

Proposed Rule Change by Municipal Securities Rulemaking Board  
Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934

Initial <input checked="" type="checkbox"/>	Amendment <input type="checkbox"/>	Withdrawal <input type="checkbox"/>	Section 19(b)(2) <input checked="" type="checkbox"/>	Section 19(b)(3)(A) <input type="checkbox"/>	Section 19(b)(3)(B) <input type="checkbox"/>
			Rule		
			<input type="checkbox"/> 19b-4(f)(1)	<input type="checkbox"/> 19b-4(f)(4)	
			<input type="checkbox"/> 19b-4(f)(2)	<input type="checkbox"/> 19b-4(f)(5)	
			<input type="checkbox"/> 19b-4(f)(3)	<input type="checkbox"/> 19b-4(f)(6)	

Exhibit 2 Sent As Paper Document <input type="checkbox"/>	Exhibit 3 Sent As Paper Document <input type="checkbox"/>
--	--

**Description**  
Provide a brief description of the proposed rule change (limit 250 characters).

Proposed rule change to establish a pilot phase of the continuing disclosure service of MSRB's Electronic Municipal Market Access system.

**Contact Information**  
Provide the name, telephone number and e-mail address of the person on the staff of the self-regulatory organization prepared to respond to questions and comments on the proposed rule change.

First Name	<input type="text" value="Ernesto"/>	Last Name	<input type="text" value="Lanza"/>
Title	<input type="text" value="General Counsel"/>		
E-mail	<input type="text" value="elanza@msrb.org"/>		
Telephone	<input type="text" value="(703) 797-6600"/>	Fax	<input type="text" value="(703) 797-6700"/>

**Signature**  
Pursuant to the requirements of the Securities Exchange Act of 1934,  
Municipal Securities Rulemaking Board  
has duly caused this filing to be signed on its behalf by the undersigned thereunto duly authorized officer.

Date

By  (Name)  (Title)

NOTE: Clicking the button at right will digitally sign and lock this form. A digital signature is as legally binding as a physical signature, and once signed, this form cannot be changed.

Ronald Smith, rsmith@msrb.org

SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549

For complete Form 19b-4 instructions please refer to the EFFS website.

**Form 19b-4 Information**

Add Remove View

The self-regulatory organization must provide all required information, presented in a clear and comprehensible manner, to enable the public to provide meaningful comment on the proposal and for the Commission to determine whether the proposal is consistent with the Act and applicable rules and regulations under the Act.

**Exhibit 1 - Notice of Proposed Rule Change**

Add Remove View

The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)

**Exhibit 2 - Notices, Written Comments, Transcripts, Other Communications**

Add Remove View

Exhibit Sent As Paper Document

Copies of notices, written comments, transcripts, other communications. If such documents cannot be filed electronically in accordance with Instruction F, they shall be filed in accordance with Instruction G.

**Exhibit 3 - Form, Report, or Questionnaire**

Add Remove View

Exhibit Sent As Paper Document

Copies of any form, report, or questionnaire that the self-regulatory organization proposes to use to help implement or operate the proposed rule change, or that is referred to by the proposed rule change.

**Exhibit 4 - Marked Copies**

Add Remove View

The full text shall be marked, in any convenient manner, to indicate additions to and deletions from the immediately preceding filing. The purpose of Exhibit 4 is to permit the staff to identify immediately the changes made from the text of the rule with which it has been working.

**Exhibit 5 - Proposed Rule Text**

Add Remove View

The self-regulatory organization may choose to attach as Exhibit 5 proposed changes to rule text in place of providing it in Item I and which may otherwise be more easily readable if provided separately from Form 19b-4. Exhibit 5 shall be considered part of the proposed rule change.

**Partial Amendment**

Add Remove View

If the self-regulatory organization is amending only part of the text of a lengthy proposed rule change, it may, with the Commission's permission, file only those portions of the text of the proposed rule change in which changes are being made if the filing (i.e. partial amendment) is clearly understandable on its face. Such partial amendment shall be clearly identified and marked to show deletions and additions.

**1. Text of Proposed Rule Change**

(a) The Municipal Securities Rulemaking Board (the “MSRB”) is hereby filing with the Securities and Exchange Commission (the “Commission”) a proposed rule change to establish a pilot phase (the “continuing disclosure pilot”) of the continuing disclosure service of the MSRB’s Electronic Municipal Market Access system (“EMMA”). The continuing disclosure pilot would receive electronic submissions of, and would make publicly available on the Internet, continuing disclosure documents and related information voluntarily submitted by issuers, obligated persons and their agents. The MSRB requests approval of the continuing disclosure pilot to commence operation on May 11, 2009, or such later date as may be announced by the MSRB in a notice published on the MSRB website, which date shall be no later than 30 days after Commission approval of the proposed rule change. In addition, the MSRB requests approval of the continuing disclosure pilot for a period ending on July 1, 2009.<sup>1</sup>

