MSRB REPORTS

Volume 2, Number 3 | Municipal Securities Rulemaking Board | March/April 1982

Publication Dates

The Board initially announced that *MSRB Reports* would be published monthly. However, the publication schedule has been gradually extended to a publication date of every six to eight weeks. If there is any question whether you have received all issues, please refer to the "Volume" and "Number" on each issue. The issues published in 1981 were Volume 1, Numbers 1 through 4. The next issue (Volume 2, Number 4) is scheduled to be published during the first week of June.

In This Issue

New Issue Assessment Fee Decreased

Please ensure that those individuals responsible for payment of the assessment fee on new issues of municipal securities are made aware that this fee has been decreased from 3 cents to 2 cents effective April 1, 1982.

(see notice on page 5)

April–June

April 1 —effective date for reduction of assessment fee to 2 cents

June 1 —comments due on draft amendments to rule G-15 concerning yield disclosure requirements

June 7 —effective date for new rule G-33 on calculations

Pending—SEC approval of amendments to:
- rule G-12 (facilitating clearing through registered clearing agencies)
- rule G-9 (amending retention period for syndicate records)

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Notice of Approval

Route To:

- ☒ Manager, Muni. Dept.
- ☐ Underwriting
- ☒ Trading
- ☐ Sales
- ☒ Operations
- ☒ Compliance
- ☐ Training
- ☐ Other_____

Rule G-12

Amendments Approved Concerning Fungibility of Securities

On February 8, 1982, the Securities and Exchange Commission approved an amendment to Board rule G-12 on uniform practice. This amendment incorporated into the section of rule G-12 pertaining to "good delivery" certain provisions governing the fungibility (interchangeability) for delivery purposes of securities which are identical with respect to the issuer, interest rate, and maturity date, but differ in secondary details. The amendment reflected in major part previously-effective interpretations of other provisions of Board rules.

As of the approval of the amendment, Board rule G-12 requires that all securities delivered on an inter-dealer transaction must be identical with respect to

- the issuer, interest rate, and maturity date of the securities;
- whether the securities are subject to redemption prior to maturity;
- whether the securities are general obligation, limited tax, or revenue securities;
- the type of revenue, if the securities are revenue securities;
- the identity of any company or other person (in addition to the issuer) obligated on the debt service of the issue;
- the specific provisions of a call or advance refunding, if the securities have been called or advance refunded;
- the dated date and first coupon date, if the securities have an "odd" (short or long) first coupon; and
- the specifics of the call provisions (optional, mandatory, and extraordinary redemption features), if any, applicable to the securities.

The Board has solicited comment, in its January 15, 1982 notice on the specific identification of municipal securities, on the desirability of requiring that such securities also be identical with respect to the date of issuance ("dated date"); the Board has not taken action on this proposal as of this time. In addition, the Board expressed in that notice its intention to require that general obligation securities delivered on a transaction be identical with respect to the security or sources of payment of the issue; the Board will consider such a requirement in the near future, as changes to the industry's operational procedures are effected to remove impediments to making this distinction in deliveries.

The text of the amendment follows.

March 5, 1982

Questions or comments concerning this notice may be directed to Donald F. Donahue, Deputy Executive Director.

Text of Amendment*

Rule G-12. Uniform Practice

(a) through (d) No change.

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

(i) No change.

(ii) Securities Delivered. All securities delivered on a transaction shall be identical as to the information set forth in subparagraph (E) of paragraph (c) (v) and, to the extent applicable, the information set forth in subparagraphs (A) and (C) of paragraph (c) (vi). All securities delivered shall also be identical as to the call provisions of such securities.

(ii) through (xv) renumbered as (iii) through (xvi). No substantive change.

(f) through (l) No change.

* Underlining indicates new language.

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Rule A-13

New Issue Assessment Fee Decreased

The new issue assessment rate will be decreased to 2 cents effective April 1, 1982. An amendment to the Board's underwriting assessment rule (rule A-13) to decrease the assessment rate from 3 cents to 2 cents per $1,000 par value of new issue municipal securities has been approved by the Securities and Exchange Commission. The amendment will apply to new issues of municipal securities contracted for on or after April 1, 1982.

