

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-62742, File No. SR-MSRB-2010-05)

August 19, 2010

Self-Regulatory Organizations; Municipal Securities Rulemaking Board; Order
Approving Proposed Rule Change Relating to the Continuing Disclosure Service of the
MSRB Electronic Municipal Market Access (EMMA) System

On June 30, 2010, the Municipal Securities Rulemaking Board (“MSRB”), filed with the Securities and Exchange Commission (“Commission”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Exchange Act”),¹ and Rule 19b-4 thereunder,² a proposed rule change relating to the continuing disclosure service of the MSRB Electronic Municipal Market Access (EMMA) System. The proposed rule change was published for comment in the Federal Register on July 19, 2010.³ The Commission received one comment letter.⁴ This order approves the proposed rule change.

Currently Exchange Act Rule 15c2-12 provides that an underwriter for a primary offering of municipal securities subject to Exchange Act Rule 15c2-12 is prohibited from underwriting the offering unless the underwriter has determined that the issuer or an obligated person for whom financial information or operating data is presented in the final official statement has undertaken in writing to provide certain items of information to the MSRB. Such items include: (A) annual financial information; (B) audited financial

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 62489 (July 13, 2010), 75 FR 41909 (July 19, 2010) (“Commission’s Notice”).

⁴ See letter from Steve Apfelbacher, President, National Association of Independent Public Finance Advisors (“NAIPFA”), dated August 9, 2010.

statements if available and if not included in the annual financial information; (C) notices of certain events (“Rule 15c2-12 Event Notices”);⁵ and (D) notices of failures to provide annual financial information on or before the date specified in the written undertaking.

Written undertakings are to provide that all continuing disclosure documents submitted to the MSRB shall be accompanied by identifying information as prescribed by the MSRB.

Such submissions are made by issuers, obligated persons and their agents to the MSRB through the EMMA continuing disclosure service and are made available to the public through the EMMA Web site for free and through paid subscriptions.

The Commission has recently amended Exchange Act Rule 15c2-12 to modify several provisions relating to the submission of continuing disclosures to the MSRB (the “Rule 15c2-12 Amendment”).⁶ The Rule 15c2-12 Amendment, among other things, (1) removes the exemption from the continuing disclosure provisions of Exchange Act Rule 15c2-12 for demand securities;⁷ (2) modifies Exchange Act Rule 15c2-12 to establish a timeliness standard for submission of Rule 15c2-12 Event Notices of ten business days after the occurrence of the event; (3) deletes the general materiality condition for certain

⁵ Under Exchange Act Rule 15c2-12(b)(5)(i)(C), notices of the following events currently are required to be submitted to the MSRB, if material: principal and interest payment delinquencies; non-payment related defaults; unscheduled draws on debt service reserves reflecting financial difficulties; unscheduled draws on credit enhancements reflecting financial difficulties; substitution of credit or liquidity providers, or their failure to perform; adverse tax opinions or events affecting the tax-exempt status of the security; modifications to rights of security holders; bond calls; defeasances; release, substitution, or sale of property securing repayment of the securities; and rating changes.

⁶ See Release No. 34-62184A; File No. S7-15-09 (May 26, 2010).

⁷ Currently primary offerings for demand securities as described in Exchange Act Rule 15c2-12(d)(1)(iii) are exempt from the requirements of Exchange Act Rule 15c2-12.

of the Rule 15c2-12 Event Notices; (4) modifies the language of the Rule 15c2-12 Event Notice regarding adverse tax events;⁸ and (5) adds new Rule 15c2-12 Event Notices.⁹

To permit issuers and obligated persons to meet the provisions of the Rule 15c2-12 Amendment on or prior to the compliance date of December 1, 2010 established under the Rule 15c2-12 Amendment, this proposed rule change would modify the language of the EMMA continuing disclosure service to reflect the materiality standard changes under the Rule 15c2-12 Amendment and would modify the list of voluntary event-based disclosures that may be submitted to the EMMA continuing disclosure service to reflect changes in the list of Rule 15c2-12 Event Notices made by the Rule 15c2-12 Amendment.¹⁰

⁸ The Rule 15c2-12 Amendment expands the current language of such Rule 15c2-12 Event Notice category to include adverse tax opinions, the issuance by the IRS of proposed or final determinations of taxability, Notices of Proposed Issue (IRS Form 5701-TEB) or other material notices or determinations with respect to the tax status of the security or other material events affecting the tax status of the security.

⁹ The Rule 15c2-12 Amendment includes the following new Rule 15c2-12 Event Notices: tender offers; bankruptcy, insolvency, receivership, or similar event of the issuer or obligated person; the consummation of a merger, consolidation, or acquisition involving an obligated person or the sale of all or substantially all of the assets of the obligated person, other than in the ordinary course of business, the entry into a definitive agreement to undertake such an action or the termination of a definitive agreement relating to any such actions, other than pursuant to its terms, if material; and the appointment of a successor or additional trustee, or the change of name of a trustee, if material.

¹⁰ The existing language of the EMMA continuing disclosure service would incorporate the changed list of Rule 15c2-12 Event Notices made by the Rule 15c2-12 Amendment by reference to the then-current provisions of Exchange Act Rule 15c2-12 and therefore no change in the language of the EMMA continuing disclosure service would be made. In addition, the removal of the exemption for demand securities from the continuing disclosure provisions of Exchange Act Rule 15c2-12 does not require changes to the EMMA continuing disclosure

The MSRB has requested an effective date for the proposed rule change of a date to be announced by the MSRB in a notice published on the MSRB Web site, which date shall be no later than December 1, 2010 and shall be announced no later than five (5) business days prior to the effective date. A full description of the proposal is contained in the Commission's Notice.

The Commission received one comment letter supporting the proposal.¹¹ NAIPFA does not believe the proposed rule change to allow the MSRB to modify EMMA to accommodate the Rule 15c2-12 Amendment will impose any undue burden on issuers. In addition, NAIPFA agrees that the proposed changes are consistent with the Exchange Act and will effectuate the Commission's recent Rule 15c2-12 Amendment.

The Commission has carefully considered the proposed rule change and finds that the proposed rule change is consistent with the requirements of the Exchange Act and the rules and regulations thereunder applicable to the MSRB¹² and, in particular, the requirements of Section 15B(b)(2)(C) of the Exchange Act¹³ and the rules and regulations thereunder. Section 15B(b)(2)(C) of the Exchange 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

service in order to permit submission of disclosures in connection with demand securities.

¹¹ See supra note 4.

¹² In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

¹³ 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.¹⁴ In particular, the Commission finds that the proposed rule change is consistent with the Exchange Act because in that it effectuates the Commission's Rule 15c2-12 Amendment under the Exchange Act. In addition, the proposed rule change serves to remove impediments to and help perfect the mechanisms of a free and open market in municipal securities and would serve to promote the statutory mandate of the MSRB to protect investors and the public interest. The proposed rule change would aid in providing additional information for making investment decisions more easily accessible to all participants in the municipal securities market on an equal basis throughout the life of the securities without barriers to obtaining such information. Broad access to additional continuing disclosure documents through the continuing disclosure service of EMMA should assist in preventing fraudulent and manipulative acts and practices by improving the opportunity for public investors to access material information about issuers and their securities.

The proposed rule change will become effective on the date requested by the MSRB.

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Exchange

¹⁴ Id.

Act,¹⁵ that the proposed rule change (SR-MSRB-2010-05), be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁶

Florence E. Harmon
Deputy Secretary

¹⁵ 15 U.S.C. 78s(b)(2).

¹⁶ 17 CFR 200.30-3(a)(12).