

affecting the national security and whether the regulations and directives meet current approval requirements.

(d) The agency shall prepare regulations and directives governing use of the polygraph in employment screening and personnel investigations which must be reviewed and approved by the Director, OPM. These shall contain at a minimum:

(1) Specific purposes for which the polygraph may be used, and details concerning the types of positions or organizational entities in which it will be used, and the officials authorized to approve these examinations;

(2) A provision that a person to be examined must be informed as far in advance as possible of the intent to use the polygraph, and of

(i) Other devices or aids to the examination which may be used simultaneously with the polygraph, such as voice recordings,

(ii) The effect of the polygraph examination, or his/her refusal to take this examination, on eligibility for employment, and that refusal to consent to a polygraph examination will not be made a part of the personnel file, and

(iii) The characteristics and nature of the polygraph machine and examination, including an explanation of the physical operation of the machine, the procedures to be followed during the examination, and the disposition of information developed;

(3) A provision that no polygraph examination will be given unless the person to be examined has voluntarily consented in writing to be examined after having been informed of the provisions in paragraph (d)(2) of this section;

(4) A provision that questions to be asked during a polygraph examination must have relevance to the subject of the particular inquiry;

(5) Adequate standards for the selection and training of examiners, keeping in mind the Government's objective of insuring protection for the subject of an examination and the accuracy of polygraph results;

(6) A provision for adequate monitoring of polygraph operations to prevent abuses or unwarranted invasions of privacy; and

(7) A provision for adequate safeguarding of files, charts, and other relevant data developed through polygraph examinations to avoid unwarranted invasions of privacy.

(e) Approval to use the polygraph for employment selection screening for positions in the competitive service will be granted only for a 12-month period, and is conditioned upon prior approval of the agency's regulations and

directives as provided in paragraph (d) of this section. An agency given approval to use the polygraph for competitive service positions will be required to recertify annually to the Director, OPM, that the conditions which led to the original certification still exist in the agency. Nothing contained in this section shall be applicable to polygraph examinations for purposes other than employment selection screening.

(f) The basic requirements of National Security Decision Directive Number 84 (NSDD-84), subject to and as affected by any restrictions in force, approved by former President Ronald W. Reagan on March 11, 1983, include the use of the polygraph in certain instances. Agencies that originate or handle classified national security information should review the current requirements of NSDD-84.

#### **Subpart C—Maintenance of Information**

##### **§ 736.301 Maintenance of Investigative Files.**

(a) Investigative files are records subject to the Privacy Act and the Freedom of Information Act and are maintained in accordance with the provisions of those Acts.

(b) Investigative information, including investigative reports and other materials, is highly personal and is properly restricted to agency officials who have an official need for it in performance of their duties. All investigative information shall be maintained in confidence. Notices of systems of records published to fulfill Privacy Act requirements must show full consideration for the highly personal nature of this information.

(c) When not in use, personnel investigations must be stored in a combination-locked cabinet or safe, or in an equally secure area. Access to case files should be limited only to the Security Officer and approved staff, who shall not have access to their own files.

##### **§ 736.302 Handling of OPM Investigative Files.**

(a) The agency security office must maintain a record of each disclosure of OPM investigative material within the agency, including at a minimum:

(1) The name and title of the person to whom disclosure was made;

(2) The type of background investigation conducted on the person to whom the material was disclosed;

(3) The date(s) of disclosure; and

(4) The reason(s) for the disclosure.

(b) An agency may disseminate OPM investigative files, in whole or in part,

outside the agency only when the agency obtains prior OPM approval. Agency security officers are responsible for controlling files within their agencies.

(c) Privacy Act and Freedom of Information Act requests for OPM investigative records are to be submitted to the Office of Personnel Management, Federal Investigations Processing Center, FOI/P, P.O. Box 618, Boyers, Pennsylvania 16018-0618.

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## **DEPARTMENT OF THE TREASURY**

### **Fiscal Service**

#### **31 CFR Part 356**

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

#### **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:** Proposed rule.

**SUMMARY:** The Department of the Treasury ("Department") is proposing, for comment, an amendment to 31 CFR Part 356 (Uniform Offering Circular for the Sale and Issue of Marketable Book-Entry Treasury Bills, Notes, and Bonds). The proposed amendment defines the term "investment adviser" and contains a new section on bidding through investment advisers. The amendment also makes certain clarifying changes.

