

MSRB REPORTS

Volume 9, Number 3

Municipal Securities Rulemaking Board

November 1989

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The amendments would provide more specific guidance as to the supervisory responsibilities of dealers.

Board Elects Sexton Chairman; Gunyou Vice Chairman

Thomas Sexton has been elected Chairman of the Board and John M. Gunyou, Vice Chairman. Mr. Sexton is Managing Director of The First Boston Corporation in New York and Mr. Gunyou is City Finance Officer for Minneapolis. The new officers began their one-year terms on October 1, 1989.

Mr. Sexton is in charge of municipal and mortgage-backed securities and a member of the Management Committee at First Boston. He began his career in the municipal bond industry in 1968 at Reynolds & Co. after receiving an M.B.A. from Seton Hall University. He went to White, Weld & Co. in 1973 as Head Municipal Trader, and when it merged with Merrill Lynch in 1978 he was First Vice President in charge of municipal trading, underwriting and sales. He joined First Boston in 1980.

Mr. Gunyou has been Finance Director and Assistant City Coordinator for Minneapolis since 1984. Before that, he was with Brown, Bortz & Coddington, a large economic and financial consulting firm in the Rocky Mountain region, where he completed over 200 consulting assignments for public agencies. He also is a member of the Executive Board of the Government Finance Officers Association. He received an M.P.A. in Public Finance from the University of Colorado.

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From the Chairman

The MSRB will mark its fifteenth anniversary this coming year. It seems fitting that the coming year will also see the establishment of our central electronic repository for official statements and other documents. For the first time, this information on municipal securities issues will be available to everyone from a central source.

The Board has devoted a great deal toward accomplishing this goal. Throughout the process—from our initial letter to the SEC in December 1987 to the SEC's recent adoption of rule 15c2-12—we have been encouraged by the industry's response, reflecting its desire to improve the information flows to all market participants. We sincerely hope that your attention will not diminish; the steps taken this past year only begin to address some of the problems that need to be solved if the market for municipal securities is to become more efficient and have greater integrity.

We believe that only through open communications with all market participants—issuers, financial advisors, bond attorneys, trustees, transfer agents, paying agents, dealers, analysts and investors—can the impediments to an expanding market be removed. This market will likely come under greater scrutiny as individuals, with their expectations regarding information flows conditioned by their experience in the corporate equity and debt markets, take their place as the dominant investors in the municipal securities market.

More immediately, I ask you to pay close attention as we present our plans for the repository in *MSRB Reports*. In this issue you will find our notice concerning proposed rule G-36 on sending official statements to the Board, which we filed with the SEC for approval, and our request for your comments on which refunding documents should be kept in the repository. In January, we will be releasing a paper in *MSRB Reports* outlining our system concept for the repository and we will be holding open meetings to discuss the repository shortly thereafter.

We believe that the establishment of the repository will have a profound impact on the industry and we need to know your thoughts on its development so that the Board can continue to serve the needs of market participants. Let's all make the MSRB's fifteenth year one of accomplishment.

Sincerely,

Thomas Sexton
Chairman, 1989-1990

Staff Appointments

Diane G. Klinke has been appointed General Counsel. Ms. Klinke has served on the Board's staff as Deputy General Counsel for six years. Prior to that, she served as Counsel to the Chairman of the Securities and Exchange Commission, an attorney in the SEC's General Counsel's Office, and an associate with the law firm of Hawkins Delafield & Wood. Ms. Klinke received a J.D. at the University of Michigan Law School in 1978.

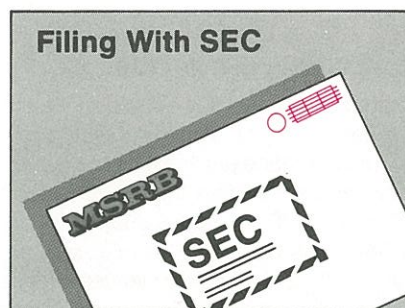
Thomas A. Hutton has been appointed Director of Arbitration. Mr. Hutton has served as the Board's Arbitration Administrator for five years. Before that, he was Head Legal Assistant for a 20-lawyer group, at the law firm of Wald, Harkrader & Ross, pursuing claims in arbitration-like proceedings before the World Court's U.S.-Iran Tribunal. Mr. Hutton received a B.A. at The American University in 1979.

Angela Desmond has resigned as General Counsel to the Municipal Securities Rulemaking Board effective September 1, 1989. Ms. Desmond joined the Board in 1981 as Deputy General Counsel and has held the positions of General Counsel, Secretary and Director of Arbitration since 1983. Prior to joining the Board's staff, Ms. Desmond worked for the Securities and Exchange Commission in the General Counsel's Office and in the Division of Market Regulation.

Upon leaving the Board, Ms. Desmond intends to pursue opportunities in the private sector.

Calendar

- | | |
|-------------------|--|
| December 1 | — Effective date of G-35 and A-16 on arbitration |
| January 1 | — Effective date of SEC rule 15c2-12 on municipal securities disclosure |
| | — Effective date of qualification of FINOPS |
| | — Effective date of G-3 revisions to the representative qualification exam |
| January 19 | — Comments due on G-36 and G-8 on delivery of refunding documents |
| Pending | — G-27 and G-9 on supervision requirements |
| | — G-32 technical amendment |
| | — G-35 on definitions of public and industry arbitrators |
| | — G-35 on administrative changes to arbitration |


Route to:

- Manager, Muni Dept.
- Underwriting
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- Public Finance
- Compliance
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Delivery of Official Statements to the Board: Rules G-36 and G-8

Amendments Filed

The amendments would require underwriters to send official statements to the Board for inclusion in the Board's central electronic repository.

The amendment to rule G-8 would require underwriters to keep certain records regarding compliance with the rule.

On November 13, 1989, the Board filed with the Securities and Exchange Commission (Commission) proposed rule G-36, on delivery of official statements and Form G-36 to the Board or its designee, and proposed amendments to rule G-8, on recordkeeping. Proposed rule G-36 would require underwriters to send official statements to the Board for inclusion in the Board's planned central electronic repository. The proposed rule and draft amendments will be effective 30 days after Commission approval in order to allow underwriters time to develop procedures to comply with the new requirements.¹

Background

The complexities of municipal securities (e.g., complex extraordinary and other call features, put options and variable and/or convertible interest rates) make it essential that professionals and investors have access to complete and timely descriptive information about municipal securities and municipal securities issuers. Such information generally is available in official statements for new issue municipal securities. The Board has been concerned, however, that the flow of information in the new issue market has not been adequate to ensure that market

participants have access to the official statement for a new issue at the time trading begins in the issue. In addition, in the secondary market, it appears that dealers that need descriptive information for issues they are trading usually do not have access to the official statements that contain the information. The Board believes that these information problems can be ameliorated by the creation of a repository of official statements and certain refunding documents.²

Summary of Proposed Rule and Amendments

Proposed Rule G-36

The Board plans to create a repository that would function much like a public library that stores and indexes the documents and provides copies of the documents to parties requesting them for a fee. In furtherance of that goal, the Board adopted proposed rule G-36. Rule G-36(b) would require underwriters of issues subject to Securities Exchange Act rule 15c2-12 to provide to the Board or its designee a copy of the final official statement and a completed Form G-36 which includes CUSIP numbers for these issues to permit the information to be indexed by CUSIP number.³ In addition, rule G-36(c) would require underwriters of certain issues not subject to rule 15c2-12 to send to the Board a copy of the official statement in final form if prepared by or on behalf of the issuer, along with a completed Form G-36. These issues include those less than \$1 million, but not those qualified for the exemption set forth in rule 15c2-12(c), regardless of the amount of the issue (e.g., certain privately-placed and short-term issues).⁴ Official statements for issues exempt from rule 15c2-12 pursuant to section (c) would not be required to be sent to the repository because

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

¹ SEC File No. SR-MSRB-89-9. Comments filed with the Commission should refer to the file number.

² See December 17, 1987 letter from James B.G. Hearty, Chairman, MSRB, to David S. Ruder, Chairman, SEC, *MSRB Reports*, Vol. 8, No. 1 (January 1988); and November 28, 1988 letter from John W. Rowe, Chairman, MSRB, to Jonathan G. Katz, Secretary, SEC, *MSRB Reports*, Vol. 8, No. 5 (December 1988).

³ If a syndicate is formed for the underwriting of the issue, rule G-36(f) would require the managing underwriter to take the actions required under proposed rule G-36.

⁴ Rule 15c2-12(c) exempts from the rule issues in denominations of \$100,000 or more if such securities: (1) are sold to no more than 35 financially sophisticated persons; or (2) have a maturity of nine months or less; or (3) at the option of the holder may be tendered to the issuer for redemption or purchase at least as frequently as every nine months until maturity, early redemption, or purchase by the buyer.

the Board believes that such documents may not be very useful to repository users. Privately-placed securities probably will not be heavily traded in the secondary market and short-term issues will mature soon after the official statement is placed in the repository. The Board, however, urges underwriters to provide official statements for such issues voluntarily, along with a completed Form G-36, if they wish them to be included in the repository.

