

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-63086; File No. SR-MSRB-2010-03)

October 13, 2010

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

I. Introduction

On May 20, 2010, the Municipal Securities Rulemaking Board (the "MSRB") filed with the Securities and Exchange Commission (the "Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Exchange Act")¹ and Rule 19b-4 thereunder,² a proposed rule change to amend the continuing disclosure service of the MSRB's Electronic Municipal Market Access system ("EMMA") to provide for the posting of credit rating information on the EMMA public website. The proposed rule change was published for comment in the Federal Register on June 2, 2010.³ The Commission received two comment letters regarding the MSRB's proposed rule change.⁴ The MSRB responded to these comment letters in a letter dated September 16, 2010.⁵ This order approves the proposed rule change.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 62175 (May 26, 2010), 75 FR 30892.

⁴ See letter from Deven Sharma, President, Standard & Poor's Ratings Services ("S&P"), to Elizabeth M. Murphy, Secretary, Commission, dated June 22, 2010 ("S&P Letter") and letter from Susan Gaffney, Director, Federal Liaison Center, Government Finance Officers Association ("GFOA"), to Elizabeth M. Murphy, Secretary, Commission, dated July 23, 2010 ("GFOA Letter").

⁵ See letter from Ernesto A. Lanza, General Counsel, MSRB, to Elizabeth M. Murphy, Secretary, Commission, dated September 16, 2010 ("MSRB Letter").

II. Background and Description of Proposal

The proposed rule change would amend the EMMA continuing disclosure service to provide for the posting of credit rating information on the EMMA public website. If and to the extent that one or more Nationally Recognized Statistical Rating Organizations (“NRSRO”) has agreed to provide credit rating and related information regarding municipal securities to the MSRB, at no charge, through an automated data feed for dissemination on the EMMA website, the EMMA website would display such credit rating and related information along with any documents and identifying information relating to the applicable municipal security otherwise displayed on the EMMA website. Currently, such other documents or information may include official statements, advance refunding documents, continuing disclosure documents, transaction price data, interest rate reset information, and identifying information relating to a specific municipal security.

Under the proposed rule change, credit rating and related information normally would be posted within 15 minutes of successful transmission to the MSRB during the hours of 8:30 am to 6:00 pm Eastern time, and any such information successfully transmitted outside of the MSRB’s normal business hours would be posted as soon as practicable. The MSRB stated that under the proposed rule change it shall have no obligation to supplement, modify or confirm credit rating and related information received by it through an NRSRO’s automated data feed based on information available from any other source, including but not limited to any such information made publicly available by an NRSRO by any means other than its automated data feed.

In the MSRB Letter responding to comments, the MSRB requested that the proposal be approved with a revised effective date to be announced by the MSRB in a notice published on the MSRB website, which date shall be no later than one year after Commission approval of the proposal

and shall be announced no later than five business days before the effective date. The MSRB stated that the revised effective date would provide additional time for any NRSRO that has not yet determined to participate in the EMMA ratings initiative to work with the MSRB to develop appropriate mechanisms to minimize potential threats to intellectual property rights and other commercial interests.⁶ The MSRB stated that the additional three month period also would provide any such NRSRO with a further opportunity to provide the MSRB with access to its automated data feed for development and testing purposes with a view to potentially making such NRSRO's ratings information available for display upon launch of the EMMA ratings initiative should such NRSRO reconsider its participation in the EMMA ratings initiative prior to such launch.⁷

III. Discussion of Comment Letters and Commission Findings

A. Discussion of Comment Letters

The Commission received two comment letters on the proposed rule change filed by the MSRB; the MSRB responded to these comments. GFOA strongly supported the proposed rule change stating that “we believe that there is nothing more relevant than making credit ratings available in one location, where the public can access the information quickly, efficiently, and at no cost to them.”⁸ GFOA believed that all members of the public should have access to ratings information at the CUSIP level and that posting ratings information on EMMA at no charge to the public would create a “level playing field” for all investors and eliminate a two-tier system that unfairly allows institutional and sophisticated investors to more easily access information about a security than other investors.⁹ While GFOA recognized that rating agencies “have every

⁶ See MSRB Letter, at 7.

⁷ Id.

⁸ See GFOA Letter, at 1.

