

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-87583; File No. SR-MSRB-2019-13)

November 21, 2019

Self-Regulatory Organizations; Municipal Securities Rulemaking Board; Notice of Filing of a Proposed Rule Change to Amend the Information Facility of the MSRB's Electronic Municipal Market Access (EMMA®) System

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act” or “Exchange Act”)¹ and Rule 19b-4 thereunder,² notice is hereby given that on November 19, 2019 the Municipal Securities Rulemaking Board (“MSRB”) filed with the Securities and Exchange Commission (“SEC” or “Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the MSRB. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

The MSRB filed with the Commission a proposed rule change to amend the information facility of the MSRB’s Electronic Municipal Market Access (EMMA®) system (the “EMMA IF”)³ to provide for (1) the automated calculation and static display of the number of days

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ The EMMA IF serves to outline the basic functionality and the high-level parameters by which the MSRB operates the EMMA system. As further described in the EMMA IF, the EMMA system consists of the EMMA Primary Market Disclosure Service, the EMMA Continuing Disclosure Service, the EMMA Trade Price Transparency Service and the EMMA Short-Term Obligation Rate Transparency Service. See EMMA IF, available at: <http://www.msrb.org/Rules-and-Interpretations/MSRB-Rules/Facilities/EMMA-Facility.aspx>.

between (i) the annual fiscal period end date for an issuer⁴ or obligated person⁵ and (ii) the date an annual financial disclosure⁶ is submitted to the EMMA system for such annual fiscal period (the “Submission Calculator”) and (2) the reconfiguration of certain information shown on the

⁴ Under 17 CFR 240.15c2-12 of the Exchange Act (“Rule 15c2-12” or the “Rule”), the Commission has generally defined the term “issuer of municipal securities” to mean any governmental issuer specified in section 3(a)(29) of the Act and the issuer of any separate security, including a separate security as defined in rule 3b-5(a) under the Act. See 17 CFR 240.15c2-12(f)(4). The proposed rule change uses the term issuer consistent with Rule 15c2-12(f)(4) to mean any such “issuer of municipal securities” submitting continuing disclosure documents and related information to the EMMA system, whether on a voluntary basis or pursuant to a contractual undertaking, such as a continuing disclosure agreement (as hereinafter defined in note 6 infra).

⁵ Section 15B(e)(10) of the Act defines “obligated person” as “any person, including an issuer of municipal securities, who is either generally or through an enterprise, fund, or account of such person, committed by contract or other arrangement to support the payment of all or part of the obligations on the municipal securities to be sold in an offering of municipal securities.” 15 U.S.C. 78o-4(e)(10). As interpreted by the Commission in Rule 15c2-12(f)(10), the term “obligated person” means any person, including an issuer of municipal securities, who is either generally or through an enterprise, fund, or account of such person committed by contract or other arrangement to support payment of all, or part of the obligations on the municipal securities to be sold in the offering (other than providers of municipal bond insurance, letters of credit, or other liquidity facilities). See 17 CFR 240.15c2-12(f)(10). The proposed rule change uses the term obligated person consistent with Rule 15c2-12(f)(10) to mean any such “obligated person” submitting continuing disclosure documents and related information to the EMMA system, whether on a voluntary basis or pursuant to a contractual undertaking, such as a continuing disclosure agreement.

⁶ Under Rule 15c2-12, a participating underwriter in an offering of certain municipal securities must determine that an issuer or obligated person has undertaken in a written agreement or contract for the benefit of holders of the municipal securities to provide certain information to the MSRB (a “continuing disclosure agreement”), which includes a requirement, among others, to provide certain annual financial and operating information (i.e., “annual financial filings”) and audited financial statements (i.e., “audited financial filings”), if available (collectively, “annual financial disclosures”). See 17 CFR 240.15c2-12(b)(5)(i).

EMMA public website (emma.msrb.org) (the “EMMA Portal”)⁷ to more prominently display an issuer’s or obligated person’s annual financial disclosures and related information (the “proposed rule change”).

The Board is proposing these amendments to the EMMA IF and corresponding enhancements to the EMMA system 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. The Board believes the proposed rule change is consistent with the Act. By promoting greater transparency and awareness of the financial disclosures available in the municipal securities market, the Board believes the proposed rule change would promote (1) the protection of investors and the public interest and (2) the prevention of fraudulent and manipulative acts and practices. The Board has determined to file the proposed rule change under Section 19(b)(2) of the Act and requests that the proposed rule change become operative on a date to be determined by the MSRB through a notice published on its website not later than 180 days following the publication of the Commission’s approval of the proposed rule change in the Federal Register, with such operative date being not more than one year from the date of such MSRB notice.

The text of the proposed rule change is available on the MSRB’s website at www.msrb.org/Rules-and-Interpretations/SEC-Filings/2019-Filings.aspx, at the MSRB’s principal office, and at the Commission’s Public Reference Room.

⁷ As further defined in the EMMA IF, the EMMA Portal is the functionality for displaying and otherwise making certain documents and data available to the public without charge.

II. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the MSRB included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The MSRB has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The proposed rule change consists of amendments to the EMMA IF that would provide for (1) the development and operation of the Submission Calculator and (2) the reconfiguration of certain information shown on the EMMA Portal, in order to more prominently display an issuer’s or obligated person’s annual financial disclosures and related information.

