer, an official statement in preliminary form, if any, shall be sent to the customer with a written notice that no final official statement is being prepared. Every broker, dealer or municipal securities dealer shall promptly furnish the documents and information referred to in this section (a) to any broker, dealer or municipal securities dealer to which it sells new issue municipal securities, upon the request of such broker, dealer or municipal securities dealer.

(b) *Responsibility of Managing Underwriters, Sole Underwriters and Financial Advisors.*

(i) *Managing Underwriters and Sole Underwriters.* When a final official statement is prepared by or on behalf of an issuer, the managing underwriter or sole underwriter, upon request, shall provide all brokers, dealers and municipal securities dealers that purchase the new issue securities with an official statement and other information required by paragraph (a)(ii) of this rule and not less than one additional official statement in final form per $100,000 par value of the new issue purchased by the broker, dealer or municipal securities dealer and shall provide all purchasing brokers, dealers and municipal securities dealers with instructions how to order additional copies of the final official statement directly from the printer. A managing underwriter or sole underwriter that prepares an official statement on behalf of an issuer shall print the final official statement and other information required by paragraph (a)(ii) of this rule and make them available promptly after the date of sale of the issue but no later than two business days before the date all securities are delivered by the syndicate manager to the syndicate members.

(ii) *Financial Advisors.* A broker, dealer or municipal securities dealer that, acting as financial advisor, prepares a final official statement on behalf of an issuer, shall make that official statement in final form available to the managing underwriter or sole underwriter promptly after the award is made. If the financial advisor is responsible for printing the final official statement, it shall make adequate copies of the final official statement available to the managing underwriter or sole underwriter promptly after the award is made but not later than two business days before the date all securities are delivered by the syndicate manager to the syndicate members to permit their compliance with paragraph (b) (i) of this rule.

(c) *Definition of New Issue Municipal Securities and Official Statement.* For purposes of this rule, the following terms have the following meanings:

(i) the term "new issue municipal securities" shall mean securities of an issue that are sold by a broker, dealer or municipal securities dealer during the underwriting period defined in rule G-11 of the Board, and

(ii) the term "official statement" shall mean a document prepared by the issuer or its representatives setting forth, among other matters, information concerning the issuer and the proposed issue of securities. A notice of sale shall not be deemed to be an "official statement" for purposes of this rule.

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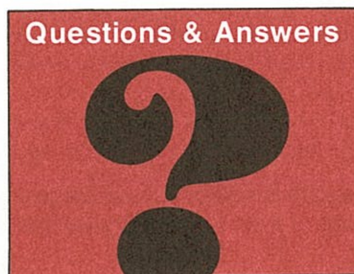

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Disclosure Requirements for New Issue Securities: Rule G-32

Questions and Answers

Answers to frequently asked questions concerning disclosure requirements to customers purchasing new issue securities. Reprinted from *MSRB Reports*, September 1986 issue.

GENERAL

Q: What is the intent of rule G-32?

A: The rule is designed to ensure that a customer who purchases new issue municipal securities is provided with a final official statement, if one is prepared by the issuer, as well as certain other information by settlement date so that the customer possesses all the available information relevant to his investment decision.

Q: Have there been any recent amendments to rule G-32 on disclosures in connection with new issues?

A: Yes. In September 1985, amendments to rule G-32 became effective. The amended rule requires:

(1) delivery of rule G-32 disclosures, including a final official statement, if one is prepared, to a customer purchasing new issue securities by settlement date of the transaction;

(2) delivery of a preliminary official statement only if no final official statement has been prepared, along with a written notice that a final official statement has not been prepared;

(3) financial advisors and/or managing underwriters to make the final official statement available in a timely manner; and

(4) managing underwriters to provide, upon request, purchasing dealers (including syndicate members) with an official statement as well as other information required by rule G-32 and one additional official statement per $100,000 par value of the new issue securities.

DEFINITION OF NEW ISSUE SECURITIES

Q: What are new issue municipal securities?

A: Rule G-32 defines new issue municipal securities as securities of an issuer that are sold by a dealer during the underwriting period, as defined in Board rule G-11(ix).

Q: Do new issue municipal securities include issues of tax-exempt commercial paper?

A: No. Written disclosures usually are provided to investors of tax-exempt commercial paper on a periodic basis rather than at issuance of the securities.

Q: Does rule G-32 apply to new issues of tax-exempt notes as well as bonds?

A: Yes. Rule G-32 does not make any distinction between bonds and notes. It also applies to general obligation issues and revenue issues.

Q: Does rule G-32 apply to securities which are privately placed?

A: Yes. The Board has determined that the rule should apply in such circumstances.

PREPARATION OF OFFICIAL STATEMENTS

Q: What is an official statement?

A: An official statement is a document prepared by an issuer or its representative stating, among other things, information concerning the issuer and the proposed issue of securities.

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

A: No. Rule G-32 requires that a municipal securities dealer furnish an offering statement only if one is voluntarily prepared by or on behalf of an issuer.

Q: What are the responsibilities of managing underwriters that prepare final official statements on behalf of issuers?

A: Managing underwriters are responsible for ensuring that final official statements are printed in sufficient time and in sufficient number to permit dealers to deliver them to customers by settlement of their transactions.

Q: What is "sufficient time?"

A: The official statements must be printed in final form no later than two business days prior to the date the securities are delivered by the manager to the syndicate members.

Q: How many official statements are managing underwriters required to prepare?

A: Managing underwriters shall prepare enough official statements and other information required by the rule to provide each purchasing dealer, upon request, with an official statement and one additional final official statement per $100,000 par value of the new issue securities.

Q: Did rule G-32 always specify the responsibilities of managing underwriters?

A: No. The Board recently adopted these provisions because it believed that managing underwriters should be responsible for ensuring that final official statements are printed in sufficient time and number to permit dealers to deliver them to customers by settlement date of a transaction in new issue securities. Additionally, the provisions are designed to achieve some balance between the costs associated with the dissemination of official statements borne by underwriters and those borne by dealers selling new issue securities.

