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attached to securities your firm had delivered to the agent were mutilated. You request guidance as to the standards set forth in rule G-12(e) for the identification of mutilated coupons.

As you are aware, rule G-12(e)(ix) indicates that a coupon will be considered to be mutilated if the coupon is damaged to the extent that any one of the following *cannot be ascertained* from the coupon:

(A) title of the issuer;

(B) certificate number;

(C) coupon number or payment date...;

or

(D) the fact that there is a signature... (emphasis added)

The standard set forth in the rule (that the information "cannot be ascertained") was deliberately chosen to make clear that minimal damage to a coupon is not sufficient to cause that coupon to be considered mutilated. For example, if the certificate number imprinted on a coupon is partially torn, but a sufficient portion of the coupon remains to permit identification of the number, the coupon would not be considered to be mutilated under the standard set forth in the rule, and a rejection of the delivery due to the damage to the coupon would not be permitted. In the case of the damaged coupon shown on the sample certificate enclosed with your letter, it seems clear that the certificate number can be identified, and confusion with another number would not be possible; therefore, this coupon would not be considered to be mutilated under the rule, and a rejection of a delivery due to the damage to this coupon would not be in accordance with the rule's provisions.

Your letter also inquires as to the means by which dealers can obtain redress in the event that a delivery is rejected due to damaged coupons which are not, in their view, mutilated under the standard set forth in the rule. I note that rule G-12(h)(ii) sets forth a procedure for a close-out by a selling dealer in the event that a delivery is improperly rejected by the purchaser; this procedure could be used in the circumstances you describe to obtain redress in this situation. Further, the arbitration procedure under Board rule G-35 could also be used in the event that the dealer incurs additional costs as a result of such an improper rejection of a delivery. *MSRB interpretation of January 4, 1984*.

Delivery requirements: put option bonds. In a previous telephone conversation [name omitted] of your office had inquired whether any or all of the following deliveries of securities which are subject to a put option could be rejected:

(1) Certain securities are the subject of a "one time only" put option, exercisable by delivery of the securities to a designated trustee on or before a stated expiration date. An interdealer transaction in the securities — described as "puttable" securities — is effected for settlement prior to the expiration date. Delivery on the transaction is not made, however, until after the expiration date, and the recipient is accordingly unable to exercise the option, since it cannot deliver the securities to the trustee by the expiration date.

(2) Certain securities are the subject of a "one time only" put option, exercisable by delivery of the securities to a designated trustee on or before a stated expiration date. An interdealer transaction in the securities — described as "puttable" securities — is effected for settlement prior to the expiration date. Delivery on the transaction is made prior to the expiration date, but too late to permit the recipient to satisfy the conditions under which it can exercise the option (*e.g.*, the trustee is located too far away for the recipient to be able to present the physical securities by the expiration date).

(3) Certain securities are the subject of a put option exercisable on a stated periodic basis (*e.g.*, annually). An inter-dealer transaction in the securities — described as "puttable" securities — is effected for settlement shortly before the annual exercise date on the option. Delivery on the transaction, however, is not made until after the annual exercise date, so that the recipient is unable to exercise the option at the time it anticipated being able to do so.

I am writing to confirm my previous advice to him regarding the Board's consideration of his inquiry.

As I informed him, his inquiry was referred to a Committee of the Board which has responsibility for interpreting the "delivery" provisions of the Board's rules; that Committee has authorized my sending this response. In considering the inquiry, the Committee took note of the provisions of Board rule G-12(g), under which an inter-dealer delivery may be reclaimed for a period of eighteen months following the delivery date in the event that information pertaining to the description of the securities was inaccurate for either of the following reasons:

(i) information required by subparagraph (c)(v)(E) of this rule was omitted or erroneously noted on a confirmation, or

(ii) information material to the transaction but not required by subparagraph (c)(v)(E) of this rule was erroneously noted on a confirmation.

Under this provision, therefore, a delivery of securities described on the confirmation as being "puttable" securities could be reclaimed if the securities delivered are not, in fact, "puttable" securities.

The Committee is of the view that, in the first of the situations which he cited, the delivery could be rejected or reclaimed pursuant to the provisions of rule G-12(g). In this instance the securities were traded and described as being "puttable" securities; the securities delivered, however, are no longer "puttable" securities, since the put option has expired by the delivery date. Accordingly, the rule would permit rejection or reclamation of the delivery.

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In the third case he put forth, however, this provision would not be applicable, since the securities delivered are as described. Accordingly, there would not be a basis under the rules to reject or reclaim this delivery, and a purchasing dealer who believed that it had incurred some loss as a result of the delivery would have to seek redress in an arbitration proceeding or in the courts. This may also be the result in the second case he cited, depending on the facts and circumstances of the delivery. *MSRB interpretation of February 27, 1985*.

Confirmation disclosure: put option bonds. This will acknowledge receipt of your letter of March 17, 1981, with respect to "put option" or "tender option" features on certain new issues of municipal securities. In your letter you note that an increasing number of issues with "put option" features are being brought to market, and you inquire concerning the application of the Board's rules to these securities.

