



55 Water Street  
New York, NY 10041  
Tel 212-438-5600  
www.standardandpoors.com

June 22, 2010

Ms. Elizabeth M. Murphy, Secretary  
U.S. Securities and Exchange Commission  
100 F Street, NE  
Washington, DC 20549-1090

Re: *Municipal Securities Rulemaking Board; Notice of Filing of Proposed Rule Change Relating to Amendments to the Continuing Disclosure Service of the MSRB's Electronic Municipal Market Access System (EMMA<sup>®</sup>), Securities Exchange Act of 1934 Rel. No. 62175 (May 26, 2010)*  
File No. SR-MSRB-2010-03

Dear Ms. Murphy:

Standard & Poor's Ratings Services ("Ratings Services"), a nationally recognized statistical rating organization ("NRSRO") registered under Section 15E of the Securities Exchange Act of 1934 (as amended, the "Exchange Act"), welcomes the opportunity to comment on the proposed rule changes submitted by the Municipal Securities Rulemaking Board (the "MSRB") contained in the release referenced above (the "Proposal").

The Proposal would expand the continuing disclosure service of the MSRB's Electronic Municipal Market Access system ("EMMA") to provide for the posting of credit rating and related information on the EMMA public website to the extent that one or more NRSROs have agreed to provide such information regarding municipal securities to the MSRB, at no charge, through an automated data feed.

Ratings Services supports the MSRB's goal of encouraging transparency in the market for municipal securities. However, we believe that the Proposal's assumption that NRSROs may, or should, provide credit rating and related information regarding municipal securities to the MSRB, at no charge, is commercially untenable and does not appropriately account for the value of NRSROs' intellectual property. In our view, the absence of fair compensation and adequate intellectual property protections for our proprietary information renders the Proposal's underlying assumption unreasonably burdensome. Further, given the extensive disclosure requirements to which NRSROs are already subject, we believe that including credit rating and related information on the EMMA public website would offer only limited incremental value to investors in municipal securities.

1. *The Proposal does not provide for adequate protection of intellectual property rights.*

Ratings Services' credit ratings, including our most up to date credit ratings for municipal securities, are publicly available at no cost to the general public on our website. In addition, under rules promulgated by the U.S. Securities and Exchange Commission (the "Commission"), Ratings Services is required to publicly disclose extensive information, including detailed information about our outstanding credit ratings. These disclosure requirements recently have been expanded through the adoption of final rule amendments by the Commission in February and November of 2009. The February rule amendments, as explained in the Commission's adopting release, *Amendments to Rules for Nationally Recognized Statistical Rating Organizations*, Exchange Act Rel. No. 59342 (February 2, 2009), expanded disclosure requirements for NRSROs in two significant ways. First, the amendments required each NRSRO to include in its publicly available annual certification on Form NRSRO detailed performance statistics for each class of rating for which the NRSRO is registered, including municipal securities ratings. Secondly, the amendments expanded rule 17g-2(d) to require additional public disclosure of rating actions histories for 10% of each class of credit ratings for which an NRSRO is registered and for which it has issued 500 or more credit ratings paid for by the obligor being rated or the issuer, underwriter or sponsor of the security being rated (the "10% Requirement"). The November rule amendments, described in the Commission's adopting release, *Amendments to Rules for Nationally Recognized Statistical Rating Organizations*, Exchange Act Rel. No. 61050 (November 23, 2009) (the "November 2009 Release"), further modified rule 17g-2(d) to introduce an additional requirement that each NRSRO disclose rating actions histories for all credit ratings initially determined on or after June 26, 2007 (the "100% Requirement"). While the 10% Requirement applies exclusively to issuer-paid credit ratings, the 100% Requirement applies, subject to different posting delays, to issuer-paid, subscriber-paid and unsolicited credit ratings. A new rating action with respect to an issuer-paid rating covered by the 10% Requirement must be publicly reflected no later than six months after it is taken, and a new rating action with respect to a rating covered by the 100% Requirement must be reflected, in the case of an issuer-paid credit rating, no later than twelve months or, in the case of a credit rating that is not issuer-paid, no later than twenty-four months after such rating action is taken. Pursuant to the Commission's rules, this required disclosure must be made publicly available on an NRSRO's corporate website.

