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## Update: Final SIFMA and NABL Model Documents on New Issue Price Regulations for Municipal Bonds

In April 2017, we issued a *GT Alert*, "[Help! Why Did the Tax Lawyers Change the Issue Price Certificate?](#)" summarizing final regulations the U.S. Department of Treasury published on Jan. 9, 2017, in the Federal Register (81 FR 88999) under Section 148 of the Internal Revenue Code of 1986, as amended (the Code), amending the "issue price" definition (the New Issue Price Regulations). The New Issue Price Regulations set forth a procedural framework that allows issuers to determine issue price under a range of circumstances depending on the pricing mechanism the issuer employs for its bond sale. To comply with these new regulations, issuers are likely to need different certifications from underwriters than those they previously received, and different provisions in the Notice of Sale and Bond Purchase Agreement, all of which will require new agreements among underwriters to the Bonds. Given this, the National Association of Bond Lawyers (NABL) and the Securities Industry and Financial Markets Association (SIFMA) prepared model documents for underwriters and issuers to use when the New Issue Price Regulations take effect. In our April Alert, we discussed the SIFMA and NABL draft model documents. On May 1, SIFMA issued **final model riders** and on May 8, NABL released **final model certifications**. This *GT Alert* provides an update on these final model documents.

### NABL's Final Model Issue Price Certifications

As provided in our April Alert, NABL has produced six model certificates, each very concise and self-contained. These model certifications support determining issue price using:

- > The Actual Price Rule for all maturities;
- > The Initial Offering Price Rule for all maturities;
- > A combination of the Actual Price Rule for some maturities and the Initial Offering Price Rule for other maturities;
- > The Competitive Sale Rule (this certification includes a municipal advisor certificate about the bidding process); and
- > The Private Placement Rule.

The last certificate is a consolidated form for negotiated sales that applies whether the issue price of one or more maturities is determined under actual sale prices and/or initial offering prices. This certification is similar to the combination certification except it provides options for when the issue price is determined solely under initial offering prices or actual sale prices.

### SIFMA Final Model Riders

SIFMA's made some notable changes when it finalized its draft riders. SIFMA has provided model riders for:

- > The master Agreements Among Underwriters (one for negotiated sales and one for competitive sales);
- > The master Selling Group Agreement for negotiated sales;
- > The Retail Distribution Agreement for negotiated sales;
- > The Bond Purchase Agreement (one for when there is only one underwriter and one for multiple underwriters);
- > The Official Confirmation of Bids (one for electronic bids and one for paper bids); and
- > The Notice of Sale (there are four alternative riders).

The final riders to the Notice of Sale relate to when the Competitive Sale Rule is expected to apply but provides for the following alternatives if the Competitive Sale Rule is not met:

- > General Rule applies;
- > Initial Price Rule applies;
- > Bids will be cancelled if the hold the price requirement is required unless the bidder confirms its bid; or
- > Bid will be cancelled.

In the draft riders, SIFMA provided an alternative rider to the Notice of Sale under which the underwriter could revoke its bid if the issuer determined to apply the hold-the-price-firm requirement for any maturity, in which case the issuer could award the securities to another bidder under the Notice of Sale. If the underwriter did not revoke its bid, it would have agreed to meet those requirements. The draft riders also included an option that did not permit the underwriter to revoke its bid, and required the underwriter(s) to meet the hold-the-price requirements. These riders were replaced, as noted above.

The final riders retain provisions to help the lead underwriter make certifications about actions of other underwriters in the syndicate, such as the prices at which the maturities were sold and, if necessary, that the underwriters in the syndicate followed the special-rule requirements.

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