



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-2009-010

Dear Secretary Murphy:

The Securities Industry and Financial Markets Association (“SIFMA”)¹ appreciates this opportunity to comment on proposed rule changes by the Municipal Securities Rulemaking Board (“MSRB”) that would permit issuers and their designated agents to make voluntary submissions to the primary market disclosure service of: (i) preliminary official statements, related pre-sale documents and other primary market documents; and (ii) additional categories of disclosure as well as related indexing information about their continuing disclosure undertakings that would be displayed on the MSRB’s Electronic Municipal Market Access system (“EMMA”) web portal and included in EMMA’s disclosure subscription service.

Voluntary Submissions by Issuers and their Designated Agents

Except as noted below with respect to the use of Uniform Resource Locators, SIFMA supports the proposed rule changes as they are intended to provide greater transparency to potential investors in the municipal securities markets. It is appropriate that issuers and obligated persons be permitted to provide this information, which includes disclosure documents, undertakings to prepare audited financial statements in accordance with generally accepted accounting principles and notices of receipt of a Certificate of Achievement for Excellence in Financial Reporting, as such information is within their purview and should remain so.

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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Because these are voluntary submissions to be undertaken by issuers, it is not clear what will be the role and obligations of the dealers if this proposed rule is adopted. For example, if an issuer offers to prepare its audited financial statements pursuant to generally accepted accounting principles and fails to do so, what responsibility, if any, would the dealer have? Further, if an issuer does not make the voluntary submissions, does the dealer have to disclose this to potential investors? Because voluntary disclosure by issuers is a new concept under EMMA, SIFMA seeks guidance from the SEC with respect to these matters.

Using a Uniform Resource Locator for Disclosure to Investors

SIFMA supports the concept of the proposed rule change that would permit issuers, obligated persons and their agents to provide a uniform resource locator (“URL”) to a website for investor relations or financial/operating information because doing so can provide more information to potential investors. We are aware of the fact that last year the SEC² noted that the antifraud provisions of the federal securities laws apply to statements made on a website as they would apply to any other statement made by an issuer or an obligated person.

For Continuing Disclosure. SIFMA supports allowing issuers, obligated persons and their agents to voluntarily place a URL that would be displayed on the EMMA web portal for purposes of complying with continuing disclosure obligations and other voluntary disclosure that issuers would like to provide to potential investors. This information is in the purview of issuers and obligated persons, who, of course, are responsible for the contents of their websites. This proposed change would provide a central location for market participants to locate information that issuers and obligated persons are already providing on their websites.

For Primary Issuance of Securities. We have concerns, though, about how the proposed rule change will be implemented in the limited context of the underwriting period of a primary issuance of municipal securities. Currently, the underwriters have little involvement with the issuers’ websites and the information posted thereon. Underwriters neither provide content to the websites nor monitor them on an ongoing basis for accuracy. The legal opinions that are rendered in connection with a municipal debt offering do not include references to information contained on websites. Also, there does not appear to be any coordination between the offering of municipal securities and the information that is maintained on an issuer’s website. Given this current practice and current state of securities law, SIFMA is concerned that use of URLs in municipal securities offering documents and EMMA submissions during the underwriting period of a primary offering may present liability risks.

² See SEC Release No. 34-58288; IC-28351 (August 1, 2008), 73 Fed. Reg. 45862 (August 7, 2008).

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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
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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