

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-51020; File No. SR-MSRB-2005-01)

January 11, 2005

Self-Regulatory Organizations; Municipal Securities Rulemaking Board; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Interpretive Reminder Notice Regarding Rule G-17, on Disclosure of Material Facts – Disclosure of Original Issue Discount Bonds

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),¹ and Rule 19b-4 thereunder,² notice is hereby given that on January 5, 2005, the Municipal Securities Rulemaking Board (“MSRB” or “Board”) filed with the Securities and Exchange Commission (“Commission” or “SEC”) the proposed rule change as described in Items I and II below, which Items have been prepared by the MSRB. The MSRB has designated this proposal as constituting a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule of the MSRB under Section 19(b)(3)(A)(i) of the Act³ and Rule 19b-4(f)(1) thereunder,⁴ which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The MSRB is filing with the Commission an interpretive reminder notice regarding Rule G-17, on disclosure of material facts—disclosure of original issue discount bonds. The text of the notice follows, with italics indicating new language:

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A)(i).

⁴ 17 CFR 240.19b-4(f)(1).

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REMINDER NOTICE REGARDING RULE G-17, ON DISCLOSURE OF MATERIAL FACTS—DISCLOSURE OF ORIGINAL ISSUE DISCOUNT BONDS

The MSRB is publishing this notice to remind dealers of their affirmative disclosure obligations when effecting transactions with customers in original issue discount bonds. An original issue discount bond, or O.I.D. bond, is a bond that was sold at the time of issue at a price that included an original issue discount. The original issue discount is the amount by which the par value of the bond exceeded its public offering price at the time of its original issuance. The original issue discount is amortized over the life of the security and, on a municipal security, is generally treated as tax-exempt interest. When the investor sells the security before maturity, any profit realized on such sale is calculated (for tax purposes) on the adjusted book value, which is calculated for each year the security is outstanding by adding the accretion value to the original offering price. The amount of the accretion value (and the existence and total amount of original issue discount) is determined in accordance with the provisions of the Internal Revenue Code and the rules and regulations of the Internal Revenue Service.¹

Rule G-17, the MSRB's fair dealing rule, encompasses two general principles. First, the rule imposes a duty on dealers not to engage in deceptive, dishonest, or unfair practices. This first prong of Rule G-17 is essentially an antifraud prohibition. In addition to the basic antifraud provisions in the rule, the rule imposes a duty to deal fairly with all persons. As part of a dealer's obligation to deal fairly, the MSRB has interpreted the rule to create affirmative disclosure obligations for dealers. The MSRB has stated that the dealer's affirmative disclosure obligations require that a dealer disclose, at or before the sale of municipal securities to a customer, all material facts concerning the

transaction, including a complete description of the security.² These obligations apply even when a dealer is effecting non-recommended secondary market transactions.

In the context of the sale to customers of an original issue discount security, the MSRB's customer confirmation rule, Rule G-15(a), provides that information regarding the status of bonds as original issue discount securities must be included on customer confirmations. Specifically, Rule G-15(a)(i)(C)(4)(c) provides that, "If the securities pay periodic interest and are sold by the underwriter as original issue discount securities, a designation that they are "original issue discount" securities and a statement of the initial public offering price of the securities, expressed as a dollar price" must be included on the customer's confirmation.

The MSRB previously has alerted dealers of their obligation to make original issue discount disclosures to customers and has stated that, "The Board believes that the fact that a security bears an original issue discount is material information (since it may affect the tax treatment of the security); therefore, this fact should be disclosed to a customer prior to or at the time of trade."³ The MSRB is publishing this notice to remind dealers of their disclosure obligations under Rule G-17 because it remains concerned that, absent adequate disclosure of a security's original issue discount status, an investor might not be aware that all or a portion of the component of his or her investment return represented by accretion of the discount is tax-exempt, and therefore might sell the securities at an inappropriately low price (i.e., at a price not reflecting the tax-exempt portion of the discount) or pay capital gains tax on the accreted discount amount. Without appropriate disclosure, an investor also might not be aware of how his or her transaction price compares to the initial public offering price of the security. Appropriate

disclosure of a security's original issue discount feature should assist customers in computing the market discount or premium on their transaction.

