
MODEL ISSUE PRICE DOCUMENTATION REPORT



National Association
of Bond Lawyers

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MODEL ISSUE PRICE DOCUMENTATION REPORT

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On December 9, 2016, the Department of the Treasury and the Internal Revenue Service released final regulations (the “Final Regulations”)¹ that revise the rules relating to the determination of the issue price of tax-advantaged bonds. The Final Regulations were the culmination of significant public input, including from the National Association of Bond Lawyers (“NABL”), on two previously proposed regulatory projects relating to the topic.

The Final Regulations represent a substantial departure from the prior regulations. Implementing the Final Regulations will involve conforming issue price documentation to reflect the rules set forth in the Final Regulations and advising clients as to the possible ramifications of the Final Regulations on the bond pricing process. As a service to its members, NABL has prepared sample forms of issue price documentation (the “model issue price documentation”), with a goal that such model documents will allow for a higher degree of industry consistency and lead to more efficient financings and dependable certifications.

There will likely be situations in which the model issue price documentation must be tailored to meet the circumstances of the particular transaction. Additionally, individual law firms may utilize different styles of documentation. The model issue price documentation is designed to provide a guide on the content that may be appropriate, but is not intended to limit the form of documentation to be used by individual law firms or attorneys. NABL also recognizes that its members and their law firms have unique drafting customs and preferences, and that members may use the model issue price documentation as a drafting aid, but might not use the documents in exactly the manner presented. To assist NABL members in modifying the model documents, a Word version of the documents is available here.

Organization

For ease of use, the model issue price documentation is organized as a suite of documents and is divided into six parts, each corresponding to a rule or combination of rules that may be used to determine issue price. NABL has crafted the model issue price documentation with attention to industry customs and an allocation of responsibility for information between participants in a municipal finance transaction.

The Final Regulations contain four primary rules that issuers and their counsel may use to establish the issue price of tax-advantaged bonds issued for money. First, there is a general “actual sales” rule.² Under the actual sales rule, the issue price of a bond is the first price at which at least 10% of the bonds of a particular maturity are sold to purchasers who are not underwriters of the bond or legally related to such underwriters.³ Second, the Final Regulations provide a special rule under which the issue price of a bond is the initial offering price of the bonds of such maturity to the public if certain requirements are met (the “hold-the-offering-price rule”).⁴ Third, the Final Regulations contain a special rule that is specific to qualifying competitively sold bond issues, which also contains several different requirements that must be

¹ Issue Price Definition for Tax-Exempt Bonds, 81 Fed. Reg. 88,999 (December 9, 2016).

² Treas. Reg. § 1.148-1(f)(2)(i).

³ *Id.*; Treas. Reg. § 1.148-1(f)(3)(ii).

⁴ Treas. Reg. § 1.148-1(f)(2)(ii).

satisfied for the rule to apply (the “competitive sales rule”).⁵ Finally, the Final Regulations provide a rule that confirms that the issue price of bonds issued in a “private placement” transaction is the price paid by the purchaser for those bonds.⁶ The Final Regulations also contain certain definitions⁷ and documentation requirements.

In certain circumstances, more than one rule can apply to establish the issue price of a bond. In that case, an issuer and its counsel can utilize the rule to apply to a bond that is most advantageous to the issuer, provided that adequate factual data are obtained from the underwriter. For example, information relating to actual sales may be requested, even when issue price can be established under a different rule. Therefore, while the model issue price documentation is divided into six parts, NABL contemplates that there may be circumstances where a single certificate may include representations from different model certificates.

The model issue price documentation uses certain drafting conventions in an effort to make the documents as efficient as possible, and as a way to limit the representations contained in the documents to factual matters. NABL members and non-lawyer industry stakeholder groups commented that the model issue price documentation should seek representations from non-lawyer financing team participants in a manner that reflects factual matters, as opposed to legal conclusions. Accordingly, the model issue price documentation uses defined terms that are defined within the documents themselves (as opposed to other documents relating to the bond issue), and do not contain citations to legal authorities.

Scope

The NABL model issue price documentation covers a number of possible situations in each of which one or more of the 10% actual sales rule, the hold-the-offering-price rule, and the competitive sales rule has been satisfied as of the issue date of the bonds. However, it is theoretically possible under the Final Regulations, where the issuer has decided to employ the 10% actual sales rule, for the issue price of one or more maturities of a bond issue (an “undersold maturity”) NOT to be determined as of the issue date of the bonds. Counsel using the NABL model issue price documentation as a starting point for their issue price certificates may in such circumstances feel the need to modify the particular issue price certificate to recognize the absence of an issue price as of the bonds’ issue date, but at the same time make reference to, or simply restate, the obligation of the underwriter(s) set forth in the model issue price documents prepared by the Securities Industry and Financial Markets Association (“SIFMA”), including the Bond Purchase Agreement and the Agreement Among Underwriters, to continue to report to the issuer the sales of bonds of each undersold maturity beyond the issue date until the earlier of (i) the time the 10% actual sales rule is met with respect to the undersold maturity, or (ii) all of the bonds of that maturity are sold. Counsel may determine that the inclusion of this type of statement will provide a more meaningful description to the reader of the certificate since all maturities of the bond issue will thus have been addressed in some fashion.

Coordination with Stakeholder Groups

A working group of NABL members took responsibility for drafting the model issue price documentation, which were distributed to various industry groups for review and comment. NABL recognizes that its membership is best served by a set of model documents that has been subject to review by representatives of the financial services firms who ultimately will be asked to sign the certificates.

⁵ Treas. Reg. § 1.148-1(f)(2)(iii).

⁶ Treas. Reg. § 1.148-1(f)(2)(i).

⁷ Treas. Reg. § 1.148-1(f)(3).

Similarly, the NABL working group reviewed and commented on model document provisions prepared by SIFMA for inclusion in bond purchase agreements, agreements among underwriters, notices of sale, and other documents that are intended to facilitate issue price determinations under the Final Regulations; however, no endorsement of the SIFMA documents is being made by NABL.

