



Municipal Securities Rulemaking Board

February 6, 2020

Vanessa Countryman  
Secretary  
Securities and Exchange Commission  
100 F Street, NE  
Washington, DC 20549-1090

**Re: MSRB Response to Comments on SR-MSRB-2019-13**

Dear Ms. Countryman:

On November 19, 2019, the Municipal Securities Rulemaking Board (“MSRB” or the “Board”) filed with the Securities and Exchange Commission (“SEC” or “Commission”) a proposed rule change to amend the information facility of the MSRB’s Electronic Municipal Market Access (EMMA®) system (the “EMMA IF”) to provide for: (1) the automated calculation and static display of the number of days between (i) the annual fiscal period end date for an issuer or obligated person and (ii) the date an annual financial disclosure is submitted to the EMMA system for such annual fiscal period (the “Submission Calculator”); and (2) the reconfiguration of certain information shown on the EMMA public website ([emma.msrb.org](http://emma.msrb.org)) (the “EMMA Portal”) to more prominently display an issuer’s or obligated person’s annual financial disclosures and related information (the “proposed rule change”).<sup>1</sup>

The SEC published the proposed rule change for comment in the Federal Register on November 27, 2019.<sup>2</sup> Five comment letters were submitted.<sup>3</sup> The comment letters urged the

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<sup>1</sup> File No. SR-MSRB-2019-13. The text of the proposed rule change as filed by the MSRB is available at <http://www.msrb.org/~media/Files/SEC-Filings/2019/MSRB-2019-13-refiled.ashx>?. Unless expressly defined herein, the defined terms used in this letter shall have the same meanings as defined in the proposed rule change.

<sup>2</sup> See Exchange Act Release No. 87583 (Nov. 21, 2019), 84 FR 65436 (Nov. 27, 2019).

<sup>3</sup> See letters from (1) Scott Andreson, Chair, National Federation of Municipal Analysts (“NFMA”) (Dec. 13, 2019) (the “NFMA Letter”); (2) Emily Swenson Brock, Director, Federal Liaison Center, Government Finance Officers Association (“GFOA”) (Dec. 18, 2019) (the “GFOA Letter”); (3) Chuck Samuels, General Counsel, National Association of Health and Educational Facilities Finance Authorities (“NAHEFFA”) (Dec. 18, 2019) (the “NAHEFFA Letter”); (4) Kenton Tsoodle, Assistant City Manager, Oklahoma City, GFOA Representative; David Erdman, Capital Finance Director, State of Wisconsin – Department of Administration, GFOA Representative; Cynthia Evangelisti, Treasurer,

Commission to disapprove the proposed rule change unless or until certain topics were addressed by the MSRB. After careful consideration of the comment letters, the MSRB provides the following response to those comments.

### **Introduction**

As noted in the proposed rule change, the timeliness of financial disclosures has long been held as a significant factor in their usefulness to investors and other market participants.<sup>4</sup> Equally important, the subject of how to improve the timeliness of financial disclosures in the municipal securities market has been, and continues to be, a significant concern of the Commission, the Board, and various market participants.<sup>5</sup> The Board proposed the

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Chicago Park District, GFOA Representative; The Honorable Fiona Ma, Treasurer, State of California, National Association of State Treasurers (“NAST”) Representative; Dennis Reilly, Executive Director, Wisconsin Health & Educational Facilities Authority, NAHEFFA Representative; Staci Henshaw, Deputy Auditor, Virginia Auditor of Public Accounts, National Association of State Auditors, Comptrollers and Treasurers (“NASACT”) Representative; Christine Crowley, Municipal Advisor, Fiscal Advisors & Marketing, Inc., National Association of Municipal Advisors (“NAMA”) Representative; Brian Reilly, Senior Municipal Advisor, Ehlers, Inc., NAMA Representative; Stacey Lewis, Partner, Pacifica Law Group LLP, National Association of Bond Lawyers (“NABL”) Representative; Bradley Patterson, Shareholder, Gilmore & Bell, P.C., NABL Representative; and Teri Guarnaccia, Partner, Ballard Spahr LLP, NABL Representative (collectively, the “Issuer Representatives Workgroup”) (Dec. 18, 2019) (the “Issuer Representatives Workgroup Letter”); and (5) Vicki Hellenbrand, President, Baker Tilly Municipal Advisors, LLC (“Baker Tilly”) (Dec. 19, 2019) (the “Baker Tilly Letter”).