The Proposal indicates that the MSRB intends to make credit rating and related information more easily accessible on an equal basis to all municipal securities market participants. However, Ratings Services' existing manner of public disclosure of current municipal ratings and the information required by the Commission's rules through its website already ensures that such information is provided in an easily accessible manner and on an equal basis to the public, including retail investors in municipal securities. By making such information centrally available through our own website, Ratings Services is able to make such information easily accessible, while at the same time guaranteeing that key safeguards to our proprietary information are in place and enforced. For example, access to our website establishes an agreement between the user and Ratings Services. Pursuant to this agreement, users of our website are subject to certain terms of use. Among other things, our terms of use explicitly state that our website may be utilized only for non-commercial use and provide us with

the ability to terminate access for violations of the terms of use. Moreover, Ratings Services utilizes its website infrastructure to monitor for unlawful access or improper use and to control against violations of the terms of use. By centrally providing information through our own website, Ratings Services is in the best position to detect violations of the terms of use governing our website and to appropriately implement safeguards against their violation, including the ability to discontinue use for end users that violate their obligations under the terms of use.

In contrast, the Proposal does not adequately address how proprietary information that is provided to the MSRB would be protected. Although the MSRB implements basic terms-of-use protections, the MSRB terms of use do not constitute an agreement between Ratings Services and the end user of the EMMA portal. If our credit rating and related information were provided on the EMMA portal, Ratings Services would not be in a position to enforce its rights against end-users of the EMMA portal as effectively as against users of its own website. Furthermore, we are concerned that, as a third party, the MSRB will not have incentives to provide appropriate levels of protection for our intellectual property and cannot be expected to monitor compliance with the same vigilance as the owners of such intellectual property. Ratings Services expends significant resources on technology to maintain protections for, and to monitor the use of, our website—for example, by employing a registration process for users accessing certain information. We believe that our investment in such technological safeguards ensures the greatest level of protection for our intellectual property, and we are concerned that the MSRB does not have the same incentive to provide a comparable level of protection.

Because we cannot be assured that the MSRB will provide the same level of care in monitoring and enforcing its terms of use as Ratings Services does with respect to its website, there can be no assurance that market professionals will not be able to strategically collect credit rating and related information from EMMA as a substitute for products and services currently provided on a fee basis by Ratings Services. Moreover, the Proposal's assertion that "all participants in the municipal securities market" will have easy access to such information (Proposal at p. 3) raises the ominous possibility that our proprietary information will be disseminated unchecked. Our proprietary information, once obtained, may potentially be utilized for the commercial benefit of third parties that leverage this information for their own benefit. Notably, the MSRB's terms of use, unlike the terms of use for Ratings Services' website, do not prohibit professional market participants from accessing information for commercial use, other than to prohibit the "develop[ment] or creat[ion] [of] a database to be sold, leased, furnished, licensed or otherwise made available." (MSRB's Web Portals Terms and Conditions of Use at <http://emma.msrb.org/AboutEMMA/UserAgreement.aspx>.) Moreover, under the terms of use governing access to the EMMA portal, the MSRB may change the terms of use at any time without consulting Ratings Services or any other party. As a result, the limited protections afforded to any proprietary information provided by Ratings Services to the MSRB pursuant to the Proposal could be unilaterally revoked or modified by the MSRB at its discretion. Because the Proposal fails to provide concrete assurances that proprietary information will be protected, we believe that it would be imprudent to forfeit control over our proprietary information and sacrifice the basic protections that we enjoy through the provision of information through our own corporate website.

2. *The Proposal is commercially untenable.*

In regulating NRSROs, the Commission has “acknowledged . . . concerns over potential loss of NRSRO revenue” and has remained mindful that it is necessary to adopt rules that “mitigate any potential negative impact on [ ] NRSRO revenues.” (November 2009 Release at p. 27.) For this reason, the Commission, in adopting the 100% Requirement, introduced delays in publication to “help mitigate any effect on . . . revenues for the 100% disclosure requirement.” (November 2009 Release at p. 27.) We believe that the Proposal, unlike the Commission’s regulatory actions with respect to NRSROs, fails to recognize NRSROs’ legitimate commercial needs and does not appreciate the significant negative effect on revenue that the provision of proprietary information at no cost would have on NRSROs. We believe that for this reason the Proposal is commercially untenable.

The Proposal states that it “would make [credit rating and related] information more easily accessible on an equal basis to all participants in the municipal securities market, including in particular retail investors in municipal securities who do not normally have access to *information services customarily used by professional market participants.*” (Proposal at pp. 3-4 [emphasis supplied].) This language suggests that the Proposal envisions NRSROs providing proprietary information services to the MSRB which are currently provided by such NRSROs on a fee basis to professional market participants. Further, the Proposal acknowledges that such information, provided *at no cost* to the MSRB, will be easily accessible “to all participants in the municipal securities market,” including these same professional market participants currently paying for such proprietary products and services. As noted above, the MSRB’s terms of use do not provide a flat prohibition against such market professionals utilizing information posted on EMMA for commercial use.