Other Notes

The model issue price documentation does not contain representations relating to matters that NABL members typically also seek from underwriters, municipal advisors, or bond purchasers, such as the arbitrage yield or the weighted average maturity of an issue (or a refunded issue), the benefit of bond insurance, debt service reserve funding, multipurpose issue allocations, or related calculations, or other similar matters. NABL takes no position on where those representations are most appropriately made in the documents relating to a bond issue.

The model issue price documentation does not include a certificate that relates to bonds issued in exchange for property. In the municipal finance area, this occurs most frequently in reissuance transactions, where modifications made to the terms of the original bonds are sufficiently significant to cause such bonds to be treated as exchanged for a new issue of bonds. Exchanges of debt instruments for property are governed by Sections 1274 and 1288(b) of the Internal Revenue Code of 1986, as amended, and the Treasury Regulations under that section, and NABL encourages its members to review each such transaction to determine what types of certifications are appropriate in a given set of circumstances.

Finally, NABL recognizes that underwriters, municipal advisors, and bond purchasers are not serving in the capacity of lawyers and, therefore, the information provided is intended to be factual in nature and not represent a substantive legal conclusion made by those parties. Accordingly, each certificate in the model issue price documentation contains a paragraph that limits the representations made in each respective certification to factual matters, and specifies the scope of the knowledge of the representative making the certifications on behalf of the certificate-giver.

The model issue price documentation was created by a working group of NABL members consisting of the participants listed in Exhibit A.

ANNOTATIONS

(a) ***Certificate No. 1 – Consolidated Form of Certificate for Negotiated Sales.*** NABL members and certain stakeholder groups suggested that the model issue price documentation include a form of issue price certificate that includes alternative provisions applicable to both the general rule of Treas. Reg. § 1.148-1(f)(2)(i) and the hold-the-offering-price rule of Treas. Reg. § 1.148-1(f)(2)(ii). Certificate No. 1 is the Consolidated Form and Certificates No. 2, No. 3, and No. 4 provide models of separate certificates. The representations contained in Certificate No. 1 are reflected in Certificate Nos. 2-4, and are described in more detail below.

(b) ***Model Issue Price Certificate No. 2 – A Substantial Amount of Each Bond is Actually Sold to the Public***

Model Issue Price Certificate No. 2 applies to transactions where issue price is established based on the price at which a substantial amount (i.e., at least 10%) of each bond⁸ in an issue is first sold at a given price on or before the issue date of the bonds to persons who are not underwriters of the bonds or legally related to such underwriters. For bonds that are actually sold to persons who are not underwriters of the bonds (and who are not legally related to such underwriters), the Final Regulations provide that the issue price is the first price at which a substantial amount (i.e., at least 10%) of the bond is sold. As opposed to the prior regulations, the Final Regulations do not contain, explicitly, a requirement that bonds be offered in a *bona fide* public offering or a fair market value requirement or limitation. Although other sources of law or regulation may impose similar requirements,⁹ the model issue price documentation does not contain representations relating to the nature of the offering or the extent to which the sale prices represent fair market value.¹⁰ If desired, such representations may be added to the model issue price documentation or included in other closing documents or certificates.

(c) ***Model Issue Price Certificate No. 3 – Combining Actual Sales Rule and Hold-the-Offering-Price Rule***

Model Issue Price Certificate No. 3 (“Certificate No. 3”) contemplates situations where there are bond maturities to which the actual sales rule applies and other bond maturities to which the hold-the-offering-price rule applies. This result is specifically allowed under the Final Regulations. Accordingly, Certificate No. 3 divides the bonds of an issue into (i) the bonds of an issue the issue price of which is established under the general rule of Section 1.148-2(f)(2)(i) of the Treasury Regulations, and (ii) the bonds of an issue the issue price of which is established under the hold-the-offering-price rule under Section 1.148-2(f)(2)(ii) of the Treasury Regulations.

The Final Regulations provide that, where an issuer may use more than one rule to establish the issue price of bonds of an issue, the issuer must identify in its books and records the rule used to establish

⁸ For purposes of this report and the model issue price documentation, the term “bond” is used to refer to a given maturity of a debt issuance, and no substantive distinction is intended by the use of the word bond in place of, for example, “note,” “debenture,” or other words of similar import that, for federal tax purposes, represent an evidence of indebtedness.

⁹ See, e.g., MSRB Rule G-30; MSRB, *Interpretive Notice Concerning the Application of MSRB Rule G-17 to Underwriters of Municipal Securities* (August 2, 2012).

¹⁰ NABL notes that, for federal tax purposes, the issue price should be the fair market value of a debt instrument. See, e.g., *United States v. Cartwright*, 411 U.S. 546 (1973); David C. Garlock, et. al., *Federal Income Taxation of Debt Instruments* ¶ 317 (2017 ed. 2017).

the issue price of each bond of an issue.¹¹ NABL suggests that its members document the rule used to establish the issue price of bonds of an issue (e.g., in the issuer’s tax certificate), even where only one rule is available to establish the issue prices of all of the bonds of the issue.

The hold-the-offering-price rule requires that underwriters agree to neither offer nor sell the bonds at a price higher than the initial offering price of the bonds for a specified period after the sale date. NABL contemplates that this agreement will be memorialized in the Bond Purchase Agreement between the issuer and the underwriter or in a notice of sale provision. The issuer should obtain a representation or covenant from the underwriter that a similar agreement is set out in the Agreement Among Underwriters among the underwriter and the co-managers. The model issue price documentation recites the fact of the agreement, but does not include a separate agreement to this effect or contemplate that the Bond Purchase Agreement will be attached to the documentation. Instead, the model issue price documentation anticipates that this item will be included in the bond transcript. The SIFMA model issue price documents contain the undertakings and agreements of underwriters relating to the hold-the-offering-price rule that are reflected in Certificate No. 3.