The Collection and Display of Financial Information on the EMMA Portal

The EMMA System and EMMA Portal. The EMMA system consists of several component functions that process and disseminate market information submitted to the MSRB. For example, the EMMA Trade Price Transparency Service publishes information on the EMMA Portal about trading activity in the municipal securities market when such information is reported by brokers, dealers, and municipal securities dealers (collectively, “dealers”) in accordance with MSRB Rule G-14, on reports of sales or purchases. Similarly, the EMMA Primary Market Disclosure Service processes submissions of official statements, preliminary official statements, and related pre-sale documents for display on the EMMA Portal when such

information is submitted voluntarily or in compliance with MSRB Rule G-32, on disclosures in connection with primary offerings. Consequently, issuers, obligated persons, dealers, investors, and the general public routinely interact with the EMMA system in order to submit or access information. The EMMA Portal averages more than 95,000 pageviews per day, which amounts to over 35 million pageviews in a full year. In this way, the EMMA Portal is relied upon as a free and credible source of market information and provides unprecedented transparency about the municipal securities market.⁸

Rule 15c2-12 and the EMMA Continuing Disclosure Service. A continuing disclosure agreement that is entered into consistent with the requirements of Rule 15c2-12 commits an issuer or obligated person to provide continuing disclosure documents in conformance with the process and other requirements prescribed by the MSRB, including the entry of certain identifying information.⁹ The EMMA Continuing Disclosure Service is the component of the

⁸ See, e.g., Securities and Exchange Commission, Report on the Municipal Securities Market, at p. 35 (July 31, 2012) (“2012 Municipal Report”) (stating EMMA “significantly improved the availability of both primary market and continuing disclosure documents to investors”), available at <https://www.sec.gov/news/studies/2012/munireport073112.pdf>, and Commissioner Michael S. Piowar, Remarks at MSRB Dinner to Celebrate Milestones in Municipal Market Transparency (April 24, 2018) (stating EMMA has “empowered investors with a level of transparency that was previously unknown in this market and has transformed the municipal securities industry”), available at <https://www.sec.gov/news/speech/speech-piowar-20180424>.

⁹ See 17 CFR 240.15c2-12(b)(5)(i); see also Release No. 34-59062 (December 5, 2008) 73 FR 76104 (December 15, 2008) (File No. S7-21-08) (the “Sole Repository Release”) (“The final amendments require a Participating Underwriter to reasonably determine that the issuer or obligated person has agreed at the time of a primary offering: (1) to provide the continuing disclosure documents to the MSRB instead of to each NRMSIR and the appropriate SID, if any; and (2) to provide the continuing disclosure documents in an electronic format and accompanied by identifying information as prescribed by the

EMMA system authorized to receive, process, and disseminate continuing disclosure information submitted by issuers, obligated persons, and their agents (collectively, “disclosure submitters” or “submitters”).¹⁰ Upon receipt and processing, the EMMA Continuing Disclosure Service disseminates annual financial disclosures, event notices, and other disclosure documents on the EMMA Portal, making them publicly available at no cost. The EMMA system uses certain identifying information provided by submitters to electronically index and systematically display submissions, which allows external users to more readily find and access disclosure documents on the EMMA Portal.

Submission Process for Annual Financial Disclosures. In authorizing the EMMA Continuing Disclosure Service, the Commission granted authority to the MSRB to prescribe the identifying information collected by the EMMA system for purposes of sorting, categorizing, and retrieving continuing disclosure submissions.¹¹ When receiving the submission of an annual

MSRB.”). As further described herein, the EMMA system uses certain identifying information provided by a submitter to electronically index a disclosure document.

¹⁰ See Release No. 34-59061 (December 5, 2008), 73 FR 75778 (December 12, 2008) (File No. SR-MSRB-2008-05) (December 8, 2008) (the “Continuing Disclosure Service Release”) (establishing the EMMA Continuing Disclosure Service “for the receipt of, and for making available to the public, continuing disclosure documents and related information to be submitted by issuers, obligated persons and their agents pursuant to continuing disclosure undertakings entered into consistent with Rule 15c2-12”).

¹¹ See 17 CFR 240.15c2-12(b)(5)(i). See also the Sole Repository Release, *supra* note 9, 73 FR at 76114 (“We [*i.e.*, the SEC] believe that providing identifying information with each submitted document will permit the repository to sort and categorize the document efficiently and accurately. We also anticipate that the inclusion with each submission of the basic information needed to accurately identify the document will facilitate the ability of investors, market participants, and others to reliably search for and locate relevant disclosure documents.”) and the Continuing Disclosure Service Release, *supra* note 10, 73 FR at 75781, fn. 48 (stating “the commitment by an issuer to provide identifying information exists only if it were included in a continuing disclosure agreement. As a

financial disclosure, the MSRB generally requires¹² disclosure submitters to enter the following information:

- Disclosure Category. Submitters identify the appropriate indexing category for the annual financial disclosure (the “disclosure category”) as being an annual financial filing and/or audited financial filing.¹³
- Brief Content Description. Submitters may provide a brief description of the content of the annual financial filing and/or audited financial filing.
- Fiscal Period Covered. Submitters enter the annual fiscal period covered by the annual financial disclosure in the date field, including a fiscal year end date (the “Fiscal Period End Date”).¹⁴

result, issuers submitting continuing disclosure documents pursuant to the terms of undertakings that were entered into prior to the effective date of [the amendments to the Rule effectuated by the Sole Repository Release] and that did not require identifying information will be able to submit documents without supplying identifying information.”)

¹² As noted in the Continuing Disclosure Service Release, a continuing disclosure agreement specifies whether an issuer or obligated persons must provide identifying information. As a result, issuers and obligated persons submitting continuing disclosure documents pursuant to the terms of certain continuing disclosure agreements – *i.e.*, agreements entered into prior to the effective date of the Commission’s 2008 amendments to the Rule that did not require identifying information – are permitted to submit documents without supplying such identifying information. See Continuing Disclosure Release, supra note 10, at 73 FR 75781, fn. 48.