<sup>4</sup> 84 FR at 65438 (citing statements from the Commission’s 1994 Interpretive Release and the Commission’s 2012 Municipal Report).

<sup>5</sup> The MSRB believes that the comment letters further support this conclusion. While many commenters expressed concerns about the precise functioning of the Submission Calculator, they also seemed to agree in concept that the timing of a disclosure can be an important data point for investors to consider. For example, the Issuer Representatives Workgroup Letter indicated that its objective is to advance the “mutual goals of quality, *timely*, and meaningful disclosure.” Issuer Representatives Workgroup Letter, at p. 1 (italics added). NFMA stated, “[w]e note that a disclosure calculator does not directly address or improve the timeliness of audit filings, *rather it provides transparency on the currency of such disclosures.*” NFMA Letter, at p. 2 (italics added). GFOA stated that, “[w]e strongly suspect investors already track and calculate this information themselves.” GFOA Letter, at p. 2. Baker Tilly stated, “[w]e agree that timely

enhancements to the EMMA system in light of these concerns and in an effort to promote greater transparency in the municipal securities market, including by making financial information more readily apparent to investors, market professionals, and the general public through the EMMA Portal.<sup>6</sup>

The MSRB appreciates commenters' candid assessments of the proposed rule change and is encouraged by their stated commitments to meaningfully improve transparency in the municipal securities market. However, the Board does not believe that the proposed rule change should be disapproved or withdrawn for the reasons discussed in more detail below. The MSRB looks forward to continued dialogue with market participants on the topic of municipal market transparency, particularly to follow-up on how the MSRB could make the specific enhancements suggested in the commenter letters and the progress market participants make in developing consensus industry solutions.<sup>7</sup>

#### **Stakeholder Consultation and Education**

Commenters expressed concern that, prior to filing the proposed rule change, the MSRB did not formally invite market participants to provide input through a public request for comment or through other MSRB-organized stakeholder consultation, like beta-testing and user focus groups.<sup>8</sup> The Issuer Representatives Workgroup requested that the MSRB withdraw the filing until it had undertaken "stakeholder consultation and user focus groups in search for

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continuing disclosure reporting is important, but the calculated day count will be used by some as an indicator of credit worthiness." Baker Tilly Letter, at p. 2.

<sup>6</sup> 84 FR at 65437.

<sup>7</sup> See, e.g., notes 39, 40, 41, and 42 infra and related discussion.

<sup>8</sup> See GFOA Letter, at p. 2 ("This proposal was not put out for public comment by the MSRB, nor did the MSRB seek stakeholder input as it developed the proposal, either on policy or technical fronts."); NAHEFFA Letter, at p. 2 ("As far as we can ascertain, [the proposed rule change] was developed solely internally within MSRB without consultation with any stakeholder. Nor are we aware to what extent, if any, it has been tested in trial or mock disclosures for a variety of issuer and borrower types, governmental and nongovernmental, including for conduit issuance."); and Baker Tilly Letter, at p. 2 ("We suggest that the Proposed Rule Change be discussed with stakeholders and user focus groups to explore improvements and to avoid any unintended consequences, such as inconsistent and unclear data or a distorted market influence resulting from the calculation prior to an SEC approval.").

