



MSRB

Municipal Securities
Rulemaking Board

June 1, 2009

Elizabeth M. Murphy
Secretary
Securities and Exchange Commission
Station Place
100 F Street, NE
Washington, DC 20549

Re: File No. SR-MSRB-2009-04

Dear Ms. Murphy:

On May 8, 2009 and May 18, 2009, the Municipal Securities Rulemaking Board (the “MSRB”) filed with the Securities and Exchange Commission (the “Commission”) responses to a comment letter received by the Commission in connection with a proposed rule change to amend the continuing disclosure service of the MSRB’s Electronic Municipal Market Access system (“EMMA”) to accept, and to make publicly available on the Internet, voluntary submissions of continuing disclosure documents provided other than in connection with Exchange Act Rule 15c2-12.¹ Subsequently, the Commission received two additional comment letters on the proposed rule change.² This letter further supplements the MSRB’s prior responses to address the additional commentators.

¹ File No. SR-MSRB-2009-04. *See* letter from Douglas Adamson, Executive Vice President, Technical Services Division, American Bankers Association, to Elizabeth M. Murphy, Commission Secretary, dated April 24, 2009.

² *See* letter from Heather Traeger, Associate Counsel, Investment Company Institute, to Ms. Murphy, dated May 20, 2009; letter from Vickie A. Tillman, Executive Vice President, Standard & Poor’s Ratings Services, to Ms. Murphy, dated May 29, 2009.

Comments of the Investment Company Institute

The Investment Company Institute (the “ICI”) “support[s] the expansion of EMMA to accept disclosure information that is not specified in continuing disclosure undertakings (*i.e.*, information beyond what is currently required by the Exchange Act or permitted by the MSRB). This improvement in disclosure should enhance the overall efficiency of the secondary trading market for municipal securities”*[footnotes omitted]*. The ICI agrees with the MSRB’s proposal to display on each security’s detail page only those categories for which a continuing disclosure submission has been made with respect to such security. The ICI recommends that issuers be encouraged to submit information to EMMA for all classes of municipal securities, including securities not subject to Rule 15c2-12, stating that “[i]nvestors, municipal analysts, investment advisers, and the broker-dealers who effect transactions in these municipal securities would benefit significantly from access to current, high-quality disclosure comparable to that in other markets.”

The MSRB notes that EMMA is designed to accept submissions of continuing disclosure documents from issuers, obligated persons and their agents for any municipal security in any of the established categories, regardless of whether an obligation exists under a continuing disclosure undertaking to provide such disclosure. Thus, submitters are able to submit continuing disclosures in connection with municipal securities that are not subject to Rule 15c2-12, beginning today on a voluntary basis with the launch of the pilot phase of the EMMA continuing disclosure service.³

³ See Exchange Act Release No. 59964 (May 21, 2009), 74 FR 25778 (May 29, 2009) (File No. SR-MSRB-2009-03) (approving EMMA continuing disclosure pilot). During the pilot phase, voluntary continuing disclosure submissions may not be made for certain limited classes of municipal securities, such as securities for which no CUSIP numbers have been assigned, commercial paper issues customarily identified by a 6-digit CUSIP number and 529 college savings plans and other municipal fund securities. EMMA will accept continuing disclosure submissions with respect to all municipal securities, including those identified above, beginning on July 1, 2009 with the launch of the permanent continuing disclosure service in conjunction with the effective date of amendments to Rule 15c2-12. See Exchange Act Release No. 59062 (December 5, 2008), 73 FR 76104 (December 15, 2008) (adopting amendments to Rule 15c2-12); Exchange Act Release No. 59061 (December 5, 2008), 73 FR 75778 (December 12, 2008) (File No. SR-MSRB-2008-05) (approving the continuing disclosure service of EMMA with an effective date of July 1, 2009).

Comments of Standard & Poor's Ratings Services

Standard & Poor's Ratings Services ("S&P") supports the goal of the proposed rule change to encourage transparency in the municipal securities market. S&P states:

The creation of a special EMMA category dedicated to rating agency material may be viewed by municipal issuers and their underwriters as encouraging this data to be included in rule 15c2-12 continuing disclosure undertakings and submitted to EMMA. For this reason, before approving the Proposal in its current form, we believe that the Commission and the MSRB should assess both the expected benefits and the potential consequences of including rating agency materials as an EMMA disclosure category.