¹³ Disclosure submitters select the “Annual Financial Information and Operating Data (Rule 15c2-12)” disclosure category field for an annual financial filing and/or the “Audited Financial Statements or CAFR (Rule 15c2-12)” disclosure category field for an audited financial filing.

¹⁴ The EMMA Dataport Manual for Continuing Disclosure Submissions provides instructions and other information for issuers, obligated persons, dealers, municipal advisors, or staff of any other organization submitting to the EMMA Continuing

Once published by a disclosure submitter, the EMMA Continuing Disclosure Service (1) timestamps the annual financial disclosure to register the time and date of the submission of the annual financial disclosure to the EMMA system (the “Posted Date”), (2) processes the information entered by a submitter to classify and index the annual financial disclosure on the EMMA Portal, and (3) disseminates the annual financial disclosure document and related information, such as the fiscal period information, on the EMMA Portal, making the annual financial disclosure and related information publicly available at no cost.

Concerns Regarding the Timeliness of Annual Financial Disclosures

The timeliness of financial disclosures is often cited as an important factor in their usefulness to investors and other market participants, and 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 and various market participants.¹⁵

The Commission’s 1994 Interpretive Release and Rule Amendments. The Commission has emphasized the importance of timely disclosure for decades. As early as its 1994 interpretive release regarding the disclosure obligations of municipal security issuers and others, the Commission stated that, “[t]o avoid providing investors with a stale, and therefore potentially misleading, picture of financial condition and results of operations, issuers and obligors need to

Disclosure Service via the EMMA Dataport web user interface. The manual is published on the MSRB’s website and is available at:
<http://www.msrb.org/~media/pdfs/msrb1/EMMA/pdfs/EMMACDManual.ashx?la=en>.

¹⁵ See, e.g., 2012 Municipal Report, *supra* note 8 at p. 74 (citing Release No. 34-33741, “Statement of the Commission Regarding Disclosure Obligations of Municipal Securities Issuers and Others” (March 9, 1994), 59 FR 12748 (March 9, 1994)).

release their annual financial statements as soon as practical.”¹⁶ Later in the same year when it amended Rule 15c2-12 to require continuing disclosure agreements to thereafter incorporate provisions regarding annual financial disclosures and certain event notices, the Commission further highlighted the importance of financial information in the secondary market, declaring that “purchasers in the secondary market need the same level of financial information and operating data in making investment decisions as purchasers in the underwritten offering.”¹⁷

The Commission’s 2012 Municipal Report. Building on its prior statements, the Commission’s 2012 Municipal Report affirmed that, “[t]imely financial reporting, including timely issuance of audited annual financial information, not only aids market participants in making informed investment decisions, but is critical to the function of an efficient trading market.”¹⁸ Citing comments from market participants, the 2012 Municipal Report concluded that, “[t]he major challenge in the secondary market disclosure, according to market participants, is the timeliness and completeness of filings as well as compliance with continuing disclosure agreements.” The report also noted certain concerns raised by municipal issuers about the burden of increased regulation,¹⁹ including the concern that mandating a specific timeframe for the

¹⁶ Release No. 34-33741, “Statement of the Commission Regarding Disclosure Obligations of Municipal Securities Issuers and Others” (March 9, 1994), 59 FR 12748, at 12753 (March 9, 1994) (File No. S7-4-94).

¹⁷ Release No. 34-34961 (November 10, 1994), 59 FR 59950 (November 17, 1994) (File No. S7-5-94).

¹⁸ 2012 Municipal Report, supra note 8, at p. 74.

¹⁹ Id., at p. iv (“the Report notes concerns raised by issuers about potential burdens that could result from increased regulation.”)

dissemination of financial information may not be feasible for the municipal market.²⁰ In acknowledgment of the limitations on the regulation of municipal issuers under the existing regulatory scheme, the 2012 Municipal Report made a series of recommendations involving “a combination of approaches, including legislative, regulatory and industry-based initiatives.”²¹ One of those recommendations included the enhancement of the EMMA system, so that “retail investors have better access to disclosure with respect to municipal securities as soon as practicable.”²²

²⁰ Id., at p. 80 (citing to the concerns of issuer representatives at certain hearings regarding “the necessity, or even feasibility, of a mandated shorter timeframe for the dissemination of financial information” and the possibility that “shorter deadlines could diminish the value of financial information” by causing governments to adopt a “reduced set of basic financial statements”).

²¹ Id., at p. vii (“First, in light of the Commission’s limited regulatory authority, we recommend a number of potential legislative changes which, if implemented by Congress, would provide the Commission with additional authority to initiate changes to improve municipal securities disclosures made by issuers. The legislative changes would not result, however, in the repeal or modification to the existing proscriptions on the SEC or the MSRB requiring any presale filing of disclosure documents, known as the ‘Tower Amendment’ (discussed in more detail in the Report). The legislative recommendations would nonetheless give the Commission the authority to take regulatory steps that it determines to be appropriate to meaningfully enhance disclosure practices by municipal issuers, which could be accomplished in a short period of time.”)

²² Id., at p. 141; see also Recommendation of Market Structure Subcommittee of IAC [i.e., the Commission’s Investor Advisory Committee], Select Enhancements to Protect Retail Investors in Municipal and Corporate Bonds, July 5, 2018, available at <https://www.sec.gov/spotlight/investor-advisory-committee-2012/iac061418-market-structure-subcommittee-recommendation.pdf> (recommending the MSRB enhance the EMMA Portal to highlight to “investors, when they reach an obligor’s landing page, if the obligor is out of compliance with its continuing disclosure requirements as it relates to financial reporting”).