The text of the proposed rule change is set forth below, with underlining indicating additions:

**MUNICIPAL SECURITIES RULEMAKING BOARD  
ELECTRONIC MUNICIPAL MARKET ACCESS SYSTEM –  
EMMA<sup>®</sup>**

**EMMA CONTINUING DISCLOSURE SERVICE**

The EMMA continuing disclosure service, established as a service of EMMA, receives submissions of continuing disclosure documents, together with related indexing information to allow the public to readily identify and access such documents, from issuers, obligated persons and their agents pursuant to continuing disclosure undertakings entered into consistent with Exchange Act Rule 15c2-12, at no charge to the submitter. Submissions may be made through a choice of an Internet-based electronic submission interface or electronic computer-to-computer streaming connections. The EMMA continuing disclosure service makes continuing disclosures available to the public, at no charge, on the Internet through the EMMA portal. The EMMA

---

<sup>1</sup> The Commission has previously approved the establishment of the continuing disclosure service of EMMA, which will commence operation on July 1, 2009. *See* Securities Exchange Act Release No. 59061 (December 5, 2008), 73 FR 75778 (December 12, 2008) (File No. SR-MSRB-2008-05) (approving the continuing disclosure service of EMMA with an effective date of July 1, 2009) (the “EMMA continuing disclosure service approval”). The EMMA continuing disclosure service is designed to commence operation simultaneously with the effectiveness of certain amendments to Exchange Act Rule 15c2-12 adopted by the Commission. *See* Securities Exchange Act Release No. 59062 (December 5, 2008), 73 FR 76104 (December 15, 2008) (adopting amendments to Exchange Act Rule 15c2-12).

continuing disclosure service also makes continuing disclosures available by subscription for a fee.

**Submissions to the EMMA Continuing Disclosure Service – No change**

**Public Availability of Continuing Disclosure Documents – No change**

**Pilot for EMMA Continuing Disclosure Service**

In anticipation of the commencement of operations of the EMMA continuing disclosure service on July 1, 2009, the MSRB is implementing a pilot phase of the EMMA continuing disclosure service to provide for the voluntary electronic submission to the MSRB of continuing disclosure documents and related information by issuers, obligated persons and their agents and to provide for the free public access to such documents through the EMMA portal. Such submissions shall be made as PDF files, accompanied by related indexing information, through the submission processes established with respect to the EMMA continuing disclosure service; provided that such processes may become available for use by voluntary submitters on a phased-in basis. Documents submitted by issuers, obligated persons and their agents shall be made available to the public on the EMMA portal through the processes established with respect to the EMMA continuing disclosure service; provided that such processes may be implemented on a phased-in basis. The MSRB also may make available test versions of the computer-to-computer submission processes and data stream subscription services established with respect to the EMMA continuing disclosure service on a phased-in basis during the pilot phase. The features of the EMMA portal established with respect to the EMMA continuing disclosure service may become available for use by public users of the EMMA website on a phased-in basis during the pilot phase. There shall be no charge for the making of submissions during the pilot phase or for accessing such documents on the EMMA portal.

The MSRB shall undertake to make the submission and EMMA portal access services available during the pilot phase on the same terms as established for the EMMA continuing disclosure service but reserves the right to operate any feature on a more limited basis as necessary or appropriate, in the sole discretion of the MSRB, during the pilot phase. The pilot phase is expected to operate for a limited period of time as the MSRB transitions to the permanent EMMA continuing disclosure service anticipated to commence operation on July 1, 2009. The pilot phase shall terminate automatically at such time as the permanent EMMA continuing disclosure service becomes operational.

\* \* \* \* \*

(b) Not applicable.

(c) Not applicable.

**2. Procedures of the Self-Regulatory Organization**

The proposed rule change was adopted by the MSRB on October 23, 2008. Questions concerning this filing may be directed to Leslie Carey, Associate General Counsel, Margaret C. Henry, Associate General Counsel, or Ernesto A. Lanza, General Counsel, at (703) 797-6600.

