



August 12, 2009

Ms. Elizabeth M. Murphy
Secretary
United States Securities and Exchange Commission
100 F Street, NE
Washington, D.C. 20549-1090

Re: Comment Letter on File No. SR-MSRB-2009-09

Dear Secretary Murphy:

The Securities Industry and Financial Markets Association (“SIFMA”)¹ appreciates this opportunity to comment on a notice of filing with the Securities and Exchange Commission (“Commission”) of a proposed rule change by the Municipal Securities Rulemaking Board (“MSRB”) relating to Rule G-32 and the primary market disclosure and primary market subscription services of the MSRB’s Electronic Municipal Market Access system (“EMMA”). The proposed rule change would require brokers, dealers and municipal securities dealers (“dealers”), acting as underwriters, placement agents or remarketing agents for primary offerings of municipal securities, to provide to EMMA information about whether the issuer or other obligated person has undertaken to provide continuing disclosure, the identity of any obligated persons other than the issuer and the timing by which such issuers or obligated persons have agreed to provide annual financial and operating data.

Submission of Continuing Disclosure Information under Rule 15c2-12

As we have done in the past, SIFMA fully supports the MSRB’s initiatives to promote greater disclosure and increased transparency. In our view, though, the proposed amendments do not promote those goals and, consequently, are not in the best interest of investors. By proposing the addition of continuing disclosure obligation fields in EMMA, the MSRB, in effect, is

¹ SIFMA, or the “Association,” 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.

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accommodating investors who do not read the official statement as it is providing them with access to important information in a format that is separate from the official statement.

The official statement is the sole disclosure document created in connection with a bond offering and it represents the input of the entire working group. Every word is reviewed by the working group and, based on that review, the issuer or the obligated person, as the case may be, issues a certificate regarding the accuracy of the document and the various legal counsel provide opinions as to the accuracy of the document. The proposed rule would violate the integrity of the official statement by requiring a dealer to extract select information from the official statement for inclusion in another format that is not reviewed by any members of the working group. The integrity of the official statement is supported by a long standing industry practice: when there is a summary of an official statement, there will be legend advising readers that the summary is for convenience only and that they must read the entire document.² The importance of reviewing the entire official statement is echoed in EMMA, which contains the following legend: “NOTE: Failure to review entire official statement together with all amendments may result in incomplete understanding of your security. Files can be viewed individually below but should not be read in isolation from one another.”

The proposed rule change is redundant because dealers are already required to file with EMMA copies of official statements, which, under Rule 15c2-12(f)(3), contain a description of the continuing disclosure obligations of the issuer or the obligated person (usually, under a heading entitled “Continuing Disclosure Agreement” or “Continuing Disclosure Obligations”). In addition to such summary description, it is a common industry practice for continuing disclosure agreements to be included as an appendix to the official statement. Because all official statements are filed as pdf files with EMMA, potential investors can search the filed official statements for any information, including the status of an issuer’s continuing disclosure obligations. It is difficult to see the advantages of the proposed amendment over the current system.

It is also worth noting that the proposed amendment would require that the dealer act in a manner that contradicts the legal paradigm of an official statement. The information in the official statement (with limited exceptions) belongs to the issuer, which grants the underwriter the right to use that document – and only the entire document - in marketing the issuer’s debt securities. The issuer does not grant authority to the underwriter to use excerpts of the document. Nonetheless, the proposed rule would require the underwriter to excerpt information beyond the scope of its authority with considerable potential liability for its errors.

² It is worth noting that, even with this legend, some bond counsel do not include a summary of the official statement because potential investors might read the summary and not the entire official statement.

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Except for certain identifying data such as par amount, maturity dates, CUSIP number and other data, there are not any other regulatory requirements that obligate a participant in a municipal bond transaction to extract information from the official statement and insert it in a separate format for the benefit of potential investors. Rather than having all pertinent information centralized in the official statement, the proposed rule change would create a decentralized system in which the same information would be in two different places and formats. We believe that this arrangement has the potential to confuse potential investors. Of course, extracting the information and entering it into EMMA will create opportunities for transcription, input and other errors.

We believe that the SEC's recent experience in an analogous situation may be instructive. In 2004, the SEC proposed rules changes to the Securities Exchange Act of 1934, which would have required dealers to create a new point of sale disclosure piece regarding distribution costs and conflicts of interest to investors in mutual funds and other instruments.³ The proposed rule was not adopted, in part, because dealers objected to creating a stand alone disclosure document for information that was already included in the prospectus.

SIFMA is also concerned with the timing of the proposed amendment. As you know, since September, 2008, dealers have been entering data into the Depository Trust and Clearing Corporation's New Issue Information Dissemination System ("NIIDS"), which was intended to serve as a repository of information for the MSRB. Since June, 2009, though, dealers have been entering data manually into Form G-32 because of the incompatibility of EMMA with NIIDS. Once again, we urge the MSRB to commit to a date by which it will make EMMA compatible with NIIDS.⁴

If the MSRB wants to highlight the continuing disclosure obligations of an issuer or an obligated person, this can be done by creating a best practices standard. SIFMA, of course, will be willing to assist in reaching out to the dealer community, drafting the practices and disseminating them to our members.

³ See SEC Release Nos. 33-8358; 34-49148; IC- 26341 (January 29, 2004); 69 Fed. Reg. 6438 (February 10, 2004).

⁴ See Comment Letter from Leslie M. Norwood, SIFMA, to Elizabeth M. Murphy, SEC (date May 10, 2009) (File No. SR-MSRB-2009-02).

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Conclusion

We appreciate this opportunity to comment on this proposed rule change. If you have any questions concerning these comments, or would like to discuss these comments further, please contact me at 212.313.1149 or at lbijou@sifma.org.

Respectfully,



Leon J. Bijou,
Managing Director
and Associate General Counsel

cc: ***Securities and Exchange Commission***
Martha Mahan Haines
Mary Simpkins
Municipal Securities Rulemaking Board
Lynnette Kelly Hotchkiss
Ernesto A. Lanza
Securities Industry and Financial Markets Association
Municipal Executive Committee
Municipal Legal Advisory Committee
Municipal Syndicate & Trading Committee
Municipal Credit Research, Strategy & Analysis Committee
Regional Dealer Fixed Income Committee