Recent Commission Statements. Echoing the language of the 2012 Municipal Report, SEC Chairman Jay Clayton stated in December 2018 that, “[t]imely and accurate information is essential for investors and analysts. Without that, it is challenging to accurately evaluate the current financial condition of a municipal issuer (or any issuer for that matter).”²³ In the same speech, Chairman Clayton tasked the Commission’s Office of Municipal Securities to work with the MSRB and other stakeholders to explore potential approaches to improve transparency around the age and type of financial information.²⁴ Reiterating his thoughts more recently, Chairman Clayton stated in July 2019 that “the timeliness of municipal issuer financial reporting . . . can and should be improved.”²⁵

NFMA Letter to the Board. In May 2019, the Board received a letter from the National Federation of Municipal Analysts (NFMA) that expressed concerns regarding the timing of financial information in the municipal securities market. The letter asserted that “[u]sers of EMMA do not have an easy way to determine the currency of financial reporting by an issuer” and encouraged the Board to “create a counter that would calculate and prominently display the

²³ See Chairman Jay Clayton, Opening Remarks at the Municipal Securities Conference, December 6, 2018, available at <https://www.sec.gov/news/public-statement/statement-clayton-120618>.

²⁴ Id. (“To be clear: I believe that there are potential steps that the SEC and the MSRB can take – that would be wholly consistent with the words and spirit of the Tower Amendment – to improve transparency around the age and type of financial information.”).

²⁵ See Chairman Jay Clayton, Remarks to the SEC Fixed Income Market Structure Advisory Committee, July 29, 2019, available at https://www.sec.gov/news/public-statement/clayton-remarks-fimsac-072919#_ftn1.

greater of the number of days since the end of the last fiscal year to the audit filing date or the number of days since the last fiscal year for which there is not a submitted audit.”²⁶

The Board has developed the proposed rule change cognizant of the historical evolution of disclosure practices in the municipal securities market²⁷ and the present concerns of certain market participants regarding the timing of financial disclosures in the municipal securities market.²⁸ The Board believes the proposed rule change would further promote transparency and efficiency in the municipal securities market – primarily by making information about the timing

²⁶ Letter from Scott Andreson, Chair, National Federation of Municipal Analysts (NFMA), dated May 3, 2019 (the “NFMA Letter”), available at <https://www.nfma.org/assets/documents/position.stmt/nfmaLetterSECMSRBmay3.pdf> (last accessed on October 15, 2019).

²⁷ In February 2017, the MSRB published a report analyzing the timing of the submission of annual financial disclosures to the EMMA system between the years 2010 and 2016. See MSRB: Timing of Annual Financial Disclosures by Issuers of Municipal Securities (February 2017), available at <http://www.msrb.org/msrb1/pdfs/MSRB-CD-Timing-of-Annual-Financial-Disclosures-2016.pdf>. The Government Accounting Standards Board (GASB) assessed the timeliness of audited annual financial reports in a 2018 research memorandum measuring the number of days to the release of audited annual financial reports broken down by various factors such as size and type of government. See GASB, Research Memorandum: Timeliness of Financial Reporting (December 12, 2018), available at https://www.gasb.org/cs/ContentServer?c=Document_C&cid=1176171975910&d=&pageName=GASB%2FDocument_C%2FDocumentPage (last accessed on October 15, 2019).

²⁸ The Board is also aware that the Government Finance Officers Association (GFOA) has announced an industry working group to address timely and meaningful disclosures. See GFOA, Weekly Members News, GFOA Launches Industry Working Group on Municipal Bond Disclosure (July 25, 2019), available at <http://www.estoregfoa.org/StaticContent/staticpages/NL07252019.html> (last accessed on October 15, 2019); see also Sarah Wynn, New GFOA working group to address timely disclosure, The Bond Buyer (July 26, 2019), available at <https://www.bondbuyer.com/news/new-gfoa-working-group-to-address-timely-disclosure> (last accessed on October 15, 2019).

of annual financial disclosures more prominent on the EMMA Portal, so that market participants can make more informed decisions – without imposing significant additional burdens on dealers, municipal issuers, or obligated persons.

The Submission Calculator and Illustrative Examples

The Board believes that the Submission Calculator would provide an important transparency tool for market participants that would make information reported to the EMMA system regarding the timing of annual financial disclosures more readily apparent. As discussed above, the Submission Calculator would automatically calculate and statically display the elapsed number of days between (1) the Fiscal Period End Date for an issuer or obligated person, as such date is entered by a submitter through the process of publishing an annual financial disclosure on the EMMA Portal, and (2) the Posted Date of an annual financial disclosure submitted to the EMMA system for such annual fiscal period.²⁹ The Submission Calculator would depend on the existing information required to be provided by a submitter, calculating the number of days elapsed based solely on the entry of the Fiscal Period End Date and the Posted Date for an annual financial disclosure.³⁰ The day of the Posted Date would be included in the

²⁹ Both dates are currently visible on the EMMA Portal.