**3. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

(a) The proposed rule change would establish the continuing disclosure pilot as a pilot phase of the continuing disclosure service of EMMA to provide, pending the commencement of operation of the permanent EMMA continuing disclosure service on July 1, 2009, for the voluntary electronic submission to the MSRB of continuing disclosure documents and related information by issuers, obligated persons and their agents and to provide for the free public access to such documents through the EMMA portal.<sup>2</sup>

Under Exchange Act Rule 15c2-12(b)(5), an underwriter for a primary offering of municipal securities subject to the rule currently is prohibited from underwriting the offering unless the underwriter has determined that the issuer or an obligated person for whom financial information or operating data is presented in the final official statement, or a designated agent, has undertaken in writing to provide certain items of information to the marketplace.<sup>3</sup> The items to be provided include: (A) annual financial information concerning obligated persons; (B) audited financial statements for obligated persons if available and if not included in the annual financial information; (C) notices of certain events, if material; and (D) notices of failures to provide annual financial information on or before the date specified in the written undertaking. The written agreement shall identify each obligated person or other person for whom information is to be provided, either by name or by an objective criteria for selecting such person, and also shall specify (i) the type of information to be included in the annual financial information, (ii) the accounting principles pursuant to which financial statements will be prepared and whether

---

<sup>2</sup> The EMMA portal began operation on March 31, 2008 as a pilot facility and is accessible at <http://emma.msrb.org>. See Securities Exchange Act Release No. 57577 (March 28, 2008), 73 FR 18022 (April 2, 2008) (File No. SR-MSRB-2007-06) (approving operation of the EMMA pilot to provide free public access to the MSIL system collection of official statements and advance refunding documents and to the MSRB's Real-Time Transaction Reporting System historical and real-time transaction price data) (the "EMMA portal pilot filing").

<sup>3</sup> Under Rule 15c2-12(b)(5)(i), annual filings are to be sent to all existing nationally recognized municipal securities information repositories ("NRMSIRs") and any applicable state information depositories ("SIDs"), while material event notices may be sent to all existing NRMSIRs or to the MSRB, as well as to any applicable SIDs.

such financial statements will be audited, and (iii) the date on which the annual financial information will be provided.

The continuing disclosure pilot would accept voluntary submissions of continuing disclosure documents, including but not limited to items to be provided pursuant to Exchange Act Rule 15c2-12. Submissions of continuing disclosure documents to the continuing disclosure pilot would be made solely in electronic format by issuers, obligated persons and their agents through a secured, password-protected, web-based interface with EMMA. Such submissions would be made as portable document format (PDF) files, accompanied by related indexing information, through the submission processes established with respect to the EMMA continuing disclosure service; provided that such processes may become available for use by voluntary submitters on a phased-in basis. No paper submissions would be accepted. Documents submitted by issuers, obligated persons and their agents would be made available to the public on the EMMA portal. The specific features of the EMMA portal established with respect to the EMMA continuing disclosure service may become available for use by public users of the EMMA website on a phased-in basis during the pilot phase. The MSRB also may make available test versions of the computer-to-computer submission processes and data stream subscription services established with respect to the EMMA continuing disclosure service on a phased-in basis during the pilot phase. There would be no charge for the making of submissions to the continuing disclosure pilot or for accessing such documents on the EMMA portal.

The MSRB would view electronic submissions of continuing disclosure documents to the continuing disclosure pilot as having been submitted to the MSRB for purposes of any existing continuing disclosure undertakings entered into consistent with Exchange Act Rule 15c2-12.<sup>4</sup> The MSRB takes no position with regard to whether a submission made to the continuing disclosure pilot that is made publicly available through the EMMA portal would satisfy any other provisions of existing continuing disclosure undertakings.

The MSRB would undertake to make the submission and EMMA portal access services available during the pilot phase on the same terms as established for the EMMA continuing disclosure service but would reserve the right to operate any feature on a more limited basis as necessary or appropriate, in the sole discretion of the MSRB, during the pilot phase. The continuing disclosure pilot would be expected to operate for a limited period of time as the

---

<sup>4</sup> The MSRB currently operates CDINet to process and disseminate notices of material events submitted to the MSRB. The MSRB urges, but does not require, submitters currently using CDINet to instead make any future submissions to the continuing disclosure pilot, solely in electronic format, upon the launch of the continuing disclosure pilot until such time as all submissions must be made to the permanent EMMA continuing disclosure service. The MSRB intends to file in the near future a proposed rule change with the Commission to discontinue CDINet as of the commencement of operations of the permanent EMMA continuing disclosure service on July 1, 2009.

MSRB transitions to the permanent EMMA continuing disclosure service anticipated to commence operation on July 1, 2009. The continuing disclosure pilot would terminate automatically at such time as the permanent EMMA continuing disclosure service becomes operational.

The MSRB has designed EMMA, including the EMMA portal, as a scalable system with sufficient current capacity and the ability to add further capacity to meet foreseeable usage levels based on reasonable estimates of expected usage, and the MSRB would monitor usage levels in order to assure continued capacity in the future.

