THE DYNAMICS OF UNDERWRITER DISCLOSURES TO ISSUERS UNDER MSRB RULE G-17

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Purpose of G-17 Interpretive Notice

• The Dodd-Frank Act, for the first time, gave a U.S. securities regulator/SRO authority to protect issuers
• As part of the MSRB’s expanded mission to protect issuers, MSRB Notice 2012-25 seeks to ensure that issuers understand and acknowledge receipt of disclosures relating to the municipal securities transactions they are entering into
• Requires underwriters to make specific written disclosures to all issuers
• Requires additional disclosures to issuers in the case of recommended complex transactions, or if the issuer or issuer personnel is inexperienced
SIFMA G-17 Model Disclosures

• Models produced:
  • Underwriter’s disclosure letter
    • Role disclosure
    • Compensation disclosure
    • Conflicts disclosure
  • Model risk disclosures for certain common products/common features in the industry
  • Policies and procedures
  • Includes explanatory notes and commentary
SIFMA Model Underwriter’s Disclosure Letter

• Needs to be sent to municipal securities issuer
• Neither G-23 nor G-17 requires disclosures to conduit obligors
• However, many firms are also sending to the obligor and/or municipal guarantor
• SIFMA’s Model Clarifying Statements for Municipal Securities Underwriters covers G-23 role disclosures, however, this model letter covers G-23 required disclosures as well
SIFMA Model Underwriter’s Disclosure Letter

• Senior managing underwriter will send all disclosures to issuer on behalf of syndicate
  • Should also send disclosures to co-managers
• However, all co-managers need to send their own conflicts disclosures, if conflicts exist
  • Co-managers should also send disclosures to senior manager
• Conflicts disclosures may need to be updated during transaction
SIFMA G-17 Model Risk Disclosures

• SIFMA model risk disclosures
  • Generally only necessary for recommended complex municipal securities transactions
  • Disclosures should be tailored to the unique features and risks of the specific financing
  • SIFMA models:
    o Fixed rate bonds (for inexperienced issuers/personnel)
    o VRDOs
    o Floating rate notes
    o Interest rate swaps
Material Risk Disclosures Generally

• G-17 disclosure for recommended complex transactions
  • Must explain “magnitude” of risks
    • Understanding of rate fluctuations
    • Understanding of termination payments
Swaps Covered by G-17 Interpretive Notice

- New swaps related to new municipal bond transactions
- Material amendments to existing swaps in new municipal bond transactions
- Refunding bond transactions with existing swaps
Acknowledgments by Issuers

• Issuer officials need to be identified
  • Need to be authorized to bind issuer and not have a conflict
  • Underwriter may rely on written delegation by authorized issuer official (including RFP)
• Acknowledgements need to be retained by underwriter
• Attempts at obtaining acknowledgements should be tracked
• Underwriter should document why it was unable to obtain acknowledgement
• If multiple rounds of disclosures are sent, additional acknowledgements may be necessary
Timing of Disclosures

• Initial underwriter’s disclosure letter should be sent at earliest possible time
  • When being considered as underwriter
  • After being selected as underwriter
• If type of transaction is known at that time, risks for complex transactions can be sent at the same time
• If type of transaction is not known at that time, risks for complex transactions can be sent later if a complex transaction is recommended
• Issuer needs time to consider and evaluate disclosures prior to signing a bond purchase agreement
Next Steps

Q1. Are issuers receiving G-17 disclosures from underwriters?
Q2. Are the disclosures helpful?
Q3. Are issuers black-lining the disclosures they receive against SIFMA’s model documents?
Q4. Are issuers readily returning written acknowledgements to underwriters?

Some issuers have said that as a policy they will not acknowledge the G-17 disclosures. Others have only been willing to acknowledge “receipt”.

Q5. What can be done to simultaneously streamline the written disclosures AND give comfort to underwriters that their disclosures fulfill their regulatory obligations?

A. Additional clarifying guidance issued by the MSRB: conflicts, non-complex transactions, de minimis exception for co-managers, sophisticated issuers . . .
SIFMA Information on G-17 Implementation

Models available at: www.sifma.org/g17disclosures
or www.sifma.org/muni