PHONE 202-503-3300 601 Thirteenth Street, NW
FAX 202-637-0217 Suite 800 South
www.nabl.org Washington, D.C. 20005

National Association of Bond Lawyers

February 22, 2016

VIA EMAIL

Mr. John J. Cross III
Associate Tax Legislative Counsel
United States Department of the Treasury
1500 Pennsylvania Ave, NW
Washington, DC 20220

Mr. James A. Polfer
Chief, Branch 5
Financial Institutions and Products
Office of the Chief Counsel
Internal Revenue Service
1111 Constitution Avenue, NW
Washington, DC 20224

RE: Proposed Arbitrage Regulations Addressing Definition of "Issue Price" for Tax-Exempt Bond Purposes (REG-138526-14)

Dear Mr. Cross and Mr. Polfer:

The National Association of Bond Lawyers ("NABL") respectfully submits this letter on issue price supplementing our comments submitted on September 22, 2015 ("NABL's 2015 Comments") relating to the definition of issue price in the proposed arbitrage regulations, REG-138526-14, which were published in the Federal Register on June 24, 2015 (the "Proposed Regulations").

This letter requests that an exception to the general rule for establishing issue price, separate from the alternative method, be created in the Proposed Regulations for competitive sales of bonds. Such request is based on (a) the unique nature of competitive sales (which do not occur in the corporate debt arena and are unique to municipal bonds), and (b) the undue burden that would be placed on issuers (particularly small issuers and those issuers required by state law to sell their bonds competitively) should the Proposed Regulations be adopted in their present form. This letter was prepared and approved by NABL's Board of Directors.

Competitive Sale Exception to the General Rule

As more thoroughly described in NABL's 2015 Comments, the competitive sale of bonds is unique to the municipal bond market. Corporate bonds are not sold by competitive sale.

Competitive sales are unique in three distinct ways: (1) the different timing of the filling of orders for bonds sold through a competitive bidding process; (2) the different contractual arrangement between the issuer and the winning bidder; and

(3) the market discipline associated with competitive sales of bonds. This uniqueness is illustrated in the following excerpt from NABL's 2015 Comments[1]:

The bid [in a competitive sale] is based upon the bidder's assessment of the market at the point in time at which the bid is submitted, with little or no premarketing due to inherent uncertainty as to whether the bidder will be successful in its bid to purchase the bonds.

Upon award of a bid, a contractual relationship is established between the issuer and the underwriter. Pursuant to the terms of the notice of sale, each bidder, by submitting a bid, generally agrees to make a public offering of the bonds. The winning bidder will have very little time to receive and fill orders to establish the issue price under the general rule of the Proposed Regulations, as the notice of sale will typically require the winning bidder to deliver the reoffering price information within a half hour or perhaps up to two hours after the award. In the absence of premarketing, bidders are submitting a bid based solely on their expectations as to the appropriate reoffering price of bonds based on a variety of market factors at the time of the award. An underwriter has much less ability, and thus no incentive, to not price the bonds fairly and correctly in a competitive bid situation. Data supports the intuitive conclusion that, without premarketing and the inability to alter the fixed sale parameters to match current supply and demand, it is more likely that the underwriter in a competitive bid will have more maturities that do not meet the 10% actual sales requirement on the sale date. This is particularly so when the winning bidder has bid aggressively (i.e., producing the lowest yield to the issuer).

NABL respectfully requests that the Proposed Regulations be changed to create a separate exception to the general rule by adding a new paragraph (f)(2)(iii) to § 1.148-1(f)(2) in the Proposed Regulations for bonds sold by competitive sale (the "Competitive Sale Exception"). The Competitive Sale Exception we propose would provide as follows:

(iii) Competitive Sales. As an alternative to the general rule in paragraph (f)(2)(i) of this section, an issuer may treat the initial offering price to the public as the issue price of the bonds if the following requirements are met:

(A) A notice of sale, or notice inviting bids, or other similar solicitation, with respect to the bonds is distributed to interested bidders; and

(B) At least three bids are received.

Additionally, while frequent and/or large issuers may have little difficulty receiving three or more bids from underwriters or other interested bidders, it is our understanding that smaller and less frequent issuers experience less market interest in their competitive sales and, not infrequently, may receive fewer than three bids. The receipt of fewer than three bids is typically not a reflection on the competitive bid process used by the issuer but results from other market-based factors.[2]

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[1]See pages 23 and 24 of NABL's 2015 Comments.

[2]As a result in part of narrow spreads (as a percentage of principal amount), underwriters are more likely to pass on bidding for smaller issues than issues with larger principal amounts.

Accordingly, we also recommend that a second, special "small issue" rule be created to accommodate these issuers. If the face amount of the bond issue does not exceed $30,000,000 then, despite receiving fewer than three bids, the issuer should still be able to treat the initial offering price to the public as the issue price of its bonds if the provisions of subparagraph (A) are satisfied. This could be accomplished by adding the following language at the end of subparagraph (B) of the Competitive Sale Exception set forth above:

> ", provided, however, that in the case of a bond issue with a face amount not exceeding $30,000,000, the requirements of this subparagraph (B) shall not apply."

NABL is not alone in identifying municipal bond issues of $30,000,000 or less as small issues. The Bond Dealers of America, in its letter to the Internal Revenue Service regarding the Proposed Regulations dated December 9, 2015,[3] noted as follows:

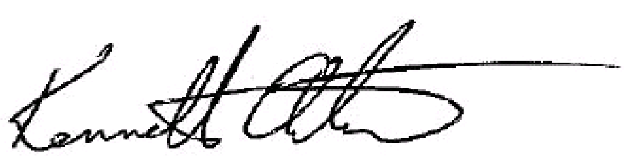
> In the corporate market, a majority of most bond issues come with one or two maturities. The proposed regulatory structure would be suitable for those corporate issuances. In the municipal market, most of the deals come with multiple serial maturities and term maturities with self-amortizing debt structures. This creates significant reductions in interest rate costs to the issuers that issue self-amortizing debt. Another option provided to the issuer and bidder, *usually due to small issue size (typically $30 million or less)*, is that maturities can be combined in order to structure the deal to align with investor demand. *(emphasis added)*

NABL exists to promote the integrity of the municipal market by advancing the understanding of and compliance with the law affecting public finance. We respectfully provide this supplemental submission in furtherance of this mission.

If you have any questions regarding the enclosed comments, please contact Bill Daly in our Washington, D.C., office at (202) 503-3300.

Thank you in advance for your consideration of this submission.

Sincerely,



Kenneth Artin

[3] See page 4 of the BDA Comments.