The MSRB may restrict or terminate malicious, illegal or abusive usage for such periods as may be necessary and appropriate to ensure continuous and efficient access to the EMMA portal and to maintain the integrity of EMMA and its operational components. Such usage may include, without limitation, usage intended to cause the EMMA portal to become inaccessible by other users, to cause the EMMA database or operational components to become corrupted or otherwise unusable, to alter the appearance or functionality of the EMMA portal, or to hyperlink to or otherwise use the EMMA portal or the information provided through the EMMA portal in furtherance of fraudulent or other illegal activities (such as, for example, creating any inference of MSRB complicity with or approval of such fraudulent or illegal activities or creating a false impression that information used to further such fraudulent or illegal activities has been obtained from the MSRB or EMMA). Measures taken by the MSRB in response to such unacceptable usage shall be designed to minimize any potentially negative impact on the ability to access the EMMA portal.

(b) The MSRB has adopted the proposed rule change pursuant to section 15B(b)(2)(C) of the Exchange Act, which provides that MSRB's rules shall:

be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in municipal securities, to remove impediments to and perfect the mechanism of a free and open market in municipal securities, and, in general, to protect investors and the public interest.

The MSRB believes that the proposed rule change is consistent with the Exchange Act. The EMMA continuing disclosure service, including the pilot phase thereof, would serve as an additional mechanism by which the MSRB works toward removing impediments to and helping to perfect the mechanisms of a free and open market in municipal securities. The continuing disclosure pilot would be an important transitional step toward ensuring the effective and efficient operation of the permanent EMMA continuing disclosure service upon launch on July 1, 2009.

The EMMA continuing disclosure service, including the pilot phase thereof, would help make information useful for making investment decisions more easily accessible to all participants in the municipal securities market on an equal basis throughout the life of the securities without charge through a centralized, searchable Internet-based repository, thereby removing potential barriers to obtaining such information. Broad access to continuing disclosure documents through the EMMA continuing disclosure service should assist in preventing fraudulent and manipulative acts and practices by improving the opportunity for public investors to access material information about issuers and their securities.

Furthermore, the EMMA continuing disclosure service should reduce the effort necessary for issuers and obligated persons to comply with their continuing disclosure undertakings by making submissions to a single venue<sup>5</sup> using an electronic submission process, which should result in lower costs to issuers and savings to their citizens. Similarly, a single centralized and searchable venue for free public access to disclosure information should promote a more fair and efficient municipal securities market in which transactions are effected on the basis of material information available to all parties to such transactions, which should allow for fairer pricing of transactions based on a more complete understanding of the terms of the securities and the potential investment risks. Free access to this information – previously available in most cases only through paid subscription services or on a per-document fee basis – should reduce transaction costs for dealers and investors.

All of these factors serve to promote the statutory mandate of the MSRB to protect investors and the public interest.

#### **4. Self-Regulatory Organization’s Statement on Burden on Competition**

The MSRB does not believe that the proposed rule change would impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act. The continuing disclosure pilot would be an important transitional step toward ensuring the effective and efficient operation of the permanent EMMA continuing disclosure service upon launch on July 1, 2009. As the MSRB has previously stated in its filing with the Commission in connection with the permanent EMMA continuing disclosure service (the “permanent EMMA continuing disclosure filing”),<sup>6</sup> although the MSRB recognizes that the EMMA continuing

---

<sup>5</sup> Some states may require issuers and/or obligated persons to submit disclosure information to state information depositories or other venues pursuant to state law.

<sup>6</sup> See Securities Exchange Act Release No. 58256 (July 30, 2008) 73 FR 46161 (August 7, 2008) (File No. SR-MSRB-2008-05) (proposing the establishment of the continuing disclosure service of EMMA). See also Securities Exchange Act Release No. 59061 (December 5, 2008), 73 FR 75778 (December 12, 2008) (File No. SR-MSRB-2008-05) (approving the continuing disclosure service of EMMA with an effective date of July 1, 2009).



disclosure service might require private enterprises to modify some aspects of the way they undertake their current business activities, the MSRB believes that the continuing disclosure service would promote, rather than hinder, further competition, growth and innovation in this area. The MSRB believes that the benefits realized by the investing public from the broader and easier availability of disclosure information about municipal securities that would be provided through the EMMA continuing disclosure service, including the pilot phase thereof, would justify any potentially negative impact on existing enterprises from the operation of EMMA.

