

INSIGHTS

## The Final Countdown: New Issue Price Regulations Effective June 7th

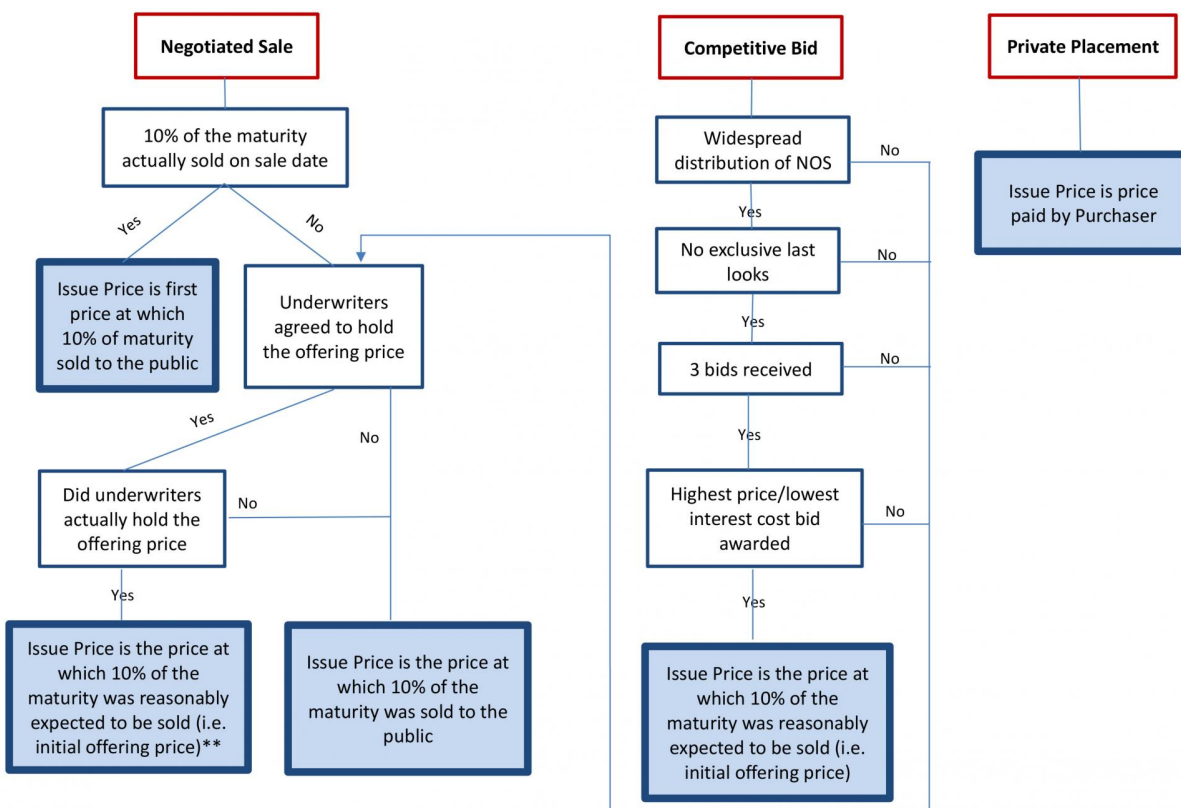
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The June 7<sup>th</sup> effective date for the final Treasury Regulations relating to the establishment of “issue price” of tax-exempt obligations (the “New Regulations”) is drawing near. In fact, for obligations that are scheduled to price on or soon after the June 7<sup>th</sup> effective date, working groups are already addressing the New Regulations in bond purchase agreements and notices of sale. With this in mind, now is the time for players in the municipal bond market to buckle down and address the New Regulations and their impact on practices and documentation. As we have previously reported (

As illustrated in the flowchart below (and available [here](#)), the manner in which issue price is established under the New Regulations is not, in many instances, straightforward. Rather, it depends upon: (i) the type of transaction involved (i.e., negotiated sale, competitive bid, or private placement); (ii) the specific agreements made between the issuer and the underwriters relating to whether the new “hold-the-offering-price rule” will be applied; (iii) the post-sale actions of the underwriters in determining whether the new hold-the-offering-price rule can, in fact, be applied; and (iv) whether the issuer elects to rely upon the hold-the-offering-price rule or the actual sales rule for each maturity of the obligations.

### Summary of Issue Price Under Treas. Reg. 1.148-1(f)\*



\* This flowchart is a summary only. Please consult tax counsel regarding the specifics of the rules summarized.

\*\*Note that issuer can still choose at closing to determine issue price based on the first price at which 10% of the maturity is sold to the public.

Because the establishment of issue price under the New Regulations is more complex and burdensome than under the current rules (as the reasonably expected initial public offering price can no longer be relied upon in all instances), communication is key. Early in the deal, working group members should discuss the best path to establishing issue price. For example, issuers should talk with their financial advisors and bond/tax counsel regarding whether it is essential for issue price to be established on the sale date (as may be the case in, for example, advance refundings), as well as the pros and cons of requiring underwriters to hold the offering price.

Players in the municipal bond market should also be prepared for the inevitable changes to several transaction documents that will result from the imposition of the New Regulations, including the sale documents and tax-related certificates. The Securities Industry and Financial Markets Association and the National Association of Bond Lawyers recently released suggested language for many of these documents in anticipation of the June 7<sup>th</sup> effective date, which Bracewell has reviewed and tailored to take into account state laws and practices.

Don't get caught by the buzzer on June 7<sup>th</sup>. If you have any questions about the New Regulations and the changes that they will bring, please do not hesitate to contact any member of Bracewell's