Q: In a competitive issue, if a financial advisor prepares an official statement on behalf of the issuer, but is not responsible for printing it, when does the financial advisor have to deliver the final official statement to the managing underwriter for printing?

A: The financial advisor must deliver the final version of the official statement to the managing underwriter promptly after the award is made so that the managing underwriter can complete printing at least two business days prior to the date it delivers the securities to the syndicate members.

Q: What if the financial advisor is responsible for printing the official statement?

A: The financial advisor must prepare sufficient copies, as defined in rule G-32(b)(i), of the final official statement and deliver them to the managing underwriter no later than two business days before the date the manager delivers the securities to the syndicate members.

Q: Does rule G-32 apply to all financial advisors?

A: No. The rule only applies to financial advisors who are registered as brokers, dealers or municipal securities dealers with the SEC.

DELIVERY OF OFFICIAL STATEMENTS TO CUSTOMERS

Q: Does the Board have any requirements governing the delivery of an official statement to a customer?

A: Yes. A dealer is required to send a copy of the official statement, if one is prepared voluntarily by the issuer or its representative, to any customer purchasing new issue municipal securities prior to settlement of the transaction.

Q: How can we assure that customers will receive official statements by settlement?

A: An official statement sent at least three business days prior to settlement will be presumed to have been received by the customer.

Q: What if a manager supplies a dealer with an insufficient quantity of official statements?

A: The obligation of a dealer to furnish an official statement to each customer is not relieved by the manager's failure to supply a sufficient number of copies of an official statement. In such cases it is incumbent upon the dealer to reproduce the official statement at its own expense.

Q: Didn't the rule once require that disclosures be provided to a customer with or prior to sending the final confirmation?

A: Yes. The Board has extended the deadline for delivery until settlement of the transaction to ensure that a dealer has adequate time to deliver the disclosures to the customer and that the customer will receive the disclosures prior to paying for the securities.

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

A: Yes. The rule applies to a dealer who sells new issue municipal securities regardless of whether it is the underwriter or a member of a syndicate.

Q: Is it permissible to send a customer a photocopy of the front page of the official statement during the pre-sale period and subsequently provide the official statement in its entirety by settlement date?

A: Rule G-32 only requires that you send a copy of the final official statement before the settlement date of the transaction. The rule does not prevent you from sending other material prior to that time.

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

A: No, because the customer did not purchase the new issue securities.

Q: May I provide a summary of an official statement in lieu of sending the official statement?

A: No. If an official statement (or a preliminary official statement) is prepared by an issuer, it must be provided to the customer.

Q: What if an issuer in a competitive sale only prepares a preliminary official statement?

A: A dealer selling new issue securities is required to deliver the preliminary version along with written notice that no final official statement will be prepared by settlement of the transaction with the customer.

Q: Didn't the rule previously require that when a final official statement was not prepared in time to send with the money confirmation, a preliminary version, if one existed, had to be sent, and the final official statement sent as soon as it became available from the issuer?

A: Yes. But G-32, as recently amended, only requires that the final version of the official statement be delivered

by settlement date of the transaction. This provision is designed to minimize the costs associated with dissemination of official statements. Of course, a dealer may send a preliminary official statement, in addition to the final official version, if it wishes.

DELIVERY OF OFFICIAL STATEMENTS TO DEALERS

Q: Are managing underwriters responsible for delivering final official statements to purchasing dealers?

A: Yes. Managing underwriters, upon request, must deliver final official statements to all dealers that purchase new issue securities, along with the other G-32 disclosures.

Q: How many official statements are managing underwriters required to deliver to purchasing dealers?

A: The rule states that the managing underwriters shall provide, upon request, purchasing dealers (including syndicate members) with one copy of the final official statement and one additional official statement per $100,000 par value of the new issue purchased by the dealer and sold to the customer.

Q: What other information is a managing underwriter required to deliver to a dealer that purchases new issue municipal securities?

A: The rule also requires a manager to provide instructions on how to obtain additional official statements from the printer to any dealer seeking additional copies of the document.

Q: From which does a purchasing dealer obtain G-32 disclosures, the managing underwriter or the selling dealer?

A: A purchasing dealer may obtain rule G-32 disclosures from either the selling dealer from which it purchased the securities or from the managing underwriter.

DISCLOSURES TO CUSTOMERS IN CONNECTION WITH NEGOTIATED UNDERWRITINGS

Q: In a negotiated underwriting, is a dealer required to furnish any other information in addition to an official statement to a customer?

A: Yes. The dealer must disclose the following information:
(1) the underwriting spread;
(2) the amount of any fee received by the dealer as agent for the issuer in the distribution of the securities; and
(3) the initial offering price for each maturity in the issue that is offered or to be offered in whole or in part by the underwriter.

Q: If these disclosures are not made in the official statement, does the dealer have to disclose them in another document?

A: Yes.

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

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

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

A: No.

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

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

Q: Is it permissible to state in the official statement that the underwriting spread is the difference between the price paid to the issuer and the offering price?

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

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

A: No. The spread must be disclosed separately.

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

A: Yes. This terminology is acceptable.

Q: Would the following format constitute an acceptable disclosure of the underwriting spread:

Application of Proceeds	
Construction costs	**$120,000,000**
Underwriter's discount	**2,500,000**
Legal Expenses	**200,000**
Printing & Miscellaneous Expenses	**300,000**
Principal amount of bonds	**$123,000,000**

A: Yes. The underwriting may be expressed either as a total amount or as a listing of the components of the gross spread.

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

"The underwriting spread is 3.476 points"?

A: Yes.

Q: In a negotiated sale some maturities are sold out presale. Has an official statement complied with the requirements of G-32, if in disclosing the initial offering prices, it merely indicates that those maturities are not reoffered?

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

RECORDKEEPING

Q: Must a dealer maintain a record of deliveries of rule G-32 disclosures?

A: Yes. Rule G-8 requires a dealer to maintain a record of deliveries of rule G-32 disclosures. Rule G-9 requires that these records be retained for a period of not less than three years. The rule does provide flexibility to a dealer regarding how to maintain records of the deliveries.