(d) ***Model Issue Price Certificate No. 4 – Exclusive Use of Hold-the-Offering-Price Rule***

The provisions of Model Issue Price Certificate No. 4 are drafted to be used where the issue price of each bond in the issue is being established using the hold-the-offering-price rule of Treas. Reg. § 1.148-1(f)(2)(ii).

(e) ***Model Issue Price Certificate No. 5 – Competitive Sales***

Model Issue Price Certificate No. 5 (“Certificate No. 5”) is intended to be used in qualifying competitive sale transactions and is also accompanied by a Certificate of the Municipal Advisor. The context of these transactions, particularly the role of the municipal advisor, makes it such that the issuer and bond counsel should obtain information relating to the issue price determination separately from the successful bidder and the municipal advisor. Certificate No. 5 solicits the information from the successful bidder that is typically within the bidder’s role in a competitive transaction, and leaves certain other information relating to the process of the competitive sale to the municipal advisor. In transactions where the issuer does not engage the services of a municipal advisor, bond counsel will need to consider whether representations relating to the factual matters otherwise addressed in the Certificate of the Municipal Advisor should be made by the issuer or a different transaction participant.

The competitive sales rule requires, among other things, that the bonds be awarded to the bidder that offers to purchase the bonds at the highest price (or lowest interest cost). This provision does not specify how “interest cost” is to be determined, but there are a number of different bases that issuers and municipal advisors might use to determine the winning bid. Metrics used in awarding bids include (but are not necessarily limited to) different iterations of “net” interest cost (“NIC”) and “true” interest cost (“TIC”). While both NIC and TIC are important financial metrics, neither is equivalent to the yield of an issue for arbitrage purposes. The understanding of the NABL members involved in preparing the model issue price documentation is that the phrase “interest cost” was intended to be broad, in an effort to afford issuers and their municipal advisors flexibility to determine how best to measure the financial basis upon which to award bonds in a competitive sale. Accordingly, Certificate No. 5 does not specify any exact calculation of interest cost.

¹¹ Treas. Reg. § 1.148-2(f)(2)(iv).

(f) *Model Issue Price Certificate No. 6 – Private Placements*

Model Issue Price Certificate No. 6 (“Certificate No. 6”) is intended to be used in private placement transactions. The Final Regulations provide that the issue price of bonds issued in a private placement transaction is the price paid for the bonds by the purchaser (without reducing the purchase price for any costs of issuance). Certain transactions, particularly transactions structured as bank loans, may involve costs that are either paid to the purchaser (or proceeds retained by the purchaser) that may be treated either as costs of issuance or as costs that should adjust the issue price of an issue.¹² NABL suggests that counsel carefully consider those costs in making issue price determinations in private placement transactions. In particular, NABL members should carefully consider the treatment of “points” paid by a borrower, commitment fees, and amounts charged by a purchaser that may relate to services performed by or on behalf of the purchaser or lender.

There is some ambiguity in the Final Regulations about what constitutes a “private placement” transaction, primarily due to a statement in the Final Regulations that might be read to suggest that a private placement transaction to which the rule applies may only have one purchaser of all of the bonds of an issue.¹³ Absent other guidance or clarification, the better reading of this provision is that the issue price of each bond issued in a private placement transaction is determined separately, and that it is not required that all bonds of an issue be purchased by a single purchaser in order for the rule relating to private placements to apply.¹⁴ Where multiple purchasers purchase bonds of a single issue that are not offered to the public, NABL suggests that each purchaser give the issuer a separate issue price certificate.

Finally, the experience of the members of the NABL model issue price documentation working group is that there are transactions where purchasers of the bonds in a private placement are also providing some other financial product to the bond issue obligor, such as an interest rate swap relating to the purchased bonds. Certificate No. 6 does not include any representations relating to any additional financial products or services that may relate (directly or indirectly) to a bond transaction. NABL suggests that members carefully consider the additional representations that may be appropriate for such transactions.

¹² See Treas. Reg. § 1.1273-2(g)(2)(i); Treas. Reg. § 1.1273-2(g)(5), Examples 1 and 2. The treatment of costs as either costs of issuance or as costs that adjust the issue price of the issue has added significance in the case of private activity bonds that purport to be qualified bonds, within the meaning of Section 141(e), because Section 147(g)(1) provides that a private activity bond shall not be a qualified bond if more than 2% of the proceeds of the issue of which the private activity bond is a part are used to finance issuance costs.

¹³ Treas. Reg. § 1.148-2(f)(2)(i).

¹⁴ While the rule relating to private placements is a helpful clarification, the result for private placements is dictated in any event under Treas. Reg. § 1.1273-2(a)(1).

 CERTIFICATE NO. 1 – CONSOLIDATED FORM

\$[PRINCIPAL AMOUNT]
[BOND CAPTION]

ISSUE PRICE CERTIFICATE

The undersigned, on behalf of [NAME OF UNDERWRITER/REPRESENTATIVE] ([“[SHORT NAME OF UNDERWRITER]”][the “Representative”]], on behalf of itself and [NAMES OF OTHER UNDERWRITERS] (together, the “Underwriting Group”), hereby certifies as set forth below with respect to the sale and issuance of the above-captioned obligations (the “Bonds”).

Select appropriate provisions below:

1. [Alternative 1¹⁵ – All Maturities Use General Rule: *Sale of the Bonds*. As of the date of this certificate, for each Maturity of the Bonds, the first price at which at least 10% of such Maturity of the Bonds was sold to the Public is the respective price listed in Schedule A.] [Alternative 2¹⁶ – Select Maturities Use General Rule: *Sale of the General Rule Maturities*. As of the date of this certificate, for each Maturity of the General Rule Maturities, the first price at which at least 10% of such Maturity of the Bonds was sold to the Public is the respective price listed in Schedule A.]