³⁰ Consistent with its current functionality, the EMMA system would continue to intake, display, and disseminate annual financial disclosures and related information. The EMMA system would continue to conduct format checks, validate the submitter, and timestamp annual financial disclosures with a Posted Date; however, there would not be an evaluative analysis of the documents or information submitted, nor a validation of the disclosure categories selected by the submitter (e.g., “Other Financial/Operating Data” is erroneously selected rather than “Annual Financial Information and Operating Data (Rule 15c2-12)” or “Audited Financial Statements or CAFR (Rule 15c2-12)”). Nevertheless, the submission calculator would show as not applicable upon the entry of erroneous information that would result in negative calculations and, in the future, the EMMA system may provide soft data checks requesting submitters to confirm entries that are

calculation, as further demonstrated below.³¹ This number of days elapsed would be displayed on the EMMA Portal at the individual security details level.³² Importantly, the MSRB would not evaluate the substantive content of the documents and information submitted, and the Submission Calculator would not analyze the relevant content to evaluate an issuer's or obligated person's compliance with the terms of an applicable continuing disclosure agreement or any applicable law, regulation, or other legal obligation.³³

The following are illustrative examples of the submission process and resulting calculations of the Submission Calculator.

likely erroneous. See Release No. 34-84837 (December 17, 2018), 83 FR 65765, at 65767 (November 21, 2018) (File No. SR-MSRB-2018-09) (describing the “ministerial” functioning of the EMMA system). Accordingly, the submitter would remain responsible for the content of the documents and information submitted to the EMMA system related to an annual financial disclosure, including the proper disclosure category (or categories) of an annual financial disclosure. Moreover, as the resulting calculation performed by the Submission Calculator would depend on this information, it is imperative that disclosure submitters make accurate and complete submissions.

³¹ Stated differently, the Posted Date would not count as an additional full day toward the Submission Calculator's count total. For illustrative purposes, if an issuer submitted an annual financial disclosure on the same day as the date of the end of its annual fiscal period, the Submission Calculator would display zero days as the timing of such annual financial disclosure. If an issuer submitted an annual financial disclosure on the day following the date of the end of its annual fiscal period, the Submission Calculator would display one day as the timing of such annual financial disclosure, and so on.

³² The EMMA Portal's security details pages enable users to access documents and information associated with a particular municipal security, such as an official statement, continuing disclosure document, and/or trade report.

³³ Consistent with the EMMA system's current functionality, if a submitter enters an erroneous Fiscal Period End Date for an annual financial disclosure, then the Submission Calculator would perform its calculation based on the erroneous Fiscal Period End Date entered by the submitter. See also note 30.

- Example One – Single Submission. An issuer submits its audited financial statements to the EMMA system on December 23, 2020 and identifies³⁴ (1) the annual financial disclosure as meeting both disclosure categories of an audited financial filing and annual financial filing³⁵ and (2) the Fiscal Period End Date for the annual financial disclosure as June 30, 2020. The Submission Calculator would display the number of days between the Posted Date for the issuer’s annual financial disclosure and the Fiscal Period End Date of the issuer’s 2020 annual fiscal period as 176 days.³⁶

Example Two – Second Year Submission. An issuer submits its audited financial statements to the EMMA system on December 23, 2020 and

³⁴ A submitter would need to select the appropriate disclosure category (or disclosure categories) applicable to the submission of an annual financial disclosure for the Submission Calculator to perform its calculation. For example, if the submitter in this fact pattern only identified the submission as falling within the disclosure category of “Other,” then the Submission Calculator would not have the necessary information to perform or display its calculation. In these circumstances, the Submission Calculator would display as not applicable on the EMMA Portal for the relevant securities until such time as the issuer submits a disclosure selected as meeting the disclosure category of an annual financial disclosure with a Fiscal Period End Date.

³⁵ Submitters may select multiple disclosure categories for a continuing disclosure filing, including an annual financial disclosure. The fields currently entitled “Annual Financial Information and Operating Data (Rule 15c2-12)” and “Audited Financial Information Statements or CAFR (Rule 15c2-12)” are respectively intended for the submission of annual financial filings and audited financial filings.

³⁶ 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 results of a Submission Calculator would show as not applicable on the EMMA Portal for securities that do not yet have a published annual financial disclosure submission.

identifies (1) the annual financial disclosure as meeting both disclosure categories of an audited financial filing and annual financial filing and (2) the Fiscal Period End Date for the annual financial disclosure as June 30, 2020. The Submission Calculator would display the number of days between the Posted Date for the issuer's latest annual financial disclosure and the Fiscal Period End Date of the issuer's 2020 annual fiscal period as 176 days. Subsequently, the issuer's next annual fiscal period ends on June 30, 2021. On January 4, 2022, the issuer submits its audited financial statements to the EMMA system for its annual fiscal period ending on June 30, 2021. The issuer identifies (1) the annual financial disclosure as meeting both disclosure categories of an audited financial filing and annual financial filing and (2) the Fiscal Period End Date for the annual financial disclosure as June 30, 2021. Upon processing of the subsequent submission, the Submission Calculator would refresh to display the number of days between the Posted Date for the issuer's latest annual financial disclosure and the Fiscal Period End Date of the issuer's 2021 annual fiscal period as 188 days.³⁷

³⁷ The Submission Calculator would continue to reflect its calculation for the most recent annual fiscal period until such time as a submitter publishes a new annual financial disclosure for a subsequent fiscal period, as identified by the Fiscal Period End Date entered by a submitter. Upon the processing of a new annual financial disclosure for a subsequent fiscal period, the EMMA system would no longer display the prior calculation for the preceding annual fiscal period. Using the facts of this example to illustrate this point, the Submission Calculator would continue to display the number of days between the issuer's latest annual financial disclosure and the end of its 2020 annual fiscal period as 176 days until the second submission is submitted and processed on January 4, 2022, at which time the Submission Calculator would then display the number

