OMB APPROVAL	
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SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549
Form 19b-4

File No. SR - 2009 - 10
Amendment No. 1

Proposed Rule Change by Municipal Securities Rulemaking Board

Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934

Initial	Amendment	Withdrawal
☐	☑	☐

Section 19(b)(2)	Section 19(b)(3)(A)	Section 19(b)(3)(B)
☑	☐	☐

Pilot	Extension of Time Period for Commission Action	Date Expires
☐	☐	

Rule

☐ 19b-4(f)(1) ☐ 19b-4(f)(2) ☐ 19b-4(f)(3) ☐ 19b-4(f)(4) ☐ 19b-4(f)(5) ☐ 19b-4(f)(6)

Exhibit 2 Sent As Paper Document ☐

Exhibit 3 Sent As Paper Document ☐

Description

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

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	Ernesto	Last Name	Lanza
Title	General Counsel		
E-mail	elanza@msrb.org		
Telephone	(703) 797-6600	Fax	(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 12/18/2009

By Ronald W. Smith
(Name)

Corporate Secretary
(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") this Amendment No. 1 (the "amendment") to File No. SR-MSRB-2009-10, originally filed on July 14, 2009 (the "original proposed rule change"). This amendment amends and restates the original proposed rule change relating to additional voluntary submissions by issuers to the MSRB's Electronic Municipal Market Access system ("EMMA") (as amended, the "proposed rule change"). The proposed rule change would amend EMMA's primary market and continuing disclosure services to permit issuers and their designated agents to submit preliminary official statements and other related pre-sale documents, official statements and advance refunding documents, as well as to permit issuers, obligated persons and their designated agents to submit information relating to the preparation and submission of audited financial statements and annual financial information and to post links to other disclosure information. The MSRB requests an effective date for the proposed rule change of a date to be announced by the MSRB in a notice published on the MSRB Web site, which date shall be no later than nine months after Commission approval of the proposed rule change and shall be announced no later than sixty (60) days prior to the effective date.

The text of the proposed rule change is set forth below:[1]

* * * * * * * * * *

EMMA PRIMARY MARKET DISCLOSURE SERVICE

The EMMA primary market disclosure service, established as a service of EMMA, receives submissions of official statements ("OSs"), preliminary official statements ("POSs") and related pre-sale documents ("POS-related documents"), advance refunding documents ("ARDs"), and any amendments thereto (collectively, "primary market documents"), together with related indexing information to allow the public to readily identify and access such documents, from brokers, dealers and municipal securities dealers ("dealers"), acting as underwriters, placement agents or remarketing agents for primary offerings of municipal securities ("underwriters"), and their agents pursuant to MSRB rules, and from issuers and their designated agents, 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 primary market disclosure service makes primary market documents

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[1] Underlining indicates additions; brackets indicate deletions. Changes made by this amendment to the original proposed rule change are indicated in Exhibit 4. The text of the proposed rule change will be available on the MSRB Web site at www.msrb.org/msrb1/sec.asp.

available to the public, at no charge, on the Internet through the EMMA portal. The EMMA primary market disclosure service also makes primary market documents available by subscription for a fee.

Submissions to the EMMA Primary Market Disclosure Service

Designated Electronic Format for Documents. No change.

Method of Submission. No change.

Timing of Submissions. Underwriters and their agents [Submitters] shall make submissions to EMMA of primary market documents [OSs, POSs, ARDs] and related information within the timeframes set forth in MSRB rules and related MSRB procedures. The EMMA primary market disclosure service's submission processes are available for submissions throughout the day, subject to the right of the MSRB to make such processes unavailable between the hours of 3:00 am and 6:00 am each day, Eastern time, for required maintenance, upgrades or other purposes, or at other times as needed to ensure the integrity of EMMA and its systems. The MSRB shall provide advance notice on the EMMA portal of any planned periods of unavailability and shall endeavor to provide information on the EMMA portal as to the status of the submission interface during unanticipated periods of unavailability, to the extent technically feasible.

Document Types. The EMMA primary market disclosure service accepts submissions of primary market documents, [OSs, POSs and ARDs,] including any amendments to the foregoing, submitted pursuant to MSRB rules or on a voluntary basis. POS-related documents, including but not limited to notices of sale or supplemental disclosures, will be accepted only if accompanied or preceded by a POS.

Information to be Submitted. Underwriters and their agents [Submitters] shall provide to EMMA related indexing information with respect to each document submitted. Underwriters and their agents [Submitters] submitting primary market documents [OSs, POSs or ARDs] under MSRB rules, or providing information under MSRB rules regarding a primary offering where no such document is required to be submitted, shall provide such items of information as are required by MSRB rule or the EMMA Dataport Manual to be included on Form G-32. Voluntary submissions of primary market documents by issuers and their designated agents will be accepted if, at the time of submission, they are accompanied by information necessary to accurately identify: (i) the category of document being submitted (such as OS, POS, POS-related document, ARD); (ii) the issues or specific securities to which such document is related (including CUSIP number to the extent then available, issuer name, state, issue description/securities name, dated date, maturity date, and/or coupon rate); and (iii) in the case of an ARD, the specific securities being refunded pursuant to the ARD (including original CUSIP number and any newly assigned CUSIP number).

Submitters shall be responsible for the accuracy and completeness of all information submitted to EMMA.

Submitters. Submissions to the EMMA primary market disclosure service may be made solely by authorized submitters using password-protected accounts in the MSRB's user account management and authentication system known as MSRB Gateway. Submissions may be made by the following classes of submitters:

- underwriter, which may submit primary market documents [OSs, POSs, ARDs] and related information, as well as such other documents or information as provided under MSRB rules, with respect to municipal securities which the underwriter has underwritten;

- issuer, which may submit primary market documents and related information with respect to such issuer's municipal securities; and

- designated agent, which may submit the documents otherwise permitted to be submitted by the underwriter or issuer, as appropriate, which has designated such agent, as provided below.

Issuers wishing to make submissions of primary market documents and related indexing information to the EMMA primary market disclosure service would use the same accounts established with respect to submissions of continuing disclosure documents to the EMMA continuing disclosure service, subject to additional verification procedures. Underwriters and issuers may designate agents to submit primary market documents and related indexing information on their behalf, and may revoke the designation of any such agents, through MSRB Gateway. Such designated agents must register to obtain password-protected accounts on EMMA in order to make submissions on behalf of the designating party. [underwriters.] All actions taken on EMMA by a designated agent on behalf of an underwriter that has designated such agent shall be the responsibility of the underwriter. The MSRB considers an agent designated by an issuer to make submissions of primary market documents and related indexing information as being authorized by the issuer to take actions on EMMA on behalf of such issuer.

Public Availability of Primary Market Disclosure Documents

No change.

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EMMA CONTINUING DISCLOSURE SERVICE

The EMMA continuing disclosure service, established as a service of EMMA, receives submissions of continuing disclosure documents, together with related information about continuing disclosures and 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, as well as other continuing disclosure documents concerning municipal securities, 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 continuing disclosure service also makes continuing disclosures available by subscription for a fee.

Submissions to the EMMA Continuing Disclosure Service

Designated Electronic Format for Documents. No change.

Method of Submission. No change.

Timing of Submissions. No change.

Document Types. The EMMA continuing disclosure service accepts submissions from issuers, obligated persons, and their agents of (i) the continuing disclosure documents described in Rule 15c2-12, and (ii) other continuing disclosure documents concerning municipal securities not specifically described in Rule 15c2-12.

The continuing disclosure documents described in Rule 15c2-12 consist of the following categories of documents:

- annual financial information concerning issuers or other obligated persons as described in paragraph (b)(5)(i)(A) of Rule 15c2-12, or other financial information and operating data provided by issuers or other obligated persons as described in paragraph (d)(2)(ii)(A) of Rule 15c2-12;

- financial statements for issuers or other obligated persons if not included in the annual financial information as described in paragraph (b)(5)(i)(B) of Rule 15c2-12;

- notices of certain events, if material, as described in paragraph (b)(5)(i)(C) of Rule 15c2-12; and

- notices of failures to provide annual financial information on or before the date specified in the written undertaking as described in paragraph (b)(5)(i)(D) of Rule 15c2-12.

Categories of other disclosure documents concerning municipal securities not specifically described in Rule 15c2-12 include:

- other financial or operating data disclosures, including but not limited to quarterly or monthly financial information; interim or additional financial information or operating data; budget documents; investment, debt or financial policies; consultant reports; information provided to rating agencies, credit or liquidity providers or other third parties; changes in accounting standards, fiscal year or timing of annual disclosure; undertaking of an issuer or obligated person to prepare audited financial statements pursuant to generally accepted accounting principles as established by the Governmental Accounting Standards Board (GASB) or the Financial Accounting Standards Board (FASB), as applicable; undertaking of an issuer or obligated person to submit annual financial information to EMMA within 120 calendar days after the end of the applicable fiscal year (provided that the EMMA continuing disclosure service will accept the submission, through December 31, 2013, of an alternative transitional undertaking of an issuer or obligated person to submit annual financial information to EMMA within 150 calendar days after the end of the applicable fiscal year); uniform resource locator (URL) of the issuer's or obligated person's Internet-based investor relations or other repository of financial/operating information; and other uncategorized financial or operating data; and

- other event-based disclosures, including but not limited to amendments to continuing disclosure undertakings; changes in obligated person; notices to investors pursuant to bond documents; communications from the Internal Revenue Service; tender offer or secondary market purchase notices; notices of bid for auction rate or other securities; capital or other financing plans; litigation or enforcement action documents; documents relating to mergers, consolidations, reorganizations, insolvency or bankruptcy; changes of trustee, tender agent, remarketing agent, or other on-going party; materials relating to derivative or other similar transactions; and other uncategorized event-based disclosures.

The MSRB may combine two or more categories, may divide any category into two or more new categories or subcategories, or may form additional categories for purposes of indexing documents submitted as uncategorized financial/operating data or event-based disclosures, as appropriate, based on the types of documents received.

In addition, for the categories of continuing disclosures listed below, a submitter may provide, in lieu of or in addition to a continuing disclosure document, a statement of the information indicated below by means of a text/data input field: undertaking of an issuer or obligated person to prepare audited financial statements pursuant to generally accepted accounting principles as established by GASB or FASB, as applicable; undertaking of an issuer or obligated person to submit annual financial information to EMMA within 120 calendar days (or, through December 31, 2013, within 150 calendar days) after the end of the applicable fiscal year; and URL of the issuer's or obligated person's Internet-based investor relations or other repository of financial/operating information. Submitters also may change or rescind any such undertaking or change or remove any such URL at any time by means of a text/data input field, and any such changes, rescissions or removals will be reflected on the EMMA portal; provided

that an undertaking of an issuer or obligated person to submit annual financial information to EMMA within 150 calendar days after the end of the applicable fiscal year will continue to be displayed on the EMMA portal through June 30, 2014, and will automatically cease to be displayed on the EMMA portal after such date, unless the issuer or obligated person has previously changed or rescinded such undertaking.

Information to be Submitted. No change.

Submitters. No change.

Public Availability of Continuing Disclosure Documents

EMMA Portal. Submissions made through the EMMA continuing disclosure service accepted during the hours of 8:30 am to 6:00 pm Eastern time on an MSRB business day are, in general, posted on the EMMA portal within 15 minutes of acceptance, although during peak traffic periods posting may occur within one hour of acceptance. Submissions outside of such hours often are posted within 15 minutes although some submissions outside of the MSRB's normal business hours may not be processed until the next business day. Except as otherwise provided herein in connection with a specific category of document or information that may be submitted to the EMMA continuing disclosure service, continuing [Continuing] disclosure documents, undertakings and related [indexing] information submitted to EMMA shall be made available to the public through the EMMA portal for the life of the related securities.

The EMMA portal provides on-line search functions utilizing available indexing information to allow users of the EMMA portal to readily identify and access documents and related information provided through the EMMA continuing disclosure service. Basic identifying information relating to specific municipal securities and/or specific issues accompanies the display of continuing disclosure documents.

The EMMA portal is available without charge to all members of the public. 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 will monitor usage levels in order to assure continued capacity in the future.

The MSRB reserves the right to 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. The MSRB is not responsible for the content of the information or documents submitted by submitters displayed on the EMMA portal or distributed to subscribers of the EMMA continuing disclosure subscription service.

Subscriptions. No change.

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(b) Not applicable.

(c) Not applicable.

2. Procedures of the Self-Regulatory Organization

The original proposed rule change was adopted by the MSRB on June 11, 2009 and this amendment was adopted by the MSRB on December 3, 2009. Questions concerning this filing may be directed to Leslie Carey, Associate General Counsel, or Justin R. Pica, Director, Uniform Practice Policy, at (703) 797-6600.

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

(a) This amendment makes certain modifications to the original proposed rule change based on comments received on the original proposed rule change and discussions with Commission staff, as described below.

Preliminary Official Statements and Other Primary Market Documents

The proposed rule change would amend the EMMA primary market disclosure service[2] to permit issuers and their designated agents to make voluntary submissions to the primary market disclosure service of official statements, preliminary official statements and related pre-sale documents, and advance refunding documents (collectively, "primary market documents").[3] Pre-sale documents other than a preliminary official statement (including but not limited to notices of sale or supplemental disclosures) would be accepted only if accompanied or preceded by the preliminary official statement.[4] An issuer seeking to make submissions of primary market documents to the EMMA primary market disclosure service would use the same accounts

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[2] This amendment does not modify the provisions of the original proposed rule change relating to the EMMA primary market disclosure service.

[3] Obligated persons would be permitted to submit primary market documents through the EMMA primary market disclosure service only if designated as an agent by the issuer.

[4] The MSRB believes that posting of such pre-sale documents without the related disclosure information provided in a preliminary official statement would be inconsistent with the core disclosure purposes of EMMA.

established with respect to submissions of continuing disclosure documents to the EMMA continuing disclosure service, subject to additional verification procedures to affirmatively establish the account holder's authority to act on behalf of the issuer in connection with such primary market disclosure submissions.

Submissions of primary market documents by issuers and their designated agents will be accepted on a voluntary basis if, at the time of submission, they are accompanied by information necessary to accurately identify: (i) the category of document being submitted; (ii) the issues or specific securities to which such document is related; and (iii) in the case of an advance refunding document, the specific securities being refunded pursuant thereto. The primary market documents and related indexing information would be displayed on the EMMA web portal and also would be included in EMMA's primary market disclosure subscription service.

Additional Continuing Disclosure Submissions and Undertakings

As amended and restated by this amendment, the proposed rule change also would amend the EMMA continuing disclosure service to permit issuers, obligated persons and their agents to make voluntary submissions to the continuing disclosure service of additional categories of disclosures, as well as information about their continuing disclosure undertakings. Such additional continuing disclosures and related indexing information would be displayed on the EMMA web portal and also would be included in EMMA's continuing disclosure subscription service. Such additional items are:

- an issuer's or obligated person's undertaking to prepare audited financial statements pursuant to generally accepted accounting principles ("GAAP") as established by the Governmental Accounting Standards Board ("GASB"), or pursuant to GAAP as established by the Financial Accounting Standards Board ("FASB"), as applicable to such issuer or obligated person and as further described below (the "voluntary GAAP undertaking");[5]

- an issuer's or obligated persons' undertaking to submit annual financial information to EMMA within 120 calendar days after the end of the fiscal year or, as a transitional alternative that may be elected through December 31, 2013, within 150 calendar days

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[5] In response to the comments received on the original proposed rule change, as discussed below, this amendment modifies the original proposed rule change by permitting issuers and obligated persons to elect either the GASB standard or the FASB standard for GAAP, as appropriate. The original proposed rule change only contemplated the use of the GASB standard.

after the end of the applicable fiscal year, as further described below (the "voluntary annual filing undertaking");[6] and

- uniform resource locator (URL) of the issuer's or obligated person's Internet-based investor relations or other repository of financial/operating information.

Voluntary GAAP Undertaking. The voluntary GAAP undertaking would consist of a voluntary undertaking by an issuer or obligated person, either at the time of a primary offering or at any time thereafter, that the issuer or obligated person will prepare its audited financial statements in accordance with GAAP. The MSRB contemplates that state or local governments or any other entities to which GASB standards are applicable would apply GAAP as established by GASB and that any other entities to which FASB standards are applicable would apply GAAP as established by FASB.

The voluntary GAAP undertaking would assist investors and other market participants in understanding how audited financial statements were prepared. The fact that an issuer or obligated person has entered into a voluntary GAAP undertaking, and the standard under which audited financial statements are to be prepared, would be prominently disclosed on the EMMA web portal as a distinctive characteristic of the securities to which such undertaking applies. An issuer or obligated person that has made a voluntary GAAP undertaking may later rescind such undertaking, which would be disclosed through EMMA. The MSRB would not review whether an entity has selected the appropriate accounting standard and would not review or confirm the conformity of submitted audited financial statements to GAAP. The MSRB contemplates that the making of a voluntary GAAP undertaking through EMMA by an issuer or obligated person would reflect the *bona fide* intent of the issuer or obligated person to perform as undertaken but would not, by itself, necessarily create a contractual obligation of such issuer or obligated person.

Voluntary Annual Filing Undertaking. The voluntary annual filing undertaking would consist of a voluntary undertaking by an issuer or obligated person, either at the time of a primary offering or at any time thereafter, that the issuer or obligated person, as appropriate, will submit to EMMA its annual financial information as contemplated under Rule 15c2-12 of the Securities Exchange Act of 1934 (the "Exchange Act") by no later than 120 calendar days after

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[6] In response to the comments received on the original proposed rule change, as discussed below, this amendment modifies the original proposed rule change by permitting issuers and obligated persons to elect to undertake to submit annual financial information either within 120 days or 150 days after the end of the fiscal year. The original proposed rule change only contemplated a 120 day timeframe.

the end of such issuer's or obligated person's fiscal year (the "120 day undertaking").[7] Alternatively, to and including December 31, 2013, the EMMA continuing disclosure service will provide the option for an issuer or obligated person to indicate its undertaking to submit to EMMA its annual financial information by no later than 150 calendar days after the end of such issuer's or obligated person's fiscal year (the "transitional 150 day undertaking").[8] An issuer or obligated person that has made a transitional 150 day undertaking may convert such election to a 120 day undertaking at any time. On and after January 1, 2014, the transitional 150 day undertaking option would no longer be available for selection.

The voluntary annual filing undertaking would assist investors and other market participants in understanding when the annual financial information is expected to be available in the future. The fact that an issuer or obligated person has entered into a voluntary annual filing undertaking would be prominently disclosed on the EMMA web portal as a distinctive characteristic of the securities to which such undertaking applies. An issuer or obligated person that has made a voluntary annual filing undertaking may later rescind such undertaking, which would be reflected on the EMMA web portal. A transitional 150 day undertaking would continue to be displayed on the EMMA web portal through June 30, 2014, and would automatically cease to be displayed on the EMMA web portal after such date, unless the issuer or obligated person has previously changed or rescinded such undertaking.

The MSRB would not review or confirm the compliance of an issuer or obligated person with its voluntary annual filing undertaking. The MSRB contemplates that the making of a voluntary annual filing undertaking through EMMA by an issuer or obligated person would reflect the *bona fide* intent of the issuer or obligated person to perform as undertaken but would

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7 Under the Exchange Act, smaller public reporting companies, as non-accelerated filers, generally are required to file their annual reports on Form 10-K with the Commission within 90 days after the end of their fiscal year. The longer 120-day period included in the voluntary annual filing undertaking of the proposed rule change is designed to accommodate additional steps that state and local governments often must take – under state law, pursuant to their own requirements, or otherwise – in completing the work necessary to prepare their annual financial information as contemplated under Exchange Act Rule 15c2-12.

8 The option to elect, through December 31, 2013, a transitional 150 day undertaking acknowledges that the 120 day undertaking may not be immediately achievable by many issuers and obligated persons, as described in the comments discussed below, and is designed to provide a means by which to recognize issuers and obligated persons that are taking steps toward ultimately making their annual financial information available within 120 days of fiscal year end in the future. Of course, those issuers and obligated persons that are already able to make their annual financial information available within 120 days or fewer after the end of the fiscal year could make the 120 day undertaking immediately.

not, by itself, necessarily create a contractual obligation of such issuer or obligated person. Unless the issuer or obligated person incorporates the 120 day undertaking or transitional 150 day undertaking as an obligation under its continuing disclosure agreement, the MSRB would view such issuer's or obligated person's performance pursuant to such undertaking as distinct from any performance obligations under its continuing disclosure agreement entered into consistent with Rule 15c2-12, although the MSRB believes that successful performance in accordance with a voluntary annual filing undertaking generally should also satisfy the obligation under a continuing disclosure agreement, depending on the specific terms of such agreement, if the agreement provides a longer timeframe for such submission.

Investor Relation URL Posting. A URL of an issuer's or obligated person's Internet-based investor relations or other repository of financial/operating information would provide investors with an additional avenue for obtaining further financial, operating or other investment-related information about such issuer or obligated person.

Elimination of Proposed GFOA-CAFR Certificate. This amendment modifies the original proposed rule change by eliminating one item of additional voluntary submissions relating to the award of the Certificate of Achievement for Excellence in Financial Reporting awarded by the Government Finance Officers Association ("GFOA") in connection with the preparation of a Comprehensive Annual Financial Report ("CAFR") of an issuer. The MSRB notes that CAFRs are already frequently submitted to EMMA by issuers, and in most cases the issuers include the GFOA certificate in the submitted CAFR. Therefore, EMMA already effectively serves as a venue through which CAFRs and GFOA certificates are made available to investors.

Manner of Submission. Issuers and obligated persons would make a voluntary GAAP undertaking or voluntary annual filing undertaking through a data input election on EMMA. Voluntary undertakings could later be rescinded through the same EMMA interface process. The URL of an issuer's or obligated person's investor relations or other repository of financial/operating information also could be entered through a text/data input field on EMMA. No document would be required to be submitted to EMMA in connection with the voluntary GAAP undertaking, voluntary annual filing undertaking or the issuer/obligated person URL. The input process for each of these additional items would include a free text input field permitting issuers and obligated persons to include limited additional information relating to each such item that they deem appropriate with respect thereto for public dissemination. Further, the MSRB would include an explanation of the nature of the voluntary GAAP undertaking and voluntary annual filing undertaking on the EMMA web portal.

Effective Date of Proposed Rule Change

As noted above, the MSRB has requested an effective date for the proposed rule change of a date to be announced by the MSRB in a notice published on the MSRB Web site, which date

shall be no later than nine months after Commission approval of the proposed rule change and shall be announced no later than sixty (60) days prior to the effective date.

(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 in that it serves to remove impediments to and help perfect the mechanisms of a free and open market in municipal securities and would serve to promote the statutory mandate of the MSRB to protect investors and the public interest. Voluntary dissemination of preliminary official statements through EMMA, particularly if made available prior to the sale of a primary offering to the underwriters, would provide timely access by investors and other market participants to key information useful in making an investment decision in a manner that is consistent with the MSRB's statutory authority. The voluntary GAAP undertaking would assist understanding of how such information was prepared and the voluntary annual filing undertaking would assist understanding of when such information is expected to be available in the future. A URL provided by an issuer or obligated person would provide investors with an additional avenue for obtaining further financial, operating or other investment-related information about such issuer or obligated person.

4. Self-Regulatory Organization's Statement on Burden on Competition

The MSRB does not believe the proposed rule change would impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act. The additional items of information submitted by issuers and obligated persons to the EMMA system for public dissemination would be available to all persons simultaneously. In addition to making such information available for free on the EMMA web portal to all members of the public, the MSRB would make such documents and information available by subscription on an equal and non-discriminatory basis. Further, the proposed rule change would apply equally to all issuers and obligated persons.

The MSRB does not believe that making the additional items of information to be included in the EMMA continuing disclosure service available to the public would compete with other information providers and, to the extent other information providers were to seek to make such information available to the public, such providers could obtain the information from the

MSRB through the subscription service on an equal and non-discriminatory basis. Further, the MSRB does not believe that allowing issuers to submit documents to the EMMA primary market disclosure service would create a burden on or compete inappropriately with any other information providers to which such documents may also be provided and notes that other information providers would be able to obtain the information from the MSRB through the subscription service on an equal and non-discriminatory basis.

The proposed rule change also would not impose any additional burdens on competition among issuers of municipal securities since the voluntary submissions provided for under the proposed rule change may be made by any issuer on an equal and non-discriminatory basis.

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 by the MSRB on the original proposed rule change prior to filing with the Commission. The original proposed rule change was published by the Commission for comment in the Federal Register and the Commission received comments from a number of commentators.[9] In addition, several commentators provided comments to the MSRB with respect to the submission of preliminary official

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[9] *See* Exchange Act Release No. 60315 (July 15, 2009) (File No. SR-MSRB-2009-10), 74 FR 36294 (July 22, 2009). The Commission received comments from the City of Brookfield, Wisconsin ("Brookfield"); Connecticut State Treasurer ("Connecticut"); Government Finance Officers Association ("GFOA"); Village of Greendale, Wisconsin ("Greendale"); Village of Hinsdale, Illinois ("Hinsdale"); Inland Empire Utilities Agency ("Inland"); International City/County Management Association, National Association of Counties, National Association of State Auditors, Comptrollers and Treasurers, National League of Cities, U.S. Conference of Mayors, American Public Power Association, and Council on Infrastructure Financing Authorities, jointly ("Joint Issuer Groups"); Investment Company Institute ("ICI"); Township of Lower Merion, Pennsylvania ("Lower Merion"); Michigan State Treasurer ("Michigan"); National Association of Bond Lawyers ("NABL"); National Association of Health and Educational Facilities Finance Authorities ("NAHEFFA"); National Association of State Treasurers ("NAST"); Oregon Municipal Finance Officers Association ("OMFOA"); City of Portland, Oregon ("Portland"); City of Rock Hill, South Carolina ("Rock Hill"); Rutherford County, Tennessee ("Rutherford"); Securities Industry and Financial Markets Association ("SIFMA"); State of Tennessee ("Tennessee"); Utah Government Finance Officers Association ("UGFOA"); and Virginia Government Finance Officers' Association ("VGFOA"). The comment letters received by the Commission are posted on the Commission's Web site at http://www.sec.gov/comments/sr-msrb-2009-10/msrb200910.shtml.

statements to EMMA in response to a series of notices published by the MSRB seeking comment on the establishment of EMMA for purposes of official statement dissemination (the "MSRB Notices").[10]

General

Except with respect to the voluntary annual filing undertaking, virtually all commentators on the original proposed rule change supported the proposal. Most commentators opposed the voluntary annual filing undertaking, with some of these commentators not expressing opinions on the remaining portions of the original proposed rule change. NABL suggested delaying action on changes to the EMMA continuing disclosure service until the Commission's proposed amendments to Rule 15c2-12 are finalized,[11] and also noted general concerns regarding whether prominent display of the voluntary undertakings would be construed as recommendations by the MSRB and regarding the specific process by which issuers and obligated persons could later rescind any undertakings they make. SIFMA asked what responsibilities dealers may have arising from an issuer's failure to meet a voluntary undertaking. Various commentators provided comments on specific elements of the original proposed rule change, as described below.

Preliminary Official Statements

The original proposed rule change would amend the EMMA primary market disclosure service to permit issuers and their designated agents to make voluntary submissions to the primary market disclosure service of official statements, preliminary official statements and related pre-sale documents, and advance refunding documents. Pre-sale documents other than a preliminary official statement (including but not limited to notices of sale or supplemental disclosures) would be accepted only if accompanied or preceded by the preliminary official statement.

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10 MSRB Notice 2006-19 (July 27, 2006) (the "Concept Release"); MSRB Notice 2007-5 (January 25, 2007) (the "January 2007 Notice"). Comments relating to preliminary official statement submissions were received in response to the Concept Release from American Government Financial Services Company ("AGFS"), TRB Associates ("TRB"), UMB Bank, N.A. ("UMB"), and Zions Bank Public Finance ("Zions"). Comments relating to preliminary official statement submissions were received in response to the January 2007 Notice from American Municipal Securities, Inc. ("AMS"), DPC DATA Inc. ("DPC"), Ipreo Holdings LLC ("Ipreo"), NABL and SIFMA. These notices and comment letters are included in Exhibit 2.

11 *See* Exchange Act Release No. 60332 (July 17, 2009) (File No. S7-15-09), 74 FR 36832 (July 24, 2009).

A number of commentators on the original proposed rule change expressed general support for the various elements thereof (other than the voluntary annual filing undertaking), including the element to permit issuers to submit preliminary official statements and related pre-sale documents. In addition, in comment letters to the MSRB on the MSRB Notices, SIFMA,[12] along with AMS, DPC, Ipreo, NABL, TRB, UMB and Zions, supported the concept of voluntary submissions of preliminary official statements. DPC and AGFS suggested that the MSRB explore making the submission of preliminary official statements mandatory, while SIFMA, AMS and NABL emphasized that preliminary official statement submissions should not be made mandatory.

The MSRB believes that there is considerable value in providing a means for centralized access to preliminary official statements at or prior to the time of trade and in sufficient time to make use of the information in coming to an investment decision. However, the MSRB is precluded from mandating pre-sale submission of preliminary official statement pursuant to Exchange Act Section 15B(d)(1). In its filing with the Commission to establish the EMMA primary market disclosure service, the MSRB stated that it expected to provide the opportunity for voluntary submissions of and access to preliminary official statements through EMMA, consistent with the MSRB's statutory authority, pursuant to a future filing with the Commission.[13] The proposed rule change would permit such voluntary submissions of preliminary official statements.