The issues of this type with which we are familiar have a "put option" or "tender option" feature permitting the holder of securities of an issue to sell the securities back to the trustee of the issue at par. The "put" or "tender option" privilege normally becomes available a stated number of years (*e.g.*, six years) after issuance, and is available on stated dates thereafter (*e.g.*, once annually, on an interest payment date). The holder of the securities must usually give several months prior notice to the trustee of his intention to exercise the "put option."

Most Board rules will, of course, apply to "put option" issues as they would to any other municipal security. As you recognize in your letter, the only requirements raising interpretive questions appear to be the requirements of rules G-12 and G-15 concerning confirmations. These present two interpretive issues: (1) does the existence of the "put option" have to be disclosed and if so, how, and (2) should the "put option" be used in the computation of yield and dollar price.

Both rules require confirmations to set forth a

> description of the securities, including ... if the securities are ... subject to redemption prior to maturity ..., an indication to such effect

Confirmations of transactions in "put option" securities would therefore have to indicate the existence of the "put option," much as confirmations concerning callable securities must indicate the existence of the call feature. The confirmation need not set forth the specific details of the "put option" feature.

The requirements of the rules differ with respect to disclosure of yields and dollar prices. Rule G-12, which governs interdealer confirmations, requires such confirmations to set forth the

> yield at which transaction was effected and resulting dollar price, except in the case of securities which are traded on the basis of dollar price or securities sold at par, in which event only dollar price need be shown (in cases in which securities are priced to premium call or to par option, this must be stated and the call or option date and price used in the calculation must be shown, and where a transaction is effected on a yield basis, the dollar price shall be calculated to the lowest of price to premium call, price to par option, or price to maturity)

Rule G-15 requires customer confirmations to contain 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. In cases in which the dollar price 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.

(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; provided, however, that yield information for transactions in callable securities effected at a dollar price in excess of par, other than transactions in securities which have been called or prerefunded, is not required to be shown until October 1, 1981.

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

Therefore, with respect to transactions in "put option" securities effected on the basis of dollar price, rule G-12 requires that confirmations simply set forth the dollar price. Rule G-15 requires that confirmations of such transactions set forth the dollar price and the yield to maturity resulting from such dollar price. With respect to transactions effected on the basis of yield, both rules require that the confirmations set forth the yield at which the transaction was effected and the resulting dollar price. Unless the parties otherwise agree, the yield should be computed to the maturity date when deriving the dollar price. If the parties explicitly agree that the transaction is effected at a yield to the "put option" date, then such yield may be shown on the confirmation, together with a statement that it is a "yield to the [date] put option," and an indication of the date the option first becomes available to the holder.

Since the exercise of the "put option" is at the discretion of the holder of the securities, and not, as in the case of a call feature, at the discretion of someone other than the holder, the Board concludes that the presentation of a yield to maturity on the confirmation, and the computation of yield prices to the maturity date, is appropriate, and accords with the goal of advising the purchaser of the minimum assured yield on the transaction. The Board further believes that the ability of the two parties to a transaction to agree to price the transaction to the "put option" date, should they so desire, provides sufficient additional flexibility in applying the rules to transactions in "put option" securities. *MSRB interpretation of April 24, 1981*.

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Confirmation disclosure: put option bonds. This will acknowledge receipt of your letter of May 6, 1981, requesting further clarification of the application of Board rules to municipal securities with "put option" or "tender option" features. In your letter you note that I had previously indicated that, in some circumstances, Board rules would require interdealer and customer confirmations to set forth a yield to the "put option" date, designated as such. You suggest that presentation of this information on confirmations would re-quire reprogramming of many computerized confirmation-processing systems, and you inquire whether the Board intends that

> dealers should possess the capability to "price to the put" and [to] indicate the appropriate yield in their confirmation systems[.]

In my previous letter of April 24, 1981, I advised that Board rules G-12(c), on interdealer confirmations, and G-15, on customer confirmations, would require the following with respect to transactions in securities with "put option" features:

(1) If the transaction is effected on the basis of a yield price, the confirmation must state the yield at which the transaction was effected and the resulting dollar price. The dollar price must be computed to the maturity date, since, in most instances, these securities will not have call features. If the securities do have a refunding call feature, the requirement for pricing to the lowest of the premium call, par option, or maturity would obtain.

(2) If the transaction is effected on the basis of a dollar price, the confirmation must state the dollar price, and, in the case of a customer confirmation, the resulting yield to maturity. If the securities have a call feature, the customer confirmation would state the yield to premium call or the yield to par option in lieu of the yield to maturity, if either is lower than the yield to maturity.

In neither case does the rule require the presentation of a yield or a dollar price computed to the "put option" date as a part of the standard confirmation processing. Further, the Board does not at this time plan to adopt any requirement for a calculation of yield or dollar price to the lower of the put option or maturity dates, comparable to the calculation requirement involving call features. I would therefore have to respond to your inquiry by stating that the Board does not at this time intend to require, as an aspect of standard confirmation processing, that dealers have the capability to "price to the put."