Municipal securities brokers and municipal securities dealers are required to pay the assessment fee on all new issues purchased by or placed through them which have an aggregate par value of $1,000,000 or more and a final stated maturity of not less than two years from the date of the securities. Prior to the proposed rule changes, the fee was calculated at the rate of $.03 per $1,000 of the par value of such securities. The proposed rule changes modify rule A-13 to provide that the fee payable with respect to new issues which a municipal securities broker or municipal securities dealer has contracted on or after April 1, 1982, to purchase from an issuer shall be calculated at the rate of $.02 per $1,000.

At the start of its fiscal year beginning October 1, 1981, the Board had an available fund balance of approximately $650,000. Since then, the fund balance has grown as assessment fee receipts have exceeded expectations and expenses have been well within budgetary limits. In view of this reserve the Board believes that a reduction in the assessment fee to $.02 per $1,000 is warranted. Based upon projections of the Board's expenses and revenues, assuming such reduction in the assessment fee, the Board expects that it will be able to continue its activities for at least 18 months without being required to increase the fee.

The 2 cent-rate is effective April 1, 1982. The fee payable on new issue municipal securities contracted for prior to April 1, 1982 should be calculated at the current rate of 3 cents per $1,000 par value. The table below shows the different rates which are applicable.

Date of Contract With Issuer	Size of Issue (Par Value)	
	Less than $1,000,000	$1,000,000 or more
October 1, 1980–March 30, 1982	No fee Payable	$.03
On or after April 1, 1982	No fee payable	$.02

The Board reminds municipal securities brokers and municipal securities dealers that rule A-13 requires the filing of certain information with the Board concerning new issues of municipal securities, including those issues on which no assessment fee is payable.

* * * * * *

The text of the amendment follows.

March 5, 1982

Text of Rule Changes.*

Rule A-13. Underwriting Assessment for Municipal Securities Brokers and Municipal Securities Dealers.

(a) In addition to the fees prescribed by other rules of the Board, each municipal securities broker and municipal securities dealer shall pay a fee to the Board equal to ~~.003% ($.03 per $1,000)~~ .002% (.02 per $1,000) of the par value of all municipal securities which are purchased from an issuer by or through such municipal securities broker or municipal securities dealer, whether acting as principal or agent, as part of a new issue which has an aggregate par value of $1,000,000 or more and which has a final stated maturity of not less than two years from the date of the securities; provided, however, that if such municipal securities broker or municipal securities dealer is a member of a syndicate or similar account formed for the purchase of such securities, such fee shall be calculated on the basis of the participation of such municipal securities broker or municipal securities

*Underlining indicates new language; material which is lined through has been deleted.

dealer in the syndicate or similar account. Such fee must be received at the office of the Board in Washington, D.C. not later than 30 calendar days following the date of settlement with the issuer. In the event a syndicate or similar account has been formed for the purchase of the securities, the fee shall be paid by the managing underwriter on behalf of each participant in the syndicate or similar account.

(b) - (c) No change.

(d) The fee prescribed in paragraph (a) shall be payable with respect to any new issue municipal security which a municipal securities broker or municipal securities dealer shall have contracted on or after ~~October 1~~, ~~1980~~ April 1, 1982 to purchase from an issuer. ~~Anything herein to the contrary notwithstanding, a fee calculated at the rate of .001% ($.01 per $1,000) shall be payable with respect to any new issue of municipal securities which a municipal securities broker or municipal securities dealer shall have contracted on or before December 31, 1979 to purchase from an issuer which has an aggregate par value of less than $1,000,000~~.

(e) No change.

Letter of Interpretation

Applicability of Assessment Fee to Private Placements

This is in response to your request for a clarification of the application of Board rule A-13, concerning the underwriting assessment for municipal securities brokers and municipal securities dealers, to private placements of municipal securities.

Rule A-13 imposes an assessment fee on the underwriting of new issue municipal securities as an equitable means of defraying the costs and expenses of operating the Board. The assessment fee applies to new issue municipal securities which are ". . . purchased from an issuer by or through [a] municipal securities broker, or municipal securities dealer, whether acting as principal or agent." The Board has consistently interpreted the rule as requiring payment of the assessment fee where a municipal securities dealer acting as agent for the issuer arranges the direct placement of new issue municipal securities with institutional customers or individuals.* In such cases it can be said that the securities are purchased from an issuer "through" the municipal securities dealer.