2. ***Initial Offering Price of the [Bonds]/[Hold-the-Offering-Price Maturities]***.

(a) [Alternative 1¹⁷ – All Maturities Use Hold-the-Offering-Price Rule: [SHORT NAME OF UNDERWRITER][The Underwriting Group] offered the Bonds to the Public for purchase at the respective initial offering prices listed in Schedule A (the “Initial Offering Prices”) on or before the Sale Date. A copy of the pricing wire or equivalent communication for the Bonds is attached to this certificate as Schedule B.] [Alternative 2¹⁸ – Select Maturities Use Hold-the-Offering-Price Rule: [SHORT NAME OF UNDERWRITER][The Underwriting Group] offered the Hold-the-Offering-Price Maturities to the Public for purchase at the respective initial offering prices listed in Schedule A (the “Initial Offering Prices”) on or before the Sale Date. A copy of the pricing wire or equivalent communication for the Bonds is attached to this certificate as Schedule B.]

(b) [Alternative 1 – All Maturities use Hold-the-Offering-Price Rule: As set forth in the [Bond Purchase Agreement][Notice of Sale and bid award], [SHORT NAME OF UNDERWRITER][the members of the Underwriting Group] [has][have] agreed in writing that, (i) for each Maturity of the Bonds, [it][they] would neither offer nor sell any of the Bonds of such Maturity to any person at a price that is higher than the Initial Offering Price for such Maturity during the Holding Period for such Maturity (the “hold-the-offering-price rule”), and (ii) any selling group agreement shall contain the agreement of each dealer who is a member of the selling group, and any retail distribution agreement shall contain the agreement of each broker-dealer who is a party to the retail distribution agreement, to comply with the hold-the-offering-price rule. Pursuant to such agreement, no Underwriter (as defined below) has offered or sold any Maturity of the Bonds at a price that is higher than the respective Initial Offering Price for that Maturity of the Bonds

¹⁵ If Alternative 1 is used, delete the remainder of paragraph 1 and all of paragraph 2 and renumber paragraphs accordingly.

¹⁶ If Alternative 2 is used, delete Alternative 1 of paragraph 1 and use each Alternative 2 in paragraphs 2(a) and (b).

¹⁷ If Alternative 1 is used, delete all of paragraph 1 and renumber paragraphs accordingly.

¹⁸ Alternative 2(a) of paragraph 2 should be used in conjunction with Alternative 2 in paragraphs 1 and 2(b).

during the Holding Period. [Alternative 2 - Select Maturities Use Hold-the-Offering-Price Rule: As set forth in the [Bond Purchase Agreement][Notice of Sale and bid award], [SHORT NAME OF UNDERWRITER][the members of the Underwriting Group] [has][have] agreed in writing that, (i) for each Maturity of the Hold-the-Offering-Price Maturities, [it][they] would neither offer nor sell any of the Bonds of such Maturity to any person at a price that is higher than the Initial Offering Price for such Maturity during the Holding Period for such Maturity (the “hold-the-offering-price rule”), and (ii) any selling group agreement shall contain the agreement of each dealer who is a member of the selling group, and any retail distribution agreement shall contain the agreement of each broker-dealer who is a party to the retail distribution agreement, to comply with the hold-the-offering-price rule. Pursuant to such agreement, no Underwriter (as defined below) has offered or sold any Maturity of the Hold-the-Offering-Price Maturities at a price that is higher than the respective Initial Offering Price for that Maturity of the Bonds during the Holding Period.

3. *Defined Terms.*

[(a) *General Rule Maturities* means those Maturities of the Bonds listed in Schedule A hereto as the “General Rule Maturities.”]

[(b) *Hold-the-Offering-Price Maturities* means those Maturities of the Bonds listed in Schedule A hereto as the “Hold-the-Offering-Price Maturities.”]

[(c) *Holding Period* means, with respect to a Hold-the-Offering-Price Maturity, the period starting on the Sale Date and ending on the earlier of (i) the close of the fifth business day after the Sale Date ([DATE]), or (ii) the date on which the [SHORT NAME OF UNDERWRITER][the Underwriters] [has][have] sold at least 10% of such Hold-the-Offering-Price Maturity to the Public at prices that are no higher than the Initial Offering Price for such Hold-the-Offering-Price Maturity.]

(d) *Issuer* means [DESCRIBE ISSUER].

(e) *Maturity* means Bonds with the same credit and payment terms. Bonds with different maturity dates, or Bonds with the same maturity date but different stated interest rates, are treated as separate maturities.

(f) *Public* means any person (including an individual, trust, estate, partnership, association, company, or corporation) other than an Underwriter or a related party to an Underwriter. The term “related party” for purposes of this certificate generally means any two or more persons who have greater than 50 percent common ownership, directly or indirectly.

(g) *Sale Date* means the first day on which there is a binding contract in writing for the sale of a Maturity of the Bonds. The Sale Date of the Bonds is [DATE].

(h) *Underwriter* means (i) any person that agrees pursuant to a written contract with the Issuer (or with the lead underwriter to form an underwriting syndicate) to participate in the initial sale of the Bonds to the Public, and (ii) any person that agrees pursuant to a written contract directly or indirectly with a person described in clause (i) of this paragraph to participate in the initial sale of the Bonds to the Public (including a member of a selling group or a party to a retail distribution agreement participating in the initial sale of the Bonds to the Public).

The representations set forth in this certificate are limited to factual matters only. Nothing in this certificate represents [NAME OF UNDERWRITING FIRM][the Representative’s] interpretation of any laws, including specifically Sections 103 and 148 of the Internal Revenue Code of 1986, as amended, and

the Treasury Regulations thereunder. The undersigned understands that the foregoing information will be relied upon by the Issuer[and the Borrower] with respect to certain of the representations set forth in the [Tax Certificate] and with respect to compliance with the federal income tax rules affecting the Bonds, and by [BOND COUNSEL] in connection with rendering its opinion that the interest on the Bonds is excluded from gross income for federal income tax purposes, the preparation of Internal Revenue Service Form 8038[-G][-GC][-TC], and other federal income tax advice it may give to the Issuer [and the Borrower] from time to time relating to the Bonds.