In your May 6 letter you quote a paragraph from my previous correspondence, which stated the following:

> If the parties explicitly agree that the transaction is effected at a yield to the "put option" date, then such yield may be shown on the confirmation, together with a statement that it is a yield to the (date) put option, and an indication of the date the option first becomes available to the holder.

As this paragraph indicates, in some circumstances the parties to a particular transaction may agree between themselves that the transaction is effected on the basis of a yield to the "put option" date, and that the dollar price will be computed in that fashion. In such circumstances, the yield to the "put option" date is the "yield at which [the] transaction was effected" and must be disclosed as such; it must also be identified in order to evidence the agreement of the parties that the transaction is priced in this fashion. However, since the sale of securities on the basis of a yield to the "put option" is at the discretion of the parties to the transaction, and is a special circumstance requiring a mutual agreement of such parties, I suggest that the reprogramming you mention would be necessary only if your bank elects to treat securities with "put option" features in this special fashion. Further, given the fact that these would be exceptional transactions, and would require special handling at the time of trade itself (*viz.*, the conclusion of the mutual agreement concerning the pricing), I suggest that manual processing of these transactions on an "exception" basis appears to be a viable alternative to the reprogramming. *MSRB interpretation of May 11, 1981.*

Confirmation disclosure: advance refunded securities. I am writing in response to your recent letter concerning the confirmation description requirements of Board rules applicable to transactions in securities which have been advance refunded. In particular, you note that certain issues of securities have been advance refunded by specific certificate number, with securities of certain designated certificate numbers refunded to one redemption date and price and other securities of the same issue refunded to a different redemption date and price. You inquire whether a confirmation of a transaction in such securities should identify the securities as being advance refunded by certificate number.

Rules G-12(c)(vi)(C)[*] and G-15(a)(iii)(C)[†] require that confirmations include

> if the securities [involved in the transaction] are "called" or "prerefunded," a designation to such effect, the date of maturity which has been fixed by the call notice, and the amount of the call price...

The rules therefore require, with respect to a transaction in securities which have been advance refunded by certificate number, that the confirmation state that the securities have been advance refunded, and the refunding redemption date and price. The rules do not require that the fact that only certain specific certificate numbers of the issue were advance refunded to that redemption date and price be stated on the confirmation. *MSRB Interpretation of January 4, 1984.*

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[*] [Currently codified at rule G-12(c)(vi)(E).]

[†] [Currently codified at rule G-15(a)(i)(C)(3)(a).]

Confirmation disclosures: tender option bonds with adjustable tender fees. This is in response to your inquiry concerning the application of the Board's rules to certain tender option bonds with adjustable tender fees issued as part of a recent [name of bond deleted] issue. Apparently, there is

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some uncertainty as to the interest rate which should be shown on the confirmation, and the appropriate yield disclosure required by rule G-15 with respect to customer confirmations in transactions involving these securities.

The securities in question are tender option bonds with a 2005 maturity which may be tendered during an annual tender period for purchase on an annual purchase date each year until the 2005 maturity date. To retain this tender option for the first year after issuance, the option bond owner must pay a tender fee of $27.50 per $1,000 in principal amount of the bonds. Beginning in the second year, however, the tender fee may vary each year and will be in an amount determined by the company granting the option (the "Company"), in its discretion, and approved by the bank which issued a letter of credit securing the obligations of the Company. The tender fee must, however, be in an amount which, in the judgment of the Company based upon consultation with not less than five institutional buyers of short term securities, would under normal market conditions permit the bonds to be remarketed at not less than par. If at any time these fees are not paid, the trustee will pay the fee to the Company on behalf of the owner and deduct that amount from the next interest payment sent to the owner unless the owner tenders the bonds prior to the fee payment date. While a system has been set up to receive payment of these tender fees, we understand that the trustee of the issue is assuming that most of the tender fees will be paid through a deduction from the interest payment.

You have advised us that confirmations of the original syndicate transactions in these securities stated the interest rate on the securities as 7-1/8%, which is the current effective rate on the bonds taking into account the tender fees during the first year after issuance (*i.e.*, the 9-7/8% rate less the 2-6/8% fee) and which, because of the yearly tender fee adjustment, is fixed only for one year. The interest rate shown on the bond certificates, however, is the 9-7/8% total rate, and no reference is made to the 7-1/8% effective rate. In addition, the bonds are traded on a dollar price basis as fixed-rate securities and are sold as one year tender option bonds (although the 2005 maturity date is disclosed). The yield to the one year tender date is the only yield customer confirmations.

You inquire whether it is proper that the confirmation show the interest rate on these securities as 7-1/8% and whether the yield disclosure requirements of rule G-15 are met with the disclosure of the yield to the one year tender date. Your inquiry was referred to the Committee of the Board which has responsibility for interpreting the Board's confirmation rules. The Committee has authorized this reply.