Q: Have dealers always been required to maintain records of deliveries of rule G-32 disclosures?

A: No. These recordkeeping requirements have been in effect since September 1985. The Board has indicated that these recordkeeping requirements for dealers would facilitate enforcement of the other provisions of the rule.

DISCLOSURES IN CONNECTION WITH SECONDARY MARKETS

Q: Is a dealer required to deliver a final official statement if a syndicate has closed and it no longer retains any unsold securities (*i.e.*, bonds paid for and delivered)?

A: No. Rule G-32 requires dealers to deliver final official statements for new issue municipal securities that are sold during the underwriting period. The rule does not require the delivery of final official statements in the secondary market.

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CUSIP Numbers for Secondary Market Securities: Rule G-34

Comments Requested

The draft amendment would require dealers to apply for new CUSIP numbers for secondary market securities that have one CUSIP number but are no longer a single, fully fungible group of securities.

The Board is circulating for comment a draft amendment to rule G-34 on CUSIP numbers and the dissemination of initial trade date information. The draft amendment would require dealers to apply for new CUSIP numbers for secondary market municipal securities that are assigned a CUSIP number which no longer designates a single, fully fungible group of securities. All interested parties are invited to submit comments on the draft amendment by May 8, 1987.

Background: Rule G-34

Rule G-34 requires dealers to apply to the Board or its designee for new CUSIP numbers in certain specified circumstances.[1] Section (a) of the rule requires any dealer that acquires a new issue of municipal securities as a principal or agent to apply for the assignment of CUSIP numbers to the new issue.[2] If the new issue will be used to refund an outstanding issue of municipal securities in such a manner that securities previously assigned one CUSIP number are refunded to more than one date or price, the dealer also must apply for new CUSIP numbers for the outstanding issue.

Section (b) of rule G-34 requires any dealer that acquires or arranges for a transferable instrument altering the security or source of payment for part of a maturity of an outstanding issue to apply for new CUSIP numbers for the securities that are subject to the transferable instrument when traded with the instrument attached. Such transferable instruments include insurance with respect to debt service on the issue, put or tender options, letters of credit or guarantee or any similar devices.

Rule G-34 is designed to ensure that unique CUSIP numbers are assigned to designate securities that are interchangeable in the market, *i.e.*, that are fungible. Recently, the Board has seen circumstances, not specifically addressed by rule G-34, that may cause secondary market securities previously having identical features no longer to be fungible. For example, some issues of municipal securities contain remarketing provisions that allow portions of an issue previously subject to the same put option to be remarketed after the put date as different groups of securities, subject to different put options. In addition, a transferable secondary market security enhancement for portions of a maturity may be obtained by an investor, who is not subject to the requirements of rule G-34.

The Board recognizes that dealers and automated clearance and settlement systems depend upon CUSIP numbers to identify municipal securities.[3] The Board believes that it therefore may be necessary for dealers to ensure that new CUSIP numbers are assigned to secondary market securities in all circumstances in which the assigned CUSIP number no longer designates a fungible group of securities.

Summary of Draft Amendment

The draft amendment would require a dealer to apply for new CUSIP numbers in connection with the sale or offering of any secondary market municipal securities which are assigned one CUSIP number, but which no longer are identical with respect to certain specified features. These features, which also are used to determine CUSIP number assignment for new issues, are listed in rule G-34(a)(i)(A). They are:

(1) the complete name of issue and series designation, if any;

(2) interest(s) and maturity date(s);

(3) dated date;

(4) type of issue (*e.g.*, general obligation, limited tax or revenue);

(5) type of revenue, if the issue is a revenue issue;

(6) details of all redemption provisions;

(7) the name of any company or other person in addition to the issuer obligated, directly or indirectly, with respect to the debt service on all or part of the issue; and

Comments on the matters discussed in this notice should be submitted not later than May 8, 1987, and may be directed to Harold L. Johnson, Assistant General Counsel. Written comments will be available for public inspection.

[1] The Board has designated the CUSIP Service Bureau to receive these applications.

[2] The CUSIP numbers must be obtained on or prior to the date of sale of the issue. The rule also requires any dealer serving as a financial advisor to the issuer of a competitive issue to be responsible for ensuring that CUSIP numbers are assigned to the issue.

[3] The Board is aware that at least one depository has plans to make securities settling in same-day funds eligible for deposit. This will allow some issues with remarketing provisions that currently are not eligible for book-entry delivery to be included in automated clearance and settlement systems.

(8) any distinction(s) in the security or source of payment of the debt service on the issue.

The draft amendment would require a dealer applying for new CUSIP numbers for secondary market securities to provide the CUSIP number previously assigned to the securities and other information necessary to ensure appropriate CUSIP number assignment to the securities. The draft amendment would apply only if the secondary market securities are eligible for new CUSIP number assignment.[4]

The Board requests comment on the draft amendment and on the situations that may arise in the secondary market causing previously fungible municipal securities no longer to be fungible. The Board also welcomes comment on the procedures that currently are used in the market to identify such securities for trading, clearance and settlement.

March 6, 1987

Text of Draft Amendment*

Rule G-34. CUSIP Numbers and Dissemination of Initial Trade Date Information.

(a) New Issue Securities.

No change.

(b) Secondary Market Securities.

(i) ~~Except as otherwise provided in this section (b)~~, Each ~~municipal securities~~ broker, dealer or municipal securities dealer ~~who~~ that, in connection with a sale or an offering for sale of part, ~~but not all~~, of an ~~outstanding~~ maturity of an issue of municipal securities, acquires or arranges for the acquisition of a transferable instrument applicable to such part which alters the security or source of payment of such part shall apply in writing to the Board or its designee for the assignment of a CUSIP number ~~which will be used~~ to designate the part of the ~~outstanding~~ maturity of the issue which is the subject of the instrument when traded with the instrument attached. Such instruments shall include (A) insurance with respect to the payment of debt service on such portion, (B) a put option or tender option, (C) a letter of credit or guarantee, or (D) any other similar device. This paragraph (i) shall not apply with respect to any part of an outstanding maturity of an issue of municipal securities with respect to which a CUSIP number that is applicable to such part when traded with an instrument which alters the security or source of payment of such part has already been assigned.