**DATES:** Comments must be submitted on or before March 5, 1996. The Department is particularly interested in receiving comments regarding alternative methods for obtaining, in the least burdensome manner possible, the information needed to ensure that no person or entity receive a disproportionate share of the auction.

**ADDRESSES:** Comments should be sent to: Government Securities Regulations Staff, Bureau of the Public Debt, Room 515, E Street Building, Washington, D.C. 20239-0001. Comments received will be available for public inspection and copying at the Treasury Department Library, FOIA Collection, Room 5030, Main Treasury Building, 1500 Pennsylvania Avenue, N.W., Washington, D.C. 20220. Persons wishing to visit the library should call (202) 622-0990 for an appointment.

**FOR FURTHER INFORMATION CONTACT:** Michael W. Sunner, Deputy Assistant Commissioner, Office of Financing,

Bureau of the Public Debt (202) 219-3350, or Margaret Marquette, Attorney-Adviser, Office of the Chief Counsel, Bureau of the Public Debt (202) 219-3320.

**SUPPLEMENTARY INFORMATION:** 31 CFR Part 356, also referred to as the uniform offering circular, sets out the terms and conditions for the sale and issuance by the Department of the Treasury to the public of marketable book-entry Treasury bills, notes, and bonds. The uniform offering circular was originally published on January 5, 1993 (58 FR 412), as a comprehensive statement of those terms and conditions. Amendments to the circular were published on June 3, 1994 (59 FR 28773), and March 15, 1995 (60 FR 13906). In the time since the rule was first published, several questions have arisen about the application of the circular in situations where an investment adviser formulates a bid or otherwise makes bidding decisions for a managed account. As a result, the Department is proposing to define the term "investment adviser" and is setting out the specific terms and conditions for bidding through investment advisers.

31 CFR Part 356 currently does not describe in detail rules applying to investment advisers. The preamble to the January 5, 1993, rule refers to investment advisers and "others who bid on behalf of their managed investment accounts or other clients," stating that an investment adviser can bid for its clients in the name of the investment adviser or in the names of the clients. The section on net long position reporting requires that a special report be provided in those cases where an investment adviser controls bids and positions exceeding a specified amount.

The current rule, while allowing investment advisers to bid for controlled accounts, does not specify how the various provisions of the rule apply with respect to those accounts. In particular, it does not address what is meant by the statement in the preamble to the January 5, 1993, rule that an investment adviser or a managed account is considered the "bidder for all purposes of [the] rule." It does not make clear to what extent, if any, a managed account must take into consideration the bids and position of the person or entity it would otherwise be associated with under the bidder definitions contained in Appendix A of the rule. It also does not make clear to what extent an adviser that manages accounts must take into consideration the bids and position of an entity that "supervises" the adviser.

The proposed rule adds, in § 356.2, a definition for the term "investment adviser." The new definition describes what is meant by the term "investment discretion." An entity exercising its authority over an account to determine which auctions an account will bid in and the quantity of securities to be bid for is an investment adviser for purposes of the rule. The definition also clarifies that an adviser employed or supervised by an entity is considered to be part of that entity, i.e., as if the adviser was an affiliate of the entity under the bidder definitions. For example, in the case where an individual serves as an investment adviser to a mutual fund and is employed by a partnership that advises other mutual funds, it is the partnership, not the individual, that is considered the investment adviser for purposes of the offering circular.

Section 356.15 sets out those terms that are unique to bids placed through investment advisers. It provides that a controlled account is considered to be separate from the person or entity that it would otherwise be part of under the bidder definitions. A corporate investment account managed by a third party that has investment discretion would be a controlled account and, therefore, would not be considered to be part of the corporation under the offering circular.

Section 356.15(a) incorporates a provision found in the preamble to the January 5, 1993, rule that an investment adviser may bid for an account either in the name of the investment adviser, in which case the adviser is considered the bidder, or in the name of the account, in which case the account is considered the bidder. This means that, for purposes of bidding noncompetitively, an investment adviser that bids for its controlled accounts in the name of the adviser is limited to the maximum allowed bid and award amount for a noncompetitive bid for that auction, e.g., \$1 million total in a bill auction. An investment adviser that bids noncompetitively for its controlled accounts in the names of the accounts may bid for each account for the maximum allowed noncompetitive amount, e.g., \$1 million for each account in a bill auction.

The proposed rule makes clear, in § 356.15(b), that a controlled account is subject to the same bidding restrictions as other bidders regardless of whether a bid for the account is in the name of an investment adviser or in the name of the account. Specifically, the investment adviser may not bid for the account both competitively and noncompetitively in the same auction. Also, the account is

subject to the noncompetitive bidding and award limitations contained in the rule.

