



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:
 - Fixed rate bonds (for inexperienced issuers/personnel)
 - VRDOs
 - Floating rate notes
 - 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