

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-57577, File No. SR-MSRB-2007-06)

March 28, 2008

Self-Regulatory Organizations; Municipal Securities Rulemaking Board; Notice of Filing of Amendment Nos. 1 and 2 and Order Granting Accelerated Approval of Proposed Rule Change as Modified by Amendment Nos. 1 and 2 Thereto Relating to an Amendment to the Municipal Securities Information Library® System to Establish a Pilot System for Consolidated Dissemination of Disclosure Documents and Related Information through an Internet-Based Public Access Portal

I. Introduction

On November 15, 2007, the Municipal Securities Rulemaking Board (“MSRB” or “Board”), filed with the Securities and Exchange Commission (“Commission”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),¹ and Rule 19b-4 thereunder,² a proposed rule change to establish a pilot system (the “pilot portal”) for the consolidated dissemination, through an Internet-based public access portal, of disclosure documents and related information that the MSRB currently receives through its existing facilities. The proposed rule change was published for comment in the Federal Register on December 28, 2007.³ The Commission directly received one comment letter regarding the proposal.⁴ On January 30, 2008, the MSRB filed Amendment No. 1 to the

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 57004 (December 20, 2007), 72 FR 73941 (December 28, 2007) (“Commission’s Notice”).

⁴ See letter from Peter J. Schmitt, CEO, DPC DATA Inc. (“DPC DATA”), dated January 23, 2008. The MSRB forwarded to the Commission a comment letter it received on this rule filing. See supra note 5. The Commission considered both comment letters.

proposal.⁵ On March 7, 2008, the MSRB filed Amendment No. 2 to the proposal.⁶ The text of Amendment Nos. 1 and 2 is available on the MSRB's Web site (<http://www.msrb.org>), at the MSRB's principal office, and at the Commission's Public Reference Room. This order provides notice of the proposed rule change as modified by Amendment Nos. 1 and 2 and approves the proposed rule change as amended on an accelerated basis.

II. Description of the Proposal

MSRB Rule G-36 requires that a broker, dealer or municipal securities dealer that acts as managing or sole underwriter for most primary offerings of municipal securities send the official statement ("OS") and Form G-36(OS) to the Municipal Securities Information Library® or "MSIL" system.⁷ In addition, if the offering is an advance

⁵ In Amendment No. 1, the MSRB stated that "the pilot portal would be established and operated pending establishment of a permanent Internet-based public access system to be known as the Electronic Municipal Market Access system ("EMMA")," and amended Exhibit 2 of the proposed rule change by submitting a comment letter about the proposed rule received by the MSRB from Philip Moyer, CEO, EDGAR Online, Inc. ("EDGAR Online"), to Ernesto A. Lanza, Senior Associate General Counsel, MSRB, dated December 17, 2007. The Commission notes that a proposal to establish any permanent system would be required to be submitted to the Commission for Commission consideration as a proposed rule change pursuant to Section 19(b) of the Act.

⁶ In Amendment No. 2, the MSRB partially amended the text of the proposed rule change to clarify that the pilot portal would be implemented as a service of EMMA as a pilot facility within the MSIL system. In addition, the MSRB discusses the comment letter included in Amendment No. 1 (the EDGAR Online letter), together with the comment letter received by the Commission in response to the Commission's Notice (the DPC DATA Inc. letter). Finally, Amendment No. 2 requests that the Commission approve an operational date for the pilot portal of March 31, 2008.

⁷ Municipal Securities Information Library and MSIL are registered trademarks of the MSRB. The MSIL system's OS/ARD system was initially approved by the Commission in 1991 and amended in 2001 to establish the current optional electronic submission system. See Securities Exchange Act Release No. 29298

refunding and an escrow deposit agreement or other advance refunding document (“ARD”) has been prepared, the ARD and Form G-36(ARD) also must be sent to the MSIL system by the managing or sole underwriter. OSs and ARDs collected by the MSIL system currently are made available in paper form, subject to copying charges, at the MSRB’s public access facility in Alexandria, Virginia, and electronically by paid subscription on a daily over-night basis and by purchase of annual back-log collections.

The proposed rule change would establish, on a pilot basis, an Internet-based public access portal to provide free access to OSs and ARDs received by the MSRB under Rule G-36. Copies of all such OSs and ARDs received by the MSRB on or after implementation of the pilot portal will be made available to the public as portable document format (PDF) files for viewing, printing and downloading at the pilot portal promptly after acceptance and processing, and will remain publicly available for the life of the municipal securities. The pilot portal will provide on-line search functions utilizing the MSIL system computer to ensure that users of the pilot portal are able to readily identify and access documents that relate to specific municipal securities based on a broad range of search parameters. The pilot portal will be designed to provide a user searching for a particular municipal security with a comprehensive display of relevant information concerning such security available from the MSRB’s various information systems on a single screen or related set of screens. The pilot portal will provide basic identifying information for the security, direct access to the OS submitted by the underwriter to the MSIL system, price information from the MSRB’s Real-Time

(June 13, 1991), 56 FR 28194 (June 19, 1991) (SR-MSRB-1990-2); Securities Exchange Act Release No. 44458 (June 20, 2001), 66 FR 34495 (June 28, 2001) (SR-MSRB-2001-03).