⁹ Id.

right to copyright their written analysis, rationale and other derivative products,” GFOA also believed that the rating agencies “should not be able to withhold the basic conclusion of a rating from open distribution through the EMMA system.”¹⁰ GFOA stated that the proposed rule “simply serves to take what already is public information and direct it to one location,” which would be “something that is a true benefit to investors and the public.”¹¹ GFOA further stated that having the rating agencies provide ratings information directly to EMMA is a more efficient way of disseminating information to investors, noting that issuers may not be aware of rating changes at the moment they occur.¹² GFOA believed that the MSRB and the credit rating agencies currently have adequate technical expertise, portals and systems to send feeds to EMMA at little cost to the rating agencies or the MSRB.¹³ Lastly, GFOA believed that the MSRB should have safeguards in place to ensure that a rating is assigned to the correct CUSIP and a procedure in place that would quickly identify and correct any inaccuracies and notify investors of an incorrect rating.¹⁴

S&P, an NRSRO, supported the MSRB’s goal of encouraging transparency, but believed that the “[p]roposal’s assumption that NRSROs may, or should, provide credit rating and related information regarding municipal securities to the MSRB, at no charge, is commercially untenable and does not appropriately account for the value of the NRSROs’ intellectual

¹⁰ Id.

¹¹ Id.

¹² See GFOA Letter, at 2.

¹³ Id.

¹⁴ Id.

property.”¹⁵ In addition, S&P believed that including credit rating and related information on the EMMA public website would offer only limited incremental value to investors in municipal securities given the extensive disclosure requirements to which NRSROs are already subject.¹⁶

S&P believed that the Commission’s NRSRO requirements provide for an appropriate level of disclosure and expressed concern that the proposed rule change “does not specify the scope of the ‘credit and related information’ regarding municipal securities that the MSRB would expect to be provided by the NRSROs.”¹⁷ S&P expressed concern that to the extent the credit rating and related information expected to be provided by NRSROs pursuant to the proposed rule change would extend beyond the disclosure currently required by the Commission’s NRSRO rules, S&P was concerned that such information may not be sufficiently tailored to meet the needs of retail investors.¹⁸ S&P further stated that existing disclosure is sufficient to enable investors to access S&P’s ratings and effectively evaluate the quality of their ratings relative to the credit ratings produced by other NRSROs.¹⁹ S&P believed that the benefits of the proposed rule change to investors in municipal securities would not outweigh the burdens that it would impose on NRSROs that voluntarily provided such information.²⁰

The MSRB responded to these comments by stating that it agreed with GFOA that the EMMA ratings initiative would provide substantial benefits to retail investors and would

¹⁵ See S&P Letter, at 1.

¹⁶ Id.

¹⁷ See S&P Letter, at 5.

¹⁸ Id.

¹⁹ Id.

²⁰ Id.

represent a significant increase in the level of investor protection provided by the MSRB’s information systems and marketplace rules.²¹ The MSRB stated that under the proposed rule change, each NRSRO ultimately determines the scope of the credit rating and related information to be provided through EMMA.²² The EMMA website would display the same automated data feed provided to other subscribers to the NRSRO’s information.²³ The MSRB indicated that “it is difficult to understand how displaying on the EMMA website information an NRSRO also makes available to other information services, which in turn make them available to their users, would result in such information being insufficiently tailored or otherwise problematic for the needs of retail investors.”²⁴ The MSRB stated that S&P’s reference to information required to be disclosed under the Commission’s NRSRO rules correctly reflects that the purpose of such information is, at least in part, to allow market participants to evaluate the relative quality of the various NRSROs’ credit ratings.²⁵ However, the MSRB noted that the display of ratings information on the EMMA website “serves an entirely different purpose – that is, to provide investors with access to material information about municipal securities from NRSROs, not to provide a means by which investors can determine which NRSRO does its job the best.”²⁶ The MSRB further noted that the “material information that would be displayed to EMMA website users would be precisely the same as the information that each NRSRO has determined is

²¹ See MSRB Letter, at 3.

²² Id.

²³ See MSRB Letter, at 3-4.

²⁴ See MSRB Letter, at 4.

²⁵ Id.

²⁶ Id.

appropriate to be included in its automated data feed, thus suggesting that this is precisely the information that NRSROs believe is relevant for investors to have.”²⁷

S&P expressed concern that “the [p]roposal does not adequately address how proprietary information that is provided to the MSRB would be protected” and noted that making its ratings information available on EMMA would lessen its ability to enforce its rights against end-users of the EMMA portal as against users of its own website.²⁸ GFOA stated that any “written communication about the rating to a public bond issuer creates a ‘public record’ of that issue that must be disclosed and is certainly material.”²⁹ GFOA believed that “the proposed rule simply serves to take what already is public information and direct it to one location...something that is a true benefit to investors and the public.”³⁰

The MSRB responded to these comments by stating that a significant portion of the information that would be displayed through the EMMA ratings initiative is already available on the EMMA website in official statements and material event notices provided under Rule 15c2-12 under the Exchange Act³¹ in connection with ratings changes.³² The MSRB stated that it was “sensitive to the fact that such electronic display could raise concerns regarding intellectual property rights if appropriate measures are not instituted to limit the ability of EMMA website users to use data in a way that is inconsistent with such rights.”³³ The MSRB plans to “display

²⁷ Id.