(ii) Each broker, dealer or municipal securities dealer, in connection with a sale or an offering for sale of part of a maturity of an issue of municipal securities which is assigned a CUSIP number that no longer designates securities identical with respect to all features of the issue listed in Items (1) through (8) of subparagraph (a)(i)(A) of this rule, shall apply in writing to the Board or its designee for a new CUSIP number or numbers to designate the part or parts of the maturity which are identical with respect to Items (1) through (8) of subparagraph (a)(i)(A).

~~(ii)~~ (iii) The ~~municipal securities~~ broker, dealer or municipal securities dealer shall make the application required under this section (b) as promptly as possible, and shall provide to the Board or its designee: ~~information sufficient to identify~~

(A) the previously assigned CUSIP number;

(B) all information on the features of the maturity of the issue listed in Items (1) through (8) of subparagraph (a)(i)(A) of this rule and documentation of the features of such maturity sufficient to evidence the basis for CUSIP number assignment; and,

(C) if the application is based on an instrument affecting the source of payment or security for a part of a maturity of an issue, information on ~~and to describe~~ the nature of the instrument ~~acquired~~, including the name of any party obligated with respect to debt service under the terms of such instrument ~~The municipal securities broker or municipal securities dealer also shall provide~~ and documentation sufficient to evidence ~~the basis for number assignment and~~ the nature of the instrument ~~acquired~~.

~~(iii) The provisions of this section (b) shall not apply with respect to any part of an outstanding maturity of an issue of municipal securities with respect to which a CUSIP number that is applicable to such part when traded with an instrument which alters the security or source of payment of such part has already been issued.~~

(c) No change.

(d) Eligibility. The provisions of this rule shall not apply to an issue of municipal securities (or for the purpose of section (b) ~~the~~ any part of an outstanding maturity of an issue ~~when traded with an instrument which alters the security or source of payment of such part)~~ which does not meet the eligibility criteria for CUSIP number assignment.

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[4]The CUSIP Service Bureau is expanding the types of municipal securities eligible for CUSIP number assignment. The Board urges dealers to contact the Service Bureau to determine the CUSIP eligibility of secondary market securities.

*Underlining indicates new language; broken rule indicates deletions.

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Request For Comments

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Underwriting Period for Sole Underwriters: Rule G-32

Comments Requested

The draft amendment would define the "underwriting period" for sole underwriters.

The Board is circulating for comment a draft amendment to rule G-32, on disclosures in connection with new issues. The draft amendment would define the "underwriting period" for sole underwriters and thus identify the transactions that are subject to the disclosure requirements of rule G-32. All interested parties are invited to submit comments on the draft amendment by May 8, 1987.

Background: Rule G-32

Rule G-32 prohibits any dealer from selling new issue municipal securities to a customer unless the dealer delivers to the customer by the settlement date of the transaction a copy of the final official statement, if one is prepared by or on behalf of the issuer. If no official statement is prepared, a written statement to that effect must be provided. For negoitiated issues, the dealer also must deliver certain written information concerning the underwriting arrangements.[1] These disclosure requirements apply to all dealers selling new issue municipal securities, whether or not they are members of a syndicate distributing the issue.[2]

New issue municipal securities for purposes of rule G-32 are those sold during the "underwriting period," as defined in rule G-11. Rule G-11 states that the underwriting period begins with the first submission to a syndicate of an order for the purchase of securities or the purchase of such securities from the issuer, whichever first occurs. The underwriting period ends when the issuer delivers the securities to the syndicate or the syndicate no longer retains an unsold balance of the securities, whichever last occurs. This definition is designed to ensure that sufficient numbers of investors receive the new issue disclosures, even if an early delivery is made by an issuer or a syndicate immediately "sells out" a new issue and no longer retains an unsold balance on the date of sale of the issue.

Summary of Draft Amendment

The Board has interpreted rule G-32 to apply to new issue securities underwritten by a sole underwriter, notwithstanding the use of the term "syndicate" in the definition of underwriting period, and has stated that the number of underwriters is irrelevant to the purposes of the rule.[3] The Board notes, however, that a sole underwriter might retain an unsold balance of an issue for a relatively long time after the intitial reoffering of the new issue and delivery of the issue by the issuer. Unlike a syndicate manager, a sole underwriter cannot allocate unsold portions of an issue to syndicate members, ending the underwriting period.

The draft amendment would define the underwriting period for a sole underwriter to begin upon the first submission of an order for the issue to the underwriter or the purchase of the issue from the issuer, whichever first occurs. The underwriting period would end when both of the following two conditions are met: (i) the issuer delivers the securities to the underwriter; and (ii) the underwriter no longer retains an unsold balance of the securities or 21 calendar days elapse after the first submission of an order to the underwriter for the purchase of the securities, whichever first occurs. The Board believes that this definition would balance the objective of rule G-32 to ensure that a sufficient number of investors receive new issue disclosures with the potential that underwriting periods in sole underwritings might remain open for long periods of time if not limited in some way.

The Board requests comment from interested parties on the draft amendment. Specifically, the Board seeks comment on the 21-day period limiting the new issue disclosure obligations and whether it would provide sufficient distribution of new issue disclosures to investors. The Board also

Comments on the matters discussed in this notice should be submitted not later than May 8, 1987, and may be directed to Harold L. Johnson, Assistant General Counsel. Written comments will be available for public inspection.

[1]This information is: (i) the underwriting spread; (ii) the amount of any fee received by the dealer as agent for the issuer in the distribution of the securities; and (iii) the initial offering price for each maturity in the issue that is offered or to be offered in whole or part by the underwriters of the issue. If this underwriting information is not contained in the official statement, the underwriter must prepare a separate written disclosure document containing the information.

