Texas Water Development Board

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TO: Board Members

THROUGH: Jeff Walker, Executive Administrator
Rebecca Trevino, CPA, Chief Financial Officer

FROM: Georgia Sanchez, Development Fund Manager

DATE: August 17, 2020

SUBJECT: Underwriting Policies and Procedures for Negotiated Bond Transactions

ACTION REQUESTED

Consider approving the FY2021 Underwriting Policies and Procedures for Negotiated Bond Transactions of the Texas Water Development Board.

BACKGROUND

As an issuer of municipal debt, the Texas Water Development Board (TWDB) may issue publicly through two types of processes: negotiated sale and competitive sale. Prior to 1993, the TWDB utilized the competitive process to sell its bonds. Since that time and with one exception, the TWDB has utilized the negotiated process. Negotiated bond sales provide flexibility in structuring new debt and refunding transactions to strengthen cash flow coverage and provide maximum flexibility to address changing market conditions or activity.

With the implementation of the negotiated bond sale process in 1993, Underwriting Policies and Procedures for Negotiated Bond Transactions (UPPs) were drafted and approved to provide guidelines for underwriting activity for negotiated bond sales. The UPPs provide a consistent basis for staff to evaluate and report on specific performance factors after each transaction. The guidelines are generally considered standard operating procedures and are helpful in outlining goals, performance standards and reporting requirements. Underwriters selected through a formal Request for Qualifications (RFQ) process to serve in the TWDB underwriting pool are required to sign and abide by the UPPs. Before each bond transaction, the requirements of the UPPs are reviewed with the firm selected to serve as Senior Manager of the underwriting syndicate. The UPPs document was last approved on March 12, 2020. As a best practice, approval will be requested at the beginning of each fiscal year, starting with FY2021.

Our Mission

Leading the state's efforts in ensuring a secure water future for Texas and its citizens

Board Members

Peter M. Lake, Chairman | Kathleen Jackson, Board Member | Brooke T. Paup, Board Member

Jeff Walker, Executive Administrator

KEY ISSUES

In conjunction with the TWDB financial advisor, staff has completed the annual review of the UPPs. No changes are recommended.

RECOMMENDATION

In order to provide a consistent basis for staff to outline, evaluate and report on performance factors in conjunction with issuance of the agency's debt, the Executive Administrator recommends approval of the FY2021 Underwriting Policies and Procedures for Negotiated Bond Transactions of the Texas Water Development Board.

Attachment: Proposed FY2021 Underwriting Policies and Procedures for Negotiated Bond Transactions (UPPs)

TEXAS WATER DEVELOPMENT BOARD (TWDB)

UNDERWRITING POLICIES AND PROCEDURES

FOR NEGOTIATED BOND TRANSACTIONS

Proposed
September 3, 2020

A. Definitions

The following definitions shall apply:

- *Agreement Among Underwriters or AAU*: The contract establishing the underwriting Syndicate formed to market the bonds. The AAU will include provisions covering the liability of each Syndicate member, stated as a percentage, and if such percentage shall apply equally to underwriting commitments, profits and losses; a description of order types, order priority, pricing of the bonds and requirements respecting a public offering; and other matters relating to trade practice and applicable rules of the Municipal Securities Rulemaking Board (MSRB).

- *Authorized Representative (AR)*: The Executive Administrator and the Development Fund Manager, together with any other employee designated to act on behalf of the TWDB as an Authorized Representative.

- *Bond Purchase Agreement*: The contract between the Syndicate and the TWDB setting forth the final terms, prices and conditions upon which the Syndicate purchases a new issue of bonds issued by the TWDB.

- *Expenses*: The costs of operating the Syndicate for which the senior manager may be reimbursed.

- *Good Faith Deposit*: A sum of money required to be delivered to the TWDB by the Syndicate pursuant to the Bond Purchase Agreement. The Good Faith Deposit is generally provided in the form of a certified or cashier's check in an amount determined by the TWDB, a minimum of 1.00% of the par amount of bonds or another amount as determined by the TWDB.

- *Group Net Order*: An order for bonds that is allocated at the public offering price without deducting the concession or takedown. A Group Net Order benefits all members of the Syndicate according to their respective percentage liability commitments as detailed in the AAU, as further provided in Section E.

