



September 16, 2010

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

***Re: File No. SR-MSRB-2010-03***

Dear Ms. Murphy:

On May 20, 2010, the Municipal Securities Rulemaking Board (the “MSRB”) filed with the Securities and Exchange Commission (the “Commission”) a proposed rule change to amend the continuing disclosure service of the MSRB’s Electronic Municipal Market Access system (“EMMA”) to provide for the posting of credit rating information on the EMMA public website (the “EMMA ratings initiative” or the “Proposal”). Under the Proposal, if and to the extent that a nationally recognized statistical rating organization (“NRSRO”) agrees to provide credit rating and related information regarding municipal securities to the MSRB, at no charge, through an automated data feed for display on the EMMA website, the EMMA website would display such credit rating and related information along with any documents and other information relating to the applicable municipal security otherwise displayed on the EMMA website, such as official statements, advance refunding documents, continuing disclosure documents, transaction price data, interest rate reset information, and identifying information relating to a specific municipal security.

The Commission published the Proposal for comment in the Federal Register (the “Federal Register Notice”).<sup>1</sup> The Commission received comment letters from Standard & Poor’s

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<sup>1</sup> Exchange Act Release No. 62175 (May 26, 2010), 75 FR 30892 (June 2, 2010).



Ratings Services (“S&P” or “Ratings Services”) and Government Finance Officers Association (“GFOA”),<sup>2</sup> and the Commission has requested that the MSRB provide its response to these letters.

### **General Comments**

GFOA strongly supports the EMMA ratings initiative, stating that “we believe that there is nothing more relevant than making credit ratings available in one location, where the public can access the information quickly, efficiently, and at no cost to them.” In its letter, S&P states that, although it “supports the MSRB’s goal of encouraging transparency in the market for municipal securities,” it has a number of reservations regarding the EMMA ratings initiative, noting:

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.

The comments included in these letters are described in greater detail below, together with the MSRB’s responses.

### **Potential Benefits**

GFOA notes that the EMMA ratings initiative would add transparency to the municipal securities market and that “[p]osting ratings information on EMMA at no charge to the public also creates a level playing field for all investors – retail and institutional – and eliminates a two-tier system that unfairly allows institutional and sophisticated investors to more easily access

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<sup>2</sup> Letter from Deven Sharma, President, S&P, to Elizabeth M. Murphy, Commission Secretary, dated June 22, 2010; letter from Susan Gaffney, Director, Federal Liaison Center, GFOA, to Elizabeth M. Murphy, Commission Secretary, dated July 23, 2010.

information about a security than other investors.” GFOA also argues that the direct posting of ratings on EMMA would be more efficient than the current process for submitting event notices under Exchange Act Rule 15c2-12 in connection with rating changes, observing that:

Issuers may not be aware of rating changes at the moment they occur (e.g., In 2008 when the bond insurers were downgraded, it caused many municipal securities to also be downgraded. However, since that information was not directly sent to issuers, some issuers were unable to directly notify the NRMSIRs of the rating changes). Having a direct feed with this information, rather than having to wait for the information to be posted through the material event notice process, is the easiest way for the marketplace to access this information.

S&P questions the benefits of the EMMA ratings initiative, arguing that 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.” S&P states that, “[t]o 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.” S&P further states that:

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.

***MSRB Response.*** The MSRB agrees with GFOA that the EMMA ratings initiative would provide substantial benefits to retail investors and would represent a significant increase in the level of investor protection provided by the MSRB’s information systems and marketplace rules.

With regard to S&P’s concern regarding the scope of credit rating and related information to be provided through EMMA, each NRSRO ultimately determines such scope in that the Proposal states that the EMMA website would display such credit rating and related information as is provided by the NRSRO through its automated data feed – the same automated

data feed provided to other subscribers to the NRSRO's information.<sup>3</sup> It is difficult to understand how displaying on the EMMA website information an NRSRO also makes available to other information services, which in turn make them available to their users, would result in such information being insufficiently tailored or otherwise problematic for the needs of retail investors. Furthermore, S&P's reference to information required to be made available to market participants under the Commission's NRSRO rules correctly reflects that the purpose of such information is, at least in part, to allow market participants to evaluate the relative quality of the various NRSROs' credit ratings. However, the display of ratings information on the EMMA website under the EMMA ratings initiative serves an entirely different purpose – that is, to provide investors with access to material information about municipal securities from NRSROs, not to provide a means by which investors can determine which NRSRO does its job the best. The material information that would be displayed to EMMA website users would be precisely the same as the information that each NRSRO has determined is appropriate to be included in its automated data feed, thus suggesting that this is precisely the information that NRSROs believe is relevant for investors to have.

### **Protection of Intellectual Property Rights**

S&P states that “the Proposal does not adequately address how proprietary information that is provided to the MSRB would be protected.” S&P notes that it provides ratings information on its own website and undertakes considerable effort to protect its intellectual property rights in the information. S&P expresses concern that, because the MSRB's terms of use with regard to the EMMA website would be between the MSRB and the EMMA users, rather than between S&P and such users:

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. . . . 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

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<sup>3</sup> The fact that the MSRB would receive the same automated data feed as other subscribers to the NRSRO's information also serves to make the burden of providing such information by the NRSROs at most marginal.