improvements and to avoid any unintended consequences[.]”<sup>9</sup> Similarly, GFOA stated that the “proposal could have benefitted from stakeholder consultation and user focus groups typically performed by the MSRB in search for improvements and to avoid any unintended consequences.”<sup>10</sup> The MSRB appreciates the willingness of commenters to provide constructive feedback on the proposed rule change. The MSRB would value the opportunity for stakeholders to preview the proposed enhancements to the EMMA Portal in advance of the date such enhancements would become visible to the public, as well as for stakeholders to provide input on possible future MSRB education initiatives and market transparency enhancements.<sup>11</sup>

Subject to the Commission’s approval of the proposed rule change, the MSRB believes that it can provide the sort of stakeholder consultation requested by the commenters during the period between the publication of the Commission’s approval order and the date the proposed enhancements become visible to the public on the EMMA Portal. While the MSRB believes that engaging in such stakeholder outreach can be valuable, the legal standard under the Exchange Act applicable to the approval of a proposed rule change does not require such engagement.<sup>12</sup> Accordingly, the MSRB does not believe that the proposed rule change should

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<sup>9</sup> Issuer Representatives Workgroup Letter, at p. 1.

<sup>10</sup> GFOA Letter, at p. 2. Although not summarized in the proposed rule change, the MSRB notes that it did conduct informal outreach with stakeholders in advance of filing the proposed rule change, including as early as May 2019. See, e.g., Kyle Glazier, *Issuers take offense at analysts’ letter*, The Bond Buyer (May 19, 2019), available at <https://www.bondbuyer.com/news/issuers-push-back-on-analysts-letter> (last accessed on January 27, 2020) (“Mark Kim, the MSRB’s executive vice president and chief operating officer also visited with [GFOA’s debt] committee Saturday and discussed some of those efforts, including some preliminary discussion of possibly adding a ‘counter’ to EMMA to indicate how often an issuer is updating its financial information.”).

<sup>11</sup> Subject to the Commission’s approval of the proposed rule change, and any conditions stated therein, the MSRB anticipates an operative date by July 2020 for the Submission Calculator.

<sup>12</sup> See Section 19(b)(2)(C)(i) of the Exchange Act (15 U.S.C. 78s(b)(2)(C)(i)) (“The Commission shall approve a proposed rule change of a self-regulatory organization if it finds that such proposed rule change is consistent with the requirements of this title and the rules and regulations issued under this title that are applicable to such organization.”); see also 84 FR at 65441 (describing the Board’s statutory basis for the

be withdrawn or disapproved based on comments suggesting a lack of stakeholder outreach prior to the filing of the proposed rule change.

### **Erroneous Submissions**

Commenters also expressed concerns about the consequences of erroneous submissions. NAHEFFA stated, “[i]t seems inevitable that there will be errors[.]”<sup>13</sup> GFOA stated “accuracy is critical” and reiterated NAHEFFA’s comments about errors.<sup>14</sup> The Issuer Representatives Workgroup suggested that an unintended consequence could be “inconsistent and unclear” data.<sup>15</sup> Baker Tilly generally observed that “automated calculations do not always result in accurate information.”<sup>16</sup> NFMA echoed these concerns, stating:

Submission errors, including classification errors and incorrect dates, that are frequent in today’s EMMA system, pose a high risk that a meaningful number of calculations will be based on inaccurate information. As EMMA is the public source of information for market participants, the NFMA has repeatedly suggested that there should be greater oversight of the submission process to ensure that documentation is at least classified and labeled correctly.<sup>17</sup>

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proposed rule change pursuant to Section 15B(b)(2)(C) of the Exchange Act (15 U.S.C. 78o-4(b)(2)(C)).

<sup>13</sup> NAHEFFA Letter, p 2.

<sup>14</sup> GFOA Letter, p 2.