- Example Three – Annual Financial Disclosures through Sequential Submissions for the Same Fiscal Period. An issuer submits its annual financial information and operating data, which does not include the issuer’s audited financial statements, to the EMMA system on December 23, 2020. The issuer identifies (1) the annual financial disclosure as meeting the disclosure category of an annual financial filing and (2) the Fiscal Period End Date for the annual financial disclosure as June 30, 2020. The Submission Calculator would display the number of days between the Posted Date for the issuer’s annual financial disclosure and the Fiscal Period End Date of the issuer’s 2020 fiscal period as 176 days. Subsequently, the issuer submits its audited financial statements on January 4, 2021 for the same annual fiscal period and identifies (1) the annual financial disclosure as meeting the disclosure category of an audited financial filing and (2) the Fiscal Period End Date as June 30, 2020. The Submission Calculator would continue to display the number of days between the Posted Date for the issuer’s annual financial disclosure and the Fiscal Period End Date of the issuer’s 2020 annual fiscal period as 176 days, because the Submission Calculator would generate its

of days between the issuer’s latest annual financial disclosure and the Fiscal Period End Date of its 2021 annual fiscal period as 188 days.

calculation from the earlier Posted Date for the submission of the unaudited financial information and operating data.³⁸

- Example Four – Annual Financial Disclosures with Sequential Submissions for Issues with Multiple Obligated Persons with Different Fiscal Periods. An obligated person for an issue of municipal securities (“Obligated Person One”) submits its audited financial statements as an annual financial disclosure for an issue of municipal securities on December 23, 2020. Obligated Person One identifies (1) the annual financial disclosure as meeting both disclosure categories of an audited financial filing and annual financial filing and (2) its Fiscal Period End Date as June 30, 2020. The Submission Calculator would display the number of days between the Posted Date of the issue’s annual financial disclosure and the Fiscal Period End Date of Obligated Person One’s 2020 annual fiscal period as 176 days.

Subsequently, another obligated person for the same issue of municipal securities (“Obligated Person Two”) submits its audited financial statements as an annual financial disclosure for the issue on January 4, 2021. Obligated Person Two identifies (1) the annual financial disclosure as meeting both disclosure categories of an audited financial filing and annual financial filing and (2) its Fiscal Period End Date as June 30, 2020. The Submission

³⁸ The Submission Calculator would apply similar logic in other fact patterns where annual financial disclosures are published to the EMMA system in a piecemeal method, as through multiple submissions on different dates. See Example Four.

Calculator would not refresh and continue to display the number of days between the Posted Date of the issue's prior annual financial disclosure submitted by Obligated Person One and the Fiscal Period End Date of Obligated Person One's 2020 annual fiscal period as 176 days, because the Submission Calculator would perform its calculation based on the earliest Posted Date for an annual financial disclosure with the most recent Fiscal Period End Date.

Subsequently, a third obligated person for the same issue of municipal securities ("Obligated Person Three") submits its audited financial statements as an annual financial disclosure for the issue on January 5, 2021. Obligated Person Three identifies (1) the annual financial disclosure as meeting both disclosure categories of an audited financial filing and annual financial filing and (2) its Fiscal Period End Date as July 31, 2020. Upon processing, the Submission Calculator would refresh to display the number of days between the Posted Date of the issue's annual financial disclosure submitted by Obligated Person Three and the Fiscal Period End Date of Obligated Person Three's 2020 annual fiscal period as 158 days, because the Submission Calculator would perform its calculation based on the Posted Date for Obligated Person Three's annual financial disclosure, which has the most recent Fiscal Period End Date.

Enhancement of the EMMA Display

In addition to providing for the development and operation of the Submission Calculator, the proposed rule change would also provide for the enhancement and reconfiguration of certain information shown on the EMMA Portal to more prominently display an issuer's or obligated person's annual financial disclosures and related information. More specifically, the revised EMMA Portal would more prominently display the information reported about an annual financial disclosure for a municipal security, including the Fiscal Period End Date, the Posted Date, and the results of the Submission Calculator. The MSRB would also increase the prominence of the links provided by any issuer through its customized homepage to other websites containing relevant information.³⁹ With these enhancements to the EMMA Portal and the implementation of the Submission Calculator, the security details page for a municipal security generally would provide the information shown in Figure 1 below, which is shown as processed with the hypothetical facts and resulting calculation from "Example One – Single Submission" above.

³⁹ The EMMA system allows issuers to enhance the display of their municipal securities information on EMMA Portal by creating a free custom EMMA issuer homepage. One of the customizations supported is the ability for an issuer to designate links to independent websites. See the MSRB's Customizing an EMMA® Issuer Homepage, available at <http://www.msrb.org/msrb1/EMMA/pdfs/EMMA-Issuer-Homepage-Fact-Sheet-for-Issuers.pdf>.

Figure 1

<p><u>Timing of Annual Financial Disclosure</u></p> <p>Fiscal Period End Date: 06/30/2020 Posted Date: 12/23/2020 Timing of Disclosure: 176 Days</p> <p><u>Hyperlink to Disclosure Document PDF(s)</u> <u>Hyperlink(s) to Other Website(s) if Provided</u></p>
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While each of these data points, other than the Submission Calculator results shown as the Timing of Disclosure in Figure 1, are currently available on the EMMA Portal, the proposed rule change is intended to improve users' awareness of this information. Nothing about this display would be evaluative of an issuer's or obligated person's compliance with the applicable terms of a continuing disclosure agreement. The proposed rule change would not modify how submitters provide this information to the EMMA system, nor require submitters to input any new data, but it would augment the display of information reported to the EMMA system to make it more apparent to users.