Transaction Reporting System (“RTRS”) for the most recent trades in such security (as well as historical price information), and, if the security has been advance refunded by a refunding issue, any ARDs submitted by the underwriter to the MSIL system in connection with such advance refunding.

The proposed rule change consists of an amendment to the MSRB’s existing Official Statement and Advance Refunding Document (OS/ARD) system of the MSIL system, under which the MSRB proposes to establish and operate the pilot portal while it develops a proposal to establish a permanent Internet-based public access system (the “permanent system”).⁸ The MSRB requests approval of the pilot portal for a period of one year from the date it becomes operational, subject to earlier termination upon Commission consideration and approval, pursuant to Section 19(b) of the Act, of a permanent system. The pilot portal would operate for a limited period of time for electronic submissions of all OSs and ARDs to the MSRB and free public access to such documents through a centralized Internet-based portal.⁹

The MSRB requests that the Commission find good cause, pursuant to Section 19(b)(2) of the Act, for approving Amendment Nos. 1 and 2 prior to the thirtieth day after publication of notice of filing of Amendment Nos. 1 and 2 in the Federal Register. The

⁸ Proposed rule changes to establish a permanent system were not included by the MSRB in this filing regarding the pilot portal. The establishment of a permanent system would be considered by the Commission following a proposed rule change filing by the MSRB pursuant to Section 19(b) of the Act .

⁹ The MSRB has stated it is developing an “access equals delivery” standard for OS dissemination under Rule G-32, concerning disclosures in connection with new issues. Neither the “access equals delivery” standard nor any kind of permanent system were included by the MSRB in the filing subject to this order. Such issues would be considered by the Commission following a filing by the MSRB pursuant to Section 19(b) of the Act.

MSRB believes that the Commission has good cause for granting accelerated approval of Amendment Nos. 1 and 2 because the amendments do not substantively alter the original proposed rule change.

A full description of the proposal is contained in the Commission's Notice.

III. Summary of Comments and the MSRB's Response

As previously noted, the MSRB received one comment letter from EDGAR Online relating to this proposed rule change, which it forwarded to the Commission. The Commission directly received one comment letter from DPC DATA regarding the proposed rule change.¹⁰ In its comment letter, EDGAR Online strongly supported the MSRB's proposed rule change, stating that the proposed portal will encourage transparency in the municipal securities market and create a healthy ecosystem of information that will ultimately benefit both the investment community and the municipalities that seek access to public markets. Although EDGAR Online recommended that the Commission build a publicly accessible storage and dissemination system for all municipal filings, EDGAR Online strongly supported the MSRB's proposed rule change.

In commenting on this proposed rule change, DPC DATA, a Nationally Recognized Municipal Securities Information Repository (NRMSIR), expressed concerns about the proposed portal.¹¹ It stated that the MSRB's plans for its proposed MSIL-based

¹⁰ Comment letter submitted by Peter J. Schmitt, CEO of DPC DATA Inc., dated January 23, 2008, <http://www.sec.gov/comments/sr-msrb-2007-06/msrb200706-1.htm>.

¹¹ DPC Data also expressed a number of concerns about other aspects of the MSRB's plans for the EMMA system, such as the inclusion of continuing disclosure documents, that are not the subject of this proposed rule change. Only

Web portal go well beyond its organizational mandate as stated in Section 15B(b)(2)(C) of the Act. It indicated a belief that some of the proposed features, such as nine-digit CUSIP searches, are well in excess of those provided by the Commission's EDGAR system. Further, it expressed concern that "by providing value-added content and features on its proposed Web portal, the MSRB will not only effectively take over the business of providing value-added content to commercial firms, but it will fund this activity with fees collected from broker/dealers." DPC DATA urged the Commission to restrain the MSRB from offering what it viewed as value-added content and features that, in its view, will necessarily inflict economic harm on existing data vendors, and inflict the harm unevenly.

In Amendment No. 2, the MSRB stated that it has carefully reviewed the statements made by EDGAR Online and DPC DATA and continues to believe that the proposal is consistent with its statutory mandate under the Act. The MSRB concluded that developing the pilot portal through the adaptation and upgrading of existing internal MSRB systems – including but not limited to the MSIL system, the Real-Time Transaction Reporting System, and the MSRB's in-house access control systems – combined with the creation of a custom user interface designed for use by retail investors, is the most prudent and efficient manner of achieving the MSRB's goal of ensuring equal access for all market participants to the critical disclosure information needed by investors in the municipal securities market.