[UNDERWRITER][REPRESENTATIVE]

By: _____

Name: _____

—

Dated: [ISSUE DATE]

SCHEDULE A

**SALE PRICES OF THE GENERAL RULE MATURITIES AND
INITIAL OFFERING PRICES OF THE HOLD-THE-OFFERING-PRICE MATURITIES**

(Attached)

SCHEDULE B
PRICING WIRE OR EQUIVALENT COMMUNICATION

(Attached)

**SEPARATE CERTIFICATE NO. 2 – AT LEAST 10% OF EACH MATURITY
ACTUALLY SOLD AT A SINGLE PRICE**

\$[PRINCIPAL AMOUNT]
[BOND CAPTION]

ISSUE PRICE CERTIFICATE

The undersigned, on behalf of [NAME OF UNDERWRITER/REPRESENTATIVE] ([“[SHORT NAME OF UNDERWRITER”]] [the “Representative”]], on behalf of itself and [NAMES OF OTHER UNDERWRITERS] (together, the “Underwriting Group”), hereby certifies as set forth below with respect to the sale and issuance of the above-captioned obligations (the “Bonds”).

1. ***Sale of the Bonds.*** As of the date of this certificate, for each Maturity of the Bonds, the first price at which at least 10% of such Maturity of the Bonds was sold to the Public is the respective price listed in Schedule A.

2. ***Defined Terms.***

(a) *Issuer* means [DESCRIBE ISSUER].

(b) *Maturity* means Bonds with the same credit and payment terms. Bonds with different maturity dates, or Bonds with the same maturity date but different stated interest rates, are treated as separate Maturities.

(c) *Public* means any person (including an individual, trust, estate, partnership, association, company, or corporation) other than an Underwriter or a related party to an Underwriter. The term “related party” for purposes of this certificate generally means any two or more persons who have greater than 50 percent common ownership, directly or indirectly.

(d) *Underwriter* means (i) any person that agrees pursuant to a written contract with the Issuer (or with the lead underwriter to form an underwriting syndicate) to participate in the initial sale of the Bonds to the Public, and (ii) any person that agrees pursuant to a written contract directly or indirectly with a person described in clause (i) of this paragraph to participate in the initial sale of the Bonds to the Public (including a member of a selling group or a party to a retail distribution agreement participating in the initial sale of the Bonds to the Public).

The representations set forth in this certificate are limited to factual matters only. Nothing in this certificate represents [NAME OF UNDERWRITING FIRM] [the Representative’s] interpretation of any laws, including specifically Sections 103 and 148 of the Internal Revenue Code of 1986, as amended, and the Treasury Regulations thereunder. The undersigned understands that the foregoing information will be relied upon by the Issuer [and the Borrower] with respect to certain of the representations set forth in the [Tax Certificate] and with respect to compliance with the federal income tax rules affecting the Bonds, and by [BOND COUNSEL] in connection with rendering its opinion that the interest on the Bonds is excluded from gross income for federal income tax purposes, the preparation of the Internal Revenue Service Form 8038[-G][-GC][-TC], and other federal income tax advice that it may give to the Issuer [and the Borrower] from time to time relating to the Bonds.

[Signature Page Follows]

[UNDERWRITER][REPRESENTATIVE]

By: _____

Name: _____

—

Dated: [ISSUE DATE]

SCHEDULE A
SALE PRICES

(Attached)

**SEPARATE CERTIFICATE NO. 3 – COMBINATION OF GENERAL
RULE AND HOLD-THE-OFFERING-PRICE MATURITIES**

§[PRINCIPAL AMOUNT]
[BOND CAPTION]

ISSUE PRICE CERTIFICATE

The undersigned, on behalf of [NAME OF UNDERWRITER/REPRESENTATIVE] ([“[SHORT NAME OF UNDERWRITER]”][the “Representative”]), on behalf of itself and [NAMES OF OTHER UNDERWRITERS] (together, the “Underwriting Group”), hereby certifies as set forth below with respect to the sale and issuance of the above-captioned obligations (the “Bonds”).

1. ***Sale of the General Rule Maturities.*** As of the date of this certificate, for each Maturity of the General Rule Maturities, the first price at which at least 10% of such Maturity was sold to the Public is the respective price listed in Schedule A.

2. ***Initial Offering Price of the Hold-the-Offering-Price Maturities.***

(a) [SHORT NAME OF UNDERWRITER][The Underwriting Group] offered the Hold-the-Offering-Price Maturities to the Public for purchase at the respective initial offering prices listed in Schedule A (the “Initial Offering Prices”) on or before the Sale Date. A copy of the pricing wire or equivalent communication for the Bonds is attached to this certificate as Schedule B.

(b) As set forth in the [Bond Purchase Agreement][Notice of Sale and bid award], [SHORT NAME OF UNDERWRITER][the members of the Underwriting Group] [has][have] agreed in writing that, (i) for each Maturity of the Hold-the-Offering-Price Maturities, [it][they] would neither offer nor sell any of the Bonds of such Maturity to any person at a price that is higher than the Initial Offering Price for such Maturity during the Holding Period for such Maturity (the “hold-the-offering-price rule”), and (ii) any selling group agreement shall contain the agreement of each dealer who is a member of the selling group, and any retail distribution agreement shall contain the agreement of each broker-dealer who is a party to the retail distribution agreement, to comply with the hold-the-offering-price rule. Pursuant to such agreement, no Underwriter (as defined below) has offered or sold any Maturity of the Hold-the-Offering-Price Maturities at a price that is higher than the respective Initial Offering Price for that Maturity of the Bonds during the Holding Period.