To the extent that the Proposal anticipates NRSROs providing information that extends beyond the current disclosure requirements adopted by the Commission, Ratings Services believes that the Proposal will not be commercially viable unless the MSRB compensates NRSROs for their proprietary information. As in any commercial transaction, such compensation ought to be fixed through arm’s-length negotiations and established pursuant to a contractual obligation and licensing requirements, which acknowledge the proprietary nature of the NRSRO’s products and services and require that appropriate restrictions and limitations on use be applied. Through appropriate covenants and representations that might be included in a negotiated contract between each NRSRO and the MSRB, NRSROs’ intellectual property could be protected through legal obligations. Moreover, as part of a comprehensive commercial transaction, the level of protection provided by such provisions would be a significant factor in determining the appropriate level of fees to be paid by the MSRB. We are also concerned that, in the absence of contractual obligations, the MSRB may unilaterally expand the universe of those with access to our proprietary information through EMMA. For example, MSRB may modify the terms of use of its website, as discussed above, or propose additional rule changes to permit credit rating and related information to be included in the MSRB’s subscription service, which is not subject to any limitations on or additional charges for redistribution. Appropriate contractual obligations would provide a necessary check on such actions.

By requesting that credit rating and related information be provided at no charge, the Proposal asks NRSROs to freely distribute proprietary information that is currently an important source of revenue. To do so could result in NRSROs forgoing the revenues necessary for the pursuit of innovation and may affect the ability of some NRSROs to improve their models, criteria and methodologies. Moreover, this could also lead to more homogenized rating options and, ultimately, deprive investors of valuable, differentiated opinions on credit risk. As an issuer-paid NRSRO, Ratings Services must comply with the full panoply of the Commission's NRSRO rules (including both the 10% Requirement and the 100% Requirement), which comprise a rapidly developing and increasingly complex NRSRO regulatory regime. Given the need to produce quality ratings while managing the burgeoning costs of regulation, Ratings Services believes that it would be ill-advised to voluntarily forgo valuable revenue streams and to disclose additional information beyond the Commission's established disclosure requirements. Ratings Services expends significant resources in developing and producing data and analytical products that leverage our credit rating and related information. In order for such efforts to be fruitful and in order to facilitate our ability to invest in the development of new products and services, it is a commercial necessity that we generate revenues to recoup our prior investments. As a commercial matter, we are simply unable to provide proprietary information at no cost without unduly impacting our revenues.

3. *The Commission's NRSRO requirements provide for an appropriate level of disclosure.*

The Proposal does not specify the scope of the "credit rating and related information" regarding municipal securities that the MSRB would expect to be provided by NRSROs. To the extent that this information extends beyond the disclosure currently required by the Commission's NRSRO rules, we are concerned that such information may not be sufficiently tailored to meet the needs of retail investors. Ratings Services believes that the Commission's existing disclosure requirements reflect a carefully considered judgment about the appropriate level of information disclosure by NRSROs to ensure investor protection.

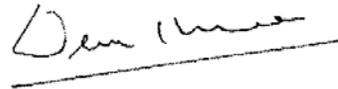
In light of the public availability of our ratings and the detailed public information already available to market participants under the Commission's regulations, Ratings Services believes that existing disclosure is sufficient to enable investors to access our ratings and effectively evaluate the quality of our ratings relative to the credit ratings produced by other NRSROs. In our view, the disclosure of additional credit rating and related information beyond the Commission's existing requirements would not provide investors in municipal securities with sufficient benefits, if any, to justify the burdens that the Proposal would impose upon NRSROs that voluntarily provided such information.

June 22, 2010

\* \* \*

We appreciate the opportunity to comment on the Proposal. Please feel free to contact me or Rita Bolger, Senior Vice President and Associate General Counsel, Global Regulatory Affairs, at (212) 438-6602, with any questions regarding our comments.

Sincerely yours,



Deven Sharma  
President  
Standard & Poor's Ratings Services

cc: Mr. Robert W. Cook, Director  
Mr. James A. Brigagliano, Deputy Director  
Mr. Michael A. Macchiaroli, Associate Director  
Mr. Thomas K. McGowan, Assistant Director  
Ms. Martha Mahan Haines, Assistant Director, Office of Municipal Securities  
Mr. Randall W. Roy, Assistant Director  
Ms. Mary Simpkins, Senior Special Counsel, Office of Municipal Securities  
Division of Trading and Markets  
U.S. Securities and Exchange Commission

Ms. Lynnette Kelly Hotchkiss, Executive Director  
Mr. Ernesto A. Lanza, General Counsel  
Municipal Securities Rulemaking Board