Connecticut noted in its comments on the original proposed rule change that preliminary official statements would generally not have CUSIP numbers associated with them and that EMMA's usability would be improved by making such documents identifiable by means other than CUSIP numbers, such as by issuer. NABL supported submissions of preliminary official statements and related pre-sale documents for competitive sales of new issues but expressed concerns with regard to potentially conflicting submissions by underwriters and issuers in the case of negotiated issues and therefore recommended that the ability to make preliminary official statement submissions by issuers be restricted solely to competitive issues.

The MSRB expects to provide search capabilities tailored to the types of indexing information that would be available for preliminary official statements, including issuer name, issue description, state, and appropriate date ranges, among other things. Submissions made by issuers would be noted as such on the EMMA web portal. The MSRB believes that postings of preliminary official statements by issuers should be available for any new issue, not just those

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12 Bear Stearns & Co., Inc. and Griffin, Kubik, Stephens & Thompson, Inc. stated that they participated in the formulation of SIFMA's comments on the January 2007 Notice and fully supported SIFMA's positions.

13 *See* Securities Exchange Act Release No. 59636 (March 27, 2009), 74 FR 15190 (April 2, 2009) (File No. SR-MSRB-2009-02)

sold on a competitive basis, and the EMMA primary market submission process would be designed to discourage duplicative submissions by issuers and underwriters.

In commenting on the MSRB Notices, SIFMA and DPC noted the importance of ensuring version control where both preliminary official statements and official statements are made available (as well as in handling "stickers" to official statements), suggesting that the MSRB include a mechanism for notification to the public when the final official statement is posted in cases where a preliminary official statement has previously been submitted. DPC suggested that preliminary official statements be deleted when final official statements are submitted, while NABL suggested that underwriters be permitted to request that the preliminary official statement be removed from the centralized electronic system once the "timeliness of a POS has ended," noting that its continued availability may confuse investors. However, SIFMA opposed the removal of the preliminary official statement.

The MSRB notes that the current operation of the EMMA web portal provides processes that address each of these suggestions. Under current Rule G-32, preliminary official statements, if available, are required to be submitted by the underwriter by closing solely in the circumstance where an official statement is not being prepared by the issuer or if the official statement is not available for submission to EMMA by the closing. Once the official statement is provided by the underwriter, the preliminary official statement generally is moved to a document archive that is accessible through the EMMA portal directly from the page where the link to the official statement is provided, thereby distinguishing the final official statement from the preliminary official statement while maintaining public access for those wishing to refer back to the preliminary official statement. Users of the EMMA portal are able to request to receive e-mail notifications for updates to the disclosure document for a specific security, which applies to the situation where an official statement is submitted to EMMA following an initial submission of the preliminary official statement.

Voluntary Annual Filing Undertaking

The original proposed rule change would amend the EMMA continuing disclosure service to permit issuers and obligated persons to undertake, on a voluntary basis, to submit annual financial information to EMMA within 120 calendar days after the end of the fiscal year. This would consist of a voluntary undertaking by an issuer or obligated person, either at the time of a primary offering or at any time thereafter, that the issuer or obligated person, as appropriate, will submit to EMMA its annual financial information as contemplated under Rule 15c2-12 by no later than 120 calendar days after the end of such issuer's or obligated person's fiscal year. Issuers and obligated persons would indicate the existence of such an undertaking through a data input election on EMMA. No document would be required to be submitted to EMMA in connection with this undertaking. The fact that an issuer or obligated person has entered into such an undertaking would be prominently disclosed on the EMMA web portal as a distinctive characteristic of the securities to which such undertaking applies and the MSRB would include an explanation of the undertaking on the EMMA web portal. If an issuer or obligated person that

has made an undertaking later rescinds such undertaking, the issuer or obligated person would be able to disclose such action through EMMA. The MSRB would not review or confirm the compliance of an issuer or obligated person with this undertaking.

This element of the original proposed rule change generated significant, but not universal, negative commentary, with virtually all commentators, except as noted below, strongly objecting.[14] GFOA stated that it believes that "setting an 'ideal' deadline of 120 days is unnecessary, arbitrary, and likely harmful to the quality of financial reporting." GFOA noted that many issuers that meet the 180 day timeframe for receiving its Certificate of Achievement for Excellence in Financial Reporting with respect to the preparation of their CAFRs must "struggle" to achieve that deadline and that a significantly shorter deadline "might reasonably be expected to persuade any number of such governments to abandon a CAFR altogether in favor of a plain set of basic financial statements." GFOA also noted that GAAP requires reporting of data from legally separate component units over which most issuers have no legal ability to compel to provide such data in a timeframe that would make meeting the voluntary annual filing undertaking possible. GFOA further suggested that the voluntary annual filing undertaking could encourage the use of less qualified audit firms and the increased use of estimates. The Joint Issuer Groups and NAST stated that they "strongly encourage the SEC and the MSRB to withdraw this part of the proposal, as it is not consistent with current practices and would diminish the quality of financial reporting and auditing standards." Various other issuers and issuer groups made arguments similar to those raised by the GFOA.[15]

Numerous issuers and issuer groups argued that the voluntary annual filing undertaking would likely become a *de facto* standard that issuers would feel compelled to meet.[16] They noted that the accelerated production of financial information would create significant financial and personnel burdens that would likely have adverse consequences to issuers while providing questionable benefits to investors.[17] Small issuers observed that their internal staffs are not able to support this timeframe and are given low priority by their auditors as compared to their larger

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14 *See* Brookfield, Connecticut, GFOA, Greendale, Inland, Joint Issuer Groups, Lower Merion, Michigan, NABL, NAHEFFA, NAST, OMFOA, Portland, Rock Hill, Rutherford, Tennessee, UGFOA and VGFOA.

15 *See* Brookfield, Connecticut, Greendale, Inland, Joint Issuer Groups, Lower Merion, Michigan, NABL, NAHEFFA, NAST, OMFOA, Portland, Rock Hill, Rutherford, Tennessee, UGFOA and VGFOA.

16 *See* Brookfield, Connecticut, Inland, Joint Issuer Groups, NAHEFFA, NAST and VGFOA.

17 *See* Brookfield, Connecticut, GFOA, Greendale, Inland, Joint Issuer Groups, NAHEFFA, NAST, OMFOA, Portland, UGFOA and VGFOA.

clients.[18] Portland stated that "even if the City 'staffed up' on its end, there are not a sufficient number of independent auditors available to conduct the auditing function within the 120-day time period." Rock Hill stated that auditing firms "are increasingly less inclined to bid for governmental audits because of the specialized continuing education requirements and the perception that the work is not lucrative."

Inland Empire expressed concern that the potential "black eye" for not making the voluntary annual filing undertaking could create pressure from elected officials to meet it that, in turn, could cause professional staff and their auditors to produce less accurate information just to meet the deadline. While not expressly opposing the voluntary annual filing undertaking, Connecticut questioned the usefulness of this element and expressed concern if this element is used by the market to screen issues. Many issuers stated that the 180 day standard used by GFOA in connection with its CAFR program is a more appropriate timeframe.[19] VGFOA cited difficulties in simultaneously meeting GFOA's CAFR timeframes, state law requirements and the existing annual financial undertaking in its continuing disclosure undertaking entered into pursuant to Rule 15c2-12. Several commentators noted various adjustments that are uniquely required to be made for governmental entities or conduit borrowers after the end of the fiscal year that make meeting the 120 day timeframe difficult or impossible.[20] Tennessee reviewed various statistics on timing of preparation of audited statements and concluded that "[s]electing a timeframe of 120 days without understanding the differences in reporting environments appears arbitrary and may unnecessarily limit the municipal market volume." Tennessee further noted that states have met to discuss "timeliness barriers and ways of reducing the timeframe of financial reporting" and requests that further study be undertaken. NAHEFFA noted that, since there are apparently no legal ramifications for failing to meet the deadline in an issuer's voluntary annual filing undertaking, nothing would "preclude the issuer from effectively advertising the undertaking on EMMA, and as a result receiving preferred status, irrespective of actual compliance."

Hinsdale, however, noted that "the proposed 120 day period for submitting annual financial information is a good start toward meeting the objective of making financial statements of governments timely and useful in the public securities market." GFOA stated that it "certainly could support a voluntary disclosure field indicating that a government was, in fact, in compliance with its continuing disclosure agreement obligations."

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18 *See* Brookfield, Greendale, Inland, NAHEFFA, OMFOA, Portland, Rock Hill, Rutherford, UGFOA and VGFOA.

19 *See* Inland, Michigan, Portland and UGFOA.

20 *See* GFOA, Inland, Joint Issuer Groups, NAHEFFA, NAST, Rock Hill, Tennessee, UGFOA and VGFOA.

The ICI stated that it is "particularly supportive" of the voluntary annual filing undertaking proposal, although it continued to press for "the establishment of a meaningful, mandatory timeframe for filing financial reports." ICI recommended, with regard to a mandatory standard, a 180-day deadline as an incremental improvement over the current industry practice of 270 days. SIFMA also supported the voluntary annual filing undertaking.

The MSRB acknowledges and appreciates the detailed explanations provided by commentators on the original proposed rule change with respect to the existing difficulties and barriers to meeting the 120 day timeframe of the voluntary annual filing undertaking as proposed in the original proposed rule change. The MSRB understands that a significant portion of the issuer and obligated person community is likely unable to make such a 120 day undertaking at this time and that such inability does not necessarily reflect problems with the issuer's or obligated person's credit or the quality of disclosures they make. As the MSRB had previously noted, this voluntary undertaking was originally proposed after consultation between the MSRB and Commission staff.[21] After a careful review of the comments and further discussions with Commission staff on the voluntary annual filing undertaking, the MSRB understands that the Commission staff strongly believes that, given its voluntary nature, the undertaking to provide annual financial information within the originally proposed 120 day timeframe remains the appropriate undertaking for display on the EMMA web portal.

In light of the commentators' widespread concerns regarding the attainability of the 120 day timeframe, the MSRB has determined to provide a transitional option for issuers and obligated persons to elect a 150 day undertaking as an alternative to the 120 day undertaking. This alternative election would provide issuers and obligated persons seeking to make the voluntary annual filing undertaking, but that are not currently able to meet a 120 day timeframe, with a reasonable opportunity to overcome existing barriers to more rapid dissemination of financial information in an orderly and cost-effective manner. Commission staff has indicated that an alternative election of 150 days after fiscal year end would be an appropriate transitional alternative but that this option should be available only on a temporary basis to provide a pathway toward achieving the 120 day timeframe.

The MSRB has accordingly modified the original proposed rule change to allow the election, through December 31, 2013, of a transitional 150 day alternative, which election would be displayed on the EMMA web portal through June 30, 2014 unless the issuer or obligated person changes or rescinds such undertaking. On and after January 1, 2014, the transitional 150 day undertaking option would no longer be available for selection. An issuer or obligated person that makes a transitional 150 day undertaking could convert such election to a 120 day undertaking at any time. Of course, an issuer or obligated person that believes it is able to meet the 120 day timeframe could make the 120 day undertaking immediately upon the effectiveness

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21 *See* MSRB Notice 2009-44 (July 15, 2009).

of the proposed rule change. The fact that an issuer or obligated person has entered into such an undertaking, including the timeframe elected, would be prominently disclosed on the EMMA web portal as a distinctive characteristic of the securities to which such undertaking applies. The EMMA web portal would not include information regarding the availability or existence of the voluntary annual filing undertaking in those cases where an issuer or obligated person does not make a voluntary annual filing undertaking.

The MSRB reiterates that the voluntary annual filing undertaking would in fact be voluntary and that an issuer or obligated person that makes a voluntary annual filing undertaking may later rescind such undertaking. The MSRB contemplates that the making of a voluntary annual filing undertaking through EMMA by an issuer or obligated person would reflect the *bona fide* intent of issuer or obligated person to perform as undertaken but would not, by itself, necessarily create a contractual obligation of such issuer or obligated person. Unless the issuer or obligated person incorporates the 120 day undertaking or transitional 150 day undertaking as an obligation under its continuing disclosure agreement, the MSRB would view the issuer's or obligated person's performance pursuant to such undertaking as distinct from any performance obligations under its continuing disclosure agreement entered into consistent with Rule 15c2-12. By making a voluntary annual filing undertaking, an issuer that has a contractual obligation under its continuing disclosure agreement to provide its annual financial information within a longer timeframe would be indicating its intent to make a good faith effort to submit its annual financial information to EMMA more rapidly than it is otherwise obligated under the continuing disclosure agreement.

The MSRB would include an explanation of the nature of the voluntary annual filing undertaking on the EMMA web portal. In particular, the MSRB would disclose that the voluntary annual filing undertaking is voluntary, is solely indicative of the timing by which the annual financial information is intended to be made available and is not indicative of the accuracy or completeness of the annual financial information or of the financial health of the issuer or obligated person. Further, the MSRB would disclose that a decision by an issuer or obligated person not to make such an undertaking does not raise a negative inference in regard to the accuracy or completeness of its annual financial information or of the financial health of the issuer or obligated person.

Voluntary GAAP Undertaking

The original proposed rule change would amend the EMMA continuing disclosure service to permit issuers and obligated persons to undertake, on a voluntary basis, to prepare audited financial statements pursuant to GAAP as established by GASB. This would consist of a voluntary undertaking by an issuer or obligated person (in the case of an obligated person that is a state or local governmental entity), either at the time of a primary offering or at any time thereafter, that the issuer or obligated person will prepare its audited financial statements in accordance with GAAP as established by GASB. This undertaking could be included within the continuing disclosure undertaking entered into consistent with Rule 15c2-12 or could be made in

a separate agreement. Issuers and obligated persons would indicate the existence of such an undertaking through a data input election on EMMA. No document would be required to be submitted to EMMA in connection with this undertaking. The fact that an issuer or obligated person has entered into such an undertaking would be prominently disclosed on the EMMA web portal as a distinctive characteristic of the securities to which such undertaking applies and the MSRB would include an explanation of the undertaking on the EMMA web portal. If an issuer or obligated person that has made an undertaking later rescinds such undertaking, the issuer or obligated person would be able to disclose such action through EMMA. The MSRB would not confirm the accuracy of this undertaking and would not review or confirm the conformity of submitted audited financial statements to GAAP.

Commentators generally supported permitting issuers to make an undertaking with respect to their use of GAAP according to GASB, although several commentators provide suggestions. GFOA supported a voluntary submission with regard to preparation of financial statements according to GAAP but did not support stating the standard used, noting that some submitters may be subject to FASB standards instead. The Joint Issuer Groups and NAST agreed with GFOA. NAHEFFA also noted that FASB standards, rather than GASB standards, are applicable to 501(c)(3) entities.

The MSRB agrees that many obligated persons may be subject to FASB standards rather than GASB standards and therefore has modified the voluntary GAAP undertaking to permit the submitter to select either the GASB or FASB standard for GAAP.

NABL expressed concern that an issuer that does not elect a voluntary GAAP undertaking will be stigmatized as less creditworthy even where they follow other standards, including statutory standards, and notes that financial statements are accompanied by a statement of the accounting principles applied. NAHEFFA stated that the EMMA website should be organized so that no improper inference is drawn by a charitable organization, as a conduit borrower, not making the voluntary GAAP undertaking. While not opposing the voluntary GAAP undertaking, Connecticut questioned the usefulness of this element and stated that use of GASB GAAP may not always be answerable on a yes-or-no basis and that, since it prepares its information on a modified GAAP basis, it would probably not be able to make this undertaking.

The MSRB believes that permitting investors to understand the standards applied to the preparation of an issuer's or obligated person's financial statements would be valuable but acknowledges that it is important that information about the nature of the voluntary GAAP undertaking should be disclosed. The fact that an issuer or obligated person has entered into a voluntary GAAP undertaking, including whether the financial statements are to be prepared pursuant to GASB or FASB standards, would be prominently disclosed on the EMMA web portal as a distinctive characteristic of the securities to which such undertaking applies. The EMMA web portal would not include information regarding the availability or existence of the voluntary GAAP undertaking in those cases where an issuer or obligated person does not make a voluntary GAAP undertaking. The MSRB would include an explanation of the nature of the

voluntary GAAP undertaking on the EMMA web portal. In particular, the MSRB would disclose that the voluntary GAAP undertaking is voluntary, is solely indicative of the accounting standards that the issuer or obligated person intends to use in preparing its financial statements and is not indicative of the accuracy or completeness of the financial statements or of the financial health of the issuer or obligated person. Further, the MSRB would disclose that a decision by an issuer or obligated person not to make such an undertaking does not raise a negative inference in regard to the accuracy or completeness of its financial statements or of the financial health of the issuer or obligated person. The MSRB contemplates that the making of a voluntary GAAP undertaking through EMMA by an issuer or obligated person would reflect the *bona fide* intent of the issuer or obligated person to perform as undertaken but would not, by itself, necessarily create a contractual obligation of such issuer or obligated person.

Issuer/Obligated Person URL

The original proposed rule change would amend the EMMA continuing disclosure service to permit issuers and obligated persons to post the URLs for their Internet-based investor relations or other repository of financial/operating information. The URL of an issuer's or obligated person's investor relations or other repository of financial/operating information would be entered through a text/data input field on EMMA and no document would be required to be submitted to EMMA.

Commentators generally supported permitting issuers and obligated persons to provide a hyperlink to their investor relations or similar web page, with Connecticut noting that this hyperlink may be more useful to the general public than CUSIP-based EMMA filings for general financial information that is not issue-specific. GFOA observed the importance of guidance being provided on responsibilities with regard to posting of hyperlinks on EMMA and that issuers be given an ability to correct or withdraw URLs as necessary. SIFMA supported the posting of URLs for continuing disclosures but expresses concerns about their use during a primary offering due to potential liability issues.

The MSRB has determined to retain this element as proposed. Issuers and obligated persons will be able to make appropriate changes to the URLs posted through EMMA. The hyperlinks will be posted in a manner designed to segregate access to the URL from postings of official statements for new issues.

GFOA's CAFR Certificate

The original proposed rule change would amend the EMMA continuing disclosure service to permit issuers to submit the Certificate of Achievement for Excellence in Financial Reporting awarded by GFOA in connection with the preparation of its CAFR. The original proposed rule change noted that GFOA awards this certificate to a government if, based on a review process, its CAFR substantially complies with both GAAP and GFOA's CAFR program policy. According to current GFOA eligibility requirements, financial reports must include all

funds and component units of the governmental entity, in accordance with GAAP, in order to be considered a CAFR. If an issuer were to submit a copy of the GFOA certificate to EMMA, the EMMA web portal would prominently disclose the issuer's receipt thereof as a distinctive characteristic of the applicable securities and the MSRB would include an explanation of the certificate on the EMMA web portal. The MSRB would not confirm the validity of any such certificate submitted to EMMA.

GFOA recommended that EMMA disclose the basis for the certificate and provide a link to the GFOA's web pages describing the CAFR program. GFOA also encouraged the MSRB to consider permitting a similar submission for issuers that have received GFOA's Distinguished Budget Presentation Award. NABL questioned whether investors would understand that this certificate recognizes the issuer's application of accounting principles but is not an affirmation of its creditworthiness. NABL also noted that some issuers that have received the GFOA certificate have been the subject of Commission enforcement actions for misleading disclosure, including misleading financial statements covered by such certificate. NAHEFFA noted that the GFOA certificate is generally inapplicable to conduit borrowings. While not opposing the disclosure of the GFOA certificates, Connecticut questioned the usefulness of this element.

The MSRB has determined not to proceed with this element of the original proposed rule change at this time. The MSRB notes that CAFRs are already frequently submitted to EMMA by issuers as the audited financial statements element of their annual financial information filings, and in most cases the issuers include the GFOA certificate in the submitted CAFR. As part of the MSRB's standard EMMA update and maintenance process, the MSRB expects to modify the input process for all continuing disclosure submissions to permit issuers and obligated persons to input specific document titles and/or subcategories, which would permit submitters of CAFRs to indicate that their submitted audited financial statements are CAFRs. This document title/subcategory would be displayed on the EMMA web portal.

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)

Not applicable.

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

Not applicable.

9. Exhibits

1. Revised Federal Register Notice.

2. MSRB notices requesting comment and comment letters on submission of preliminary official statements.

4. Changes to original proposed rule change.

EXHIBIT 1

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34- ; File No. SR-MSRB-2009-10)

Revised Proposed Rule Change by the Municipal Securities Rulemaking Board Relating to Additional Voluntary Submissions by Issuers to the MSRB's Electronic Municipal Market Access System (EMMA®)

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Exchange Act")[1] and Rule 19b-4 thereunder,[2] notice is hereby given that on December 18, 2009, the Municipal Securities Rulemaking Board (the "MSRB") filed with the Securities and Exchange Commission (the "Commission") Amendment No. 1 (the "amendment") to a proposed rule change previously filed with the Commission.[3] The amendment is 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 amendment 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 the amendment to File No. SR-MSRB-2009-10, originally filed on July 14, 2009 (the "original proposed rule change"). The amendment amends and restates the original proposed rule change relating to additional voluntary submissions by issuers to the MSRB's Electronic Municipal Market Access system ("EMMA") (as amended, the "proposed rule change"). The proposed rule change

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1 15 U.S.C. 78s(b)(1).

2 17 CFR 240.19b-4.

3 File No. SR-MSRB-2009-10. *See* Exchange Act Release No. 60315 (July 15, 2009) (File No. SR-MSRB-2009-10), 74 FR 36294 (July 22, 2009).

would amend EMMA's primary market and continuing disclosure services to permit issuers and their designated agents to submit preliminary official statements and other related pre-sale documents, official statements and advance refunding documents, as well as to permit issuers, obligated persons and their designated agents to submit information relating to the preparation and submission of audited financial statements and annual financial information and to post links to other disclosure information. The MSRB requests an effective date for the proposed rule change of a date to be announced by the MSRB in a notice published on the MSRB Web site, which date shall be no later than nine months after Commission approval of the proposed rule change and shall be announced no later than sixty (60) days prior to the effective date.

The text of the proposed rule change is available on the MSRB's web site at 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.

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

1. Purpose

This amendment makes certain modifications to the original proposed rule change based on comments received on the original proposed rule change and discussions with Commission staff, as described below.

Preliminary Official Statements and Other Primary Market Documents

The proposed rule change would amend the EMMA primary market disclosure service[4] to permit issuers and their designated agents to make voluntary submissions to the primary market disclosure service of official statements, preliminary official statements and related pre-sale documents, and advance refunding documents (collectively, "primary market documents").[5] Pre-sale documents other than a preliminary official statement (including but not limited to notices of sale or supplemental disclosures) would be accepted only if accompanied or preceded by the preliminary official statement.[6] An issuer seeking to make submissions of primary market documents to the EMMA primary market disclosure service would use the same accounts established with respect to submissions of continuing disclosure documents to the EMMA continuing disclosure service, subject to additional verification procedures to

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4 This amendment does not modify the provisions of the original proposed rule change relating to the EMMA primary market disclosure service.

5 Obligated persons would be permitted to submit primary market documents through the EMMA primary market disclosure service only if designated as an agent by the issuer.

6 The MSRB believes that posting of such pre-sale documents without the related disclosure information provided in a preliminary official statement would be inconsistent with the core disclosure purposes of EMMA.

affirmatively establish the account holder's authority to act on behalf of the issuer in connection with such primary market disclosure submissions.

Submissions of primary market documents by issuers and their designated agents will be accepted on a voluntary basis if, at the time of submission, they are accompanied by information necessary to accurately identify: (i) the category of document being submitted; (ii) the issues or specific securities to which such document is related; and (iii) in the case of an advance refunding document, the specific securities being refunded pursuant thereto. The primary market documents and related indexing information would be displayed on the EMMA web portal and also would be included in EMMA's primary market disclosure subscription service.

Additional Continuing Disclosure Submissions and Undertakings

As amended and restated by this amendment, the proposed rule change also would amend the EMMA continuing disclosure service to permit issuers, obligated persons and their agents to make voluntary submissions to the continuing disclosure service of additional categories of disclosures, as well as information about their continuing disclosure undertakings. Such additional continuing disclosures and related indexing information would be displayed on the EMMA web portal and also would be included in EMMA's continuing disclosure subscription service. Such additional items are:

- an issuer's or obligated person's undertaking to prepare audited financial statements pursuant to generally accepted accounting principles ("GAAP") as established by the Governmental Accounting Standards Board ("GASB"), or pursuant to GAAP as established by the Financial Accounting Standards Board

("FASB"), as applicable to such issuer or obligated person and as further described below (the "voluntary GAAP undertaking");[7]

- an issuer's or obligated persons' undertaking to submit annual financial information to EMMA within 120 calendar days after the end of the fiscal year or, as a transitional alternative that may be elected through December 31, 2013, within 150 calendar days after the end of the applicable fiscal year, as further described below (the "voluntary annual filing undertaking");[8] and
- uniform resource locator (URL) of the issuer's or obligated person's Internet-based investor relations or other repository of financial/operating information.

Voluntary GAAP Undertaking. The voluntary GAAP undertaking would consist of a voluntary undertaking by an issuer or obligated person, either at the time of a primary offering or at any time thereafter, that the issuer or obligated person will prepare its audited financial statements in accordance with GAAP. The MSRB contemplates that state or local governments or any other entities to which GASB standards are applicable would apply GAAP as established by GASB and that any other entities to which FASB standards are applicable would apply GAAP as established by FASB.

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7 In response to the comments received on the original proposed rule change, as discussed below, this amendment modifies the original proposed rule change by permitting issuers and obligated persons to elect either the GASB standard or the FASB standard for GAAP, as appropriate. The original proposed rule change only contemplated the use of the GASB standard.

8 In response to the comments received on the original proposed rule change, as discussed below, this amendment modifies the original proposed rule change by permitting issuers and obligated persons to elect to undertake to submit annual financial information either within 120 days or 150 days after the end of the fiscal year. The original proposed rule change only contemplated a 120 day timeframe.

The voluntary GAAP undertaking would assist investors and other market participants in understanding how audited financial statements were prepared. The fact that an issuer or obligated person has entered into a voluntary GAAP undertaking, and the standard under which audited financial statements are to be prepared, would be prominently disclosed on the EMMA web portal as a distinctive characteristic of the securities to which such undertaking applies. An issuer or obligated person that has made a voluntary GAAP undertaking may later rescind such undertaking, which would be disclosed through EMMA. The MSRB would not review whether an entity has selected the appropriate accounting standard and would not review or confirm the conformity of submitted audited financial statements to GAAP. The MSRB contemplates that the making of a voluntary GAAP undertaking through EMMA by an issuer or obligated person would reflect the *bona fide* intent of the issuer or obligated person to perform as undertaken but would not, by itself, necessarily create a contractual obligation of such issuer or obligated person.

Voluntary Annual Filing Undertaking. The voluntary annual filing undertaking would consist of a voluntary undertaking by an issuer or obligated person, either at the time of a primary offering or at any time thereafter, that the issuer or obligated person, as appropriate, will submit to EMMA its annual financial information as contemplated under Rule 15c2-12 of the Securities Exchange Act of 1934 (the "Exchange Act") by no later than 120 calendar days after the end of such issuer's or obligated person's fiscal year (the "120 day undertaking").[9] Alternatively, to and including December 31, 2013,

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[9] Under the Exchange Act, smaller public reporting companies, as non-accelerated filers, generally are required to file their annual reports on Form 10-K with the

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the EMMA continuing disclosure service will provide the option for an issuer or obligated person to indicate its undertaking to submit to EMMA its annual financial information by no later than 150 calendar days after the end of such issuer's or obligated person's fiscal year (the "transitional 150 day undertaking").[10] An issuer or obligated person that has made a transitional 150 day undertaking may convert such election to a 120 day undertaking at any time. On and after January 1, 2014, the transitional 150 day undertaking option would no longer be available for selection.

The voluntary annual filing undertaking would assist investors and other market participants in understanding when the annual financial information is expected to be available in the future. The fact that an issuer or obligated person has entered into a voluntary annual filing undertaking would be prominently disclosed on the EMMA web portal as a distinctive characteristic of the securities to which such undertaking applies. An issuer or obligated person that has made a voluntary annual filing undertaking may later rescind such undertaking, which would be reflected on the EMMA web portal. A

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Commission within 90 days after the end of their fiscal year. The longer 120-day period included in the voluntary annual filing undertaking of the proposed rule change is designed to accommodate additional steps that state and local governments often must take – under state law, pursuant to their own requirements, or otherwise – in completing the work necessary to prepare their annual financial information as contemplated under Exchange Act Rule 15c2-12.

[10] The option to elect, through December 31, 2013, a transitional 150 day undertaking acknowledges that the 120 day undertaking may not be immediately achievable by most issuers and obligated persons, as described in the comments discussed below, and is designed to provide a means by which to recognize issuers and obligated persons that are taking steps toward ultimately making their annual financial information available within 120 days of fiscal year end in the future.

transitional 150 day undertaking would continue to be displayed on the EMMA web portal through June 30, 2014, and would automatically cease to be displayed on the EMMA web portal after such date, unless the issuer or obligated person has previously changed or rescinded such undertaking.

The MSRB would not review or confirm the compliance of an issuer or obligated person with its voluntary annual filing undertaking. The MSRB contemplates that the making of a voluntary annual filing undertaking through EMMA by an issuer or obligated person would reflect the *bona fide* intent of the issuer or obligated person to perform as undertaken but would not, by itself, necessarily create a contractual obligation of such issuer or obligated person. Unless the issuer or obligated person incorporates the 120 day undertaking or transitional 150 day undertaking as an obligation under its continuing disclosure agreement, the MSRB would view such issuer's or obligated person's performance pursuant to such undertaking as distinct from any performance obligations under its continuing disclosure agreement entered into consistent with Rule 15c2-12, although the MSRB believes that successful performance in accordance with a voluntary annual filing undertaking generally should also satisfy the obligation under a continuing disclosure agreement, depending on the specific terms of such agreement, if the agreement provides a longer timeframe for such submission.

