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February 25, 2008

Ernesto A. Lanza  
Senior Associate General Counsel  
Municipal Securities Rulemaking Board  
1900 Duke Street  
Suite 600  
Alexandria, VA 22314

Re: **MSRB Notice 2008-05 (January 31, 2008)**  
**MSRB Begins Planning for Continuing Disclosure Component of  
the New Electronic Municipal Market Access System (EMMA)**

Dear Mr. Lanza:

The National Association of Bond Lawyers ("NABL") respectfully submits the enclosed response to the Municipal Securities Rulemaking Board ("MSRB") solicitation of comments on MSRB Notice 2008-05, dated January 31, 2008 (the "Notice"), regarding MSRB's planning for the continuing disclosure component of the new electronic municipal market access system ("EMMA"). The comments were prepared by an *ad hoc* subcommittee of NABL's Securities Law and Disclosure Committee, as listed in Exhibit I.

In the Notice, the MSRB requests specific comments regarding the continuing disclosure component of EMMA, and NABL has provided comments in response to certain of these requests.

NABL exists to promote the integrity of the municipal market by advancing the understanding of and compliance with the law affecting public finance. A professional association incorporated in 1979, NABL has approximately 3,000 members and is headquartered in Chicago.

If you have any questions concerning the comments, please feel free to contact me at 205/226-3482 ([fcclark@balch.com](mailto:fcclark@balch.com)) or Elizabeth Wagner, Director of Governmental Affairs at 202/682-1498 ([ewagner@nabl.org](mailto:ewagner@nabl.org)).

Ernesto A. Lanza  
RE: MSRB Notice 2008-05  
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Thank you in advance for your consideration of these comments with respect to this important development in the municipal securities industry.

Sincerely,

A handwritten signature in black ink, appearing to read "J. Foster Clark". The signature is stylized with a large, sweeping initial "J" and a long horizontal stroke at the end.

J. Foster Clark

Enclosures

cc: Teri M. Guarnaccia  
Curt Gwathney  
William L. Hirata  
Michael T. Kersten  
Andrew Kintzinger  
John M. McNally  
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# National Association of Bond Lawyers

COMMENTS  
OF THE  
NATIONAL ASSOCIATION OF BOND LAWYERS  
REGARDING  
MSRB NOTICE 2008-05

MSRB BEGINS PLANNING FOR CONTINUING DISCLOSURE COMPONENT OF THE  
NEW ELECTRONIC MUNICIPAL MARKET ACCESS SYSTEM (EMMA)

The following comments are submitted to the Municipal Securities Rulemaking Board (“MSRB”) on behalf of the National Association of Bond Lawyers (“NABL”) relating to the MSRB Notice 2008-05—MSRB Begins Planning for Continuing Disclosure Component of the New Electronic Municipal Market Access System (EMMA), dated January 31, 2008 (the “Notice”). The comments were prepared by an *ad hoc* subcommittee of the NABL Securities Law and Disclosure Committee.

NABL welcomes this opportunity to respond to the MSRB’s continuing initiative to develop an electronic system for dissemination of municipal securities disclosure documents and focuses its comments on those particular questions to which it believes it has relevant expertise. NABL has two general comments about the Notice as well as several specific comments. The headings shown below under NABL’s specific comments correspond to the MSRB’s requests in the Notice.

**1. General Comment—Availability of Continuing Disclosure Filings on EMMA.**

NABL asks that the MSRB clarify its plans regarding the availability of continuing disclosure filings on EMMA. Will all content be free? Will only portions of the content be free? In the Notice, the MSRB makes several statements about the availability of continuing disclosure filings on EMMA. The Notice states that “EMMA’s continuing disclosure component would . . . [provide] for free electronic submissions of all continuing disclosures under Rule 15c2-12 to the MSRB and free public access to such disclosures through the public EMMA website . . . .” The Notice also states that “[i]n addition to making continuing disclosures available publicly through the EMMA public web site, such disclosures would be available on a real-time basis through paid subscriptions to the complete EMMA document collection for re-dissemination or other use by subscribers.” Further, the Notice states that “[i]n addition, the MSRB has noted that it will offer real-time subscriptions to EMMA’s document collection and related information, which will be designed to provide real-time access to such documents and information as they are submitted and processed. The MSRB’s goal is to ensure an efficient process for submission of documents and information to EMMA while making available real-time subscription products at a reasonable cost with a view to promoting broad dissemination of the EMMA information collection and encouraging market-based approaches to value-added services designed to meet the needs of investors and other market participants.” When read together, these statements seem to indicate that only paid subscribers would have immediate access to all of EMMA’s documents. Is this the MSRB’s intent? Or is the MSRB’s intent that all would have immediate

access, but that paid subscribers would have immediate receipt of the information (through an RSS technology or otherwise)?

