NATIONAL ASSOCIATION OF BOND LAWYERS

COMMENTS ON IRS PROPOSED REGULATIONS REGARDING APPLICATION OF PRIVATE ACTIVITY BOND TESTS TO REFUNDING ISSUES

I. INTRODUCTION

The following are comments prepared by a subcommittee[1] of the General Tax Matters Committee (the **"Committee"**) of the National Association of Bond Lawyers (**"NABL"**). These comments were prepared by the Committee in accordance with NABL's purposes. While not all members of the Committee necessarily concur in each of these comments, the comments represent the consensus of the participants. Reference herein to the term "we" or "the Committee" is to the participants identified on the cover page. In addition, certain members of the Board of Directors of NABL have reviewed the comments. We would welcome the opportunity to discuss these comments with representatives of the Department of the Treasury and the Internal Revenue Service (**"IRS"**) and to answer any questions that the comments may raise.

NABL was incorporated as an Illinois nonprofit corporation on February 5, 1979, for the purposes of educating its members and others in the law relating to state and municipal bonds and other obligations, providing a forum for the exchange of ideas as to law and practice, improving the state of the art in the field, providing advice and comment at the federal, state and local levels with respect to legislation, regulations, rulings and other actions, or proposals therefor, affecting state and municipal obligations, and providing advice and comment with regard to state and municipal obligations in proceedings before courts and administrative bodies through briefs and memoranda as a friend of the court or agency. NABL currently has approximately 3,000 members.

II. BACKGROUND

Bonds issued by a State or political subdivision that are considered "private activity bonds" under section 141 of the Internal Revenue Code of 1986, as amended (the **"Code"**) cannot qualify for tax-exemption under section 103(a) of the Code, with the exception of certain types of "qualified bonds" such as exempt-facility bonds, qualified mortgage bonds, student loan bonds, qualified small issue bonds or qualified 501(c)(3) bonds. A bond is a private activity bond if it is part of an issue that meets (i) both the private business use test and the private security or payment test (collectively, the **"private business tests"**), or (ii) the private loan financing test.

An issue generally meets the private business use test if more than 10 percent of the proceeds of the issue are to be used for any private business use (the **"10% private use limit"**).

[1] These comments were prepared through the efforts of John Cross, Joe Forrester, Carol Lew, Sam Norber, Robert Price, Linda Schakel, Jeremy Spector, and Patti Wu.

For this purpose, "private business use" is generally defined as any use (directly or indirectly) in a trade or business carried on by any person other than a governmental unit, other than use as a member of the general public. An issue meets the private security or payment test if the payment of principal of, or interest on, more than 10 percent of the proceeds of the issue is, under the terms of the issue or any underlying arrangement, directly or indirectly (i) secured by any interest in property used or to be used for a private business use or in any payments in respect of such property, or (ii) to be derived from payments, whether or not to the issuer, in respect of property, or borrowed money, used or to be used for a private business use (the **"10% private payment/security limit"** and, collectively with the 10% private use limit, the **"10% private business limit"**). These 10 percent tests are reduced to 5 percent for certain unrelated and disproportionate private business uses.

An issue generally meets the private loan financing test if proceeds of the issue are to be used (directly or indirectly) to make or finance loans to persons other than governmental units in an amount that exceeds the lesser of (i) 5 percent of the total proceeds of the issue, or (ii) $5 million. There is an exception to the private loan financing test for certain loans that enable the borrower to finance a governmental tax or assessment of general application for a specific essential governmental function.

Under Section 145 of the Code, the private activity bond tests described above also apply, with certain modifications, to qualified 501(c)(3) bonds, with related use by a 501(c)(3) organization treated as governmental use.

On December 29, 1994, the Service issued proposed regulations containing detailed and comprehensive rules relating to the application of the provisions described above, including rules on the treatment of refundings. On January 10, 1997, the Service issued final regulations with respect to the private activity bond tests (the **"1997 Regulations"**), but the section relating to the treatment of refundings was specifically reserved. On May 14, 2003, the Service issued new proposed regulations relating to application of the private activity bond tests to refunding issues (the **"Proposed Regulations"**).[2] These regulations are proposed to apply prospectively to bonds sold on or after the date of publication of final regulations in the Federal Register.

