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DEPARTMENT OF THE TREASURY

Fiscal Service

[Department of the Treasury Circular, Public Debt Series No. 1-93]

31 CFR Part 356

Sale and Issue of Marketable Book-Entry Treasury Bills, Notes and Bonds

AGENCY: Bureau of the Public Debt, Fiscal Service, Department of the Treasury.

ACTION: Final rule.

SUMMARY: The Department of the Treasury ('`Department'') is issuing in final form an amendment to 31 CFR part 356, published as a final rule on January 5, 1993 (58 FR 412). 31 CFR part 356, also referred to as the uniform offering circular, sets out terms and conditions for the sale and issue by the Department to the public of marketable book-entry Treasury bills, notes and bonds. The amendment contained herein allows for Treasury securities awarded to a submitter that is a member of a clearing corporation to be delivered to an account of the clearing corporation at a depository institution, provided the securities are for the submitter's own account and certain agreements have been executed by the parties and filed with the appropriate Federal Reserve Bank. Specifically, this change will enable a clearing corporation to net securities awarded at an auction to submitters that are its members with the when-issued and secondary market trades of such members in the same securities.

EFFECTIVE DATE: June 3, 1994.

FOR FURTHER INFORMATION CONTACT: Don Hammond, Acting Director, Government Securities Regulations Staff, Bureau of the Public Debt (202) 219-3632, or Margaret Marquette, Attorney-Adviser, Office of the Chief Counsel, Bureau of the Public Debt (202) 219-3320. (TDD for hearing impaired: (202) 219-9274.)

SUPPLEMENTARY INFORMATION:

I. Background and Analysis

Clearing corporations play an increasingly important role in the clearance and settlement of securities transactions. To date, clearing

corporation involvement in the clearance and settlement of Treasury securities has been limited to the secondary market. The Department believes that including Treasury auction purchases in a multilateral netting system operated by a clearing agency registered with the Securities and Exchange Commission ('`SEC'') can be beneficial to the efficiency of the government securities market. For example, with respect to the book-entry system for Treasury securities, it can reduce the number of securities transfers. In addition, it can enable the clearing agency to improve its risk management by providing a more complete picture of its members' positions.

This amendment to the uniform offering circular specifies the conditions under which Federal Reserve Banks may deliver to an account of a clearing corporation at a depository institution securities awarded at auction to submitters that are members of the clearing corporation. The amendment permits only securities awarded to a submitter for its own account to be delivered through a clearing corporation. To qualify as a clearing corporation for purposes of this rule, an entity must be registered with the SEC as a clearing agency.

Currently, the only SEC-registered clearing agency that nets trades in Treasury securities is the Government Securities Clearing Corporation ('`GSCC''). GSCC has proposed to net GSCC netting member auction awards of Treasury securities against their when-issued and secondary market trades in the same securities. On March 10, 1994, the SEC published the GSCC's proposed rule amendments necessary to implement the netting of the proprietary auction awards of its members (59 FR 11345). The SEC comment period ended on March 31, 1994.

This rule amends Secs. 356.2, 356.11, 356.16, and 356.24 of the uniform offering circular.

Specifically, in Sec. 356.2, the definition of the term ``autocharge agreement'' has been expanded to allow for an autocharge between a clearing corporation and a depository institution. In addition, the term ``clearing corporation'' is defined as a clearing agency, as defined by Sec. 3 of the Securities Exchange Act of 1934, that is registered with the SEC.

The term ``delivery and payment agreement'' has also been added to the definitions in Sec. 356.2. This term refers to an agreement between a submitter and a clearing corporation authorizing a Federal Reserve Bank to deliver securities awarded to a submitter to, and accept payment from, a depository institution for the clearing corporation. This new agreement is needed to authorize the delivery of securities to a clearing corporation's account rather than to the submitter's account. Any existing autocharge agreements between a submitter and a depository institution will continue to govern delivery and payment for submitters not taking delivery through a clearing corporation. In addition, any existing autocharge agreements will continue to govern the delivery of and payment for securities awarded to customers.

