

Proposed Rule Change by Municipal Securities Rulemaking Board  
Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934

Initial <input checked="" type="checkbox"/>	Amendment <input type="checkbox"/>	Withdrawal <input type="checkbox"/>	Section 19(b)(2) <input checked="" type="checkbox"/>	Section 19(b)(3)(A) <input type="checkbox"/>	Section 19(b)(3)(B) <input type="checkbox"/>
Pilot <input type="checkbox"/>			Rule		
Extension of Time Period for Commission Action <input type="checkbox"/>			<input type="checkbox"/> 19b-4(f)(1)	<input type="checkbox"/> 19b-4(f)(4)	
Date Expires <input type="text"/>			<input type="checkbox"/> 19b-4(f)(2)	<input type="checkbox"/> 19b-4(f)(5)	
			<input type="checkbox"/> 19b-4(f)(3)	<input type="checkbox"/> 19b-4(f)(6)	

Exhibit 2 Sent As Paper Document <input type="checkbox"/>	Exhibit 3 Sent As Paper Document <input type="checkbox"/>
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**Description**  
Provide a brief description of the proposed rule change (limit 250 characters).

Proposed rule change relating to the voluntary submission of continuing disclosure documents to the MSRB's upcoming continuing disclosure service of the Electronic Municipal Market Access system (EMMA)

**Contact Information**  
Provide the name, telephone number and e-mail address of the person on the staff of the self-regulatory organization prepared to respond to questions and comments on the proposed rule change.

First Name  Last Name   
 Title   
 E-mail   
 Telephone  Fax

**Signature**  
Pursuant to the requirements of the Securities Exchange Act of 1934,  
Municipal Securities Rulemaking Board  
has duly caused this filing to be signed on its behalf by the undersigned thereunto duly authorized officer.

Date   
 By  Corporate Secretary  
 (Name)  (Title)

NOTE: Clicking the button at right will digitally sign and lock this form. A digital signature is as legally binding as a physical signature, and once signed, this form cannot be changed.

SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549

For complete Form 19b-4 instructions please refer to the EFFS website.

**Form 19b-4 Information**

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The self-regulatory organization must provide all required information, presented in a clear and comprehensible manner, to enable the public to provide meaningful comment on the proposal and for the Commission to determine whether the proposal is consistent with the Act and applicable rules and regulations under the Act.

**Exhibit 1 - Notice of Proposed Rule Change**

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The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)

**Exhibit 2 - Notices, Written Comments, Transcripts, Other Communications**

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Exhibit Sent As Paper Document

Copies of notices, written comments, transcripts, other communications. If such documents cannot be filed electronically in accordance with Instruction F, they shall be filed in accordance with Instruction G.

**Exhibit 3 - Form, Report, or Questionnaire**

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Exhibit Sent As Paper Document

Copies of any form, report, or questionnaire that the self-regulatory organization proposes to use to help implement or operate the proposed rule change, or that is referred to by the proposed rule change.

**Exhibit 4 - Marked Copies**

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The full text shall be marked, in any convenient manner, to indicate additions to and deletions from the immediately preceding filing. The purpose of Exhibit 4 is to permit the staff to identify immediately the changes made from the text of the rule with which it has been working.

**Exhibit 5 - Proposed Rule Text**

Add Remove View

The self-regulatory organization may choose to attach as Exhibit 5 proposed changes to rule text in place of providing it in Item I and which may otherwise be more easily readable if provided separately from Form 19b-4. Exhibit 5 shall be considered part of the proposed rule change.

**Partial Amendment**

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If the self-regulatory organization is amending only part of the text of a lengthy proposed rule change, it may, with the Commission's permission, file only those portions of the text of the proposed rule change in which changes are being made if the filing (i.e. partial amendment) is clearly understandable on its face. Such partial amendment shall be clearly identified and marked to show deletions and additions.

