

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-59881; File No. SR-MSRB-2009-05)

May 7, 2009

Self-Regulatory Organizations; Municipal Securities Rulemaking Board; Notice of Filing of Proposed Rule Change Relating to the Subscription Service for Continuing Disclosure Documents Through the Electronic Municipal Market Access System (EMMA<sup>®</sup>)

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Exchange Act”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on April 22, 2009, the Municipal Securities Rulemaking Board (the “MSRB”) filed with the Securities and Exchange Commission (the “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 has filed with the Commission a proposed rule change to establish a real-time subscription to the document collection of the continuing disclosure service of the MSRB’s Electronic Municipal Market Access system (“EMMA”).<sup>3</sup> The MSRB has requested approval of the proposed rule change on or prior to July 1, 2009.

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

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

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

<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).

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 a proposal to establish a real-time subscription to the continuing disclosure document collection. The real-time data stream subscription to the EMMA continuing disclosure service to be provided through a web service would be made available for an annual fee of \$45,000.<sup>4</sup> The continuing disclosure subscription service would make available to subscribers all continuing disclosure documents and related information provided by submitters through the EMMA submission process that is posted on the EMMA portal. Such documents and information would be made available to subscribers simultaneously with the posting thereof on the EMMA portal.

Data with respect to the EMMA continuing disclosure service to be provided through the real-time data stream would consist of the following elements, among others and as applicable,

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<sup>4</sup> The proposed subscription price would cover a portion of the administrative, technical and operating costs of the EMMA continuing disclosure subscription service but would not cover all costs of such subscription service or of the EMMA continuing disclosure service. The MSRB has proposed establishing the subscription price at a fair and reasonable level consistent with the MSRB's objective that subscriptions be made available on terms that promote the broad dissemination of documents and data throughout the marketplace.

as would be more specifically set forth in the EMMA Continuing Disclosure Subscriber Manual posted on the EMMA portal: (i) submission data, including submission ID and submission transaction date/time; (ii) disclosure indexing data, including disclosure type, financial/operating disclosure category, event disclosure category, other voluntary disclosure description, disclosure dates, and CUSIP numbers; (iii) contact information data, including contact organization type, contact name, address, phone number, and e-mail address; and (iv) document data, including document ID, document posting date, and document status indicator.

The EMMA Continuing Disclosure Subscriber Manual would set forth a complete, up-to-date listing of all data elements made available through the continuing disclosure subscription service, including detailed definitions of each data element, specific data format information, and information about technical data elements to support transmission and data-integrity processes between EMMA and subscribers.

Subscriptions would be provided through computer-to-computer data streams utilizing XML files for data and files in a designated electronic format (consisting of PDF files) for documents. Appropriate schemas and other technical specifications for accessing the web services through which the real-time data stream are to be provided would be set forth in the EMMA Continuing Disclosure Subscriber Manual.

The MSRB would make the continuing disclosure subscription service available on an equal and non-discriminatory basis. In addition, the MSRB would not impose any limitations on or additional charges for redistribution of such documents by subscribers to their customers, clients or other end-users. Subscribers would be subject to all of the terms of the subscription agreement to be entered into between the MSRB and each subscriber, including proprietary rights of third parties in information provided by such third parties that is made available through

the subscription. The MSRB would not be responsible for the content of the information or documents submitted by submitters distributed to subscribers through the continuing disclosure subscription service.

2. Statutory Basis

The MSRB has adopted the proposed rule change pursuant to Section 15B(b)(2)(C) of the Exchange Act, 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.

The MSRB believes that the proposed rule change is consistent with the Exchange Act and will serve to promote the statutory mandate of the MSRB to protect investors and the public interest. The EMMA continuing disclosure subscription service would serve as a 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 subscription service would make the indexed comprehensive collection of continuing disclosure documents of the EMMA continuing disclosure service available to marketplace participants for redissemination and for use in creating value-added products and services. Such redissemination and third-party use would provide market participants, including investors and the general public, additional avenues for obtaining these key disclosures and would make additional tools available in making well-informed investment decisions. Broad access to continuing disclosure documents through the

subscription service, in addition to the public access available through the EMMA web portal, should further assist in preventing fraudulent and manipulative acts and practices by improving the opportunity for public investors to access material information about issuers, their securities and the prices at which such securities trade.