The official statements must be sent, by certified or registered mail, or some other equally prompt means that provides a record of sending, within one business day of receipt from the issuer for issues subject to rule 15c2-12 but no later than 10 business days after the date of the final agreement to purchase, offer or sell the municipal securities, and within one business day of closing for other issues. The latter requirement ensures that the Board is not inserting itself into the official statement preparation process—but recognizes that if final official statements are prepared, they are completed by closing.

In addition, rule G-36(d) would require underwriters to send to the Board amended or "stickered" official statements if the issuer provides the amendment during the underwriting period. Underwriters also must provide a statement including the CUSIP number or numbers for the issue, the fact that official statements previously had been sent to the Board and that the official statement has been amended.

Rule G-36(e) would provide that, if an issue is cancelled after documents are provided to the Board or its designee, the underwriter must notify the Board promptly, in writing, of this fact. Through this provision the Board would ensure that the repository does not collect and disseminate documents for cancelled issues. Finally, rule G-36(g) would require that, within 60 days of the effective date of the rule, underwriters send to the Board the documents and written information referred to in rule G-36 for each offering of municipal securities from the effective date of SEC rule 15c2-12 (January 1, 1990) to the effective date of rule G-36.

Proposed Amendments to Rule G-8

The proposed amendments to rule G-8 would require the underwriter to keep a record of the name, par amount and CUSIP number or numbers of all issues subject to rule G-36, along with the dates that the documents are received from the issuer and are sent to the Board or its designee and, for issues subject to rule 15c2-12, the date of the final agreement to purchase, offer, or sell the municipal securities. The proposed rule change is designed to assist in ensuring compliance with certain of the requirements of rule 15c2-12 and rule G-36.

Summary of Comments

In August 1989, the Board published for comment draft rule G-36 and draft amendments to rule G-8. The Board received 10 comments in response to the draft rule.⁵ In general, most of the commentators supported the concept of a central repository for official statements operated by the Board.

Draft Rule G-36: Issues Subject to Rule G-36

Four commentators stated that the Board should make the rule applicable to all issues, not just those subject to rule 15c2-12, if official statements are made available by the issuer. Three commentators, however, stated that the Board should limit application of draft rule G-36 to issues subject to rule 15c2-12. The Board has determined to extend the rule to certain issues not subject to rule 15c2-12, *i.e.*, certain issues of less than \$1 million. The Board believes it would be beneficial to have those official statements in the repository. As noted above, the rule does not apply to other issues exempt from rule 15c2-12 (*i.e.*, certain private placements and short-term issues, whether above or below the \$1 million threshold) because such documentation may not be very useful to repository users.

Documents to be Sent to Repository

While there was a consensus among the commentators that official statements should be delivered to the Board, three commentators stated that there are problems with the requirement to deliver refunding documents. As discussed in an accompanying notice, the Board has deleted this requirement from proposed rule G-36 but has published revised provisions on the delivery of refunding documents for additional industry comment.

Six commentators agreed that draft rule G-36 should apply to stickered official statements. In response to these comments, the Board has added a new section (d) to rule G-36 to require underwriters to send to the Board amended or "stickered" official statements, if prepared by the issuer during the underwriting period. Underwriters also must provide a statement including the CUSIP number or numbers for the issue, the fact that the official statement previously had been sent to the Board and that the official statement has been amended.

Where to Send Documents

One commentator asked that the Board revise the draft rule to require underwriters to send the required documents to the Board and any Nationally Recognized Municipal Securities Information Repository (NRMSIR).⁶ It stated that it should not be unduly burdensome for underwriters to provide such documents since the number of NRMSIR applicants does not appear to be large. In addition, it noted that having the documents delivered to the Board and the NRMSIRs ensures that each NRMSIR has a complete set of all official statements without a requirement for an electronic linkage between the NRMSIRs and the Board.

The Board's repository will be the "public library" for official statements that will not only collect and disseminate the information for one or two months after the underwriting period, but also will retain the information for the life of the issue and for a certain period beyond. Its main functions are to be the permanent base for historical information on municipal securities and the central location for dissemination of more current municipal securities documents to assist the functioning of the municipal

⁵ See *MSRB Reports*, vol. 9, no. 2 (August, 1989), p. 3. The comment letters are available for inspection at the Board's offices.

⁶ Rule 15c2-12 provides that, if the final official statement is available from an NRMSIR, a dealer's obligation to provide a copy of a final official statement to a potential customer, if requested, ends 25 days after the underwriting period, instead of 90.

securities market and facilitate Board rulemaking.

The Board decided against requiring underwriters to send copies of official statements to the Board and all NRMSIRs. It is unclear how many organizations will apply for NRMSIR status—particularly if the Board provides them, by rule, with the right to receive free official statements for all new issues. The Board believes it would be onerous to put such an open-ended burden on the dealer community. In addition, it is not clear how underwriters can be kept apprised of which entities have acquired NRMSIR status and how the enforcement agencies (*i.e.*, NASD and banking agencies) could inspect for compliance with such a rule.

The Board also believes that it is inappropriate to write rules that benefit certain private, profit-making ventures. In addition, the Board does not believe it would be fair to mandate that certain information disseminators (*i.e.*, NRMSIRs) receive free documents while other information disseminators do not—only because they did not apply for NRMSIR status. Once the Board's repository is operational, the Board will provide information to any party, including NRMSIRs, which requests it. The Board expects that the pricing of documents in the repository will take into account the difference between single document requests and multi-document requests which can be handled less expensively (*i.e.*, in "bulk"). Any organization that provides a useful service to dealers should be able to obtain official statements voluntarily from dealers. The Board urges underwriters to send official statements to NRMSIRs and other information vendors prior to and after the Board's repository begins operation.

Timing of Delivery of Documents

A number of commentators questioned the portion of the draft rule requiring, for issues subject to SEC rule 15c2-12, delivery of the required documents to the Board within one business day after receipt of the final official statement from the issuer. Five commentators suggested that the Board change the requirement to "send" within one business day by first class mail. This would allow the required documents to reach the Board quickly, but not require dealers to pay for an overnight delivery service. Since rule 15c2-12 requires underwriters to deliver official statements to potential customers for at least 25 days after the end of the underwriting period, one commentator noted that Board receipt of official statements a day or two later will not affect the availability of official statements to investors.

The proposed rule was revised to require underwriters to send the official statement to the Board within one business day of receipt from the issuer by certified or registered mail, or some other equally prompt means that provides a record of sending (*e.g.*, by messenger, overnight delivery service, etc.). While this one to two day delay could be a problem for repository customers that need the documents quickly, the Board believes that the proposed revision is a helpful compromise. The requirement for some kind of receipt should assist underwriters in keeping certain records regarding compliance with the rule, as required by the draft amendments to rule G-8.

Two commentators were opposed to the portion of the rule requiring delivery to the Board of the final official statement for issues subject to rule 15c2-12 no later than eight business days

after concluding any final agreement to purchase the issue. They noted that it would be a burden on dealers, and result in technical violations of rule G-36, if the issuer or its agent fails to meet its contractual obligation under rule 15c2-12 to provide a final official statement to the underwriter within seven business days of the date of the final agreement to purchase the issue.

The Board believes that underwriters should not be subject to a rule violation for something outside of their control; however, it is important that issuers and underwriters do everything possible to ensure that the issuer is able to comply with its contractual requirement to provide final official statements in a timely fashion. The Board revised this provision to require underwriters to send the official statement no later than 10 business days from the date of the final agreement to purchase the securities. Changing the "delivery no later than eight business days" requirement to "send no later than 10 business days" gives underwriters an additional three business days past the contractual delivery date to send the official statement before any violation of rule G-36 occurs.

Miscellaneous

In regard to sending the Board information about cancelled issues, two commentators stated that the requirement is a good one and one commentator added that the information could be provided to the Board within five business days of cancellation. The "promptly" standard in the draft rule remains.

One commentator was opposed to the requirement that underwriters provide copies of official statements from January 1 to the effective date of rule G-36 because of the administrative burdens and costs for underwriters. The provision remains because the burden on underwriters should not be great since the Board expects the rule to become effective early in 1990. After January 1, 1990, the Board will accept voluntary delivery of official statements prior to the effective date of rule G-36.

Draft Amendments to Rule G-8

Two commentators agreed that the draft amendments to rule G-8 would be helpful to ensure compliance with rule G-36. In response to the Board's question whether any further recordkeeping requirements to ensure compliance with rule 15c2-12 should be added, two commentators stated their opposition to any such requirement because they believe underwriters should be able to develop their own method of compliance and not be chilled by being required to record certain items under the Board's rules.

