SIFMA™

Securities Industry and Financial Markets Association

February 13, 2008

John J. Cross III
Associate Tax Legislative Counsel – Office of Tax Policy
United States Department of the Treasury
1500 Pennsylvania Avenue, NW
Room 4212, Main Treasury
Washington, DC 20220

Dear Mr. Cross:

The Securities Industry and Financial Markets Association ("Association")[1] appreciates the time you and your colleagues from the Treasury Department and Internal Revenue Service have taken to speak with us about the dilemma currently being confronted by the municipal securities financial markets as a result of failures in the effort to remarket certain floating rate municipal bonds.

Consistent with your comments at our meeting last week, we have confined our recommendations to concepts that we believe work within the current framework of IRS and Treasury interpretations of reissuance. These recommendations are not intended to compromise any of the current principles that are supported by established precedent and set forth in Regulations section 1.1001-3. Our recommendations are set forth in the attached Exhibits and propose amendments to Notice 88-130, Regulations section 1.1001-3, and Regulations sections 1.148-4 and 1.150-1. These recommendations are set forth as alternatives. The recommendations grouped under Exhibit A are somewhat narrowly focused, while the recommendations grouped under Exhibit B are more comprehensive. The proposed amendments to Treasury Regulation Section 1.148-4 in Exhibit C are from the NABL comment letter on December 26, 2007, and are specific to the problems associated with deemed terminations of qualified hedges.

We hope that you find these ideas helpful. We are eager to discuss these ideas with you and would appreciate the opportunity to meet again to discuss these recommendations. If you have any questions concerning these comments, or would like to discuss these ideas further, please do not hesitate to contact the undersigned at 212.313.1130 or via email at lnorwood@sifma.org.

Respectfully submitted,

Leslie M. Norwood
Managing Director and
Associate General Counsel

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1 The Association, or "SIFMA," brings together the shared interests of more than 650 securities firms, banks and asset managers. SIFMA's mission is to promote policies and practices that work to expand and perfect markets, foster the development of new products and services and create efficiencies for member firms, while preserving and enhancing the public's trust and confidence in the markets and the industry. SIFMA works to represent its members' interests locally and globally. It has offices in New York, Washington D.C., and London and its associated firm, the Asia Securities Industry and Financial Markets Association, is based in Hong Kong.

cc: ***United States Department of Treasury***
Eric Solomon
Donald L. Korb
Michael J. Desmond
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Internal Revenue Service
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Securities Industry and Financial Markets Association
Municipal Executive Committee
Municipal Policy Committee
Municipal Legal Advisory Committee
Municipal Financial Products Committee
Municipal Credit Research, Strategy and Analysis Committee

EXHIBIT A
Proposed Amendments to Notice 88 - 130 and Regulations Section 1.001 - 3

Proposed Amendments to Notice 88-130

Notice 88-130 would only govern changes of interest rate mode on qualified tender bonds (that is, whether a change from one interest rate mode to another results in a reissuance is governed by 88-130 and all other changes occurring in connection with that conversion would be separately analyzed under 1.1001-3 without regard to the change in interest rate mode). Notice 88-130 would be revised to provide that any pre-authorized change in interest rate mode of a qualified tender bond would not result in a reissuance for purposes of section 150.

Bonds will not fail to be qualified tender bonds as a result of (1) the issuance of bonds in an auction rate mode, (2) a final stated maturity date that is no longer than the later of 40 years after the date of issue or the latest date reasonably expected (as of the date of issue) to be required to carry out the governmental purpose of the issue of which the bond is a part, and [(3) the remarketing of bonds that are converted to a new mode at a premium sufficient to pay costs of issuance, qualified hedge termination fees, qualified guarantee fees, or to fund a reasonably required reserve or replacement fund.] A qualified tender bond may otherwise be remarketed at a premium provided that the proceeds from the remarketing do not exceed the outstanding amount of the remarketed bond.

The addition of an interest rate mode customarily included in qualified tender bonds or similar to such modes (including, for example, a put mode) shall be treated as a qualifying corrective change.

The purchase of a tendered bond by a liquidity provider or remarketing agent is not a purchase of the bond by or on behalf of the issuer.

Proposed Amendments to Regulations Section 1.001-3

For purposes of applying section 1.1001-3 to a qualified tender bond (as modified above), the following rules apply: (1) changes in interest rates occurring due to a change in interest rate mode are not modifications, (2) all tax-exempt bonds shall be considered recourse, (3) the increase in the interest rate applicable in the event of a failed auction to a rate not in excess of the maximum rate permitted by law is not a significant modification.