Investor Relation URL Posting. A URL of an issuer's or obligated person's Internet-based investor relations or other repository of financial/operating information would provide investors with an additional avenue for obtaining further financial, operating or other investment-related information about such issuer or obligated person.

Elimination of Proposed GFOA-CAFR Certificate. This amendment modifies the original proposed rule change by eliminating one item of additional voluntary submissions relating to the award of the Certificate of Achievement for Excellence in Financial Reporting awarded by the Government Finance Officers Association ("GFOA") in connection with the preparation of a Comprehensive Annual Financial Report ("CAFR") of an issuer. The MSRB notes that CAFRs are already frequently submitted to EMMA by issuers, and in most cases the issuers include the GFOA certificate in the submitted CAFR. Therefore, EMMA already effectively serves as a venue through which CAFRs and GFOA certificates are made available to investors.

Manner of Submission. Issuers and obligated persons would make a voluntary GAAP undertaking or voluntary annual filing undertaking through a data input election on EMMA. Voluntary undertakings could later be rescinded through the same EMMA interface process. The URL of an issuer's or obligated person's investor relations or other repository of financial/operating information also could be entered through a text/data input field on EMMA. No document would be required to be submitted to EMMA in connection with the voluntary GAAP undertaking, voluntary annual filing undertaking or the issuer/obligated person URL. The input process for each of these additional items would include a free text input field permitting issuers and obligated persons to include limited additional information relating to each such item that they deem appropriate with respect thereto for public dissemination. Further, the MSRB would include an explanation of the nature of the voluntary GAAP undertaking and voluntary annual filing undertaking on the EMMA web portal.

Effective Date of Proposed Rule Change

As noted above, the MSRB has requested an effective date for the proposed rule change of a date to be announced by the MSRB in a notice published on the MSRB Web site, which date shall be no later than nine months after Commission approval of the proposed rule change and shall be announced no later than sixty (60) days prior to the effective date.

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 in that it serves to remove impediments to and help perfect the mechanisms of a free and open market in municipal securities and would serve to promote the statutory mandate of the MSRB to protect investors and the public interest. Voluntary dissemination of preliminary official statements through EMMA, particularly if made available prior to the sale of a primary offering to the underwriters, would provide timely access by investors and other market participants to key information useful in making an investment decision in a manner that is consistent with the MSRB's statutory authority. The voluntary GAAP undertaking would assist understanding of how such information was prepared and the voluntary annual filing undertaking would assist understanding of

when such information is expected to be available in the future. A URL provided by an issuer or obligated person would provide investors with an additional avenue for obtaining further financial, operating or other investment-related information about such issuer or obligated person.

B. Self-Regulatory Organization's Statement on Burden on Competition

The MSRB does not believe the proposed rule change would impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act. The additional items of information submitted by issuers and obligated persons to the EMMA system for public dissemination would be available to all persons simultaneously. In addition to making such information available for free on the EMMA web portal to all members of the public, the MSRB would make such documents and information available by subscription on an equal and non-discriminatory basis. Further, the proposed rule change would apply equally to all issuers and obligated persons.

The MSRB does not believe that making the additional items of information to be included in the EMMA continuing disclosure service available to the public would compete with other information providers and, to the extent other information providers were to seek to make such information available to the public, such providers could obtain the information from the MSRB through the subscription service on an equal and non-discriminatory basis. Further, the MSRB does not believe that allowing issuers to submit documents to the EMMA primary market disclosure service would create a burden on or compete inappropriately with any other information providers to which such documents may also be provided and notes that other information providers would be

able to obtain the information from the MSRB through the subscription service on an equal and non-discriminatory basis.

The proposed rule change also would not impose any additional burdens on competition among issuers of municipal securities since the voluntary submissions provided for under the proposed rule change may be made by any issuer on an equal and non-discriminatory basis.

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 by the MSRB on the original proposed rule change prior to filing with the Commission. The original proposed rule change was published by the Commission for comment in the Federal Register and the Commission received comments from a number of commentators.[11] In addition,

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[11] *See* Exchange Act Release No. 60315 (July 15, 2009) (File No. SR-MSRB-2009-10), 74 FR 36294 (July 22, 2009). The Commission received comments from the City of Brookfield, Wisconsin ("Brookfield"); Connecticut State Treasurer ("Connecticut"); Government Finance Officers Association ("GFOA"); Village of Greendale, Wisconsin ("Greendale"); Village of Hinsdale, Illinois ("Hinsdale"); Inland Empire Utilities Agency ("Inland"); International City/County Management Association, National Association of Counties, National Association of State Auditors, Comptrollers and Treasurers, National League of Cities, U.S. Conference of Mayors, American Public Power Association, and Council on Infrastructure Financing Authorities, jointly ("Joint Issuer Groups"); Investment Company Institute ("ICI"); Township of Lower Merion, Pennsylvania ("Lower Merion"); Michigan State Treasurer ("Michigan"); National Association of Bond Lawyers ("NABL"); National Association of Health and Educational Facilities Finance Authorities ("NAHEFFA"); National Association of State Treasurers ("NAST"); Oregon Municipal Finance Officers Association ("OMFOA"); City of Portland, Oregon ("Portland"); City of Rock Hill, South Carolina ("Rock Hill"); Rutherford County, Tennessee ("Rutherford"); Securities Industry and Financial Markets Association ("SIFMA"); State of Tennessee ("Tennessee"); Utah Government Finance Officers Association ("UGFOA"); and Virginia Government Finance Officers' Association ("VGFOA"). The comment letters received by the

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several commentators provided comments to the MSRB with respect to the submission of preliminary official statements to EMMA in response to a series of notices published by the MSRB seeking comment on the establishment of EMMA for purposes of official statement dissemination (the "MSRB Notices").[12]

General

Except with respect to the voluntary annual filing undertaking, virtually all commentators on the original proposed rule change supported the proposal. Most commentators opposed the voluntary annual filing undertaking, with some of these commentators not expressing opinions on the remaining portions of the original proposed rule change. NABL suggested delaying action on changes to the EMMA continuing disclosure service until the Commission's proposed amendments to Rule 15c2-12 are finalized,[13] and also noted general concerns regarding whether prominent display of the voluntary undertakings would be construed as recommendations by the MSRB and regarding the specific process by which issuers and obligated persons could later rescind

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Commission are posted on the Commission's Web site at http://www.sec.gov/comments/sr-msrb-2009-10/msrb200910.shtml.

12 MSRB Notice 2006-19 (July 27, 2006) (the "Concept Release"); MSRB Notice 2007-5 (January 25, 2007) (the "January 2007 Notice"). Comments relating to preliminary official statement submissions were received in response to the Concept Release from American Government Financial Services Company ("AGFS"), TRB Associates ("TRB"), UMB Bank, N.A. ("UMB"), and Zions Bank Public Finance ("Zions"). Comments relating to preliminary official statement submissions were received in response to the January 2007 Notice from American Municipal Securities, Inc. ("AMS"), DPC DATA Inc. ("DPC"), Ipreo Holdings LLC ("Ipreo"), NABL and SIFMA. These notices and comment letters are included in Exhibit 2.

13 *See* Exchange Act Release No. 60332 (July 17, 2009) (File No. S7-15-09), 74 FR 36832 (July 24, 2009).

any undertakings they make. SIFMA asked what responsibilities dealers may have arising from an issuer's failure to meet a voluntary undertaking. Various commentators provided comments on specific elements of the original proposed rule change, as described below.

Preliminary Official Statements

The original proposed rule change would amend the EMMA primary market disclosure service to permit issuers and their designated agents to make voluntary submissions to the primary market disclosure service of official statements, preliminary official statements and related pre-sale documents, and advance refunding documents. Pre-sale documents other than a preliminary official statement (including but not limited to notices of sale or supplemental disclosures) would be accepted only if accompanied or preceded by the preliminary official statement.

A number of commentators on the original proposed rule change expressed general support for the various elements thereof (other than the voluntary annual filing undertaking), including the element to permit issuers to submit preliminary official statements and related pre-sale documents. In addition, in comment letters to the MSRB on the MSRB Notices, SIFMA,[14] along with AMS, DPC, Ipreo, NABL, TRB, UMB and Zions, supported the concept of voluntary submissions of preliminary official statements. DPC and AGFS suggested that the MSRB explore making the submission of preliminary official statements mandatory, while SIFMA, AMS and NABL emphasized that preliminary official statement submissions should not be made mandatory.

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[14] Bear Stearns & Co., Inc. and Griffin, Kubik, Stephens & Thompson, Inc. stated that they participated in the formulation of SIFMA's comments on the January 2007 Notice and fully supported SIFMA's positions.

The MSRB believes that there is considerable value in providing a means for centralized access to preliminary official statements at or prior to the time of trade and in sufficient time to make use of the information in coming to an investment decision. However, the MSRB is precluded from mandating pre-sale submission of preliminary official statement pursuant to Exchange Act Section 15B(d)(1). In its filing with the Commission to establish the EMMA primary market disclosure service, the MSRB stated that it expected to provide the opportunity for voluntary submissions of and access to preliminary official statements through EMMA, consistent with the MSRB's statutory authority, pursuant to a future filing with the Commission.[15] The proposed rule change would permit such voluntary submissions of preliminary official statements.

Connecticut noted in its comments on the original proposed rule change that preliminary official statements would generally not have CUSIP numbers associated with them and that EMMA's usability would be improved by making such documents identifiable by means other than CUSIP numbers, such as by issuer. NABL supported submissions of preliminary official statements and related pre-sale documents for competitive sales of new issues but expressed concerns with regard to potentially conflicting submissions by underwriters and issuers in the case of negotiated issues and therefore recommended that the ability to make preliminary official statement submissions by issuers be restricted solely to competitive issues.

The MSRB expects to provide search capabilities tailored to the types of indexing information that would be available for preliminary official statements, including issuer

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15 *See* Securities Exchange Act Release No. 59636 (March 27, 2009), 74 FR 15190 (April 2, 2009) (File No. SR-MSRB-2009-02)

name, issue description, state, and appropriate date ranges, among other things. Submissions made by issuers would be noted as such on the EMMA web portal. The MSRB believes that postings of preliminary official statements by issuers should be available for any new issue, not just those sold on a competitive basis, and the EMMA primary market submission process would be designed to discourage duplicative submissions by issuers and underwriters.

In commenting on the MSRB Notices, SIFMA and DPC noted the importance of ensuring version control where both preliminary official statements and official statements are made available (as well as in handling "stickers" to official statements), suggesting that the MSRB include a mechanism for notification to the public when the final official statement is posted in cases where a preliminary official statement has previously been submitted. DPC suggested that preliminary official statements be deleted when final official statements are submitted, while NABL suggested that underwriters be permitted to request that the preliminary official statement be removed from the centralized electronic system once the "timeliness of a POS has ended," noting that its continued availability may confuse investors. However, SIFMA opposed the removal of the preliminary official statement.

The MSRB notes that the current operation of the EMMA web portal provides processes that address each of these suggestions. Under current Rule G-32, preliminary official statements, if available, are required to be submitted by the underwriter by closing solely in the circumstance where an official statement is not being prepared by the issuer or if the official statement is not available for submission to EMMA by the closing. Once the official statement is provided by the underwriter, the preliminary

official statement generally is moved to a document archive that is accessible through the EMMA portal directly from the page where the link to the official statement is provided, thereby distinguishing the final official statement from the preliminary official statement while maintaining public access for those wishing to refer back to the preliminary official statement. Users of the EMMA portal are able to request to receive e-mail notifications for updates to the disclosure document for a specific security, which applies to the situation where an official statement is submitted to EMMA following an initial submission of the preliminary official statement.

Voluntary Annual Filing Undertaking

The original proposed rule change would amend the EMMA continuing disclosure service to permit issuers and obligated persons to undertake, on a voluntary basis, to submit annual financial information to EMMA within 120 calendar days after the end of the fiscal year. This would consist of a voluntary undertaking by an issuer or obligated person, either at the time of a primary offering or at any time thereafter, that the issuer or obligated person, as appropriate, will submit to EMMA its annual financial information as contemplated under Rule 15c2-12 by no later than 120 calendar days after the end of such issuer's or obligated person's fiscal year. Issuers and obligated persons would indicate the existence of such an undertaking through a data input election on EMMA. No document would be required to be submitted to EMMA in connection with this undertaking. The fact that an issuer or obligated person has entered into such an undertaking would be prominently disclosed on the EMMA web portal as a distinctive characteristic of the securities to which such undertaking applies and the MSRB would include an explanation of the undertaking on the EMMA web portal. If an issuer or

obligated person that has made an undertaking later rescinds such undertaking, the issuer or obligated person would be able to disclose such action through EMMA. The MSRB would not review or confirm the compliance of an issuer or obligated person with this undertaking.

This element of the original proposed rule change generated significant, but not universal, negative commentary, with virtually all commentators, except as noted below, strongly objecting.[16] GFOA stated that it believes that "setting an 'ideal' deadline of 120 days is unnecessary, arbitrary, and likely harmful to the quality of financial reporting." GFOA noted that many issuers that meet the 180 day timeframe for receiving its Certificate of Achievement for Excellence in Financial Reporting with respect to the preparation of their CAFRs must "struggle" to achieve that deadline and that a significantly shorter deadline "might reasonably be expected to persuade any number of such governments to abandon a CAFR altogether in favor of a plain set of basic financial statements." GFOA also noted that GAAP requires reporting of data from legally separate component units over which most issuers have no legal ability to compel to provide such data in a timeframe that would make meeting the voluntary annual filing undertaking possible. GFOA further suggested that the voluntary annual filing undertaking could encourage the use of less qualified audit firms and the increased use of estimates. The Joint Issuer Groups and NAST stated that they "strongly encourage the SEC and the MSRB to withdraw this part of the proposal, as it is not consistent with current practices and would diminish the quality of financial reporting and auditing

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16 *See* Brookfield, Connecticut, GFOA, Greendale, Inland, Joint Issuer Groups, Lower Merion, Michigan, NABL, NAHEFFA, NAST, OMFOA, Portland, Rock Hill, Rutherford, Tennessee, UGFOA and VGFOA.

standards." Various other issuers and issuer groups made arguments similar to those raised by the GFOA.[17]

Numerous issuers and issuer groups argued that the voluntary annual filing undertaking would likely become a *de facto* standard that issuers would feel compelled to meet.[18] They noted that the accelerated production of financial information would create significant financial and personnel burdens that would likely have adverse consequences to issuers while providing questionable benefits to investors.[19] Small issuers observed that their internal staffs are not able to support this timeframe and are given low priority by their auditors as compared to their larger clients.[20] Portland stated that "even if the City 'staffed up' on its end, there are not a sufficient number of independent auditors available to conduct the auditing function within the 120-day time period." Rock Hill stated that auditing firms "are increasingly less inclined to bid for governmental audits because of the specialized continuing education requirements and the perception that the work is not lucrative."

Inland Empire expressed concern that the potential "black eye" for not making the voluntary annual filing undertaking could create pressure from elected officials to meet it that, in turn, could cause professional staff and their auditors to produce less accurate

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17 *See* Brookfield, Connecticut, Greendale, Inland, Joint Issuer Groups, Lower Merion, Michigan, NABL, NAHEFFA, NAST, OMFOA, Portland, Rock Hill, Rutherford, Tennessee, UGFOA and VGFOA.

18 *See* Brookfield, Connecticut, Inland, Joint Issuer Groups, NAHEFFA, NAST and VGFOA.

19 *See* Brookfield, Connecticut, GFOA, Greendale, Inland, Joint Issuer Groups, NAHEFFA, NAST, OMFOA, Portland, UGFOA and VGFOA.

20 *See* Brookfield, Greendale, Inland, NAHEFFA, OMFOA, Portland, Rock Hill, Rutherford, UGFOA and VGFOA.

information just to meet the deadline. While not expressly opposing the voluntary annual filing undertaking, Connecticut questioned the usefulness of this element and expressed concern if this element is used by the market to screen issues. Many issuers stated that the 180 day standard used by GFOA in connection with its CAFR program is a more appropriate timeframe.[21] VGFOA cited difficulties in simultaneously meeting GFOA's CAFR timeframes, state law requirements and the existing annual financial undertaking in its continuing disclosure undertaking entered into pursuant to Rule 15c2-12. Several commentators noted various adjustments that are uniquely required to be made for governmental entities or conduit borrowers after the end of the fiscal year that make meeting the 120 day timeframe difficult or impossible.[22] Tennessee reviewed various statistics on timing of preparation of audited statements and concluded that "[s]electing a timeframe of 120 days without understanding the differences in reporting environments appears arbitrary and may unnecessarily limit the municipal market volume." Tennessee further noted that states have met to discuss "timeliness barriers and ways of reducing the timeframe of financial reporting" and requests that further study be undertaken. NAHEFFA noted that, since there are apparently no legal ramifications for failing to meet the deadline in an issuer's voluntary annual filing undertaking, nothing would "preclude the issuer from effectively advertising the undertaking on EMMA, and as a result receiving preferred status, irrespective of actual compliance."

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21 *See* Inland, Michigan, Portland and UGFOA.

22 *See* GFOA, Inland, Joint Issuer Groups, NAHEFFA, NAST, Rock Hill, Tennessee, UGFOA and VGFOA.

Hinsdale, however, noted that "the proposed 120 day period for submitting annual financial information is a good start toward meeting the objective of making financial statements of governments timely and useful in the public securities market." GFOA stated that it "certainly could support a voluntary disclosure field indicating that a government was, in fact, in compliance with its continuing disclosure agreement obligations."

The ICI stated that it is "particularly supportive" of the voluntary annual filing undertaking proposal, although it continued to press for "the establishment of a meaningful, mandatory timeframe for filing financial reports." ICI recommended, with regard to a mandatory standard, a 180-day deadline as an incremental improvement over the current industry practice of 270 days. SIFMA also supported the voluntary annual filing undertaking.

The MSRB acknowledges and appreciates the detailed explanations provided by commentators on the original proposed rule change with respect to the existing difficulties and barriers to meeting the 120 day timeframe of the voluntary annual filing undertaking as proposed in the original proposed rule change. The MSRB understands that a significant portion of the issuer and obligated person community is likely unable to make such a 120 day undertaking at this time and that such inability does not necessarily reflect problems with the issuer's or obligated person's credit or the quality of disclosures they make. As the MSRB had previously noted, this voluntary undertaking was originally proposed after consultation between the MSRB and Commission staff.[23] After a careful review of the comments and further discussions with Commission staff on the

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[23] *See* MSRB Notice 2009-44 (July 15, 2009).

voluntary annual filing undertaking, the MSRB understands that the Commission staff strongly believes that, given its voluntary nature, the undertaking to provide annual financial information within the originally proposed 120 day timeframe remains the appropriate undertaking for display on the EMMA web portal.

In light of the commentators' widespread concerns regarding the attainability of the 120 day timeframe, the MSRB has determined to provide a transitional option for issuers and obligated persons to elect a 150 day undertaking as an alternative to the 120 day undertaking. This alternative election would provide issuers and obligated persons seeking to make the voluntary annual filing undertaking, but that are not currently able to meet a 120 day timeframe, with a reasonable opportunity to overcome existing barriers to more rapid dissemination of financial information in an orderly and cost-effective manner. Commission staff has indicated that an alternative election of 150 days after fiscal year end would be an appropriate transitional alternative but that this option should be available only on a temporary basis to provide a pathway toward achieving the 120 day timeframe.

The MSRB has accordingly modified the original proposed rule change to allow the election, through December 31, 2013, of a transitional 150 day alternative, which election would be displayed on the EMMA web portal through June 30, 2014 unless the issuer or obligated person changes or rescinds such undertaking. On and after January 1, 2014, the transitional 150 day undertaking option would no longer be available for selection. An issuer or obligated person that makes a transitional 150 day undertaking could convert such election to a 120 day undertaking at any time. Of course, an issuer or obligated person that believes it is able to meet the 120 day timeframe could make the

120 day undertaking immediately upon the effectiveness of the proposed rule change. The fact that an issuer or obligated person has entered into such an undertaking, including the timeframe elected, would be prominently disclosed on the EMMA web portal as a distinctive characteristic of the securities to which such undertaking applies. The EMMA web portal would not include information regarding the availability or existence of the voluntary annual filing undertaking in those cases where an issuer or obligated person does not make a voluntary annual filing undertaking.

The MSRB reiterates that the voluntary annual filing undertaking would in fact be voluntary and that an issuer or obligated person that makes a voluntary annual filing undertaking may later rescind such undertaking. The MSRB contemplates that the making of a voluntary annual filing undertaking through EMMA by an issuer or obligated person would reflect the *bona fide* intent of issuer or obligated person to perform as undertaken but would not, by itself, necessarily create a contractual obligation of such issuer or obligated person. Unless the issuer or obligated person incorporates the 120 day undertaking or transitional 150 day undertaking as an obligation under its continuing disclosure agreement, the MSRB would view the issuer's or obligated person's performance pursuant to such undertaking as distinct from any performance obligations under its continuing disclosure agreement entered into consistent with Rule 15c2-12. By making a voluntary annual filing undertaking, an issuer that has a contractual obligation under its continuing disclosure agreement to provide its annual financial information within a longer timeframe would be indicating its intent to make a good faith effort to submit its annual financial information to EMMA more rapidly than it is otherwise obligated under the continuing disclosure agreement.

The MSRB would include an explanation of the nature of the voluntary annual filing undertaking on the EMMA web portal. In particular, the MSRB would disclose that the voluntary annual filing undertaking is voluntary, is solely indicative of the timing by which the annual financial information is intended to be made available and is not indicative of the accuracy or completeness of the annual financial information or of the financial health of the issuer or obligated person. Further, the MSRB would disclose that a decision by an issuer or obligated person not to make such an undertaking does not raise a negative inference in regard to the accuracy or completeness of its annual financial information or of the financial health of the issuer or obligated person.

Voluntary GAAP Undertaking

The original proposed rule change would amend the EMMA continuing disclosure service to permit issuers and obligated persons to undertake, on a voluntary basis, to prepare audited financial statements pursuant to GAAP as established by GASB. This would consist of a voluntary undertaking by an issuer or obligated person (in the case of an obligated person that is a state or local governmental entity), either at the time of a primary offering or at any time thereafter, that the issuer or obligated person will prepare its audited financial statements in accordance with GAAP as established by GASB. This undertaking could be included within the continuing disclosure undertaking entered into consistent with Rule 15c2-12 or could be made in a separate agreement. Issuers and obligated persons would indicate the existence of such an undertaking through a data input election on EMMA. No document would be required to be submitted to EMMA in connection with this undertaking. The fact that an issuer or obligated person has entered into such an undertaking would be prominently disclosed on

the EMMA web portal as a distinctive characteristic of the securities to which such undertaking applies and the MSRB would include an explanation of the undertaking on the EMMA web portal. If an issuer or obligated person that has made an undertaking later rescinds such undertaking, the issuer or obligated person would be able to disclose such action through EMMA. The MSRB would not confirm the accuracy of this undertaking and would not review or confirm the conformity of submitted audited financial statements to GAAP.

Commentators generally supported permitting issuers to make an undertaking with respect to their use of GAAP according to GASB, although several commentators provide suggestions. GFOA supported a voluntary submission with regard to preparation of financial statements according to GAAP but did not support stating the standard used, noting that some submitters may be subject to FASB standards instead. The Joint Issuer Groups and NAST agreed with GFOA. NAHEFFA also noted that FASB standards, rather than GASB standards, are applicable to 501(c)(3) entities.

The MSRB agrees that many obligated persons may be subject to FASB standards rather than GASB standards and therefore has modified the voluntary GAAP undertaking to permit the submitter to select either the GASB or FASB standard for GAAP.

NABL expressed concern that an issuer that does not elect a voluntary GAAP undertaking will be stigmatized as less creditworthy even where they follow other standards, including statutory standards, and notes that financial statements are accompanied by a statement of the accounting principles applied. NAHEFFA stated that the EMMA website should be organized so that no improper inference is drawn by a charitable organization, as a conduit borrower, not making the voluntary GAAP

undertaking. While not opposing the voluntary GAAP undertaking, Connecticut questioned the usefulness of this element and stated that use of GASB GAAP may not always be answerable on a yes-or-no basis and that, since it prepares its information on a modified GAAP basis, it would probably not be able to make this undertaking.

The MSRB believes that permitting investors to understand the standards applied to the preparation of an issuer's or obligated person's financial statements would be valuable but acknowledges that it is important that information about the nature of the voluntary GAAP undertaking should be disclosed. The fact that an issuer or obligated person has entered into a voluntary GAAP undertaking, including whether the financial statements are to be prepared pursuant to GASB or FASB standards, would be prominently disclosed on the EMMA web portal as a distinctive characteristic of the securities to which such undertaking applies. The EMMA web portal would not include information regarding the availability or existence of the voluntary GAAP undertaking in those cases where an issuer or obligated person does not make a voluntary GAAP undertaking. The MSRB would include an explanation of the nature of the voluntary GAAP undertaking on the EMMA web portal. In particular, the MSRB would disclose that the voluntary GAAP undertaking is voluntary, is solely indicative of the accounting standards that the issuer or obligated person intends to use in preparing its financial statements and is not indicative of the accuracy or completeness of the financial statements or of the financial health of the issuer or obligated person. Further, the MSRB would disclose that a decision by an issuer or obligated person not to make such an undertaking does not raise a negative inference in regard to the accuracy or completeness of its financial statements or of the financial health of the issuer or obligated person. The

MSRB contemplates that the making of a voluntary GAAP undertaking through EMMA by an issuer or obligated person would reflect the *bona fide* intent of the issuer or obligated person to perform as undertaken but would not, by itself, necessarily create a contractual obligation of such issuer or obligated person.

Issuer/Obligated Person URL

The original proposed rule change would amend the EMMA continuing disclosure service to permit issuers and obligated persons to post the URLs for their Internet-based investor relations or other repository of financial/operating information. The URL of an issuer's or obligated person's investor relations or other repository of financial/operating information would be entered through a text/data input field on EMMA and no document would be required to be submitted to EMMA.

Commentators generally supported permitting issuers and obligated persons to provide a hyperlink to their investor relations or similar web page, with Connecticut noting that this hyperlink may be more useful to the general public than CUSIP-based EMMA filings for general financial information that is not issue-specific. GFOA observed the importance of guidance being provided on responsibilities with regard to posting of hyperlinks on EMMA and that issuers be given an ability to correct or withdraw URLs as necessary. SIFMA supported the posting of URLs for continuing disclosures but expresses concerns about their use during a primary offering due to potential liability issues.

The MSRB has determined to retain this element as proposed. Issuers and obligated persons will be able to make appropriate changes to the URLs posted through

EMMA. The hyperlinks will be posted in a manner designed to segregate access to the URL from postings of official statements for new issues.

GFOA's CAFR Certificate

The original proposed rule change would amend the EMMA continuing disclosure service to permit issuers to submit the Certificate of Achievement for Excellence in Financial Reporting awarded by GFOA in connection with the preparation of its CAFR. The original proposed rule change noted that GFOA awards this certificate to a government if, based on a review process, its CAFR substantially complies with both GAAP and GFOA's CAFR program policy. According to current GFOA eligibility requirements, financial reports must include all funds and component units of the governmental entity, in accordance with GAAP, in order to be considered a CAFR. If an issuer were to submit a copy of the GFOA certificate to EMMA, the EMMA web portal would prominently disclose the issuer's receipt thereof as a distinctive characteristic of the applicable securities and the MSRB would include an explanation of the certificate on the EMMA web portal. The MSRB would not confirm the validity of any such certificate submitted to EMMA.

GFOA recommended that EMMA disclose the basis for the certificate and provide a link to the GFOA's web pages describing the CAFR program. GFOA also encouraged the MSRB to consider permitting a similar submission for issuers that have received GFOA's Distinguished Budget Presentation Award. NABL questioned whether investors would understand that this certificate recognizes the issuer's application of accounting principles but is not an affirmation of its creditworthiness. NABL also noted that some issuers that have received the GFOA certificate have been the subject of

Commission enforcement actions for misleading disclosure, including misleading financial statements covered by such certificate. NAHEFFA noted that the GFOA certificate is generally inapplicable to conduit borrowings. While not opposing the disclosure of the GFOA certificates, Connecticut questioned the usefulness of this element.

The MSRB has determined not to proceed with this element of the original proposed rule change at this time. The MSRB notes that CAFRs are already frequently submitted to EMMA by issuers as the audited financial statements element of their annual financial information filings, and in most cases the issuers include the GFOA certificate in the submitted CAFR. As part of the MSRB's standard EMMA update and maintenance process, the MSRB expects to modify the input process for all continuing disclosure submissions to permit issuers and obligated persons to input specific document titles and/or subcategories, which would permit submitters of CAFRs to indicate that their submitted audited financial statements are CAFRs. This document title/subcategory would be displayed on the EMMA web portal.

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 an effective date for the proposed rule change of a date to be announced by the MSRB in a notice published on the MSRB Web site, which date shall be no later than nine months after Commission approval of the proposed rule change and shall be announced no later than sixty (60) days prior to the effective date.

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); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-MSRB-2009-10 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-2009-10. 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). 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-2009-10 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.[24]

Elizabeth M. Murphy
Secretary

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[24] 17 CFR 200.30-3(a)(12).