As with the current rule, the proposed rule states that an investment adviser must include in its net long position calculation those bids and positions it controls in addition to bids and positions it would otherwise have to include as a bidder. Unlike the current rule, however, the proposed rule provides for the total reportable net long position to be reported on the tender rather than in a special report to a Federal Reserve Bank.

A significant change in the proposed rule from the current rule is the amount of a net long position that an investment adviser may exclude from its net long position calculation. The current rule allows the adviser to exclude net long positions less than \$500 million for certain accounts that are not bid for in an auction. The rule as revised would provide for a similar type of exclusion but decreases the amount of the exclusion to \$10 million. This change is being proposed because the Department believes that a lower exclusionary amount is necessary to give a more accurate picture of the amount of a security controlled by an investment adviser.

In developing this proposal, the Department considered, as an alternative, providing investment advisers an exclusion based on an aggregate amount as opposed to separate position amounts in specific accounts, e.g., allow an adviser to exclude the net long positions of any accounts on whose behalf it is not bidding up to a given aggregate amount. For example, if the aggregate net long position of all controlled accounts on whose behalf the adviser was not placing competitive bids was equal to or less than a designated amount (such as \$200 million), then that amount could be excluded from its net long calculation. However, if the aggregate net long position for these accounts exceeded such amount, then the amount in excess of the designated amount would have to be included in the net long calculation. This alternative was not selected because of a concern that it would be more burdensome for advisers with large numbers of accounts to determine the total balance of the net long positions of all non-bidder accounts than to determine which accounts had net long positions in excess of a specified threshold at the cutoff time for reporting. Commenters are asked to address this presumption when they consider the proposal.

The Department would welcome any comments on the exclusion provisions

outlined above. It would also welcome any alternative suggestions that would allow the Department to obtain the information it needs to ensure that no person or entity receive or control a disproportionate share of the auction, and to obtain that information in the least burdensome manner possible.

Section 356.15(d) provides that an investment adviser may submit bids for its controlled accounts directly to a Federal Reserve Bank or the Bureau of the Public Debt or may forward such bids to a depository institution or dealer, regardless of whether those bids are in the name of the adviser or in the names of the accounts. If a bid is submitted directly, the investment adviser is considered the submitter and, depending on whether the bid is in the name of the adviser or in the name of one of its accounts, the adviser or the account, respectively, is considered the bidder. If the adviser forwards a bid for one of its controlled accounts to a depository institution or dealer, either the adviser or the account is considered a customer of such depository institution or dealer depending on whether the bid is in the name of the adviser or in the name of the account. In such a case, the adviser is not considered an intermediary as defined in § 356.2 of the offering circular.

The provision allowing an adviser to submit or forward bids in the names of its controlled accounts is an exception to the restriction against anyone other than a depository institution or dealer submitting or forwarding bids for others. It is not the Department's intent, however, to authorize an investment adviser that does not also meet the definition of a depository institution or dealer to submit or forward bids for customers. A controlled account is not the same as a customer. (See definition of "customer" in § 356.2 which refers to directing a depository institution or dealer to bid for a specified amount of securities in a specific auction.) Accordingly, an investment adviser that is not also a depository institution or dealer may submit or forward bids only for its own account or for its controlled accounts.

#### Other Clarifying Changes

The Department is also taking this opportunity to make other clarifying changes to the rule. Section 356.13 has been revised to make clear the Department's requirement that, in those cases where a bidder has more than one bid, its reportable net long position is to be reported in connection with only one of those bids. This requirement is to avoid any possible confusion or

duplication in net long position reporting.

Section 356.11 has been amended to provide for the use of unique numbers assigned to bidders for identification purposes. Additionally, Appendix A has been revised to provide that, for purposes of the rule, a business trust is considered to be a corporation. Finally, a change has been made in the example given in § 356.21 to reflect that Treasury bills may now be held in multiples of \$1,000.

The proposed rule contained herein includes a new § 356.15. It also amends §§ 356.2, 356.11, 356.13, 356.21, and 356.22 as well as Appendix A to Part 356. Other sections have been renumbered as a result of adding the new section § 356.15.

#### Procedural Requirements

This proposed rule does not meet the criteria for a "significant regulatory action" pursuant to Executive Order 12866.