<sup>15</sup> Issuer Representatives Workgroup Letter, at p. 1. While the Issuer Representatives Workgroup Letter identifies a general concern regarding “inconsistent and unclear data” the signatories do not further identify any specific examples of how the Submission Calculator and the other proposed enhancements would actually result in inconsistent or unclear data that is not otherwise already addressed in the proposed rule change. See, e.g., 84 FR at 65440 – 65441 (discussing four hypothetical fact patterns). The MSRB shares this general concern about the clarity of the data presented on the EMMA Portal.

<sup>16</sup> Baker Tilly Letter, p. 2. To the degree that Baker Tilly is suggesting that the Submission Calculator itself may malfunction and display incorrect calculations, the MSRB has established policies and procedures to maintain the performance of the EMMA system. Accordingly, the MSRB does not believe that the proposed rule change should be withdrawn or disapproved for this reason.

<sup>17</sup> NFMA Letter, at p. 3.

The MSRB appreciates commenters' concerns about improving the accuracy and completeness of information displayed on the EMMA Portal. As stated in the proposed rule change, the enhancements to the EMMA Portal would not alter the process for users to submit annual financial disclosures nor change the type of information collected in the publication of such disclosures.<sup>18</sup> The information that would be utilized in the proposed enhancements – including the calculation generated by the Submission Calculator – is presently being input by users and published for public view on the EMMA Portal. In this sense, the MSRB believes that commenters' assertions about the inevitability and frequency of submission errors are relevant to the evaluation of the proposed rule change but are more aptly characterized as market behaviors that would be expected to persist regardless of the proposed rule change, rather than market outcomes that will specifically result from the proposed rule change.

Consequently, to the degree that the Submission Calculator and the other proposed enhancements would provide new prominence to the information submitted, the Board believes that submitters would have an additional incentive to properly categorize and describe annual financial disclosures, and the incidences of submissions with erroneous information would be expected to marginally decline from current rates.<sup>19</sup> Similarly, to the degree that submitters exert greater diligence in completing the disclosure submission process in response to the proposed rule change, the MSRB believes that any additional burden created by this change in market behavior is exceeded by the benefits of greater market transparency through the improved availability and understanding of market information displayed on the EMMA Portal.<sup>20</sup> Accordingly, commenters' assertions about the consequences of erroneous submissions do not change the MSRB's determinations about the overall benefits of the Submission Calculator, and the MSRB does not believe that the proposed rule change should be withdrawn or disapproved for this reason.

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<sup>18</sup> 84 FR at 65442.

<sup>19</sup> See 84 FR at 65442, n. 48 (discussing potential benefits of greater diligence resulting from increasing the prominence of the information that would be used by the Submission Calculator). The MSRB believes that commenters' statements about the incidences of erroneous submissions gives greater weight to its discussion about the data quality incentives of the proposed rule change and further justifies the approval of the proposed rule change.

<sup>20</sup> Id.

More specific to comments that the MSRB undertake “greater oversight of the submission process”<sup>21</sup> or otherwise prevent “inconsistent and unclear data,”<sup>22</sup> the MSRB believes that submitters should retain ultimate responsibility for the accuracy and completeness of the content they submit for publication on the EMMA Portal, including identification of the applicable disclosure category (or categories) of an annual financial disclosure. Accordingly, the proposed rule change does not provide for the modification of the EMMA system to analyze the accuracy or completeness of a disclosure nor the independent validation of the disclosure information input by a submitter.<sup>23</sup> Comments about the need for improved data quality and greater MSRB oversight of information input by disclosure submitters do not alter the MSRB’s determinations in this regard. As indicated in the proposed rule change, the MSRB will continue to strive to make the EMMA system’s submission process as user-friendly as feasible in order to improve overall data quality.<sup>24</sup>

### **Correction of Submission Mistakes**

Several commenters sought clarity regarding whether disclosure submitters will be able to correct submission mistakes.<sup>25</sup> GFOA stated that, “. . . while we understand that the issuer is responsible for accurately inputting the required dates, we cannot be assured by the language in the proposal that an issuer will have the ability to correct mistakes within the EMMA system.” NAHEFFA stated that, “[i]t seems inevitable that there will be errors, and it is unclear

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<sup>21</sup> NFMA Letter, at p. 3.