Of course, a municipal securities dealer who serves in an advisory role to an issuer on such matters as the structure or timing of a new issue, but who plays no part in arranging a private placement of the securities, would not be required to pay the assessment fee prescribed by rule A-13.—*MSRB interpretation of February 22, 1982 by Judith R. Sillari, Assistant General Counsel.*

*See, Interpretive Notice on Underwriting Assessment, February 20, 1976, *MSRB Manual* (CCH) ¶3061 at 3022.

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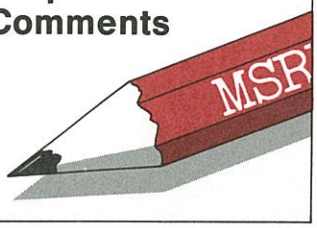
Request For Comments



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Rule G-15

Comments Requested Concerning Draft Amendment to Yield Disclosure Requirements

The Municipal Securities Rulemaking Board is circulating for public comment a draft amendment to the provisions of Board rule G-15 which currently require, in certain circumstances, the disclosure of a yield to premium call or a yield to par option on a confirmation sent to a customer. The amendment is being circulated for public comment prior to further consideration by the Board and filing with the Securities and Exchange Commission.

Board rule G-15 requires that a customer confirmation must set forth certain information with respect to the transaction being confirmed, including, among other matters, the yield and dollar price of the transaction. In the case of a transaction effected on the basis of a yield price, the confirmation must state the yield and the resulting dollar price, which must be computed to the lowest of price to premium call, price to par option, or price to maturity; if the transaction is priced to the call or option feature, this must be stated, and the particular call or option date and price used in the price computation must be shown. In the case of a transaction effected on the basis of a dollar price, the confirmation must state the dollar price and the resulting yield, computed to the lowest of yield to premium call, yield to par option, or yield to maturity; if the yield shown is computed to the call or option feature, however, the confirmation is not required to set forth the specific call or option date and price used in the yield computation.

The draft amendment would require that, if the yield shown on a confirmation is computed to a premium call or a par option, the details of call or option feature used in the yield computation must be specified. This would make the requirements of the rule internally consistent, regardless of the price basis of the transaction. The Board notes that this may also provide important information to customers concerning the specific conditions under which the yields shown on their confirmations would be realized.

The draft amendment would revise the provisions of rule G-15(a)(viii) to require confirmations to state:*
yield and dollar price as follows:

(A) for transactions effected on a yield basis, the yield at which transaction was effected and the resulting dollar price shall be shown. Such dollar price shall be calculated to the lowest of price to premium call, price to par option, or price to maturity.

(B) for transactions effected on the basis of dollar price, the dollar price at which transaction was effected, and the lowest of the resulting yield to premium call, yield to par option, or yield to maturity shall be shown.

(C) for transactions at par, the dollar price shall be shown.

In cases in which the resulting dollar price or yield shown on the confirmation is calculated to premium call or par option, this must be stated, and the call or option date and price used in the calculation must be shown;

All interested persons are invited to submit written comments to the Board on the draft amendment. The Board is mindful that certain previous changes to rule G-15 have necessitated significant reprogramming of computerized confirmation processing systems; the Board would be particularly interested in comments concerning the necessity for programming changes in connection with the draft amendment.

March 12, 1982

Letters of comment should be submitted to the Board on or before June 1, 1982, and should be sent to the attention of Donald F. Donahue, Deputy Executive Director, Municipal Securities Rulemaking Board, 1150 Connecticut Avenue, N.W., Suite 507, Washington, D.C. 20036, telephone (202) 223-9347. Written comments will be available for public inspection.

*New language is underscored; deleted language has been omitted.

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Municipal Lease and Installment Contract Participations

Application of Board's Rules to Participation Interests in Tax-exempt Lease Purchase Agreements and Installment Contracts

The staff of the Securities and Exchange Commission has taken the position that certain participation interests in tax-exempt installment contracts or lease purchase agreements are "municipal securities" as defined in the Securities Exchange Act.* The Act generally provides that a person or entity engaged in the business of effecting transactions in, or buying and selling, municipal securities must register with the Commission as a municipal securities broker or municipal securities dealer and qualify under the Board's professional qualification rules, and that transactions in municipal securities are subject to other applicable Board rules.** As the Board has previously noted, all of its rules apply to participation interests in municipal leases in the same way as they apply to other types of municipal securities.

