

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-59643; File No. SR-MSRB-2009-03)

March 27, 2009

Self-Regulatory Organizations; Municipal Securities Rulemaking Board; Notice of Filing of Proposed Rule Change Relating to the Establishment of a Pilot Phase of Its Upcoming Continuing Disclosure Service of the Electronic Municipal Market Access system (EMMA<sup>®</sup>)

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on March 25, 2009, the Municipal Securities Rulemaking Board (“MSRB”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been substantially 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 has filed with the Commission a proposed rule change to establish a pilot phase (the “continuing disclosure pilot”) of the continuing disclosure service of the MSRB’s Electronic Municipal Market Access system (“EMMA”). The continuing disclosure pilot would receive electronic submissions of, and would make publicly available on the Internet, continuing disclosure documents and related information voluntarily submitted by issuers, obligated persons and their agents. The MSRB has requested approval of the continuing disclosure pilot to commence operation on May 11,

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<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

2009, or such later date as may be announced by the MSRB in a notice published on the MSRB Web site, which date shall be no later than 30 days after Commission approval of the proposed rule change. In addition, the MSRB has requested approval of the continuing disclosure pilot for a period ending on July 1, 2009.<sup>3</sup>

The text of the proposed rule change is available on the MSRB's Web site (<http://www.msrb.org/msrb1/sec.asp>), at the MSRB's principal office, and at the Commission's Public Reference Room.

## 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 would establish a pilot phase of the continuing disclosure service of EMMA to provide, pending the commencement of operation of the

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<sup>3</sup> The Commission has previously approved the establishment of the continuing disclosure service of EMMA, which will commence operation on July 1, 2009. See Securities Exchange Act Release No. 59061 (December 5, 2008), 73 FR 75778 (December 12, 2008) (File No. SR-MSRB-2008-05) (approving the continuing disclosure service of EMMA with an effective date of July 1, 2009). The EMMA continuing disclosure service is designed to commence operation simultaneously with the effectiveness of certain amendments to Exchange Act Rule 15c2-12 adopted by the Commission. See Securities Exchange Act Release No. 59062 (December 5, 2008), 73 FR 76104 (December 15, 2008) (adopting amendments to Exchange Act Rule 15c2-12).

permanent EMMA continuing disclosure service on July 1, 2009, for the voluntary electronic submission to the MSRB of continuing disclosure documents and related information by issuers, obligated persons and their agents and to provide for the free public access to such documents through the EMMA portal.<sup>4</sup>

Under Exchange Act Rule 15c2-12(b)(5), an underwriter for a primary offering of municipal securities subject to the rule currently 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, or a designated agent, has undertaken in writing to provide certain items of information to the marketplace.<sup>5</sup> The items to be provided include: (A) annual financial information concerning obligated persons; (B) audited financial statements for obligated persons if available and if not included in the annual financial information; (C) notices of certain events, if material; and (D) notices of failures to provide annual financial information on or before the date specified in the written undertaking. The written agreement shall identify each obligated person or other person for whom information is to be provided, either by name or by an objective criteria for selecting such person, and also shall specify (i) the type of information to be included in the annual financial information, (ii) the

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<sup>4</sup> The EMMA portal began operation on March 31, 2008 as a pilot facility and is accessible at <http://emma.msrb.org>. See Securities Exchange Act Release No. 57577 (March 28, 2008), 73 FR 18022 (April 2, 2008) (File No. SR-MSRB-2007-06) (approving operation of the EMMA pilot to provide free public access to the MSIL system collection of official statements and advance refunding documents and to the MSRB's Real-Time Transaction Reporting System historical and real-time transaction price data) (the "EMMA portal pilot filing").

<sup>5</sup> Under Rule 15c2-12(b)(5)(i), annual filings are to be sent to all existing nationally recognized municipal securities information repositories ("NRMSIRs") and any applicable state information depositories ("SIDs"), while material event notices may be sent to all existing NRMSIRs or to the MSRB, as well as to any applicable SIDs.

accounting principles pursuant to which financial statements will be prepared and whether such financial statements will be audited, and (iii) the date on which the annual financial information will be provided.

The pilot phase of the EMMA continuing disclosure service would accept voluntary submissions of continuing disclosure documents, including but not limited to items to be provided pursuant to Exchange Act Rule 15c2-12. Submissions of continuing disclosure documents to the pilot phase of the EMMA continuing disclosure service would be made solely in electronic format by issuers, obligated persons and their agents through a secured, password-protected, Web-based interface with EMMA. Such submissions would be made as portable document format (PDF) files, accompanied by related indexing information, through the submission processes established with respect to the EMMA continuing disclosure service; provided that such processes may become available for use by voluntary submitters on a phased-in basis. No paper submissions would be accepted. Documents submitted by issuers, obligated persons and their agents would be made available to the public on the EMMA portal. The specific features of the EMMA portal established with respect to the EMMA continuing disclosure service may become available for use by public users of the EMMA Web site on a phased-in basis during the pilot phase. The MSRB also may make available test versions of the computer-to-computer submission processes and data stream subscription services established with respect to the EMMA continuing disclosure service on a phased-in basis during the pilot phase. There would be no charge for the making of submissions during the pilot phase or for accessing such documents on the EMMA portal.