- *HUB (Historically Underutilized Business) Firms*: Firms owned by minorities, or women as defined by State law.

- *Liability*: The principal amount of securities to be underwritten by each member of the Syndicate, expressed as a percentage of the total par amount of the underwriting.

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- *Managers*: The book-running senior manager and other members of the Syndicate that may be allotted a portion of the Management Fee, if any.

- *Member Order*: An order for bonds placed by a member of the Syndicate confirmed to that member at the takedown, as further provided in Section E.

- *National Retail Order*: An order for bonds which is a direct purchase by an individual resident of any state outside of Texas. National Retail Order does not include trust departments, investment advisors or money managers acting on behalf of such residents, or separately managed accounts ("SMAs"). Orders by broker dealers or dealer banks are not considered retail accounts and may not be submitted as retail orders. The TWDB, together with its designated financial advisor, will clarify and define with the senior manager, prior to each issuance, accounts and orders to be considered as retail orders. The orders are usually subject to a maximum limit defined in writing prior to release of the preliminary pricing, and the priority provisions set forth in Section E. Under no circumstance will a Syndicate member enter multiple orders for a specific maturity for the same individual to circumvent this maximum amount.

- *Net Designated Order*: An order for bonds submitted by a Syndicate member on which all or a portion of the takedown is to be credited to firms designated by the purchaser of the bonds according to the percentages designated by the said purchaser within the parameters agreed to by the AR and the Senior Manager and set forth in the pricing wire, as further provided in Section E.

- *Priority Order*: A Group Net Order, Net Designated Order, or Member/Retail Order targeted toward a specific purchaser, such as Texas resident, and given preferential treatment in the bond allocation process.

- *Selling Group*: Other members of the TWDB's underwriting team used to assist in the marketing of the bonds. Selling Group members are not a party to the AAU and do not have underwriting liability.

- *Spread (or Underwriters' Discount)*: The differential between the prices paid to the TWDB for a new issue of bonds issued by the TWDB and the prices at which the securities are initially offered to the investing public. This is also termed the "gross spread, "gross underwriting spread" or "production." To the extent that the initial offering prices are subsequently lowered by the Syndicate, the full amount of the spread may not be realized by the Syndicate. The spread is usually expressed in dollars per bond. Although one or more components may not be present in any particular offering, generally the spread consists of four components: Expenses, Management Fee, Takedown, and Underwriting Risk.

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- *State*: The State of Texas.

- *Syndicate*: A group of underwriters formed to purchase and reoffer the TWDB's bonds for sale to the public at a stated offering price. Each member of the Syndicate has a percentage in the liability of the financing, as detailed in the AAU.

- *Takedown:* The discount from the public offering price allowed to members of an underwriting account on Orders.

- *Texas Retail Order*: An order which is a direct purchase by an individual resident of Texas, or trust departments, investment advisors or money managers acting on behalf of a resident of Texas. Orders by broker dealers or dealer banks are not considered retail accounts and may not be submitted as retail orders. The TWDB, together with its designated financial advisor, will clarify and define with the senior manager, prior to each issuance, accounts and orders to be considered as retail orders. The orders are usually subject to a maximum limit defined in writing prior to release of the preliminary pricing, and the priority provisions set forth in Section E. Under no circumstance will a Syndicate member enter multiple orders for a specific maturity for the same individual to circumvent this maximum amount. Upon request, an underwriter must immediately submit to the TWDB copies of all initial trade confirmations to verify retail orders.

- *True Interest Cost*: The rate, compounded semi-annually, necessary to discount the amounts payable on the respective principal and interest payment dates to the purchase price received on the closing date of the issue.

- *Underwriting Policies and Procedures or UPPs*: These Underwriting Policies and Procedures for Negotiated Bond Sales.

- *Underwriting Risk*: The amount paid under certain specific circumstances to the Syndicate members to provide for the risk that other components of the spread will not be sufficient to cover future incurred losses associated with the underwriting of the bonds.

B. <u>Overview</u>

1. All Syndicate members will be expected to perform at a level which provides maximum benefit to the State and which reflects their liability percentage as defined in the AAU. The AR will conduct a post-sale evaluation of each Syndicate member's performance approximately 30 days after the close of the transaction. The results of the evaluation will be used in the selection process for book-running senior manager and other Syndicate members for future TWDB financings.

