

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-62489; File No. SR-MSRB-2010-05)

July 13, 2010

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

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),¹ and Rule 19b-4 thereunder,² notice is hereby given that on June 30, 2010, 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 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 amend the continuing disclosure service of its Electronic Municipal Market Access (“EMMA”) system to reflect recent Commission amendments to Securities Exchange Act Rule 15c2-12 (“Exchange Act Rule 15c2-12”). The MSRB requests 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.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

The text of the proposed rule change is available on the MSRB's Web site at www.msrb.org/Rules-and-Interpretations/SEC-Filings.aspx, 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. 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

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 statements if available and if not included in the annual financial information; (C) notices

of certain events (“Rule 15c2-12 Event Notices”);³ 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”).⁴ 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;⁵ (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

³ 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.

⁴ See Release No. 34-62184A; File No. S7-15-09 (May 26, 2010).

⁵ 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;⁶ and (5) adds new Rule 15c2-12 Event Notices.⁷

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.⁸

⁶ 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.

⁷ 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.

⁸ 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

Upon this proposed rule change becoming effective, the continuing disclosure service of EMMA would accept submissions of, and make publicly available through EMMA, the following categories of event-based continuing disclosure documents:⁹

Rule 15c2-12 Event Notices

- principal and interest payment delinquencies
- non-payment related defaults, if material
- 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, IRS notices or events affecting the tax status of the security¹⁰
- modifications to rights of security holders, if material
- bond calls, if material¹¹

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

⁹ This proposed rule change does not modify the existing categories of financial/operating data disclosures available through the EMMA continuing disclosure service.

¹⁰ This category would represent the expansion in the 15c2-12 Amendment of the prior category of “adverse tax opinions or events affecting the tax-exempt status of the security” to “adverse tax opinions, the issuance by the Internal Revenue Service 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.” See amended Exchange Act Rule 15c2-12(b)(5)(i)(C)(6).

¹¹ The Rule 15c2-12 Amendment expands this category to include tender offers. See amended Exchange Act Rule 15c2-12(b)(5)(i)(C)(8). The EMMA continuing disclosure service currently provides a voluntary event-based notice category of “tender offers/secondary market purchases.” The EMMA continuing disclosure service will continue to utilize “bond call” as a separate category from “tender offer.”

- defeasances
- release, substitution or sale of property securing repayment of the

securities, if material

- rating changes
- tender offers¹²
- bankruptcy, insolvency, receivership or similar event of the obligated

person¹³

- merger, consolidation, or acquisition of the obligated person, if material¹⁴
- appointment of a successor or additional trustee, or the change of name of

a trustee, if material

Additional/Voluntary Event-Based Disclosures (certain communications from the

Internal Revenue Service, tender offers, merger/consolidation/reorganization/in-

solvency/bankruptcy and change of trustee are no longer reflected as additional/voluntary event-based disclosures).

¹² Id. The existing “tender offers/secondary market purchases” category of voluntary event-based notice will be split into a new Rule 15c2-12 Event Notice category of “tender offers” and a voluntary event-based category of “secondary market purchases.”

¹³ The existing “merger/consolidation/reorganization/insolvency/bankruptcy” category of voluntary event-based notice will be split into a new Rule 15c2-12 Event Notice category of “bankruptcy, insolvency, receivership or similar event of the issuer or obligated person” and a second Rule 15c2-12 Event Notice category of “merger, consolidation or acquisition of the obligated person.” See amended Exchange Act Rule 15c2-12(b)(5)(i)(C)(12).

¹⁴ Id. The full reference to this category under amended Exchange Act Rule 15c2-12(b)(5)(i)(C)(13) is “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.”

- amendment to continuing disclosure undertaking
- change in obligated person
- notice to investors pursuant to bond documents
- certain communications from the Internal Revenue Service
- secondary market purchases
- bid for auction rate or other securities
- capital or other financing plan
- litigation/enforcement action
- change of tender agent, remarketing agent, or other on-going party
- derivative or other similar transaction
- other event-based disclosures

2. Statutory Basis

The MSRB has adopted the proposed rule change pursuant to Section 15B(b)(2)(C) of the Act,¹⁵ 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 of a free and open market in municipal securities, and, in general, to protect investors and the public interest.

¹⁵ 15 U.S.C. 78o-4(b)(2)(C).

The MSRB believes that the proposed rule change is consistent with the Act in that it effectuates the Commission's Rule 15c2-12 Amendment under the 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.

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

The MSRB does not believe the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. Documents and information provided through the continuing disclosure service would be available to all persons simultaneously. In addition to making the additional documents and information available for free on the EMMA portal to all members of the public, the MSRB would make such documents and information available by subscription on an equal and non-discriminatory basis.

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.

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

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.

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-2010-05 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-2010-05. 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 Web site 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 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-2010-05 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.¹⁶

Florence E. Harmon
Deputy Secretary

¹⁶ 17 CFR 200.30-3(a)(12).