New paragraph 356.11(b)(2) makes clear that for competitive bids submitted in paper form, a submitter that is a clearing corporation member and is submitting bids for its own account and for customers must submit a separate tender for each specific delivery instruction. This requirement also applies to any other submitter instructing delivery of awarded securities to more than one account.

New paragraph 356.16(b)(2)(iii) has been added to clarify that, if awarded securities are to be delivered to an account of a clearing corporation at a depository institution, a delivery and payment agreement must be acknowledged by, and on file with, the appropriate Federal Reserve Bank prior to the submission of a tender for the securities. By entering into such an agreement, the submitter authorizes the Federal Reserve Bank to provide to the clearing corporation notice of the submitter's auction awards. Further, a clearing corporation entering into delivery and payment agreements with submitters must have an acknowledged autocharge agreement on file at the Federal Reserve Bank maintaining the accounts of the clearing corporation's agent banks. By entering into an autocharge agreement, the clearing corporation authorizes the Federal Reserve Bank to provide

the depository institution whose funds account will be charged on issuance notice of certain payment related information for securities to be delivered.

Finally, paragraph 356.24(a) has been expanded to provide that, if securities are to be delivered to an account of a clearing corporation at a depository institution, notice of awards will be provided to the clearing corporation. Also, paragraph 356.24(c) has been modified to correspond to the expanded definition of autocharge agreement.

II. Special Analysis

This final rule does not meet the criteria for a ``significant regulatory action'' pursuant to Executive Order 12866.

Because this rule relates to public contracts and procedures for United States securities, the notice, public comment, and delayed effective date provisions of the Administrative Procedure Act are inapplicable, pursuant to 5 U.S.C. 553(a)(2).

In addition, because this rule is in the public interest, expedites the handling and processing of government securities, offers a new option for delivery and payment of securities, and does not adversely affect holders of government securities, the Department has determined not to publish the rule for public comment and to make the rule effective immediately upon publication.

As no notice of proposed rulemaking is required, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601, et seq.) do not apply.

List of Subjects in 31 CFR Part 356

Bonds, Federal Reserve System, Government securities, Securities.

For the reasons set forth in the preamble, 31 CFR Chapter II, subchapter B, part 356, is hereby amended as follows:

PART 356--SALE AND ISSUE OF MARKETABLE BOOK-ENTRY TREASURY BILLS, NOTES, AND BONDS (DEPARTMENT OF THE TREASURY CIRCULAR, PUBLIC DEBT SERIES NO. 1-93)

1. The authority citation for part 356 continues to read as follows:

Authority: 5 U.S.C. 301; 31 U.S.C. 3102, et seq.

2. The heading for part 356 is revised as set forth above.

3. Section 356.2 is amended by revising the definition of ``Autocharge agreement'' and adding in alphabetical order the definitions of ``Clearing corporation'' and ``Delivery and payment agreement'' to read as follows:

Sec. 356.2 Definitions.

* * * * *

Autocharge agreement means a written agreement between a submitter and a depository institution or between a clearing corporation and a depository institution, acknowledged by a Federal Reserve Bank, which authorizes a Federal Reserve Bank to deliver securities awarded at auction to the book-entry account of the depository institution or, when authorized, to a TREASURY DIRECT account, and to charge a funds account of the depository institution for the settlement amount of the securities. (See exhibit B for a sample autocharge agreement between a submitter and a depository institution.)

* * * * *

Clearing corporation means a clearing agency as defined in Section 3 of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(23)) that is registered with the Securities and Exchange Commission pursuant to

Section 17A of the Securities Exchange Act of 1934 and the rules thereunder.