**5. Self-Regulatory Organization’s Statement on Comments Received on the Proposed Rule Change by Members, Participants, or Others**

Written comments were neither solicited nor received on the proposed rule change. However, in connection with the permanent EMMA continuing disclosure filing, the Commission received comments relating to, among other things, the effective date of the filing and a desire for a transition to the permanent EMMA continuing disclosure filing.<sup>7</sup> In the permanent EMMA continuing disclosure filing, the MSRB had originally proposed an effective date of January 1, 2009. One commentator requested that the Commission establish a transition period before making electronic filings on EMMA mandatory as a result of the submissions needing to be submitted as PDF-word searchable files.<sup>8</sup> Another commentator noted a need to address smaller issuers who may need additional time to familiarize themselves with an electronic system.<sup>9</sup> A third commentator noted that “municipal issuers and obligated persons may be confused as to where they should file continuing disclosure documents during the period of transition from the current system to the EMMA system” and suggested that these concerns “could be addressed during a short transition period.”<sup>10</sup>

As a result, the MSRB amended the permanent EMMA continuing disclosure filing to request that the Commission delay the implementation of the permanent EMMA continuing disclosure service to July 1, 2009.<sup>11</sup> The MSRB noted that the delayed effectiveness would provide the MSRB with the opportunity to implement a pilot phase of the EMMA continuing

---

<sup>7</sup> Comment letters to the Commission on the permanent EMMA continuing disclosure filing are available at <http://www.sec.gov/comments/sr-msrb-2008-05/msrb200805.shtml>.

<sup>8</sup> See Letter from Susan A. Gaffney, Director, Federal Liaison Center, Government Finance Officers Association, to Ms. Harmon, dated September 22, 2008.

<sup>9</sup> See Letter from William A. Holby, President, National Association of Bond Lawyers, to Ms. Harmon, dated September 22, 2008.

<sup>10</sup> See Letter from Christopher Alwine, Head of Municipal Money Market and Bond Groups, Vanguard, to Ms. Harmon, dated September 24, 2008.

<sup>11</sup> See SR-MSRB-2008-05, Amendment No. 1 (November 5, 2008).

disclosure service to allow voluntary submissions to be made prior to the effectiveness of the permanent EMMA continuing disclosure service. During this pilot period, submitters would be able to familiarize themselves with the submission process and receive assistance to establish user accounts.

**6. Extension of Time Period for Commission Action**

The MSRB declines to consent to an extension of the time period specified in Section 19(b)(2) of the Exchange Act.

**7. Basis for Summary Effectiveness Pursuant to Section 19(b)(3) or for Accelerated Effectiveness Pursuant to Section 19(b)(2)**

The MSRB requests that the Commission find good cause, pursuant to Section 19(b)(2) of the Exchange Act, for approving this proposed rule change prior to the thirtieth day after publication of the notice of filing of this proposed rule change in the Federal Register. The Commission has previously approved the permanent EMMA continuing disclosure service to commence operation on July 1, 2009 after due public notice and comment.<sup>12</sup> The MSRB believes that the Commission has good cause for granting accelerated approval of this proposed rule change since the continuing disclosure pilot would be an important transitional step toward ensuring the effective and efficient operation of the permanent EMMA continuing disclosure service upon launch on July 1, 2009 and the continuing disclosure pilot would not raise any issues or concerns not already addressed in connection with the approval of the permanent EMMA continuing disclosure service.

**8. Proposed Rule Change Based on Rules of Another Self-Regulatory Organization or of the Commission**

Not applicable.

**9. Exhibits**

1. Federal Register Notice

---

<sup>12</sup> See EMMA continuing disclosure service approval at footnote 1 *supra*.

**EXHIBIT 1**

**SECURITIES AND EXCHANGE COMMISSION**

(Release No. 34- ; File No. SR-MSRB-2009-03)

Proposed Rule Change by the Municipal Securities Rulemaking Board Relating to the Establishment of a Pilot Phase of Its Upcoming Continuing Disclosure Service of the Electronic Municipal Market Access system (EMMA<sup>®</sup>)

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Exchange Act”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on March 25, 2009, the Municipal Securities Rulemaking Board (the “MSRB”) filed with the Securities and Exchange Commission (the “Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the MSRB. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

**I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change**

The MSRB has filed with the Commission a proposed rule change to establish a pilot phase (the “continuing disclosure pilot”) of the continuing disclosure service of the MSRB’s Electronic Municipal Market Access system (“EMMA”). The continuing disclosure pilot would receive electronic submissions of, and would make publicly available on the Internet, continuing disclosure documents and related information voluntarily submitted by issuers, obligated persons and their agents. The MSRB has requested approval of the continuing disclosure pilot to commence operation on May 11,

---

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

2009, or such later date as may be announced by the MSRB in a notice published on the MSRB website, which date shall be no later than 30 days after Commission approval of the proposed rule change. In addition, the MSRB has requested approval of the continuing disclosure pilot for a period ending on July 1, 2009.<sup>3</sup>

The text of the proposed rule change is available on the MSRB's web site at [www.msrb.org/msrb1/sec.asp](http://www.msrb.org/msrb1/sec.asp), at the MSRB's principal office, and at the Commission's Public Reference Room.

## **II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, the MSRB included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The MSRB has prepared summaries, set forth in Sections A, B and C below, of the most significant aspects of such statements.