We commend the IRS for providing governmental issuers with various options to apply the private business tests in the context of refundings and believe that the Proposed Regulations offer much needed guidance and flexibility to issuers in a variety of circumstances. Nevertheless, we respectfully submit that there are a few areas in which the Proposed Regulations may be changed in order to make them more "user-friendly" in light of the financing practices of issuers.

III. MEASUREMENT PERIOD PROPOSALS

Section 1.141-3(g)(1) provides that the amount of private use is determined according to the average percentage of private business use of that property during the measurement period.

[2] Unless otherwise indicated, all references to Sections shall be to the 1997 Regulations, and all references to Proposed Section shall be to the Proposed Regulations.

Section 1.141-3(g)(2) provides generally that the measurement period of property financed by an issue begins on the later of the issue date of that issue or the date the property is placed in service and ends on the earlier of the last date of the reasonably expected economic life of the property or the latest maturity date of any bond of the issue financing the property determined without regard to any optional redemption dates (the **"Measurement Period"**).

Proposed Section 1.141-13(a) provides generally that a refunding issue and a prior issue are tested separately under Code Section 141 so that the determination of whether a refunding issue consists of private activity bonds generally does not depend on whether the prior issue consists of private activity bonds.

The Proposed Regulations provide that the proceeds of the refunding issue are deemed to be used for the same purposes as the proceeds of the prior issue. Proposed Section 1.141-13(b)(2)(i) provides generally that the amount of private business use of a refunding issue is determined under Section 1.141-3(g) based on the measurement period for the refunding issue, i.e., from the date of issue of the refunding issue without regard to any private business use that occurred prior to the issue date of the refunding issue (the **"Fresh Start Measurement Period"**).

Proposed Section 1.141-13(b)(2)(ii) provides, however, that the amount of private use of a refunding issue that refunds a prior issue of governmental bonds is the amount of private business use (A) during the period that begins on the first day of the measurement period for the prior issue (or the first issue of governmental bonds in a series of refundings of governmental bonds) and ends on the last day of the measurement period for the refunding issue (the **"Combined Measurement Period"**); or (B) at the option of the issuer, the Fresh Start Measurement Period but only if the prior issue does not satisfy the private business use test, based on a measurement period that begins on the first day of the Combined Measurement Period and ends on the issue date of the refunding issue (the **"Prior Issue Truncated Measurement Period"**).

In light of the concerns described more fully below, we respectfully suggest that Proposed Section 1.141-13(b)(2)(ii) be modified to delete the Prior Issue Truncated Measurement Period and to provide (a) absent any evidence to the contrary, and subject to general anti-abuse rules, a presumption that a governmental issuer did not exceed the 10% private use limit and (b) the amount of private business use of the refunding issue is the amount of private business use during either the Fresh Start Measurement Period or the Combined Measurement Period.

A. The 10% Presumption with a Fresh Start

When the Code was enacted in 1986, Code Section 103(a) was amended to reduce the percentage of nongovernmental use allowed in a tax exempt bond issue from 25% to 10% (5% for unrelated or disproportionate). When such legislation was originally introduced in 1985, however, there was no nongovernmental use permitted. Congress recognized that such a stringent test was impractical to apply and provided the 10% private business limit as a cushion against inadvertent private use in a governmental bond.

The vast majority of governmental issuers use their best efforts to comply with the tax rules. They have generally set up procedures, with the advice of their bond counsel, to comply with their general covenants not to take any action that would cause the bonds to become taxable or to become private activity bonds. This generally means that governmental issuers take reasonable steps to avoid exceeding the 10% private use limit applied on an annual basis. Generally, any inadvertent private use should fit within this 10% private use limit.[3] Therefore, unless it is shown that a governmental issuer has applied the 10% private use limit on other than an annual basis as permitted by the 1997 Regulations, as described more fully below, governmental issuers deserve a presumption that the amount of private use in its bond issues does not exceed 10% in any prior year. With this presumption in place, the amount of private business use of a refunding issue may be determined based on the Fresh Start Measurement Period.

