Introduction to the
SIFMA Model Issue Price Documents
May 1, 2017

SIFMA has released municipal security issue price model documents in an effort to aid industry market participants in compliance with the new Treasury Department issue price rules for municipal securities, which become effective on June 7, 2017.

The model documents are available at the following link: www.sifma.org/issuepricedocs.

SIFMA and its members believe that these issue price model documents will help industry members reduce legal costs and regulatory risk while increasing legal certainty. The documents are designed to make it easier for banks and broker dealers to assist their issuer clients in complying with the issue price rules and in understanding the expectations of market participants while promoting transparency of sales terms for both issuers and underwriters.

The SIFMA Model Issue Price Documents are comprised of the riders to the following items:

I. Agreement Among Underwriters – Negotiated
    A. Addendum to the Initial Wire Delivered Pursuant to the SIFMA Master AAU (2002)
    B. Exhibit A to Agreement Among Underwriters (Instructions, Terms and Acceptance) (1997)
II. Agreement Among Underwriters – Competitive
III. Selling Group Agreement – Negotiated
IV. Retail Distribution Agreement – Negotiated
V. Bond Purchase Agreement
    A. Insert for Bond Purchase Agreement – sole underwriter
    B. Insert for Bond Purchase Agreement – multiple underwriters
VI. Notice of Sale
    A. Alternative I - 10% Test to Apply if Competitive Sale Requirements are Not Satisfied
    B. Alternative II - Hold-the-Offering-Price Rule May Apply if Competitive Sale Requirements are Not Satisfied
    C. Alternative III - Bidders Should Expect that the Competitive Sale Requirements Will be Satisfied – Bids Cancelled if Hold-the-Offering-Price Rule to Apply Unless Bidder Confirms its Bid
    D. Alternative IV - Bidders Should Expect that the Competitive Sale Requirements Will be Satisfied – Sale Will be Cancelled if Competitive Sale Requirements Not Satisfied
    E. Rider for Official Confirmation of Bids (Electronic Bids) or Bid Form (Paper Bids)

Each of these items is a model document intended to be used as a common starting point for drafting the various issue price riders that may be necessary for industry participants to comply with the new issue price regulations, to be effective on June 7, 2017. The issue price riders will enable issuers to comply with the requirements of the issue price regulations while continuing to allow issuers to obtain the best possible pricing for their securities offerings. The issue price riders have been reviewed by representatives of NABL, GFOA and NAMA. Many of their comments, as well as comments received from other market participants, are reflected in the documents.

While the issue price regulations permit issuers to elect to use the "hold-the-offering-price" rule to establish issue price for all or a portion of an issue of securities, the issue price riders assume that the pricing of an issue of securities that is subject to the "hold-the-offering-price" rule will likely be more expensive for the issuer. If underwriters are required to agree not to offer or sell unsold securities at a price higher than the initial offering price for a period of up to five business days after the sale date, they may price the securities differently than if that restriction did not apply. Consequently, for negotiated sales, the "hold-the-offering-price" rule will apply to the securities only if the underwriter agrees to comply with the rule, as set forth in the bond purchase agreement. For competitive sales, if the competitive sale requirements are not satisfied, the issue price riders now establish four alternatives, listed above. The issue price riders do not reflect an alternative suggested by some commenters, to require bidders in a competitive offering to submit two bids – one that assumes that the "hold-the-offering-price" rule will apply and a second that assumes that the rule will not apply. We have been advised that a two-bid requirement is not practical in the tight timeframes that apply in a competitive bidding context and that potential bidders would likely decline to bid rather than submit two bids. Additionally, requiring potential bidders to submit multiple bids adds complexity and potential confusion to the process. Further, the principles behind these model documents are to suggest simple and standardized potential alternatives in competitive transactions for the purpose of facilitating clear documentation and avoiding misunderstandings, and so issuers receive as many bids as possible. Simply said, if the terms in the notice of sale are complicated and confusing, bidders may not have the time, resources, or inclination to bid the deal.

We want to highlight the following points:

- In the drafter's notes for the BPAs, there is a reminder to the drafter that the hold-the-offering-price rule may not be necessary if the Issuer does not need to establish the issue price of the Securities as of the sale date;

- The four competitive sale alternatives, as detailed below, address different fact patterns for competitive sales.

- Alternative I (10% Test to Apply if Competitive Sale Requirements are Not Satisfied) for the Notice of Sale has been added for sales where the issuer agrees that it will not apply the hold-the-offering-price rule in the event that the competitive sale requirements are not satisfied; Alternative I generally may be used if:
  (a) the issuer does not need to determine the issue price of the Securities on the sale date,

(b) the initial sale of the Securities to the public may not satisfy the competitive sale requirements, and
(c) the issuer will not apply the hold-the-offering-price rule to any maturity of the Securities in the event that the initial sale of the Securities to the public does not satisfy the competitive sale requirements.

- Alternative II (Hold-the-Offering-Price Rule May Apply if Competitive Sale Requirements are Not Satisfied) of the Notice of Sale generally may be used if:
  (a) the issuer must determine the issue price of the Securities on the sale date (for example, if the Securities are an advance refunding issue),
  (b) the initial sale of the Securities to the public may not satisfy the competitive sale requirements, and
  (c) the issuer expects to apply the hold-the-offering-price rule to one or more maturities of the Securities in the event that the initial sale of the Securities to the public does not satisfy the competitive sale requirements.

- Alternative III (Bidders Should Expect that the Competitive Sale Requirements Will be Satisfied – Bids Cancelled if Hold-the-Offering-Price Rule to Apply Unless Bidder Confirms its Bid) of the Notice of Sale now provides that the bids will be cancelled and deemed withdrawn if the sale does not meet the competitive sale requirements <u>and</u> the issuer determines to use the hold-the-offering-price rule, <u>unless</u> the prospective winning bidder confirms its bid and agrees to be bound by the hold-the-offering-price rule within 90 minutes after notification from the issuer; Alternative III generally may be used if the competitive sale requirements are expected to be satisfied or if the issuer does not need to determine the issue price of the Securities on the sale date.

- Alternative IV (Bidders Should Expect that the Competitive Sale Requirements Will be Satisfied – Sale Will be Cancelled if Competitive Sale Requirements Not Satisfied) of the Notice of Sale provides that the issuer will cancel the sale if the competitive bid requirements are not satisfied.

- The bid form in Part E applies to all of the alternative Notices of Sale.

- Drafter's notes for each of the Notices of Sale state that the winning bidder's assistance to the Issuer in establishing the issue price of the Securities may include adjusting the par amount of the Securities to be awarded.

- Practitioners should be aware that the issue price for an issue of securities, established as described in the issue price riders, is the issue price for arbitrage tax purposes and is not the issue price that holders of the securities must use for their own income tax purposes.

If any questions or concerns regarding the SIFMA Model Issue Price Documents arise, please contact Leslie Norwood at lnorwood@sifma.org.