---

<sup>3</sup> The Commission has previously approved the establishment of the continuing disclosure service of EMMA, which will commence operation on July 1, 2009. *See* Securities Exchange Act Release No. 59061 (December 5, 2008), 73 FR 75778 (December 12, 2008) (File No. SR-MSRB-2008-05) (approving the continuing disclosure service of EMMA with an effective date of July 1, 2009). The EMMA continuing disclosure service is designed to commence operation simultaneously with the effectiveness of certain amendments to Exchange Act Rule 15c2-12 adopted by the Commission. *See* Securities Exchange Act Release No. 59062 (December 5, 2008), 73 FR 76104 (December 15, 2008) (adopting amendments to Exchange Act Rule 15c2-12).

**A. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

**1. Purpose**

The proposed rule change would establish a pilot phase of the continuing disclosure service of EMMA to provide, pending the commencement of operation of the permanent EMMA continuing disclosure service on July 1, 2009, for the voluntary electronic submission to the MSRB of continuing disclosure documents and related information by issuers, obligated persons and their agents and to provide for the free public access to such documents through the EMMA portal.<sup>4</sup>

Under Exchange Act Rule 15c2-12(b)(5), an underwriter for a primary offering of municipal securities subject to the rule currently is prohibited from underwriting the offering unless the underwriter has determined that the issuer or an obligated person for whom financial information or operating data is presented in the final official statement, or a designated agent, has undertaken in writing to provide certain items of information to the marketplace.<sup>5</sup> The items to be provided include: (A) annual financial information concerning obligated persons; (B) audited financial statements for obligated persons if

---

<sup>4</sup> The EMMA portal began operation on March 31, 2008 as a pilot facility and is accessible at <http://emma.msrb.org>. See Securities Exchange Act Release No. 57577 (March 28, 2008), 73 FR 18022 (April 2, 2008) (File No. SR-MSRB-2007-06) (approving operation of the EMMA pilot to provide free public access to the MSIL system collection of official statements and advance refunding documents and to the MSRB’s Real-Time Transaction Reporting System historical and real-time transaction price data) (the “EMMA portal pilot filing”).

<sup>5</sup> Under Rule 15c2-12(b)(5)(i), annual filings are to be sent to all existing nationally recognized municipal securities information repositories (“NRMSIRs”) and any applicable state information depositories (“SIDs”), while material event notices may be sent to all existing NRMSIRs or to the MSRB, as well as to any applicable SIDs.

available and if not included in the annual financial information; (C) notices of certain events, if material; and (D) notices of failures to provide annual financial information on or before the date specified in the written undertaking. The written agreement shall identify each obligated person or other person for whom information is to be provided, either by name or by an objective criteria for selecting such person, and also shall specify (i) the type of information to be included in the annual financial information, (ii) the accounting principles pursuant to which financial statements will be prepared and whether such financial statements will be audited, and (iii) the date on which the annual financial information will be provided.

The pilot phase of the EMMA continuing disclosure service would accept voluntary submissions of continuing disclosure documents, including but not limited to items to be provided pursuant to Exchange Act Rule 15c2-12. Submissions of continuing disclosure documents to the pilot phase of the EMMA continuing disclosure service would be made solely in electronic format by issuers, obligated persons and their agents through a secured, password-protected, web-based interface with EMMA. Such submissions would be made as portable document format (PDF) files, accompanied by related indexing information, through the submission processes established with respect to the EMMA continuing disclosure service; provided that such processes may become available for use by voluntary submitters on a phased-in basis. No paper submissions would be accepted. Documents submitted by issuers, obligated persons and their agents would be made available to the public on the EMMA portal. The specific features of the EMMA portal established with respect to the EMMA continuing disclosure service may become available for use by public users of the EMMA website on a phased-in basis

during the pilot phase. The MSRB also may make available test versions of the computer-to-computer submission processes and data stream subscription services established with respect to the EMMA continuing disclosure service on a phased-in basis during the pilot phase. There would be no charge for the making of submissions during the pilot phase or for accessing such documents on the EMMA portal.

The MSRB would view electronic submissions of continuing disclosure documents during the pilot phase of the EMMA continuing disclosure service as having been submitted to the MSRB for purposes of any existing continuing disclosure undertakings entered into consistent with Exchange Act Rule 15c2-12.<sup>6</sup> The MSRB takes no position with regard to whether a submission made to the pilot phase of the EMMA continuing disclosure service that is made publicly available through the EMMA portal would satisfy any other provisions of existing continuing disclosure undertakings.