By requiring an issuer to use a Combined Measurement Period or to prove that the prior issue does not satisfy the private business use test in order to get a "fresh start" with respect to the refunding issue, the Proposed Regulations, in effect, require an audit of the use of proceeds of the refunded bonds. The refunded bonds may have been issued as long as ten, fifteen, or twenty years ago or longer. Document retention policies vary by issuer and retaining and/or locating the necessary information, with staff changes, over such long periods of time may be difficult despite the best of intentions. Such an exercise would become an effort to prove the negative, i.e., that the issuer did not exceed the 10% private use limit, and, in light of most issuers efforts to stay within the 10% private use limit on an annual basis, an unnecessary administrative burden on governmental issuers. Therefore, we suggest that the Proposed Regulations be amended to provide that, absent any evidence to the contrary, and subject to general anti-abuse rules, a governmental issuer is presumed not to have exceeded the 10%

---

[3] In some instances, governmental bond issues may finance multiple projects managed by many different departments within municipal government. Similarly, qualified 501(c)(3) bond issues may finance multiple facilities with a multitude of users, e.g., a bond issue for a hospital system may finance improvements at several hospital facilities located at multiple locations within a state or throughout the country, managed by several different 501(c)(3) hospitals within the system. Despite the good faith efforts of these governmental issuers/borrowers, however, the 10% limit may be exceeded through inadvertent actions by one of the many people involved in administering a facility, e.g., through a bad management contract or a lease, that may not come to the attention of the department charged with overseeing compliance until well after such contract or lease has been executed. As a practical matter, when such private use comes to light, the governmental issuer/borrower will use its best efforts to correct the situation, e.g., by amending the contract to qualify under Rev. Proc. 97-13, or by terminating or modifying the offending lease. The issuer has, in effect, taken remedial action with respect to the bond financed facility by terminating the impermissible use. The Code recognizes that there must be a balance between the degree of governmental use required to qualify for tax exempt financing and the need to permit some deminimis amount of private use to facilitate the normal operation of government. The 10% private business limit is that balance and we believe that the potential for such inadvertent violations by an issuer should not preclude application of the 10% Presumption.

private use limit with respect to any prior bonds and such issuer would use the Fresh Start Measurement Period for purposes of measuring the amount of private use of its refunding bonds (the **"10% Presumption"**).

B. The Combined Measurement Period

When the 1997 Regulations were promulgated, the concept of measuring private use over time was introduced. Instead of applying the private use limits on an annual basis, the 1997 Regulations permitted the amount of private use to be determined generally over the Measurement Period, i.e., beginning on the later of the issue date or the date the property is placed in service and ending on the earlier of the end of the reasonably expected economic life of the property or the latest maturity date of the bond. Thus, assuming a 30 year bond issue for property with a 30 year useful life for example, an issuer could have up to three complete years of private use of the bond financed facility as long as the issuer had 27 years of governmental use of the same property. Issuers had the flexibility to choose to use these three years of private use in the first three years of a bond issue, the last three years, or anywhere in between. If an issuer planned to target its permitted private use to particular years, e.g., having three years of private use in the first three years of a bond issue, it would generally have more stringent procedures in place to insure that there would be governmental use for the balance of the period.

Issuers with anticipated private use would not be entitled to the 10% Presumption described above. Such issuers should be able to apply either the Fresh Start Measurement Period or the Combined Measurement Period without first proving that the prior issue to be refunded did not satisfy the private business use test based on the Prior Issue Truncated Measurement Period. The IRS appears to be concerned that the application of a Fresh Start Measurement Period to governmental refunding issues without first satisfying the Prior Issue Truncated Measurement Period test would somehow permit issuers to "double-up" the permitted private use. In light of how the private use test is applied to the prior issue, however, the use of the Fresh Start Measurement Period would not allow an issuer to increase the amount of private business use without jeopardizing the tax exemption of the prior issue.

For example, assume County A issues $30 million of governmental revenue bonds (**"Issue A"**) in 2003 and the proceeds are used to finance the acquisition of a building (the **"Building"**). $1 million of principal is retired each year with a final maturity of 2033. Assuming related private use, County A has 3 years of permitted private business use and uses it (e.g., a holdover private business tenant leases space for three years) during the first 5 years of the Issue A Measurement Period. Assume County A issues $20 million of governmental revenue bonds (**"Issue B"**) in 2013 to current refund the outstanding principal amount of Issue A. Issue B also amortizes $1 million of principal in each year with a final maturity of 2033.