3. ***Defined Terms.***

(a) *General Rule Maturities* means those Maturities of the Bonds listed in Schedule A hereto as the “General Rule Maturities.”

(b) *Hold-the-Offering-Price Maturities* means those Maturities of the Bonds listed in Schedule A hereto as the “Hold-the-Offering-Price Maturities.”

(c) *Holding Period* means, with respect to a Hold-the-Offering-Price Maturity, the period starting on the Sale Date and ending on the earlier of (i) the close of the fifth business day after the Sale Date ([DATE]), or (ii) the date on which [SHORT NAME OF UNDERWRITER][the Underwriters] [has][have] sold at least 10% of such Hold-the-Offering-Price Maturity to the Public at prices that are no higher than the Initial Offering Price for such Hold-the-Offering-Price Maturity.

(d) *Issuer* means [DESCRIBE ISSUER].

(e) *Maturity* means Bonds with the same credit and payment terms. Bonds with different maturity dates, or Bonds with the same maturity date but different stated interest rates, are treated as separate maturities.

(f) *Public* means any person (including an individual, trust, estate, partnership, association, company, or corporation) other than an Underwriter or a related party to an Underwriter. The term “related party” for purposes of this certificate generally means any two or more persons who have greater than 50 percent common ownership, directly or indirectly.

(g) *Sale Date* means the first day on which there is a binding contract in writing for the sale of a Maturity of the Bonds. The Sale Date of the Bonds is [DATE].

(h) *Underwriter* means (i) any person that agrees pursuant to a written contract with the Issuer (or with the lead underwriter to form an underwriting syndicate) to participate in the initial sale of the Bonds to the Public, and (ii) any person that agrees pursuant to a written contract directly or indirectly with a person described in clause (i) of this paragraph to participate in the initial sale of the Bonds to the Public (including a member of a selling group or a party to a retail distribution agreement participating in the initial sale of the Bonds to the Public).

The representations set forth in this certificate are limited to factual matters only. Nothing in this certificate represents [NAME OF UNDERWRITING FIRM][the Representative’s] interpretation of any laws, including specifically Sections 103 and 148 of the Internal Revenue Code of 1986, as amended, and the Treasury Regulations thereunder. The undersigned understands that the foregoing information will be relied upon by the Issuer[and the Borrower] with respect to certain of the representations set forth in the [Tax Certificate] and with respect to compliance with the federal income tax rules affecting the Bonds, and by [BOND COUNSEL] in connection with rendering its opinion that the interest on the Bonds is excluded from gross income for federal income tax purposes, the preparation of the Internal Revenue Service Form 8038[-G][-GC][-TC], and other federal income tax advice that it may give to the Issuer [and the Borrower] from time to time relating to the Bonds.

[UNDERWRITER][REPRESENTATIVE]

By: _____

Name: _____

—

Dated: [ISSUE DATE]

SCHEDULE A

**SALE PRICES OF THE GENERAL RULE MATURITIES AND
INITIAL OFFERING PRICES OF THE HOLD-THE-OFFERING-PRICE MATURITIES**

(Attached)

SCHEDULE B
PRICING WIRE OR EQUIVALENT COMMUNICATION
(Attached)

SEPARATE CERTIFICATE NO. 4 – ALL MATURITIES SUBJECT TO HOLD-THE-OFFERING-PRICE RULE

\$[PRINCIPAL AMOUNT]
[BOND CAPTION]

ISSUE PRICE CERTIFICATE

The undersigned, on behalf of [NAME OF UNDERWRITER/REPRESENTATIVE] ([SHORT NAME OF UNDERWRITER]) [the “Representative”], on behalf of itself and [NAMES OF OTHER UNDERWRITERS] (together, the “Underwriting Group”), hereby certifies as set forth below with respect to the sale and issuance of the above-captioned obligations (the “Bonds”).

1. Initial Offering Price of the Bonds.

(a) [SHORT NAME OF UNDERWRITER][The Underwriting Group] offered each Maturity of the Bonds to the Public for purchase at the respective initial offering prices listed in Schedule A (the “Initial Offering Prices”) on or before the Sale Date. A copy of the pricing wire or equivalent communication for the Bonds is attached to this certificate as Schedule B.

(b) As set forth in the [Bond Purchase Agreement][Notice of Sale and bid award], [SHORT NAME OF UNDERWRITER][the members of the Underwriting Group] [has][have] agreed in writing that, (i) for each Maturity of the Bonds, [it][they] would neither offer nor sell any of the Bonds of such Maturity to any person at a price that is higher than the Initial Offering Price for such Maturity during the Holding Period for such Maturity (the “hold-the-offering-price rule”), and (ii) any selling group agreement shall contain the agreement of each dealer who is a member of the selling group, and any retail distribution agreement shall contain the agreement of each broker-dealer who is a party to the retail distribution agreement, to comply with the hold-the-offering-price rule. Pursuant to such agreement, no Underwriter (as defined below) has offered or sold any Maturity of the Bonds at a price that is higher than the respective Initial Offering Price for that Maturity of the Bonds during the Holding Period.

2. Defined Terms.

(a) *Holding Period* means, for each Maturity of the Bonds, the period starting on the Sale Date and ending on the earlier of (i) the close of the fifth business day after the Sale Date ([DATE]), or (ii) the date on which [SHORT NAME OF THE UNDERWRITER][the Underwriters] [has][have] sold at least 10% of such Maturity of the Bonds to the Public at prices that are no higher than the Initial Offering Price for such Maturity.

(b) *Issuer* means [DESCRIBE ISSUER].

(c) *Maturity* means Bonds with the same credit and payment terms. Bonds with different maturity dates, or Bonds with the same maturity date but different stated interest rates, are treated as separate Maturities.

(d) *Public* means any person (including an individual, trust, estate, partnership, association, company, or corporation) other than an Underwriter or a related party to an Underwriter. The term “related party” for purposes of this certificate generally means any two or more persons who have greater than 50 percent common ownership, directly or indirectly.