Rules G-12(c)(v)(E) and G-15(a)(i)(E)[*] require that dealer and customer confirmations contain a description of the securities including, among, other things, the interest rate on the bonds. The Committee believes that the stated interest rate on these bonds of 9-7/8% should be shown as the interest rate in the securities description on confirmations to reduce the confusion that may arise when the bond certificates are delivered and to ensure that an outdated effective rate is not utilized. In order to fully describe the rate of return on these bonds, however, the Committee believes that immediately after the notation of the 9-7/8% rate on the confirmations, the following phrase must be added — "less fee for put." Thus, it will be the responsibility of the selling dealer to determine the current effective rate applicable to these bonds and to disclose this to purchasing dealers and customers at the time of trade.[1]

In regard to yield disclosure, rule G-15(a)(i)(I)[†] requires that the yield to maturity be disclosed because these securities are traded on the basis of a dollar price.[2] The Board has determined that, for purposes of making this computation, only "in whole" calls should be used. Thus, for these tender option bonds, the yield to maturity is required to be disclosed. It appears, however, that an accurate yield to maturity cannot be calculated for these securities. While it is possible to calculate a yield to maturity using the stated 9-7/8% interest rate, this figure might be misleading since the adjustable tender fees would not be taken into account. Similarly, a yield calculated from the current effective rate of return would not be meaningful since it would not reflect subsequent changes in the amounts of the tender fees deducted. In view of these difficulties, the Committee believes that confirmations of these securities need not disclose a "yield to maturity." The Committee is also of the view, however, that dealers must include the yield to the one year tender date on the confirmations as an alternative form of yield disclosure. *MSRB interpretation of October 3, 1984.*

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[1] We understand that these tender option bonds are the first of a series of similar issues and on subsequent issues of this nature the phrase "Bond subject to the payment of tender fee" will be printed on the bond certificates next to the interest rate. This additional description on the bond certificates, although helpful, is not a substitute for complete confirmation disclosure and this interpretation applies to these subsequent issues as well.

[2] Rule G-15(a)(i)(I)[†] requires that on customer confirmations for transactions effected on the basis of a dollar price…the lowest of the resulting yield to call, yield to par option, or yield to maturity shall be shown.

[*] [Currently codified at rule G-15(a)(i)(B)(4)(c).]

[†] [Currently codified at rule G-15(a)(i)(A)(5)(b).]

Confirmation disclosures: tender option bonds with adjustable tender fees. This is in response to your letter requesting a one year delay in the effective date of an October 3, 1984, interpretation of Board rules G-12 and G-15 concerning confirmation disclosure of tender option bonds with adjustable tender fees. In that interpretation, the Board stated that the interest rate shown on the confirmation for these bonds should be the interest rate noted on the bond certificate (the "stated interest rate") but that the confirmation also must include the phrase "less fee for put." The Board also stated that it is the responsibility of the selling dealer to determine the current effective interest rate applicable to these bonds taking into account the tender fee (the "net interest rate") and to disclose this to purchasers at the time of trade. In addition, the Board took the position that the yield to maturity disclosure requirement does not apply to these bonds since an accurate yield to maturity cannot be calculated for these securities

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because of the annual adjustments to the tender fee. Dealers must, however, include the yield to the tender option date as an alternative form of yield disclosure.

While you agree with the interpretation, you state that the automated systems currently in place are not capable of complying with the interpretation and thus you request a one year delay in the effective date of this interpretation in order for the industry to effect necessary system modifications. Your request was referred to the Committee of the Board which has responsibility for interpreting the Board's confirmation rules. The Committee has authorized this reply.

Apparently, a problem arises when dealers include the stated interest rate in the interest rate field on the confirmation. In computing the yield on the transaction, most computer systems automatically pick up the rate in that field as the interest rate. Thus, an overstated yield based on the stated interest rate, instead of a yield based on the net interest rate, is printed on confirmations. We have been informed that certain dealers have solved this problem by including the net interest rate in the interest rate field. In this way, the computer automatically picks up the correct interest rate needed to determine the accurate yield to the tender option date. In order to solve the interest rate disclosure problem, these dealers include elsewhere in the description field of the confirmation the stated interest rate with the phrase "less fee for put." The Board believes that this method of disclosure is consistent with the Board's confirmation disclosure requirements.

Since the Board believes that most dealers will be able to comply either with the original interpretation or this clarification utilizing their present computer systems, it has decided not to approve any delay in the effective date of this interpretation for system modifications. We note, however, that any dealer that believes its system cannot comply with this interpretation might consider requesting a no-action letter from the SEC until its system modifications are in place. *MSRB interpretation of March 5, 1985.*

Confirmation requirements for partially refunded securities. This will respond to your letter of May 16, 1989. The Board reviewed your letter at its August 1989 meeting and authorized this response.

You ask what is the correct method of computing price from yield on certain types of "partially prerefunded" issues having a mandatory sinking fund redemption. The escrow agreement for the issues provides for a stated portion of the issue to be redeemed at a premium price on an optional, "in-whole," call date for the issue. The remainder of the issue is subject to a sinking fund redemption at par.[1] Unlike some issues that are prerefunded by certificate number, the certificates that will be called at a premium price on the optional call date are not identified and published in advance. Instead, they are selected by lottery 30 to 60 days before the redemption date for the premium call. Prior to this time, it is not known which certificates will be called at a premium price on the optional call date. In the particular issues you have described, the operation of the sinking fund redemption will retire the entire issue prior to the stated maturity date for the issue.

