



Agreement Among Underwriters

October 1, 1997

Guidance Notes*

The Bond Market Association (the “Association”) is publishing a revised version of the Agreement Among Underwriters for use in connection with the public offering by underwriters of governmental securities. The Agreement Among Underwriters is comprised of the Instructions, Terms and Acceptance and the Master Standard Terms and Conditions (together, the “Agreement” or the “Agreement Among Underwriters”). The Agreement Among Underwriters was originally released by the Association in 1991. The Association’s efforts remain directed toward providing the market with a standardized Agreement Among Underwriters readily available for use by underwriters in connection with the formation of underwriting groups. The revisions are intended to further that objective by simplifying the Agreement and to reflect changes since 1991 in market practices and legal requirements.

As with the 1991 version of the Agreement, the Agreement Among Underwriters is designed to provide a common starting place that can be completed easily while allowing the flexibility to readily incorporate modifications or supplements to the Agreement to reflect the specifics of the transaction.

To assist users of the Agreement Among Underwriters, the Association has prepared the following guidance notes that explain various provisions of the Agreement and highlight revisions from the 1991 version of the Agreement. These guidance notes, however, should not be relied upon by any underwriter in connection with a particular issuance of Securities to determine, without appropriate legal or other relevant professional advice, whether any provision of the Agreement Among Underwriters, or the Agreement Among Underwriters as a whole, is suitable for the particular circumstances and needs of that underwriter in the context of the specific transaction.

Capitalized terms not otherwise defined have the meanings given to them in the Agreement Among Underwriters.

Usage of the Agreement Among Underwriters

The Instructions, Terms and Acceptance (the “Instructions”) will be the only portion of the Agreement to be completed and, as appropriate, modified and supplemented by the Representative in connection with a particular issue of Securities. The Master Standard Terms and Conditions (the “Terms and Conditions”) are incorporated by reference in the Instructions to form the Agreement. To the extent that the terms and provisions of the Terms and Conditions require modification or supplementing, that will be accomplished by the use of Exhibit A to the Instructions. Parties using the Agreement Among Underwriters are discouraged from making any

* For negotiated transactions subject to SEC Rule 15c2-12.

modifications directly to the Terms and Conditions. The Association hopes that, by putting into the Instructions all modifications and supplements to the Agreement, the amount of paper that must be transferred between the Representative and the members of the Group in order to execute the Agreement can be reduced, thereby facilitating the process of organizing the Group. **It is not intended that the Terms and Conditions be distributed to the members of the Group in connection with each transaction, but rather that the Terms and Conditions be incorporated by reference.** Of course, the Representative should feel free to distribute the Terms and Conditions to the Group, if desired, and Underwriters are encouraged to request a copy of the Terms and Conditions from the Representative if needed.

The Association will facilitate this process by posting the Terms and Conditions on its Web site (bondmarkets.com). Any underwriter seeking to review the contents of the Terms and Conditions may refer to the Web site before signing the Instructions on a transaction. The Instructions also may be distributed, at the option of the Representative, through Dalcomp. The Representative should advise recipients if the Instructions are to be distributed through Dalcomp or any other similar means of distribution.

The Agreement Among Underwriters is principally intended to be used in negotiated offerings of Securities that are subject to the provisions of SEC Rule 15c2-12. If desired, the Agreement can be modified for transactions that are exempt from SEC Rule 15c2-12 by eliminating references to that Rule. Those modifications can be effected through Exhibit A to the Instructions.

Agreement Among Underwriters Instructions, Terms and Acceptance

1. Description of Offering

Information with respect to the proposed offering of Securities should be completed at the beginning of the Instructions and dates, addresses and Prevailing Time (e.g., Eastern Standard Time, Chicago Time or similar references) should be inserted in Section 1. Items that accompany the Instructions (or that are being forwarded under separate cover), such as the Preliminary Official Statement, the proposed form of Purchase Contract and blue sky materials, if any, should be identified. In order to streamline the Instructions, certain terms that had been defined in the Instructions are now defined in the Terms and Conditions and provisions relating to advertising and compliance with MSRB Rules have been moved into the Terms and Conditions.

2. Official Statements

Specific reference has been added in Section 3 to the effect that the Issuer will be obligated to provide, or cause to be provided, the Underwriters with final Official Statements, in sufficient quantity to comply with SEC Rule 15c2-12(b)(4), within the period of time required by SEC Rule 15c2-12(b)(3). If an Underwriter does not submit an order for Official Statements, the Representative may assume that the Underwriter is requesting only the minimum number required by MSRB Rule G-32(b)(i) (one Official Statement plus an additional Official Statement per each \$100,000 par value of Securities that the Underwriter has purchased and sold to customers).