## 1. Text of Proposed Rule Change

(a) The Municipal Securities Rulemaking Board (the “MSRB”) hereby files with the Securities and Exchange Commission (the “Commission”) a proposed rule change to amend the continuing disclosure service of the MSRB’s Electronic Municipal Market Access System (“EMMA”) to accept, and to make publicly available on the Internet, voluntary electronic submissions by issuers, obligated persons and their agents of continuing disclosure documents provided other than in connection with Exchange Act Rule 15c2-12. The MSRB requests approval of the proposed rule change on or prior to July 1, 2009.

The text of the proposed rule change is set forth below, with underlining indicating additions and brackets indicating deletions:

**MUNICIPAL SECURITIES RULEMAKING BOARD  
ELECTRONIC MUNICIPAL MARKET ACCESS SYSTEM –  
EMMA<sup>®</sup>**

### **EMMA CONTINUING DISCLOSURE SERVICE**

The EMMA continuing disclosure service, established as a service of EMMA, receives submissions of continuing disclosure documents, together with related indexing information to allow the public to readily identify and access such documents, from issuers, obligated persons and their agents pursuant to continuing disclosure undertakings entered into consistent with Exchange Act Rule 15c2-12, as well as other continuing disclosure documents concerning municipal securities, at no charge to the submitter. Submissions may be made through a choice of an Internet-based electronic submission interface or electronic computer-to-computer streaming connections. The EMMA continuing disclosure service makes continuing disclosures available to the public, at no charge, on the Internet through the EMMA portal. The EMMA continuing disclosure service also makes continuing disclosures available by subscription for a fee.

### **Submissions to the EMMA Continuing Disclosure Service**

*Designated Electronic Format for Documents.* No change.

*Method of Submission.* No change.

*Timing of Submissions.* No change.

*Document Types.* The EMMA continuing disclosure service accepts submissions from issuers, obligated persons, and their agents of (i) the continuing disclosure documents [as] described in Rule 15c2-12, and (ii) other continuing disclosure documents concerning municipal securities [specified in continuing disclosure undertakings entered into consistent with Rule 15c2-12 but] not specifically described in Rule 15c2-12.

**The [C]continuing disclosure documents described in Rule 15c2-12** consist of the following categories of documents[, as set forth in Rule 15c2-12]:

- annual financial information concerning issuers or other obligated persons as described in paragraph (b)(5)(i)(A) of Rule 15c2-12, or other financial information and operating data provided by issuers or other obligated persons as described in paragraph (d)(2)(ii)(A) of Rule 15c2-12;
- financial statements for issuers or other obligated persons if not included in the annual financial information as described in paragraph (b)(5)(i)(B) of Rule 15c2-12;
- notices of certain events, if material, as described in paragraph (b)(5)(i)(C) of Rule 15c2-12; and
- notices of failures to provide annual financial information on or before the date specified in the written undertaking as described in paragraph (b)(5)(i)(D) of Rule 15c2-12.

**Categories of other disclosure documents concerning municipal securities not specifically described in Rule 15c2-12 include:**

- **other financial or operating data disclosures, including but not limited to quarterly or monthly financial information; interim or additional financial information or operating data; budget documents; investment, debt or financial policies; consultant reports; material provided to rating agencies or credit or liquidity providers; changes in accounting standards, fiscal year or timing of annual disclosure; and other uncategorized financial or operating data; and**
- **other event-based disclosures, including but not limited to amendments to continuing disclosure undertakings; changes in obligated person; notices to investors pursuant to bond documents; communications from the Internal Revenue Service; tender offer or secondary market purchase notices; notices of bid for auction rate or other securities; capital or other financing plans; litigation or enforcement action documents; documents relating to mergers, consolidations, reorganizations, insolvency or bankruptcy; changes of trustee, tender agent, remarketing agent, or other on-going party; materials relating to derivative or other similar transactions; and other uncategorized event-based disclosures.**

**The MSRB may combine two or more categories, may divide any category into two or more new categories or subcategories, or may form additional categories for purposes of indexing documents submitted as uncategorized financial/operating data or event-based disclosures, as appropriate, based on the types of documents received.**