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.

GFOA states:

We recognize that rating agencies have every right to copyright and protect their written analysis, rationale and other derivative products, but they should not be able to withhold the basic conclusion of a rating from open distribution through the EMMA system. Any written communication about the rating to a public bond issuer creates a “public record” of that issue that must be disclosed and is certainly material. This proposed rule simply serves to take what already is public information and direct it to one location – again, something that is a true benefit to investors and the public.

**MSRB Response.** The MSRB notes that a significant portion of the information that would be displayed through the EMMA ratings initiative is already available, in a piece-meal fashion, on the EMMA website in official statements and material event notices provided under Exchange Act Rule 15c2-12 in connection with ratings changes. While displaying this information electronically in a consistent manner through the EMMA ratings initiative would be a significant benefit to investors, the MSRB is sensitive to the fact that such electronic display could raise concerns regarding intellectual property rights if appropriate measures are not instituted to limit the ability of EMMA website users to use data in a way that is inconsistent with such rights. The MSRB plans to display credit ratings at the individual security level and not in a fashion that would allow a user to view, copy or print credit ratings on a market-wide basis. In addition, while the MSRB offers subscriptions to electronic feeds of some of the information displayed on EMMA, the Proposal would not provide for inclusion of credit ratings and related information obtained from NRSROs in these subscription products.<sup>4</sup>

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<sup>4</sup> S&P expresses concerns regarding the potential for the MSRB to later amend the Proposal to include such information in a subscription service. Such a change is not currently contemplated and, if proposed at some time in the future, would be subject to the same rulemaking process as this Proposal. NRSROs seeking to participate in the EMMA ratings initiative could include appropriate limitations or conditions on their agreement to participate in regard to any future redissemination of credit rating information through a subscription service.

The MSRB has previously worked with information vendors to establish appropriate safeguards with regards to their intellectual property rights in information currently made available through the EMMA website, including the creation of significant barriers to the strategic or large-scale collection of third-party data, and the MSRB expects to undertake such efforts with any NRSRO that agrees to provide its ratings information for display on the EMMA website. The MSRB believes that a constructive discussion with any such NRSRO regarding existing safeguards and potential modifications and improvements thereto tailored to its specific needs would provide it with the necessary comfort that the risk of misuse of its proprietary interests can be appropriately minimized. The MSRB is confident that ratings information can be displayed to the public through the EMMA website without creating a significant adverse impact on the financial interests of the NRSROs and might in fact indirectly result in greater public interest in other products offered by the NRSROs.

### **Commercial Viability of Proposal**

S&P states that the EMMA ratings initiative “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.” In arguing that the EMMA ratings initiative is “commercially untenable” without compensation from the MSRB, S&P states:

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.... Given the need to produce quality ratings while managing the burgeoning costs of regulation [under the Commission’s NRSRO rules], 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.

***MSRB Response.*** Each individual NRSRO must make its own assessment of the advisability of providing its credit rating information to the MSRB for display on the EMMA website, although the MSRB believes that with appropriately negotiated intellectual property safeguards, such display on EMMA should not have any more appreciable negative impact on the revenues of the NRSROs as does the display of such information on their own respective websites. If the Proposal is approved by the Commission, the MSRB expects to launch the EMMA ratings initiative with the participation of one or more NRSROs that have determined that such display of credit rating information is advisable and beneficial to retail investors in municipal securities, and the MSRB would proceed with such launch even if one or more NRSROs elects not to participate. The MSRB would be open to continuing a dialogue with any NRSRO that chooses not to participate in the initial launch of the EMMA ratings initiative so that, should such NRSRO later determine to participate, the MSRB could more quickly incorporate such NRSRO's information alongside of credit rating information of any NRSROs that have participated since such launch.

### **Requested Effective Date of Proposal**

The MSRB had originally requested an effective date for the Proposal of a date to be announced by the MSRB in a notice published on the MSRB website, which date shall be no later than nine months after Commission approval of the Proposal and shall be announced no later than five (5) business days prior to the effective date. To provide additional time for any NRSRO that has not yet determined to participate in the EMMA ratings initiative to work with the MSRB to develop appropriate mechanisms to minimize potential threats to intellectual property rights and other commercial interests, the MSRB hereby requests that the Proposal be approved with a revised effective date to be announced by the MSRB in a notice published on the MSRB website, which date shall be no later than one year after Commission approval of the Proposal and shall be announced no later than five (5) business days prior to the effective date. The additional three month period also would provide any such NRSRO with a further opportunity to provide the MSRB with access to its automated data feed for development and testing purposes with a view to potentially making such NRSRO's ratings information available for display upon launch of the EMMA ratings initiative should such NRSRO reconsider its participation in the EMMA ratings initiative prior to such launch.

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

Sincerely,



Ernesto A. Lanza  
General Counsel

cc: Martha Mahan Haines, Chief,  
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