The MSRB would view electronic submissions of continuing disclosure

documents during the pilot phase of the EMMA continuing disclosure service as having been submitted to the MSRB for purposes of any existing continuing disclosure undertakings entered into consistent with Exchange Act Rule 15c2-12.<sup>6</sup> The MSRB takes no position with regard to whether a submission made to the pilot phase of the EMMA continuing disclosure service that is made publicly available through the EMMA portal would satisfy any other provisions of existing continuing disclosure undertakings.

The MSRB would undertake to make the submission and EMMA portal access services available during the pilot phase on the same terms as established for the EMMA continuing disclosure service but would reserve the right to operate any feature on a more limited basis as necessary or appropriate, in the sole discretion of the MSRB, during the pilot phase. The pilot phase would be expected to operate for a limited period of time as the MSRB transitions to the permanent EMMA continuing disclosure service anticipated to commence operation on July 1, 2009. The pilot phase would terminate automatically at such time as the permanent EMMA continuing disclosure service becomes operational.

The MSRB has designed EMMA, including the EMMA portal, as a scalable system with sufficient current capacity and the ability to add further capacity to meet foreseeable usage levels based on reasonable estimates of expected usage, and the MSRB would monitor usage levels in order to assure continued capacity in the future.

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<sup>6</sup> The MSRB currently operates CDINet to process and disseminate notices of material events submitted to the MSRB. The MSRB urges, but does not require, submitters currently using CDINet to instead make any future submissions to the pilot phase of the EMMA continuing disclosure service, solely in electronic format, upon the launch of the pilot phase until such time as all submissions must be made to the permanent EMMA continuing disclosure service. The MSRB intends to file in the near future a proposed rule change with the Commission to discontinue CDINet as of the commencement of operations of the permanent EMMA continuing disclosure service on July 1, 2009.

The MSRB may restrict or terminate malicious, illegal or abusive usage for such periods as may be necessary and appropriate to ensure continuous and efficient access to the EMMA portal and to maintain the integrity of EMMA and its operational components. Such usage may include, without limitation, usage intended to cause the EMMA portal to become inaccessible by other users, to cause the EMMA database or operational components to become corrupted or otherwise unusable, to alter the appearance or functionality of the EMMA portal, or to hyperlink to or otherwise use the EMMA portal or the information provided through the EMMA portal in furtherance of fraudulent or other illegal activities (such as, for example, creating any inference of MSRB complicity with or approval of such fraudulent or illegal activities or creating a false impression that information used to further such fraudulent or illegal activities has been obtained from the MSRB or EMMA). Measures taken by the MSRB in response to such unacceptable usage shall be designed to minimize any potentially negative impact on the ability to access the EMMA portal.

## 2. Statutory Basis

The MSRB believes that the proposed rule change is consistent with Section 15B(b)(2)(C) of the Act,<sup>7</sup> 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, to remove impediments to and perfect the mechanism

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<sup>7</sup> 15 U.S.C. 78o-4(b)(2)(C).

of a free and open market in municipal securities, and, in general, to protect investors and the public interest.

The MSRB believes that the proposed rule change is consistent with the Act. The EMMA continuing disclosure service, including the pilot phase thereof, would serve as an additional mechanism by which the MSRB works toward removing impediments to and helping to perfect the mechanisms of a free and open market in municipal securities. The pilot phase would be an important transitional step toward ensuring the effective and efficient operation of the permanent EMMA continuing disclosure service upon launch on July 1, 2009.

The EMMA continuing disclosure service, including the pilot phase thereof, would help make information useful 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 charge through a centralized, searchable Internet-based repository, thereby removing potential barriers to obtaining such information. Broad access to continuing disclosure documents through the EMMA continuing disclosure service 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.

Furthermore, the EMMA continuing disclosure service should reduce the effort necessary for issuers and obligated persons to comply with their continuing disclosure undertakings by making submissions to a single venue<sup>8</sup> using an electronic submission

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<sup>8</sup> Some states may require issuers and/or obligated persons to submit disclosure information to state information depositories or other venues pursuant to state law.

process, which should result in lower costs to issuers and savings to their citizens. Similarly, a single centralized and searchable venue for free public access to disclosure information should promote a more fair and efficient municipal securities market in which transactions are effected on the basis of material information available to all parties to such transactions, which should allow for fairer pricing of transactions based on a more complete understanding of the terms of the securities and the potential investment risks. Free access to this information – previously available in most cases only through paid subscription services or on a per-document fee basis – should reduce transaction costs for dealers and investors.