For those persons or firms that may not be familiar with the Board's rules, the Board wishes to highlight at this time certain threshold requirements contained in its rules regarding fees and professional qualifications. With respect to the application of the Board's other rules, the Board expects to publish in a subsequent edition of *MSRB Reports* an exposure draft of certain proposed rule amendments that will apply specifically to transactions in participations in municipal leases and lease purchase agreements. In the interim, the Board welcomes the comments of interested persons regarding the application of the Board's rules to these municipal securities.

Fees and Assessments

Board Rule A-12 requires a municipal securities broker or municipal securities dealer to pay the Board an initial fee of $100 within 10 days from the date of its registration with the Securities and Exchange Commission. This fee must be accompanied by a written statement setting forth the name, address, and SEC registration number of the dealer. Further payment to the Board of an annual fee of $100 is required by rule A-14. In addition to these fees, a dealer is required by rule A-13 to pay the Board an assessment of 2 cents per $1000 of the par value of all new issues of municipal securities which it underwrites or places, and which have an aggregate par value of $1,000,000 or more and a final stated maturity date of not less than two years from the date of issuance.*** This assessment must be received at the Board's offices not later than 30 days following the date of settlement with the issuer and must be accompanied by one completed copy of the Board's Form A-13. Rule A-13 also requires the filing of certain information with the Board concerning new issues of municipal securities, including those issues on which no assessment fee is payable.

Any person or firm involved in the sale or placement of participations in municipal leases or installment contracts that must register with the Securities and Exchange Commission, must comply with the Board's initial and annual fee requirements, and any lease participation financings it places that meet the size and maturity requirements of rule A-13 are subject to the assessment fee.

Separately Identifiable Department or Division of a Bank

Rule G-1 defines a separately identifiable division or department of a bank as "that unit of the bank which conducts

Questions regarding the Board's qualifications requirements should be directed to Peter H. Murray, Assistant Executive Director, and questions regarding the application of other Board rules should be directed to Angela Desmond, Deputy General Counsel.

*See SEC staff letter dated September 1, 1981, reprinted in *MSRB Reports*, Volume 2, Number1.
**Questions whether particular issues of participation interests in municipal financings are "municipal securities" or whether particular activities will require registration as a municipal securities broker or municipal securities dealer should be directed to the Commission's Division of Market Regulation, Office of the Chief Counsel.
***Until April 1, 1982, the assessment is 3 cents per $1000 of the par value.

all activities of the bank relating to the conduct of business as a municipal securities dealer. . . ." The rule defines such activities to include, among other things, the underwriting, trading and sales of municipal securities or the rendering of financial advisory and consulting services to issuers in connection with the issuance of municipal securities.

Since municipal lease and installment contract participations are deemed to be municipal securities, the underwriting, trading and sale of these participations, as well as the furnishing of financial advisory services to an issuer regarding the issuance of these participations, are functions which must be included as a part of a bank's registered dealer department. The Board urges all bank dealers which have registered as a separately identifiable department or division to review their organizations and assure that all departments or units which carry on activities in municipal lease and installment contract participations are designated on the bank's Form MSD registration and other applicable bank records as part of its separately identifiable department or division. The Board also notes that such activities must be under the supervision of a person designated by the bank's board of directors as responsible for these activities.

Professional Qualifications

Board rule G-2 establishes standards of professional qualification by prohibiting municipal securities brokers and municipal securities dealers from effecting transactions in municipal securities unless they and their associated persons are qualified in accordance with Board rules. Board rule G-3 defines the categories of persons associated with municipal securities brokers and dealers. These include municipal securities representatives, whose activities generally involve underwriting, trading or sales of municipal securities, or financial advisory or consulting services for issuers of municipal securities, as well as categories of municipal securities principals who must supervise the various municipal securities activities of the dealer and its associated persons. Rule G-3 also establishes qualification examination and apprenticeship requirements for such persons, and specifies the number of supervisory personnel who must be associated with a municipal securities broker or dealer. These requirements must be met before a dealer may commence its municipal securities activities.