2. **General Comment—Continuing Disclosure Filings for Previously Issued Municipal Securities on EMMA.**

NABL also asks that the MSRB clarify its plans regarding continuing disclosure filings with respect to previously issued municipal securities. In the Notice, the MSRB indicates that it expects to collect information relating to “new issue municipal securities,” which suggests the MSRB will not accept continuing disclosure filings with respect to previously issued municipal securities. Will the MSRB accept filings with respect to previously issued municipal securities either because they are submitted voluntarily by an issuer or because an issuer is required to submit them pursuant to a continuing disclosure agreement?

3. **Specific Comments.**

*The MSRB seeks comments on these additional items of information to be submitted in connection with new issues. In addition, the MSRB seeks comments on whether other additional items of information should be required to be submitted by underwriters at the time of initial issuance, such as (among other things) the identity of any agents designated to provide continuing disclosure information or any criteria set out in the continuing disclosure undertaking for identifying obligated persons subject to the disclosure obligations pursuant to such undertaking.*

In the Notice, the MSRB states that, at the time of initial issuance “underwriters of new issue municipal securities would be required to provide the following items of information: (i) whether a continuing disclosure undertaking exists; (ii) the identity of any obligated persons other than the issuer; and (iii) the date identified in the undertaking by which annual financial information is expected to be disseminated.”

NABL has no comments on the first requested item of information but would qualify the second requested item of information. Instead of having underwriters identify “obligated persons” (a term that has a technical meaning under the United States Securities and Exchange Commission’s Rule 15c2-12), NABL recommends that underwriters be required only to identify those persons expressly specified in the continuing disclosure undertaking who will be required to make continuing disclosure filings or to state that such persons will be determined by the functional description contained in the continuing disclosure undertaking (for example, participants in a pooled bond financing satisfying certain criteria in the continuing disclosure undertaking).

Rule 15c2-12 does not require that continuing disclosure filings be made regarding all obligated persons, but only regarding those obligated persons about whom financial information or operating data is included in an offering document. In addition, NABL is concerned that this second requested item of information could be viewed as additional certification by underwriters beyond the obligations prescribed by Rule 15c2-12(b)(5)(i) that underwriters “reasonably determine” that a continuing disclosure undertaking conforming to the Rule has been executed.

With respect to the third item of information, NABL requests that the MSRB clarify why it plans to require that underwriters provide to the MSRB the date identified in the continuing

disclosure undertakings by which annual financial information is expected to be disseminated. This information already can be found in the offering documents to which such undertakings relate. Moreover, if more than one person is specified in the undertaking that will be required to make continuing disclosure filings or if reporting is required more frequently than annually, financial information dissemination will be required on multiple dates.

With respect to other additional items of information that should be required to be submitted by underwriters at the time of initial issuance, NABL does not believe that underwriters should be asked to identify agents designated to provide continuing disclosure information. However, NABL recommends that the MSRB consider requiring underwriters to submit CUSIP numbers at the time of initial issuance, so that users of EMMA can search for information by issuer name or CUSIP number. NABL also recommends that the MSRB solicit input from the investor community regarding the desirability of requiring underwriters to submit the name and a unique identification number for those obligated persons about whom financial information or operating data is included in an offering document (for example, an employer identification number) at the time of initial issuance, so that users of EMMA can search for information by obligated persons identified in filings.

*The MSRB seeks comments on whether the MSRB should accept submissions from a third party with respect to an issuer's securities only if the issuer has affirmatively designated to EMMA that such third party is authorized to act as its agent, or whether submissions from any registered EMMA user should be accepted on behalf of an issuer unless the issuer has affirmatively indicated that it wishes to take control over which parties can submit on its behalf.*

NABL respectfully defers to the issuer community on the issue of whether the MSRB should accept submissions from third parties with respect to an issuer's securities.



# National Association of Bond Lawyers

## EXHIBIT I

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