(e) *Sale Date* means the first day on which there is a binding contract in writing for the sale of a Maturity of the Bonds. The Sale Date of the Bonds is [DATE].

(f) *Underwriter* means (i) any person that agrees pursuant to a written contract with the Issuer (or with the lead underwriter to form an underwriting syndicate) to participate in the initial sale of the Bonds to the Public, and (ii) any person that agrees pursuant to a written contract directly or indirectly with a person described in clause (i) of this paragraph to participate in the initial sale of the Bonds to the Public (including a member of a selling group or a party to a retail distribution agreement participating in the initial sale of the Bonds to the Public).

The representations set forth in this certificate are limited to factual matters only. Nothing in this certificate represents [NAME OF UNDERWRITING FIRM][the Representative’s] interpretation of any laws, including specifically Sections 103 and 148 of the Internal Revenue Code of 1986, as amended, and the Treasury Regulations thereunder. The undersigned understands that the foregoing information will be relied upon by the Issuer[and the Borrower] with respect to certain of the representations set forth in the [Tax Certificate] and with respect to compliance with the federal income tax rules affecting the Bonds, and by [BOND COUNSEL] in connection with rendering its opinion that the interest on the Bonds is excluded from gross income for federal income tax purposes, the preparation of the Internal Revenue Service Form 8038[-G][-GC][-TC], and other federal income tax advice that it may give to the Issuer [and the Borrower] from time to time relating to the Bonds.

[UNDERWRITER][REPRESENTATIVE]

By: _____

Name: _____

—

Dated: [ISSUE DATE]

SCHEDULE A
INITIAL OFFERING PRICES OF THE BONDS
(Attached)

SCHEDULE B
PRICING WIRE OR EQUIVALENT COMMUNICATION

(Attached)

CERTIFICATE NO. 5 – SPECIAL RULE FOR CERTAIN COMPETITIVE SALES
*****NOTE: FOR USE IN SALES WHERE AT LEAST THREE BIDS ARE RECEIVED*****

\$[PRINCIPAL AMOUNT]
 [BOND CAPTION]

ISSUE PRICE CERTIFICATE

The undersigned, on behalf of [NAME OF UNDERWRITER] (“[SHORT NAME OF UNDERWRITER]”), hereby certifies as set forth below with respect to the sale of the above-captioned obligations (the “Bonds”).

1. ***Reasonably Expected Initial Offering Price.***

(a) As of the Sale Date, the reasonably expected initial offering prices of the Bonds to the Public by [SHORT NAME OF UNDERWRITER] are the prices listed in Schedule A (the “Expected Offering Prices”). The Expected Offering Prices are the prices for the Maturities of the Bonds used by [SHORT NAME OF UNDERWRITER] in formulating its bid to purchase the Bonds. Attached as Schedule B is a true and correct copy of the bid provided by [SHORT NAME OF UNDERWRITER] to purchase the Bonds.

(b) [SHORT NAME OF UNDERWRITER] was not given the opportunity to review other bids prior to submitting its bid.¹⁹

(c) The bid submitted by [SHORT NAME OF UNDERWRITER] constituted a firm offer to purchase the Bonds.

2. ***Defined Terms.***

(a) *Maturity* means Bonds with the same credit and payment terms. Bonds with different maturity dates, or Bonds with the same maturity date but different stated interest rates, are treated as separate Maturities.

(b) *Public* means any person (including an individual, trust, estate, partnership, association, company, or corporation) other than an Underwriter or a related party to an Underwriter. The term “related party” for purposes of this certificate generally means any two or more persons who have greater than 50 percent common ownership, directly or indirectly.

(c) *Sale Date* means the first day on which there is a binding contract in writing for the sale of a Maturity of the Bonds. The Sale Date of the Bonds is [DATE].

(d) *Underwriter* means (i) any person that agrees pursuant to a written contract with the Issuer (or with the lead underwriter to form an underwriting syndicate) to participate in the initial sale of the Bonds to the Public, and (ii) any person that agrees pursuant to a written contract directly or indirectly with a person described in clause (i) of this paragraph to participate in the initial sale of the Bonds to the Public (including a member of a selling group or a party to a retail distribution agreement participating in the initial sale of the Bonds to the Public).

¹⁹ Treas. Reg. §1.148-1(f)(3)(i)(B) requires that all bidders have an equal opportunity to bid to purchase bonds. If the bidding process affords an equal opportunity for bidders to review other bids prior to submitting their bids, then this representation should be modified to describe the bidding process.

The representations set forth in this certificate are limited to factual matters only. Nothing in this certificate represents [SHORT NAME OF UNDERWRITER]'s interpretation of any laws, including specifically Sections 103 and 148 of the Internal Revenue Code of 1986, as amended, and the Treasury Regulations thereunder. The undersigned understands that the foregoing information will be relied upon by the Issuer [and the Borrower] with respect to certain of the representations set forth in the [Tax Certificate] and with respect to compliance with the federal income tax rules affecting the Bonds, and by [BOND COUNSEL] in connection with rendering its opinion that the interest on the Bonds is excluded from gross income for federal income tax purposes, the preparation of the Internal Revenue Service Form 8038[-G][-GC][-TC], and other federal income tax advice that it may give to the Issuer [and the Borrower] from time to time relating to the Bonds.

[UNDERWRITER]

By: _____

Name: _____

—

Dated: [ISSUE DATE]

SCHEDULE A
EXPECTED OFFERING PRICES

(Attached)

SCHEDULE B
COPY OF UNDERWRITER'S BID

(Attached)

**[\$[PRINCIPAL AMOUNT]
[BOND CAPTION]**

CERTIFICATE OF MUNICIPAL ADVISOR

The undersigned, on behalf of [NAME OF MUNICIPAL ADVISOR] (the “Municipal Advisor”), as the municipal advisor to [NAME OF ISSUER] in connection with the issuance of the above-captioned obligations (the “Bonds”), has assisted the Issuer in soliciting and receiving bids from potential underwriters in connection with the sale of the Bonds in a competitive bidding process in which bids were requested for the purchase of the Bonds at specified written terms, and hereby certifies as set forth below with respect to the bidding process and award of the Bonds.