The proposed amendments were revised to require underwriters to keep records regarding compliance with rule G-36, including the new provisions regarding issues not subject to rule 15c2-12 and stickered official statements. While the Board has the authority to adopt extensive recordkeeping requirements to ensure compliance with rule 15c2-12, the Board added only one item to the draft amendments to rule G-8 at this time—the date of the final agreement to purchase the issue. This will allow enforcement agencies to review the timing of the delivery of official statements by issuers or their agents to underwriters and the subsequent sending of the official statements to the Board. If, over time, compliance procedures with

SEC rule 15c2-12 seem to be lacking, the Board could consider whether additional rulemaking is necessary.

November 13, 1989

Text of Proposed Rule, Amendments and Form G-36*

Rule G-36. Delivery of Final Official Statements and Form G-36 to Board or its Designee

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

(i) The term "final official statement" shall mean a document or documents defined in Securities Exchange Act rule 15c2-12(e)(3).

(ii) The term "primary offering" shall mean an offering defined in Securities Exchange Act rule 15c2-12(e)(7).

(b) Delivery Requirements for Issues Subject to Securities Exchange Act Rule 15c2-12. Each broker, dealer or municipal securities dealer that acts as an underwriter in a primary offering of municipal securities subject to Securities Exchange Act rule 15c2-12 shall send to the Board or its designee by certified or registered mail, or some other equally prompt means that provides a record of sending, within one business day after receipt of the final official statement from the issuer or its designated agent, but no later than 10 business days after any final agreement to purchase, offer, or sell the municipal securities, the following documents and written information: one copy of the final official statement; and a completed Form G-36 prescribed by the Board, including the CUSIP number or numbers for the issue.

(c) Delivery Requirements for Issues not Subject to Securities Exchange Act Rule 15c2-12.

(i) Subject to paragraph (ii), below, each broker, dealer, or municipal securities dealer that acts as an underwriter in a primary offering of municipal securities not subject to Securities Exchange Act rule 15c2-12 shall send to the Board or its designee, by certified or registered mail, or some other, equally prompt means that provides a record of sending, within one business day of delivery of the securities by the issuer to the broker, dealer, or municipal securities dealer, the following documents and written information: a copy of the official statement in final form, if prepared by or on behalf of the issuer; and a completed Form G-36 prescribed by the Board, including the CUSIP number or numbers for the issue.

(ii) This section shall not apply to primary offerings of municipal securities, regardless of the amount of the issue, if the issue qualifies for an exemption set forth in Securities Exchange Act rule 15c2-12(c).

(d) Amended Official Statements. In the event a broker, dealer, or municipal securities dealer provides to the Board or its designee an official statement pursuant to sections (b) or (c),

above, and the official statement is amended or "stickered" by the issuer during the underwriting period, such broker, dealer, or municipal securities dealer must send to the Board or its designee, by certified or registered mail, or some other equally prompt means that provides a record of sending, the amended official statement within one business day of receipt from the issuer, along with a statement including: the CUSIP number or numbers for the issue; the fact that the official statement previously had been sent to the Board or its designee and that the official statement has been amended.

(e) Cancellation of Issue. In the event a broker, dealer or municipal securities dealer provides to the Board or its designee the documents and written information referred to in sections (b) or (c), above, but the issue is later cancelled, the broker, dealer, or municipal securities dealer shall notify the Board or its designee of this fact promptly in writing.

(f) Underwriting Syndicate. In the event a syndicate or similar account has been formed for the underwriting of a primary offering of municipal securities, the managing underwriter shall take the actions required under the provisions of this rule and comply with the recordkeeping requirements of rule G-8(a)(xv).

(g) Delivery of Final Official Statements and Form G-36 for Issues Prior to the Effective Date of Rule G-36. By [insert 60 days from the effective date of rule G-36], each broker, dealer and municipal securities dealer that acts as an underwriter in a primary offering of municipal securities shall send to the Board or its designee by certified or registered mail, or some other equally prompt means that provides for a record of sending, the documents and written information referred to in sections (b), (c) or (d), above, for each primary offering of municipal securities sold on or after January 1, 1990 to [insert the effective date of rule G-36].

* * *

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

(a) Descriptions of Books and Records Required to be Made (i) through (xiv) No change.

(xv) Records Concerning Delivery of Final Official Statements and CUSIP Numbers to the Board or its Designee. A broker, dealer or municipal securities dealer that acts as an underwriter in a primary offering of municipal securities subject to rule G-36 (or, in the event a syndicate or similar account has been formed for the purpose of underwriting the issue, the managing underwriter) shall maintain a record of: the name, par amount and CUSIP number or numbers for all such primary offerings of municipal securities and the dates that the documents and written information referred to in Rule G-36 are received from the issuer and are sent to the Board or its designee and, for issues subject to Securities Exchange Act rule 15c2-12 the date of the final agreement to purchase, offer or sell the municipal securities.

* Underlining indicates new language.

FORM G-36

FULL NAME OF ISSUER/DESCRIPTION OF ISSUE

STATE

CITY/COUNTY

PAR VALUE OF ISSUE

DATE OF FINAL MATURITY

DATED DATE

CUSIP NUMBERS (and corresponding maturity dates)

_____	_____
_____	_____
_____	_____
_____	_____

MANAGING UNDERWRITER

Prepared by

Telephone No.



Route to:

- Manager, Muni Dept.**
- Underwriting**
- Trading**
- Sales**
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- Compliance**
- Training**
- Other _____**

Delivery of Refunding Documents to the Board: Rules G-36 and G-8

Comments Requested

The Board requests comments regarding the draft amendments on—

- whether the definition of "refunding documents" includes useful information on refunded issues without also including unnecessary documents;
- whether additional information should be required;
- whether the timing of the sending of the documents to the Board is reasonable and whether the underwriter has access to these documents at closing; and
- whether the Board should consider requiring trust indentures for all issues, not just refunded issues, to be sent to the Board for inclusion in the repository.

The Board plans to create a repository to store and index official statements and provide copies of the documents to parties requesting them for a fee. The Board believes that the repository also should include documents regarding the refunding of an issue of municipal securities to assist market participants in the buying and selling of the refunded issue.

In August 1989, the Board requested comment on draft rule G-36 which would require underwriters to deliver to the Board or its designee a copy of the final official statement, along with certain refunding documents for issues that are advance refunded, to be placed in the repository. The draft rule also would require underwriters to keep certain records, under rule G-8, regarding compliance with draft rule G-36. As explained in an accompanying notice, the Board approved a revised rule G-36 and amendments to rule G-8 and has filed them with the Securities and Exchange Commission. The proposed rule and amendments will be effective 30 days after Commission approval. These amendments, however, deleted reference to the delivery of refunding documents to the Board. While the Board intends to adopt a delivery requirement for these documents, it has determined to publish for comment a revised provision regarding refunding documents.

Summary of Comments

The August 1989 version of rule G-36 defined refunding documents as those documents that set forth the terms and

conditions under which an issue of municipal securities is advance refunded, including the refunding escrow trust agreement, or its equivalent, and the notice of defeasance. The draft rule required the underwriter to deliver such documents within one business day of receipt from the issuer or its agent but no later than eight business days after the date of the final agreement to purchase, offer or sell the municipal securities.

A number of commentators on the draft rule expressed general approval for the delivery of refunding documents. Two commentators, however, were opposed to the definition of refunding documents in the rule. One commentator noted that the definition was vague, unnecessarily broad and placed an unwarranted burden on underwriters, as well as on the future users of the repository, because it could include a number of lengthy documents (e.g., bond ordinances, legal opinions, escrow agreements and arbitrage certificates) that would not be useful but would have to be collected and delivered by underwriters. This commentator stated that the information regarding the escrow and scheduled redemptions of refunded bonds typically is available in the notice of defeasance and notice of call and suggested that the rule require the filing only of these documents for refunded issues. Another commentator stated that the refunding documents called for in the rule were often beyond the control of the underwriter to obtain, at least prior to closing, and that refunding documents often are incomplete without reference to the documents of the refunded issue, for example, the refunded issue's official statement. The commentator noted that these documents would not necessarily be available in the repository.

Both commentators also questioned the timing of the delivery requirement, citing the possibility of changes in these documents until the closing of the issue.

Summary of Revised Draft Amendments

Prior to adopting a delivery requirement for refunding documents, the Board has decided to elicit further comment on a revised definition of refunding documents and the timing of delivery of these documents. The Board is proposing draft amendments to rule G-36 which would define refunding documents to include the refunding escrow trust agreement, notice

Comments on the draft amendments should be submitted no later than January 19, 1990, and may be directed to Diane G. Klinke, General Counsel. Written comments will be available for public inspection.

of defeasance, and trust indenture for the refunded issue (or their equivalents). The Board believes that the completeness of information provided in the notice of defeasance varies and the specific information required by the draft amendments should assist market participants in the buying and selling of refunded issues.

