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September 22, 2008

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Ms. Florence E. Harmon
Acting Secretary
Securities and Exchange Commission
100 F Street, NE
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Re: **SEC Release No. 34-58256; File No. SR-MSRB-2008-05**
NABL Comments on Proposed Rule Change Relating to the
Establishment of a Continuing Disclosure Service of the Electronic
Municipal Market Access System ("EMMA")

Dear Ms. Harmon:

The National Association of Bond Lawyers ("NABL") respectfully submits the enclosed response to the Securities and Exchange Commission's ("SEC") solicitation of comments relating to SEC Release No. 34-58256, dated July 30, 2008. The comments were prepared by an *ad hoc* subcommittee of NABL's Securities Law and Disclosure Committee, as listed in Exhibit I.

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 404/572-4663 (bholby@kslaw.com) or the NABL Governmental Affairs office at 202/682-1498 (governmentalaffairs@nabl.org).

Thank you in advance for your consideration of these comments.

Sincerely,

William A. Holby

Enclosures

cc: *Ad hoc* subcommittee, NABL Securities Law and Disclosure Committee



National Association of Bond Lawyers

**COMMENTS
OF THE
NATIONAL ASSOCIATION OF BOND LAWYERS
REGARDING
SECURITIES AND EXCHANGE COMMISSION RELEASE NO. 34-58256
FILE NO. SR-MSRB-2008-05**

**PROPOSED RULE CHANGE RELATING TO THE ESTABLISHMENT
OF A CONTINUING DISCLOSURE SERVICE OF THE ELECTRONIC
MUNICIPAL MARKET ACCESS SYSTEM (EMMA)**

The following comments are submitted to the Securities and Exchange Commission (“SEC”) on behalf of the National Association of Bond Lawyers (“NABL”) relating to SEC Release No. 34-58256, dated July 30, 2008 (the “Release”) and MSRB Notice 2008-33. The comments were prepared by an *ad hoc* subcommittee of the NABL Securities Law and Disclosure Committee comprised of those individuals listed on Exhibit I and were approved by the NABL Board of Directors.

Through MSRB Notice 2008-05 dated January 31, 2008 (the “EMMA Notice”), the Municipal Securities Rulemaking Board (“MSRB”) previously had requested comments on the continuing disclosure component of the Electronic Municipal Market Access System (“EMMA”). NABL welcomed the opportunity to respond to the MSRB’s continuing initiative to develop an electronic system for dissemination of municipal securities disclosure documents, and submitted comments on February 25, 2008 (the “Prior NABL Comments”).

NABL appreciates that the concerns and questions raised in the Prior NABL Comments have been addressed in the Release. NABL also appreciates the willingness of MSRB staff to meet with three members of our task force (Messrs. Kintzinger and McNally and Ms. Guarnaccia) in the MSRB offices on September 3 for a demonstration of EMMA’s features, as well as including other NABL members via teleconference.

NABL also is submitting comments (the “NABL 15c2-12 Comments,” a copy of which is attached) today in connection with the proposed amendments to Rule 15c2-12 set forth in SEC Release No. 34-58255 (the “15c2-12 Release”). NABL supports the SEC’s goal of allowing issuers to make continuing disclosure filings at a single repository, and the NABL 15c2-12 Comments primarily address transition issues once the proposed amendments to Rule 15c2-12 become effective.

However, as the goal of both the Release and the 15c2-12 Release is to facilitate the flow and availability of continuing disclosure information, NABL has two suggestions:

1. **No Limitation on Submissions Made to EMMA.** NABL suggests that the documents to be made publicly available through the EMMA portal not be limited to those “specific items of continuing disclosure described in Rule 15c2-12 and any additional disclosure items as specifically set forth in a continuing disclosure undertaking...” As the existing nationally recognized municipal securities information repositories (“NRMSIRs”) do not have

such limitations on the materials provided by issuers, obligated persons and their agents, NABL is concerned that if non-specified information is available only through existing NRMSIRs or private data vendors, the goal of the SEC and MSRB to provide investors with as much current information as possible through access to the EMMA portal will be thwarted and a two-tier information system may develop, with only specified continuing disclosure documents available through the EMMA portal and non-specified information of a continuing disclosure nature available only through NRMSIRs (to the extent that any survive the transition) or private data vendors. Accordingly, NABL suggests that the MSRB not limit the materials to be made publicly available through the EMMA portal to those specified under Rule 15c2-12 or set forth in a continuing disclosure undertaking.