<sup>22</sup> Issuer Representatives Workgroup Letter, p 1.

<sup>23</sup> 84 FR at 65439, n. 30.

<sup>24</sup> 84 FR at 65442 (“To promote accuracy, the Board would continue to provide educational resources and other tools to assist submitters in properly completing the publication process.”).

<sup>25</sup> The MSRB believes that NFMA’s comments about the need for private sector technology development is outside the scope of the proposed rule change and therefore not specifically addressed herein. NFMA Letter, p. 3 (“To address the challenges with the EMMA system, address the varying sophistication and needs of municipal investors, and modernize the system to meet today’s technology standards, we believe that significant participation from private sector technology firms and information vendors is likely needed, with consideration given to outsourcing the design, development, oversight, and maintenance functions of EMMA.”).

that these errors can be corrected and overridden, preventing or changing erroneous information that is being displayed to the public in a prominent manner.” The MSRB appreciates commenters’ concerns about the need for flexibility to modify erroneous submissions.

The MSRB wishes to make clear that the EMMA system currently provides issuers and obligated persons the ability to modify prior continuing disclosure submissions, including by selecting different categories, adding or replacing submitted files, editing dates and descriptive information, adding or removing securities associated with a submission, and changing the contact information for the submission. To further enhance understanding and transparency regarding the modification process, the MSRB is already pursuing several user interface and functionality improvements independent of the proposed rule change.<sup>26</sup> Accordingly, the MSRB does not believe that the proposed rule change should be withdrawn or disapproved for this reason.

### **Investor Understanding**

Commenters also expressed concerns about how investors might use the information provided by the Submission Calculator, including whether it might be used to erroneously compare the timing of disclosures for different types of municipal securities or municipal issuers. GFOA stated that, “[t]here is no apples to apples comparison between issuers that can be represented by this calculator,” and that “some issuers could be unfairly judged by investors that information may not be ‘timely’ when in fact it is submitted as quickly as possible – and within the timeframe noted in a CDA – pending the completion of audited financials.”<sup>27</sup> NAHEFFA similarly expressed a concern about pooled financings and other municipal securities with multiple obligated persons, stating “we do not understand how such financings with

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<sup>26</sup> Currently, the MSRB is developing enhancements to the EMMA system to display the modification history of a disclosure submission. These enhancements are expected to be complete in advance of any operative date for the proposed rule change. As part of the enhancements, the EMMA system will allow disclosure submitters to make certain amendments to a prior submission without changing the Posted Date of the submission, such as changing the category or categories selected for the submission and the fiscal period end date. As a result, the Submission Calculator will appropriately perform its calculation based on such corrected categories and fiscal period dates. To promote transparency, investors and EMMA users will be able to clearly see the modifications that have been made to a submission over time by the submitter.

<sup>27</sup> GFOA Letter, at p. 2.

borrowers who may have different fiscal periods will be handled without providing significantly misleading information.”<sup>28</sup> NFMA stated its view that the Submission Calculator should only perform a calculation on filings marked as audited financial filings, not for unaudited annual financial filings,<sup>29</sup> because there would be an “opportunity for manipulation” of the calculation.<sup>30</sup> Baker Tilly suggested that the proposed rule change could alter market behavior

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<sup>28</sup> NAHEFFA Letter, at p. 3. The MSRB directs NAHEFFA to the fourth example in the MSRB’s proposed rule change, which specifically addresses this scenario. 84 FR at 65440.