MSRB Notice 2007-5
(January 25, 2007)

MSRB Seeks Comments on Draft Rule Changes to Establish an Electronic Access System for Official Statements

The Municipal Securities Rulemaking Board (the "MSRB") is seeking comment on draft rule changes to implement an electronic system for access to primary market disclosure in the municipal securities market. This new electronic system, to be known as the "MSIL/Access system," would build on the MSRB's existing Municipal Securities Information Library ("MSIL") system to provide Internet-based access to official statements ("OSs") and certain other documents and related information. The immediate access to OSs for new issue customers provided through the electronic MSIL/Access system would permit significantly faster access to critical disclosure information than under the current dissemination system based historically on the physical movement of OSs by and among brokers, dealers and municipal securities dealers ("dealers") and to customers. The MSIL/Access system would be modeled in part on the "access equals delivery" rule for prospectus delivery for registered securities offerings adopted by the Securities and Exchange Commission (the "SEC") in 2005.[1]

OVERVIEW OF THE MSIL/ACCESS SYSTEM

The MSIL/Access system would consist of two basic elements: (i) the MSRB's existing MSIL system, which would serve as the central collection facility through which dealers acting as underwriters, primary distributors, placement agents or remarketing agents (collectively referred to as "underwriters") would submit OSs and certain other related documents and information to the MSIL/Access system in electronic form for virtually all primary offerings of municipal securities; and (ii) one or more Internet-based central access facilities (the "MSIL/Access portals") through which investors, dealers and other market participants would obtain OSs and such other materials.

Once the MSIL/Access system is implemented, OSs would be freely accessible by new issue customers and other market participants through the on-line MSIL/Access portals. By virtue of such access through the MSIL/Access system, the existing obligation of dealers to deliver OSs directly to customers under current Rule G-32, on disclosures in connection with

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[1] *See* Securities Act Release No. 8591 (July 19, 2005), 70 FR 44722 (August 3, 2005). The draft rule changes would incorporate (with modifications adapted to the specific characteristics of the municipal securities market) many of the key "access equals delivery" provisions in Securities Act Rule 172, on delivery of prospectus, Rule 173, on notice of registration, and Rule 174, on delivery of prospectus by dealers and exemptions under Section 4(3) of the Securities Act of 1933, as amended (the "Securities Act").

new issues, would be deemed satisfied in connection with the sale of new issue municipal securities, other than interests in 529 college savings plans and other municipal fund securities. A dealer selling new issue municipal securities would be required to provide to a purchasing customer, by no later than two business days after trade settlement, either a copy of the OS or written notice that the OS may be accessed through the MSIL/Access system and that a copy of the OS will be provided to the customer by the dealer upon request. Dealers selling municipal fund securities would continue to be obligated to deliver OSs to customers as under current Rule G-32.

The requirements for underwriter submission of OSs and other related documents and information to the MSRB under Rule G-36, on delivery of official statements, advance refunding documents and Forms G-36(OS) and G-36(ARD), would be consolidated into revised Rule G-32.[2] As revised, Rule G-32 would require all submissions by underwriters to the MSRB to be made electronically. All OS submissions and other related documents and information would be made available on a "real-time" basis to investors and other market participants through the MSIL/Access portals.

A central MSIL/Access portal would be established by the MSRB to provide an assured Internet-based centralized source for free access to OSs and other related documents and information in connection with all new issue municipal securities to investors, other market participants and the public. Additional MSIL/Access portals using the document collection obtained through the MSIL system could be established by other entities as parallel sources for OSs and other documents and information.

JULY 2006 CONCEPT RELEASE

In a concept release published on July 27, 2006, the MSRB sought comment on whether the establishment of an "access equals delivery" model in the municipal securities market would be appropriate and on the general parameters relating to such a model (the "Concept Release").[3] The Concept Release described a basic framework for instituting this model, noting two critical factors that would need to be put into place: all OSs must be available electronically, and such electronic OSs must be easily and freely available to the public. The Concept Release described in general terms certain modifications that could be made to existing MSRB rules to implement the "access equals delivery" model.

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[2] Current Rule G-36 would be deleted.

[3] *See* MSRB Notice 2006-19 (July 27, 2006).

The MSRB received comments from 29 industry participants,[4] who were very supportive of an "access equals delivery" model with only limited reservations.[5] Based on its review of these comments, the MSRB has determined to proceed with the initial steps of adopting an "access equals delivery" model and establishing the MSIL/Access system for OS dissemination.

DRAFT RULE AMENDMENTS TO IMPLEMENT THE MSIL/ACCESS SYSTEM

The MSRB is seeking comments on extensive revisions to the OS submission and dissemination requirements set forth in its rules in order to implement an "access equals delivery" model based on the MSIL/Access system. Specifically, current Rules G-32 and G-36 would be consolidated into a single substantially revised Rule G-32, on new issue disclosure practices, and Rule G-36 would be rescinded. Revised Rule G-32 would consist of four sections: (i) dealer disclosures to new issue customers (section (a)); (ii) underwriter submissions to the MSIL/Access system (section (b)); (iii) preparation of OSs by financial advisors (section (c)); and (iv) definitions (section (d)). The draft amendments also would include related amendments to Rule G-8, on recordkeeping, and Rule G-9, on preservation of records. These revisions are described briefly below.

Dealers are reminded that, in addition to their obligations under Rule G-32, they are required under Rule G-17, on fair practice, to provide to the customer, at or prior to the time of trade, all material facts about the transaction known by the dealer as well as material facts about the security that are reasonably accessible to the market.[6] Disclosures made after the time of trade, such as by delivery of the OS or by customer access to the OS through the MSIL/Access system at or near trade settlement, do not substitute for the required material disclosures that must be made at or prior to the time of trade pursuant to Rule G-17. In the new issue market, the preliminary official statement ("POS"), when available, often is used by dealers marketing new issues to customers and can serve as a primary vehicle for providing the required time-of-trade disclosures under Rule G-17, depending upon the accuracy and completeness of the POS as of

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4 Copies of the comment letters received by the MSRB on the Concept Release are available for public inspection at the MSRB website. Some of the principal comments are described briefly throughout this notice.

5 One commentator suggested that dealers be required to deliver both printed and electronic OSs unless the customer consents to receive only the electronic OS, while another argued that "access equals delivery" should be permitted only if actual delivery of the preliminary official statement is required. The remaining commentators supported the "access equals delivery" model.

6 *See* Rule G-17 Interpretation – Interpretive Notice Regarding Rule G-17, on Disclosure of Material Facts, March 20, 2002, *reprinted in* MSRB Rule Book.

the time of trade.[7] The MSRB has previously emphasized the importance of making material disclosures available to customers in sufficient time to make use of the information in coming to an investment decision, such as through earlier delivery of the POS.[8] The MSRB urges dealers to make POSs available to their potential customers in a timeframe that provides an adequate opportunity to make the appropriate assessments in coming to an investment decision. ***In addition, the MSRB seeks comment on whether the MSIL/Access system should provide for voluntary submissions by underwriters of POSs to be made publicly accessible through the MSIL/Access portals.***[9]

Dealer Disclosures to New Issue Customers (Rule G-32(a)). Subsection (a)(i) of revised Rule G-32 would retain the basic OS dissemination requirements for dealers selling new issue municipal securities to customers as set forth in current Rule G-32. However, under subsection (a)(ii), dealers selling new issue municipal securities, other than municipal fund securities, would be deemed to have satisfied this basic requirement for delivering OSs to customers by trade settlement, such OSs being made publicly available through the MSIL/Access system. In the case of a dealer that is the underwriter for the new issue, such satisfaction would be conditioned on the underwriter having submitted the OS (or having made a good faith and reasonable effort to submit the OS and remediating as soon as practicable any failure to make a timely submission) to the MSIL/Access system.[10] Dealers selling municipal fund securities would remain subject to the existing OS delivery requirement.

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7 Dealers should note that additional or revised material information provided to the customer subsequent to the time of trade (such as in a revised POS, the final OS or through any other means) cannot cure a failure to provide the required material information at or prior to the time of trade. However, a revised POS or other supplemental information provided to customers after delivery of the original POS but at or prior to the time of trade can be used to comply with the time-of-trade disclosure obligation under Rule G-17.

8 *See, e.g.,* MSRB Notice 2006-07 (March 31, 2006); MSRB Discussion Paper on Disclosure in the Municipal Securities Market (December 21, 2000), *published in* MSRB Reports, Vol. 21, No. 1 (May 2001); and Official Statement Deliveries Under Rules G-32 and G-36 and Exchange Act Rule 15c2-12 (July 15, 1999), *published in* MSRB Reports, Vol. 19, No. 3 (Sept. 1999).

9 The ability of the MSRB to require submission of disclosure materials prior to the bond sale is subject to Section 15B(d)(1) of the Securities Exchange Act of 1934, as amended (the "Exchange Act").

10 These provisions are based on the provisions of sections (b) and (c) of Securities Act Rule 172 and section (h) of Securities Act Rule 174.

Under subsection (a)(iii), a dealer selling new issue municipal securities with respect to which the OS delivery obligation is deemed satisfied as described above would be required to provide to the customer, within two business days following trade settlement, either a copy of the OS or a written notice[11] stating that the OS is available from the MSIL/Access system, providing a web address where such OS may be obtained, and stating that a copy of the OS will be provided upon request.[12] In addition, if the customer requests a copy of the OS, the dealer would be required to send it promptly. Dealers would be required to honor any customer's explicit standing request for copies of OSs for all of his or her transactions with the dealer.[13]

With respect to the notice requirement, the MSRB notes (as described below) that the MSIL/Access system could be serviced by more than one MSIL/Access portal. ***The MSRB seeks comment on whether the URL included in the notice to customers should be restricted to a specific MSIL/Access portal or could be for any of the MSIL/Access portals, or whether dealers should be permitted to identify a source other than a MSIL/Access portal.***[14] Dealers would be required to include the URL assigned for the specific OS referred to in the notice, rather than to a MSIL/Access portal's home or search page. ***The MSRB seeks comment on potential technical difficulties that might result from requiring that the notice include a URL assigned to a specific OS, particularly in respect to assuring that the unique URL for each OS remains operative throughout the time such document remains publicly available. Would it be appropriate to limit the period of time during which the URL for a specific OS is required to be maintained unchanged, such that after such period the OS could be archived and be made accessible through an on-line search function at the MSIL/Access portal? What would be the appropriate period of time (beyond the end of the new issue disclosure period) for maintaining such URLs unchanged prior to permitting OSs to be moved to an archival collection accessible through an on-line search function?***

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11 The MSRB would view a notice provided in any form considered to be a "written communication" for purposes of Securities Act Rule 405 as meeting this requirement.

12 This provision is based on the provisions of section (a) of Securities Act Rule 173. Most commentators agreed that this customer notice should be provided within two business days of trade settlement, as under the SEC "access equals delivery" rule. Dealers could, but would not be required to, provide such notice on or with the trade confirmation. Under Rule G-15(a)(i), confirmations are required to be given or sent to customers at or prior to trade settlement.

13 One commentator, an elderly investor, asked not to be required to request a paper copy every time he makes a purchase. Three other commentators shared his concern for access by elderly investors.

14 As noted in the text accompanying footnote 29 below, the MSRB believes that such notice must provide the URL for a source that provides the OS at no cost throughout the new issue disclosure period and a reasonable limited period of time thereafter.

Revised Rule G-32 would not substantially change the OS delivery obligation with respect to sales of municipal fund securities from those that currently exist.[15] The selling dealer would be required to deliver the OS to the customer by trade settlement, provided that the dealer may satisfy this delivery obligation for its repeat customers (*i.e.*, customers participating in periodic municipal fund security plans or non-periodic municipal fund security programs) by promptly sending any updated disclosure material to the customer as it becomes available, as set forth in paragraph (a)(iv)(A). In addition, the dealer would be required under paragraph (a)(iv)(B) to disclose any distribution-related fee received as agent for the issuer to the extent not disclosed in the OS or trade confirmation.

One commentator suggested that issues described under Exchange Act Rule 15c2-12(d)(1)(i) ("limited offerings") be excluded from the "access equals delivery" model, while another commentator suggested that the model be made available for such offerings on a voluntary basis.[16] The draft amendments do not provide such an exclusion. ***The MSRB seeks further comment on whether such an exclusion for limited offerings should be provided and, if so, why such an exclusion would be appropriate.*** Were such an exclusion to be provided, the existing OS delivery requirement would be retained for such new issue municipal securities. If, in the alternative, an exclusion were to be provided on a voluntary basis (*e.g.*, at the election of the underwriter, which would submit the OS to the MSIL/Access system for those issues that would qualify for the "access equals delivery" model), an assured process for communicating to dealers whether such an election has been made by the underwriter (*e.g.*, a required information submission to the MSIL/Access system that would allow a notice to be posted at the MSIL/Access portals, particularly if the underwriter has elected ***not*** to qualify the limited offering for the "access equals delivery" model) would be necessary. Such notice would serve the purpose of avoiding situations where a dealer might provide a notice to the customer that an

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15 Some commentators stated that municipal fund securities should be excluded from the "access equals delivery" model in view of the SEC's exclusion of mutual funds from its "access equals delivery" rule, while other commentators disagreed. Although the "access equals delivery" model would not be available for municipal fund securities, electronic OSs could still be used to fulfill the OS delivery requirement under prior guidance concerning the use of electronic communications where standards for notice, access and evidence to show delivery are met. *See* Rule G-32 Interpretation – Notice Regarding Electronic Delivery and Receipt of Information by Brokers, Dealers and Municipal Securities Dealers, November 20, 1998, *reprinted in* MSRB Rule Book.

16 Issues under Exchange Act Rule 15c2-12(d)(1)(i) are those in which the securities have authorized denominations of $100,000 or more and are sold to no more than 35 persons who the underwriter reasonably believes: (a) have such knowledge and experience in financial and business matters that they are capable of evaluating the merits and risks of the prospective investment, and (b) are not purchasing for more than one account or with a view to distributing the securities.

OS is available from the MSIL/Access system, rather than delivering the OS directly to the customer, when in fact no such OS is available. Finally, to the extent that some or all of these limited offerings do not qualify for the "access equals delivery" model, Rule G-32 would need to retain existing provisions regarding inter-dealer dissemination of the OS, which have been deleted from the draft amendments included in this notice.[17] ***To the extent that any commentator believes that an exclusion for limited offerings (with or without the ability of the underwriter to make an election to qualify for the "access equals delivery" model) should be provided, the MSRB seeks comment on issues arising from the provisions described above that would be needed to ensure that customers are provided access to the OS.***

Underwriter Submissions to the MSIL/Access System (Rule G-32(b)). Section (b) of revised Rule G-32 would set forth the various submission requirements for underwriters. This new section (b) would replace current Rule G-36 in its entirety.

- ***Official Statements and Preliminary Official Statements*** (Rule G-32(b)(i)) – All submissions by underwriters of OSs to the MSIL/Access system would be required to be made within one business day after receipt from the issuer but by no later than the closing date[18] for the offering.[19] If no OS is prepared for an offering or if an OS is being prepared but is not yet

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17 Although municipal fund securities would not qualify for the "access equals delivery" model, official statements for such securities would be readily available to all dealers from the MSIL/Access portals as described below and therefore the existing inter-dealer dissemination requirements under current Rule G-32 would not be required and have been omitted from the draft rule changes.

18 "Closing date" would be defined in revised Rule G-32(d)(ix) as the date of first delivery of the securities to the underwriter. For bond or note offerings, this would generally correspond to the traditional concept of the bond closing date. In the case of continuous offerings, such as for municipal fund securities, the closing date would be considered to occur when the first securities are delivered.

19 Rule G-36 currently requires the OS to be sent, for offerings subject to Exchange Act Rule 15c2-12, within one business day after receipt from the issuer but no later than ten business days after the bond sale, and for offerings exempt from Exchange Act Rule 15c2-12, by the later of one business day after receipt from the issuer or one business day after the bond closing. Some commentators believed these existing timeframes should be retained, while others believed that all submissions should be made by the closing date. The MSRB has determined to require all submissions by the closing date to ensure that OSs will be available from the MSIL/Access portals by first trade settlement and to simplify dealer compliance. In addition, retaining the current timeframes rather than requiring all submissions to occur by the closing date could potentially result in OSs becoming available later under the "access equals delivery" model than is the case under

(continued . . .)

available from the issuer by the closing date, the underwriter would be required to submit the POS, if any, to the MSIL/Access system by the closing date. Once an OS becomes available, the underwriter would be required to submit the OS to the MSIL/Access system within one business day after receipt from the issuer.[20] If no OS is prepared for an offering, the underwriter also would be required to provide notice of that fact to the MSIL/Access system.

Revised Rule G-32(b)(i) does not provide a submission exception from the MSIL/Access system for OSs relating to municipal fund securities, even though municipal fund securities do not qualify for the "access equals delivery" model under section (a) of the rule. The MSRB believes that, particularly in the case of 529 college savings plans, there is considerable value to investors and the marketplace in general in having disclosure information centrally available on-line. The MSRB recognizes that, in the 529 college savings plan market, issuers generally already make their OSs available freely on-line and that the College Savings Plans Network ("CSPN") will soon launch a significant upgrade to its existing website to provide a comprehensive centralized web-based utility for this market. This CSPN utility is expected to include, among a number of other useful resources, easy access to the OSs for all 529 college savings plans in the marketplace. The MSRB looks forward to the launch of this valuable utility and urges dealers and other participants in the 529 college savings plan market to provide the investing public with easy access to, and to affirmatively encourage the use of, this market-wide information. The MSRB would invite CSPN to consider operating its utility as a MSIL/Access portal for the 529 college savings plan market if the exclusion of municipal fund securities from the "access equals delivery" model is eliminated at some point in the future.

- ***Advance Refunding Documents*** (Rule G-32(b)(ii)) **–** Underwriters would continue to be required to submit advance refunding documents ("ARDs") to the MSIL/Access system by no later than five business days after the closing date. The requirement would apply whenever an ARD has been prepared in connection with a primary offering, not just for those offerings in which an OS also has been prepared as under current Rule G-36.

- ***Amendments to Official Statements and Advance Refunding Documents*** (Rule G-32(b)(iii)) **–** As under current Rule G-36, underwriters would continue to be required to submit OS amendments to the MSIL/Access system within one business day of receipt

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current rules for those issues having a closing date that occurs less than ten business days after the bond sale.

[20] One commentator stated that, if the OS is not available by bond closing, the POS should be submitted by bond closing pending availability of the final OS. Other commentators stated that POSs for all issues should be made publicly available. The MSRB has determined to require POS submissions only in the limited circumstances described above but is also seeking comment on whether to permit voluntary submissions of POSs to the MSIL/Access system. *See* text accompanying footnote 9 above.

throughout the new issue disclosure period. The revised rule would explicitly include amendments to ARDs within these same requirements.

- ***Cancellation of Issue & Underwriting Syndicate*** (Rule G-32(b)(iv) and (v)) **–** As under current Rule G-36, underwriters would be required to advise the MSIL/Access system of any cancellation of an issue for which a submission has previously been made. Managing underwriters would be responsible for compliance on behalf of their syndicate members.

- ***Submission Procedures and Form G-32*** (Rule G-32(b)(vi)) **–** All OSs, POSs and ARDs, as well as any amendments thereto, must be submitted to the MSIL/Access system by electronic means in a designated electronic format.[21] Paper submissions would no longer be accepted, with all submissions to the MSIL/Access system limited at the outset to documents in portable document format (PDF). However, the MSIL/Access system would retain the flexibility to allow other formats that may be developed in the future, as appropriate, consistent with the need to maintain the integrity of a long-term archive of documents and the need to ensure ready availability of documents through the MSIL/Access portals to the general public, including retail investors.[22] ***The MSRB seeks further comments from the industry on what parameters are important in determining the suitability of an electronic format for documents accessible through the MSIL/Access system and whether any such formats, other than PDF, currently exist or are in development.*** The MSIL/Access system will be designed to accept such electronic submissions either through an upgraded version of the existing MSIL web-based interface known as the e-OS system or by upload or data stream initially using extensible markup language (XML).[23]

Current Form G-36(OS) and Form G-36(ARD), which can be completed either on paper or electronically, would be replaced by a single Form G-32 that must be completed

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21 "Designated electronic format" would be defined in revised Rule G-32(d)(vi) as any electronic formats for OSs and other documents that are acceptable for purposes of the MSIL/Access system.

22 Most commentators agreed that OSs should be in PDF files, which is the format currently required for submissions of OSs made to the MSIL system through its electronic interface. Some commentators urged that the new system retain flexibility to adopt appropriate file formats that may be developed in the future. Some commentators favored allowing multiple formats, while others opposed the use of multiple formats.

23 Among other improvements to the current e-OS system, dealers choosing to make submissions through the data-entry interface of the upgraded e-OS system would be able to save partial forms for completion at a later time and would in many cases have information pre-populated into their forms based on the entry of one or a limited number of CUSIP numbers, rather than being required to enter all CUSIP numbers and maturity dates by hand.

electronically. Underwriters would be required to submit to the MSIL/Access system a Form G-32 in connection with each OS (or POS, where no OS exists), as well as in connection with each offering for which no OS or POS is to be made available through the MSIL/Access system.[24] The MSRB anticipates that the Form G-32 submission process would be initiated by the submission of the CUSIP number information and initial offering prices for each maturity[25] shortly after the bond sale. The MSRB notes that paragraph (a)(ii)(C) of Rule G-34, on CUSIP numbers and new issue requirements, currently requires underwriters to disseminate CUSIP information by the time of the first execution of a transaction in virtually all new issues. ***The MSRB seeks comments on whether this would be the appropriate timeframe for requiring CUSIP information and initial offering prices, as well as notice that no OS or POS will be provided (if applicable), to be provided to the MSIL/Access system for public dissemination through the MSIL/Access portals.***

Other items of information to be submitted through the Form G-32 submission process, including the underwriting spread, if any, and the amount of any fee received by the underwriter as agent for the issuer in the distribution of the securities (to the extent such information is not included in the OS),[26] as well as many of the items currently required on Form G-36(OS) in connection with the MSRB's underwriting assessment under Rule A-13, would be provided by the underwriter as they become available. In general, Form G-32 would be completed by the closing date, although for certain items that may not become available until after the closing date (*e.g.*, ARDs, amendments to OSs or ARDs, etc.), submissions could continue to be made with respect to a Form G-32 as necessary up to the end of the new issue disclosure period.

All submissions of ARDs under subsection (b)(ii), amendments under subsection (b)(iii) and notices of issue cancellation under subsection (b)(iv) would be made by means of a Form G-32 previously initiated in connection with the related OS or offering. In effect, a Form G-32 initiated in connection with a new issue would be a single continuous submission process for the related OS, any related ARDs or amendments, and issue-specific information that would be completed in stages beginning at or prior to the time of first execution of a transaction in such issue and ending in most cases on the closing date but in some cases extending as late as the end of the new issue disclosure period, depending on the specific features of such issue.

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[24] As described above, in cases where no OS or POS is being submitted to the MSIL/Access system, the underwriter would be required to provide notice thereof to the MSIL/Access system. Such information would be designed in part to provide through the MSIL/Access portals notice to customers and others that no OS or POS will be available.

[25] The initial offering price information disclosure under this provision would take the place of such disclosure to customers by selling dealers under current Rule G-32.

[26] These items of information would be publicly disclosed at the MSIL/Access portals and would take the place of disclosures to customers by selling dealers required under current Rule G-32.

The specific formats and processes for making submissions would be set out in the Form G-32 Manual, which would replace the current Form G-36 Manual. Underwriters would be permitted to designate one or more submission agents to submit documents and information required under this rule. The rule would not limit who may act as such submission agent on behalf of the underwriter but, as an agent, the underwriter would be bound by the actions of such agent. Therefore, a failure to comply with the submission requirements by such agent would be treated as a failure by the underwriter.

Preparation of Official Statements By Financial Advisors (Rule G-32(c))**.** Revised Rule G-32 would require any dealer acting as financial advisor that prepares the OS for the issuer to make the OS available to the managing or sole underwriter in electronic form promptly after it has been approved by the issuer for distribution. This would apply to all offerings for which a dealer financial advisor prepares the OS. The electronic OS must be in a designated electronic format acceptable for purposes of the MSIL/Access system.

Definitions (Rule G-32(d))**.** The existing definitions in Rules G-32 and G-36 would be consolidated into section (d) of revised Rule G-32 and the definitions for designated electronic format and closing date (as described above), among others, would be added. In addition, certain existing terms would be modified. The significant modifications to these existing terms are described below:

- "***New issue municipal securities***" would no longer exclude commercial paper. ***The MSRB seeks comment on whether there is any justification for retaining this exclusion, given the modifications to the disclosure dissemination system that would be made.***

- "***New issue disclosure period***" is modified slightly to emphasize that the period ends 25 days after the final delivery by the issuer of ***any*** securities of the issue. For traditional bond or note offerings, this final delivery would correspond to the new definition of "closing date." However, for continuous offerings, such as for municipal fund securities, this final delivery would not occur until the end of such continuous offering (*i.e.*, no further securities are being issued). The new issue disclosure period would serve as the period during which dealers selling new issue municipal securities to customers would be required to send notice to customers regarding availability of the OS on-line (or to deliver a copy of the OS for municipal fund securities). In addition, this is the period during which underwriters would remain responsible for providing OS amendments to the MSIL/Access system.

- "***Primary offering***" would include specific reference to remarketings of municipal securities that the SEC views as primary offerings under Exchange Act Rule 15c2-12(f)(7), beyond those specifically enumerated in such subsection (f)(7). The MSRB is concerned that many dealers continue to mistakenly view current Rule G-36 and Exchange Act Rule 15c2-12 as applying to remarketings only if they are accompanied by a change in either (i) the authorized denomination of the securities from $100,000 or more to less than $100,000, or (ii) the period

during which the securities may be tendered from a period of nine months or less to a period of more than nine months. The SEC has made clear that this is not the case.[27]

Recordkeeping Amendments. Subsections (a)(xiii) and (a)(xv) of Rule G-8 currently require that records be maintained in connection with deliveries of OSs to customers and submissions of OSs, ARDs and Forms G-36(OS) and (ARD) to the MSIL facility. The draft rule changes would modify certain of these requirements to reflect the changes to Rule G-32 and consolidate such requirements into subsection (a)(xiii). Subsections (b)(x) and (b)(xi) of Rule G-9 relating to preservation of such records would also be modified to conform to the changes to Rule G-8.

MSIL/ACCESS PORTALS

In the Concept Release, the MSRB sought comment on how best to provide electronic access to OSs to investors and the marketplace, including which entities would be best positioned to provide such service. Most commentators believed that the MSRB would be an appropriate operator of the central access facility, while many suggested that the central access facility also could be operated by an outside contractor with oversight by the MSRB pursuant to contract. Several commentators expressed interest in operating the central access facility. Most commentators stated that OSs should remain publicly available until maturity. Commentators agreed that financial and operating information in OSs quickly becomes stale, although some noted that such information (even when stale) is valuable as a point of reference when reviewing secondary market financial and operating information provided to the nationally recognized municipal securities information repositories ("NRMSIRs") under Exchange Act Rule 15c2-12(b)(5). Most commentators stated that much of the other information in the OS, particularly relating to the terms of the securities, is useful throughout the life of a bond issue. Other commentators countered that the current new issue disclosure period for providing OSs would be a sufficiently long time for OSs to be made available. One such commentator stated that maintaining public access beyond this period would impair the economic interests of information vendors that currently make OSs available on a commercial basis.

The MSRB has determined that a MSIL/Access portal serving as a central access facility must post OSs and other documents and information directly on its centralized website, rather than simply providing a central directory of links to OSs and such other items at other sites.[28] Beyond that, the MSRB believes it is premature to finalize the precise structure of the MSIL/Access portal arrangements at this time and is continuing to consider the appropriate

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27 *See* letter from Robert L.D. Colby, Chief Counsel, SEC, to Kathleen S. Thompson, Esq., Pillsbury, Madison & Sutro (March 11, 1991) (90-91 CCH Dec., FSLR ¶79,659).

28 Most commentators agreed, with some noting that a highly decentralized system for posting of OSs by different issuers, underwriters, financial advisors, financial printers, information vendors and others could be problematic.

parameters pursuant to which such MSIL/Access portals should be operated. Some basic characteristics for a system of MSIL/Access portals are outlined below. ***The MSRB is seeking further comment on such parameters and characteristics for the MSIL/Access portals.***

The MSRB intends to establish its own MSIL/Access portal to provide an assured centralized source for free access to OSs and other related documents and information for all new issues to investors, other market participants and the general public. The MSRB agrees that there is value in continuous access to much of the information provided in the OS for the life of the securities and has determined that its central MSIL/Access portal will provide such access. The MSRB anticipates that older OSs would be moved to an archive that would be accessible on-line through a search function.

The MSRB notes, however, that this MSRB MSIL/Access portal need not operate as the exclusive MSIL/Access portal. Rather, multiple entities that subscribe to the MSIL system document collection – which will be designed to provide nearly real-time access to documents as they are submitted and processed – could establish separate MSIL/Access portals designed to make available publicly the basic documents and information provided through the MSIL/Access system, together with such other documents, information and utilities (*e.g.*, indicative data, transaction pricing data, secondary market information, analytic tools, etc.) as each such operator shall determine. These separate MSIL/Access portals could provide these services on such commercial terms as they deem appropriate, provided that the notice under revised Rule G-32(a)(iii)(B) for dealers relying on the "access equals delivery" model would be required to provide the URL for the specific OS and any amendments thereto posted at a MSIL/Access portal for free throughout the new issue disclosure period and for a reasonable limited period of time thereafter (*i.e.*, for a period extending beyond 25 days after the closing date).[29] ***The MSRB seeks comment on the appropriate limited period of time beyond the end of the new issue disclosure period during which documents should remain publicly available through free MSIL/Access portals in order to ensure that new issue customers have had an adequate opportunity to access and retain copies of such documents.*** Dealers choosing to rely on these separate MSIL/Access portals also would need to ensure that such portals make OSs available with a level of reliability comparable to that of the MSRB's MSIL/Access portal.