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2. All Syndicate members will be expected to provide a positive financial impact in each bond transaction. To allow Syndicate members the opportunity to make a meaningful contribution, the book-running senior manager will be expected to actively involve Syndicate members in the preliminary discussions regarding the coupon structuring and pricing of the issue. The book-running senior manager will give the orders of Syndicate members no less attention than it would give to its own priority orders and make a bona fide attempt to fill those orders, giving due consideration for the Syndicate member's liability and the Priority Provisions, unless the effect would be to produce an outcome that is overall not in the best interest of the TWDB.

3. All Syndicate members will be expected to help further the TWDB's good faith efforts of including HUB firms in all facets of the financing. HUB firms are expected to participate fully throughout the financing process.

4. All Syndicate members will be expected to make themselves available to participate, when requested, in various aspects of the financing (e.g., informational meetings, pre-pricing conference calls, due diligence calls, and other meetings prior to the issuance of bonds, etc.).

C. Municipal Securities Rulemaking Board ("MSRB") Rules

MSRB rules shall be followed at all times in the underwriting of the bonds.

1. The priority of orders for bonds for purposes of allocation must be established and disclosed in writing to the Syndicate prior to the first offer of any bonds, in accordance with MSRB rules and Section E.

2. In placing an order with the book-running senior manager, all Syndicate members shall state whether it is a National Retail Order, a Texas Retail Order, a Group Net Order, a Net Designated Order, a Member Order or any other appropriate designation, including whether the order is for a related account. Any change in the designation of order type after order placement must be communicated to the book-running senior manager during the order period.

3. Any bonds sold by the Syndicate must be at the then-applicable respective public offering prices. Each member of the Syndicate agrees to make a bona fide public offering of all bonds allocated to it at the respective public offering prices. Syndicate members may reallow the concessions or any part thereof agreed upon by the Syndicate at a Syndicate meeting or any part thereof on sales to: (a) dealers who are members of the National Association of Securities Dealers, Inc. ("NASD"); or (b) dealer banks or divisions or departments of banks. This provision applies until the book-running senior manager issues a written release of Syndicate restrictions. The book-running senior manager shall execute and deliver prior to the delivery of the bonds

an "issue price certificate" as required by the Bond Purchase Agreement in such form as is mutually acceptable to the book-running senior manager and bond counsel (as identified in the Bond Purchase Agreement).

4. Under no circumstance will any Syndicate member re-allocate any portion of the takedown to any non-Syndicate account, broker-dealer or dealer bank in the form of a concession without the consent of the book-running manager unless the concession is stated on the pricing wire.

D. Liability

1. No later than two weeks prior to the day of pricing, the book-running senior manager must provide to the AR for review a recommended liability assignment for each Syndicate member. Upon approval by the AR, the book-running senior manager must incorporate the liability assignments into the AAU.

2. In general, the AR expects that the book-running senior manager will recommend itself 30% - 50% of the issue as its liability. All liability assignments are subject to the approval of the AR.

3. Performance shall be a factor in the bond allocation process. The allocation of bonds is also based on the distribution of liability to the Syndicate.

E. Priority Provisions

Priority Provisions are the rules adopted by an underwriting Syndicate specifying the priority to be given different types of orders received by the Syndicate. As required by the MSRB, the priority provisions must be adopted in writing in the AAU and provided to all Syndicate members. The types of orders are:

1. Texas Retail Order;
2. National Retail Order;
3. Group Net Order;
4. Net Designated Order; and
5. Member Order.

F. Agreement Among Underwriters (AAU)

1. The AAU must include the liability assignments, the priority of orders for purposes of allocation and the takedown designation policy in effect for the transaction. The book-running senior manager must deliver to the AR, and the AR shall review, the AAU prior to its distribution to Syndicate members, or the liability assignments if an electronic Master AAU is used.

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2. The book-running senior manager must provide a written copy of the AAU to each of the Syndicate members if an electronic Master AAU is not used. Each Syndicate member must review the terms and conditions set forth in the AAU and return a signed copy to the book-running senior manager, if distributed in physical form, or approve the electronic AAU via an electronic delivery system such as Ipreo, at least two business days prior to the day of pricing.