<sup>29</sup> NFMA Letter, at p. 3 (“The MSRB’s Submission Calculator is triggered based on the submission of any document tagged as a required annual financial disclosure, whether it is an audit, a different type of annual financial filing, or a failure to file notice.”). The MSRB notes that a failure to file notice would not trigger the Submission Calculator’s function. In terms of why the Submission Calculator accounts for both annual financial filings and also audited financial filings, the Board determined that jurisdictional variations in the timing of audits and Rule 15c2-12’s permissive “when and if available” language would mean that the calculation would not be applicable to a number of submissions and, thereby, the Submission Calculator’s functionality would be superior to such an alternative. See, e.g., 2012 Municipal Report, at p. 70 (“In the 1994 amendments to Rule 15c2-12, the Commission did not adopt requirements mandating the use of audited financial statements, recognizing that not all issuers prepared such audited financial statements.”).

<sup>30</sup> NFMA Letter, at p. 3. On the subject of disclosures intended to “manipulate” the information available to investors, the MSRB notes that it does not evaluate a submission for accuracy, completeness, or compliance with the terms of an applicable continuing disclosure agreement, and, consequently, would have no systematic basis for determining whether a given submission was intended to “manipulate” the functioning of the Submission Calculator. The MSRB believes that disclosure submitters “manipulate” the disclosures published to the EMMA system at their own legal risk. See, e.g., Section 10(b) of the Exchange Act (15 U.S.C. 78j). For similar reasons, the MSRB declines to specifically address whether the proposed enhancements may inform “punitive” regulatory matters. See GFOA Letter, at p. 2.

by encouraging quick but “inadequate” filings.<sup>31</sup> NFMA also expressed concerns about investors being misled by the display of a calculation based on out-of-date annual financial disclosures.<sup>32</sup>

The MSRB does not disagree with the observations underlying many of these comments; however, the MSRB believes that the comments do not necessarily demonstrate flaws unique to the proposed rule change but are more generally representative of the variation and complexity of disclosure practices in the municipal securities market. The MSRB believes that it can mitigate some potential investor confusion by making various investor

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<sup>31</sup> Baker Tilly Letter, at p. 2 (“While the nature of how the actual filings are made will not change, we would foresee a future burden on submitters to file something, however inadequate, as quickly as possible. . . . There could be pressure on issuers to report something, anything, to get a favorable day count which in the end will not be of value to investors.”). To the degree that Baker Tilly shares NFMA’s concern that the proposed rule change might encourage issuers and obligated persons to manipulate the Submission Calculator with incomplete or inaccurate filings, the immediately preceding footnote provides a response to this topic. See also note 32 infra (discussing the context of the Submission Calculator) and note 33 infra (discussing benefits of investor education). As a more general matter, the MSRB believes that investors can benefit from timely access to accurate disclosures made in good faith, even when the financial information included in various disclosures is sequenced through a number of piecemeal submissions of individually incomplete or supplementary documents. Accordingly, the MSRB does not believe that the proposed rule change should be withdrawn or disapproved for this reason.

<sup>32</sup> NFMA Letter, at p. 3. (“Additionally, the Submission Calculator has the potential to be misleading since it is based on the last submitted annual financial disclosure. For the obligated party that hasn’t disclosed for the recently concluded fiscal year, the number displayed will be based on the last time annual financial filings were made, even if that number of days has been exceeded for the current fiscal year. And without visibility on historical timeliness information, an obligor that hasn’t provided disclosures in several years can appear to be a timely discloser if it posts annual financial information sooner than usual because of an upcoming bond sale.”). While the Submission Calculator would display the calculation available for the annual financial disclosure with the earliest Posted Date for the most recent Fiscal Period End Date, the proposed enhancements would contextualize that submission by clearly displaying its Fiscal Period End Date and Posted Date next to the calculation. The MSRB believes that an investor would be able to readily identify how recent the financial information available is based on the displayed Fiscal Period End Date. See 84 FR at 65441, Figure 1. Accordingly, the MSRB does not believe that the proposed rule change should be disapproved on this basis.