Discussion of Proposed Amendments to the Text of the EMMA IF

The proposed rule change would amend the text of the EMMA IF to provide for the development and otherwise describe the operation of the Submission Calculator. More specifically, the proposed rule change would amend the EMMA IF to define the term "EMMA metrics" to mean the calculations, data, and metrics derived from municipal securities disclosure documents and related information submitted to the EMMA system. In this way, the calculations, data, and metrics generated by the Submission Calculator would be included in the term "EMMA metrics." This definition is intended to provide greater clarity regarding the various

types of information that may be disseminated by the EMMA system in light of the Submission Calculator's new functionality,⁴⁰ including more precisely delineating the distinctions between disclosure documents, related information, indexing information, and EMMA metrics.⁴¹

2. Statutory Basis

The proposed rule change is consistent with the provisions of Section 15B(b)(2)(C) of the Act,⁴² which provides that the MSRB's rules shall:

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

The Board believes the proposed rule change is consistent with the Act because the proposed rule change would promote (1) the protection of investors and the public interest and (2) the prevention of fraudulent and manipulative acts and practices, principally by promoting greater transparency and awareness of the financial disclosures available in the municipal securities

⁴⁰ Assuming approval of the proposed rule change, on the operative date the EMMA system would only process the EMMA metrics generated by the Submission Calculator for dissemination and display on EMMA Portal.

⁴¹ For example, the proposed rule change more precisely articulates that the term 'indexing information' is a subset of 'related information' that includes the disclosure category fields of "Annual Financial Information and Operating Data (Rule 15c2-12)" and the "Audited Financial Statements or CAFR (Rule 15c2-12)" for purposes of the Submission Calculator's functionality. This clarification is important to delineate the Submission Calculator's use of indexing information as entered by a submitter from the EMMA metrics generated by the Submission Calculator.

⁴² 15 U.S.C. 78o-4(b)(2)(C).

market through the EMMA Portal. The proposed rule change would promote the protection of investors and the public interest by increasing investors' and the general public's awareness of the type and timing of financial information available in the municipal securities market and, consequently, enable investors and other market participants to make more informed decisions. More broadly, the proposed rule change would enable the general public to more readily access the financial information reported to the EMMA Portal. The proposed rule change would promote the prevention of fraudulent and manipulative acts and practices by fostering a better understanding among all market participants of the type and timing of financial information available in the municipal securities market, including by making the type and timing of financial information more readily apparent on the EMMA Portal, and, thereby, mitigating some information asymmetries that may exist in the market, such as between retail investors and institutional investors. In short, the Board believes that the proposed rule change is consistent with the Act because it would enhance market transparency regarding existing municipal issuer financial disclosure practices, including by improving the accessibility and availability of information displayed on the EMMA Portal and by making the Submission Calculator results readily apparent to EMMA users.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Board has conducted an analysis on the proposed rule change to gauge its overall economic impact and assess its burden on competition.⁴³ For the reasons discussed below, the

⁴³ See "Policy on the Use of Economic Analysis in MSRB Rulemaking," available at <http://msrb.org/Rules-and-Interpretations/Economic-Analysis-Policy.aspx>. In evaluating the potential burden on competition, the Board was guided by its principles that require the Board to consider costs and benefits of a rule change, its impact on capital formation, and the main reasonable alternative regulatory approaches.

Board has determined that the proposed rule change would not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Exchange Act.

The Board's Determinations Regarding the Burden on Competition

Section 15B(b)(2)(C)⁴⁴ of the Exchange Act requires that MSRB rules shall “not be designed . . . to impose any burden on competition not necessary or appropriate in furtherance of the purposes of this title.” The Board believes the proposed rule change is consistent with Section 15B(b)(2)(C)⁴⁵ because the proposed rule change promotes transparency in the municipal securities market by (1) calculating and clearly displaying the timing between an issuer’s or obligated person’s reported Fiscal Period End Date and the Posted Date for the submission of certain of its annual financial disclosures and (2) making existing information about annual financial disclosures more readily apparent on the EMMA Portal. Consequently, the Board believes the proposed rule change would improve the awareness and understanding of market participants regarding the type and timing of financial information currently available on the EMMA Portal. Investors and other market participants would benefit from these enhancements by being able to more readily locate relevant financial information and, thereby, the proposed rule change would improve overall transparency in the market. Similarly, the calculations displayed by the Submission Calculator would assist investors in their analysis of a municipal security’s

⁴⁴ 15 U.S.C. 78o-4(b)(2)(C).

⁴⁵ Id.

financial information by clearly and prominently displaying a metric for the standardized measure of the timing of that information.⁴⁶

Burdens on Disclosure Submitters. The Board believes that the proposed rule change does not create any new compliance or reporting burdens and, thereby, does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Exchange Act. While the information provided to the EMMA Portal by submitters might take on new prominence by virtue of the manner in which the information would be displayed on the EMMA Portal under the proposed rule change, the proposed enhancements would not alter the basic process for submitting annual financial disclosures or change the type of information collected related to such disclosures.⁴⁷ 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.

⁴⁶ Recent economic literature bolsters the statements of market participants that the timing of financial disclosures is a significant factor in their usefulness. Specifically, academic research finds that a delay in reporting is likely to convey a negative signal with respect to issuers and have negative effects on the capital markets, such as higher yield and lower liquidity. See Henke, Trent S. and John J. Maher, “Government Reporting Timeliness and Municipal Credit Market Implications,” *Journal of Governmental & Nonprofit Accounting*, Vol. 5, No. 1, 2016, and Sherrill, D. Eli and Rustin T. Yerkes, “Municipal Disclosure Timeliness and the Cost of Debt,” *The Financial Review*, 53, 2018. At the same time, the MSRB notes that timing may be one among many significant factors in the usefulness of a financial disclosure, as for example the timing of a disclosure generally does not speak to the quality or completeness of a disclosure’s contents.