Furthermore, broader re-dissemination and third-party use of continuing disclosure documents 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 (including any changes thereto), changes in circumstances of issuers and obligated persons, and the potential investment risks arising therefrom.

**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 Exchange Act.<sup>5</sup>

The proposed rule change would make the continuing disclosure subscription service available to all persons on an equal and non-discriminatory basis. The documents and information provided

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<sup>5</sup> The MSRB previously stated in its filing with the Commission in connection with the permanent EMMA continuing disclosure service that it believes that the continuing disclosure service would promote, rather than hinder, further competition, growth and innovation in this area. 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 No. SR-MSRB-2008-05) (approving the continuing disclosure service of EMMA with an effective date of July 1, 2009). The MSRB stated that it 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 would justify any potentially negative impact on existing enterprises from the operation of EMMA.

through the subscription service would be available to all subscribers simultaneously with their availability through the EMMA web portal. In addition to making the documents and information available for free on the EMMA web portal to all members of the public, the MSRB would make continuing disclosure documents and information available by subscription on an equal and non-discriminatory basis without imposing restrictions on subscribers from, or imposing additional charges on subscribers for, re-disseminating such documents or otherwise offering value-added services and products based on such documents on terms determined by each subscriber.<sup>6</sup> The MSRB believes that the proposed rule change would promote increased competition among information services in the marketplace resulting from the entry of additional commercial enterprises.

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 a notice published by the MSRB on January 31, 2008, the MSRB described and sought comment on its plan for implementing a continuing disclosure service that would be integrated into other services to be offered through EMMA (the "2008 Notice").<sup>7</sup> In particular, the MSRB stated its plan to institute the continuing disclosure service to accept submissions of continuing disclosure documents pursuant to continuing disclosure undertakings consistent with Rule 15c2-12. In addition to making continuing disclosures available at no cost through the

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<sup>6</sup> The MSRB notes that subscribers may be subject to proprietary rights of third parties in information provided by such third parties that is made available through the subscription.

<sup>7</sup> See MSRB Notice 2008-05 (January 31, 2008). The comments received on this notice are discussed in SR-MSRB-2008-05 (July 29, 2008). See also 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). Comments relating to voluntary filings of continuing disclosure documents not contemplated under Exchange Act Rule 15c2-12 are discussed herein.

EMMA portal, the MSRB would make such disclosures available through a paid real-time data stream subscription for redissemination or other use by subscribers. One commentator asked whether periodic filings other than submissions of annual financial information, such as quarterly or monthly financial results, would be accepted.<sup>8</sup> Another commentator stated that it strongly believed that EMMA should be capable of housing all disclosure documents, extending beyond those specifically required by Rule 15c2-12, and could only support a system that allows access to other pertinent information.<sup>9</sup> The MSRB supports the dissemination of additional continuing disclosures beyond the baseline established by Rule 15c2-12 and is providing for such submission and dissemination in this filing.

### 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 the proposed rule change, or
- (B) institute proceedings to determine whether the proposed rule change should be disapproved.

The MSRB has requested that the Commission approve the proposed rule change on or prior to July 1, 2009.

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<sup>8</sup> See letter from Robert Donovan and Stephen M. Fillebrown, National Association of Health and Education Facilities Finance Authorities, to Ernesto A. Lanza, Senior Associate General Counsel, MSRB, dated March 3, 2008.

<sup>9</sup> See letter from Rob Yolland, Chairman, National Federation of Municipal Analysts, to Mr. Lanza, dated March 10, 2008.

#### 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 Exchange 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-2009-05 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-2009-05. 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 a.m. and 3:00 p.m. Copies of the filing will also 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 No. SR-MSRB-2009-05 and should be submitted on or before [insert date 21 days from date of publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>10</sup>

Florence E. Harmon  
Deputy Secretary

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<sup>10</sup> 17 CFR 200.30-3(a)(12).