The draft amendments would require underwriters to send the refunding documents to the Board within one business day of closing of the issue. This should allow underwriters to obtain the final version of these documents in sufficient time to send them to the repository.¹

Request for Comment

The Board requests comment on the draft amendments. Specifically, comment is requested whether the definition of refunding documents includes useful information on refunded issues without also including unnecessary documents. The Board also requests comment whether additional information should be required (e.g., the accountant's report on the adequacy of the escrow account and the official statement for the refunded issue). In addition, the Board asks whether the timing of the sending of the documents to the Board is reasonable and whether the underwriter has access to these documents at closing. Finally, the Board requests comment whether the Board should consider requiring trust indentures for all issues, not just refunded issues, to be sent to the Board for inclusion in the repository.

November 14, 1989

Text of Revised Draft Amendments*

Rule G-36. Delivery of Final Official Statements, Refunding Documents and Form G-36 to Board or its Designee

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

- (i) and (ii) No change.
- (iii) The term "refunding documents" shall mean the refunding escrow trust agreement, the notice of defeasance, and the trust indenture for the refunded issue (or their equivalents).

(b) *Delivery Requirements for Issues Subject to Securities Exchange Act Rule 15c2-12.*

(i) Each broker, dealer or municipal securities dealer that acts as an underwriter in a primary offering of municipal securities subject to Securities Exchange Act rule 15c2-12 shall send to the Board or its designee by certified or registered mail, or some other equally prompt means that provides a record of sending, within one business day after receipt of the final official statement from the issuer or its designated agent, but no later than 10 business days after any final agreement to purchase, offer, or sell the municipal securities, the following documents and written information: one copy of the final official statement; and a com-

pleted Form G-36 prescribed by the Board, including the CUSIP number or numbers for the issue and, in the case of an advance refunding, for the refunded issue.

(ii) If the issue advance refunds an outstanding issue of municipal securities, each broker, dealer or municipal securities dealer that acts as an underwriter in such issue also must send to the Board or its designee the refunding documents, by certified or registered mail, or some other equally prompt means that provides a record of sending within one business day of delivery of the securities by the issuer to the broker, dealer, or municipal securities dealer.

(c) *Delivery Requirements for Issues not Subject to Securities Exchange Act Rule 15c2-12.*

(i) Subject to paragraph (ii), below, each broker, dealer, or municipal securities dealer that acts as an underwriter in a primary offering of municipal securities not subject to Securities Exchange Act rule 15c2-12 shall send to the Board or its designee, by certified or registered mail, or some other equally prompt means that provides a record of sending, within one business day of delivery of the securities by the issuer to the broker, dealer, or municipal securities dealer, the following documents and written information: a copy of the official statement in final form, if prepared by or on behalf of the issuer; if the issue advance refunds an outstanding issue of municipal securities, the refunding documents, and a completed Form G-36 prescribed by the Board, including the CUSIP number or numbers for the issue and, in the case of an advance refunding, for the refunded issue. 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 one is prepared by or on behalf of the issuer, and a completed Form G-36, noting that no final official statement is being prepared, shall be sent to the Board, by the method and within the timeframe noted above.

(ii) This section shall not apply to primary offerings of municipal securities, regardless of the amount of the issue, if the issue qualifies for an exemption set forth in Securities Exchange Act rule 15c2-12(c).

(d) through (f) No change.

(g) *Delivery of Final Official Statements, Refunding Documents and Form G-36 for Issues Prior to the Effective Date of Rule G-36.* By [insert 60 days from the effective date of rule G-36], each broker, dealer and municipal securities dealer that acts as an underwriter in a primary offering of municipal securities shall send to the Board or its designee by certified or registered mail, or some other equally prompt means that provides for a record of sending, the documents and written information referred to in sections (b), (c) or (d), above, for each primary offering of municipal securities sold on or after January 1, 1990 to [insert the effective date of rule G-36].

* * *

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

(a) *Descriptions of Books and Records Required to be Made*

¹ Draft amendments to rule G-8 and a revised Form G-36 regarding refunding documents also follow this notice.

* Underlining indicates new language.

(i) through (xiv) No change.
 (xv) *Records Concerning Delivery of Final Official Statements, Refunding Documents and CUSIP Numbers to the Board or its Designee.* A broker, dealer or municipal securities dealer that acts as an underwriter in a primary offering of municipal securities subject to rule G-36 (or, in the event a syndicate or similar account has been formed for the purpose of underwriting the issue, the managing under-

writer) shall maintain a record of: the name, par amount and CUSIP number or numbers for all such primary offerings of municipal securities and the dates that the documents and written information referred to in Rule G-36 are received from the issuer and are sent to the Board or its designee and, for issues subject to Securities Exchange Act rule 15c2-12, the date of the final agreement to purchase, offer or sell the municipal securities.

FORM G-36

FULL NAME OF ISSUER/DESCRIPTION OF ISSUE _____

STATE _____

CITY/COUNTY _____

PAR VALUE OF ISSUE _____

DATE OF FINAL MATURITY _____

DATED DATE _____

CUSIP NUMBERS (AND CORRESPONDING MATURITY DATES)

CUSIP NUMBERS (AND CORRESPONDING MATURITY DATES) FOR REFUNDED ISSUE (IF APPLICABLE)

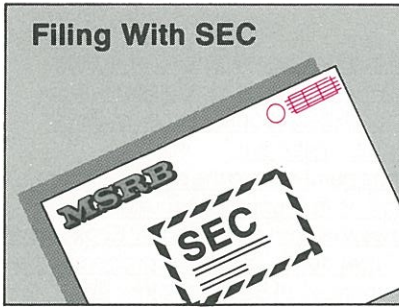
CHECK ONE

Originally-assigned CUSIP Numbers (No new numbers assigned) _____

New numbers required to be assigned (See Rule G-34) _____

MANAGING UNDERWRITER _____

Prepared by _____ Telephone No. _____



Route to:

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

Supervision Requirements: Rules G-27 and G-9

Amendments Filed

The amendments would provide more specific guidance as to the supervisory responsibilities of dealers.

On November 16, 1989, the Board filed with the Securities and Exchange Commission amendments to rules G-27 on supervision and G-9 on preservation of records.¹ The amendments will provide more specific guidance in rule G-27 as to the supervisory responsibilities of dealers and clarify rule G-9 as it applies to rule G-27. The Board has requested that the Commission delay the effectiveness of the amendments for a period of six months following the date of Commission approval in order to provide dealers an opportunity to review their procedures to ensure compliance with the amendments.

The amendments to rule G-27 extensively revise the rule to clarify that an effective supervisory system has three components: (i) the specific designation of each principal, including his area of supervisory responsibility; (ii) the adoption and maintenance of detailed written supervisory procedures designed to ensure that a dealer's business and the municipal securities activities of its associated persons are in compliance with Board and other applicable rules; and (iii) at least an annual review of its supervisory system and written procedures to ensure that they are adequate and up-to-date and to determine whether the dealer is in compliance with Board and other applicable rules.²

November 16, 1989

Text of Draft Amendments*

G-27. Supervision

(a) through (e)

(a) Obligation to supervise. Each broker, dealer and municipal securities dealer ("dealer") shall supervise the conduct of its

municipal securities business and the municipal securities activities of its associated persons to ensure compliance with Board rules and the applicable provisions of the Act and rules thereunder ("applicable rules").

(b) Designation of principals.

(i) General. Each dealer shall specifically designate one or more associated persons qualified as municipal securities principals, municipal securities sales principals, financial and operations principals in accordance with Board rules, or as general securities principals to be responsible for the supervision of its municipal securities business and the municipal securities activities of its associated persons as required by this rule.

(ii) Written Record. A written record of each supervisory designation and of the designated principal's responsibilities under this rule shall be maintained and updated as required under rule G-9.

(iii) Appropriate principal. Each dealer shall designate a municipal securities principal as responsible for its supervision under sections (a) and (c) of this rule, except as provided in this section. A non-bank dealer shall, and a non-bank dealer meeting the requirements of Securities Exchange Act rule 15c3-1(a)(2) or (3) or the exemption under rule 15c3-1(b)(3) may, designate a financial and operations principal as responsible for the financial reporting duties specified in rule G-3(a)(ii)(A-E) and with primary responsibility for books and records under section (c)(v) below. In addition, a municipal securities sales principal may be designated as responsible for supervision under sections (c)(ii), (iii) and (vii) of this rule, to the extent the activities pertain to sales to or purchases from a customer; a general securities principal may be designated as responsible for supervision under sections (c)(v) and (vii)(A) of this rule and under rules G-7(b) and G-21(e); and a financial and operations principal may be designated as responsible for supervision under section (c)(vi) of this rule.

(c) Written supervisory procedures. Each dealer shall adopt,

Questions about the amendments may be directed to Diane G. Klinke, General Counsel.

¹ SEC File No. SR-MSRB-89-12. Comments filed with the Commission should refer to the file number.

² See *MSRB Reports*, Vol. 9, No. 2 (August 1989) pp. 13-15 for a more complete summary of the amendments.