Although this proposed rule is being issued in proposed form to secure the benefit of public comment, the notice and public procedures requirements of the Administrative Procedure Act are inapplicable, pursuant to 5 U.S.C. 553(a)(2).

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.

The collection of information contained in this proposed rule, in § 356.15, have been submitted to the Office of Management and Budget for review under § 3507(d) of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). Under the Act, an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid OMB control number.

This information is being collected by the Department of the Treasury in order to determine the amount of a Treasury security controlled by an investment adviser bidding competitively in an auction for that security. The information will be used for the purpose of determining the award to be made as the result of a competitive bid for a security.

Responses to the collection of information are required in order for the potential respondent to purchase securities. Information concerning securities holdings and transactions is considered confidential under Treasury regulations (31 CFR Part 323) and the Privacy Act. The information may be disclosed to a law enforcement agency, courts and counsel for litigation

purposes, and as otherwise authorized by law.

*Estimated total annual reporting burden:* 250 hours.

*Estimated average annual burden hours per respondent:* 5 hours.

*Estimated number of respondents:* 50.

*Estimated annual frequency of responses:* On occasion.

The Department of the Treasury solicits comments on the following concerning the proposed collection of information:

1. Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility;
2. The accuracy of the estimate of the burden of the proposed collection of information;

3. How to enhance the quality, utility, and clarity of the information to be collected; and

4. How to minimize the burden of the collection of information on those who are to respond, including through the use of automated collection techniques or other forms of information technology.

Comments on the collection of information should be sent to the Office of Information and Regulatory Affairs of the Office of Management and Budget, Attention: Desk Officer for Department of the Treasury/Bureau of the Public Debt, Washington, D.C. 20503, with copies to the Government Securities Regulations Staff, Bureau of the Public Debt, at the address previously specified.

#### List of Subjects in 31 CFR Part 356

Bonds, Federal Reserve System, Government securities, Securities.

Dated: December 27, 1995.

Gerald Murphy,  
*Fiscal Assistant Secretary.*

For the reasons set forth in the preamble, 31 CFR Chapter II, Subchapter B, Part 356, is proposed to be 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 is revised to read as follows:

Authority: 5 U.S.C. 301; 31 U.S.C. 3102, *et seq.*; 12 U.S.C. 391.

2. Section 356.2 is amended by adding in alphabetical order the definition of "investment adviser" to read as follows:

**§ 356.2 Definitions.**

\* \* \* \* \*

*Investment adviser* means any person or entity that has investment discretion for or otherwise exercises control over the bids or positions of a person or entity not considered part of the investment adviser under the bidder definitions in Appendix A. Investment discretion includes determining what, how many, and when securities shall be purchased or sold. A person or entity managing investments for itself is not considered an investment adviser for such investments. Where an investment adviser is employed or supervised by an entity, the investment adviser is considered to be part of that entity.

\* \* \* \* \*

3. Section 356.11(a)(1) is amended by revising the second sentence to read as follows:

**§ 356.11 Submission of bids.****(a) General.**

(1) \* \* \* Except as otherwise provided, tenders must be submitted in an approved format, including the use of preassigned identification numbers, where applicable. \* \* \*

\* \* \* \* \*

4. Section 356.13 is amended by removing paragraph (a)(2) and redesignating paragraph (a)(1) as paragraph (a). The last two sentences of paragraph (a) are revised to read as follows:

**§ 356.13 Net long position.****(a) Reporting net long positions.**

\* \* \* In cases where a bidder that is required to report the amount of its net long position has more than one bid, the bidder's total net long position should be reported in connection with only one bid. A bidder that is a customer must report its reportable net long position through only one depository institution or dealer. (See § 356.14(c).)

\* \* \* \* \*

5. Sections 356.15 and 356.16 are redesignated as §§ 356.16 and 356.17 respectively and new § 356.15 is added to read as follows:

**§ 356.15 Bidding through investment advisers.**

(a) *General.* Where bids or positions of a person or entity are controlled by an investment adviser, such bids or positions are considered to be a controlled account, separate from the bids and positions of any person or entity with which they would otherwise be associated under the bidder definitions in Appendix A. The investment adviser may bid for controlled accounts by including, in a bid in the adviser's name, amounts that

it is investing for the controlled accounts. The investment adviser may also bid for controlled accounts in the names of such accounts. Where bids are in an investment adviser's name, the investment adviser is considered the bidder for such bids and, where bids are in the name of a controlled account, the named controlled account is considered the bidder, for all purposes of this Part 356, except as specified in this § 356.15.