[2]Dealers selling new issue municipal securities to other dealers must provide the written disclosures upon request. A managing or sole underwriter must provide any dealer purchasing new issue municipal securities with one copy of the official statement for each $100,000 of par value of the issue purchased and sold to customers, upon request.

[3]Interpretive Letter of April 18, 1979, by Mark K. Sisitsky, General Counsel, *MSRB Manual* (CCH) ¶3656.15.

welcomes suggestions of alternative definitions of underwriting period for sole underwritings.

March 16, 1987

Text of Draft Amendment*

Rule G-32. Disclosures in Connection with New Issues.

(a) through (b) No change.

(c) Definition of New Issue Municipal Securities and Official Statement.

For purposes of this rule, the following terms have the following meanings:

(i) ~~+~~The term "new issue municipal securities" shall mean securities of an issue that are sold by a broker, dealer, or municipal securities dealer during the underwriting period, ~~defined in rule G-11 of the Board,~~ but shall not include issues of tax-exempt commercial paper. ~~, and~~

(ii) The term "underwriting period" shall mean:

(A) for securities purchased from an issuer by a syndicate, the period defined in paragraph (a) (ix) of rule G-11, on sales of new issue municipal securities during the underwriting period; and

(B) for securities purchased from an issuer by one broker, dealer or municipal securities dealer, the period commencing with the first submission to the broker, dealer or municipal securities dealer of an order for the purchase of the securities or the purchase of such securities from the issuer, whichever first occurs, and ending at such time as the following two conditions both are met: (1) the issuer delivers the securities to the broker, dealer or municipal securities dealer; and (2) the broker, dealer or municipal securities dealer no longer retains an unsold balance of the securities purchased from the issuer or 21 calendar days elapse after the date of the first submission of an order for the securities, whichever first occurs.

~~(ii)~~ renumbered (iii) No change.

*Underlining indicates new language; broken rule indicate deletions.

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Letter to PSA on Issuers Calling Escrowed-to-Maturity Bonds

March 17, 1987

Mr. Clayton Brown
Chairman
Public Securities Association
40 Broad Street
New York, NY 10004-2373

Re: Issuers Calling Escrowed-to-Maturity Bonds

Dear Mr. Brown:

The Municipal Securities Rulemaking Board is concerned that the market for escrowed-to-maturity bonds has been disrupted by recent events which have caused uncertainty concerning issuers' authority to exercise optional redemption provisions of escrowed-to-maturity bonds. Traditionally, the term escrowed-to-maturity has meant that such bonds are not subject to optional redemption prior to maturity. Investors and market professionals have relied on this understanding in their purchases and sales of such bonds. Recently, certain issuers have attempted to call escrowed-to-maturity bonds. As a result, investors and market professionals considering transactions in escrowed-to-maturity bonds must review the documents for the original issue, for any refunding issues, as well as the escrow agreement and state law, to determine whether any optional redemption provisions apply. In addition, the Board understands that there is uncertainty as to the fair market price of such securities.

The Board believes that it is essential that issuers, when applicable, expressly note in official statements and defeasance notices relating to escrowed-to-maturity bonds that they have reserved the right to call such bonds. The Board believes the absence of such express disclosure would raise concerns whether the issuer's disclosure documents adequately explain the material features of the issue and would severely damage investor confidence in the municipal securities market. Although the Board has no rulemaking authority over issuers, it would be appropriate for a dealer that assists an issuer in preparing a disclosure document for escrowed-to-maturity bonds to alert the issuer of the need to disclose that it has reserved the right to call the bonds. The Board believes that such information is material to a customer's investment decision about the bonds and to the efficient trading of such bonds.

The PSA's recent resolution and other efforts, along with those of the Governmental Accounting Standards Board, are helping clarify whether issuers have the right to call escrowed-to-maturity bonds pursuant to optional redemption provisions. To assist these efforts, the Board is contacting the Government Finance Officers Association and the National Association of Bond Lawyers to suggest that these groups aid in clarifying uncertainties in this area.

Sincerely,

H. Keith Brunnemer, Jr.
Chairman

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Confirmation Disclosure of Securities Subject to Alternative Minimum Tax: Rules G-12, G-15 and G-17

Amendments Approved and Intepretation

The amendments require confirmation disclosure of securities subject to alternative minimum tax.

On February 24, 1987, the Securities and Exchange Commission approved amendments to rules G-12(c) and G-15(a), on confirmations, that require identification on customer and inter-dealer confirmations of issues subject to alternative minimum tax. The amendments became effective upon approval by the Commission.[1] This notice also reviews the application of rule G-17, on fair dealing, to disclosures by dealers and underwriters concerning alternative minimum tax securities.

Background

The Tax Reform Act of 1986, among other things, provides for an alternative minimum tax on the interest received on "private activity bonds"[2] (other than Section 501(c)(3) obligations) issued after August 7, 1986.

Application of Rule G-17

The Board believes that the fact that "tax-exempt" interest paid on a municipal security may be subject to the alternative minimum tax is material information because it may affect the tax treatment of income derived from the security and may affect the security's price. As the Board previously has stated, "[t]he tax exemption of income received is a primary investment consideration for purchasers of municipal securities."[3] Therefore, this fact should be disclosed to a customer, under rule G-17 on fair dealing, prior to or at the time of trade. Moreover, in instances in which an issuer fails to identify securities that are subject to alternative minimum tax, rule G-17 requires the underwriter to do so.

Amendments to Rules G-12(c) and G-15(a)

The amendments require that confirmations of transactions in securities for which the interest is identified by the issuer or underwriter as subject to the alternative minimum tax, contain a designation to that effect.[4]

The Board understands that the amendments are consistent with confirmation disclosures already being followed by much of the industry.

February 24, 1987

Text of Amendments*

Rule G-12. Uniform Practice

(a) and (b) No change.

(c) (i) through (v) No change.

(vi) In addition to the information required by paragraph (v) above, each confirmation shall contain the following information, if applicable:

(A) through (C) No change.