* Underlining indicates new language; strikethrough indicates deletions.

maintain and enforce written supervisory procedures reasonably designed to ensure that the conduct of its municipal securities business and the municipal securities activities of its associated persons are in compliance as required in section (a) of this rule. Such procedures shall codify the dealer's supervisory system for ensuring compliance and, at a minimum, shall establish procedures

(i) that state how a designated principal shall monitor for compliance by the dealer with all applicable rules and supervise the activities of associated persons specified in rule G-3(a)(iii);

(ii) a designated principal shall follow when a customer complaint concerning the dealer's municipal securities activities is received;

(iii) for the regular and frequent review and approval by a designated principal of customer accounts introduced or carried by the dealer in which transactions in municipal securities are effected; such review shall be designed to ensure that such transactions are in accordance with all applicable rules and to detect and prevent irregularities and abuses;

(iv) for the periodic review by a designated principal of each office which engages in municipal securities activities;

(v) for the maintenance and preservation, by a designated principal, of the books and records required to be maintained and preserved by rules G-8 and G-9 of the Board;

(vi) for the supervision by a designated principal of the processing, clearance, and in the case of a non-bank dealer safekeeping of municipal securities; and

(vii) for the prompt review and written approval by a designated principal of:

(A) the opening of each customer account introduced or carried by the dealer in which transactions in municipal securities may be effected;

(B) each transaction in municipal securities on a daily basis, including each transaction in municipal securities effected with or for a discretionary account introduced or carried by the dealer; and

(C) all correspondence pertaining to the solicitation or execution of transactions in municipal securities.

(d) Duty to update and review written procedures. Each dealer shall revise and update its written supervisory procedures as necessary to respond to changes in Board or other applicable rules and as other circumstances require. In addition, each dealer shall review, at least on an annual basis, its supervisory system and written supervisory procedures adopted under section (c) of this rule to determine whether they are adequate and up-to-date and shall ensure that the dealer is in compliance with this rule.

* * *

G-9. Preservation of Records

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

(i) - (vi) No change.

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

(b) - (g) No change.



Route to:

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

Arbitration Changes: Rules G-35 and A-16

Amendments Approved

The amendments relate to disclosure of predispute arbitration agreements and conform certain provisions of the Board's Arbitration Code and arbitration fees to amendments to the Uniform Code of Arbitration developed by the Securities Industry Conference on Arbitration.

On October 5, 1989, 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 relate to disclosure of predispute arbitration agreements and conform certain provisions of the Board's Arbitration Code and arbitration fees to amendments to the Uniform Code of Arbitration developed by the Securities Industry Conference on Arbitration, which is composed of representatives from the Board, nine other self-regulatory organizations, four public members and the Securities Industry Association. The amendments include provisions for fuller disclosure by arbitrators, more detailed discovery procedures, a requirement that a verbatim record of hearings be kept, requirements for information contained in awards and for making awards involving public customers available to the public, and raising the amount of claims considered to be small claims from \$5,000 to \$10,000. Amendments to sections 8(c) (ii), 8(c) (iii) and 12 (c) of rule G-35, on definitions of public and industry arbitrators, are still pending.²

The amendments to rule G-35 become effective on December 1, 1989 and the amendments to rule A-16 become effective for all cases filed after November 30, 1989.

October 5, 1989

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) No change.

(b)(1) No change.

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

(ii) through (f) No change.

Sections 6 through 7 No change.

Section 8. *Composition and Appointment of Panels*

(a) No change.

(b) ~~*Notice of Appointment; Objections.*~~ The Director of Arbitration shall inform the parties to the proceeding of the names and ~~business affiliations~~ employment histories for the past ten years of the persons appointed to the panel as well as information disclosed pursuant to section 13 at least 8 business days prior to the date fixed for the initial hearing session. A party may make further inquiry of the Director of Arbitration concerning the background of any arbitrator.

(c) *Objections*

(i) In any arbitration proceeding, each party shall have the right to one peremptory challenge. In arbitration proceedings where there are multiple claimants, respondents and/or third-party respondents, the claimants shall have one peremptory challenge, the respondents shall have one

Questions about this notice may be directed to Thomas A. Hutton, Director of Arbitration.

¹ SEC Release No. 34-27341.

² See *MSRB Reports*, Vol. 8, No. 5 (December 1988), pp. 15-17; *MSRB Reports*, Vol. 9, No. 1 (March 1989), pp. 15-17; and *MSRB Reports*, Vol. 9, No. 2 (August 1989), pp. 23-24.

* Underlining indicates new language; strike-through indicates deletions.

peremptory challenge and the third-party respondents shall have one peremptory challenge, unless the Director of Arbitration determines that the interests of justice would best be served by awarding additional peremptory challenges. Each party shall also have the right to request that the Arbitration Committee remove other members of the panel which the Arbitration Committee shall be empowered to do in its sole discretion. Unless extended by the Director of Arbitration, a party wishing to exercise a peremptory challenge or to request that the Arbitration Committee remove members of the panel must do so by notifying the Director of Arbitration in writing within five business days of notification of the identity of the persons named to the panel. There shall be unlimited challenges for cause.

- (ii) [amendment pending]
- (iii) [amendment pending]

Sections 9 through 11 No change.

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

- (a) through (b) No change.
- (c) [amendment pending]

Section 13. Required Disclosure by Arbitrators

(a) Each arbitrator shall be required to disclose to the Director of Arbitration any circumstances which might preclude such arbitrator from rendering an objective and impartial determination upon any matter submitted to arbitration. Each arbitrator shall disclose:

- (1) Any direct or indirect financial or personal interest in the outcome of the arbitration;
- (2) Any existing or past financial, business, professional, family or social relationships which are likely to affect impartiality or which might reasonably create an appearance of partiality or bias. Persons requested to serve as arbitrators should disclose any such relationships which they personally have with any party or its counsel, or with any individual whom they have been told will be a witness. They also should disclose any such relationship involving members of their families or their current employers, partners or business associates.

(b) Persons who are requested to accept appointment as arbitrators should make a reasonable effort to inform themselves of any interests or relationships described in Paragraph (a) above.

(c) The obligation to disclose interests or relationships described in Paragraph (a) above is a continuing duty which requires a person who accepts appointment as an arbitrator to disclose, at any stage of the arbitration, any such interests or relationships which arise, or which are recalled or discovered.

(d) Prior to the commencement of the first hearing session, the Director of Arbitration may remove an arbitrator who discloses such information. The Director of Arbitration also shall inform the parties of any information disclosed pursuant to this section if the arbitrator who disclosed the information is not removed.

Section 14. Disqualification or Other Disability of Arbitrators

(a) In the event that any arbitrator, after appointment and prior to the first hearing session, should become disqualified, resign, die, refuse or be unable to perform or discharge his duties, the

Director of Arbitration shall appoint a new member to the panel to replace such arbitrator.

(b) In the event that any arbitrator, after the commencement of the first hearing session but prior to the rendition of an award should become disqualified, resign, die, refuse or be unable to perform or discharge his duties as an arbitrator, the Director of Arbitration, upon such proof as the Director of Arbitration deems satisfactory shall, where permitted by law, either (a) appoint a new member to the panel to replace such arbitrator, obtaining the consent of the parties if necessary under applicable law, or (b) with the consent or waiver of the parties, direct that the arbitration proceed without the substitution of a new arbitrator the remaining arbitrator(s) may continue with the hearing and determination of the controversy, unless such continuation is objected to by any party within five days of notification of such disqualification. Upon objection, the Director of Arbitration shall appoint a new member to the panel to fill any vacancy.

(c) If a replacement arbitrator is named, the Director of Arbitration shall inform the parties as soon as possible of the name and employment history for the past ten years of the replacement arbitrator, as well as information disclosed pursuant to section 13. A party may make further inquiry of the Director of Arbitration concerning the replacement arbitrator's background and, within the time remaining prior to the next hearing session or the five business day period provided by Section 8, whichever is shorter, may exercise its right to challenge the replacement arbitrator as provided in Section 8.

Sections 15 through 21 No change.

Section 22. Discovery

[Section 22 renumbered Section 23(b)]

(a) Requests for Documents and Information

The parties shall cooperate to the fullest extent practicable in the voluntary exchange of documents and information to expedite the arbitration. Any request for documents or other information should be specific, relate to the matter in controversy, and afford the party to whom the request is made a reasonable period of time to respond without interfering with the time set for the hearing.

(b) Document Production and Information Exchange

(1) Any party may serve a written request for information or documents ("information request") upon another party twenty (20) business days or more after service of the statement of claim by the Director of Arbitration or upon service of the answer by the Director of Arbitration, whichever is earlier. The requesting party shall serve the written information request on all parties and file a copy with the Director of Arbitration. The parties shall endeavor to resolve disputes regarding an information request prior to serving any objection to the request. Such efforts shall be set forth in the objection.

(2) Any objection to an information request, in part or in whole, shall be served in writing by the objecting party on all parties and filed with the Director of Arbitration within fifteen (15) calendar days from the date of service. Any response to objections to an information request shall be served on all parties and filed with the Director of Arbitration within ten (10) calendar days of receipt of the objection.

(3) Unless an objection is filed or a greater time is allowed by the requesting party, information requests shall be satisfied within thirty (30) calendar days from the date of service.