1. The Bonds were offered for sale at specified written terms more particularly described in the Notice of Sale, which was distributed to potential bidders, a copy of which is attached to this certificate as Attachment 1.

2. The Notice of Sale was disseminated electronically through [NAME OF DISSEMINATION PLATFORM][], and a copy of the Notice of Sale (or a summary thereof) was published in The Bond Buyer[®] newspaper on [DATE][]. The method[s] of distribution of the Notice of Sale [is][are] regularly used for purposes of disseminating notices of sale of new issuances of municipal bonds, and notices disseminated in such manner are widely available to potential bidders. [INSERT ADDITIONAL OR DIFFERENT DESCRIPTION OF BIDDING PROCESS, IF APPLICABLE].

3. To the knowledge of the Municipal Advisor, all bidders were offered an equal opportunity to bid to purchase the Bonds so that, for example, if the bidding process afforded any opportunity for bidders to review other bids before providing a bid, no bidder was given an opportunity to review other bids that was not equally given to all other bidders (that is, no exclusive “last-look”).

4. The Issuer received bids from at least three bidders who represented that they have established industry reputations for underwriting new issuances of municipal bonds. Based upon the Municipal Advisor’s knowledge and experience in acting as the municipal advisor for other municipal issues, the Municipal Advisor believes those representations to be accurate. Copies of the bids received are attached to this certificate as Attachment 2.

5. The winning bidder was [NAME OF UNDERWRITER] (the “Underwriter”), whose bid was determined to be the best conforming bid in accordance with the terms set forth in the Notice of Sale, as shown in the bid comparison attached as Attachment 3 to this certificate. The Issuer awarded the Bonds to the Underwriter.

The representations set forth in this certificate are limited to factual matters only. Nothing in this certificate represents the Municipal Advisor’s interpretation of any laws, including specifically Sections 103 and 148 of the Internal Revenue Code of 1986, as amended, and the Treasury Regulations thereunder. The undersigned understands that the foregoing information will be relied upon by the Issuer[and the Borrower] with respect to certain of the representations set forth in the [Tax Certificate] and with respect to compliance with the federal income tax rules affecting the Bonds, and by [BOND COUNSEL] in connection with rendering its opinion that the interest on the Bonds is excluded from gross income for federal income tax purposes, the preparation of the Internal Revenue Service Form 8038[-G][-GC][-TC], and other federal income tax advice that it may give to the Issuer [and the Borrower] from time to time relating to the Bonds. No other persons may rely on the representations set forth in this certificate without the prior written consent of the Municipal Advisor.

[MUNICIPAL ADVISOR]

By: _____

Name: _____

—

Dated: [ISSUE DATE]

ATTACHMENT 1
NOTICE OF SALE

(Attached)

ATTACHMENT 2

BIDS RECEIVED

(Attached)

ATTACHMENT 3
BID COMPARISON

(Attached)

CERTIFICATE NO. 6 – BONDS SOLD IN A PRIVATE PLACEMENT

[\$[PRINCIPAL AMOUNT]
[BOND CAPTION]

CERTIFICATE OF THE [PURCHASER]

The undersigned, on behalf of [NAME OF PURCHASER] (the “Purchaser”), hereby certifies as set forth below with respect to the purchase of the above-captioned obligations (the “Bonds”).

1. **Purchase of the Bonds.** On the date of this certificate, the Purchaser is purchasing the Bonds for the amount of \$[AMOUNT]. The Purchaser is not acting as an Underwriter with respect to the Bonds. The Purchaser has no present intention to sell, reoffer, or otherwise dispose of the Bonds (or any portion of the Bonds or any interest in the Bonds). The Purchaser has not contracted with any person pursuant to a written agreement to have such person participate in the initial sale of the Bonds and the Purchaser has not agreed with the Issuer pursuant to a written agreement to sell the Bonds to persons other than the Purchaser or a related party to the Purchaser.

2. **Defined Terms.**

(a) **Public** means any person (including an individual, trust, estate, partnership, association, company, or corporation) other than an Underwriter or a related party. The term “related party” for purposes of this certificate generally means any two or more persons who have greater than 50 percent common ownership, directly or indirectly.

(b) **Underwriter** means (i) any person that agrees pursuant to a written contract with the Issuer (or with the lead underwriter to form an underwriting syndicate) to participate in the initial sale of the Bonds to the Public, and (ii) any person that agrees pursuant to a written contract directly or indirectly with a person described in clause (i) of this paragraph to participate in the initial sale of the Bonds to the Public (including a member of a selling group or a party to a retail distribution agreement participating in the initial sale of the Bonds to the Public).

The representations set forth in this certificate are limited to factual matters only. Nothing in this certificate represents the Purchaser’s interpretation of any laws, including specifically Sections 103 and 148 of the Internal Revenue Code of 1986, as amended, and the Treasury Regulations thereunder. The undersigned understands that the foregoing information will be relied upon by the Issuer[and the Borrower] with respect to certain of the representations set forth in the [Tax Certificate] and with respect to compliance with the federal income tax rules affecting the Bonds, and by [BOND COUNSEL] in connection with rendering its opinion that the interest on the Bonds is excluded from gross income for federal income tax purposes, the preparation of the Internal Revenue Service Form 8038[-G][-GC][-TC], and other federal income tax advice that it may give to the Issuer [and the Borrower] from time to time relating to the Bonds.

[PURCHASER], as Purchaser

By: _____

Name: _____

—

Dated: [ISSUE DATE]

EXHIBIT A

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