The MSRB intends to continue offering subscriptions to the MSIL system collection on terms that promote the broad dissemination of disclosure information throughout the marketplace without creating a significant negative impact on the pricing of dissemination services by subscribers. In particular, the MSRB hopes that multiple MSIL/Access portals would provide free continuous access to OSs and other documents throughout the new issue disclosure period and a reasonable limited period of time thereafter and also would provide continuing access

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[29] *See* footnote 14 above. As noted above, the MSRB's MSIL/Access portal would maintain a permanent archive of all OSs and therefore it is anticipated that other MSIL/Access portals would not be required (but would be permitted) to maintain public access to OSs beyond the initial period described above.

beyond the expiration of this period on favorable terms, with due consideration for promoting access by infrequent users (*e.g.*, retail investors) for free or at greatly reduced rates. The MSRB's goal in promoting the establishment of parallel MSIL/Access portals is to provide all market participants with a realistic opportunity to access OSs and other documents and information throughout the life of the securities in a non-cost prohibitive manner while encouraging market-based approaches to meeting the needs of investors and other market participants.

STRAIGHT-THROUGH PROCESSING

The MSRB expects to develop the new MSIL/Access system as a key component in a straight-through processing environment for new issue documents and information, permitting underwriters to designate third-party submission agents to act on their behalf and providing "real-time" access to documents and data for subscribers and the marketplace. Underwriters could designate financial printers, financial advisors, information vendors, industry utilities or other appropriate parties to act as their designated submission agents. Such agents could, in turn, establish data stream connections with the MSIL/Access system to submit the documents or other information that they have been designated to submit on behalf of any number of underwriters directly to the MSIL/Access system. In particular, underwriters that currently must submit OSs to the MSRB as well as to certain information vendors or industry utilities could, subject to appropriate arrangements, designate such parties to act as submission agents who would forward such submitted OSs to the MSIL/Access system. Conversely, the MSIL/Access system would be designed to permit an underwriter to submit the OS directly to the MSRB under revised Rule G-32 and to have such OS (upon the making of appropriate subscription and technical arrangements) redelivered to such other organizations. Thus, the MSIL/Access system would be designed to provide underwriters with the flexibility to undertake their various submission processes in the municipal securities market in the manner best suited to their particular business plans, internal systems and vendor/contractual relationships.

LISTING OF MUNICIPAL SECURITIES BUSINESS ON FORM G-37

Dealers that engage in municipal securities business, as defined in Rule G-37, on political contributions and prohibitions on municipal securities business, generally must report such business to the MSRB, along with certain other items of information, on a quarterly basis on Form G-37 submitted to the MSRB through the existing MSIL system.[30] The modifications needed to establish the MSIL/Access system could potentially streamline the Form G-37 submission process as well. In particular, by requiring that underwriters submitting Form G-32 provide information as to whether the offering was sold on a negotiated basis, together with a list of all syndicate members, such information could be used to help pre-populate Section III of

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[30] Municipal securities business includes negotiated underwritings, private placements and other agency offerings, financial advisory or consultant engagements and remarketing agent engagements.

Form G-37 (relating to issuers with which the dealer has engaged in municipal securities business during the calendar quarter) to be prepared and submitted by such underwriter and syndicate members. Throughout the quarter, such information for each dealer would be compiled. When it becomes time for dealers to submit their quarterly Forms G-37, such dealers would access these compiled lists through an upgraded version of the MSRB's existing web-based interface for Form G-37 submissions and review such lists for accuracy and completeness.[31] Such an automated process would require that all Form G-37 submissions be made electronically through this web-based interface, with no paper submissions permitted.

The MSRB seeks comment on the merits of partially automating the Form G-37 process through information provided on Form G-32. In particular, would the added burden of additional information submissions by underwriters under revised Rule G-32 be outweighed by the possible benefits realized in partially automating the Form G-37 process?

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The MSRB seeks comments on all aspects of this notice. **Comments should be submitted no later than March 12, 2007, and may be directed to Ernesto A. Lanza, Senior Associate General Counsel.** Written comments will be available for public inspection upon request and also will be posted on the MSRB web site.[32]

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[31] In particular, the information provided through the Form G-32 submissions would not be expected to include information on issues for which the dealer served as financial advisor and may not provide complete information on issues for which the dealer served as remarketing agent. Furthermore, dealers would need to add the appropriate information regarding contributions to issuer officials and payments to state and local political parties in Sections I and II of Form G-37.

[32] All comments received will be made publicly available without change. Personal identifying information, such as names or e-mail addresses, will not be edited from submissions. Therefore, commentators should submit only information that they wish to make available publicly.

TEXT OF DRAFT RULE CHANGES

Rule G-32. New Issue Disclosure Practices[33]

(a) **Dealer Disclosures to New Issue Customers.**

(i) No dealer shall sell, whether as principal or agent, any new issue municipal securities to a customer unless such dealer delivers to the customer by no later than the settlement of the transaction a copy of the official statement or, if an official statement is not being prepared, a written notice to that effect together with a copy of a preliminary official statement, if any.

(ii) Notwithstanding the provisions of subsection (a)(i) of this rule, the delivery obligation thereunder shall be deemed satisfied if the following conditions are met:

(A) the new issue municipal securities being sold are not municipal fund securities; and

(B) the underwriter has made the submissions to the MSIL/Access system required under paragraph (b)(i)(A) or (b)(i)(B) of this rule (other than any required submission under clause (b)(i)(B)(2)(b)), or the underwriter has made a good faith and reasonable effort to make such submission and, in the event that the underwriter fails to make such submission in a timely manner, the underwriter makes such submission as soon as practicable thereafter; provided that the condition in this paragraph (B) shall apply solely to sales to customers by dealers acting as underwriters in respect of the new issue municipal securities being sold.

(iii) Any dealer that sells any new issue municipal securities to a customer with respect to which the delivery obligation under subsection (a)(i) of this rule is deemed satisfied pursuant to subsection (a)(ii) of this rule shall provide to the customer, by no later than two business days following the settlement of such transaction, either:

(A) a copy of the official statement or, if an official statement is not being prepared, a written notice to that effect together with a copy of a preliminary official statement, if any; or

(B) a notice to the effect that the official statement is available from the MSIL/Access system and that a copy of the official statement will be provided upon request, which notice shall include the uniform resource locator (URL) where the official statement may be obtained.

If a dealer provides notice to a customer pursuant to paragraph (a)(iii)(B), such dealer shall, upon

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[33] The text of current Rule G-32 is replaced in its entirety with the text set forth above.

request from the customer, promptly send a copy of the official statement to the customer.

(iv) In the case of a sale by a dealer of municipal fund securities to a customer, the following additional provisions shall apply:

(A) notwithstanding the provisions of subsection (a)(i) of this rule, if a customer who participates in a periodic municipal fund security plan or a non-periodic municipal fund security program has previously received a copy of the official statement in connection with the purchase of municipal fund securities under such plan or program, a dealer that sells additional shares or units of the municipal fund securities under such plan or program to the customer will be deemed to have satisfied the delivery obligation under subsection (a)(i) of this rule if such dealer sends to the customer a copy of any new, supplemented, amended or "stickered" official statement, by first class mail or other equally prompt means, promptly upon receipt thereof; provided that, if the dealer sends a supplement, amendment or sticker without including the remaining portions of the official statement, such dealer includes a written statement describing which documents constitute the complete official statement and stating that the complete official statement is available upon request; and

(B) to the extent not included in the official statement or trade confirmation, the dealer shall provide to the customer, by no later than the settlement of the transaction, written disclosure of the amount of any fee received by the dealer as agent for the issuer in the distribution of the securities.

(v) If two or more customers share the same address, a dealer may satisfy the delivery obligations set forth in this section (a) by complying with the requirements set forth in Rule 154 of the Securities Act of 1933, on delivery of prospectuses to investors at the same address. In addition, any such dealer shall comply with section (c) of Rule 154, on revocation of consent, to the extent that the provisions of paragraph (a)(iv)(A) relating to a customer who participates in a periodic municipal fund security plan or a non-periodic municipal fund security program apply.

(b) **Underwriter Submissions to MSIL/Access system.**

(i) **Official Statements and Preliminary Official Statements.**

(A) Subject to paragraph (B) of this subsection (i), each underwriter in a primary offering of new issue municipal securities shall submit the official statement to the MSIL/Access system within one business day after receipt of the official statement from the issuer or its designated agent, but by no later than the closing date.

(B) If an official statement is not made available by the issuer or its designee to the underwriter by the closing date or if an official statement will not be prepared for an offering not subject to Securities Exchange Act Rule 15c2-12, the underwriter shall submit to the MSIL/Access system:

(1) by no later than the closing date, the preliminary official statement, if any, or, if no preliminary official statement has been prepared, notice to that effect;

(2) in the case of an offering for which an official statement is being prepared:

(a) by no later than the closing date, notice to the effect that the official statement will be provided when it becomes available; and

(b) within one business day after receipt from the issuer or its designated agent, the official statement;

(3) in the case of an offering not subject to Securities Exchange Act Rule 15c2-12 for which an official statement will not be prepared, by no later than the closing date, notice to the effect that no official statement will be prepared.

(ii) **Advance Refunding Documents.** If new issue municipal securities offered in a primary offering advance refund outstanding municipal securities and an advance refunding document is prepared, each underwriter in such offering shall submit the advance refunding document to the MSIL/Access system by no later than five business days after the closing date.

(iii) **Amendments to Official Statements and Advance Refunding Documents.** In the event the underwriter for a primary offering has previously submitted to the MSIL/Access system an official statement or advance refunding document and such document is amended by the issuer during the new issue disclosure period, the underwriter for such primary offering must submit the amendment to the MSIL/Access system within one business day after receipt of the amendment from the issuer or its designated agent.

(iv) **Cancellation of Issue.** In the event an underwriter provides to the MSIL/Access system the documents and written information referred to in subsection (i), (ii) or (iii) above, but the issue is later cancelled, the underwriter shall notify the MSIL/Access system of this fact promptly as provided in the Form G-32 Manual.

(v) **Underwriting Syndicate.** In the event a syndicate or similar account has been formed for the underwriting of a primary offering of new issue municipal securities, the managing underwriter shall take the actions required under the provisions of this rule and comply with the recordkeeping requirements of rule G-8(a)(xiii)(B).

(vi) **Submission Procedures and Form G-32.**

(A) All submissions required under this rule shall be made by means of Form G-32 and shall be submitted electronically in such format and manner, and shall include such information, as specified in the Form G-32 Manual.

(B) Form G-32 and any related documents shall be submitted by the underwriter or by any submission agent designated by the underwriter pursuant to procedures set forth in the Form G-32 Manual. The failure of a submission agent designated by an underwriter to comply with any requirement of this rule shall be considered a failure by such underwriter to so comply.

(c) **Preparation of Official Statements By Financial Advisors.** A dealer that, acting as financial advisor, prepares an official statement on behalf of an issuer with respect to any new issue municipal securities shall make the official statement available to the managing underwriter or sole underwriter in a designated electronic format promptly after the issuer approves its distribution.

(d) **Definitions**. For purposes of this rule, the following terms have the following meanings:

(i) The term "new issue municipal securities" shall mean municipal securities that are sold by a dealer during the issue's new issue disclosure period.

(ii) The term "new issue disclosure period" shall mean the period commencing with the first submission to an underwriter of an order for the purchase of new issue municipal securities or the purchase of such securities from the issuer, whichever first occurs, and ending 25 days after the final delivery by the issuer of any securities of the issue to or through the underwriting syndicate or sole underwriter.

(iii) The term "primary offering" shall mean an offering defined in Securities Exchange Act Rule 15c2-12(f)(7), including but not limited to any remarketing of municipal securities that constitutes a primary offering as such subsection (f)(7) may be interpreted from time to time by the Commission.

(iv) The term "official statement" shall mean (A) for an offering subject to Securities Exchange Act Rule 15c2-12, a document or documents defined in Securities Exchange Act Rule 15c2-12(f)(3), or (B) for an offering not subject to Securities Exchange Act Rule 15c2-12, a document or documents prepared by or on behalf of the issuer that is complete as of the date delivered to the underwriter and that sets forth information concerning the terms of the proposed offering of securities. A notice of sale shall not be deemed to be an "official statement" for purposes of this rule.

(v) The term "MSIL/Access system" shall mean the electronic municipal securities information access system for collecting and disseminating new issue documents and information.

(vi) The term "designated electronic format" shall mean an electronic format designated in the current Form G-32 Manual as an acceptable electronic format for submission or preparation of documents pursuant to section (b) or (c) of this rule.

(vii) The term "underwriter" shall mean a dealer that is an underwriter as defined in Securities Exchange Act Rule 15c2-12(f)(8).

(viii) The term "advance refunding document" shall mean the refunding escrow trust agreement or its equivalent prepared by or on behalf of the issuer.

(ix) The term "closing date" shall mean the date of first delivery by the issuer to or through the underwriter of new issue municipal securities sold in a primary offering.

(x) The term "dealer", as used in this rule, shall include any broker, dealer or municipal securities dealer.

(xi) The term "Form G-32 Manual" shall mean the document(s) designated as such published by the Board from time to time setting forth the processes and procedures with respect to submissions to be made to the MSIL/Access system by underwriters under Rule G-32(b).

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Rule G-36. Delivery of Official Statements, Advance Refunding Documents and Forms G-36(OS) and G-36(ARD) to Board or Its Designee

[RESCINDED]

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Rule G-8. Books and Records to be Made by Brokers, Dealers and Municipal Securities Dealers[34]

(a) **Description of Books and Records Required to be Made.** Except as otherwise specifically indicated in this rule, every broker, dealer and municipal securities dealer shall make and keep current the following books and records, to the extent applicable to the business of such broker, dealer or municipal securities dealer:

(i)-(xii) No change.

(xiii) **Records Concerning <u>New Issue Disclosure Practices.</u>** ~~**Deliveries of Official Statements.**~~ A record of all deliveries **<u>made by the broker, dealer or municipal securities dealer</u>** to**<u>:</u>**

<u>(A)</u> purchasers of new issue municipal securities~~,~~ of**<u>:</u>**

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[34] Underlining indicates additions; strikethrough indicates deletions.

(1) official statements **or preliminary official statements required under Rule G-32(a)(i), (a)(iii)(A) or (a)(iv)(A);**

(2) notices or written disclosures required under Rule G-32(a)(iii)(B) or (a)(iv)(B); ~~**or other disclosures concerning the underwriting arrangements required under rule G-32 and,**~~

(3) if applicable, a record evidencing compliance with **subsection (a)(v) of Rule G-32.** ~~**section (a)(i)(C) of rule G-32.**~~

(B) the Board, in the capacity of underwriter in a primary offering of municipal securities (or, in the event a syndicate or similar account has been formed for the purpose of underwriting the issue, the managing underwriter), of:

(1) official statements or preliminary official statements required under Rule G-32(b)(i);

(2) advance refunding documents required under Rule G-32(b)(ii);

(3) amendments to official statements and advance refunding documents required under Rule G-32(b)(iii);

(4) Forms G-32 required under Rule G-32(b)(vi).

(xiv) No change.

(xv) **[RESERVED]** ~~**Records Concerning Delivery of Official Statements, Advance Refunding Documents and Forms G-36(OS) and G-36(ARD) to the Board or its Designee. A broker, dealer or municipal securities dealer that acts as an underwriter in a primary offering of municipal securities subject to rule G-36 (or, in the event a syndicate or similar account has been formed for the purpose of underwriting the issue, the managing underwriter) shall maintain:**~~

~~**(A) a record of the name, par amount and CUSIP number or numbers for all such primary offerings of municipal securities; the dates that the documents and written information referred to in rule G-36 are received from the issuer and are sent to the Board or its designee; the date of delivery of the issue to the underwriters; and, for issues subject to Securities Exchange Act Rule 15c2-12, the date of the final agreement to purchase, offer or sell the municipal securities; and**~~

~~**(B) copies of the Forms G-36(OS) and G-36(ARD) and documents submitted to the Board or its designee along with the certified or registered mail receipt or other record of sending such forms and documents to the Board or its designee.**~~

(xvi)-(xxii) No change.

(b)-(g) No change.

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Rule G-9. Preservation of Records[35]

(a) No change.

(b) **Records to be Preserved for Three Years.** Every broker, dealer and municipal securities dealer shall preserve the following records for a period of not less than three years:

(i)-(ix) No change.

(x) all records **relating to Rule** ~~**of deliveries of rule**~~ G-32 ~~**disclosures and, if applicable, a record evidencing compliance with section (a)(i)(C) of rule G-32**~~ required to be retained as described in rule G-8(a)(xiii);

(xi) **[RESERVED]** ~~**the records to be maintained pursuant to rule G-8(a)(xv);**~~

(xii)-(xvi) No change.

(c)-(f) No change.

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[35] Underlining indicates additions; strikethrough indicates deletions.

Alphabetical List of Comment Letters on MSRB Notice 2007-05 (January 25, 2007) relating to preliminary official statement submissions

1. American Municipal Securities, Inc.: Letter from J. Cooper Petagna, Jr., President, dated March 12, 2007
2. Bear, Stearns & Co. Inc.: Letter from Vincent A. Mazzaro, Senior Managing Director & Controller of Municipals, dated March 19, 2007
3. DPC DATA Inc.: Letter from Peter J. Schmitt, Chief Executive Officer, dated March 9, 2007
4. Griffin, Kubik, Stephens & Thompson, Inc.: Letter from Robert J. Stracks, Counsel, dated March 14, 2007
5. Ipreo Holdings LLC: Letter from Kevin Colleran, Vice President, dated March 9, 2007
6. National Association of Bond Lawyers: Letter from Carol L. Lew, President, dated March 12, 2007
7. Securities Industry and Financial Markets Association: Letter from Leslie M. Norwood, Vice President and Assistant General Counsel, dated March 16, 2007

AMERICAN MUNICIPAL SECURITIES, INC.

INVESTMENT BANKERS
Since 1980

Building *wealth* for the retirement years...Providing *income* to enjoy them

March 12, 2007

Ernesto A. Lanza
Senior Associate General Counsel
Municipal Securities Rulemaking Board
1900 Duke Street, Suite 600
Alexandria, VA 22314

Re: Comments to MSRB Notice 2007-05 (January 25-2007)
Changes to Establish an Electronic Access System for Official Statements

Dear Mr. Lanza:

We have reviewed the above mentioned Notice and are in favor of the proposed MSIL/Access System. It seems that making official statements available in one easy-to-access location is a good idea. In addition, the change to electronically submit what is currently submitted as Form G-36(OS) and official statements also seems to be a good idea. It seems that submitting the information electronically would save time and allow the ability to search for information easily. We have provided our comments to your specific questions from the Notice as shown below.

1. *The MSRB seeks comment on whether the MSIL/Access system should provide for voluntary submissions by underwriters of POSs to be made publicly accessible through the MSIL/Access portals.* **The submission of a POS should be voluntary.**

2. *The MSRB seeks comment on whether the URL included in the notice to customers should be restricted to a specific MSIL/Access portal or could be for any of the MSIL/Access portals, or whether dealers should be permitted to identify a source other than a MSIL/Access portal.* **It seems reasonable that all OSs should be submitted to the MSIL/Access portal as opposed to some other source.**

   In the overview notice you state that "A dealer selling new issue municipal securities would be required to provide to a purchasing customer, by no later than two business days after trade settlement, either a copy of the OS or written notice that the OS may be accessed through the MSIL/Access system and that a copy of the OS will be provided to the customer by the dealer upon request." Is the written notice to the customer to be sent via regular mail or could it be sent via electronic mail?

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3. *The MSRB seeks comment on potential technical difficulties that might result from requiring that the notice include a URL assigned to a specific OS, particularly in respect to assuring that the unique URL for each OS remains operative throughout the time such document remains publicly available. Would it be appropriate to limit the period of time during which the URL for a specific OS is required to be maintained unchanged, such that after such period the OS could be archived and be made accessible through an on-line search function at the MSIL/Access portal? What would be the appropriate period of time (beyond the end of the new issue disclosure period) for maintaining such URLs unchanged prior to permitting OSs to be moved to an archival collection accessible through an on-line search function?* **To eliminate the need to distribute a specific URL for each OS, it might be more appropriate to distribute the URL address of the MSIL/Access portal's home page and from that page use an easy to use search function for obtaining all OSs assuming that directions are displayed as to how the search function works. Searches could be based on issuer name and/or CUSIP.**

4. *One commentator suggested that issues described under Exchange Act Rule 15c2-12(d)(1)(i) ("limited offerings") be excluded from the "access equals delivery" model, while another commentator suggested that the model be made available for such offerings on a voluntary basis.[16] The draft amendments do not provide such an exclusion. The MSRB seeks further comment on whether such an exclusion for limited offerings should be provided and, if so, why such an exclusion would be appropriate.* **We see no reason for an exclusion.**

5. *To the extent that any commentator believes that an exclusion for limited offerings (with or without the ability of the underwriter to make an election to qualify for the "access equals delivery" model) should be provided, the MSRB seeks comment on issues arising from the provisions described above that would be needed to ensure that customers are provided access to the OS.* **See question above.**

6. *The MSRB seeks further comments from the industry on what parameters are important in determining the suitability of an electronic format for documents accessible through the MSIL/Access system and whether any such formats, other than PDF, currently exist or are in development.* **PDF works well because the free reader program is easily accessible to everyone and is widely used. Other formats used should meet the same criteria. We would like to have options to use other formats should other options be available that meet the criteria.**

7. *The MSRB notes that paragraph (a)(ii)(C) of Rule G-34, on CUSIP numbers and new issue requirements, currently requires underwriters to disseminate CUSIP information by the time of the first execution of a transaction in virtually all new issues. The MSRB seeks comments on whether this would be the appropriate timeframe for requiring CUSIP information and initial offering prices, as well as notice that no OS or POS will be provided (if applicable), to be provided to the MSIL/Access system for public dissemination through the MSIL/Access portals.* **No, this would not be the appropriate time frame. Don't change current timing.**

8. *The MSRB is seeking further comment on such parameters and characteristics for the MSIL/Access portals.* **We envision a system in which we access an online form for submittal of the current "G-36(OS)" information to MSRB and the ability at that point to attach an electronic OS or POS file. We request that the system be user-friendly as to not create a burden for industry participants.**

9. *The MSRB seeks comment on the appropriate limited period of time beyond the end of the new issue disclosure period during which documents should remain publicly available through free MSIL/Access portals in order to ensure that new issue customers have had an adequate opportunity to access and retain copies of such documents.* **6 months**

10. *The MSRB seeks comment on the merits of partially automating the Form G-37 process through information provided on Form G-32. In particular, would the added burden of additional information submissions by underwriters under revised Rule G-32 be outweighed by the possible benefits realized in partially automating the Form G-37 process?* **This automated process should be beneficial for us.**

Thank you for the opportunity to comment on this important matter.

Sincerely,

J. Cooper Petagna, Jr.
President

BEAR STEARNS

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March 19, 2007

Ernesto A. Lanza
Senior Associate General Counsel
Municipal Securities Rulemaking Board
1900 Duke Street
Suite 600
Alexandria, Virginia 22314

Re: MSRB Notice 2007-05: Draft Rule Changes to Establish an Electronic Access System for Official Statements

Bear, Stearns & Co. Inc. ("Bear Stearns") appreciates this opportunity to respond to the January 25, 2007 notice ("Notice") issued by the Municipal Securities Rulemaking Board ("MSRB") in which the MSRB is requesting comments on "the draft rule changes to implement an electronic system for access to primary market disclosure in the municipal securities market". The Notice describes the possible implementation of the "access equals delivery" standards for MSRB proposed Rule G-32, which would be modeled in part on the "access equals delivery" rule adopted by the Securities and Exchange Commission.

At this time, Bear Stearns would like to acknowledge that it participated in the letter submitted by The Securities Industry and Financial Markets Association, dated March 16, 2007, and fully supports that letter.

Regards,

Vincent A. Mazzaro
Senior Managing Director
& Controller of Municipals

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Peter J. Schmitt
CHIEF EXECUTIVE OFFICER

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March 9, 2007

Ernesto A. Lanza, Esq.
Senior Associate General Counsel
Municipal Securities Rulemaking Board
1900 Duke Street, Suite 600
Alexandria, VA 22314

Dear Mr. Lanza:

Following are DPC DATA Inc.'s observations and responses to the questions posed in MSRB Notice 2007-05 on January 25, 2007 regarding draft rule changes to establish an electronic access system for official statements.

Inconsistencies and Misleading Presentations in the Notice

First, I would like to point out some inconsistencies communicated in the Notice, as well as a significant material error of omission that we believe creates a misleading impression of the current general state of municipal primary market disclosure.

In your preface to Notice 2007-05, you state, "The immediate access to OSs for new issue customers provided through the electronic MSIL/Access system would permit significantly faster access to critical disclosure information than under the current dissemination system based historically on the physical movement of OSs by and among brokers, dealers and municipal securities dealers ("dealers") and to customers." While partly true, nowhere in this Notice do you acknowledge the fact that many major entities[1] make POSs, OSs and/or the complete MSIL collection of final official statements and refunding documents available in electronic form broadly to the market. In the case of DPC DATA, we have made our fully indexed archive of official statements and refunding documents (along with any associated document amendments) available online to the general public since 1999. This

[1] DPC DATA Inc.'s online disclosure document repository is available online at www.DPCDATA.com and soon to be released www.MuniFILINGS.com, Bloomberg LP's desktop trading system, and Thomson Financial's official statement collection available at www.TM3.com are examples of significant archives that serve the market. There are also other services such as DPC DATA's DownloadProspectus.com and Ipreo, which distribute electronic POSs and OSs to syndicate members, investors and others at no charge to the recipients. Many financial printing companies also maintain web sites and offer free public access to PDF copies of POSs and OSs.

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archive is available to all market participants, including retail investors, without restriction. Most municipal market participants would agree that our disclosure archive web site is one of the most frequently visited web sites serving the municipal securities market, and it is primarily used for downloading final official statements. The absence of any mention in the Notice of the large number of highly used sources of electronic documents on the web misrepresents the current status of electronic delivery of disclosure documents in the market today. By that same token, we question why you would single out the College Savings Plans Network's plan to provide a web-based comprehensive archive to the market and refer to it as a "utility" for the municipal securities market when it does not yet exist, while you consciously omit any reference to all other proven, comprehensive, web-based archives and online delivery systems that have served as *de facto* market utilities for many years.

We do not recognize the MSRB's description of the proposed MSIL/Access portal concept as an original innovation for the municipal securities market. Since 1999, DPC DATA has successfully deployed our *Muni*DOCS Online™ portal to market participants, enabling them to directly link, through an API, securities records in their proprietary databases and web sites with the corresponding disclosure documents. Our portal not only links final official statements, advance refunding documents and associated document amendments, but also all secondary market disclosure documents and material event notices in the DPC DATA NRMSIR repository. The MSRB's representation in the Notice severely understates the current state of online access to OSs in the market.

We also wish to point out the fallacies in your treatment of the concept of 'free' documents for the entire market, and the analogy you draw with the SEC's EDGAR system. EDGAR is not free. It is an expensive system, and it is subsidized by American taxpayers. It only appears superficially free because there is no charge to users who access the EDGAR web site and download content. If the MSRB carries out the plan put forth in the Notice, the cost will be borne by the broker/dealer community, causing them to subsidize the entire cost of the MSIL/Access system for the market. This appears to be more biased and unfair than recovering the costs from the users of the system based on usage, and it is certainly not analogous to how the EDGAR system is financed. It should also be pointed out that the SEC did not develop and does not maintain the EDGAR system. It delivers the EDGAR system to the market through vendors under contract.[2]

Responses to Specific Questions Raised in the Notice

[2] The current list of vendors who operate and maintain the EDGAR system include Keane Federal Systems, Inc., XBRL US, Inc., Rivet Software Inc. and Wall Street on Demand.

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"...the MSRB seeks comment on whether the MSIL/Access system should provide for voluntary submissions by underwriters of POSs to be made publicly accessible through the MSIL/Access portals."

DPC DATA believes that the municipal market would be better served if the MSIL/Access system accommodated the voluntary submission of POSs and if underwriters were encouraged to submit them through the system. The early receipt of preliminary documents by data vendors enhances data quality throughout the market and promotes the complete capture of new securities description data in all major market systems prior to deal closing. We would go one step further and recommend that the MSRB explore making the submission of POSs by underwriters to MSIL mandatory.

If the MSIL system is to handle the submission of POSs from underwriters, the system will have to be capable of managing version control for these documents. It would not suffice to treat updated versions of POSs for the same deal as new, incremental additions to the document collection. In order to avoid misinformation, the system should handle the automatic cancellation of access to (or deletion of) the older version of the POS, updates to the corresponding data record in the MSIL system, and automatic notification to all recipients in the distribution channel

"The MSRB seeks comment on whether the URL included in the notice to customers should be restricted to a specific MSIL/Access portal or could be for any of the MSIL/Access portals, or whether dealers should be permitted to identify a source other than a MSIL/Access portal."

Since the MSRB's plan calls for the URL for a given document to point to a file that resides only on the MSRB's central portal, and since the other MSIL/Access portals will all present the same URL to the public, the MSRB should be indifferent about which portal dealers direct their customers to for accessing the URL. If dealers want to direct customers to another source that is not an MSIL/Access portal to obtain a copy of the document, we believe the MSRB should look upon this as analogous to dealers' current practice of delivering photocopies of printed documents instead of the printed documents themselves.