In addition, the MSRB continues to believe that the proposal, including the

the comments about the subject of this proposed rule change are discussed in this order.

functionalities thereof, will not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The MSRB represented that documents and information provided through the portal will be available to all persons on an equal basis. The MSRB also stated in Amendment No. 2 that it will continue to make the full collection of documents available by subscription on an equal basis without imposing restrictions on subscribers from re-disseminating such documents or from otherwise offering value-added services and products based on such documents on terms determined by each subscriber. The MSRB believes that any incidental impact on commercial enterprises would not create an unequal burden among such enterprises. The MSRB also believes that the experience of private enterprises involved in the dissemination of EDGAR materials and related value-added services, such as those described by EDGAR Online, supports the MSRB's conclusion that EMMA will not have an inappropriate impact on the marketplace for such services and in fact may very well promote further growth and innovation in this area.

The MSRB believes that EMMA's functionalities further its core mission by modernizing the dissemination of documents and are needed for the purposes for which the pilot portal is being created, and that such functionalities are not inconsistent with any statutory limitations placed on MSRB activities. The MSRB believes that none of these functionalities constitute value-added services that compete inappropriately with the private sector. Rather, the MSRB believes that these functionalities are critical for EMMA's operation as an assured, free centralized source of information for retail investors that provides investors with the necessary tools to find the information for which they are searching and to understand such information once it is found.

IV. Commission Discussion of Comments and the MSRB's Responses

In its evaluation of the proposed rule changes and the MSRB's responses to the comments received by the Commission, the Commission has carefully considered DPC DATA's and EDGAR Online's comments. In its evaluation of DPC DATA's comments, the Commission has particularly noted DPC DATA's statement that the proposed pilot portal and the MSRB's planned permanent system¹² should not compete with vendors in offering value-added features and services related to the handling of disclosure documents and that the proposed rule change would impose an unequal burden on competition.

Section 15B(b)(2)(C) of the Act requires that, before approving Board rules, the Commission find that the proposed rules do not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. Pursuant to current MSRB Rule G-36, which was approved¹³ by the Commission after notice and comment pursuant to Section 19(b) of the Act, and as a result of the establishment of the MSIL system, also approved¹⁴ by the Commission after notice and comment pursuant to Section 19(b), the MSRB has collected and disseminated official statements, advance refunding documents, and associated indexing information for many years. OSs and

¹² Again, the Commission notes that the proposed rule change before it concerns only the pilot portal proposed to be implemented within MSIL. Accordingly, the specific features of any permanent system to be proposed by the MSRB would be subject to Commission review, including notice and comment pursuant to Section 19(b), at such time as the MSRB files it as a proposed rule change.

¹³ Securities Exchange Act Release No. 28081 (June 1, 1990), 55 FR 23333 (June 7, 1990) (SR-MSRB-89-9).

¹⁴ Securities Exchange Act Release No. 29298 (June 13, 1991), 56 FR 28194 (June 19, 1991) (SR-MSRB-90-2).

ARDs collected by the MSIL system currently are made available in paper form, subject to copying charges, at the MSRB's public access facility in Alexandria, Virginia, and electronically by paid subscription on a daily over-night basis and by purchase of annual back-log collections. By making use of the Internet for access to OSs and ARDs, the pilot portal would modernize the method of delivery of such documents to investors and others, and make them more readily accessible by investors and others, but not alter the availability of such documents to commercial vendors or their ability to disseminate such information, together with whatever value-added products they may wish to provide.

The MSRB has proposed for the pilot portal to provide on-line search functions utilizing its existing MSIL system computer index to ensure that users of the pilot portal are able to readily identify and access documents that relate to specific municipal securities based on a broad range of search parameters. The Commission includes a variety of search methods in its EDGAR system and believes that a search function is an important component of an information system, such as the pilot portal, because without it users could have significant difficulty accessing all the documents and navigating the system.

As noted above, the pilot portal would also integrate information from the MSRB's RTRS into the pilot system, and thereby provide price information for the most recent trades in a security (as well as historical price information), and, if the security has been advance refunded by a refunding issue, provide any ARDs submitted by the underwriter to the MSIL system in connection with such advance refunding. The MSRB imposes no restrictions on the redissemination of RTRS data. As a result, the Commission does not view the inclusion of RTRS information in the pilot portal to

significantly alter the current competitive situation for information vendors, who may obtain this information and provide associated value-added products if they desire to do so.