In order to stay within the 10% private use limit for Issue A, County A must use the Building solely for governmental purposes from years 2007 through 2033 since all of its permitted private use was allocated to 2003 through 2006 and the Measurement Period for Issue A is not shortened by the refunding by Issue B. Thus, even if the private business use test was applied to Issue B using the Fresh Start Measurement Period, i.e., from 2013 to 2033, County A could not have any additional private business use during the Fresh Start Measurement Period because any additional private use would cause the Issue A to exceed the 10% private use limit. As the above example shows, the Prior Issue Truncated Measurement Period is not required when a Fresh Start Measurement Period is applied to the refunding issue in order to prevent a "doubling-up" of private use.

Therefore, we suggest that the Proposed Regulations be amended to delete the Prior Issue Truncated Measurement Period and to provide that, subject to general anti-abuse rules, a governmental issuer that does not qualify for the 10% Presumption be allowed to use either the Fresh Start Measurement Period or the Combined Measurement Period for purposes of measuring the amount of private use of its refunding bonds.

C. General Anti-Abuse Rules

We believe that amending the Proposed Regulations to provide for the 10% Presumption and deletion of the Prior Issue Truncated Measurement Period, as described above, would simplify the procedures required to implement a refunding of outstanding bonds. We understand that the IRS has expressed some concern that issuers may try to use such simplified rules to avoid the private use restrictions. For example, it has been suggested that the application of the Fresh Start Measurement Period with respect to refunding bonds would permit an issuer to have an additional 10% of private use in connection with its refunding bonds even though it might cause the prior bonds to exceed such 10% private use limit because the violation would be with respect to the prior bonds and not the refunding bonds. Thus, if the prior bonds have already been refunded, the statute of limitations may preclude the IRS from taking any action against the prior bonds. We believe that in such a situation, it would be fair to consider the refunding issue to be an abuse if the issuer is deliberately trying to exploit the 10% private use limit and permitting the statute of limitations run for the prior issue. Consequently, we suggest that the Proposed Regulations include a general anti-abuse rule in order to address situations in which these provisions may be used by an issuer to obtain more private use than permitted by the 10% private use limit.

IV. APPLICATION OF COMBINED MEASUREMENT PERIOD TO PRIVATE SECURITY OR PAYMENT TEST

It should be noted that satisfaction of the private use test can occur (with the result, under the Proposed Regulations, of a combined measurement period) even if "front loading" of private business use does not exist and no policy abuse is present. Certain obligations, such as tax allocation bonds may not be private activity bonds solely because the private payment test is not satisfied. Under the Proposed Regulations, those issues must now use a combined measurement period for computations of <u>private</u> <u>use</u> and <u>private</u> <u>payments</u>. We do not believe a potential abuse exists under Code Section 141 in connection with the computation of the "bad money" allowed to justify the burdensome requirements of the Proposed Regulations. Further, existing law adequately addresses the private payment test in this context.

Section 1.141-4(c)(2)(ii) addresses the computation of private payments in connection with a refunding. Section 1.141-4(c)(2)(ii) basically protects the IRS from issuers planning to impermissibly increase the de minimis amount of private payments allowed. Under current law, if an issuer already has received its allowed de minimis private payments with respect to the refunded issue, it cannot generally expect to receive additional private payments with respect to the refunding issue as such payments would add to the private payments on the refunded issue. An example might be added to Section 1.141-4(c)(2)(ii) to clarify its application and to guard against abuse. The approach of current law in this area is preferable to the approach of the Proposed Regulations as it involves less burdensome recordkeeping and the tax exemption on the refunding issue is not necessarily connected to the tax exemption on the refunded issue. If an issuer is unsure regarding the exact amount of private payments received with respect to the refunded bonds, the prudent issuer would, perhaps, collect no new private payments with respect to the refunding bonds. Under the Proposed Regulations, even if the issuer collects no new private payments with respect to the refunding bonds, the new issue may be tainted by the refunded issue. This result is inconsistent with separate issue treatment and more burdensome for refundings of governmental bonds than for refundings of private activity bonds.

We believe the application of the private security test should be consistent with the approach adopted for private use.

V. APPLICATION OF COMBINED ISSUE TREATMENT TO PARTIAL REFUNDING

If a combined measurement period is applicable, the Proposed Regulations provide that the present value of the private security and private payments is compared to the present value of the debt service on the combined issue. Proposed Section 1.141-13(c)(2) provides that "in the case of a partial refunding, the unrefunded debt service is not taken into account in determining the yield on the combined issue." It is unclear if the unrefunded debt service is excluded only for purposes of computing the yield on the combined issue or if it is also excluded from the debt service of the combined issue. If it is excluded for both purposes, we believe that the application of this provision of the Proposed Regulations may penalize an issuer for not refunding all of its bonds in the application of the combined issue treatment.