* * * * *

Delivery and payment agreement means a written agreement between a clearing corporation and a submitter, acknowledged by a Federal Reserve Bank, authorizing the Federal Reserve Bank, with respect to securities awarded to the submitter for its own account, to deliver such securities to, and accept payment from, a depository institution acting on behalf of the clearing corporation pursuant to an acknowledged autocharge agreement.

* * * * *

4. Section 356.11 is amended by redesignating paragraphs (b)(2) and (b)(3) as (b)(3) and (b)(4) and adding a new paragraph (b)(2) to read as follows:

Sec. 356.11 Submission of bids.

* * * * *

(b) * * *

(2) For competitive bids, if securities are to be delivered to more than one account, a separate paper tender must be submitted for each delivery instruction specified.

* * * * *

5. Section 356.16 is amended by revising paragraph (b)(2)(ii) and adding a new paragraph (b)(2)(iii) to read as follows:

Sec. 356.16 Responsibility for payment.

* * * * *

(b) * * *

(2) * * *

(ii) A submitter that chooses not to pay by charge to its funds account or a submitter that does not have a funds account must, prior to the submission of a tender, have an acknowledged autocharge agreement on file at the Federal Reserve Bank to which the tender is submitted. By submitting a tender for securities to be paid for under such autocharge agreement, the submitter authorizes the Federal Reserve Bank to provide, to the depository institution whose funds account will be charged under the agreement, notice of the total par amount of, and price to be charged for, securities awarded as a result of the submitter's tender.

(iii) In addition, a submitter that is a member of a clearing corporation may instruct that delivery and payment be made through the clearing corporation for securities awarded to the submitter for its own account, provided that the following requirements are met:

(A) The submitter must, prior to the submission of a tender for such securities, have a delivery and payment agreement with the clearing corporation acknowledged by, and on file at, the Federal Reserve Bank to which the tender is submitted. By entering into such an agreement, the submitter authorizes the Federal Reserve Bank to provide to the clearing corporation notice of the par amounts of, prices to be charged for, and total payment amounts for, securities awarded to the submitter for its own account.

(B) An autocharge agreement between the clearing corporation and the depository institution must, prior to the submission of a tender for such securities, be acknowledged by, and on file at, the Federal Reserve Bank servicing the depository institution. By entering into such an agreement, the clearing corporation authorizes the Federal Reserve Bank to which the tender is submitted to provide, to the depository institution whose funds account will be charged under the agreement, notice of the total aggregate par amount of, prices to be charged for, and total payment amounts for, securities to be delivered to the clearing corporation's designated account at the depository

institution.

* * * * *

6. Section 356.24 is amended by revising paragraphs (a) and (c) to read as follows:

Sec. 356.24 Notice of awards; confirmations.

(a) Notice of awards--(1) Notice to submitters. Notice of awards will be provided by a Federal Reserve Bank or the Department to submitters of successful competitive bids. Submitters of noncompetitive bids will be notified only when the price to be paid by noncompetitive bidders is over par or if noncompetitive bids are not accepted in full.

(2) Notice to clearing corporation. If awarded securities are to be delivered pursuant to a delivery and payment agreement, notice of the awards also will be provided by a Federal Reserve Bank or the Department to the clearing corporation that is a party to such agreement.

* * * * *

(c) Confirmation of award and settlement amount to a depository institution having an autocharge agreement with a submitter or a clearing corporation. Not later than the day after each auction, the appropriate Federal Reserve Bank will notify each depository institution that has entered into an autocharge agreement with either a submitter or a clearing corporation as to the amount to be charged to the institution's funds account at the Federal Reserve Bank on the issue date.

* * * * *

7. The title to Exhibit B to Part 356 is revised to read as follows:

Exhibit B to Part 356. Sample Autocharge Agreement To Deliver and Charge for Securities Awarded in Department of the Treasury Auctions (Submitter and Depository Institution).

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Dated: May 11, 1994.

Gerald Murphy,

Fiscal Assistant Secretary.

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