(4) Upon the written request of a party whose information request is unsatisfied, the matter will be referred by the Director of Arbitration to the arbitrators or to a selected arbitrator under paragraph (e) of this section for resolution at least 10 days prior to any hearing on the substantive issues.

(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 witness which parties may use for cross-examination or rebuttal.

(d) Prehearing Conferences

Upon the request of an arbitrator or at the discretion of the Director of Arbitration, a prehearing conference shall be scheduled. The Director of Arbitration shall set the time and place of a prehearing conference and appoint a person to preside. The prehearing conference may be held by telephone conference call. The presiding person shall seek to achieve agreement among the parties on any issue which relates to the prehearing process or to the hearing, including but not limited to exchange of information, exchange or production of documents, identification of witnesses, identification and exchange of hearing documents, stipulation of facts, identification and briefing of contested issues, and any other matters which will expedite the arbitration proceedings or is necessary to permit any party to develop fully its case. Any issues raised at the prehearing conference that are not resolved may be referred to a single member of the arbitration panel by the Director of Arbitration for decision as described in subsection (e).

(e) Decisions by Selected Arbitrator

With the consent of a majority of the panel of arbitrators, the Director of Arbitration may appoint a single member of the Arbitration Panel to decide all unresolved issues referred to under this section and section 23. In matters involving public customers, such single arbitrator shall be a public arbitrator except the arbitrator may be either public or industry when the public customer has requested a panel consisting of a majority of industry arbitrators. Such arbitrator shall be authorized to act on behalf of the panel to issue subpoenas, direct appearances of witnesses and production of documents, set deadlines for compliance, and issue any other decision which will expedite the arbitration proceedings or is necessary to permit any party to develop fully its case. Decisions under this paragraph shall be made upon the papers submitted by the parties, unless the arbitrator calls a hearing. The arbitrator may elect to refer any issue under this paragraph to the full panel.

Section 23. Subpoena Process and Power to Direct Appearances

(a) The arbitrators and any counsel of record to a proceeding shall have the power of subpoena process as is now or may hereafter be provided by law. All parties shall be given a copy

of the subpoena upon its issuance. However, The parties shall produce witnesses and documents to the fullest extent possible without resort to the subpoena process.

(b) Prior to the first hearing session, the parties shall cooperate in the voluntary exchange of such documents and information as will serve to expedite the arbitration. If the parties agree, they may also submit additional documents to the Director of Arbitration. The arbitrators shall be empowered, without resort to subpoena process, to direct the appearance of any person employed by or associated with a municipal securities broker, dealer or municipal securities dealer and the production of any records in the possession or control of such person or any municipal securities broker, dealer or municipal securities dealer. Unless the arbitrators direct otherwise, the party requesting the appearance of a person or the production of documents under this section shall bear all reasonable costs incurred in connection with the appearance of such person or the production of documents.

Sections 24 through 26 No change.

Section 27. Record of Proceedings

Unless requested by the arbitrators or a party or parties to a dispute, no record of an arbitration proceeding shall be kept. If a record is kept, it shall be a verbatim record. A verbatim record by stenographic reporter or tape recording of all arbitration hearings shall be kept. If a party or parties to a dispute elect to have the record transcribed, the cost of such transcription shall be borne by the party or parties making the request unless the arbitrators direct otherwise. The arbitrators may also direct that the record be transcribed. If the record is transcribed at the request of any party, a copy shall be provided to the arbitrators.

Sections 28 through 30 No change.

Section 31. Awards

(a) through (e) No change.

(f) The award shall contain: (1) the names of the parties; (2) a summary by the arbitrators of the issues in controversy, the damages and/or other relief requested, the damages and/or other relief awarded, and a statement of any other issues resolved; and (3) the names of the arbitrators; (4) the dates the claim was filed and the award was rendered; (5) the number and dates of hearing sessions, and the location of the hearing(s), and (6) the signatures of those arbitrators concurring in the award.

(g) Awards involving public customers shall be made available for public inspection at the Board's offices except for: (1) the names of parties who are public customers unless the customer agrees to the disclosure of his identity; and (2) the names of the arbitrators. If a party to an arbitration involving a public customer wishes to review prior awards rendered by the arbitrators assigned to the party's current case, such awards will be made available to the party if the party requests such awards within three business days of notification of the names of the arbitrators.

Sections 32 through 33 No change.

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

(a) Any claim, dispute or controversy, arising between a customer and a municipal securities broker, dealer or municipal

securities dealer, subject to arbitration under this Arbitration Code, which involves a dollar amount not exceeding ~~\$5,000~~ \$10,000 (exclusive of attendant costs and interest), shall upon demand of the customer or by written consent of the parties be arbitrated as hereinafter provided.

(b) No change.

(c) The claimant shall ~~pay the sum of deposit~~ 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 or less~~, \$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~~ upon filing of the Submission Agreement. The final disposition of this ~~sum~~ deposit shall be determined by the arbitrator.

(d) The Director of Arbitration shall endeavor to serve promptly by mail or otherwise on the respondent one copy of the Submission Agreement and Statement of Claim. The respondent shall within 20 calendar days from receipt of service file with the Director of Arbitration one executed copy of the Submission Agreement and one copy of an answer, together with supporting documents. 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 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 ~~municipal securities broker, dealer~~ or municipal securities dealer. If the respondent 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 ~~\$5,000~~ \$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.

(e) No change.

(f) The claim, dispute or controversy shall be submitted to a single public arbitrator ~~knowledgeable in the municipal securities industry~~ selected by the Director of Arbitration. Unless the customer demands or consents to 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, such hearing shall be held as soon as practicable at a locale selected by the Director of Arbitration. The choice of locale by the Director of Arbitration may be reviewed by the Arbitration Committee if a party to a proceeding promptly files a request for review with the Director of Arbitration.

(g) through (l) No change.

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

(a) Any claim, dispute or controversy between or among ~~municipal securities brokers, dealers~~ and municipal securities dealers which involves a dollar amount not exceeding ~~\$5,000~~

\$10,000 (exclusive of attendant costs and interest), shall be arbitrated as hereinafter provided.

(b) through (c) No change.

(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 ~~\$5,000~~ \$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.

(e) through (j) No change.

Section 36. Predispute Arbitration Agreements with Customers

(1) Any predispute arbitration clause shall be highlighted and shall be immediately preceded by the following disclosure language (printed in outline form as set forth herein) which shall also be highlighted:

(a) Arbitration is final and binding on the parties.

(b) The parties are waiving their right to seek remedies in court, including the right to a jury trial.

(c) Pre-arbitration discovery is generally more limited than and different from court proceedings.

(d) The arbitrators' award is not required to include factual findings or legal reasoning and any party's right to appeal or to seek modification of rulings by the arbitrators is strictly limited.

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

(2) Immediately preceding the signature line, there shall be a statement, which shall be highlighted, that the agreement contains a predispute arbitration clause. The statement also shall indicate at what page and paragraph the arbitration clause is located.

(3) A copy of the agreement containing any such clause shall be given to the customer who shall acknowledge receipt thereof on the agreement or on a separate document.

(4) No agreement shall include any condition which limits or contradicts the rules of any self-regulatory organization or limits the ability of a party to file any claim in arbitration or limits the ability of the arbitrators to make any award.

(5) The requirements of this section shall apply only to new agreements signed by an existing or new customer of a dealer after December 1, 1989.

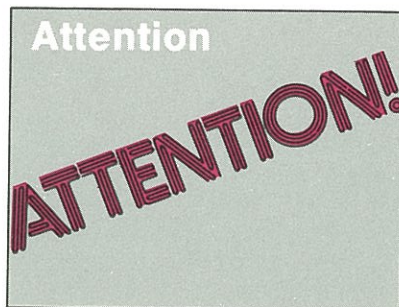
* * *

Rule A-16. Arbitration Fees and Deposits

(1) through (3) No change.

(4) Any matter submitted and thereafter settled or withdrawn prior to commencement of the first session shall entitle the parties to a refund of all but ~~\$25~~ \$50 of the amount deposited. This section shall not apply to claims filed under Section 34 of Rule G-35, the Arbitration Code.

(5) through (6) No change.

**Route to:**

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

CUSIP Numbers for Callable Multi-Series GOs: Rule G-34

Notice

Separate CUSIP number assignment is required for each series of a multi-series general obligation issue which can be called by series.

Rule G-34 requires underwriters and dealers participating in the placement of a new issue of municipal securities to ensure that an application is made for CUSIP numbers for the new issue.¹ The CUSIP Service Bureau assigns CUSIP numbers to reflect the differences in securities that are relevant to trading and investment decisions.² In addition, Board rules G-12 and G-15 require that CUSIP numbers appear on confirmations of transactions and that the securities delivered on those transactions match the CUSIP numbers appearing on the confirmations.³

Recently, certain questions have arisen about the proper method for assignment of CUSIP numbers to certain general obligation securities that have been issued in multiple series. In these issues, the issuer uses the proceeds from each series to fund a separate project, but the project itself offers bondholders no additional security for payment beyond that provided by the full faith and credit of the issuer. Securities within multiple series may be identical with respect to dated date, maturity, security and source of payment. However, an individual series may be called, in whole or part, at the option of the issuer, based on the series designation. In addition, the securities are subject to certain mandatory redemption features, which are exercisable by series and which are dependent upon the status of the project funded by the series.