The MSRB has stated that documents provided through the pilot portal will be available to all persons on an equal basis and that the MSRB will continue to make the full collection of documents available by subscription on an equal basis without imposing restrictions on subscribers from re-disseminating such documents or from otherwise offering value-added service and products¹⁵ based on such documents on terms determined by each subscriber. For all of these reasons, the Commission believes that the proposed rule change does not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

The Commission does not believe the proposal exceeds the Board's authority under Section 15B of the Act. As the Commission stated in its release approving Rule G-36,¹⁶ Section 15B(b)(2)(C) is a broad grant of authority to the Board to, among other purposes, remove impediments to and perfect the mechanism of a free and open market in municipal securities, and, in general, to protect investors and the public interest.¹⁷ It is important for market professionals and investors have access to complete and timely descriptive information about municipal securities and municipal securities issuers. The pilot portal should enhance access to information about new offerings of municipal

¹⁵ The Commission notes that information vendors were able to provide value-added services with regard to the information obtained from EDGAR.

¹⁶ Securities Exchange Act Release No. 28081 (June 1, 1990), 55 FR 23333 (June 7, 1990)(SR-MSRB-89-9).

¹⁷ 15 U.S.C. 78o-4(b)(2)(C).

securities. The Commission believes that the information contained in official statements and advance refunding documents is valuable to investors and should be widely available. Investors in municipal securities, municipal analysts, investment advisors, and the broker-dealers who effect transactions in the municipal market would benefit from easier access to current OSs and ARDs. The Commission also believes that the proposed rule change does not implicate Section 15B(d)(2) of the Act, commonly known as the Tower Amendment, because it imposes no requirements, directly or indirectly, on issuers – it instead enhances access to information already being provided by the MSRB. Further, the Commission believes that establishment of the pilot portal should help prevent fraudulent and manipulative acts and practices and protect investors and the public interest by enhancing the availability of disclosure information contained in OSs and ARDs.

V. Commission’s Findings and Order Granting Accelerated Approval of Proposed Rule Change

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the MSRB¹⁸ and, in particular, the requirements of Section 15B(b)(2)(C) of the Act¹⁹ and the rules and regulations thereunder. Section 15B(b)(2)(C) of the Act requires, among other things, that the MSRB’s rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing

¹⁸ In approving this rule the Commission notes that it has considered the proposed rule’s impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

¹⁹ 15 U.S.C. 78o-4(b)(2)(C).

information with respect to, and facilitating transactions in municipal securities, to remove impediments to and perfect the mechanism of a free and open market in municipal securities, and, in general, to protect investors and the public interest.²⁰

In particular, the Commission finds that the pilot facility will remove impediments to and help perfect the mechanisms of a free and open market in municipal securities, assist in preventing fraudulent and manipulative acts and practices, and will in general promote investor protection and the public interest by improving access for all market participants to the critical disclosure information needed by investors in the municipal securities market.

The Commission also finds good cause to approve Amendment Nos. 1 and 2 to the proposed rule change prior to the thirtieth day after the date of publication of notice of filing of the amendments in the Federal Register. The proposed rule change was published in the Federal Register on December 28, 2007.²¹ Amendment Nos. 1 and 2 do not substantively change the proposal as published in the Federal Register. The amendments included a comment letter on this proposal filed with the MSRB, responded to the comment letter filed with the MSRB and the comment letter filed with the Commission, provided a name for the public access portal and requested a delayed operational date for the pilot facility. The Commission finds that it is in the public interest to approve the proposed rule change as soon as possible to expedite its implementation.

²⁰ Id.

²¹ See supra note 3.

Accordingly, the Commission believes good cause exists, consistent with Sections 15B(b)(2)(C) and 19(b) of the Act,²² to approve Amendment Nos. 1 and 2 to the proposed rule change on an accelerated basis. The Commission approves an operational date for the pilot portal of March 31, 2008, as requested by the MSRB.

VI. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-MSRB-2007-06 on the subject line.

Paper comments:

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-MSRB-2007-06. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed

²² 15 U.S.C. 78o-4(b)(2)(C), and 78s(b).

with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549, on official business days between the hours of 10:00 am and 3:00 pm. Copies of such filing also will be available for inspection and copying at the principal office of the MSRB. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-MSRB-2007-06 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

VII. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule change is consistent with the requirements of the Act and in particular Section 15B(b)(2)(C) of the Act and the rules and regulations thereunder.

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,²³ that

²³ 15 U.S.C. 78s(b)(2).

the proposed rule change (SR-MSRB-2007-06), as modified by Amendment Nos. 1 and 2, be, and it hereby is, approved on an accelerated basis from March 31, 2008 to March 31, 2009, subject to earlier termination upon Commission consideration and approval, pursuant to Section 19(b) of the Act, of a permanent system.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²⁴

Florence E. Harmon
Deputy Secretary

²⁴ 17 CFR 200.30-3(a)(12).