G. Takedown and Designation Policies

1. Two weeks prior to the day of pricing, the book-running senior manager must provide to the AR a proposed priority of orders for purposes of allocation and a proposed policy for the designation of takedown on Net Designated Orders. The policy must include a maximum and minimum percentage of takedown to be designated to any one firm, as well as a minimum number of firms if applicable to be designated on any one Net Designated Order. Upon the approval of the AR, the priority of orders and the designation policy may be included in the AAU.

2. Any takedown not designated on Net Designated Orders within seven business days of the day of pricing will be distributed among the Syndicate members according to their respective liability assignments.

3. The book-running senior manager must include in the final pricing book a breakdown of takedown designations on all Net Designated Orders for each Syndicate member. The final pricing book must be provided to the AR no later than 30 days after the day of closing.

4. Changes to the takedown designation policy must be approved by the AR and communicated by wire to Syndicate members.

H. Marketing Plan

1. Unless otherwise agreed to by the AR, no later than two weeks prior to the day of pricing or the day before the preliminary official statement posts, whichever is sooner, the book-running senior manager must provide a marketing plan to the AR. This plan should discuss target markets (e.g., casualty companies, trust departments, bond funds, retail) for the issue, as well as couponing scenarios, the feasibility of term bonds, and other ideas for consideration to achieve the best price for the issue.

2. The following percentages of bonds allocated should be viewed as overall targets or guidelines: generally, no more than 50% to any one firm and a minimum percent to be determined by the AR based on the transaction structure and the number of firms in the syndicate.

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3. Any proposed use of a selling group must be approved by the AR and will generally include other firms in the approved underwriting pool of the TWDB.

I. Fees and Expenses

The AR reserves the right to review and approve all fees and expenses of the Syndicate and request their substantiation. It is expected that any excess funds raised beyond those required to meet issue expenses will be returned to the TWDB.

1. The book-running senior manager must provide a final estimate of the expense component to the AR no later than one week prior to the expected day of pricing. The expense component of the underwriting spread must be finalized by the book-running senior manager and approved by the AR the day of pricing. Syndicate member expenses will only be permitted subject to prior approval by the AR and supported with documentation.

2. In general, the TWDB does not reimburse the MAC fee.

3. In general, the TWDB does not reimburse the book-running senior manager for clearance fees except for the per issue amount of $800.00 for the Depository Trust Company (DTC) on issues that are registered in book-entry form only. All other clearance fees must be justified in writing and are subject to the review and approval of the AR prior to the day of pricing on a case by case basis.

4. There will be no consideration of an Underwriting Risk component of the underwriting spread until after the order period closes. At that time, the AR and the book-running senior manager will review the book of orders and discuss the need for including Underwriting Risk in the underwriters' spread for any unsold bonds. Any Underwriters' Risk component must be approved by the AR. There will be no negotiation of Underwriting Risk after the verbal award has been given by the AR to the Syndicate.

5. Proposed takedowns for all maturities must be included as part of the proposed pricing terms received by the AR at least two hours prior to the first pre-pricing conference call. All changes to takedowns are subject to review and approval by the AR.

J. Discussion of Business Terms

Unless otherwise agreed to by the AR, no later than one week prior to the day of pricing, the book-running senior manager must communicate in writing to the AR following items previously discussed with the AR by the book-running senior manager: (a) priority of orders for purposes of allocation; (b) policy covering the

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distribution of takedown on Net Designated Orders; and (c) a timetable of events during pricing. These items are subject to the approval of the AR.

K. Pricing Procedures

1. The book-running senior manager must be prepared to initiate a conference call with the AR, the designated financial advisor of the TWDB and Syndicate to review overall financing goals and plans to accomplish them. The call, *to be confirmed at the discretion of the AR*, must be initiated no later than two business days prior to the day of pricing. The plans proposed by the book-running senior manager must address, among other things, the TWDB goals of obtaining the best price for the issue, allocating bonds on the basis of work performed, and maintaining favorable long-term market access.

2. Prior to, or coincidental with the call referenced in 1. above, the book-running senior manager will have a discussion with the AR as to whether having sealed bids on the first maturities would or would not provide for optimal pricing results.