education resources available on the EMMA Portal in conjunction with the proposed enhancements.<sup>33</sup> Moreover, the Board continues to believe that the design of the Submission Calculator adequately accounts for the broad variety of common disclosure practices in the municipal securities market and promotes greater transparency, including by making financial information more readily apparent to investors, market professionals, and the general public through the EMMA Portal.<sup>34</sup> As indicated in the proposed rule change, the Board evaluated various alternatives to and iterations of the Submission Calculator.<sup>35</sup> After significant deliberation and review of the data currently reported to the EMMA system, the Board determined that the Submission Calculator would be superior to other alternatives because it could account for the lack of common uniformity in the reporting of financial information characteristic to the municipal securities market,<sup>36</sup> while also creating no new burdens on

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<sup>33</sup> 84 FR at 65442 (“Similarly, the Board believes that some of the misperceptions and other information asymmetry that may result from market participants accessing erroneous information published by submitters can be mitigated through appropriate investor education.”).

<sup>34</sup> The MSRB believes that it previously addressed many of these issues raised by commenters in the text of the proposed rule change, including (1) the lack of uniformity in the audit processes among municipal entities and the flexibility Rule 15c2-12 affords issuers and obligated persons in recognition of this lack of uniformity, see, e.g., Example Three – Annual Financial Disclosures through Sequential Submissions for the Same Fiscal Period, 84 FR at 65440; and (2) scenarios in which multiple obligors support repayment of municipal securities in the market, see, e.g., Example Four—Annual Financial Disclosures with Sequential Submissions for Issues with Multiple Obligated Persons with Different Fiscal Periods, 84 FR at 65440-65441; see also NFMA Letter, at p. 3. While the MSRB agrees that these complexities could add to investor confusion, the MSRB does not agree that the additional transparency afforded by the Submission Calculator will further contribute to potential investor confusion. Rather, the MSRB believes that the proposed enhancements will make information about these distinctions more apparent to investors, as the proposed enhancements will contextualize the Submission Calculator’s number with applicable dates and relevant links to other disclosure information.

<sup>35</sup> See, e.g., discussion under section entitled *The Board’s Analysis of Alternatives to the Proposed Rule Change*, 84 FR at 65442 - 65543.

<sup>36</sup> See, e.g., 84 FR at 65542 (“In evaluating these alternative approaches, the Board determined that (1) limiting the Submission Calculator to evaluating the timing of annual financial disclosures was most appropriate at this time, particularly in light of the

issuers and obligated persons submitting information to the EMMA Portal.<sup>37</sup> The comments do not alter the Board's determinations in this regard.

Nevertheless, in consideration of the comments to the proposed rule change, the MSRB emphasizes that it is committed to work with stakeholders on future enhancements to the EMMA Portal. The MSRB recognizes that certain industry-led initiatives have been organized on the topic of improving transparency in the municipal securities market.<sup>38</sup> The MSRB welcomes any recommendations that may result from those initiatives, particularly any consensus recommendations from municipal entities, private conduit borrowers, investors, and their regulated financial professionals on how the EMMA system could be further enhanced beyond the proposed rule change.<sup>39</sup> For example, the MSRB would welcome further discussion on

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lack of uniformity in the disclosure of interim financial information, and (2) displaying a static calculation would be most easily understood by EMMA users[.]”). The Board contemplated many of the complexities identified by commenters. Id., at 65542-65543 (“the Board considered concerns that, at this time, other approaches with more complex functionality may require significant alterations to the submission process and/or require disclosure submitters to provide additional information to the EMMA system”).

<sup>37</sup> See, e.g., 84 FR at 65542 (“Accordingly, the proposed rule change would not alter the burdens on submitters in publishing annual financial disclosures to the EMMA system in this way, and so does not result in any new burdens on competition in this regard.”).