3. Exhibits

Exhibit A should be used to identify any modifications and supplements to the Terms and Conditions.

The respective Original Participation amounts of the Representative, the Managers and the other Underwriters should be set forth in Exhibit B.

Exhibits C and D should be used by each Underwriter to accept the invitation to participate in the offering and, if necessary, to withdraw from the Group.

Agreement Among Underwriters Master Standard Terms and Conditions

As noted previously, the Association intends that the Terms and Conditions will be incorporated by reference in the Agreement and that the Terms and Conditions will not be separately distributed in connection with each transaction. Certain modifications to the provisions of the Terms and Conditions from the 1991 version are highlighted below.

1. Definitions

Certain terms that had been defined in the Instructions are now defined in Section 1 of the Terms and Conditions. The definition of “Total Takedown” has been modified to contemplate an underwriting commission or fee in lieu of an underwriting discount.

2. Offering and Order Priority

Order priorities as reflected in Section 6 of the Terms and Conditions have not been modified from those used in the 1991 version of the Agreement. If and to the extent desired, a different order priority may be specified in Exhibit A to the Instructions or by Wire Notice.

The final paragraph of Section 6 requires compliance by an Underwriter with the Legal Investment Memorandum and Blue Sky Survey, **if any**, provided by the Representative; the clause “if any” has been added to allow for any changes in market practice regarding provision of Blue Sky Surveys and Legal Investment Memoranda as a result of the enactment of the National Securities Markets Improvement Act of 1996, or otherwise.

3. Payment and Delivery

Payment of all funds is now provided to be in immediately available funds (Sections 7 and 9). Reference has been added to Section 7 to the delivery of Securities to a registered securities depository on behalf of the Underwriters.

4. Expenses

Under Section 11, expenses will be allocated among the Underwriters in Pro Rata Proportions, except as otherwise provided with respect to fees payable to the MSRB pursuant to MSRB Rule A-13. For purposes of the allocation of the A-13 Fee, “management fee” is intended to include any management or other fee payable to the managers as contemplated by MSRB Rule G-11(h)(i). The allocation of expenses and/or the A-13 Fee, and those fees to

be included as part of the “management fee,” may be otherwise provided in Exhibit A to the Instructions. The MSRB requires disclosure by the Representative of syndicate expenses. See MSRB Notice (June 14, 1995) “Syndicate Expenses: Per Bond Fee for Bookrunning Expenses.” The Representative will agree to provide the Group with an itemized statement of expenses in accordance with the requirements of MSRB Rule G-11(h)(i).

5. Continuing Disclosure

The Terms and Conditions now include references to the written undertaking by the Issuer and/or other appropriate obligated persons relating to continuing disclosure obligations. Section 22 provides that the Representative will make available to any Underwriter, upon request, copies of the written undertaking if not otherwise described or included in the Official Statement. Section 14 specifically provides, however, that the Representative and the Managers shall be under no liability with respect to “the performance by the Issuer or others of any agreement on their part, including any undertakings relating to continuing disclosure obligations.”

6. Compliance or Acknowledgement of MSRB Rules

Provisions referencing compliance or acknowledgement of various MSRB Rules have been moved from the Instructions to the Terms and Conditions. Section 18 now includes an acknowledgement from each Underwriter with respect to the applicability of the provisions of MSRB Rules G-11, G-21 and G-32(a), as well as of the provisions of SEC Rule 15c2-12(b) requiring that the Preliminary Official Statement and the Official Statement be sent to potential customers and customers in certain circumstances.

Underwriters should review closely the representations contained in Section 18 to confirm that they are in compliance. In particular, Underwriters should note that Section 18 (clause (f) of the first paragraph) now requires each Underwriter to represent that “to its knowledge, it is not prohibited from engaging in an underwriting of the Securities of the Issuer by the provisions of MSRB Rule G-37.”

Under Section 20, the Representative will agree to make the filings required by MSRB Rule G-36 and to maintain the records required by MSRB Rule G-8(a)(xv).

7. Advertising

Provisions relating to the official advertisement of the Securities and restrictions on advertisements by Underwriters have been moved from the Instructions and are now contained in Section 21 of the Terms and Conditions. The official advertisement is specifically referenced as “subject to any limitations that may be imposed by the Issuer.”