⁴⁷ While the proposed enhancements would not alter the basic process for submitting such information or change the type of information collected, the MSRB is continually evaluating how user’s interface with the EMMA system and has ongoing projects to improve that interface. See, e.g., “MSRB Improves Search Functionality on EMMA” (May 29, 2019), available at <http://www.msrb.org/News-and-Events/Press-Releases/2019/MSRB-Launches-Quick-Search.aspx>.

Improvement to Market Transparency. The Board believes that the proposed rule change would increase the accessibility and understanding of financial disclosures in the municipal securities market and, thereby, increase overall transparency in the market. The Submission Calculator would depend entirely on the information entered by a submitter, and the Board is cognizant of the potential for the Submission Calculator to result in the display of a calculation generated from erroneous information published by a submitter. To the degree that the Submission Calculator would provide new prominence to this information, the Board believes that submitters would have an additional incentive to properly categorize and describe annual financial disclosures, and so the incidences of submissions with erroneous information would be expected to marginally decline from current rates.⁴⁸ To promote accuracy, the Board would continue to provide educational resources and other tools to assist submitters in properly completing the publication process. 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. Consequently, the Board believes at this time that the benefits of the additional awareness and understanding that would result from the adoption of the Submission Calculator would exceed any potential negative consequences of the display of a calculation generated from erroneous information published by a submitter.

⁴⁸ To the degree that submitters exert greater diligence in completing the disclosure submission process in response to the Submission Calculator's functionality and the other enhancements to the display of information on the EMMA Portal, the MSRB believes that any additional burdens 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 currently displayed on the EMMA Portal.

The Board's Analysis of Alternatives to the Proposed Rule Change

The Board has assessed alternative approaches to the proposed rule change and has determined that the Submission Calculator and other enhancements to the EMMA Portal are superior to these alternatives.

Alternative Transparency Tools. The Board has considered various iterations of the Submission Calculator for the calculation and display of information regarding the timing of financial disclosures, including various active counters that would sequentially increase each day. One such alternative is a counter that would update each day to dynamically display the number of days elapsed between an issuer's or obligated person's annual fiscal period end and the current date. Similarly, the Board has considered a counter that would dynamically display the number of days elapsing between any financial disclosures submitted by an issuer or obligated person, including interim financial information, rather than just annual financial disclosures.

The Board has determined at this time that such alternatives would be inferior to the proposed rule change's Submission Calculator. 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 lack of uniformity in the disclosure of interim financial information, and (2) displaying a static calculation would be most easily understood by EMMA users and, thereby, the Submission Calculator would best promote market transparency at this time. Among other considerations, the Board evaluated whether dynamic tools might confuse some users who repeatedly return to the EMMA Portal and misunderstand the increasing display count. Additionally, 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. Accordingly, the Board has determined that, at this time, alternatives that would create new burdens on disclosure submitters would be inferior to the Submission Calculator.

Rulemaking Alternatives. The Board has also considered new rulemaking initiatives as an alternative to the proposed rule change. The Board ultimately determined that the MSRB should focus at this time on the proposed rule change's transparency efforts to more prominently display existing financial information on the EMMA Portal and should consider any related rulemaking initiatives in light of the MSRB's ongoing retrospective rule review.⁴⁹

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

The Board did not solicit written comments on the proposed change. However, as previously noted above, the Board did receive one written comment directly relevant to the proposed rule change from NFMA in May 2019.⁵⁰ Among other recommendations on how to improve disclosure practices in the municipal securities market, the NFMA Letter encouraged

⁴⁹ The Board recently prioritized an ongoing effort to review the MSRB's rules and related interpretive guidance for dealers and municipal advisors. The purpose of the retrospective rule review is to help ensure MSRB rules and interpretive guidance are effective in their principal goal of protecting investors, issuers and the public interest; not overly burdensome; clear; harmonized with the rules of other regulators, as appropriate; and reflective of current market practices. Among other criteria, retrospective rulemaking priorities are evaluated based on whether the benefits of the rule are commensurate with its burdens. See <http://www.msrb.org/Rules-and-Interpretations/Retrospective-Rule-Review-Overview.aspx>.

⁵⁰ See NFMA Letter, supra note 26.

the MSRB to modernize the EMMA system, including to provide greater transparency on the currency of audit filings.⁵¹ More specifically, NFMA encouraged the MSRB to “create a counter that would calculate and prominently display the greater of the number of days since the end of the last fiscal year to the audit filing date or the number of days since the last fiscal year for which there is not a submitted audit.”⁵² While the proposed rule change would not incorporate such a dynamic counter,⁵³ the MSRB believes that the Submission Calculator and other enhancements to the EMMA system are responsive to this particular recommendation.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the Federal Register or within such longer period of up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

- (A) by order approve or disapprove such proposed rule change, or
- (B) institute proceedings to determine whether the proposed rule change should be disapproved.

⁵¹ Id., at p. 4.

⁵² Id.

⁵³ The Board did not incorporate this aspect of NFMA’s recommendation into the proposed rule change because the Board determined at this time that such a dynamic counter would be inferior to the Submission Calculator, in that the non-static functionality of the dynamic counter might counterproductively confuse some users who repeatedly return to the EMMA Portal and misunderstand the dynamic nature of the increasing display count, among other reasons. See related discussion under The Board’s Analysis of Alternatives to the Proposed Rule Change.

IV. 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-2019-13 on the subject line.

Paper Comments:

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

All submissions should refer to File Number SR-MSRB-2019-13. 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 website (<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 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 website viewing and printing 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 the filing also will be available for inspection and copying at the principal office of the

MSRB. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-MSRB-2019-13 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, pursuant to delegated authority.⁵⁴

Eduardo Aleman
Deputy Secretary

⁵⁴ 17 CFR 200.30-3(a)(12).