As you know, rules G-12(c) and G-15(a) govern inter-dealer and customer confirmations, respectively. Rules G-12(c)(v)(1) and G-15(a)(i)(1)[*] require the dollar price computed from yield and shown on the confirmation to be computed to the lower of call date or maturity. For purposes of computing price to call, only "in-whole" calls, of the type which may be exercised in the event of a refunding, are used.[2] Accordingly, the Board previously has concluded that the sinking fund redemption in the type of issue you have described should be ignored and the dollar price should be calculated to the lowest of the "in-whole" call date for the issue (*i.e.*, the redemption date of the prerefunding) or maturity. In addition, the stated maturity date must be used for the calculation of price to maturity rather than any "effective" maturity which results from the operation of the sinking fund redemption. Identical rules apply when calculating yield from dollar price. Of course, the parties to a transaction may agree to calculate price or yield to a specific date, *e.g.*, a date which takes into account a sinking fund redemption. If this is done, it should be noted on the confirmation.[3]

In our telephone conversations, you also asked what is the appropriate securities description for securities that are advance refunded in this manner. Rules G-12(c)(v)(E) and G-15(a)(i)(E)[†] require that confirmations of securities that are "prerefunded" include a notation of this fact along with the date of "maturity" that has been fixed by the advance refunding and the redemption price. The rules also state that securities that are redeemable prior to maturity must be described as "callable."[4] In addition, rules G-12(c)(vi)(I) and G-15(a)(iii)(J)[‡] state that confirmations must include information not specifically required by the rules if the information is necessary to ensure that the parties agree to the details of the transaction. Since, in this case, only a portion of the issue will be chosen by lot and redeemed at a premium price under the prerefunding, this fact must be noted on the confirmation. As an example, the issue could be described as "partially prerefunded to [redemption date] at [premium price] to be chosen by lot-callable." The notation of this fact must be included within the securities description shown on the front of the confirmation. *MSRB Interpretation of August 15, 1989.*

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1 In some issues, a sinking fund redemption operates prior to the optional call date, while, in others, the sinking fund redemption does not begin until on or after that date.

2 See [Rule G-15 Interpretation —] Notice of December 10, 1980, Concerning Pricing to Call, MSRB Manual, paragraph 3571.

3 These rules on pricing partially prerefunded securities with sinking funds are set forth in [Rule G-15 Interpretive Letter — Disclosure of pricing: calculating the dollar price of partially prerefunded bonds,] MSRB interpretation of May 15, 1986, MSRB Manual, paragraph 3571.26.

4 The Board has published an interpretive notice providing specific guidance on the confirmation of advanced refunded securities that are callable pursuant to an optional call. See Application of Rules G-12(c) and G-15(a)

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on Confirmation Disclosure of Escrowed-to-Maturity Securities [in Rule G-17 Interpretation — Notice of Interpretation on Escrowed-to-Maturity Securities: Rules G-17, G-12 and G-15], MSRB Manual, paragraph 3581.

[*] [Currently codified at rule G-15(a)(i)(A)(5)(c)(i).]

[†] [Currently codified at rule G-15(a)(i)(C)(3)(a).]

[‡] [Currently codified at rule G-15(a)(i)(A)(8)]

Close-out procedures: mandatory repurchase. You recently inquired concerning the use of the "mandatory repurchase" option provided under Board rule G-12(h)(i)(D) for execution of a close-out notice. In the situation you presented, a municipal securities dealer executing a notice was requiring, under the provisions of this option, a repurchase at the original contract price. Since the transaction was originally effected on the basis of a yield price, you inquired whether the repurchase should be effected at this yield price (with the dollar price computed to the settlement date of the repurchase transaction), or at the dollar price computed from this yield price at the time of the original transaction.

At the time of your telephone call I responded that, while the Board would have to consider this inquiry, the Board's response to somewhat similar inquiries in the past suggested that the dollar price of the original contract should be used. I am writing to advise you that the Board did not adopt this position. With respect to the specific circumstances presented in your inquiry, the Board has concluded that the purchasing dealer does have the right, in the appropriate circumstances, to execute a close-out by requiring the seller to repurchase the securities at the yield price of the original contract, with the resulting dollar price computed to the settlement date of the repurchase transaction. The Board notes that, in these circumstances, the selling dealer has failed to fulfill its contractual obligations, and believes that permitting the use of the yield price of the original contract, with the resulting dollar price computed to the settlement date of the repurchase transaction, will in the majority of cases most fairly compensate the purchaser for the time value of the investment for the period from the original execution to the mandatory repurchase.[1]

The Board also is generally of the view that purchasers executing mandatory repurchase transactions may require a mandatory repurchase at the yield basis of the original transaction, with the resulting dollar price computed to the settlement date of the repurchase transaction, except in the case where both parties to the transaction agree that the original transaction was, and the repurchase transaction should be, effected on the basis of a dollar price, or where the terms of the transaction and/or the trading characteristics of the security (*e.g.*, issues with an active sinking fund or tender program) suggest that dollar price rather than yield was the dominant consideration in the original transaction. *MSRB interpretation of March 4, 1982.*

[1] The Board notes, for example, that, in the case of a security purchased at a discount, the purchaser and the purchaser's customer would realize the accretion of the discount for the period the security was owned. In the case of a security purchased at a premium, the premium would be amortized for the period the purchaser owned the security.