The MSRB would undertake to make the submission and EMMA portal access services available during the pilot phase on the same terms as established for the EMMA continuing disclosure service but would reserve the right to operate any feature on a more limited basis as necessary or appropriate, in the sole discretion of the MSRB, during the pilot phase. The pilot phase would be expected to operate for a limited period of time as the MSRB transitions to the permanent EMMA continuing disclosure service anticipated

---

<sup>6</sup> The MSRB currently operates CDINet to process and disseminate notices of material events submitted to the MSRB. The MSRB urges, but does not require, submitters currently using CDINet to instead make any future submissions to the pilot phase of the EMMA continuing disclosure service, solely in electronic format, upon the launch of the pilot phase until such time as all submissions must be made to the permanent EMMA continuing disclosure service. The MSRB intends to file in the near future a proposed rule change with the Commission to discontinue CDINet as of the commencement of operations of the permanent EMMA continuing disclosure service on July 1, 2009.

to commence operation on July 1, 2009. The pilot phase would terminate automatically at such time as the permanent EMMA continuing disclosure service becomes operational.

The MSRB has designed EMMA, including the EMMA portal, as a scalable system with sufficient current capacity and the ability to add further capacity to meet foreseeable usage levels based on reasonable estimates of expected usage, and the MSRB would monitor usage levels in order to assure continued capacity in the future.

The MSRB may restrict or terminate malicious, illegal or abusive usage for such periods as may be necessary and appropriate to ensure continuous and efficient access to the EMMA portal and to maintain the integrity of EMMA and its operational components. Such usage may include, without limitation, usage intended to cause the EMMA portal to become inaccessible by other users, to cause the EMMA database or operational components to become corrupted or otherwise unusable, to alter the appearance or functionality of the EMMA portal, or to hyperlink to or otherwise use the EMMA portal or the information provided through the EMMA portal in furtherance of fraudulent or other illegal activities (such as, for example, creating any inference of MSRB complicity with or approval of such fraudulent or illegal activities or creating a false impression that information used to further such fraudulent or illegal activities has been obtained from the MSRB or EMMA). Measures taken by the MSRB in response to such unacceptable usage shall be designed to minimize any potentially negative impact on the ability to access the EMMA portal.

## **2. Statutory Basis**

The MSRB has adopted the proposed rule change pursuant to Section 15B(b)(2)(C) of the Exchange Act, which provides that MSRB's rules shall:



be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in municipal securities, to remove impediments to and perfect the mechanism of a free and open market in municipal securities, and, in general, to protect investors and the public interest.

The MSRB believes that the proposed rule change is consistent with the Exchange Act. The EMMA continuing disclosure service, including the pilot phase thereof, would serve as an additional mechanism by which the MSRB works toward removing impediments to and helping to perfect the mechanisms of a free and open market in municipal securities. The pilot phase would be an important transitional step toward ensuring the effective and efficient operation of the permanent EMMA continuing disclosure service upon launch on July 1, 2009.

The EMMA continuing disclosure service, including the pilot phase thereof, would help make information useful for making investment decisions more easily accessible to all participants in the municipal securities market on an equal basis throughout the life of the securities without charge through a centralized, searchable Internet-based repository, thereby removing potential barriers to obtaining such information. Broad access to continuing disclosure documents through the EMMA continuing disclosure service should assist in preventing fraudulent and manipulative acts and practices by improving the opportunity for public investors to access material information about issuers and their securities.

Furthermore, the EMMA continuing disclosure service should reduce the effort necessary for issuers and obligated persons to comply with their continuing disclosure

undertakings by making submissions to a single venue<sup>7</sup> using an electronic submission process, which should result in lower costs to issuers and savings to their citizens. Similarly, a single centralized and searchable venue for free public access to disclosure information should promote a more fair and efficient municipal securities market in which transactions are effected on the basis of material information available to all parties to such transactions, which should allow for fairer pricing of transactions based on a more complete understanding of the terms of the securities and the potential investment risks. Free access to this information – previously available in most cases only through paid subscription services or on a per-document fee basis – should reduce transaction costs for dealers and investors.

All of these factors serve to promote the statutory mandate of the MSRB to protect investors and the public interest.

**B. Self-Regulatory Organization’s Statement on Burden on Competition**

The MSRB does not believe that the proposed rule change would impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act. The pilot phase of the EMMA continuing disclosure service would be an important transitional step toward ensuring the effective and efficient operation of the permanent EMMA continuing disclosure service upon launch on July 1, 2009. As the MSRB has previously stated in its filing with the Commission in connection with the permanent EMMA continuing disclosure service (the “permanent EMMA continuing

---

<sup>7</sup> Some states may require issuers and/or obligated persons to submit disclosure information to state information depositories or other venues pursuant to state law.

disclosure filing”),<sup>8</sup> although the MSRB recognizes that the EMMA continuing disclosure service might require private enterprises to modify some aspects of the way they undertake their current business activities, the MSRB believes that the continuing disclosure service would promote, rather than hinder, further competition, growth and innovation in this area. The MSRB believes that the benefits realized by the investing public from the broader and easier availability of disclosure information about municipal securities that would be provided through the EMMA continuing disclosure service, including the pilot phase thereof, would justify any potentially negative impact on existing enterprises from the operation of EMMA.