Exchange of new bonds

The applicability of the provisions described above would not be affected by the exchange of new bonds for the outstanding bonds where, taking into account the provisions described above, there are no differences in the bonds that would be considered significant under section 1.1001-3. For this purpose, the acquisition of an outstanding bond from the holder and the sale of the new bond to a different holder will be treated as an exchange if the acquisition and sale occur within 90 days of each other using the proceeds of the new bonds to finance the acquisition. [Additional proceeds to fund costs of issuance, redemption premium of exchanged bonds, hedge termination fee for exchanged bonds, reasonably required reserve fund for new bonds, or qualified guarantee fee for new bonds will not result in a new issue for purposes of section 150 (provided that such amounts must be taken into account for purposes of private activity bond volume cap, par-to-par limitations, etc.).]

Elective application of provisions

All of the provisions described above would apply at the election of the issuer.

EXHIBIT B
Proposed New Subsection 1.150-1(c)(4)(iii) (current (iii) renumbered as (iv))

Program of Refinancings

(A) In general

Obligations issued pursuant to a program of refinancings may be treated as part of a single issue, the issue date of which is the issue date of the first such obligation issued under the program that is not a refunding issue (the "Initial Obligation"). A program of refinancings is a program to issue obligations to finance or refinance one or more governmental purposes. Obligations are not part of the same program of refinancings unless all obligations issued after the Initial Obligation are issued to refund (other than to advance refund [consider 30 day limit]) prior obligations that are part of the program, but only to the extent that:

(1) Except as provided below, the issue price of refunding obligations does not exceed the outstanding principal amount of the prior obligations;
(2) No issue of refunding obligations issued pursuant to the program extends the weighted average maturity of any issue of prior obligations issued pursuant to the program; and
(3) The Initial Obligation does not have a term in excess of (i) 40 years or (ii) the period reasonably necessary for the governmental purposes of the program.

(B) Safe harbor

The requirement of paragraph (c)(4)(iii)(A)(3) of this section is treated as satisfied if the weighted average maturity of the issue does not exceed 120 percent of the weighted average expected economic life of the property financed by the issue.

[(C) Additional obligations

The requirement in paragraph (c)(4)(iii)(A)(1) of this section will not be violated by issuance of additional obligations to pay redemption premium on the refunded obligations or termination cost on a qualified hedge of the refunded obligations, to pay costs of issuance or qualified guarantee fees of the refunding obligations, or to fund a reasonably required reserve or replacement fund. The preceding sentence shall apply only if any additional obligations (when combined with all other obligations of the issue) meet all applicable requirements of sections 103 and 141-150 (for example, all of the obligations of the issue must meet any applicable requirements under section 146, relating to volume cap).]

EXHIBIT C
Proposed Amendments to Qualified Hedge Rules[1]

Proposed Amendment to Section 1.148-4(h)(3)(iv)(A):

(A) Termination defined – A termination of a qualified hedge includes any sale or other disposition of the hedge by the issuer or the acquisition by the issuer of an offsetting hedge. A deemed termination occurs when the hedged bonds are redeemed or when a hedge ceases to be a qualified hedge of the hedged bonds. In the case of an assignment by a hedge provider of its remaining rights and obligations under the hedge to a third party or a modification of the hedging contract, the assignment or modification is treated as a termination with respect to the issuer only if it results in a deemed exchange of the hedge and a realization event under section 1001 to the issuer. *A deemed termination of a qualified hedge does not occur solely as a result of modifications to the hedge or the acquisition by the issuer of one or more other interest rate positions if the modified hedge (or the combination of the hedge and such other interest rate position(s)) is a qualified hedge, determined without regard to any deemed termination and acquisition payment that would otherwise be treated as made or received.*

Proposed Amendment to Section 1.148-4(h)(3)(iv)(D):

(D) Special rules for refundings – To the extent that the hedged bonds are redeemed using the proceeds of a refunding issue, the termination payment is accounted for under paragraph (h)(3)(iv)(B) of this section by treating it as a payment on the refunding issue, rather than the hedged bonds. In addition, to the extent that the refunding issue is redeemed during the period to which the termination payment has been allocated to that issue, paragraph (h)(3)(iv)(C) of this section applies to the termination payment by treating it as a payment on the redeemed refunding issue. *Notwithstanding paragraph (A), a deemed termination of a qualified hedge does not occur solely as a result of the redemption of the hedged bonds if the hedged bonds are redeemed with the proceeds of refunding bonds and the hedge is a qualified hedge with respect to the refunding bonds, determined as if the hedge were entered into on the issue date of the refunding issue but without regard to any deemed termination and acquisition payment that would otherwise be treated as made or received on that date.*

[1] Taken from the NABL comment letter dated December 26, 2007