A more important threshold issue, as suggested in footnote [14] and footnote [29] of the Notice, is that it appears that the MSRB only plans to provide URLs for documents directly through its proposed web site and through the MSIL/Access portals, and not deliver (or 'push') copies of the definitive PDFs as is its current practice. The MSRB must disclose whether it will continue to affirmatively push PDF files of documents and accompanying descriptive data to vendors, or if it intends for the proposed MSIL/Access system only to deliver URLs and thereby

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require that recipients 'pull' the PDF file on demand. DPC DATA believes that it would not serve the best interests of the market if the MSIL ceased pushing documents to vendors, because it would be harmful to frustrate in any way the production of data derived from these documents that serve the market in many critical ways, ranging from the creation of terms and conditions database products that are essential for trade settlement, to the flow of vendor data into risk management and credit products that drive transactions. All of it is time-sensitive, so the bulk delivery of definitive documents is crucial to the smooth working of the market overall. Clearly, it would be best for the MSRB to push the documents to vendors in real time, simultaneous with the delivery of the URLs to MSIL/Access portals.

Considering that the MSRB does not address in the Notice whether or not it will continue to provide document and data feeds to vendors, it appears that the MSRB may be seeking to supplant completely the commercial interests that serve the market in providing primary market disclosure documents. If so, the system as described in the Notice suggests risk of irreparable impairment of vendors' economic interests.

"The MSRB seeks comment on potential technical difficulties that might result from requiring that the notice include a URL assigned to a specific OS, particularly in respect to assuring that the unique URL for each OS remains operative throughout the time such document remains publicly available. Would it be appropriate to limit the period of time during which the URL for a specific OS is required to be maintained unchanged, such that after such period the OS could be archived and be made accessible through an on-line search function at the MSIL/Access portal? What would be the appropriate period of time (beyond the end of the new issue disclosure period) for maintaining such URLs unchanged prior to permitting OSs to be moved to an archival collection accessible through an on-line search function?"

Since a URL can only resolve to one specific Internet address, and since it appears that the definitive document PDF will only reside on the MSIL/Access server, then there does not appear to be a technical obstacle to distributing multiple copies of the URL to entities all over the Internet. They will all point to the same absolute address for the document file on the MSIL/Access server.

However, this raises a related issue of how the MSIL/Access system will handle hundreds or thousands of simultaneous 'hits' to the same document file and maintain acceptable performance without undue latency. Likewise, if the sanctity of the document file on the MSIL/Access server is disturbed or the server's connection to the Internet is interrupted, then ALL links to it will be broken and the document will become completely invisible to the market until the problem is

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corrected. From a risk management perspective, the basic premise of requiring all market participants who want to view a particular OS PDF file to 'pull' it down from a single-point source, engenders concern, especially if that source is a monopoly provider. This risk of failure is mitigated today by the decentralized, competitive web-based delivery systems that currently exist in the market. People who are in a position to influence the proposed rule change the MSRB seeks in order to accommodate the proposed monopoly model of the MSIL/Access system should carefully weigh this risk against the allure of 'free' documents.

It is not possible for DPC DATA to respond to your question regarding how long a document URL should be made public before being placed in a searchable archive, because the MSRB has not shared enough technical details and specifications in the Notice. DPC DATA currently maintains a searchable archive of more than 246,000 primary disclosure documents[3] that have been mostly sourced from the MSIL system under subscription agreement with the MSRB, and our index and the documents have been available to the general public on our web site since 1999. If the MSRB intends to reproduce the same type and level of indices built with data extracted from the documents as is available in the DPC DATA online document center and web sites provided by other vendors, and offer this service for free to all users indefinitely, it raises the question of how severe the impact would be on private vendors' businesses and their continued ability to support their current level of services and secondary products, which are consumed by the entire spectrum of the municipal marketplace. Alternatively, if the MSRB simply intends to provide nothing more than the same quality of documents and accompanying data elements that it currently sells in its MSIL subscription service with the only change being online access, then we anticipate that the impact would be less severe. Until the MSRB offers more clarity about its intentions, it is impossible for us to discuss the precise implications or offer a concrete response.

"The MSRB seeks further comment on whether ... an exclusion for limited offerings should be provided and, if so, why such an exclusion would be appropriate."

DPC DATA believes that the interests of the market as a whole would be better served if there were no exemptions under SEC Rule 15c2-12 for publicly issued securities or for limited offerings. Removing the exemptions from SEC Rule 15c2-12 and from any MSRB rule pertaining to final official statement delivery would favor transparency.

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[3] This number is effective as of March 5, 2007, and it includes 199,150 official statements, 28,827 refunding documents, and 18,387 associated document amendments, all referenced in 359,416 separate series of bonds and notes. These numbers do not include the additional 631,672 secondary market disclosure documents and material event notices that are indexed to them in our system as of this date.

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"The MSRB seeks further comments from the industry on what parameters are important in determining the suitability of an electronic format for documents accessible through the MSIL/Access system and whether any such formats, other than PDF, currently exist or are in development"

New data formats and presentation schemes are constantly under development in the market. Which of these formats will possess the critical elements for success in the future is unpredictable. We believe that the list of critical elements necessary for success, in terms of what the MSRB should require, include the following at a minimum: (a) The format must not require the end user to purchase specialized software to read a file; (b) the creator of an official statement in the format must have the ability to 'lock' the resulting file such that another party would be unable to alter it; (c) the format should be ubiquitous and supported by all operating systems, and (d) it should preserve the look and feel of the original document as if it had been produced on paper. The only format generally available today that meets all of these criteria is PDF.

It is unclear at this moment whether other formats will ever fully address all of the essential elements. Since the proposed rule change imposes definitive standards on broker/dealers and their agents who will be submitting documents and data to the MSIL system online, the MSRB has a golden opportunity to choose formats that either have or are gaining broad popularity not just in the municipal securities market, but across all markets and industries. Our recommendation is to require that (i) all official statements, refunding documents and amendments be submitted in PDF form, and (ii) all descriptive data be captured in formatted fields on the MSIL web site and validated, and then converted automatically through a parser into XML and stored in that format for distribution.

"The MSRB seeks comments on whether this would be the appropriate timeframe for requiring CUSIP information and initial offering prices, as well as notice that no OS or POS will be provided (if applicable), to be provided to the MSIL/Access system for public dissemination through the MSIL/Access portals."

DPC DATA believes that the MSRB's proposed change to rule G-32 which would require the initiation of a deal record in the MSIL system with CUSIP numbers and initial offering prices at the time of bond sale is appropriate and recommended. However, a parallel system of accepting, disseminating and tracking POSs in the system that does not rely on CUSIP numbers or coupon and maturity data to initialize a filing would have to be implemented if the MSIL/Access system were to include dealer submissions of POSs. The reason is that the true benefit of including POSs in the collection would be to make the POSs available at the

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earliest possible date, whereas the CUSIP numbers are only available at approximately the date of the underwriting.

"The MSRB seeks comment on whether there is any justification for retaining [the exclusion of commercial paper from the definition of new issue municipal securities], given the modifications to the disclosure dissemination system that would be made."

DPC DATA does not believe there is any justification for retaining the exemption for commercial paper.

"The MSRB is seeking further comment on ...parameters and characteristics for the MSIL/Access portals.

As a longstanding vendor of disclosure documents and information to the municipal market, it is our opinion that the MSRB's portal concept, whereby only URLs to specific documents are provided to MSIL/Access portal operators, is prejudicial to the economic interests of existing vendors whose delivery services require that the definitive PDF file be archived on their web sites for public access. It is our expectation that the MSIL will continue its current delivery service for official statements, refunding documents and document amendments in PDF form and enhance it by offering real time delivery over the Internet instead of the current practice of daily delivery of this content on CD-ROM. However, the MSRB has offered no indication in the Notice of what its intentions are with regard to the continuation or discontinuation of its MSIL service to vendors, and must clarify its position.

We note some apparently conflicting statements in the MSIL/Access portal concept disclosed in the Notice as it pertains to vendors. For example, the MSRB offers that portal operators "...could provide these services on such commercial terms as they deem appropriate...", but at the same time the MSRB would require them "...to provide the URL for the specific OS and any amendments thereto...for free throughout the new issue disclosure period and for a reasonable limited period of time thereafter..." If the documents are in the public domain and the general public can obtain free access to the document URL by going directly to the MSRB's central portal, what is the MSRB's justification for restricting the commercial activity of vendors who would otherwise provide enhanced services for document delivery for a fee? This could be construed as interfering with standard commercial processes of private businesses, especially since users who do not want value-added services would have options to go to other portals.

"The MSRB seeks comment on the appropriate limited period of time beyond the end of the new issue disclosure period during which documents should

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remain publicly available through free MSIL/Access portals in order to ensure that new issue customers have had an adequate opportunity to access and retain copies of such documents."

DPC DATA is of the opinion that it would be appropriate for the primary MSIL/Access portal to offer new OSs to the public for free during the new issue disclosure period and for a period not exceeding twenty-five days after the closing date. Leaving the document available for free after this length of time would impair the economic interests of information vendors that currently make OSs available on a commercial basis.

"The MSRB seeks comment on the merits of partially automating the Form G-37 process through information provided on Form G-32. In particular, would the added burden of additional information submissions by underwriters under revised Rule G-32 be outweighed by the possible benefits realized in partially automating the Form-G-37 process?"

DPC DATA has no comment with regard to automating the Form G-37 process.

Summary Observations and Conclusion

As a member of the vendor community and as a representative of the interests of our customers, we look for the MSRB to explain why it has chosen this path to improve efficiency of dissemination of OSs to the market instead of any other path that would include vendor involvement. The MSIL/Access system appears to have been conceived in a relative vacuum by the MSRB, and it is presented in the Notice as a *fait accompli.* The proposed system's broader impact on the market, on other essential vendor products already in the market, and the benefits of competition among commercial firms that must operate efficiently and provide excellent service to the marketplace do not appear to have been carefully evaluated or factored into the MSRB's apparent decision to go forward with the plan as described in the Notice. In many cases, the MSRB has not presented adequate technical specifications or service design details that would be necessary to answer some questions raised in the Notice, especially those that may involve economic impairment of vendors or potential anticompetitive behavior.

The basic premise of the MSIL/Access system that each PDF version of an OS will only reside on the MSRB's central portal server ignores the practical problem of response time and latency, and it does not address the likelihood of local *force majeure* events causing documents to be unavailable.

A careful examination of the Notice raises additional questions. Clearly, one of the most glaring omissions is the lack of information about the MSIL/Access project

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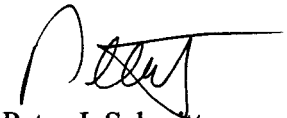
from a normal project management perspective that includes objectives, costs and funding, specific user concerns, and implementation dates. Furthermore, at the level of description offered, the only meaningful distinction between the current new issue market disclosure dissemination regime carried out by vendors and the proposed monopoly of the MSIL/Access project is the idea that access to users will be free of charge. The implications of 'free' should raise other questions about the short-term and long-term objectives of the project, and its viability as a sole venue of mandatory primary market disclosure dissemination.

The industry should question the wisdom of the MSRB investing the sums of money and the time that would be required to replicate the back-end data production systems, web delivery mechanisms, and the databases of vendor systems that already exist and function at the highest levels of efficiency and reliability. If improving the efficiency of primary market disclosure dissemination practices in the municipal market is the MSRB's true objective, then it could accomplish this simply by (a) consolidating rules G-36 and G-32 as proposed to require more timely submission of deal data and the submission of documents in electronic form only, and (b) delivering these materials in real time to vendors along the lines of straight-through-processing. Further, the MSRB could offer better terms to vendors for this feed if the vendors would agree to make the OSs available to the general public free of charge during the underwriting period and for a brief, defined period thereafter.

All of the objectives stated by the MSRB in the Notice could be met under such an arrangement, and they could be met at extremely low cost without delay. DPC DATA is prepared to cooperate with the MSRB because it would benefit all involved and make best use of existing, proven web distribution channels. We suggest that replicating these vendor channels, which have evolved to serve the market under intense competitive pressure, makes questionable sense when there are faster, less expensive and more efficient alternatives at hand that could meet the same objectives.

Yours truly,



Peter J. Schmitt
Chief Executive Officer

Griffin, Kubik, Stephens
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March 14, 2007

Mr. Ernesto A. Lanza
Senior Associate General Counsel
Municipal Securities Rulemaking Board
1900 Duke Street, Suite 600
Alexandria, VA 22314

RE: MSRB Notice 2007-05: Draft Rule Changes to Establish an Electronic Access System for Official Statements

Dear Mr. Lanza:

Reference is made to the comment letter submitted by the Securities Industry and Financial Markets Association ("SIFMA") with respect to the above notice.

We have analyzed the MSRB Notice in depth and have actively participated in the formulation of the SIFMA comment letter. We completely agree with the analysis and conclusions contained in the SIFMA letter.

Thank you for the opportunity to comment.

Very truly yours,
Griffin, Kubik, Stephens & Thompson, Inc.

Robert J. Stracks
Counsel

RJS/ays

cc: Mary Lee Corrigan, Griffin, Kubik, Stephens & Thompson, Inc.
Janis C. Brennan, Griffin, Kubik, Stephens & Thompson, Inc.
Joyce L. Miller, Griffin, Kubik, Stephens & Thompson, Inc.
Leslie M. Norwood, Securities Industry and Financial Markets Association

March 9, 2007

Mr. Ernesto A. Lanza
Senior Associate General Counsel
Municipal Securities Rulemaking Board
1900 Duke Street, Ste. 600
Alexandria, VA 22314-3412

Re: MSRB NOTICE 2007-05 (JANUARY 25, 2007)
MSRB Seeks Comments on Draft Rule Changes to Establish an Electronic Access System for Official Statements

Dear Mr. Lanza,

Ipreo Holdings LLC applauds the efforts of the MSRB to move the municipal markets to the more efficient and cost-effective Access Equals Delivery (AED) model for delivering offering documents and certain other related information. Ipreo (through its operating subsidiary, i-Deal LLC) looks forward to working with the MSRB and market participants during the implementation of the AED model for final prospectuses in the municipal bond industry. For over 20 years, we have supported the municipal industry by providing workflow solutions that enable our clients to manage the syndication process from start to finish. With over 10 years of experience in electronic document technologies we believe we can provide important contributions during the implementation of the AED model.

In addition to supporting the municipal bond market, we also provide workflow solutions to the fixed income and equity markets. Ipreo's eProspectus Offering is utilized by numerous market participants to fulfill the AED regulations that affect these markets. In fact, Ipreo recently launched its ProspectusDirect website, a public portal that serves as a repository for AED-eligible final prospectuses in the fixed income and equity markets. Our expertise in the development and ongoing maintenance of this website puts us in strong position to assist the municipal market in this similar endeavor.

In reviewing MSRB Notice 2007-05, we believe consolidating reporting requirements into revised Rule G-32 will make the industry more efficient by eliminating paperwork and data-entry involved in completing and then filing Forms G-36(OS) and G-36(ARD). As stated in MSRB Notice 2007-05: "As revised, Rule G-32 would require all submissions by underwriters to the MSRB to be made electronically. All OS submissions and other related documents and information would be made available on a "real-time" basis to investors and other market participants through the MSIL/Access portals." Many market participants currently use Ipreo's Municipal Bookrunning System to complete the G-36(OS) and G-36(ARD) forms. Clients utilizing our system can currently upload

required data attributes into the G-36(OS) and G-36(ARD) forms, eliminating re-keying. We envision a workflow that would continue to offer this functionality for current or revised MSRB forms and also provide the end-user the ability to upload the OS and submit the document and relevant forms to the MSIL/Access Site, making this information available to investors in real time. The underwriter would be provided with an audit trail of this action, providing proof it was sent to the MSRB in a timely basis.

The following are our responses to questions posed in MSRB Notice 2007-05:

In addition, the MSRB seeks comment on whether the MSIL/Access system should provide for voluntary submissions by underwriters of POS's to be made publicly accessible through the MSIL/Access portals.

Providing for voluntary submissions of the POS will help investors by increasing transparency in the market, giving investors access to transaction-related documents in electronic format to meet Rule G-17 best practice guidelines. Ipreo has a service, i-Deal Prospectus, that has been utilized for electronic dissemination and posting of POS's and OS's for close to 10 years. We would continue offering this service to our clients, including broker-dealers, financial advisors and issuers, as a vehicle to electronically deliver hyperlinks to transaction-related offering documents to investors and other market participants.

The MSRB seeks comment on whether the URL included in the notice to customers should be restricted to a specific MSIL/Access portal or could be for any of the MSIL/Access portals, or whether dealers should be permitted to identify a source other than a MSIL/Access portal.

The URL included in the notice to investors should not be restricted to a specific MSIL/Access portal. For example, many investors already have online access to brokerage accounts, and through single sign-on, those investors could also access the POS and/or the OS via a site managed by a specific broker-dealer or service provider that has contracted with the broker-dealer to provide access to such documents. Allowing for alternative MSIL/Access portals will ultimately help investors because of their ability to see order history, trade confirmations and the relevant documentation associated with those transactions across multiple security types from one location. Alternative MSIL/Access portals can also benefit investors who may want enhanced searchability of documents across security types, including municipal securities. Ipreo's ProspectusDirect platform currently offers access to final prospectuses to participants in the fixed income and equity capital markers that are AED-eligible. We plan to extend this service to our municipal clients as well.

The MSRB seeks further comments from the industry on what parameters are important in determining the suitability of an electronic format for documents accessible through the MSIL/Access system and whether any such formats, other than PDF, currently exist or are in development.

In order to maintain consistency and to minimize the burden to the investor, Ipreo recommends that the MSRB utilize PDF as its desired format for the MSIL/Access System. Adobe Acrobat software can be downloaded for free and is currently widely utilized by both institutional and retail investors. We also recommend that the PDF's submitted to the MSIL/Access System are converted to PDF from their source documents and are not scanned (although we realize that there will be cases in which components of the document, such as financials, that will need to be scanned). This will keep the files smaller in size and easier to download and print, if the investor chooses to do so.

Once again, Ipreo appreciates the opportunity to respond to the MSRB's request for comments for this important initiative. We look forward to working with industry participants in implementing an "Access Equals Delivery" model in the Municipal market.

Best regards,

Kevin Colleran
Vice President

National Association
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March 12, 2007

Ernesto A. Lanza
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Municipal Securities Rulemaking Board
1900 Duke Street
Suite 600
Alexandria, VA 22314

Re: MSRB Notice 2007-05 (January 25, 2007)
MSRB Seeks Comments on Draft Rule Changes to Establish an Electronic Access System for Official Statements

Dear Mr. Lanza:

The National Association of Bond Lawyers ("NABL") respectfully submits the enclosed response to the Municipal Securities Rulemaking Board ("MSRB") solicitation of comments on MSRB Notice 2007-05, dated January 25, 2007 (the "Notice"), regarding proposed changes to the MSRB's Rules G-8, G-9 and G-32, and the rescission of Rule G-36. The comments were prepared by an *ad hoc* subcommittee of NABL's Securities Law and Disclosure Committee.

In the Notice, the MSRB requests specific comments regarding its proposed rule changes, and NABL has provided comments in response to certain of these requests. As indicated in the earlier comments NABL submitted with respect to MSRB Notice 2006-19, NABL has not and does not expect to offer comments regarding the most desirable technical features of any new electronic filing system. However, NABL strongly supports the concept of "access equals delivery" that is embodied in the proposed rule changes. In particular, NABL encourages development of a "one-stop shopping" approach that will provide issuers, investors and other municipal market participants the most efficient and cost-effective method for providing and accessing information.

National Association of Bond Lawyers

NABL exists to promote the integrity of the municipal market by advancing the understanding of and compliance with the law affecting public finance. A professional association incorporated in 1979, NABL has approximately 3,000 members and is headquartered in Chicago.

If you have any questions concerning the comments, please feel free to contact me at 949/725-4237 (CLEW@sycr.com), or Jeff Nave at 509/777-1601 (navej@foster.com), or Elizabeth Wagner, Director of Governmental Affairs at 202/682-1498 (ewagner@nabl.org).

Thank you in advance for your consideration of these comments with respect to this important development in the municipal securities industry.

Sincerely,

Carol L. Lew

Carol L. Lew

Enclosure

cc: Teri M. Guarnaccia
William L. Hirata
Andrew Kintzinger
John M. McNally
Jeffrey C. Nave
Walter J. St. Onge III
Fredric A. Weber

National Association of Bond Lawyers

COMMENTS
OF THE
NATIONAL ASSOCIATION OF BOND LAWYERS
REGARDING
MSRB NOTICE 2007-05

DRAFT RULE CHANGES TO ESTABLISH AN
ELECTRONIC ACCESS SYSTEM FOR OFFICIAL STATEMENTS

The following comments are submitted to the Municipal Securities Rulemaking Board ("MSRB") on behalf of the National Association of Bond Lawyers ("NABL"). The comments relate to the MSRB Notice 2007-05 — MSRB Seeks Comments on Draft Rule Changes to Establish an Electronic Access System for Official Statements, dated January 25, 2007 (the "Notice"). The comments were prepared by an *ad hoc* subcommittee of the NABL Securities Law and Disclosure Committee. The members of the *ad hoc* subcommittee (the "Subcommittee") are Teri M. Guarnaccia, William L. Hirata, Andrew Kintzinger, John M. McNally, Jeffrey C. Nave, Walter J. St. Onge III, and Fredric A. Weber.

NABL welcomes this opportunity to respond to the MSRB's continuing initiative to develop an electronic system for dissemination of municipal securities disclosure documents. Moreover, NABL expects that the proposed rule changes will benefit all market participants by simplifying the delivery of disclosure materials (including the submission of documents to the MSRB) and improving access to these disclosure materials.

The Notice poses several questions, some of which relate to the technology necessary to implement the proposed rule changes. NABL has no particular insight into the most desirable technical features of any new system adopted by the MSRB to implement the rules. As a result, the Subcommittee focused its comments on those particular questions as to which it believes it has relevant expertise. The headings shown below correspond to the MSRB's requests in the Notice.

Should the MSIL/Access system provide for voluntary submissions by underwriters of preliminary official statements ("POSs") to be made publicly accessible through the MSIL/Access portals?

Yes. In the Subcommittee's experience, the use of electronic POSs is widespread and has become the current industry standard with respect to publicly-offered municipal securities. The MSRB should permit underwriters and issuers to submit POSs to, and permit investors to access POSs from, the MSIL/Access system on a voluntary basis. The Subcommittee recognizes, however, that certain offerings are intentionally directed to a limited scope of investors (*e.g.*,

transactions under Regulation D promulgated under the Securities Act of 1933 or transactions involving conduit borrowers with proprietary or confidential information). For this reason, any submission of POSs allowed under Rule G-32 (or other appropriate rule) should be solely on a voluntary basis.

The Subcommittee believes that once the timeliness of a POS has ended, issuers and underwriters should be permitted to request that a POS be removed from the MSIL/Access system, as its continued availability may confuse investors.

In addition to POSs, the Subcommittee believes it would be helpful if Rule G-32 allowed for the voluntary submission of official statements ("OSs") for previously issued securities to the MSIL/Access system. The Subcommittee believes that developing a single point of access for current and historical disclosure information will be beneficial to the municipal market. That single point of access could be achieved through the MSIL/Access or an alternative service.

Should the URL included in the notice to customers be restricted to a specific MSIL/Access portal? Should such URL be for any of the MSIL/Access portals? Should dealers be permitted to identify a source other than a MSIL/Access portal?

To address the specific questions raised by the Notice, the Subcommittee believes that the notices delivered to customers should direct users to any source, including but not limited to a URL for a specific MSIL/Access portal, that (i) is either free or approved by the customer (so that advertising revenue or customer fees can subsidize information distribution costs), and (ii) maintains a record of posting. If sources other than (or in addition to) a MSIL/Access portal are authorized by Rule G-32, the MSRB should maintain oversight responsibilities to ensure that access to the source is reliable (both in the sense that the customer notice directs viewers to the appropriate document and the source remains accessible at all times).

The Subcommittee also believes that the MSIL/Access portal system and any other source used by dealers should allow potential investors to search for all POSs and OSs that have been submitted and are not otherwise restricted from viewing (as described below). Accordingly, the Subcommittee suggests that the MSRB adopt a system in which a single website is employed that would allow users to enter a CUSIP number and/or a search phrase to access available documents (each with its own URL) associated with such CUSIP number or search phrase.

Finally, to the extent a specific URL is used for each document submitted under Rule G-32, the Subcommittee believes that such URL should be catalogued by the MSRB for research purposes. In other words, once a document is made available through the MSIL/Access system, a link to the document should remain available for as long as the related bonds are outstanding. The system also should identify any subsequent supplements and amendments to filed documents.

What potential technical difficulties might result from requiring that the notice include a URL assigned to a specific OS, particularly in respect to assuring that the unique URL for each OS remains operative throughout the time such document remains publicly available?

The Subcommittee does not have specific comments regarding this question.

Would it be appropriate to limit the period of time during which the URL for a specific OS is required to be maintained unchanged, such that after such period the OS could be archived and be made accessible through an on-line search function at the MSIL/Access portal? If so, what would be the appropriate period of time (beyond the end of the new issue disclosure period) for maintaining such URLs unchanged prior to permitting OSs to be moved to an archival collection accessible through an on-line search function?

If the MSRB adopts a system in which a URL is used for each OS, then such URL should be maintained for *at least* the longest period of time that a "participating underwriter" is required to provide potential customers with a copy of the OS under Rule 15c2-12 of the Securities and Exchange Commission ("SEC"). The same time period should be adopted by analogy for those offerings that are outside the scope of Rule 15c2-12.

The Subcommittee suggests that a separate archive system for the MSIL/Access system is not necessary, and further suggests that the URL for a particular document be unchanged at least until the bonds associated with such document are no longer outstanding. Because all filed documents would "speak as of their date," the Subcommittee does not believe an archive component is necessary. If, however, the MSRB were to adopt a system of archiving documents submitted pursuant to Rule G-32, then the initial URL created for each document should be used for the entire period of time the document is available through the MSIL/Access system. We understand that a separate URL would be necessary if documents are archived to a different page on the MSIL/Access website (or to a different website).

Should an exclusion from the "access equals delivery" model for limited offerings be provided? If so, why would such an exclusion be appropriate?

An exclusion should be provided from any mandatory filing requirement, but not from voluntary filing by issuers and underwriters. While Rule G-32 in its current form applies to both private and public offerings (see footnote 68 in SEC Release 34-26985 (adopting Rule 15c2-12)), allowing an exclusion from "access equals delivery" model for limited offerings would be consistent with the SEC's rationale for incorporating exemptions in Rule 15c2-12: that given the manner and types of certain offerings to sophisticated investors, the specific delivery requirements of the Rule for such offerings are not necessary to prevent fraud or encourage dissemination of information to the market. Many offerings that are described by paragraph (d)(1)(i) of Rule 15c2-12 are made by means of limited primary offering disclosure that is targeted to sophisticated investors.

The Subcommittee recognizes that, by requiring a limited offering OS to be submitted under Rule G-32, a broker, dealer or municipal securities dealer might effectively be forced to make an otherwise limited offering document publicly available. The Subcommittee believes that such a dilemma can be resolved by(i) allowing such OSs to be filed electronically on a voluntary basis (giving the transaction participants the ability to determine whether the filing is appropriate to protect the confidential nature of the document); or (ii) if an exclusion for limited offerings is not provided, requiring that access to the OS be password restricted at the option of the party filing the document.

If an exclusion for limited offerings (with or without the ability of the underwriter to make an election to qualify for the "access equals delivery" model) should be provided, what provisions might be needed to ensure that customers are provided access to the OS?

The MSRB can address this concern with a modification to the record-keeping requirements of Rules G-8 and G-9.

What parameters are important in determining the suitability of an electronic format for documents accessible through the MSIL/Access system? Other than PDF, are any such formats currently in existence or under development?

NABL's comments regarding MSRB Notice 2006-19 (submitted on September 14, 2006) briefly describe why portable document format ("PDF") files are commonly used in the public finance industry. In keeping with these comments, the Subcommittee believes that PDF files should continue to be used until, and unless, a better electronic format for documents is developed. At a minimum, the parameters of such an electronic format should be as follows:

- the software needed to open and read such electronic documents files should be readily available to market participants (including individual investors), should be user-friendly, and should be available as a free download from the Internet;

- the format should protect the integrity of documents that are transmitted electronically (*i.e.*, documents should not be capable of being altered once they have been submitted); and

- consumers should be familiar with the format before it is adopted, as ease of use and familiarity by the investing public will aid in the use and acceptability of electronic documents.

What is the appropriate timeframe for requiring CUSIP information and initial offering prices, as well as notice that no OS or POS will be provided (if applicable), to be provided to the MSIL/Access system for public dissemination through the MSIL/Access portals?

The Subcommittee does not have specific comments regarding this question.

Is there any justification for retaining the "commercial paper" exclusion in the definition of "new issue municipal securities," given the modifications to the disclosure dissemination system that would be made?

Yes. The Subcommittee believes there is a limited number of potential purchasers of commercial paper in the municipal securities context, and that those purchasers are accredited investors whose relationship with the commercial paper issuer is similar to the relationship between a lender and a borrower. However, while the Subcommittee believes the "commercial paper' exclusion should be maintained in Rule G-32, the Subcommittee also believes that voluntary filing of OSs with the MSIL/Access system should be permitted.

Provide comments on the parameters and characteristics for proposed MSIL/Access portals that might be established by commercial entities to make available publicly the basic documents and information provided through the MSIL/Access system, together with such other documents, information and utilities (e.g., indicative data, transaction pricing data, secondary market information, analytic tools, etc.) as each such entities may determine.