**C. Self-Regulatory Organization’s Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others**

Written comments were neither solicited nor received on the proposed rule change. However, in connection with the permanent EMMA continuing disclosure filing, the Commission received comments relating to, among other things, the effective date of the filing and a desire for a transition to the permanent EMMA continuing disclosure filing.<sup>9</sup> In the permanent EMMA continuing disclosure filing, the MSRB had originally proposed an effective date of January 1, 2009. In response, one commentator requested that the Commission establish a transition period before making electronic filings on

---

<sup>8</sup> See Securities Exchange Act Release No. 58256 (July 30, 2008) 73 FR 46161 (August 7, 2008) (File No. SR-MSRB-2008-05) (proposing the establishment of the continuing disclosure service of EMMA). See also Securities Exchange Act Release No. 59061 (December 5, 2008), 73 FR 75778 (December 12, 2008) (File No. SR-MSRB-2008-05) (approving the continuing disclosure service of EMMA with an effective date of July 1, 2009).

<sup>9</sup> Comment letters to the Commission on the permanent EMMA continuing disclosure filing are available at <http://www.sec.gov/comments/sr-msrb-2008-05/msrb200805.shtml>.

EMMA mandatory as a result of the submissions needing to be submitted as PDF-word searchable files.<sup>10</sup> Another commentator noted a need to address smaller issuers who may need additional time to familiarize themselves with an electronic system.<sup>11</sup> A third commentator noted that “municipal issuers and obligated persons may be confused as to where they should file continuing disclosure documents during the period of transition from the current system to the EMMA system” and suggested that these concerns “could be addressed during a short transition period.”<sup>12</sup>

As a result, the MSRB amended the permanent EMMA continuing disclosure filing to request that the Commission delay the implementation of the permanent EMMA continuing disclosure service to July 1, 2009.<sup>13</sup> The MSRB noted that the delayed effectiveness would provide the MSRB with the opportunity to implement a pilot phase of the EMMA continuing disclosure service to allow voluntary submissions to be made prior to the effectiveness of the permanent EMMA continuing disclosure service. During this pilot period, submitters would be able to familiarize themselves with the submission process and receive assistance to establish user accounts.

---

<sup>10</sup> See Letter from Susan A. Gaffney, Director, Federal Liaison Center, Government Finance Officers Association, to Ms. Harmon, dated September 22, 2008.

<sup>11</sup> See Letter from William A. Holby, President, National Association of Bond Lawyers, to Ms. Harmon, dated September 22, 2008.

<sup>12</sup> See Letter from Christopher Alwine, Head of Municipal Money Market and Bond Groups, Vanguard, to Ms. Harmon, dated September 24, 2008.

<sup>13</sup> See SR-MSRB-2008-05, Amendment No. 1 (November 5, 2008).

### **III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Within 35 days of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding, or (ii) as to which the self-regulatory organization consents, the Commission will:

- (A) by order approve the proposed rule change, or
- (B) institute proceedings to determine whether the proposed rule change should be disapproved.

The MSRB has requested that the Commission find good cause, pursuant to Section 19(b)(2) of the Exchange Act, for approving the proposed rule change prior to the thirtieth day after publication of the notice of filing of the proposed rule change in the Federal Register. The Commission has previously approved the permanent EMMA continuing disclosure service to commence operation on July 1, 2009 after due public notice and comment.<sup>14</sup> The MSRB believes that the Commission has good cause for granting accelerated approval of the proposed rule change since the continuing disclosure pilot would be an important transitional step toward ensuring the effective and efficient operation of the permanent EMMA continuing disclosure service upon launch on July 1, 2009 and the continuing disclosure pilot would not raise any issues or concerns not already addressed in connection with the approval of the permanent EMMA continuing disclosure service.

---

<sup>14</sup> See EMMA continuing disclosure service approval at footnote 3 *supra*.

#### **IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Exchange Act. Comments may be submitted by any of the following methods:

##### Electronic comments:

- Use the Commission's Internet comment form ([www.sec.gov/rules/sro.shtml](http://www.sec.gov/rules/sro.shtml)); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-MSRB-2009-03 on the subject line.

##### Paper comments:

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-MSRB-2009-03. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site ([www.sec.gov/rules/sro.shtml](http://www.sec.gov/rules/sro.shtml)). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549. Copies of such filing also will be available for inspection and

copying at the principal office of the MSRB. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-MSRB-2009-03 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission by the Division of Trading and Markets, pursuant to delegated authority.<sup>15</sup>

Elizabeth M. Murphy  
Secretary

---

<sup>15</sup> 17 CFR 200.30-3(a)(12).