Underwriters have encountered confusion as to whether each series within these issues should be assigned separate CUSIP numbers or whether the CUSIP number assignment for the issues should ignore the series designation. The Board wishes to clarify that, because of the possibility that the securities will be subject to early redemption by series designation, separate CUSIP numbers for each series are required.

The Board previously has indicated that a designation of multiple "purposes" for general obligation debt does not require separate CUSIP numbers for each purpose if the securities otherwise are identical.⁴ Accordingly, there are a number of outstanding multi-series general obligation issues which are assigned one CUSIP number for each maturity and which are traded, cleared, and settled without regard to series designation. While the Board does not wish to change this general rule, it believes that separate CUSIP number assignment is required for those multi-series issues which can be called by series. The Board notes that the probability of a partial or "in-whole" redemption of a series has the potential to become a significant factor to investors and that it therefore is necessary to preserve distinctions among the various series when trading, clearing and settling these securities.

The Board has consulted with the CUSIP Service Bureau in this matter and the Service Bureau has agreed to assign separate CUSIP numbers to multi-series general obligation issues which can be called by series. Dealers serving as underwriters for these issues therefore should not request the Service Bureau to ignore the series designation when assigning numbers to these issues.

November 13, 1989

**Questions about this notice may be directed
Harold L. Johnson, Associate General Counsel.**

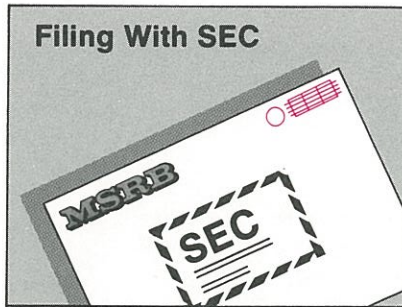
¹ The rule applies to all issues eligible for CUSIP number assignment. This includes nearly all new issue securities over three months in maturity.

² CUSIP numbers are assigned to municipal issues by their issuer title, dated date, interest rate, and maturity date. Municipal securities which are identical as to these four elements are assigned different numbers if there is a further distinction between the securities involving any of the following:

- (1) the call features of the securities (*i.e.*, whether or not securities are callable, date or terms of call feature, etc.);
- (2) any limitation of the pledge on a general obligation bond (*e.g.*, limited tax versus full faith and credit);
- (3) any distinction in the secondary security or the source of payment of a revenue bond;
- (4) the identity of any entity, besides the issuer, obligated on the debt service of the securities (*e.g.*, two pollution control revenue bonds secured by different corporate obligors); and
- (5) any distinction in the secondary security or the source of payment of a general obligation bond.

³ Certain exceptions to these rules exist for securities which have not been assigned CUSIP numbers and instances in which the CUSIP number on a confirmation and the CUSIP number assigned to securities differ only because of a transposition or transcription error.

⁴ See *MSRB Reports* Vol. 2, No. 1, (January 1982), p. 3. Of course, if specific portions of a general obligation issue are additionally backed by the revenues from various issuer activity or proceeds from various projects (so-called "double-barrelled" issues), separate CUSIP numbers are required to reflect these distinctions.



Route to:

- Manager, Muni Dept.
- Underwriting
- Trading
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- Compliance
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Technical Amendment: Rule G-32

Amendment Filed

The amendment clarifies that the commercial paper exemption within rule G-32 applies to both taxable and tax-exempt commercial paper.

On November 16, 1989, the Board filed with the Securities and Exchange Commission a technical amendment to rule G-32 regarding disclosures in connection with new issues.¹ The amendment clarifies that the commercial paper exemption within the rule applies to both taxable and tax-exempt commercial paper. The amendment will not become effective until approved by the Commission.

Rule G-32 requires a dealer that sells a new issue municipal security to deliver to the customer no later than the settlement of the transaction a copy of the official statement in final form prepared by or on behalf of the issuer or, if a final official statement is not being prepared by or on behalf of the issuer, a written notice to that effect. Rule G-32(c)(i) defines the term "new issue municipal securities" to mean securities of an issue that are sold by a broker, dealer or municipal securities dealer during the underwriting period, but shall not include issues of tax-exempt commercial paper.

In 1985, the Board revised rule G-32 to delineate more clearly the responsibilities of dealers that sell new issue securities as well as to strengthen and facilitate enforcement of the rule. During its deliberation of these amendments, the Board determined to exclude short-term commercial paper from the definition of new issue securities because issuers of those securities typically provide investors with quarterly disclosure documents although an official statement may not be prepared to accom-

pany any specific issue of these securities. The Board concluded that the disclosure process for these issues assures that investors receive material information pertaining to their investments in these securities and, given the differences between the disclosure practices for these issues and other types of municipal securities, it would not be appropriate to include these issues in the rule G-32 definition of new issue municipal securities.

Since the intent of the commercial paper exemption in rule G-32 was to exclude all short-term commercial paper, not just tax-exempt commercial paper, the technical amendment to rule G-32 clarifies this issue.

November 16, 1989

Text of Proposed Amendments*

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:

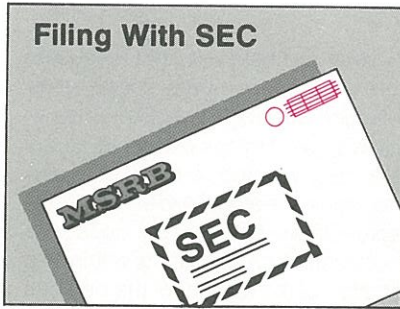
(i) The term "new issue municipal securities" shall mean municipal securities of an issue that are sold by a broker, dealer or municipal securities dealer during the issue's underwriting period, but shall not include issues of tax-exempt commercial paper.

(ii) through (iii) No change.

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

¹ SEC File No. SR-MSRB-89-11. Comments filed with the Commission should refer to the file number.

* Underlining indicates new language; strike-through indicates deletions.



Route to:

- Manager, Muni Dept.
- Underwriting
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- Compliance
- Training
- Other _____

Administrative Changes to Arbitration: Rule G-35

Amendments Filed

The proposed amendments would alter and more clearly define the duties and role of the Director of Arbitration and reconstitute the Board's Arbitration Committee to eliminate its role in reviewing case-specific decisions of the Director of Arbitration and to remove non-Board members.

On November 17, 1989, the Board filed with the Securities and Exchange Commission amendments to rule G-35, the Board's Arbitration Code.¹ The proposed amendments would alter and more clearly define the duties and role of the Director of Arbitration and reconstitute the Board's Arbitration Committee to eliminate its role in reviewing case-specific decisions of the Director of Arbitration and to remove non-Board members. The amendments will become effective upon approval by the Commission.

Director of Arbitration

The proposed amendments would make certain administrative changes regarding the role and duties of the Director of Arbitration such as: removing the Director of Arbitration's membership in, and reporting responsibilities to, the Arbitration Committee; giving the Board's Executive Director responsibility for appointing and assigning duties to the Director of Arbitration; and providing for the Director of Arbitration to designate another person to attend hearings.

Arbitration Committee

The Arbitration Code also currently contains specific provisions for an Arbitration Committee. The Arbitration Committee is comprised of three Board members—one bank dealer representative, one public representative, and one securities firm representative, three non-Board members—also one from each category, and the Director of Arbitration. As stated above, the proposed amendments would remove the Director of Arbitration as a member of the Committee.

tration as a member of the Committee.

The proposed amendments also would remove language providing for the Arbitration Committee to review case-specific determinations made by the Director of Arbitration—such as removing arbitrators from, and reviewing the time and place designated for, an arbitration hearing. The Board has determined that such review is no longer necessary or appropriate.

Finally, while certain other duties of the Committee remain in the Code (*i.e.*, establish and maintain a pool of arbitrators, and deny use of the forum) these duties historically have been performed by the Board members of the Arbitration Committee and would continue to be so performed. Thus, the proposed amendments would remove the Committee's non-Board members and it would no longer be necessary to reference the Committee in the Code.

November 17, 1989

Text of Proposed Amendments*

Rule G-35. Arbitration

Sections 1 through 2 no change.

Section 3. ~~Arbitration Committee Board~~

~~(a) Appointment.~~ The Board shall appoint an Arbitration Committee composed of seven members. The membership of the Arbitration Committee shall consist of three members of the Board, three persons who are not members of the Board and the Director of Arbitration. At all times, one of the members of the Board and one of the persons who are not members of the Board shall be associated with and representative of bank dealers, one each shall be associated with and representative of municipal securities brokers and municipal securities dealers other than bank dealers, and one each shall not be associated with any broker, dealer or municipal securities dealer. The non-Board members of the Arbitration Committee, other than the Director of Arbitration, shall serve for two-year terms and the

Questions about the proposed amendments may be addressed to Thomas A. Hutton, Director of Arbitration.