The Subcommittee believes that, if a MSIL/Access portal is inconvenient to potential investors (*e.g.*, it is intermittently inaccessible, or users encounter delays when the access portal "loads" on the viewer's screen or information is downloaded), then it should not be qualified. The market should be able to enforce performance standards on its own.

What is the appropriate limited period of time beyond the end of the new issue disclosure period during which documents should remain publicly available through free MSIL/Access portals in order to ensure that new issue customers have had an adequate opportunity to access and retain copies of such documents?

As discussed above, the Subcommittee believes documents should be maintained on a free MSIL/Access portal for the longest period of time that a "participating underwriter" is required to provide potential customers with a copy of the OS under Rule 15c2-12 (or would have been required to provide such copies if Rule 15c2-12 applied to the offering).

The Subcommittee also believes that it would be helpful to the municipal securities marketplace to have free access portals where documents provided under Rule G-32 are publicly available until the date the securities being offered are no longer outstanding, whether due to maturity or redemption).

What are the merits of partially automating the Form G-37 process through information provided on Form G-32? Would the added burden of additional information submissions by underwriters under revised Rule G-32 be outweighed by the possible benefits realized in partially automating the Form G-37 process?

While certain members of NABL advise brokers, dealers and municipal securities dealers with respect to their compliance obligations under Rule G-37, the Subcommittee believes these questions are best addressed by those who are responsible for filing Form G-37.

SIFMA
Securities Industry and Financial Markets Association

March 16, 2007

Ernesto A. Lanza
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Re: MSRB Notice 2007-05: Draft Rule Changes to Establish an Electronic Access System for Official Statements

Dear Mr. Lanza:

The Securities Industry and Financial Markets Association ("Association")[1] appreciates this opportunity to respond to the notice ("Notice") issued by the Municipal Securities Rulemaking Board ("MSRB") on January 25, 2007 (Notice 2007-05) in which the MSRB requests comment on draft rule changes to apply the "access equals delivery" standard to official statement dissemination for new issue municipal securities. The proposed new electronic system, to be designated by the MSRB as the "MSIL/Access" system, would build on the MSRB's existing Municipal Securities Information Library ("MSIL") system to provide Internet-based access to official statements and certain other documents and related information. The Notice sets out the MSRB's proposals for consolidation of current MSRB Rules G-32 and G-36 into a single substantially revised Rule G-32. The Notice describes a potential framework for instituting "access equals delivery" standards for MSRB proposed Rule G-32, modeled, in part, on recent rule changes adopted by the Securities and Exchange Commission ("SEC") for prospectus dissemination in connection with the registered securities market.[2]

The Association supports the creation of MSIL/Access and the development of the "access equals delivery" standard for official statement delivery requirements. In our comment on the MSRB's Concept Release of July 27, 2006,[3] the Association stated that the key to success for implementation of a comparable system (to the SEC's system) for MSRB rules is that the proposal must meet the readily available, free of charge standard, that it

[1] The Association, or "SIFMA," brings together the shared interests of more than 650 securities firms, banks and asset managers. SIFMA's mission is to promote policies and practices that work to expand and perfect markets, foster the development of new products and services and create efficiencies for member firms, while preserving and enhancing the public's trust and confidence in the markets and the industry. SIFMA works to represent its members' interests locally and globally. It has offices in New York, Washington D.C., and London and its associated firm, the Asia Securities Industry and Financial Markets Association, is based in Hong Kong.

[2] Securities Act Release No. 8591 (July 19, 2005), 70 Fed. Reg. 44722 (August 3, 2005).

[3] MSRB Notice 2006-19 (July 27, 2006).

promotes efficiency in the market and that it meets criteria for "flow through" processing of information. The Association believes the Notice promotes these objectives and that the MSRB should continue the process of eventually achieving these goals. The following comments are in response to the requests for comments in the Notice.

1. The MSRB seeks comment on whether the MSIL/Access system should provide for voluntary submissions by underwriters of preliminary official statements to be made publicly accessible through the MSIL/Access portals.

The Association notes that the proposed rule changes require submission of preliminary official statements, if prepared, when the underwriter has not received the final official statement by closing. Accordingly, it will be necessary for MSIL/Access to be designed to accommodate receipt of preliminary official statements. We further note that this request for comment is in a paragraph of the Notice summarizing the importance of material disclosures by dealers to customers at the time of trade pursuant to the MSRB's interpretation of Rule G-17 on fair dealing. Unlike the corporate market for registered securities in which a final prospectus is prepared on the effective date, and more likely to be available through EDGAR at the time of trade, final official statements in the municipal market may not be prepared for several days after the sale date. This circumstance increases the importance of preliminary official statement disclosure at the point of sale as a means for providing customers with material information.

The Association believes that in an increasingly electronic environment, it would be beneficial to dealers if underwriters have the option to submit preliminary official statements to the MSIL/Access system. However, as in the traditional paper markets, it is important for customers to be aware of the availability of the final official statement as a replacement of the preliminary official statement. MSIL/Access should be designed to (i) provide a flag notation on the preliminary official statement giving notice of the availability of the final official statement, or (ii) create an auto email channel at MSIL/Access for the reader of the preliminary official statement to be automatically emailed when a final official statement and any amendments are submitted in connection with the issue on screen. Regardless of voluntary submissions of preliminary official statements, this feature should be included in the system as now proposed, which requires submission of a preliminary official statement in certain circumstances.

The preliminary official statement should not be deleted automatically when the final official statement is available online. In the paper environment, investors and analysts, who have read the preliminary official statement, will frequently compare the preliminary official statement with the final official statement to note any changes. The ability to compare is important because changes, by themselves, may be significant to the reader. If an

underwriter submits the preliminary official statement to MSIL/Access, it should remain available at the site until the end of the "new issue disclosure period."

Please note that the same issue of notification of the existence of updated information in MSIL/Access occurs if there is an amendment to the final official statement. In the paper market, the term "sticker," and the mailing of stickered final official statements to prior recipients of final official statements should be applied by MSIL/Access to provide a stickered official statement for an "access equals delivery" electronic environment. If there is a sticker, there should be an electronic means to attach it to the official statement, or to notify the online reader of the official statement that there is an amendment.

2. The MSRB seeks comment on potential technical difficulties that might result from requiring that the notice include a URL assigned to a specific official statement, particularly in respect to assuring that the unique URL for each official statement remains operative throughout the time such document remains publicly available.

The Association opposes the necessity to provide customer notice of a uniform resource locator (URL) assigned to a specific official statement. The proposed rule change would require a dealer, who is subject to the final official statement delivery requirement, to provide the customer (no later than two business days following settlement) a copy of the final official statement or a notice to the effect that the final official statement is available from the MSIL/Access system (a copy available upon request), "which notice shall include the uniform resource locator (URL) where the official statement may be obtained."

The proposed rule change is based on SEC Rule 173 for registered offerings, which requires delivering "not later than two business days following the completion of such sale, a copy of the final prospectus or, in lieu of such prospectus, a notice to the effect that the sale was made pursuant to a registration statement. . ." There is no requirement for a URL to a specific location for the prospectus. Reference to the registration system alerts the recipient of the notice that the final prospectus is available on EDGAR. The customer will have received sufficient notice of the details of the issue in the confirmation, or otherwise, to access user-friendly EDGAR for the final prospectus without relying on a URL.

Requiring a specific URL forces dealers into yet another mailing of specific information, and the dealer would have to receive the URL from the managing underwriter to be able to send it to a customer. The primary means for communicating details of a transaction is the confirmation, and the confirmation should contain a generic statement that the final official statement will be available on MSIL/Access, comparably to corporate confirmation references to the registration statement. The confirmation will contain more than enough details (including CUSIP numbers) to access the final official statement on

MSIL/Access, if MSIL/Access is user-friendly, and MSIL/Access must be user-friendly if official statements are to be available to the public generally and not limited to customers with a URL. In addition, if a customer is dependent on a URL received after settlement to access the final official statement, the time will have passed for the customer to make informed decisions. MSIL/Access should be structured so that final official statements are readily accessible immediately upon availability in a user-friendly environment.

Any requirement to identify a URL for each new issue municipal security creates serious technological problems and the likelihood that manual intervention will be required. The technological problems associated with providing a URL inevitably will lead to delays and will require major system changes to implement. The Association recommends a short, generic, plain English statement comparable to the corporate reference to a "registration statement." The location of the generic language requires further consideration by people involved in systems operations, including spacing determinations to allow reference to the availability of a paper copy of the official statement. After considerable discussion with Association members involved in technology and operations, the Association strongly recommends that the MSRB appoint a task force of industry experts on technology and operations to work with the MSRB to resolve these issues.

3. The MSRB seeks comment on whether it is appropriate to limit the period of time during which the URL for a specific official statement is required to be maintained unchanged, such that after such period the official statement could be archived and be made accessible through an on-line search function at the MSIL/Access portal. What would be the appropriate period of time (beyond the end of the new issue disclosure period) for maintaining such URLs unchanged prior to permitting official statements to be moved to an archival collection accessible through an on-line search function?

As discussed immediately above, we believe there should not be a specific URL, and the question is, therefore, the time period for the "access equals delivery" presumption to be in effect. Both current Rule G-32 and proposed Rule G-32 have a requirement that dealers deliver to customers no later than the settlement date an official statement in connection with new issue municipal securities sold during the new issue disclosure period, which (by reason of the MSRB adding a bright line) ends 25 days after the closing. Since the official statement delivery requirement is in effect during this period, an "access equals delivery" notice should coincide with the new issue disclosure period. After the 25 days subsequent to closing, there is no document dissemination requirement, and MSIL/Access should transfer the official statement to its readily accessible archives.

For municipal securities settled after the 25 day period subsequent to closing, the dealer's obligation to provide information to customers continues to be subject to general antifraud and fair dealing rules, but does not include a requirement to deliver a specific document. As under current law, the decision to deliver or not deliver an official statement after the new issue disclosure period is a matter for the dealer to decide in light of the dealer's securities law obligations. If a dealer determines it appropriate to deliver an official statement, one, two or more years after closing because of the useful information it includes, the dealer should be able to refer the customer to the MSIL/Access archive.

4. The MSRB seeks comment on whether the URL included in the notice to customers should be restricted to a specific MSIL/Access portal or could be for any of the MSIL/Access portals, or whether dealers should be permitted to identify a source other than a MSIL/Access portal.

The Association repeats its statement that the notice to customers should not be required to include a URL. The Association does appreciate the MSRB's willingness to accommodate additional portals for access to official statements. The system should be designed to efficiently transmit official statements to market participants who are providing secondary market information in furtherance of the goal of giving investors, and others, the option to have a single location for reviewing primary and secondary market information. If a dealer decides to add information to the customer notice identifying portals other than MSIL/Access, it should be able to do so in plain English.

5. The MSRB seeks comment on whether an exclusion for limited offerings (with or without the ability of the underwriter to make an election to qualify for the "access equals delivery" model) should be provided.

The Association is aware that there are different points of view on the advisability of requiring submission of an official statement to MSIL/Access for limited offerings within the meaning of SEC Rule 15c2-12. Under current law, "private placements" that meet the requirements for a "limited offering" under Rule 15c2-12 ($100,000 denominations and 35 or fewer purchasers, as these limitations are used to identify those investors that are qualified and able to judge the merits and risks of investing in such an issue) are exempt from the official statement review and continuing disclosure agreement provisions of Rule 15c2-12. Current Rule G-32 provides that if an official statement is prepared in connection with a limited offering, it is to be delivered to the customer, but under current Rule G-36 there is no requirement to submit official statements to the MSRB MSIL site if the securities are exempt under Rule 15c2-12.

The case for requiring submission to MSIL/Access of an official statement voluntarily prepared for a limited offering includes the ability to utilize "access equals delivery" for the delivery component of the proposed combined Rules G-32 and G-36. In addition, there may be trading in such securities, or research related to such securities, that suggests it would be useful for information to be available at MSIL/Access. On the other hand, issuers of, and investors in, private placements may reasonably believe such information should not be in the public domain because there is no public offering. The effect of requiring submission of an offering document to MSIL/Access may be counterproductive by encouraging a decision not to prepare any offering document, as permitted by Rule 15c2-12. In that circumstance, investors would be denied the benefit of written disclosure.

The Association believes the proposed new Rule G-32 should allow voluntary submission of an offering document (prepared for a Rule 15c2-12 exempt limited offering) to MSIL/Access to have the benefit of "access equals delivery" and to submit the document to the public domain if that is desirable. We recognize that a voluntary submission to MSIL/Access will not negate the obligation to deliver an official statement to customers, if an official statement is prepared, and the language of current Rule G-32 for limited offerings, modified as necessary, should be retained for this purpose.

6. MSRB seeks further comments from the industry on what parameters are important in determining the suitability of an electronic format for document accessible through the MSIL/Access system and whether any such formats, other than PDF, currently exist or are in development.

The Association recognizes that the proposed rule will require underwriters to convert paper official statements to electronic official statements if the issuer fails to provide an electronic version. We agree with the MSRB that the industry is rapidly converting to electronic dissemination, and any burden on underwriters is insufficient to outweigh the benefits of the near real time transmission of information under an "access equals delivery" system. The Association also agrees that the proposed definition of "designated electronic format" in the Notice provides flexibility to allow changes from PDF to newer formats by revisions to the Form G-32 Manual rather than requiring a cumbersome rule change.

The Association does recommend that the PDF screen viewed by the reader provide free download of Adobe Acrobat software.

7. The MSRB seeks comments on whether [the time Rule G-34 requires CUSIP information to be disseminated] would be the appropriate timeframe for requiring CUSIP information and initial offering prices, as well as notice that no

OS or POS will be provided (if applicable), to be provided to the MSIL/Access system for public dissemination through the MSIL/Access portals.

Existing Rule G-32 requires that no later than the settlement of the transaction, the dealer provides a customer, in a negotiated sale of new issue municipal securities, the initial offering price for each maturity. The Notice indicates that requirements for delivery of this information will be moved to a new Rule G-34, and the timing for delivery of this information is proposed to be the time CUSIP numbers are to be disseminated shortly after the time of sale, and by the time of first execution of a transaction in virtually all new issues.

Under existing Rule G-32, this information is normally provided customers by the delivery of the final official statement. Since lawyers and others preparing final official statements will be likely to continue viewing the initial offering price as material information, it is likely that final official statements will continue to include the initial public offering price. Accordingly, the proposed rule change would not affect the final official statement, but would require underwriters to announce the initial public offering price when CUSIPs are announced pursuant to Rule G-34.

Any new requirements for dealers or underwriters to transmit more information at an earlier stage should be evaluated by efficiency criteria in light of advances in straight through processing capabilities. Before the MSRB finalizes prospective rule changes to Rule G-34, there should be an analysis of the DTCC New Information Dissemination Service (and any other straight through processing developments) to determine whether the information entering that system is adequate to cover the issues raised by the MSRB without unnecessary duplication. Again, early dissemination of initial offering prices requires significant changes to systems' technology, and the Association urges the MSRB to discuss the technical problems with a task force of industry experts on technology and operations.

8. "New issue municipal securities" would no longer exclude commercial paper. The MSRB seeks comment on whether there is any justification for retaining this exclusion, given the modifications to the disclosure dissemination system that would be made.

The Association recognizes that an "access equals delivery" system reduces the necessity for the commercial paper exception in the definition of "new issue municipal securities" currently in Rule G-32. The exception was inserted into the current rule to avoid an official statement delivery obligation each time commercial paper is rolled over. Under an "access equals delivery" system the official statement on file will be deemed delivered at the time of each rollover.

There are several practical issues that may be raised when a commercial paper disclosure document is considered in the context of MSIL/Access. First, the application of the definition of "new issue disclosure period" requires consideration of the time at which the disclosure document is to be transferred to the archives. Assuming a rollover occurs more than 25 days after the closing on a prior rollover, a new "new issue disclosure period" will commence. The Association believes the disclosure document can remain in the MSIL/Access archives without being moved from the current offerings screen to the archives at the time of each rollover. Nor need it remain on the current offerings screen for the life of the program. This conclusion is based on our expectation that the archives will be readily accessible. We believe it is preferable for the disclosure document to be located in the archives rather than the current screen to avoid an assumption that it has been revised for each rollover. Second, the Association views a commercial paper program as an illustration of the preferability of not having a URL to a disclosure document. The commercial paper dealer will be able to manage customer references to the original disclosure and periodic amendments during the life of the program by plain English statements without a URL being connected to part of the disclosure without drawing attention to the various components of disclosure. The proposed new Rule G-32 would require a notice to customers at the time of each rollover to the effect that an official statement is available from the MSIL/Access system. A plain English statement referencing both the original disclosure and any amendments will provide a clearer explanation than a URL with additional references to amendments. Third, if there is to be access to primary market disclosure information by inputting CUSIP numbers, there needs to be consideration of CUSIP number splits after rollovers and whether entering a CUSIP number will efficiently result in access to the proper disclosure document.[4] Again, it is important that MSIL/Access be user friendly and able to accommodate access in plain English as well as by any specific identifiers.

9. The MSRB seeks comment on the merits of partially automating the Form G-37 process through information provided on Form G-32. In particular, would the added burden of additional information submissions by underwriters under revised Rule G-32 be outweighed by the possible benefits realized in partially automating the Form G-32 process?

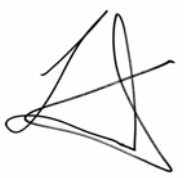
The Association appreciates consideration of possible efficiencies in automatically prompting quarterly reports to be filed pursuant to Rule G-37 with the municipal securities business items referred to in Form G-32. However, persons responsible for preparing Form G-37 have advised us that there are internal means for tracking municipal securities business, and having a second routing source from Form G-32 would simply add to Form G-37 preparation the necessity to compare and verify information received from the MSRB from Form G-32. For example, Form G-32 would require underwriters to list syndicate

[4] It should also be noted that similar issues may arise with partially pre-refunded securities where new CUSIP numbers are assigned.

members, and, therefore at the time a dealer prepares Form G-37, the dealer would be required to determine whether managing underwriters have properly characterized them as syndicate members. Moreover, the list of transactions required to be provided for the quarterly Form G-37 duplicates information already provided to the MSRB pursuant to Rule G-36 (or proposed Rule G-32). Compiling the G-37 transaction list is very time consuming for dealers. Rather than seeking to integrate the Form G-37 and G-32 processes, which would provide scant benefit to dealers due to disparate internal systems requirements, we suggest that municipal securities business disclosed on Form G-37 be limited to all jurisdictions in which a reportable contribution has been made. The Association, therefore, recommends that the MSRB not include a G-32/G-37 interface at this time.

We appreciate the opportunity to comment on this rulemaking. If you have any questions concerning these comments, or would like to discuss these comments further, please feel free to contact the undersigned at 646.637.9230 or via email at lnorwood@sifma.org.

Respectfully submitted,



Leslie M. Norwood
Vice President and
Assistant General Counsel

cc: Mr. Christopher Taylor, Municipal Securities Rulemaking Board
Diane Klinke, Esq., Municipal Securities Rulemaking Board
Hal Johnson, Esq., Municipal Securities Rulemaking Board

Securities Industry and Financial Markets Association
Municipal Executive Committee
Municipal Policy Committee
Municipal Legal Advisory Committee
Municipal Credit Research, Strategy & Analysis Committee
Municipal Operations Committee
Municipal Syndicate & Trading Committee
Municipal Brokers' Brokers Committee

MSRB Notice 2006-19
(July 27, 2006)

MSRB Seeks Comments on Application of "Access Equals Delivery" Standard to Official Statement Dissemination for New Issue Municipal Securities

The Municipal Securities Rulemaking Board (the "MSRB") is seeking comment on the implementation of an electronic system of primary market disclosure in the municipal securities market. This new system would be designed to promote significantly more effective and efficient delivery of material information to new issue customers and the marketplace in general than under existing requirements for physical delivery of official statements. The system would be modeled in part on recent rule changes adopted by the Securities and Exchange Commission (the "SEC") that instituted an "access equals delivery" model for prospectus dissemination for much of the registered securities market.[1] However, as a result of the unique nature of the municipal securities market, including but not limited to the exemption of issuers from the registration and prospectus requirements of the Securities Act of 1933 (the "Securities Act") and the Securities Exchange Act of 1934 (the "Exchange Act"), the MSRB believes that modifications to the SEC approach would be necessary.

This notice describes a potential framework for instituting the "access equals delivery" standard under MSRB rules and poses a number of questions related to its implementation. Comments are welcome from all interested parties on the proposed framework and related questions, any alternatives to this framework, and any other issues touching on the application of this standard to the municipal securities market, including the potential impact of this standard on investors and issuers, as well as on brokers, dealers and municipal securities ("dealers").

BACKGROUND

SEC's "Access Equals Delivery" Standard for Prospectuses in Registered Offerings. In the registered securities market, issuers are required to file registration statements and prospectuses electronically through the SEC's EDGAR (Electronic Data Gathering, Analysis, and Retrieval) system prior to an offering. The EDGAR system then makes electronic versions of filings available to the public at no charge on a "real-time" basis through the SEC's website. As a result, prospectuses are available free of charge at a centralized site (as well as through other information services, in some cases for a fee) throughout the selling process. The "access equals delivery" standard is premised on, among other things, this immediate availability of prospectuses and other filings through the EDGAR system and other electronic sources.

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1 *See* Securities Act Release No. 8591 (July 19, 2005), 70 FR 44722 (August 3, 2005) (the "SEC Release").

The "access equals delivery" standard provides, pursuant to Securities Act Rule 172, that a broker-dealer selling a security in a registered offering need not deliver a final prospectus to the customer if the registration statement is effective and the final prospectus is filed with the SEC (or a good faith and reasonable effort to file it is made) within the required timeframe. Under Securities Act Rule 173, a broker-dealer selling such a security must provide to the customer a notice that the security was sold in a registered offering within two business days after completion of the sale. Customers may request printed copies of the final prospectus. The "access equals delivery" standard also applies to aftermarket trades of newly issued securities pursuant to Securities Act Rule 174. This standard is not available to certain classes of registered securities, including but not limited to mutual fund shares.[2]

Official Statement Deliveries Under Current MSRB Rules. Under Rule G-32, a dealer selling a new issue municipal security to a customer during the period ending 25 days after bond closing (the "new issue disclosure period") must deliver the official statement to the customer on or prior to trade settlement.[3] The rule includes inter-dealer delivery requirements for new issue municipal securities to assist selling dealers to meet their customer delivery obligations.[4]

Rule G-36 requires underwriters to submit official statements to the MSRB. For offerings subject to Exchange Act Rule 15c2-12, the official statement must be sent within one business day after receipt from the issuer but no later than ten business days after the bond sale.[5] With limited exceptions, official statements for all other offerings must be sent by the later of one business day after receipt from the issuer or one business day after bond closing. Submitted official statements must be accompanied by completed Form G-36(OS). Official statements may be submitted in either paper or electronic format. These submissions are collected into a comprehensive library for the municipal securities market. The MSRB makes these documents available to subscribers, many of whom disseminate them (typically for a fee) or use them to

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2 *See* Section VI (Prospectus Delivery Reforms) of the SEC Release for a detailed description of the SEC rules implementing the "access equals delivery" standard.

3 Rule G-32 provides limited exceptions to this delivery requirement. The dealer also must provide certain additional information about the underwriting (including initial offering prices) if the issue was purchased by the underwriter in a negotiated sale.

4 Selling dealers and the managing underwriter must send official statements to purchasing dealers promptly upon request. Dealer financial advisors that prepare the official statement must provide such official statement to the managing underwriter promptly.

5 Rule 15c2-12(b)(3) requires an underwriter in an offering subject to the rule to contract with the issuer to receive the official statement within seven business days after the bond sale and in sufficient time to accompany money confirmations sent to customers.

obtain security-specific information to include in their data files used by dealers, investors, pricing services and others for their trading or other municipal securities market activities.

A MODEL FOR IMPLEMENTATION OF "ACCESS EQUALS DELIVERY" IN THE MUNICIPAL SECURITIES MARKET

The MSRB believes that the adoption of a modified version of the SEC's "access equals delivery" standard would greatly enhance the timeliness and efficiency of official statement deliveries. Such a model would provide the investing public with assured access to official statements throughout the new issue disclosure period and, in most cases, sooner than under the current physical delivery model. In addition, the "access equals delivery" model would significantly decrease the burden and expense of dealer deliveries of official statements, which should ultimately result in reduced transaction costs for new issue customers. The need to print significantly fewer official statements also should reduce issuance costs for issuers.

The SEC noted the significant benefits that the "access equals delivery" model would provide in the registered market, stating in the SEC Release that the rules:

> are intended to facilitate effective access to information, while taking into account advancements in technology and the practicalities of the offering process. These changes are intended to alleviate timing difficulties that may arise under the current securities clearance and settlement system, and also to facilitate the successful delivery of, and payment for, securities in a registered offering.… [G]iven that the final prospectus delivery obligations generally affect investors only after they have made their purchase commitments and that investors and the market have access to the final prospectus upon its filing, we believe that delivery obligation should be able to be satisfied through a means other than physical delivery…. At this time, we believe that Internet usage has increased sufficiently to allow us to adopt a final prospectus delivery model for issuers and their intermediaries that relies on timely access to filed information and documents.[6]

The MSRB believes that these considerations are equally applicable to the municipal securities market.

In order to apply the "access equals delivery" standard to the municipal securities market in an effective manner, however, two critical factors would need to be addressed. First, electronic versions of official statements would need to become the industry standard. Second, such electronic versions would need to be made easily and freely available to the investing public. These factors, as well as possible MSRB rule changes needed to implement an "access equals delivery" standard, are discussed below.

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6 *See* SEC Release at VI.B.

Electronic Official Statements. The MSRB currently receives approximately half of all official statement submissions under Rule G-36 in electronic format. These electronic official statements are available nearly instantaneously for further re-dissemination after the underwriter has made the submission. In contrast, official statements submitted in paper form experience significant delays before they can ultimately be re-disseminated by the MSRB, including but not limited to the added delivery time for physical documents to be delivered from the underwriter to the MSRB and the processing time for the MSRB to scan the printed documents into digital form. The MSRB believes that it is in the best interest of municipal securities investors and other participants in this marketplace to eliminate such delays and to require that all submissions under Rule G-36 be undertaken in electronic format by underwriters.

The MSRB believes that the availability of electronic official statements for delivery to the MSRB will continue to grow rapidly from the current level of approximately 50% through the natural evolution of the marketplace. Indeed, it is likely that few if any official statements are currently produced by means other than the creation of electronic files. The MSRB cannot, of course, require issuers to produce official statements in electronic format. However, the MSRB believes that, by the time an "access equals delivery" model were to be fully implemented, the level of offerings in the municipal securities market for which electronic official statements are not already being produced by the issuer will have decreased to such a low point that it would be reasonable for the MSRB to require underwriters for such offerings to themselves image or otherwise digitize those few paper-only official statements prior to submission to the MSRB. In the MSRB's view, the frequency of such imaging would be quite low, the ease of such imaging will have increased, and the potential benefit to the municipal securities market will be sufficiently high to counterbalance this rather low burden imposed by such a requirement.

The MSRB seeks comment on the current availability of electronic official statements from issuers and the factors affecting future growth in such availability. The MSRB also seeks comment on the nature and level of potential burdens of requiring that all submissions under Rule G-36 be undertaken in electronic format. Further, the MSRB currently requires that electronic official statement submissions be made solely as portable document format (pdf) files. The MSRB requests comment on the advisability of accepting other electronic formats, what such other formats should be and whether such other formats create inappropriate risks for or burdens on issuers, dealers or investors.

Centralized Access to Electronic Official Statements. Electronic official statements would need to be made readily available to the investing public, at no cost, for the duration of the applicable new issue disclosure period, at a minimum. The MSRB believes that investors would be best served if such official statements were made available at a centralized Internet website, although other parties could of course make all or portions of such collection available at other websites or through other means as well. In the alternative, a central directory of such official statements could be maintained, with the actual hosting of the electronic official statement occurring by multiple parties (such as issuers, financial advisors, underwriters, information vendors, printers, etc.) that have undertaken to maintain free ready access to such documents throughout the new issue disclosure period. However, the MSRB observes that this second

alternative would provide fewer assurances that electronic access to the official statements will in fact be maintained in a uniform manner for the required duration and likely would require third-party monitoring of these decentralized sources.

The MSRB seeks comment on whether a centralized website where all official statements for issues in their new issue disclosure period are freely available to the public would be preferable to a decentralized system in which issuers, financial advisors, underwriters, information vendors, printers and others post their respective official statements for the required period, with a central index providing hyperlinks to the official statements. Should the MSRB itself undertake either centralizing function, or are there other market participants or vendors who could undertake such duties subject to appropriate supervision? The MSRB also seeks comment on whether the current new issue disclosure period ending 25 days after the bond closing would be the appropriate period for purposes of maintaining free centralized access to official statements, or whether a longer period would be more appropriate.

Potential MSRB Rule Changes to Implement the "Access Equals Delivery" Model. Under an "access equals delivery" model for the municipal securities market, Rule G-32 would be revised, eliminating the current prohibition on settling a customer transaction in new issue municipal securities if the customer has not physically received an official statement.[7] Instead, Rule G-32 would require that a selling dealer provide notice to the customer that the official statement is available electronically.[8] The selling dealer would be required to provide a printed version of the official statement upon request. The current requirements of Rule G-32 regarding disclosure to customers of initial offering prices for negotiated sales would be deleted, such information to be provided to the entire marketplace at an earlier time under revised Rule G-36, as described below. In addition, the requirements in current Rule G-32 with respect to inter-dealer distribution of official statements would be deleted as the official statements would be readily available electronically. Finally, dealer financial advisors that prepare official statements on behalf of issuers would be required to provide electronic versions to the underwriters.