<u>(D) if the interest on the securities is identified by the issuer or the underwriter as subject to the alternative minimum tax, a designation to that effect;</u>

(D) through (H) relettered (E) through (I)

(d) through (I) No change.

* * * * *

Rule G-15(a). Customer Confirmations

(i) and (ii) No change.

(iii) In addition to the information required by paragraphs (i) and (ii) above, each confirmation to a customer shall contain the following information, if applicable:

(A) through (C) No change.

<u>(D) if the interest on the securities is identified by the issuer or underwriter as subject to the alternative minimum tax, a designation to that effect;</u>

(D) through (I) relettered (E) through (J)

(b) through (e) No change.

Questions about his notice may be directed to Diane G. Klinke, Deputy Counsel.

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[1]SEC Release No. 34-24134.

[2]Private activity bonds are defined in the Act as any bond issue, more than 10 percent of the proceeds of which are to be used (directly or indirectly) in any trade or business carried on by a person other than a governmental unit, and more than 10 percent of the payment of principal or interest of which is to be derived with respect to the trade or business use, or is secured by payments or property used in a trade or business.

[3]Exposure draft on zero coupon, compound interest and multiplier securities, *MSRB Reports,* vol. 2, no. 7 (October/November 1982) at 14; *MSRB Manual* (CCH) ¶10,225 at 10,704.

[4]Corporations are required to include interest earned on all tax-exempt obligations, regardless of when the bonds were issued or acquired, in a computation to determine if alternative minimum tax is due. The amendments, however, apply only to private activity bonds issued after August 7, 1986, as noted above.

*Underlining indicates new language

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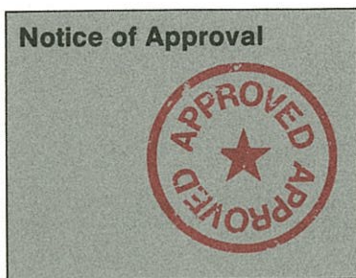

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Recordkeeping Requirements for Suitability Information: Rule G-8

Amendment Approved

Dealers are required to maintain information concerning a customer's financial background, tax status and investment objectives.

On March 5, 1987, the Securities and Exchange Commission approved an amendment to rule G-8(a)(xi) that requires municipal securities dealers to record and maintain suitability information obtained pursuant to rule G-19(b) on customer account records.[1] The amendment specifies information concerning the customer's financial background, tax status and investment objectives, as well as any other information used or considered to be reasonable and necessary by municipal securities dealers in making recommendations to customers. The Board has concluded that a suitability recordkeeping requirement provides additional investor protection by facilitating a dealer's discharge of its suitability responsibilities. It also is valuable to dealers in making recommendations and assists municipal securities principles and regulatory examiners in reviewing transactions for compliance with rule G-19(b). The amendment became effective upon approval by the Commission.

March 5, 1987

Text Amendment*

Rule G-8. Books and Records to be Made by Municipal Securities Brokers and Municipal Securities Dealers.

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

(i) through (x) No change.

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

(A) through (E) No change.

(F) information obtained pursuant to rule G-19(b) such as the customer's financial background, tax status, and investment objectives or such other information used or considered to be reasonable and necessary by such municipal securities dealer in making recommendations to the customer.

(F)–(J) relettered (G)–(K)

For purposes of this subparagraph, the terms "general securities representative" and "general securities principal" shall mean such persons as so defined by the rules of a national securities exchange or registered securities association. For purposes of this subparagraph, the term "institutional account" shall mean the account of an investment company as defined in section 3(a) of the Investment Company Act of 1940, a bank, an insurance company, or any other institutional type account. Anything in this subparagraph to the contrary notwithstanding, every municipal securities broker and municipal securities dealer shall maintain a record of the information required by items (A), (C) ~~(G)~~ (H), ~~(H)~~ (I), and ~~(J)~~ (K) of this subparagraph with respect to each customer which is an institutional account.

(xii) through (xiv) No change.

(b) through (g) No change.

Questions about this notice may be directed to Angela Desmond, General Counsel.

[1] SEC Release No. 34-24180.

*Underlining indicates new language; broken rule indicates deletions.

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Interest Payment Claim Procedure for Book-Entry Deliveries: Rule G-12

Amendment Approved

The amendment applies the interest claim procedure in rule G-12(l) to certain book-entry transactions.

On Februrary 12, 1987, the Securities and Exchange Commission approved an amendment ot rule G-12(l) on interest payment claims.[1] The amendment adds to the interest payment claim procedure set forth in rule G-12(l) claims based on certain types of book-entry transactions. The amendment became effective upon approval by the Commission.

Rule G-12(l) currently provides a procedure for dealers to make claims against other dealers for misdirected interest payments on municipal securities. The rule identifies the dealer to which an interest payment claim should be directed and the content of the written notice of claim. A dealer receiving a claim made under the procedure must pay the claim or provide a statement of its basis for denying the claim within 10 business days following receipt of the claim (20 business days if the claim involves an interest payment scheduled to be made more than 60 days prior to the date of the claim). Rule G-12(l) currently addresses only claims based on physical deliveries of securities.

The amendment extends the interest claim procedure to circumstances in which an interest payment made on a municipal security delivered by book-entry is directed to the wrong party. The amendment allows a dealer seeking such an interest payment to use the Board's interest payment claim procedure to make a claim against the delivering dealer.[2] A dealer receiving a claim made under the procedure must respond by paying the interest payment or stating its reason for its refusal to do so within the time periods currently specified in rule G-12(l).

February 12, 1987

Text of Amendment*

Rule G-12. Uniform Practice

(a)–(k) No change.

(l) *Interest Payment Claims.* A broker, dealer or municipal securities dealer seeking to claim an interest payment on a municipal security from another broker, dealer or municipal securities dealer may claim such interest payment in accordance with this section. A broker, dealer or municipal securities dealer receiving a claim made under this section shall send to the claimant a draft or bank check for the amount of the interest payment or a statement of its basis for denying the claim no later than 10 business days after the date of receipt of the written notice of the claim or 20 business days in the case of a claim involving an interest payment scheduled to be made more than 60 days prior to the date of the claim.