2. **Continuing Acceptance of Paper Submissions.** NABL suggests that EMMA continue to accept paper documents submitted in accordance with existing continuing disclosure undertakings. Although it is NABL's anecdotal understanding that almost all filings are now done electronically, there is no current requirement under Rule 15c2-12 that such filings be made electronically and NABL is concerned that issuers or obligated persons which are making timely filings and otherwise are complying with the requirements of their continuing disclosure undertakings would find their paper filings rejected by EMMA and their information unavailable to market participants.

In the NABL 15c2-12 Comments, NABL has suggested that in order to assist market participants in transitioning from the current Rule 15c2-12 to the revised Rule 15c2-12, the SEC could further amend Rule 15c2-12 to require that continuing disclosure undertakings made pursuant to the revised Rule 15c2-12 provide that new and existing undertakings made by an obligated person or issuer be made electronically. This proposed revision would require any pre-revised Rule 15c2-12 parties which do paper filings to convert to electronic filings upon any new (non-exempt) issuances, and would leave only a few parties with pre-revised Rule 15c2-12 continuing disclosure undertakings not requiring electronic filings. To assist these parties in the transition from paper to electronic filings, NABL suggests that the MSRB allow those parties who have previously filed paper documents to continue to do so for a limited period of time.



National Association of Bond Lawyers

EXHIBIT I

NABL SECURITIES LAW AND DISCLOSURE COMMITTEE
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Securities and Exchange Commission
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Re: **SEC Release No. 34-58255; File No. S7-21-08**
**NABL Comments on Proposed Amendment to Municipal Securities
Disclosure**

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Sincerely,

William A. Holby

Enclosures

cc: *Ad hoc* subcommittee, NABL Securities Law and Disclosure Committee



National Association of Bond Lawyers

**COMMENTS
OF THE
NATIONAL ASSOCIATION OF BOND LAWYERS
REGARDING
SECURITIES AND EXCHANGE COMMISSION RELEASE NO. 34-58255

PROPOSED AMENDMENT TO MUNICIPAL SECURITIES DISCLOSURE**

The following comments are submitted to the United States Securities and Exchange Commission (the “SEC” or the “Commission”) on behalf of the National Association of Bond Lawyers (“NABL”) relating to SEC Release No. 34-58255—Proposed Amendment to Municipal Securities Disclosure (the “Release”). The comments were prepared by an *ad hoc* subcommittee of the NABL Securities Law and Disclosure Committee comprised of those individuals listed on Exhibit I and were approved by the NABL Board of Directors.

NABL welcomes this opportunity to respond to the Commission’s proposed amendments to Rule 15c2-12 (the “Rule” or “Rule 15c2-12”) under the Securities Exchange Act of 1934 relating to municipal securities disclosure. NABL’s comments are focused on those particular questions to which NABL believes it has relevant expertise.

1. Transition to Revised Rule 15c2-12.

The Commission requests comments in numerous places on how best to effect transition from the current Rule 15c2-12 to the revised Rule 15c2-12 (assuming the proposed amendments are adopted). Under the current Rule 15c2-12, issuers and obligated persons (collectively, “issuers”) in non-exempt offerings agree to make continuing disclosure filings with each of the existing nationally recognized municipal securities information repositories (the “NRMSIRs”) and any applicable state information depository (the “SIDs”). In some instances, issuers may make filings with the Municipal Securities Rulemaking Board (the “MSRB”).

Under the revised Rule 15c2-12, issuers would make all continuing disclosure filings with the MSRB. This transition would be effected by eliminating references in Rule 15c2-12 to the NRMSIRs and SIDs and substituting references to the MSRB. In addition, to transition existing undertakings from multiple repositories to a single repository, the Commission is considering whether to direct its staff to withdraw the “no action” letters issued to the NRMSIRs and to designate the MSRB as the sole NRMSIR.