3. At least one hour prior to the pre-pricing conference call (one business day prior to the day of pricing) between the AR and the Syndicate, the book-running senior manager must review with the AR and the designated financial advisor of the TWDB the proposed pricing terms. This is to allow for thorough evaluation of the proposed pricing terms by the AR. The list of pricing terms provided to the AR must include principal amounts, interest rates, yields, prices, optional redemption features, concessions and takedowns per maturity and any maturities designated to be priced by a sealed bid process, detailing the cutoff time for bids and if a stated takedown will apply. The book-running senior manager must also provide the AR with the price views of each co-manager.

4. On the day preceding pricing, the book-running senior manager must initiate a pre-pricing conference call with the AR, the designated financial advisor of the TWDB, and Syndicate to discuss the proposed pricing terms, order period, underwriting spread components and other necessary pricing information. The time of the call should be communicated at least 24 hours in advance of the call, whenever possible. At the conclusion of the conference call, the book-running senior manager will send out a consensus scale to each co-manager.

5. On or before the day preceding pricing, the book-running senior manager will secure and distribute login information for an electronic order viewing platform, such as Game Day or other comparable proprietary platform, to individuals designated by the AR,

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6. Prior to its release, the preliminary pricing wire is subject to the approval of the AR. The wire must include, among other things, all pricing terms agreed upon by the AR, book-running senior manager and Syndicate during the pre-pricing conference call, and the priority of orders for bonds for purposes of allocation.

7. On the morning of the day of pricing (prior to the start of the order period), if the book-running senior manager believes that a change in any of the pricing terms approved on the pre-pricing conference call, such as interest rates, yields, prices, optional redemption features, concessions and additional takedowns per maturity, is required, the book-running senior manager must review with the AR, the designated financial advisor of the TWDB and Syndicate the proposed pricing terms and any suggested changes in light of current market conditions. Moreover, the AR may require the book-running senior manager to initiate a conference call prior to the start of the order period for large issues and/or during turbulent market conditions.

8. Any change in the initial pricing terms on any maturity during the order period must be approved by the AR.

9. During the order period, the senior manager must provide the AR and the designated financial advisor of the TWDB with access to an electronic order entry system or another comparable service as referenced in 5. above.

10. The book-running senior manager must track the receipt of orders broken down by maturity, amount, type and firm. Status reports on the pricing, including total orders received, broken down by maturity, amount, type and firm, may be requested by the AR at any time during the order period. The Game Day "Orders and Allotments by Maturity" report is an acceptable report for these purposes. Should the AR request it, the book-running senior manager must also provide submittal times and copies of confirmations for all orders or other specialized reports.

11. If the book-running senior manager feels a co-manager has incorrectly entered an order, the book-running senior manager will immediately bring it to the attention of the AR for resolution. Under no circumstances will the book-running senior manager make a unilateral decision pertaining to any order entered by a co-manager.

12. The book-running senior manager must receive approval from the AR before terminating any order period on any maturity before the previously determined close of the order period.

13. Immediately at the close of the order period, the book-running senior manager must provide the AR with a status report of all orders received and posted at that time.

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14. Within one hour after the close of the order period, the book-running senior manager must provide in writing in a format acceptable to the AR, a listing of total orders received broken down by maturity, amount, type and firm, through the end of the order period. The Game Day "Orders and Allotments by Maturity" report is an acceptable report for this purpose.

15. Within two hours after the close of the order period, the book-running senior manager must make a concerted effort to provide the AR and the designated financial advisor of the TWDB with the true interest cost of the issue. After this information has been provided to the AR, the book-running senior manager must review the book of orders and negotiate any change in pricing terms (e.g., interest rates, yields, prices, optional redemption features, concessions and additional takedowns per maturity) or other necessary proposed changes, such as underwriting spread components, prior to the verbal award of the bonds to the Syndicate by the AR.

16. Within two hours after the close of the order period, the book-running senior manager will confirm with all co-managers the orders received by the co-managers.

17. Any changes in the pricing terms negotiated between the AR, book-running senior manager and Syndicate prior to receiving the verbal award on the bonds must be confirmed to the Syndicate via a final pricing wire, subject to the approval of the AR. The book-running senior manager must also ensure that the AR receives a copy of the final pricing wire for its records.