(i) *Determining Party to Receive Claim.* A claimant making an interest payment claim under this section shall direct such claim to the party described in this paragraph (i).

(A)–(C) No change.

(D) *Deliveries by Book-Entry*. An interest payment claim arising out of a transaction with a contractual settlement date before, and settled by book-entry on or after, the interest payment date of the security shall be directed to the broker, dealer or municipal securities dealer that made the delivery.

(ii) No change.

Questions about this notice may be directed to Harold L. Johnson, Assistant General Counsel.

[1] SEC Release No. 34-24093.

[2] A customer receiving a book-entry delivery may reject the delivery if an interest payment is due or may accept the delivery and file an interest payment claim. Rule G-15(e) requires dealers to respond to any customer interest payment claim within 10 business days (20 business days for claims based on interest payments over 60 days old).

*Underlining indicates new language.

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Interpretation

Rule G-17. Failure to Submit to Arbitration

Section 2 of the Board's Arbitration Code, rule G-35, requires all dealers to submit to arbitration at the instance of a customer or another dealer. From time to time, a dealer will refuse to submit to arbitration or will delay or even refuse to make payment of an award. Such acts constitute violations of rule G-35. The Board believes that it is a violation of rule G-17, on fair dealing, for a broker, dealer or municipal securities dealer or its associated persons to fail to submit to arbitration as required by rule G-35, or to fail to comply with the procedures therein, including the production of documents, or to fail to honor an award of arbitrators unless a timely motion to vacate the award has been made according to applicable law.[1]

March 6, 1987

Questions about this notice may be directed to Angela Desmond, General Counsel.

[1] A party typically has 90 days to seek judicial review of an arbitration award; after that the award cannot be challenged. Challenges to arbitration awards are heard only in limited, egregious circumstances such as fraud or collusion on the part of the arbitrators.

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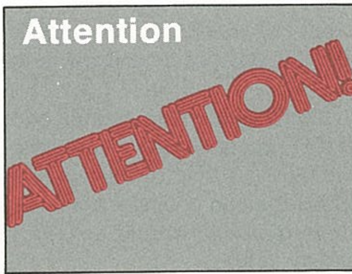

Route To:

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

Letters of Interpretation

Rule G-3. Qualification Status of a Principal Who Fails to Effect a Transaction for Two or More Years

In our recent telephone conversaton you asked whether the Board has interpreted rule G-3(c)(iv)[1] as to the qualification status of a municipal securities principal in circumstances where the bank dealer, with which the individual is associated, fails to effect a municipal security transaction for a period of two or more years. You proposed that, if there are no municipal securities transactions for the principal to supervise, the individual would not be considered to be "acting as a municipal securities principal" and, consequently, the individual's qualification as a municipal securities principal would lapse after a two-year period of such inactivitiy.

The Board has considered a similar situation and given an interpretation in the matter. It reaffirmed the interpretation that an individual whose responsibilities no longer include supervision of municipal securities activities probably will not be able to remain adequately informed in the supervisory and compliance matters of concern to municipal securities principals, and that continuing association with a municipal securities dealer, in a capacity other than that of a municipal securities principal, is not sufficient to maintain qualification as a municipal securities principal. However, the Board also concluded that it did not intend this interpretation of rule G-3(c)(iv) to mean that a dealer must necessarily effect transactions in municipal securities in order for its municipal securities principal to maintain such qualification. The Board noted that the definition of a municipal securities principal[2] not only includes supervision of trading or sales, but of other municipal securities activities as well. Consequently, the Board determined that the qualification of a municipal securities principal should not automatically terminate because the individual is associated with a municipal securities broker or dealer which has not effected a municipal securities transaction in two or more years, but that to maintain such qualification the individual must demonstrate clearly that:

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

MSRB Interpretation of January 15, 1987, by Peter H. Murray, Assistant Executive Director.

Rule G-3. Definition of a Municipal Securities Principal

This is in response to your letter of January 28, 1987, and subsequent telephone conversations with the Board's staff, requesting an interpretation of Board rule G-3(a)(i), the definition of the term "Municipal Securities Principal." You ask whether an individual, who has day-to-day responsibility for directing the municipal underwriting activities of a firm, must be qualified as a municipal securities principal. You suggest that such activity seems to meet the definition of a municipal securities principal, namely, an individual who is "directly engaged in the management, direction or supervision of . . .

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[1]Rule G-3(c)(iv) states that
[a]ny person who ceases to act as a municipal securities principal for two or more years at any time after having qualified as a municipal securities principal in accordance with this section (c) shall take and pass the Municipal Securities Principal Qualfication Examination and be qualified as a municipal securities representative prior to being qualified as a municipal securities principal.

[2]Rule G-3(a)(i) defines a municipal securities principal as
a natural person (other than a municipal securities sales principal) associated with a municipal securities broker or municipal securities dealer that has filed with the Board in compliance with rule A-12 who is directly engaged in the management, direction or supervision of one or more of the following activities:
(A) underwriting, trading or sales of municipal securities;
(B) financial advisory or consultant services for issuers in connection with the issuance of municipal securities;
(C) processing, clearance, and in the case of municipal securities brokers and municipal securities dealers other than bank dealers, safekeeping of municipal securities;
(D) research or investment advice with respect to municipal securities;
(E) any other activities which involve communication, directly or indirectly, with public investors in municipal securities;
(F) maintenance of records with respect to the activities described in subparagraphs (A) through (E); or
(G) training of municipal securities principals or municipal securities representatives;
provided, however, that the activities enumerated in subparagraphs (D) and (E) above shall be limited to such activities as they relate to the activities enumerated in subparagraphs (A) or (B) above.

underwriting . . . of municipal securities".[1] You note that this individual has the authority to make underwriting commitments in the name of the firm, but that the firm's president is designated with supervisory responsibility for this individual's underwriting activity. Also, you indicated that this individual does not have supervisory responsibilities for any other representative.