All of these factors serve to promote the statutory mandate of the MSRB to protect investors and the public interest.

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

The MSRB does not believe that the proposed rule change would impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The pilot phase of the EMMA continuing disclosure service would be an important transitional step toward ensuring the effective and efficient operation of the permanent EMMA continuing disclosure service upon launch on July 1, 2009. As the MSRB has previously stated in its filing with the Commission in connection with the permanent EMMA continuing disclosure service (the “permanent EMMA continuing disclosure filing”),<sup>9</sup> although the MSRB recognizes that the EMMA continuing disclosure service

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<sup>9</sup> See Securities Exchange Act Release No. 58256 (July 30, 2008) 73 FR 46161 (August 7, 2008) (File No. SR-MSRB-2008-05) (proposing the establishment of the continuing disclosure service of EMMA). See also Securities Exchange Act Release No. 59061 (December 5, 2008), 73 FR 75778 (December 12, 2008) (File

might require private enterprises to modify some aspects of the way they undertake their current business activities, the MSRB believes that the continuing disclosure service would promote, rather than hinder, further competition, growth and innovation in this area. The MSRB believes that the benefits realized by the investing public from the broader and easier availability of disclosure information about municipal securities that would be provided through the EMMA continuing disclosure service, including the pilot phase thereof, would justify any potentially negative impact on existing enterprises from the operation of EMMA.

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

Written comments were neither solicited nor received on the proposed rule change. However, in connection with the permanent EMMA continuing disclosure filing, the Commission received comments relating to, among other things, the effective date of the filing and a desire for a transition to the permanent EMMA continuing disclosure filing.<sup>10</sup> In the permanent EMMA continuing disclosure filing, the MSRB had originally proposed an effective date of January 1, 2009. In response, one commentator requested that the Commission establish a transition period before making electronic filings on EMMA mandatory as a result of the submissions needing to be submitted as PDF-word searchable files.<sup>11</sup> Another commentator noted a need to address smaller issuers who

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No. SR-MSRB-2008-05) (approving the continuing disclosure service of EMMA with an effective date of July 1, 2009).

<sup>10</sup> Comment letters to the Commission on the permanent EMMA continuing disclosure filing are available at <http://www.sec.gov/comments/sr-msrb-2008-05/msrb200805.shtml>.

<sup>11</sup> See Letter from Susan A. Gaffney, Director, Federal Liaison Center, Government Finance Officers Association, to Ms. Harmon, dated September 22, 2008.

may need additional time to familiarize themselves with an electronic system.<sup>12</sup> A third commentator noted that “municipal issuers and obligated persons may be confused as to where they should file continuing disclosure documents during the period of transition from the current system to the EMMA system” and suggested that these concerns “could be addressed during a short transition period.”<sup>13</sup>

As a result, the MSRB amended the permanent EMMA continuing disclosure filing to request that the Commission delay the implementation of the permanent EMMA continuing disclosure service to July 1, 2009.<sup>14</sup> The MSRB noted that the delayed effectiveness would provide the MSRB with the opportunity to implement a pilot phase of the EMMA continuing disclosure service to allow voluntary submissions to be made prior to the effectiveness of the permanent EMMA continuing disclosure service. During this pilot period, submitters would be able to familiarize themselves with the submission process and receive assistance to establish user accounts.

III. DATE OF EFFECTIVENESS OF THE PROPOSED RULE CHANGE AND TIMING FOR COMMISSION ACTION

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date 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 such proposed rule change, or

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<sup>12</sup> See Letter from William A. Holby, President, National Association of Bond Lawyers, to Ms. Harmon, dated September 22, 2008.

<sup>13</sup> See Letter from Christopher Alwine, Head of Municipal Money Market and Bond Groups, Vanguard, to Ms. Harmon, dated September 24, 2008.

<sup>14</sup> See SR-MSRB-2008-05, Amendment No. 1 (November 5, 2008).

- B. institute proceedings to determine whether the proposed rule change should be disapproved.

#### 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](mailto:rule-comments@sec.gov). Please include File Number SR-MSRB-2009-03 on the subject line.

##### Paper comments:

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

All submissions should refer to File Number SR-MSRB-2009-03. 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 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-2009-03 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>15</sup>

Florence E. Harmon  
Deputy Secretary

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<sup>15</sup> 17 CFR 200.30-3(a)(12).