NABL supports the Commission’s goal of allowing issuers to make filings at a single repository¹, but NABL suggests the following additional changes to the Rule to facilitate this transition. NABL understands that undertakings made under the existing Rule do not require issuers to make their continuing disclosure filings in electronic format or in the manner prescribed by the MSRB. (Of course there is nothing in such undertakings that would prohibit issuers from making their filings electronically.) NABL also understands that the MSRB does not expect to accept continuing disclosure filings in “paper” (that is, non-electronic) format.

To ensure that issuers make filings with the MSRB under continuing disclosure undertakings entered into prior to the amendments to Rule 15c2-12 contemplated by the Release, the Commission could take two actions. First, the Commission could require that any continuing disclosure undertaking

¹ For certain issuers, filings would still be required to be made, pursuant to state law, with the appropriate SID.

made pursuant to the revised Rule provide that, from the date of such undertaking, issuers make filings with the MSRB electronically with respect to the new undertaking and all undertakings previously entered into by such issuers. Second, the Commission also could issue an interpretive letter stating that an issuer that chooses to satisfy an existing undertaking (that is, one that requires annual filings be made to the NRMSIRs as opposed to the MSRB) by transmitting filings to the MSRB is acting in a manner consistent with the intent of Rule 15c2-12. The Commission issued a similar interpretive letter on September 7, 2004, to facilitate establishment of the Municipal Advisory Council of Texas's DisclosureUSA filing system.

2. Revision of the Small Issuer Exemption.

The Commission's proposed amendments to Rule 15c2-12 have the practical effect of repealing the Rule's exemption to the annual filing requirement specified in paragraph (d)(2) of Rule 15c2-12 (the so-called "small issuer exemption"). The proposed amendments require that issuers described by Rule 15c2-12(d)(2) file annually "that financial information and operating data which is customarily prepared by such obligated person and is publicly available". For issuers subject to public disclosure laws (that is, "sunshine" laws), the amount of publicly available financial information and operating data may exceed that which would be included in an official statement (and thus subject to disclosure under Rule 15c2-12(b)(5)).

At NABL's 2008 Bond Attorneys' Workshop, numerous NABL members indicated that their issuer clients frequently make use of the small issuer exemption. These members indicated that issuers making use of the small issuer exemption rarely receive requests from investors for financial information. They also believed such issuers would incur increased costs associated with filing such information electronically, particularly because such information may be considerably more extensive than that required to be filed by issuers that are subject to the Rule. For these reasons, NABL suggests that the Commission retain the small issuer exemption in its current form.

If the Commission concludes that a revision of the small issuer exemption is appropriate, NABL suggests that the Commission delete paragraph (d)(2) of Rule 15c2-12 altogether. This would avoid any confusion that might arise on account of the different language contained in paragraphs (b)(5)(i)(A) and (d)(2); in other words, the official statement (and not whether the information is "publicly available") should define the scope of the information to be submitted on an annual basis.

3. Definition of "Final Official Statement".

The first sentence of the definition of "final official statement" is not changed by the proposed amendments to Rule 15c2-12. The last clause of that sentence requires a final official statement to include a "description of . . . any instances in the previous five years in which each person specified pursuant to paragraph (b)(5)(ii) of this section failed to comply, in all material respects, with any previous undertakings in a written contract or agreement specified in paragraph (b)(5)(i) of this section". Paragraph (b)(5)(i) of Rule 15c2-12, however, will be revised if the proposed amendments are adopted in their current form, and issuers obligated by undertakings made before the effective date of the proposed amendments will not have entered into a "written contract or agreement specified in paragraph (b)(5)(i)" (because paragraph (b)(5)(i) currently requires different terms of the continuing disclosure undertaking). Therefore, NABL suggests that a transition provision be added to paragraph (g) of the Rule stating:

For purposes of paragraph (f)(3), the phrase "any previous undertakings in a written contract or agreement specified in paragraph (b)(5)(i) of this section" shall be deemed to include previous undertakings in a written contract or agreement specified in paragraph (b)(5)(i) as such paragraph read immediately prior to [effective date of the amendments].



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NABL COMMENTS ON PROPOSED AMENDMENT TO MUNICIPAL SECURITIES
DISCLOSURE (RELEASE NO. 34-58255)

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