If a firm required to register as a municipal securities broker or municipal securities dealer has no personnel qualified in accordance with Board rules, it must immediately take the steps necessary to bring itself into compliance with those rules. Among other things, rule G-3 requires that:

- each individual who is to function as a municipal securities representative must meet certain apprenticeship requirements and satisfy the municipal securities representative qualification examination requirements;
- a municipal securities representative may not function in that capacity unless he is supervised by a municipal securities principal;
- a candidate for the municipal securities principal examination may not sit for such examination until he takes and passes the municipal securities representative examination or is otherwise qualified as a municipal securities representative; and,
- a municipal securities dealer (other than a bank dealer) may have to have at least one individual qualified as a financial and operations principal.

March 17, 1982

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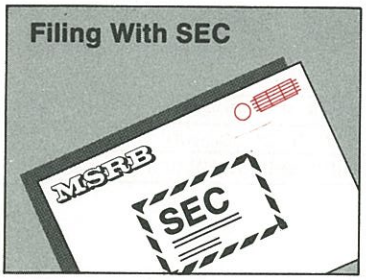

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Rule G-9

Amendment Filed Reducing Retention Period for Certain Syndicate Records

On March 17, 1982 the Municipal Securities Rulemaking Board filed with the Securities and Exchange Commission an amendment to Board rule G-9 concerning the retention of required records. The text of the amendment follows this notice.

Board rules G-8 and G-9 set forth requirements governing the making and preservation of books and records by municipal securities brokers and dealers. Rule G-8 (a)(viii) requires the certain municipal securities dealers functioning as managers of municipal securities underwriting syndicates record certain information concerning the activities of such syndicates, including, among other matters, "all orders received for the purchase of the securities . . . (except bids at other than syndicate price)," whether or not such orders were allocated syndicate securities.* Rule G-9 requires that these dealers preserve the records of syndicate transactions for a period of not less than six years.

The recently-filed amendment would substantially reduce the time period for which information concerning syndicate orders which are not allocated securities must be retained. The Board is aware that records of orders received by syndicates tend to be informal, due to the necessity for timely syndicate operations. The recordkeeping requirement, therefore, can result in the accumulation of a large volume of trading memoranda reflecting all of the orders received, necessitating a significant amount of warehousing space to maintain all of such records. Further, the Board is of the view that retention of the information pertaining to unfilled orders can be burdensome and is necessary for regulatory purposes only for a limited period of time. The Board has concluded that syndicate managers should be permitted to discard such information after this period has ended.

The Board believes that information concerning unfilled orders is necessary only in the event that questions or complaints are raised concerning the manager's allocation of securities to the orders received. In such cases, regulatory agencies might need to have access to a record of all of the orders received, so that they may check whether the allocations made were in accordance with the syndicate's priority provisions. Such a situation would occur, however, only very shortly after the order period has ended, or, at the latest, shortly after the disclosure statement concerning the allocation of securities required under rule G-11(g) is sent to syndicate members.** The Board is of the view, therefore, that information concerning unfilled orders need be preserved only for a period of time sufficient to ensure that it will be available in the event of complaints or inquiries about the manager's actions in allocating securities, and that such information need not be preserved for an extended period after that time. Accordingly, the proposed rule change provides that managers need preserve information concerning unfilled orders only until the date of the final syndicate settlement (60 days following the delivery of all securities from the syndicate, pursuant to rule G-12(j)). The Board believes that such time period provides sufficient time for complaints and questions, if any exist, to be raised.

The text of the amendment follows. The amendment will not become effective until approved by the Commission.

March 26, 1982

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

*Such records are also required to set forth
the description and aggregate par value of the securities, the name and percentage of participation of each member of the syndicate or account, the terms and conditions governing the formation and operation of the syndicate or account, . . . all allotments of securities and the price at which sold, the date and amount of any good faith deposit made to the issuer, the date of settlement with the issuer, the date of closing of the account, and a reconciliation of profits and expenses of the account.