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

MSRB Intepretation of February 27, 1987, by Peter H. Murray, Assistant Executive Director.

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[1]Rule G-3(a)(i) reads as follows:

(a) Definitions. As used in the rules of the Board, the terms "municipal securities principal," "financial and operations principal," "municipal securities representative," and "municipal securities sales principal" shall have the following respective meanings:

(i) Municipal Securities Principal. The term "municipal securities principal" means a natural person (other than a municipal securities sales principal) associated with a municipal securities broker or municipal securities dealer that has filed with the Board in compliance with rule A-12 who is directly engaged in the management, direction or supervision of one or more of the following activities:

(A) underwriting, trading or sales of municipal securities;
(B) financial advisory or consultant services for issuers in connection with the issuance of municipal securities;
(C) processing, clearance, and in the case of municipal securities brokers and municipal securities dealers other than bank dealers, safekeeping of municipal securities;
(D) research or investment advice with respect to municipal securities;
(E) any other activities which involve communication, directly or indirectly, with public investors in municipal securities;
(F) maintenance of records with respect to the activities described in subparagraphs (A) through (E); or
(G) training of municipal securities principals or municipal securities representatives;

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

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Route To:

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

New Edition of Representative Exam Study Outline

The Board has published a February 1987 edition of the Study Outline for the Municipal Securities Representative Qualification Examination (Test Series 52). No substantial change in subject matter has been made to this edition of the study outline, but several topics have been expanded to reflect the recently enacted Tax Reform Act of 1986 and changes in the marketplace. These include:

- Page 2—under topic "Short-term obligations," subtopic "Project notes" has been removed;
- Page 3—under topic "Interest rate," subtopic "Convertible" has been added;
- Page 5—under topic "Interest income," subtopics "Alternative minimum tax" and "Bank qualified bonds" have been added;
- Page 6—under topic "Indices," subtopic "40-Bond Index" has been added;
- Page 6—under topic "Functions of a bond attorney," subtopic "Establish eligibility for tax exemption" has been changed to "Renders an opinion as to tax status;"
- Page 7—under topic "Sources of information announcing proposed new issues," subtopic "Dalnet" has been added; and
- Page 19—under topic "Principal operating tools of the Federal Reserve," subtopic "Ceiling interest rates on time deposits (Regulation Q)" has been removed.

March 3, 1987

Questions about this notice and requests for the study outline may be directed to Peter H. Murray, Assistant Executive Director, or James McCabe, Paralegal.

Publications List

Manuals and Rule Texts

MSRB Manual
Complete text of MSRB rules, interpretive notices and letters. Includes samples of forms, texts of the Securities Exchange Act of 1934 and of the Securities Investor Protection Act of 1970, as amended, and other applicable rules and regulations affecting the industry. Also includes notices on proposed, amended and rescinded rules from exposure draft through SEC approval. Reprinted semi-annually.
October 1, 1986.................................... $6.00

MSRB Rules
Complete text of MSRB rules, intepretive notices and letters as reprinted in the *MSRB Manual*. Also includes samples of forms. Use of the *Rules* satisfies the requirements of rule G-29. Reprinted semi-annually.
October 1, 1986.................................... $2.50

Glossary of Municipal Securities Terms
Glossary of terms (adapted from the State of Florida's *Glossary of Municipal Bond Terms*) defined according to use in the municipal securities industry.
1985.. $1.50

Professional Qualification Handbook
A guide to the requirements for qualification as a municipal securities representative, principal, sales principal and financial and operations principal, with questions and answers on each category. Includes sections on examination procedures, waivers, disqualification and lapse of qualification, the text of MSRB qualification rules, and a glossary of terms.
July 1986.......... 5 copies per year .... No charge
Each additional copy $1.50

Manual on Close-Out Procedures
A discussion of the close-out procedures of rule G-12(h)(i) in a question and answer format. Includes the text of rule G-12(h)(i) with each sentence indexed to particular questions, and a glossary of terms.
January 1, 1985.................................... $3.00

Arbitration Information and Rules
Pamphlet reprinting SICA's *Arbitration Procedures* and *How to Proceed with the Arbitration of a Small Claim*, text of rules A-16 and G-35, glossary of terms, and list of sponsoring organizations.
1986.. No charge

Instructions for Beginning an Arbritration
Step-by-step instructions and forms needed for filing an arbitration claim.
1986.. No charge

Reporter and Newsletter

MSRB Reports
The MSRB's reporter and newsletter to the municipal securities industry. Includes notices of rule amendments filed with and/or approved by the SEC, notices of interpretation of MSRB rules, requests for comments from the industry and news items.
Bi/tri monthly.................................. No charge

Examination Study Outlines

A series of guides outlining subject matter areas a candidate seeking professional qualification is expected to know; each outline includes a list of reference materials and sample questions.

Study Outline: Municipal Securities Representative Qualification Examination
Outline for Test Series 52.
February 1987 .... No charge

Study Outline: Municipal Securities Principal Qualification Examination
Outline for Test Series 53.
September 1986 .... No charge

Study Outline: Municipal Securities Financial and Operations Principal Qualification Examination
Outline for Test Series 54.
1978.. No charge

Pamphlets

Information
Pamphlet describing Board structure and responsibility, the rulemaking process, and communication with the industry.
1–500 copies.................................. No charge
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Information for Municipal Securities Investors
Pamphlet describing Board rulemaking authority, the rules protecting the investor, arbitration and communication with the industry and investors.
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MSRB Rules	$2.50		
Glossary of Municipal Securities Terms	$1.50		
Professional Qualification Handbook	5 copies per year no charge Each additional copy $1.50		
Manual on Close-Out Procedures	$3.00		
Arbitration Information and Rules	no charge		
Instructions for Beginning an Arbitration	no charge		
Study Outline: Municipal Securities Representative Qualifications Examination	no charge		
Study Outline: Municipal Securities Principal Qualifications Examination	no charge		
Study Outline: Municipal Securities Financial and Operations Principal	no charge		
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