Rule G-36 also would be revised. The rule would require underwriters of all primary offerings of municipal securities for which official statements are prepared to submit the official statements electronically to the MSRB under Rule G-36 (*i.e.*, paper submissions would no longer

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[7] This would parallel the provision under Securities Act Rule 172 for registered offerings and under Securities Act Rule 174 for aftermarket trades in newly issued securities. The MSRB emphasizes that Rule G-17 would continue to require that dealers disclose to customers, at or prior to the time of trade, all material facts about the transaction known by the dealer, as well as material facts about the security that are reasonably accessible to the market. *See* Rule G-17 Interpretation – Interpretive Notice Regarding Rule G-17, on Disclosure of Material Facts, March 20, 2002, *reprinted in* MSRB Rule Book.

[8] This notice requirement would parallel the requirement under Securities Act Rule 173 for registered offerings.

be permitted). The timeframe for submission of official statements under Rule G-36 could be simplified to require the underwriter to submit the official statement for any offering (regardless of its status under Exchange Act Rule 15c2-12) by no later than the business day following receipt from the issuer, but in no event later than the bond closing date.

Rule G-36 would continue to require underwriters to submit much of the information currently included on Form G-36(OS) but would no longer require that such information be provided simultaneously with the official statement or in a single submission. Such information submission would be accepted solely in electronic form, either through a web-based interface or by upload or data stream using extensible markup language (xml) or other appropriate format. In addition, underwriters would be permitted to designate submission agents (such as information vendors, printers, etc.) for both the official statement and required information submissions, although the underwriters would remain responsible for accurate and timely submissions. The underwriter would be required to make an initial submission of information, consisting of CUSIP numbers and list offering prices of all maturities in the issue, on or prior to the first execution of a transaction in such issue.[9] The underwriter would thereafter submit further required information and the electronic official statement as they become available. Information submissions under Rule G-36 would be required for all new issues, even if no official statement is being produced. If an official statement is not being produced, the underwriter would be required to report that fact.

The MSRB seeks comment on whether the "access equals delivery" model should be available on all new issues or whether certain classes of new issues should continue to be subject to a physical delivery requirement. For example, the SEC did not make the "access equals delivery" model available for mutual fund sales. Should this model be made available in connection with the sale of municipal fund securities, including interests in 529 college savings plans?[10] Should issues exempt from Exchange Act Rule 15c2-12 be treated differently from

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[9] Underwriters are already required to disseminate CUSIP information within this same timeframe under current Rule G-34 for virtually all new issues. The list offering price information disclosure under revised Rule G-36 would take the place of such disclosure to customers under current Rule G-32.

[10] The SEC had noted in the SEC Release that mutual funds are subject to a different disclosure regime than are other registered securities and that it would consider the issue of electronic delivery of mutual fund prospectuses in the context of a broader review of mutual fund disclosure practices. The MSRB observes that, in contrast, 529 college savings plans and other municipal fund securities are subject to the same disclosure regime under MSRB rules as are other municipal securities, although the fact that the assets held in connection with most municipal fund securities are invested in registered mutual funds could potentially have an impact on whether the "access equals delivery" model should be applied to offerings of municipal fund securities. The MSRB seeks comment on this issue.

those that are subject to that rule? What responsibility should dealers have to confirm that an issue qualifies for the "access equals delivery" standard? Should dealers be able to assume that an electronic official statement is available for a qualifying issue without inquiry, or should there be a duty to inquire (*e.g.*, check the central website or index)? MSRB Rule G-32 currently requires dealers to deliver official statements to customers by trade settlement, whereas Securities Act Rule 173 merely requires that notice of a registered offering must be provide to the customer within two business days of trade settlement. Would it be appropriate to set a two-day post-settlement deadline for delivering notices to customers that matches the SEC's notice requirement for registered offerings?

Under Rule G-36, the MSRB is seeking comment on whether a single ultimate deadline for all issues, requiring that official statements be submitted to the MSRB by no later than the bond closing, is appropriate. In particular, is there any legitimate basis for an official statement not to be available to the underwriter by the bond closing date? If so, would it be appropriate for the MSRB to provide an alternative for those offerings where an official statement may not be available in time, such as to require the submission of a preliminary official statement (if one exists) by settlement pending the availability from the issuer and the submission to the MSRB of the final official statement? Does the current requirement under Rule G-36 that official statements for offerings subject to Exchange Act Rule 15c2-12 must be submitted to the MSRB no later than 10 business days after the bond sale influence the timing of issuer deliveries of official statements to the underwriters?[11] If so, would changing the deadline to the bond closing date have an impact on the timing of such deliveries? Finally, where a dealer financial advisor prepares the official statement, should such financial advisor be required to submit the official statement directly to the MSRB on behalf of the underwriter?

*** * * * ***

Comments should be submitted no later than September 15, 2006, and may be directed to Ernesto A. Lanza, Senior Associate General Counsel. Written comments will be available for public inspection.

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[11] As stated in footnote 5, Rule 15c2-12 obligates underwriters to contract with issuers to receive official statements by no later than seven business days after the bond sale, which is three business days prior to the deadline in Rule G-36.

List of Comment Letters on MSRB Notice 2006-19 (July 27, 2006) relating to preliminary official statement submissions

1. American Governmental Financial Services Company: Letter from Robert W. Doty, President, dated September 15, 2006
2. TRB Associates: Letter from Ruth D. Brod, Consultant, dated September 14, 2006
3. UMB Bank, N.A.: Letter from James C. Thompson, Divisional Executive Vice President, Investment Banking Division, dated September 14, 2006
4. Zions Bank Public Finance: E-mail from Eric Pehrson, Vice President, dated September 8, 2006

American Governmental Financial Services Company

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A Private Company

Robert W. Doty, CIPFA, President
Certified Independent
Public Finance Advisor

September 15, 2006

Ernesto A. Lanza, Esq.
Senior Associate General Counsel
Municipal Securities Rulemaking Board
1900 Duke Street, Suite 600
Alexandria, VA 22314

Re: MSRB Notice 2006-19 (July 26, 2006)

Dear Mr. Lanza:

I am submitting these comments in response to the Municipal Securities Rulemaking Board's request regarding the "access equals delivery" concept, and appreciate the opportunity to do so.

The "access equals delivery" concept embodied in MSRB Notice 2006-19 (July 26, 2006) has the potential to facilitate more rapid delivery of official statements in accordance with current municipal securities market practices in many offerings. Aside from benefits for dealers, this can be very useful for investors who will be able to receive documents earlier in the offering process, and it can reduce issuer printing costs.

It is important, however, that the proposal make provision to prevent abuses that may occur due to important differences between the corporate securities market and the municipal securities market. Such abuses could damage this helpful idea.

Electronic delivery is used widely in the municipal securities market for institutional investors and technological knowledgeable individual investors. Proportionately, there are many more elderly individual investors in the municipal securities market than in other markets due to their goal of protecting retirement income from taxation. Those and other less sophisticated investors may not be technologically savvy.

While the vast majority of municipal securities offerings have low risk, there is a small universe of less credit-worthy offerings—nonrated and noninsured and usually dependent in large part upon the success of private parties—that are brought into the market. Some investors, especially (but not solely) elderly ones, confuse the risks in these offerings with the general safety of municipal securities, at times in the context of s

pitches. Those transactions, which institutions may shun, are sold with especially high yields to individuals, not infrequently elderly retired persons. Putting aside obvious suitability issues, it is important that these investors have actual, not theoretical access to disclosure documents.

In many offerings in the corporate securities market, electronic access to final prospectuses is equated with delivery. That principle also can be useful in the municipal securities market, so long as investors either receive paper preliminary official statements or actually consent in a meaningful manner, either in writing or in electronic form, to electronic delivery of preliminary official statements. This assumes, of course, that final official statements are, in fact, materially identical to the preliminary documents, except for information based upon the pricing process.

Given this context, I perceive two ways in which the "access equals delivery" concept could be abused in the troublesome offerings by those market participants who are inclined to do so. First, keeping in mind that SEC Rule 15c2-12 does not require that issuers prepare preliminary official statements (only that dealers deliver them to investors if they are prepared, and even then, only if the investors request the documents), once offering participants realize that there is a cost savings from not printing final official statements, they could easily simply decline to prepare any preliminary official statements at all. That would save on all printing costs. This practice is not possible in the corporate securities market where preliminary prospectuses are required, but is not infeasible in troublesome offerings in which elderly and other less sophisticated individual investors may place a high degree of reliance upon statements of brokers.

Second, in the municipal securities market, the SEC has not adopted regulations requiring recirculation of preliminary official statements in the event that material changes occur between the preliminary and final versions of official statements. Most offering participants now identify the material changes in some form in the final official statements. If, however an individual investor has received a preliminary official statement and is not technologically skilled, the investor may not obtain a final version of the document and may never know of the material changes, placing reliance solely upon the preliminary official statement.

Consequently, I suggest that consideration be given to permitting application of the "access equals delivery" concept only in transactions in which investors have had actual access to preliminary official statements, either by receiving paper copies or by actually consenting in an appropriate form to electronic delivery of those preliminary documents. Further, I suggest that there be a requirement for recirculation in the event of material changes between preliminary and final official statements.

Thank you for this opportunity to comments on this important concept.

Yours very truly,

Robert W. Doty

Cc: Martha Mahon Haines, Esq.
Director, Office of Municipal Securities
Securities and Exchange Commission
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RUTH D. BROD

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September 14, 2006

Ernesto A. Lanza
Senior Associate General Counsel
MSRB
1900 Duke Street Suite 600
Alexandria, VA 22314

Re: MSRB Notice 2006-19 (July 27, 2006)

Dear Mr. Lanza:

I am responding to your request for comment regarding "access equals delivery". I have been involved in the municipal marketplace as a corporate portfolio manager, an issuer for a large urban school district, and a retail investor in municipal securities. As such, I am very interested in your attempts to streamline the process of disclosure for all concerned.

Attached are my comments as requested by the above mentioned MSRB notice.

If you have any questions regarding my comments, I would be happy to discuss them. You can reach me at the above phone number or email.

I appreciate the work that you are doing with regard to full and timely disclosure.

Sincerely,

Ruth D. Brod

Ruth D. Brod
Consultant
TRB Associates

Attachment

MSRB Review of 'Access Equals Delivery'

MSRB Notice 2006-19 (July 27, 2006)

As a financial professional with experience in corporate portfolio management, municipal bond issuance for a large urban school district, and municipal bond investor on a personal level, I have reviewed the MSRB Notice 2006-19 regarding information gathering and dissemination regarding municipal bonds.

I applaud the MSRB for seeking a uniform method of insuring delivery of information to new purchasers in a timely manner while at the same time, not increasing the burden on issuers. However, in the current proposal, it is unclear that any improvement would be made in what is most important: the availability of current information on all municipal bonds on an ongoing basis. Three areas that it does not support are:

- the ability to access all information including ongoing disclosure for the life of the bond for all investors,
- reduction of the cost of physical delivery to the issuer, and
- minimizing risk to investors of municipal bonds.

"Access equals Delivery"

As I understand it, a filing to the EDGAR system includes a standard formatted information block that can be uploaded into a data base system, from which it can be available to the public as is, or sorted, analyzed, reviewed and compiled with other filings as needed by the SEC or the investing public. The proposed change of requiring that the prospectus be delivered in PDF or similar form is appropriate for file retention, minimizing storage space, and printing or emailing if requested. Your proposal does not deal with the main goal of retrieval of information, and the ability to analyze and compare each municipal bond to others in the market place.

A cover sheet, designed to transfer primary information on each bond, including issuer, CUSIP numbers, security, maturity dates, ratings, callability, etc., is really what is needed to accomplish the goal of 'access' to the SEC and investing public.

Additionally, investors should have access to every disclosure filing by CUSIP number for the life of the bond. Bonds are bought and sold many times over before they mature. Each sale is supposed to be preceded by the investor reviewing the prospectus and understanding the associated risk. A link should be established for every bond by CUSIP number to give access to the Continuing Disclosure and Material Adverse Changes required to be filed with NRMSIRS and the MSRB to make current information available to each investor who holds or wishes to purchase the bond. This is especially important for corporate holders who must report their risk factors to a Board of Directors and stockholders, annually.

Cost of Printing/Posting

In preparing a preliminary official statement (POS) or official statement (OS), issuers and their lawyers and/or financial advisors collect information, describe the bond and projects funded, etc., insert insurance and rating information, include demographics, and much more. All of this is edited many times before an approved document goes to print. This information is submitted in parts to the printer who puts it all together into one document, formats it, and submits it in PDF form to the bond team for final review. The printer then works with the issuer to perfect the cover and document to properly reflect the image requested by the issuer. All of this is done without a page needing to be printed. Most copies are delivered via email to underwriters for marketing purposes.

For as little as $1000, an issuer can have a professional document and posting of the POS and OS for the life of the bond, with enough printed copies to satisfy all political requirements and issuer requests. The proposed creation of a posting website for only the period of the initial disclosure would consume valuable time and resources when credible sites already exist, such as MuniOS.com. It would be more effective to simply link the MSRB web site to the appropriate posting site for each OS. The MRSB could effectively monitor and/or restrict these posting sites, just as it does for the NRMSIRS. The task of creating the data base would be the most significant contribution that could be made by the MSRB to the municipal environment.

The suggestion to change requirements for underwriters to submit bond information simultaneously with the OS would seem to facilitate the marketing of bonds only if the information submitted is in the form of the 'cover letter' as suggested by this writer, one that could be uploaded immediately to a data base and available to investors.

Decreasing Investor Risk

As an investor in municipal bonds both from the corporate side and as an individual investor, I have been very frustrated with the lack of cooperation from dealer firms, including ones that are well known for their 'conservative' approach to investing. When approached with a new investment, I have been told the name of the bond, the ratings, interest rate and maturity, but never the security for the bonds. If a prospectus is requested, I have been told it would be sent to me in a week (but they want my decision on the investment within the hour). Having this information available immediately where it could be reviewed or printed and sent to the investor would be an excellent resource to the municipal investor, whether individual or corporate.

Over 50% of municipal bonds are sold to individual investors, the remainder to the sophisticated corporate or fund buyer. Any change that allows the dealer firms to sell municipal securities without first making sure the investor has read and understands the risks involved should be abandoned. Instead, increasing pressure should be put on dealers to provide current information.

Only by having all information in one place, including continuing disclosures and any material adverse change filings, will the dealer be able to comply fully with the rule of educating the investor and decreasing risk.

Summary

The goal of streamlining delivery and accessibility of municipal bond documentation is very important to the municipal marketplace. However, by focusing on changing the printing of the disclosure documents, you would change an efficient and effective system of posting the actual documents for the investing public.

Your goal can best be accomplished by developing a data base combined with a filing document (cover letter) with all pertinent information that can be uploaded, providing immediate and permanent files for review and analysis of each bond. Combined with links to approved posting sites for official statements, continuing disclosure and material adverse changes, this data base would serve to provide sufficient risk information on all municipal securities to the entire market.

Ruth D. Brod
Consultant
TRB Associates

UMB

September 14, 2006

Ernesto A. Lanza
Senior Associate General Counsel
MSRB
1900 Duke Street
Suite 600
Alexandria, VA 22314

RE: MSRB NOTICE 2006-19 (JULY 27, 2006) MSRB Seeks Comments on Application of "Access Equals Delivery" Standard to Official Statement Dissemination for New Issue Municipal Securities

Dear Mr. Lanza:

The Investment Banking Division of UMB Bank, N.A. (UMB) would like to thank you for the opportunity to comment on the above mentioned MSRB notice. As you are well aware the bond market in general has been struggling with the issue of the timely delivery of official statements with regard to new and secondary issues. You have requested that the industry help address the questions stated in this notice and we are happy to oblige. The following are UMB's responses to the posted questions in the notice and a few items upon which UMB would like clarity on as they would apply to our business.

The first comment we would like to make is that if this rule would be implemented in the very near future UMB would be ready to convert with little or no disruption to our business. As a regional bank dealer we have the ability to speak to the concerns expressed in the notice, chiefly the concern of whether the smaller issuers and dealers will be able to catch up to the electronic age. UMB is pleased to report that the necessary investments in process and technology have already been made.

UMB has been actively working toward a paperless environment for the last 10 fiscal years. The standard that we are requesting for delivery of official statements to us from issuers and financial advisers is in the portable document format (pdf). IBD receives an estimated 95% of all official statement documentation in electronic form.

It is of significant concern to us that when an electronic version of an official statement is received from the issuer we are currently required to print the document in hard copy form and mail it to our customer, to satisfy the requirements of G-32. This has created

Investment Banking

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UMB

significant printing cost increases, additional storage costs for UMB and our customers as well as unnecessary delays in delivery. By having the ability to notify our customers that offering documentation is available in electronic form and at a specific web site would alleviate most of the printing costs as well as the cost of shipping this material to our customers. We welcome a standardized document format in the form of a .pdf for all offering documentation.

We currently submit our G-36(OS) form along with the official statements in electronic form, and have done so for the last year. We would have no issue with electronic submission being the rule.

One item we would like addressed is the ability to add a link to the proposed database, which the MSRB might have, through our UMB website. Would there be any regulatory issue to allowing UMB to drive customers to our site, and then link them on to the proposed database site?

Another item is that the Edgar site that the SEC maintains is not very user friendly. We would welcome improvements to the site as might be aided with the SEC's new notice asking for technology bids. If a different site is selected the only requirement that we would like to see is that the offering documentation be available for the life of the issue, rather than just for the underwriting period. We feel that this will aid the secondary market and allow freer flow of information to secondary market purchasers.

Our final item of concern is time requirements. We would like additional clarity as to how we are to deliver notice. We are considering adding the notice to our confirmations which are mailed out or faxed to our customer on trade date. We are also considering sending a mass mailing to all of our customers notifying them that the offering documentation is available from the proposed web site. Will this satisfy the time requirements? What type of notification would be allowed, paper notification mailed to the customer, email, fax delivery or some other electronic form? Specific guidelines in this area would be very helpful.

Again we thank you for the opportunity to comment. We look forward to the final ruling.

Sincerely,

James C. Thompson

James C. Thompson
Divisional Executive Vice President
Investment Banking Division
UMB Bank, N.A.

Investment Banking

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Ernie Lanza

From: Eric Pehrson

Sent: Friday, September 08, 2006 5:08 PM

To: Ernie Lanza

Cc: Carl Empey; Jon Bronson

Subject: Comments to MSRB Notice 2006-19 (July 27, 2006)

Dear Mr. Lanza:

For over 90 years, Zions Bank Public Finance (and it predecessors) has been a financial advisor, underwriter or purchaser of municipal bonds, to local government entities in the State of Utah.

We support MSRB's efforts in seeking standards for "access equals delivery" in the municipal securities market. In our support we make the following comments.

1. Electronic Format.

We agree that all submissions to MSRB should be done in electronic format. We support Adobe's Portable Document Format ("PDF") as the current "universal" electronic standard and any future electronic formats that provide users with the ability to prepare, print, read and distribute "universal" electronic documents, with no additional costs or fees.

Currently, we see no additional burden or extra costs to state and local governments in complying with current electronic formats. However, if other electronic formats are used, such as "HTML" or "ASCII," and additional specific formatting is required, we would view these formats as unacceptable.

2. Central Assess to Electronic Official Statements.

We support a "free" centralized website (to be either owned/operated or governed by MSRB). The MSRB website could be operated under the same theory as the EDGAR/Securities and Exchange Commission website.

In addition, we proposed that MSRB also make electronic Preliminary Official Statements ("POS") available on the centralized website. The centralized website would include all POS related to competitive and negotiated municipal deals.

The majority of the discussion of MSRB Notice 2006-19 is in regards to final Official Statements ("OS") and the delivery and distribution thereof. There is currently no centralized process for the access and distribution of POS to the municipal market. Many of our issuers would welcome the ability to place their POS on a centralized web site, whereby interested underwriters, dealers and investors know "where to go" to get information. Corporate "preliminary" prospectuses are available on the "EDGAR/SEC" website and then are eventually replaced with the "final" prospectus. We propose that MSRB follow this SEC concept. Provide the POS on the centralized website and replace the POS with the final OS.

MSRB should charge a "reasonable service fee" for hosting the POS and final delivery/notice of the OS. Currently, most Utah municipal issuers produce and distribute a PDF POS and then hard print the OS. With electronic delivery/notification of the OS, Utah issuers will save several thousand dollars of printing/mailing costs.

We support "free centralized access" of the OS until the final maturity date of the issue.

3. Potential MSRB Rule Changes to Implement the . . . Model.

We support "access equals delivery" for **all** taxable and tax-exempt offerings of municipal bonds. Municipal bond issuers exempt from Exchange Act Rule 15c2-12 should be treated the same as those subject to Rule 15c2-12.

With electronic OS, we see no reason why MSRB Rule G-32 couldn't be changed to match SEC Rule 173 (two-day post-settlement deadline for electronic delivery notices regarding final OS to customers).

We believe that the electronic OS should be available on or prior to the bond closing date. With electronic delivery of

the OS, Rule G-36 should be amended accordingly.

If a financial advisor (or disclosure counsel or underwriter's counsel) prepares the POS and OS, the financial advisor should assume the responsibility of sending the OS to MSRB. If no financial advisor is involved, the underwriter should be responsible for this filing.

Thanks to MSRB's efforts in these matters. If you have any questions please contact me.

Sincerely,

Eric Pehrson
Vice President

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EXHIBIT 4

MARKED COPY OF CHANGES TO ORIGINAL PROPOSED RULE CHANGE[1]

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EMMA PRIMARY MARKET DISCLOSURE SERVICE

The EMMA primary market disclosure service, established as a service of EMMA, receives submissions of official statements ("OSs"), preliminary official statements ("POSs") and related pre-sale documents ("POS-related documents"), advance refunding documents ("ARDs"), and any amendments thereto (collectively, "primary market documents"), together with related indexing information to allow the public to readily identify and access such documents, from brokers, dealers and municipal securities dealers ("dealers"), acting as underwriters, placement agents or remarketing agents for primary offerings of municipal securities ("underwriters"), and their agents pursuant to MSRB rules, and from issuers and their designated agents, 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 primary market disclosure service makes primary market documents available to the public, at no charge, on the Internet through the EMMA portal. The EMMA primary market disclosure service also makes primary market documents available by subscription for a fee.

Submissions to the EMMA Primary Market Disclosure Service

Designated Electronic Format for Documents. No change.

Method of Submission. No change.

Timing of Submissions. No change.

Document Types. No change.

Information to be Submitted. Underwriters and their agents shall provide to EMMA related indexing information with respect to each document submitted. Underwriters and their agents submitting primary market documents under MSRB rules, or providing information under MSRB rules regarding a primary offering where no such document is required to be submitted, shall provide such items of information as are required by MSRB rule or the EMMA Dataport

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[1] Underlining indicates insertions made by this amendment to the original proposed rule change; brackets indicate deletions made by this amendment to the original proposed rule change.

Manual to be included on Form G-32. Voluntary submissions [Submissions] of primary market documents by issuers and their designated agents will be accepted [on a voluntary basis] if, at the time of submission, they are accompanied by information necessary to accurately identify: (i) the category of document being submitted (such as OS, POS, POS-related document, ARD); (ii) the issues or specific securities to which such document is related (including CUSIP number to the extent then available, issuer name, state, issue description/securities name, dated date, maturity date, and/or coupon rate); and (iii) in the case of an ARD, the specific securities being refunded pursuant to the ARD (including original CUSIP number and any newly assigned CUSIP number).

Submitters shall be responsible for the accuracy and completeness of all information submitted to EMMA.

Submitters. Submissions to the EMMA primary market disclosure service may be made solely by authorized submitters using password-protected accounts in the MSRB's user account

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EMMA CONTINUING DISCLOSURE SERVICE

The EMMA continuing disclosure service, established as a service of EMMA, receives submissions of continuing disclosure documents, together with related information about continuing disclosures and 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, as well as other continuing disclosure documents concerning municipal securities, 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 continuing disclosure service also makes continuing disclosures available by subscription for a fee.

Submissions to the EMMA Continuing Disclosure Service

Designated Electronic Format for Documents. No change.

Method of Submission. No change.

Timing of Submissions. No change.

Document Types. The EMMA continuing disclosure service accepts submissions from issuers, obligated persons, and their agents of (i) the continuing disclosure documents described in Rule 15c2-12, and (ii) other continuing disclosure documents concerning municipal securities not specifically described in Rule 15c2-12.

The continuing disclosure documents described in Rule 15c2-12 consist of the following categories of documents:

- annual financial information concerning issuers or other obligated persons as described in paragraph (b)(5)(i)(A) of Rule 15c2-12, or other financial information and operating data provided by issuers or other obligated persons as described in paragraph (d)(2)(ii)(A) of Rule 15c2-12;

- financial statements for issuers or other obligated persons if not included in the annual financial information as described in paragraph (b)(5)(i)(B) of Rule 15c2-12;

- notices of certain events, if material, as described in paragraph (b)(5)(i)(C) of Rule 15c2-12; and

- notices of failures to provide annual financial information on or before the date specified in the written undertaking as described in paragraph (b)(5)(i)(D) of Rule 15c2-12.

Categories of other disclosure documents concerning municipal securities not specifically described in Rule 15c2-12 include:

- other financial or operating data disclosures, including but not limited to quarterly or monthly financial information; interim or additional financial information or operating data; budget documents; investment, debt or financial policies; consultant reports; information provided to rating agencies, credit or liquidity providers or other third parties; changes in accounting standards, fiscal year or timing of annual disclosure; undertaking of an issuer or obligated person to prepare audited financial statements pursuant to generally accepted accounting principles as established by the Governmental Accounting Standards Board (GASB) or the Financial Accounting Standards Board (FASB), as applicable; undertaking of an issuer or obligated person to submit annual financial information to EMMA within 120 calendar days after the end of the applicable fiscal year (provided that the EMMA continuing disclosure service will accept the submission, through December 31, 2013, of an alternative transitional undertaking of an issuer or obligated person to submit annual financial information to EMMA within 150 calendar days after the end of the applicable fiscal year); [Certificate of Achievement for Excellence in Financial Reporting awarded by the Government Finance Officers Association;] uniform resource locator (URL) of the issuer's or obligated person's Internet-based investor relations or other repository of financial/operating information; and other uncategorized financial or operating data; and

- other event-based disclosures, including but not limited to amendments to continuing disclosure undertakings; changes in obligated person; notices to investors pursuant to bond documents; communications from the Internal Revenue Service; tender offer or secondary market purchase notices; notices of bid for auction rate or other securities;

capital or other financing plans; litigation or enforcement action documents; documents relating to mergers, consolidations, reorganizations, insolvency or bankruptcy; changes of trustee, tender agent, remarketing agent, or other on-going party; materials relating to derivative or other similar transactions; and other uncategorized event-based disclosures.

The MSRB may combine two or more categories, may divide any category into two or more new categories or subcategories, or may form additional categories for purposes of indexing documents submitted as uncategorized financial/operating data or event-based disclosures, as appropriate, based on the types of documents received.

In addition, for the categories of continuing disclosures listed below, a submitter may provide, in lieu of or in addition to a continuing disclosure document, a statement of the information indicated below by means of a text/data input field: undertaking of an issuer or obligated person to prepare audited financial statements pursuant to generally accepted accounting principles as established by GASB or FASB, as applicable; [the Governmental Accounting Standards Board;] undertaking of an issuer or obligated person to submit annual financial information to EMMA within 120 calendar days (or, through December 31, 2013, within 150 calendar days) after the end of the applicable fiscal year; and URL [uniform resource locator (URL)] of the issuer's or obligated person's Internet-based investor relations or other repository of financial/operating information. Submitters also may change or rescind any such undertaking or change or remove any such URL at any time by means of a text/data input field, and any such changes, rescissions or removals will be reflected on the EMMA portal; provided that an undertaking of an issuer or obligated person to submit annual financial information to EMMA within 150 calendar days after the end of the applicable fiscal year will continue to be displayed on the EMMA portal through June 30, 2014, and will automatically cease to be displayed on the EMMA portal after such date, unless the issuer or obligated person has previously changed or rescinded such undertaking.

Information to be Submitted. No change.

Submitters. No change.

Public Availability of Continuing Disclosure Documents

EMMA Portal. Submissions made through the EMMA continuing disclosure service accepted during the hours of 8:30 am to 6:00 pm Eastern time on an MSRB business day are, in general, posted on the EMMA portal within 15 minutes of acceptance, although during peak traffic periods posting may occur within one hour of acceptance. Submissions outside of such hours often are posted within 15 minutes although some submissions outside of the MSRB's normal business hours may not be processed until the next business day. Except as otherwise provided herein in connection with a specific category of document or information that may be submitted to the EMMA continuing disclosure service, continuing [Continuing] disclosure documents, undertakings and related [indexing] information submitted to EMMA shall be made available to the public through the EMMA portal for the life of the related securities.

The EMMA portal provides on-line search functions utilizing available indexing information to allow users of the EMMA portal to readily identify and access documents and related information provided through the EMMA continuing disclosure service. Basic identifying information relating to specific municipal securities and/or specific issues accompanies the display of continuing disclosure documents.

The EMMA portal is available without charge to all members of the public. 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 will monitor usage levels in order to assure continued capacity in the future.

The MSRB reserves the right to 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. The MSRB is not responsible for the content of the information or documents submitted by submitters displayed on the EMMA portal or distributed to subscribers of the EMMA continuing disclosure subscription service.

Subscriptions. No change.