S&P suggests that such considerations should include (i) "the general usefulness of potentially large amounts of rating agency material to investors in municipal securities," (ii) the need to "redact any data that is proprietary, confidential or subject to legal or contractual restrictions on redissemination" prior to submitting rating agency material to EMMA, and (iii) potential "unintended adverse consequences for the markets and for others" such as potential incentives for issuers to reduce the amount of information provided to rating agencies or to seek ratings only from rating agencies requiring the least amount of information. S&P argues that materials provided to rating agencies often include large amounts of raw data that may not be easily understood by investors and, given the need to redact confidential information, may result in disclosure of incomplete information that might lend itself to misinterpretation. Further, S&P suggests that, if public release of rating agency materials were to become routine, some issuers might seek to limit the amount of information publicly disclosed by limiting the amount of information provided to rating agencies.

As an alternative to creating a separate voluntary disclosure category for rating agency materials, S&P suggests that those issuers choosing to provide rating agency materials to EMMA could do so under the general "other financial/operating data" category. Presumably, this would allow issuers to submit such information without "regulatory encouragement" of such submission. Finally, S&P suggests that, if a distinct category is retained for rating agency materials, it should be separated from materials provided to credit or liquidity providers because it believes that "categorizing these entities together on an official public website could confuse some investors about the distinctly different roles played by these entities in the municipal securities marketplace."

The MSRB agrees that S&P has raised important considerations with respect to whether materials provided by issuers to rating agencies should be submitted to EMMA for public dissemination. In making such a voluntary submission, issuers and others should carefully weigh the factors identified by S&P and any other appropriate considerations that may be applicable under the specific facts and circumstances. The MSRB further believes that various factors appropriate to the particular facts and circumstances should be assessed by issuers, obligated persons and their agents in coming to a decision on whether to make a voluntary submission of continuing disclosure to EMMA, regardless of the potential category, to the extent that such parties are not otherwise obligated to make such disclosures.

However, the MSRB does not agree that the establishment of a distinct category for the submission of rating agency materials creates an inappropriate regulatory encouragement for such disclosures. The categories of continuing disclosures included in the proposed rule change represent types of disclosures that are already being made by some issuers through various means and are intended to provide a practical organizing structure to be used by submitters in providing indexing information that will allow the public to efficiently find the information that issuers are voluntarily choosing to submit. As noted in the MSRB's filing, the categories of voluntary disclosures do not represent the MSRB's opinion as to the appropriate items of disclosure with respect to any specific municipal security, and the availability of such categories does not imply or create an obligation to make any such disclosures. Submitters may themselves assess the factors raised by S&P in determining whether to provide such disclosure and/or provide additional information necessary to make such disclosure effective and not misleading to the general public. Since such disclosure is wholly voluntary, the MSRB does not believe that there is a material likelihood that the creation of this category would serve as an incentive to reduce information provided to the rating agencies or to seek ratings only from the rating agency requiring the least amount of information.

With regard to the inclusion of rating agency materials in the same category as materials provided to credit or liquidity providers, the MSRB notes that the general categorization structure is intended to serve as a finding aid for public users and that, within any particular category, the nature of the specific documents submitted may vary. Including rating agencies along with credit and liquidity providers as third-party recipients of materials from the issuer or obligated person was not intended to create an inference that the materials would be the same for each such recipient or that such materials are intended to serve an identical purpose or to be used in the identical manner. To clarify that the MSRB does not intend to equate rating agencies with credit or liquidity providers and to provide for a broader range of materials to be included in this category, the MSRB has determined to rename this category as "information provided to rating agency, credit/liquidity provider or other third party." In submitting such information,

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submitters should consider including an indication of the type of third-party recipient, to the extent appropriate for purposes of understanding the nature of the information submitted.

If you have any questions, please do not hesitate to contact me.

Sincerely,



Ernesto A. Lanza
General Counsel

cc: Martha Mahan Haines, Chief,
Office of Municipal Securities,
Securities and Exchange Commission