First, assume an issuer issues $100 in new money bonds, priced at par. The maximum permitted present value of private payments during the term of the issue would generally be $10. The amount of permitted private payments is not reduced as principal is paid off on the issue. So if 10 years later, the principal amount outstanding is $75 (due to the retirement of serials for example), the private payment limits are unaffected because the present value test is based on the amount of debt service of the issue at the closing.

Example (2) of Proposed Section 1.141-3(f) supports this interpretation in two ways. First, the 2000 Bonds, in the principal amount of $100 million, have 20 years of level debt service. Therefore, there must be some amortization of principal in each of the first 5 years. Second, the issue is fully refunded with a $93,250,000 issue in 2005. This also indicates that at least $6,750,000 of principal has been retired. Nevertheless, the example tells us, correctly, that in determining the debt service on the combined issue, the full debt service on the 2000 bonds in the first 5 years is used. This ensures that the issuer is not penalized for the amortization of the serials in the first 5 years. This example produces the correct result for a full refunding.

In the case of a partial refunding, however, the Proposed Regulations provide that the unrefunded bonds are not included in the yield calculation. If the debt service on the unrefunded bonds is not included as part of the debt service being present valued to quantify the dollar value of the 10% portion, the issuer is being penalized for the portion of the bonds that are not refunded and may provide an incentive to refund more bonds.

For example, assume an issuer issued governmental bonds in 1990 in the amount of $100. Under a 10% private payment limit, the issuer would be entitled to receive payments with a present value in 1990 of $10.

Assume, however, that between 1990 and 1998, the issuer retired $25 of principal as serial bonds. In 1998, there remained $25 of serials which were scheduled to be retired through 2000, and a term bond in the amount of $50 due in 2010 with sinking funds from 2001 through 2009.

In 1998 the issuer advance refunded the $50 of term bonds with a refunding bond issue of $60. The issuer should still be entitled to payments that roughly equal the present value of the debt service on the bonds during the term of the bonds, but replacing only the debt service on refunded bonds with debt service on the refunding bonds as described in the example, which reflects the actual debt service payments borne by the issuer. If the debt service on the $25 of bonds that came due in 1998, 1999 and 2000 is excluded because those bonds were not refunded, it would reduce the overall debt service on the combined issue and there would be a corresponding reduction in the amount of private payments that would be permitted even though the issuer is still paying for the debt service on these unrefunded bonds.

We recommend that Proposed Regulations be amended to include the debt service on the unrefunded bonds in the calculation of the combined yield and the combined debt service.

VI. SPECIAL RULE FOR GENERAL OBLIGATIONS ISSUED BY LARGE MULTIPURPOSE ISSUERS

Section 1.141-2(d)(1) provides that an issue is an issue of private activity bonds if the issuer reasonably expects, as of the issue date, that the issue will meet either the private business tests or the private loan financing test. An issue is also an issue of private activity bonds if the issuer takes a deliberate action, subsequent to the issue date, that causes the conditions of either the private business tests or the private loan financing test to be met.

Section 1.141-2(d)(5) provides a special rule for general obligation bond programs that finance a large number of separate purposes. Under that rule, the determination of whether bonds of an issue are private activity bonds may be based solely on the issuer's reasonable expectations as of the issue date if the issue meets all of the requirements set forth therein (the "Large Multipurpose Issuer Exception").

By aggregating many projects within a single bond issue and applying the proceeds of such bonds to project costs as they arise, an issuer is able to accelerate the expenditure of bond proceeds. The application of the deliberate action rule and the concomitant remedial action to issues that financed multiple projects within a single issue, however, would impose a heavy administrative burden on such issues. The preamble to the 1997 Regulations states that the Large Multipurpose Issuer Exception was intended to provide relief for “cash flow” general obligation programs where issuers use the proceeds of an issue for a large number of projects and spend proceeds promptly. The preamble further states that these programs merit special treatment in part because they further the purposes of the arbitrage rules.