¹ SEC File No. SR-MSRB-89-13. Comments filed with the Commission should refer to the file number.

* Underlining indicates new language; strike-through indicates deletions.

~~Board members shall serve for one-year terms. The Director of Arbitration shall serve as a member of the Arbitration Committee at the pleasure of the Board. Vacancies on the Arbitration Committee shall be filled by the Board. Any person selected to fill a vacancy shall serve only for the remainder of the term of such person's predecessor. The Chairman of the Arbitration Committee shall be selected by the Board and shall serve as Chairman for a one-year term.~~

~~(b) *Duties*. The Arbitration Committee Board shall establish and maintain a pool of arbitrators composed of persons from within and without the municipal securities industry. The Arbitration Committee Board shall also have such other power and authority as provided in this Arbitration Code and as is necessary to effectuate the purposes of this Arbitration Code.~~

~~Section 4. *Director of Arbitration*~~

~~The Board Executive Director shall appoint a Director of Arbitration who shall be charged with the performance of the duties and functions set forth in this Arbitration Code or otherwise assigned to the Director of Arbitration by the Arbitration Committee Executive Director. The Director of Arbitration shall be directly responsible to the Arbitration Committee and shall report to it at periodic intervals established by the Arbitration Committee and at such other times as called upon by the Arbitration Committee to do so. The Director of Arbitration may, but need not be, a member or employee of the Board. Subject to the approval of the Board, the Arbitration Committee may designate an organization or a person other than the Director of Arbitration to perform the duties and functions of the Director of Arbitration set forth in this Arbitration Code, including, but not limited to, receipt of documents filed pursuant to this Arbitration Code, forwarding such documents to the appropriate persons, and notifying the parties and other persons as required by this Arbitration Code, and attending hearings. Such organization or person is referred to in this Arbitration Code as the "Committee designee."~~

~~Sections 5 through 6. no change.~~

~~Section 7. *Denial of Arbitration*~~

~~The Arbitration Committee may Director of Arbitration, upon approval of the Board, shall have the right to decline to permit the arbitration of any claim, dispute or controversy under this Arbitration Code which in its opinion, having due regard for the intent of the Arbitration Code, is not a proper subject matter for arbitration under this Code.~~

~~Section 8. *Composition and Appointment of Panels*~~

~~(a) through (b) no change.~~

~~(c) *Objections*~~

~~(i) In any arbitration proceeding, each party shall have the right to one peremptory challenge. In arbitration proceedings where there are multiple claimants, respondents and/or third-party respondents, the claimants shall have one peremptory challenge, the respondents shall have one peremptory challenge and the third-party respondents shall have one peremptory challenge, unless the Director of Arbitration determines that the interests of justice would best be served by awarding additional peremptory~~

~~challenges. Each party shall also have the right to request that the Arbitration Committee remove other members of the panel which the Arbitration Committee shall be empowered to do in its sole discretion. Unless extended by the Director of Arbitration, a party wishing to exercise a peremptory challenge or to request that the Arbitration Committee remove members of the panel must do so by notifying the Director of Arbitration in writing within five business days of notification of the identity of the persons named to the panel. There shall be unlimited challenges for cause.~~

~~(ii) through (iii) no change.~~

~~Sections 9 through 15. no change.~~

~~Section 16. *Designation of Time and Place of Hearings*~~

~~Unless the law directs otherwise, the time and place of the initial hearing shall be determined by the Director of Arbitration and for each ensuing hearing thereafter by the arbitration panel. Any party to a proceeding may seek review by the Arbitration Committee of the decision of the Director of Arbitration regarding the time or place of the initial hearing by promptly filing a request to that effect with the Director of Arbitration. In such cases the Arbitration Committee shall determine the time or place of the initial hearing. Notice of the initial hearing shall be delivered at least 8 business days prior to the date fixed for hearing by personal service or registered or certified mail to each of the parties and for each hearing thereafter as the arbitrator panel shall determine, unless the parties shall by their mutual consent waive the notice provisions provided under this section. Attendance at a hearing constitutes a waiver of notice thereof.~~

~~Section 17. no change.~~

~~Section 18. *Attendance at Hearings*~~

~~The attendance or presence of all persons including witnesses shall be determined by the panel of arbitrators; however, all parties to the arbitration and their counsel, and the Director of Arbitration and the Committee designee, if any, shall be entitled to attend all hearings.~~

~~Sections 19 through 33. no change.~~

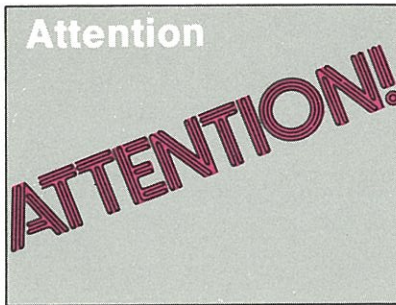
~~Section 34. *Simplified Arbitration for Small Claims Relating to Transactions with Customers*~~

~~(a) through (e) no change~~

~~(f) The claim, dispute or controversy shall be submitted to a single public arbitrator selected by the Director of Arbitration. Unless the customer demands or consents to 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, such hearing shall be held as soon as practicable at a locale selected by the Director of Arbitration. The choice of locale by the Director of Arbitration may be reviewed by the Arbitration Committee if a party to a proceeding promptly files a request for review with the Director of Arbitration.~~

~~(g) through (l) no change.~~

~~Sections 35 through 36 no change.~~

**Route to:**

- Manager, Muni Dept.
- Underwriting
- Trading
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Revisions to the Municipal Securities Representative Examination

Effective as of January 1, 1990

The Board has completed a review of the Municipal Securities Representative Qualification Examination (Test Series 52). A revised study outline for the examination is available upon request from the Board and will be implemented with all examinations administered on and after January 1, 1990.

A comprehensive review of the current study outline was undertaken by the Board's Professional Qualifications Advisory Committee to ensure that the subject matter of the examination reflects current products and practices and to realign some of the subjects for clarity. For the most part, the subject matter in the revised study outline is identical to that in the current outline. Some of the topics were reformatted for clarity, and several of the topics revised, *e.g.*, the topic of "Revenue Bonds" was expanded and reformatted to reflect the increasing use of these bonds in the market. The most significant revision concerns the subject of customer suitability. The current study outline tests "suitability" indirectly by testing the components of suitability, *e.g.*, product knowledge, tax considerations, Board rules. The revised outline contains the topic "Customer Suitability Considerations" as a direct means to test suitability. This will be achieved by requiring the candidates to answer "application" questions by making suitability determinations with respect to

a given customer's financial profile, investment objectives, tax status and similar information.

The examination is a three-hour, 100 question examination administered by the National Association of Securities Dealers, Inc. using the PLATO computer system. The passing grade is 70%.

Requests for copies of the revised study outline should be made to the Board at (202) 223-9347 or by writing to:

Municipal Securities Rulemaking Board
1818 N Street, NW Suite 800
Washington, DC 20036-2491
Attn: Publications

November 1, 1989

Questions concerning the Board's professional qualification program should be directed to Peter H. Murray, Assistant Executive Director or to Ronald W. Smith, Legal Assistant.

New Issue of *MSRB Manual*

The updated soft-cover edition of the *MSRB Manual*, dated October 1, 1989, now is available.

The *MSRB Manual*, published by Commerce Clearing House, includes the Securities Exchange Act of 1934, the Securities Investor Protection Act of 1970, Board rules and interpretations, pertinent regulations of other agencies and samples of forms.

Copies of the updated *Manual* may be obtained from the Board's offices by submitting a completed order form along with payment in full for the amount due. An order form is located on page 29 of this issue. The cost of the *Manual* is \$5.00.

Publications List

Manuals and Rule Texts

MSRB Manual

Soft-cover edition containing the text of MSRB rules, interpretive notices and letters, 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. Reprinted semi-annually.
October 1, 1989 \$5.00

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.
1989 5 copies per order 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*, the text of rules G-35 and A-16, a glossary of terms and list of sponsoring organizations.

1989 no charge

Instructions for Beginning an Arbitration

Step-by-step instructions and forms necessary for filing an arbitration claim.

1989 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 interpretations of MSRB rules, requests for comments from the industry and the public and news items.

Quarterly 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.
November 1989 no charge

Study Outline: Municipal Securities Principal Qualification Examination

Outline for Test Series 53.
May 1988 no charge

Brochures

MSRB Information for Municipal Securities Investors

Investor brochure describing Board rulemaking authority, the rules protecting the investor, arbitration and communication with the industry and investors. Use of this brochure satisfies the requirements of rule G-10.

1 to 500 copies no charge
Over 500 copies \$.01 per copy

MSRB Information

Brochure describing Board structure and responsibility, the rulemaking process, and communications with the industry.

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Over 500 copies \$.05 per copy

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Study Outline: Municipal Securities Principal Qualification Examination	no charge		
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