¹ See Glossary of Municipal Securities Terms, Second Edition (January 2004).

² See e.g., Rule G-17 Interpretation—Educational Notice on Bonds Subject to “Detachable” Call Features, May 13, 1993, MSRB Rule Book (July 2004) at 135.

³ Rules G-12 and G-15, Comments Requested on Draft Amendments on Original Issue Discount Securities, MSRB Reports, Vol. 4, No. 6 (May 1994) at 7.

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II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the MSRB included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposal. The text of these statements may be examined at the places specified in Item IV below. The MSRB has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The MSRB is publishing the proposed rule change to remind dealers of their affirmative disclosure obligations when effecting transactions with customers in original issue discount bonds.

The MSRB previously has alerted dealers of their obligation to make original issue discount disclosures to customers and has stated that, “The Board believes that the fact that a security bears an original issue discount is material information (since it may affect the tax treatment of the security); therefore, this fact should be disclosed to a

customer prior to or at the time of trade.”⁵ The MSRB is publishing this notice to remind dealers of their disclosure obligations under Rule G-17 because it remains concerned that, absent adequate disclosure of a security’s original issue discount status, an investor might not be aware that all or a portion of the component of his or her investment return represented by accretion of the discount is tax-exempt, and therefore might sell the securities at an inappropriately low price (i.e., at a price not reflecting the tax-exempt portion of the discount) or pay capital gains tax on the accreted discount amount. Without appropriate disclosure, an investor also might not be aware of how his or her transaction price compares to the initial public offering price of the security. Appropriate disclosure of a security’s original issue discount feature should assist customers in computing the market discount or premium on their transaction.

2. Statutory Basis

The MSRB has adopted the proposed rule change pursuant to Section 15B(b)(2)(C) of the Act,⁶ which authorizes the MSRB to adopt rules that shall:

be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in municipal securities, to remove impediments to and perfect the mechanism of a free and open market in municipal securities, and, in general, to protect investors and the public interest.

The MSRB has always interpreted its Rule G-17, on fair dealing, to encompass two general principles. First, the rule imposes a duty on dealers not to engage in deceptive, dishonest, or unfair practices. In addition to the basic antifraud provisions in

⁵ Rules G-12 and G-15, Comments Requested on Draft Amendments on Original Issue Discount Securities, MSRB Reports, Vol. 4, No. 6 (May 1994) at 7.

⁶ 15 U.S.C. 78o-4(b)(2)(C).

the rule, the rule imposes a duty to deal fairly with all persons. As part of a dealer's obligation to deal fairly, the MSRB has interpreted the rule to create affirmative disclosure obligations for dealers. The proposed rule change will further the purposes of Section 15B(b)(2)(C) by reminding dealers of their obligations to deal fairly with customers and affirmatively disclose, at or before the sale of municipal securities to a customer, all material facts concerning the transaction including a security's original issue discount feature.

B. Self-Regulatory Organization's Statement on Burden on Competition

The MSRB does not believe that the proposed rule change will impose any burden on competition among dealers not necessary or appropriate in furtherance of the purposes of the Act because it applies equally to all dealers in municipal securities.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The MSRB has designated this proposed rule change as constituting a stated policy, practice or interpretation with respect to the meaning, administration or enforcement of an existing MSRB rule under Section 19(b)(3)(A)(i) of the Act,⁷ and Rule 19b-4(f)(1) thereunder,⁸ which renders the proposed rule change effective upon filing with the Commission.

At any time within 60 days of this filing, the Commission may summarily

⁷ 15 U.S.C. 78s(b)(3)(A).

⁸ 17 CFR 240.19b-4.

abrogate this proposal if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.⁹

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposal is consistent with the Act.

Comments may be submitted by any of the following methods:

Electronic comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-MSRB-2005-01 on the subject line.

Paper comments:

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549-0609.

All submissions should refer to File Number SR-MSRB-2005-01. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule

⁹ See 15 U.S.C. 78s(b)(3)(C).

change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the office of the MSRB. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information

that you wish to make available publicly. All submissions should refer to File Number SR-MSRB-2005-01 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁰

Jill M. Peterson
Assistant Secretary

¹⁰ 17 CFR 200.30-3(a)(12).