Settlement of syndicate accounts. Your letter dated September 25, 1978, regarding rule G-12 has been referred to me for reply. In your letter, you inquire as to whether the requirement in section (j) of rule G-12 to settle syndicate accounts within 60 days following the date all securities are delivered to syndicate members, applies in all circumstances. Specifically, you ask whether the time for settlement may be extended under the rule in the event that the syndicate has not received all expense bills prior to the expiration of that period.

There is no provision in rule G-12 for extending the 60-day period in the circumstances which you described. In adopting this requirement, the Board sought to achieve an equitable balance between the interests of syndicate members and syndicate managers in settling syndicate accounts. The Board believes that the 60-day period provides sufficient time to enable syndicate managers to settle on syndicate accounts and represents a reasonable time within which such accounts should be settled. It is therefore incumbent upon a syndicate manager to encourage persons to submit bills to the syndicate on a timely basis. The syndicate manager will otherwise have to settle the account within the prescribed time period and make adjustments subsequently when late bills are finally received. *MSRB interpretation of November 1, 1978.*

Settlement of syndicate accounts. This is in response to your letter of July 28, 1981, suggesting that requirements analogous to those placed on syndicate managers in rule G-12(j) be imposed on syndicate members who must remit their share of syndicate losses to their syndicate managers. You state that syndicate members frequently do not remit their losses to the manager in a timely fashion and that such a requirement would establish an "equitable balance between the interests of syndicate members and syndicate managers."

Rule G-12(j) provides:

> Final settlement of a syndicate or similar account formed for the purchase of securities shall be made within 60 days following the date all securities have been delivered by the syndicate or account manager to the syndicate or account members.

The rule is not expressly limited to money payments by syndicate managers, but broadly requires that final settlement shall be made within 60 days following the date the manager delivers the securities to the syndicate members. Thus, the rule requires syndicate members to remit their share of syndicate losses to the syndicate manager within the 60-day period set forth in the rule. Since a syndicate member cannot remit his share of losses until he is apprised by the syndicate manager of the amount of his share, a member should remit his share of the losses to the manager within a reasonable period of time after receiving the syndicate accounting required by rule G-11(h). *MSRB interpretation of September 28, 1981.*

Confirmation: Mailing of WAII confirmation. I am writing to confirm my recent telephone conversation with you regarding the requirements for mailing "when, as and if issued" confirmations of transactions in new issue municipal

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securities. Our recent conversation concerned your previous inquiry as to the time limit by which a municipal securities dealer must send out such confirmations in connection with allocations of securities to "pre-sale" orders, and the propriety of a dealer's sending out such confirmations prior to the award of the new issue.

As we discussed, rule G-12(c)(iii) requires that,

> [f] or transactions effected on a "when, as and if issued" basis, initial confirmations shall be sent within two business days following the trade date.

For purposes of this requirement the designation "trade date" should be understood to refer to, in the case of a competitive new issue, a date no earlier than the date of award of the new issue of municipal securities, and, in the case of a negotiated new issue, a date no earlier than the date of signing of the bond purchase agreement. Therefore, the rule would require that initial "when, as and if issued" confirmations reflecting the allocation of new issue securities to "pre-sale" orders be sent within [one] business day after the date of award or of signing of the bond purchase agreement. For example, if the bond purchase agreement on a negotiated new issue is signed on Monday, April 26, the initial "when, as and if issued" confirmations must be sent out not later than the close of business on [Tuesday], April [27], [one] business day later.

Further, the Board is of the view that its rules prohibit a municipal securities dealer from sending out initial "when, as and if issued" confirmations prior to the trade date. In reaching this conclusion the Board does not intend to call into question the validity of a "pre-sale" order received for a syndicate's securities or the practice of soliciting such orders. The Board recognizes that such orders are expressions of the purchasers' firm intent to buy the new issue securities in accordance with the stated terms, and that such orders may be filled and confirmed immediately upon the award of the issue or the execution of a bond purchase agreement. The Board is of the view, however, that such orders cannot be deemed to be executed until the time of the award of the new issue, or the execution of a bond purchase agreement on the new issue. Mailing of confirmations on such orders prior to this time, therefore, is a representation that the orders have been filled before this actually occurs, and, as such, may be deceptive or misleading to the purchasers. *MSRB interpretation of April 30, 1982.*

NOTE: Revised to reflect subsequent amendments.

Confirmation: Mailing of WAII, "all or none" confirmation. I understand that certain ... firms ... have raised questions concerning the application of a recent Board interpretive letter to certain types of municipal securities underwritings. I am writing to advise that these questions were recently reviewed by the Board which has authorized my sending you the following response.