Proposed Section 1.141-13(b)(2)(ii) provides, however, that in applying the private business use test to a refunding issue that refunds a prior issue of governmental bonds, the amount of private business use of the refunding issue is the amount of private business use (A) during the combined measurement period; or (B) from the date of issue of the refunding, but only if, *without regard to the reasonable expectations test of section 1.141-2(d),* the prior issue does not satisfy the private business use test based on a measurement period that begins on the first day of the combined measurement period and ends on the issue date of the refunding issue.

By disregarding the reasonable expectations test in Section 1.141-2(d), the Proposed Regulations vitiates the Large Multipurpose Issuer Exception. Furthermore, having availed itself of the Large Multipurpose Issuer Exception, an issuer may not have the documentation required to show that no deliberate action had been taken subsequent to the date of issue of the bonds with respect to any of the myriad of projects financed by the issue that would cause the private business use test to be satisfied. The policy reasons for providing the Large Multipurpose Issuer Exception to new money financings apply equally to bonds issued to refund such issues. Consequently, the Proposed Regulations should provide that bonds used to refund all or a portion of a prior issue of bonds that qualified for the Large Multipurpose Issuer Exception shall not be treated as private activity bonds.

VII. ADVANCE REFUNDING OF BAD BONDS GONE GOOD

Proposed Section 1.149(d)-1 generally provides that tax exempt bonds may not be used to advance refund a prior issue of tax exempt bonds, even if there is no private use of the bond financed facility during the Fresh Start Measurement Period, if the prior issue of bonds were issued as private activity bonds.

For example, assume a governmental issuer plans to use tax exempt bonds to finance the construction of a solid waste disposal facility. Since the facility will be managed by a nongovernmental person under a management contract that does not qualify for any of the safe harbors provided by Rev. Proc. 97-13, the bonds are issued as exempt facility bonds for a solid waste disposal facility. Assume further that the management contract is terminated and the facility is now managed by the governmental issuer. If the governmental issuer wants to refund these bonds, the Proposed Regulations would treat the refunding bonds as governmental bonds but the refunding must be a current refunding. The Proposed Regulations would not permit, however, an advance refunding of the original bond issue because these bonds were private activity bonds when originally issued even though there is no further private use of the facility.

There is no policy reason to prohibit an advance refunding of such bonds. The advance refunding limitation imposed by Code Section 149(d) was intended to limit the number of issues of tax exempt private activity bonds that benefit a nongovernmental entity to one issue outstanding at any time. If the nongovernmental entity's participation in a tax exempt private activity bond has been terminated and the only beneficiary of the financing is the governmental unit, there is no sound tax reason to prohibit the governmental entity from advance refunding the original issue as long as the governmental entity is willing to treat such refunding as the only advance refunding permitted.

We recommend that the Proposed Regulations be modified to permit a private activity bond to be advance refunded by a governmental bond if the nongovernmental entity's participation in the bond financing has been terminated and the only beneficiary of the financing is the governmental unit. Such advance refunding would be the only advance refunding permitted.

VIII. APPLICATION OF REASONABLE EXPECTATIONS TEST

Proposed Section 1.141-13(e) provides that an action that would otherwise cause a refunding issue to satisfy the private business tests or the private loan financing test is not taken into account under the reasonable expectations test of Section 1.141-2(d) if the action is not a deliberate action and the weighted average maturity of the refunding bonds is not greater than the remaining weighted average maturity of the prior bonds.

As we understand it, this was an extension of the protection afforded by the 1997 Regulations to a refunding of a bond after a non-deliberate action has occurred, e.g., an involuntary taking. For example, assume bonds were issued to finance a facility that is subsequently condemned by the federal government. This, being an involuntary taking, is not a deliberate action and does not cause the original bond to meet the private activity bond test. Under Proposed Section 1.141-13(e), the original bond may subsequently be refunded on a tax exempt basis, notwithstanding the involuntary taking, as long as the weighted average maturity of the refunding bonds is not extended. This is a very useful exception, however, it would be helpful if the Proposed Regulations included an example illustrating the operation of the rule. We would suggest, however, that the weighted average maturity of the refunding bonds be limited to 120% of the useful life of the property financed by the prior bonds instead of using the remaining weighted average maturity of the prior bonds. This would permit the application of the exception to commercial paper issues and not penalize issuers for issuing shorter term obligations initially or provide any incentive to issuers to issue longer term obligations initially.