**Rule G-11(g) requires that
[t]he senior syndicate manager shall, within ten business days following the date of sale, disclose to the other members of the syndicate, in writing, the following information concerning the allocation of securities to orders submitted through the end of the order period or, if the syndicate does not have an order period, through the first business day following the date of sale:
(i) the identity of each related portfolio, municipal securities investment trust, or accumulation account referred to in section (b) [of rule G-11] submitting an order to which securities have been allocated as well as the aggregate par value and maturity date of each maturity so allocated;
(ii) the identity of each person submitting a group order to which securities have been allocated as well as the aggregate par value and maturity date of each maturity so allocated; and
(iii) a summary, by priority category, of the allocation of securities to other orders which, under the priority provisions, were entitled to a higher priority than a member's "take down" order, including any order confirmed at a price other than the original list price, indicating the aggregate par value and maturity date of each maturity so allocated.

Text of Proposed Amendment*

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) through (iii) No change.

(iv) the records of syndicate transactions described in rule G-8(a)(viii), provided, however, that (1) such records need not be preserved for a syndicate or similar account which is not successful in purchasing an issue of municipal securities, and (2) information concerning orders received by a syndicate or similar account to which securities were not allocated by such syndicate or account need not be preserved after the date of final settlement of the syndicate or account;

(v) and (vi) No change.

(b) through (g) No change.

*Underlining indicates new language.

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Rule G-12

Complaints Received Concerning Inadequate Documentation on Rejection and Reclamation of Deliveries

The Municipal Securities Rulemaking Board has recently received complaints from certain municipal securities brokers and municipal securities dealers concerning problems with the documentation provided on rejections or reclamations of deliveries on municipal securities transactions. These brokers and dealers have alleged that other organizations, when rejecting or reclaiming deliveries, have failed to provide the requisite information regarding the return of the securities, thereby making it very difficult to accomplish prompt resolution of any delivery problems. In particular, these dealers indicate, notices of rejection or reclamation have often failed to state a reason for the rejection or reclamation, or to name a person who can be contacted regarding the delivery problem.

Rule G-12(g)(iv) requires that a dealer rejecting or reclaiming a delivery of securities must provide a notice or other document with the rejected or reclaimed securities, which notice shall include the following information:

(A) the name of the party rejecting or reclaiming the securities;

(B) the name of the party to whom the securities are being rejected or reclaimed;

(C) a description of the securities;

(D) the date the securities were delivered;

(E) the date of rejection or reclamation;

(F) the par value of the securities which are being rejected or reclaimed;

(G) in the case of a reclamation, the amount of money the securities are reclaimed for;

(H) the reason for rejection or reclamation; and

(I) the name and telephone number of the person to contact concerning the rejection or reclamation.

The Uniform Reclamation Form may be used for this purpose.

Questions concerning this notice may be directed to Donald F. Donahue, Deputy Executive Director.

The Board believes that the required information is the minimum necessary to permit prompt resolution of the problem, and does not view the requirement to provide this information as burdensome. The Board is concerned that failure to provide this information may contribute to inefficiencies in the clearance process, and strongly urges municipal securities brokers and dealers to take steps to ensure that the requirements of the rule are complied with. The Board notes that, in the case of reclaimed securities, failure to provide this information may result in, at minimum, a refusal on the part of the receiving party to honor the reclamation.

March 5, 1982

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Rule A-11

Amendment Approved Providing for Indemnification of Arbitrators

Rule A-21 provides for the indemnification of Board members and employees against all liabilities and related expenses incurred in connection with the performance of their respective official duties, provided that the Board member or employee has acted in good faith and within the scope of his authority. The Board has determined to extend this indemnification policy to persons who participate as arbitrators for municipal securities disputes which are brought under the Board's arbitration code (rule G-35). An amendment to rule A-11 providing for indemnification of arbitrators against liabilities and related expenses incurred in connection with the performance of their duties as arbitrators has been approved by the Securities and Exchange Commission.

February 16, 1982

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Text of Amendment*

Rule A-11. Indemnifications of Members, ~~and~~ Employees and Arbitrators

~~Each member of the Board and each employee of the Board~~ Each member and employee of the Board and each arbitrator selected by the Board under rule G-35 shall be indemnified and held harmless against all liabilities and related expenses incurred in connection with the performance of ~~such member's~~ his official duties, ~~as a member of the Board or such employee's official duties as an employee of the Board~~, provided that such member, ~~or~~ employee or arbitrator has acted, or omitted to act, in good faith and within the scope of ~~such member's or employee's~~ his authority.

(b) Not applicable.

(c) Not applicable.

*Underlining indicates new language; material which is lined through has been deleted.