The letter in question, reprinted in the Commerce Clearing House *Municipal Securities Rulemaking Board Manual* at ¶ 3556.55[*], discusses the timing of the mailing of initial "when, as and if issued" confirmations on "pre-sale" orders to which new issue municipal securities have been allocated. Among other matters, the letter states that such confirmations may not be sent out prior to the date of award of the new issue, in the case of an issue purchased at competitive bid, or the date of execution of a bond purchase agreement on the new issue, in the case of a negotiated issue. [Certain] ... firms have questioned whether this interpretation ... is intended to apply to "all or none" underwritings, in which confirmations have been, at times, sent out prior to the execution of a formal purchase agreement.

As the Board understands it, an "all or none" underwriting of a new issue of municipal securities is an underwriting in which the municipal securities dealer agrees to accept liability for the issue at a given price only under a stated contingency, usually that the entire issue is sold within a stated period. The dealer typically "presettles" with the purchasers of the securities, with the customers receiving confirmations and paying for the securities while the underwriting is taking place. Pursuant to SEC rule 15c2-4 all customer funds must be held in a special escrow account for the issue until such time as the contingency is met (*e.g.*, the entire issue is sold) and the funds are released to the issuer; if the contingency is not met, the funds are returned to the purchasers and the securities are not issued.[1]

The Board is of the view that an initial "when, as and if issued" confirmation of a transaction in a security which is the subject of an "all or none" underwriting may be sent out prior to the time a formal bond purchase agreement is executed. This would be permissible, however, only if two conditions are met: (1) that such confirmations clearly indicate the contingent nature of the transaction, through a statement that the securities are the subject of an "all or none" underwriting or otherwise; and (2) that the dealer has established, or has arranged to have established, the escrow account for the issue as required pursuant to rule 15c2-4. *MSRB interpretation of October 7, 1982.*

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[1] I note also that SEC rule 10b-9 sets forth certain conditions which must be met before a dealer is permitted to represent an underwiritng as an "all or none" underwriting.

[*] [See Rule G-12 Interpretive Letter — Confirmation: mailing of WAII confirmation, *MSRB interpretation of April 30, 1982.*]

Automated clearance: use of comparison systems. I am writing to confirm the substance of our conversations with you at our meeting on October 3 to discuss certain of the issues that have arisen since the August 1 effective date of the requirements of rule G-12(f) for the use of automated comparison services on certain interdealer transactions in municipal securities. In our meeting you explained certain problems that have become apparent since the implementation of these requirements, and you inquired as to our views concerning the application of Board rules to these difficulties or appropriate procedures to remedy them. The essential points of our responses are summarized below.

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In particular, you indicated that the use of the "as of" (or "demand as of") feature of the automated comparison system has, in some cases, caused inappropriate rejections of deliveries of securities. This occurs, you explained, because the comparison system is currently programmed to display an alternative settlement date of two business days following the date of successful comparison of the transaction, if such comparison is accomplished through use of the "as of" or "demand as of" feature.[1] As a result, in certain cases involving transactions compared on an "as of" basis dealers have attempted to make delivery on the transaction on the contractual settlement date, and have had those deliveries rejected, since the receiving party recognizes only the later "alternative settlement date" assigned to the transaction by the comparison system. You inquire whether such rejections of deliveries are in accordance with Board rules.

I note that this "alternative settlement date" has significance for clearance purposes only, and does not result in a recomputation of the dollar price or accrued interest on the transaction.

As we advised in our conversation, the receiving dealer clearly cannot reject a good delivery of securities made on or after the contractual settlement date on the basis that the delivery is made prior to the "alternative settlement date" displayed by the comparison system. Both dealers have a contract involving the purchase of securities as of a specified settlement date, and a delivery tendered on or after that date in "good delivery" form must be accepted. A dealer rejecting such a delivery on the basis that it has been made prior to the "alternative settlement date" would be subject to the procedures for a "close-out by seller" due to the improper rejection of a delivery, as set forth in Board rule G-12(h)(ii).[2]

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You also advised that some dealers who are using the automated comparison system are using their own delivery tickets, rather than the delivery tickets generated by the system, at the time they make delivery on the transaction. As a result, you indicated, there have been rejections of these deliveries, since the receiving dealer is unable to correlate these deliveries with its records of transactions compared through the system. You suggested that the inclusion of the "control numbers" generated by the comparison system on these self-generated delivery tickets would help to eliminate these unnecessary rejections and facilitate the correlation of receipts and deliveries with records of transactions compared through the system. As I indicated in our conversation, the Board concurs with your suggestion. The Board strongly encourages dealers who choose to use their own delivery tickets for transactions compared through the automated system to display on those tickets the control number or other number identifying the transaction in the system.[3] This would ensure that the receiving dealer can verify that it knows the transaction being delivered and that it was successfully compared through the system.

* * *

You also noted that many municipal securities dealers have continued the practice of sending physical confirmations of transactions, in addition to submitting such transactions for comparison through the automated system. You advised that this is causing significant problems for certain dealers, since they are required to maintain a duplicate system in order to provide for the review of these physical confirmations.