²⁸ See S&P Letter, at 3.

²⁹ See GFOA Letter, at 1.

³⁰ Id.

³¹ 15 U.S.C. 78s(b)(1).

³² See MSRB Letter, at 5.

³³ Id.

credit ratings at the individual security level and not in a fashion that would allow a user to view, copy or print credit ratings on a market-wide basis.”³⁴

According to the MSRB, the proposed rule change also would not provide for inclusion of credit ratings and related information obtained from NRSROs in its subscription products.³⁵ S&P expressed concerns that the MSRB could later amend the proposal to include such information in a subscription service.³⁶ In response, the MSRB stated that it has no current plans to do so and noted that any such amendment would be subject to the same rulemaking process as this proposal.³⁷ The MSRB also noted that any NRSRO choosing to participate in the ratings initiative could include appropriate limitations or conditions on its agreement to participate in regard to future redissemination of credit rating information through a subscription service.³⁸

The MSRB stated that it has experience working with information vendors to protect their intellectual property rights and expressed a willingness to work with any NRSRO to provide it with the necessary comfort that the risk of misuse of its proprietary interests can be appropriately minimized.³⁹ Additionally, the MSRB expressed confidence that ratings information could be displayed through the EMMA website without creating a significant adverse effect on the financial interests of NRSROs.⁴⁰ The MSRB believed that the proposal

³⁴ Id.

³⁵ Id.

³⁶ See S&P Letter, at 4.

³⁷ See MSRB Letter, at 5.

³⁸ Id.

³⁹ See MSRB Letter, at 6.

⁴⁰ Id.

“might in fact indirectly result in greater public interest in other products offered by the NRSROs.”⁴¹

S&P believed that the proposal “fails to recognize NRSROs’ legitimate commercial needs and does not appreciate the significant negative effect on revenue that the provision of proprietary information at no cost would have on NRSROs.”⁴² S&P also characterized the ratings initiative as “commercially untenable” without compensation from the MSRB.⁴³ The MSRB responded that each individual NRSRO must “make its own assessment of the advisability of providing its credit rating information to the MSRB for display on the EMMA website.”⁴⁴ However, the MSRB noted its belief that displaying ratings on the EMMA website should not have any more appreciable negative effect on NRSROs than displaying such information on their own respective websites.⁴⁵ The MSRB stated that if the proposal is approved by the Commission, the MSRB would proceed with such launch even if one or more of the NRSROs elects not to participate.⁴⁶ However, the MSRB “would be open to continuing a dialogue with any NRSRO that chooses not to participate in the initial launch of the EMMA ratings initiative so that, should such NRSRO choose later to determine to participate, the MSRB

⁴¹ Id.

⁴² See S&P Letter, at 4.

⁴³ Id.

⁴⁴ See MSRB Letter, at 7.

⁴⁵ Id.

⁴⁶ Id.

could more quickly incorporate such NRSRO's information alongside of credit rating information of any NRSROs that have participated since such launch."⁴⁷

B. Commission Findings

The Commission has carefully reviewed the comment letters and the MSRB's response to the comment letters and finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the MSRB.⁴⁸ In particular, the Commission finds that the proposed rule change is consistent with the requirements of Section 15B(b)(2)(C) of the Exchange Act,⁴⁹ which provides that 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, 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.

In the Commission's view, the inclusion of credit rating and related information provided by NRSROs agreeing to provide such information for display on the EMMA website should serve to promote the statutory mandate of the MSRB to protect investors and the public interest. Although credit rating information is just one of many factors to consider in making an investment decision and in evaluating the credit worthiness and value of existing municipal securities holdings, the proposed rule change would make such information more easily accessible on an equal basis to all participants in the municipal securities market, including in particular retail investors in municipal

⁴⁷ Id.

⁴⁸ In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition and capital formation. See 15 U.S.C. 78c(f).

⁴⁹ 15 U.S.C. 78q-3(b)(6).

securities who do not normally have access to information services customarily used by professional market participants. The proposal will become effective on a date to be announced by the MSRB in a notice published on the MSRB website, which date shall be no later than October 13, 2011 and shall be announced no later than five business days before the effective date.

IV. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,⁵⁰ that the proposed rule change (SR-MSRB-2010-03), be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁵¹

Florence E. Harmon
Deputy Secretary

⁵⁰ 15 U.S.C. 78s(b)(2).

⁵¹ 17 CFR 200.30-3(a)(12).