(b) *Noncompetitive and competitive bidding.* Regardless of whether the bid for a controlled account is in the name of the investment adviser or in the name of the controlled account, such account may not be bid for both noncompetitively and competitively in the same auction. In addition, such account is subject to the noncompetitive bidding restrictions and award limitations contained in § 356.12(b) and 356.22(a).

(c) *Reporting net long positions.* In calculating the amount of its bids and positions for purposes of the net long position reporting requirement found in § 356.13(a), the investment adviser must include, in addition to what would otherwise be included for the investment adviser as a bidder under the bidder definitions, all other competitive bids and positions controlled by the investment adviser. The investment adviser may exclude any net long position less than \$10 million of any nonproprietary controlled account unless the adviser is placing a competitive bid for that account either in the name of the investment adviser or in the name of the account. However, if any net long position less than \$10 million of any nonproprietary account not being bid for is excluded, then all net short positions less than \$10 million of nonproprietary accounts not being bid for must also be excluded. Regardless of whether the investment adviser bids in its own name or in the name of its controlled accounts, if the net long position is reportable, it must be reported as a total in connection with only one bid.

(d) *Submitting bids for controlled accounts.* Notwithstanding the definition of submitter found in § 356.2, and the restriction against submitting bids for others found in § 356.14, an investment adviser may submit bids, whether in the adviser's own name or in the names of its controlled accounts, directly to a Federal Reserve Bank or the Bureau of the Public Debt, in which case the investment adviser is considered a submitter. In the alternative, the investment adviser may forward such bids to a depository institution or dealer.

(e) *Certifications.* By bidding for a controlled account, an investment adviser is deemed to have certified that it is in compliance with this Part and the offering announcement governing the sale and issue of the security. Further, the investment adviser is deemed to have certified that the information provided on the tender or provided to a submitter or intermediary with regard to bids for controlled accounts is accurate and complete.

(f) *Proration of awards.* In auctions where bids at the highest accepted yield or discount rate are prorated under § 356.20(a)(2) of this Part, investment advisers that submit bids for controlled accounts in the names of such accounts are responsible for prorating awards for their controlled accounts at the same percentage as that announced by the Department. The same prorating rules apply to controlled accounts as apply to submitters. See § 356.21 of this Part.

6. Section 356.21 is amended by revising paragraph (a) to read as follows:

**§ 356.21 Proration of awards.**

(a) *Awards to submitters.* In auctions where bids at the highest accepted yield or discount rate are prorated under § 356.20(a)(2) of this Part, the Federal Reserve Banks are responsible for prorating awards for submitters at the percentage announced by the Department. For example, if 80% is the announced percentage at the highest yield or discount rate, then each bid at that rate or yield shall be awarded 80% of the amount bid. Hence, a bid for \$100,000 at the highest accepted yield or discount rate would be awarded \$80,000. In all cases, awards will be for, at least, the minimum to hold, and awards must be in an appropriate multiple to hold. Awards at the highest accepted yield or rate are adjusted upwards, if necessary, to an appropriate multiple to hold. For example, Treasury bills may be issued with a minimum to hold of \$10,000 and multiples of \$1,000. Where an \$18,000 bid is accepted at the high discount rate, and the percent awarded at the high discount rate was 88%, the award to that bidder would be \$16,000, representing an upward adjustment from \$15,840 (\$18,000 x .88) to an appropriate multiple to hold. If tenders at the highest accepted rate were prorated at, for example, a rate of 4%, the award for a \$100,000 bid would be \$10,000, instead of \$4,000, in order to meet the minimum to hold for a bill issue.

\* \* \* \* \*

7. Section 356.22(b) is amended by revising the last sentence to read as follows:

**§ 356.22 Limitation on auction awards.**

\* \* \* \* \*

(b) *Awards to competitive bidders.*

\* \* \* When the bids and net long positions of more than one person or entity must be combined as required by § 356.15(c), such combined amount will be used for the purpose of this award limitation.

8. Appendix A to Part 356 is amended by adding to section (a) a new paragraph between the second and third paragraphs of the introductory text to read as follows:

Appendix A to Part 356

\* \* \* \* \*

(a) Corporation—

\* \* \* \* \*

For the purpose of this Part, a business trust, such as a Massachusetts business trust or a Delaware business trust, is considered to be a corporation.

\* \* \* \* \*

[FR Doc. 96-134 Filed 1-4-96; 8:45 am]

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