The Board is aware that certain municipal securities dealers chose to maintain parallel confirmation systems following implementation of the automated comparison requirements on August 1 in order to ensure that they maintained adequate control over their activities, and recognizes that for many such dealers this was an appropriate and prudent course of action.[4] However, the Board wishes to emphasize that its rules do not require the sending of a physical confirmation on any transaction which has been submitted for comparison through the system. On the contrary, the continued use of unnecessary physical comparisons increases the risk of the duplication of trades and deliveries and substantially decreases the efficiencies and cost savings available from the use of the automated comparison system. The Board believes that all system participants must understand that the use of the automated comparison system is of primary importance. Accordingly, the Board strongly suggests that the mailing of unnecessary physical confirmations should be discontinued once a dealer is satisfied that it has adequate control over its comparison activities through the system.

You and others have suggested that it would be helpful if dealers which are unable to discontinue the mailing of physical confirmations would identify those transactions which have also been submitted for comparison through the system through some legend or stamp placed on the physical confirmation sent on the transaction. The Board concurs with your suggestion, and recommends that, during the short remaining interim when dealers are continuing to use duplicate physical confirmations, they include on physical confirmations of transactions submitted to the automated comparison system a stamp or legend in a prominent location which clearly indicates that the transaction has been submitted for automated comparison. *MSRB interpretation of January 2, 1985.*

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[1] For example, a transaction of trade date October 19 for settlement October 25 fails to compare through the normal comparison cycle. Due to this failure to compare, the transaction is dropped from the comparison system on October 23; however, due to a resolution of the dispute, both parties resubmit the trade on an "as of" basis on October 24, and it is successfully compared on that date. Due to the delay in the comparison of the transaction, the system will display an "alternative settlement date" on this transaction of October 26 on the system-generated delivery tickets.

[2] I understand that [Registered Clearing Agency] is taking steps to have the contractual settlement date reflected on delivery tickets produced with respect to transactions compared on an "as of" or "demand as of" basis. We believe that this will be most helpful in clarifying and receiving dealer's contractual obligation to accept a proper delivery made on or after the date.

[3] I understand that proper utilization of the comparison system control number is a reliable method for identifying and referring to transactions.

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[4] The Board is also aware that on certain transactions dealers will need to send physical confirmations to document the terms of a specific agreement concluded as the time of trade (*e.g.*, a specification of a rating). In such circumstances the Board anticipates that physical confirmations will continue to be sent.

Automated settlement involving multidepository participants. This will respond to your letter concerning the requirements of rule G-12(f)(ii) applicable to transactions involving firms that are members of more than one registered securities depository. Your inquiry concerns situations in which a dealer that is a member of more than one depository executes a transaction with another dealer that is a member of one or more depositories. Your question is whether such dealers may specify the depository through which delivery must be made, either as a term of an individual transaction or with standing delivery instructions.

Your inquiry was referred to the Committee of the Board with the responsibility for interpreting the Board's automated clearance and settlement rules, which has authorized my sending this response.

The rule does not specify which depository shall be used for settlement if the transaction is eligible for settlement at more than one depository.

The Board is of the view that, under rule G-12(f), parties to a transaction are free to agree, on a trade-by-trade basis or with standing delivery agreements, on the depository to be used for making book-entry deliveries. Absent such an agreement, a seller may effect good delivery under rule G-12(f) by delivering at any depository of which the receiving dealer is a member. *MSRB interpretation of November 18, 1985.*

NOTE: Revised to reflect subsequent amendments.

See also:

Rule G-15 Interpretive Letters — Callable securities: "catastrophe" calls, *MSRB interpretation of November 7, 1977.*

- **Callable securities: disclosure,** *MSRB interpretation of August 23, 1982.*
- **Original issue discount, zero coupon securities: disclosure of, pricing to call feature,** *MSRB interpretation of June 30, 1982.*
- **Callable securities: pricing to call,** *MSRB interpretation of June 8, 1978.*
- **Callable securities: pricing to call,** *MSRB interpretation of March 9, 1979.*
- **Callable securities: pricing transactions on construction loan notes,** *MSRB interpretation of March 5, 1984.*
- **Calculation of price and yield on continuously callable securities,** *MSRB interpretation of August 15, 1989.*
- **Disclosure of pricing: calculating the dollar price of partially prerefunded bonds,** *MSRB interpretation of May 15, 1986.*
- **Securities description: revenue securities,** *MSRB interpretation of December 1, 1982.*
- **Securities description: securities backed by letters of credit,** *MSRB interpretation of December 2, 1982.*
- **Securities description: prerefunded securities,** *MSRB interpretation of February 17, 1998.*

Rule G-17 Interpretive Letter — Put option bonds: safekeeping, pricing, *MSRB interpretation of February 18, 1983.*

Rule G-12 Amendment History (since 2003)

Release No. 34-85699 (April 22, 2019), 84 FR 17897 (April 26, 2019); MSRB Notice 2019-11 (April 10, 2019)

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Release No. 34-58154 (July 15, 2008), 73 FR 42388 (July 21, 2008); MSRB Notice 2008-32 (July 22, 2008)

Release No. 34-50294 (August 31, 2004), 69 FR 54170 (September 7, 2004); MSRB Notice 2004-29 (September 2, 2004)