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## **Regulators Open to Idea of Special Issue Price Rules for Competitive Deals.**

WASHINGTON - Tax regulators are open to the idea of writing special issue price rules that would treat bonds sold in competitive deals differently than those sold in negotiated deals, Treasury Department associate tax legislative counsel John Cross told issuers meeting here on Friday.

Muni market groups have asked for special treatment for competitive deals in comments on issue price rules the Treasury Department and the Internal Revenue Service proposed in June.

"We're going to take another good look at whether we can do something more on competitive sales," Cross said during a panel on issue price at the winter meeting of the Government Financial Officers Association's debt committee.

Cross said a case can be made for special rules because most of the issue price rules are based on corporate rules and competitive deals are unique to the muni market. He and debt committee members also said tax regulators should be supportive of competitive deals because the pricing is more competitive and transparent.

Cross said that, at one point, tax regulators looked at a full year of trades and the prices of more than \$200 billion of bonds on EMMA, the Municipal Securities Rulemaking Board's website that contains muni trade data as well as disclosure information. The data suggested that there may not be a lot of pricing abuses, he said. But there have been enforcement cases and other examples of pricing abuses, he added.

Issue price is important because it is used to help determine the yield on bonds and whether an issuer is complying with arbitrage rebate or yield restriction requirements, as well as whether federal subsidy payments for direct-pay bonds such as Build America Bonds are appropriate.

Under existing rules, the issue price of each maturity of bonds that are publicly offered is generally the first price at which a substantial amount, defined as 10%, are reasonably expected to be sold to the public.

But tax regulators became concerned that some dealers were "flipping" bonds — selling them to another dealer or institutional investor who then sold them again almost simultaneously, with the prices continually rising before the bonds were eventually sold to retail investors.

Treasury and the IRS tried to tighten the rules in 2013 by proposing new ones that replaced the "reasonable expectations" standard with actual sales and increased the definition of "substantial amount" to 25% instead of 10%.

Those rules drew many complaints so Treasury and IRS scrapped them and proposed new rules in June that said the issue price of a maturity would generally be the first price at which 10% of the bonds are actually sold to the public. If 10% of a maturity hasn't been sold by the sale date, the issue price will be the initial offering price of the bonds sold to the public, as long as the lead or sole

underwriter certifies to the issue that no underwriter filled an order from the public after the sale date and before the issue date at a higher price than the initial offering price. An exception can be made if the market moved after the sale date, but the underwriter must document any market movements justifying a higher price.

Issuers say they need to know the issue price at the sale date and worry that if longer maturities of bonds take longer to sell, that can skew the issue price.

Cross also talked about rules and guidance “on the ‘to do’ list” or priority guidance plan that would facilitate public-private partnerships. Treasury and IRS want to liberalize the safe harbors for longer term management contracts so that the contracts would not result in too much private use that would jeopardize the tax-exempt status of bonds.

They also want to look remedial actions that could be taken with regard to leases under change of use rules so that bonds could remain tax-exempt if a bond-financed facility was leased to a private party.

THE BOND BUYER

BY LYNN HUME

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