18. A complete set of final number runs by the book-running senior manager must be provided to the AR and the designated financial advisor of the TWDB before the AR signs the Bond Purchase Agreement. The number runs must include, but not necessarily be limited to, a table of sources and uses of funds, a summary of assumptions and results (including significant dates, underwriting spread breakdown, ratings, true interest cost, etc.) and any additional tables that include interest rates, yields, prices, takedowns, principal amounts and related debt service by maturity.

19. The book-running senior manager and underwriters' counsel are responsible for coordinating the execution of the Bond Purchase Agreement and the delivery of the Good Faith Deposit to the AR. The good faith check must be payable to the Texas Water Development Board and should include return instructions.

20. The AR reserves the right to postpone the pricing if the above pricing procedures are not strictly followed.

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L. Allocation of Bonds

1. The book-running senior manager will be responsible for ensuring that the overall allocation of bonds meets the goals of: (a) obtaining the best price for the issue; (b) providing firms with allocations that are commensurate with work performed (the type and amount of orders submitted); and (c) providing opportunity for meaningful participation from all Syndicate members, including HUB firms.

2. The AR will review the allocation process with the book-running senior manager prior to its release to the co-managers.

3. Before allocating any bonds, the book-running senior manager must provide in writing to the AR a final listing of orders by maturity, amount and type for each of the Syndicate and selling group members. The AR must approve the proposed allocation of bonds before the book-running senior manager can release the allocation. This approval shall be given by the AR in a timely manner. Upon approval by the AR, the book-running senior manager shall make allotments to the members within one hour. In no case shall allotments be withheld overnight without the prior approval of the AR.

M. Post-Sale Support

1. Credits designated by a customer must be distributed after the delivery of the bonds to the customer, in accordance with MSRB rules.

2. The book-running senior manager must send a report of the designations by maturity, by investor to the AR for approval.

3. Final settlement of a Syndicate account and distribution of any profit due to members must be made after delivery of the Syndicate's bonds, in accordance with MSRB rules.

4. The Syndicate agrees to comply with any Syndicate rules prohibiting the selling of bonds below the public offering price (less the full takedown) prior to the release of Syndicate restrictions. In addition, each Syndicate member agrees to inform the AR of any firm in noncompliance with such Syndicate rules. Violations of Syndicate restrictions by members, other dealers or purchasers could result in unfavorable consideration on future TWDB bond sales and the forfeiture of any takedown associated with such orders.

5. The book-running senior manager must be prepared to provide the AR on an ongoing basis for at least seven business days following the release of Syndicate restrictions secondary market price levels, unsold balance, and level of trading activity of the bonds.

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6. The AR expects the Syndicate to provide liquidity in the secondary market for the issue on an ongoing basis.

N. Post-Sale Evaluation

To acknowledge performance and build accountability into Syndicate participation, the AR may conduct post-sale evaluations of the Syndicate. The book-running senior manager evaluations may consider pricing logistics, compliance with directives and deliverable instructions, marketing and corresponding materials, as well as pricing and deal support. Evaluation of other Syndicate members will consider compliance with directives and deliverable instructions as well as pricing and deal support.

1. The entire Syndicate**,** including the book-running senior manager, must provide to the AR in a timely manner all necessary information required to carry out the post-sale evaluation.

2. The book-running senior manager must provide the AR as well as the designated Financial Advisor of the TWDB each with an electronic version and one hard copy of the final pricing book. The final pricing book must include, but not necessarily be limited to, a discussion of market conditions leading up to and during the pricing, the financing schedule, comparable issues in the market, spread analysis to the MMD scale indices, media coverage where applicable, rating agency credit reports, and the final number runs.

3. To facilitate the post-sale evaluation as well as the Texas Bond Review Board (BRB) final report, the final pricing book should also include a summary of the liability assignments, total orders and allotments by firm and total income earned for each Syndicate member, including selling group members, if applicable.

4. The final pricing book must be provided no later than 40 days after the day of closing.

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TEXAS WATER DEVELOPMENT BOARD

Underwriting Policies and Procedures

The firm of _____ has read and understands the Underwriting Policies and Procedures (UPPs) adopted by the Texas Water Development Board on September 3, 2020. Should our firm be selected to serve in any underwriting Syndicate of the TWDB, we agree to adhere to the guidelines and procedures as established in the UPPs.

_____
Firm Name

_____
Lead Investment Banker

_____
Senior Underwriter

_____
Date

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