<sup>38</sup> For example, it has been represented to the MSRB that members of GFOA, NASACT, NAST, NAHEFFA, NABL, NAMA, and NFMA have organized a Municipal Market's Disclosure Industry Workgroup and that its members are working towards developing “industry solutions to the municipal market's most pressing disclosure objectives in order to advance our mutual goals of quality, timely, and meaningful disclosure.” See, e.g., Issuer Representatives Workgroup Letter, at p. 1 (but note that a representative from NFMA was a not a signatory to the letter); see also 84 FR at 65438, n. 28. The Issuer Representatives Workgroup Letter did not indicate, and the MSRB is otherwise unaware, when the Municipal Market's Disclosure Industry Workgroup will complete its work.

<sup>39</sup> The MSRB believes that many of the suggestions made in the comment letters are not mutually exclusive to the proposed rule change and that the MSRB's consideration of any consensus recommendations resulting from industry initiatives can proceed in parallel with an operative date for the proposed rule change.

GFOA's recommendation that "compliance" with the contractual terms of a continuing disclosure agreement is "a more suitable parameter to showcase to investors" on the EMMA Portal.<sup>40</sup> Similarly, the MSRB would welcome consensus proposals on NFMA's concern about identifying delayed annual financial disclosures on the EMMA Portal.<sup>41</sup> The MSRB would also welcome thoughts on how to resolve NAHEFFA's and NFMA's observations that disclosures related to pooled financings and other financings with more than one obligated person could be improved.<sup>42</sup>

In short, the MSRB is very encouraged by the stated commitments of commenters to meaningfully improve transparency in the municipal securities market and looks forward to

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<sup>40</sup> GFOA Letter, at p. 2 ("Investors agree to the parameters of that disclosure timeframe [stated in a continuing disclosure agreement] upon purchasing the security. . . . Thus, a more suitable parameter to showcase to investors may be to note whether the issuer is in compliance with their CDA – information that is readily available."). The MSRB understands that it is a common, but not universal, practice for the form of a continuing disclosure agreement ("CDA") to be appended to an official statement, but investors otherwise do not have ready access to the final executed terms of a CDA on the EMMA Portal. The MSRB would welcome further discussion on how to more widely collect and disseminate information about an issuer's or obligated person's CDA compliance, such as the submission of CDAs or the reporting of disclosure deadlines to the EMMA system by issuers and obligated persons.

<sup>41</sup> NFMA Letter, at p. 3 ("Additionally, the Submission Calculator has the potential to be misleading since it is based on the submitted annual financial disclosure. For the obligated party that hasn't disclosed for the recently concluded fiscal year, the number displayed will be based on the last time annual financial filings were made, even if that number of days has been exceeded for the current fiscal year."). The MSRB considered dynamic counters and ultimately determined not to include them as part of the proposed rule change. See 84 FR at 65442. Related to NFMA's other suggestions, the MSRB would also welcome consensus suggestions that the EMMA system should permit disclosure submitters to "[I]ink bonds not only by issuing entity but by ultimate borrower (obligor) and project" and "identify active material events and those that have been resolved." NFMA Letter, at p. 2.

<sup>42</sup> See NAHEFFA Letter, at p. 3 (discussing pooled financings), and NFMA Letter, at p. 3 (discussing transactions with multiple obligated parties). The MSRB understands that many pooled financings have objective criteria defining which entities will be considered obligated persons for continuing disclosure reporting. The MSRB believes that the EMMA Portal could be utilized for making this information more apparent to investors, such as allowing the obligated persons for such financings to be reported and displayed.

Securities and Exchange Commission  
MSRB Response to Comments on SR-MSRB-2019-13  
February 6, 2020  
Page 14 of 14

continuing dialogue with stakeholders on how the EMMA system can further improve transparency beyond adoption of the proposed enhancements. The MSRB believes the proposed rule change is complementary to such efforts and so the proposed enhancements should not be withdrawn or disapproved at this time in anticipation of the outcomes of ongoing industry initiatives.

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If you have any questions, please feel free to contact me or David Hodapp, Assistant General Counsel, at 202-838-1500.

Sincerely,



Gail Marshall  
Chief Compliance Officer