*Information to be Submitted.* In connection with documents submitted to the EMMA continuing disclosure service, the submitter shall provide, at the time of submission, information necessary to accurately identify:

- the category of information being provided (such as annual financial information; financial statements; material event notice, including designation of which specific type or types of events; notice of failure to make timely filing of annual financial information; or other **continuing disclosure document concerning municipal securities, identified by category** [information provided pursuant to a continuing disclosure undertaking]);
- in the case of annual financial information, financial statements and other financial information or operating data, the period covered by such documents;
- the issues or specific securities to which such document is related or otherwise material (including CUSIP number, issuer name, state, issue description/securities name, dated date, maturity date, and/or coupon rate);
- the name(s) of the obligated person(s) (if other than the issuer) to which such document applies;
- the name and date of the document; and
- the identity of and contact information for the person submitting the document.

*Submitters.* No change.

### **Public Availability of Continuing Disclosure Documents**

No change.

\* \* \* \* \*

(b) Not applicable.

(c) Not applicable.

## **2. Procedures of the Self-Regulatory Organization**

The proposed rule change was adopted by the MSRB on October 23, 2008. Questions concerning this filing may be directed to Margaret C. Henry, Associate General Counsel, Leslie Carey, Associate General Counsel, or Ernesto A. Lanza, General Counsel, at 703-797-6600.

### 3. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(a) The Commission has previously approved the establishment of the continuing disclosure service of EMMA, which will commence operation on July 1, 2009.<sup>1</sup> The EMMA continuing disclosure service will receive electronic submissions of, and will make publicly available on the Internet through the EMMA web portal,<sup>2</sup> continuing disclosure documents and related information from issuers, obligated persons and their agents pursuant to continuing disclosure undertakings entered into consistent with Exchange Act Rule 15c2-12. As approved, the EMMA continuing disclosure service will accept submissions of (i) continuing disclosure documents as described in Rule 15c2-12,<sup>3</sup> and (ii) other disclosure documents specified in continuing disclosure undertakings but not specifically described in Rule 15c2-12.

The proposed rule change would amend the EMMA continuing disclosure service to accept submissions of, and to make publicly available through the EMMA web portal, additional categories of continuing disclosure documents voluntarily submitted by issuers, obligated persons and their agents (“voluntary continuing disclosure document”). The proposed rule change would not establish an obligation upon any issuer or obligated person to make a submission of any voluntary continuing disclosure document. Voluntary continuing disclosure

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<sup>1</sup> 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 approval”). 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). Approval of the proposed rule change on or prior to July 1, 2009 would allow the permanent EMMA continuing disclosure service to accept such voluntary disclosures upon commencement of operations.

<sup>2</sup> The EMMA web portal is accessible at <http://emma.msrb.org>.

<sup>3</sup> Such items consist of: (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 the following events, 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/sale of property securing repayment of the securities, and rating changes; and (D) notices of failures to provide annual financial information on or before the date specified in the continuing disclosure undertaking.

documents would be submitted, processed and disseminated in the same manner as provided with respect to disclosures made to the EMMA continuing disclosure service pursuant to continuing disclosure undertakings entered into consistent with Rule 15c2-12. In particular, such submissions would be accepted solely in electronic form as portable document format (PDF) files accompanied by appropriate indexing information.

To facilitate organizing the submissions for easier access by the public, the proposed rule change would establish a number of additional categories in connection with voluntary continuing disclosure documents which the EMMA continuing disclosure service would accept and for which specific indexing information is to be provided to EMMA during the submission process.<sup>4</sup> These additional or voluntary categories would be applicable both to submissions pursuant to continuing disclosure undertakings of additional disclosure items beyond those items specified under Rule 15c2-12, as previously approved in the EMMA continuing disclosure service approval, and to continuing disclosures submitted voluntarily from time to time at the election of the issuer or obligated person pursuant to this proposed rule change (together categorized as “Additional/Voluntary Disclosures”). The categories of Additional/Voluntary Disclosure would be as follows:

**Other Financial/Operating Data Disclosures**

- quarterly/monthly financial information
- change in fiscal year/timing of annual disclosure
- change in accounting standard
- interim/additional financial information/operating data
- budget
- investment/debt/financial policy
- material provided to rating agency or credit/liquidity provider
- consultant reports

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<sup>4</sup> These categories reflect types of additional information that issuers or obligated persons have sometimes agreed to provide in their continuing disclosure undertakings beyond those items specified under Rule 15c2-12, as well as categories derived from sources such as existing investor relations websites of municipal issuers, recommended practices published by the Government Finance Officers Association, recommended best practices published by the National Federation of Municipal Analysts and suggestions from the MSRB’s investor and issuer advisory groups and other industry participants.

- other financial/operating data

**Other Event-Based Disclosures**

- amendment to continuing disclosure undertaking
- change in obligated person
- notice to investors pursuant to bond documents
- communication from the Internal Revenue Service
- tender offer/secondary market purchases
- bid for auction rate or other securities<sup>5</sup>
- capital or other financing plan
- litigation/enforcement action
- merger/consolidation/reorganization/insolvency/bankruptcy
- change of trustee, tender agent, remarketing agent, or other on-going party
- derivative or other similar transaction
- other event-based disclosures

With respect to the submission process through EMMA, the various categories of continuing disclosure would be organized to differentiate between categories of items specified under Rule 15c2-12 and Additional/Voluntary Disclosures.<sup>6</sup> In most cases, submitters would be able to index a single submitted document into multiple applicable categories, including categories applicable to Rule 15c2-12 disclosures and to Additional/Voluntary Disclosures. Over time, the MSRB may combine two or more categories, may divide any category into two or

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<sup>5</sup> This would include, but not be limited to, any notice pursuant to the SEC no-action letter regarding municipal auction rate securities dated March 14, 2008, *available at* <http://www.sec.gov/divisions/corpfin/cf-noaction/2008/mars031408.pdf>.

<sup>6</sup> EMMA would not differentiate between an Additional/Voluntary Disclosure made pursuant to a continuing disclosure undertaking and an Additional/Voluntary Disclosure made outside of a continuing disclosure undertaking, and all categories of Additional/Voluntary Disclosures would be available for either type of submission.



more new categories or subcategories, or may form additional categories for purposes of indexing documents submitted in the “other financial/operating data” or “other event-based disclosures” general category as appropriate based on the types of documents received.

The categories of Additional/Voluntary Disclosures would be for the convenience of submitters and users of such documents and do not represent the MSRB’s opinion as to the appropriate items of disclosure with respect to any specific municipal security. The availability of such categories would not imply or create an obligation to make any disclosures, and it would not be uncommon for one or many of the categories to be inapplicable to any particular security. Further, the nature of the specific documents submitted for a particular category may vary widely. Only those categories for which submissions have been made for a particular security would be displayed on the EMMA web portal page for such security.<sup>7</sup>

**(b)** The MSRB believes that the proposed rule change is consistent with Section 15B(b)(2)(C) of the Securities Exchange Act of 1934 (the “Exchange Act”), 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.

The EMMA continuing disclosure service, as amended by the proposed rule change, 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, and would serve to promote the statutory mandate of the MSRB to protect investors and the public interest. The inclusion of voluntary continuing disclosure documents in the EMMA continuing disclosure service would further 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. 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. 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

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<sup>7</sup> Thus, specific Rule 15c2-12 Disclosure and Additional/Voluntary Disclosure category headings would not be displayed on the EMMA web portal for a security or issue if there is no disclosure document available from EMMA for such category.

potential investment risks. Free access to this information – previously generally available, if at all, through paid subscription services or on a per-document fee basis – should reduce transaction costs for dealers and investors.

#### **4. 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 Exchange Act. Documents and information provided through the continuing disclosure service would be available to all persons simultaneously. 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 such 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. In particular, the MSRB believes that the proposed rule change will make most voluntary continuing disclosure documents available for the first time to a broader group of private information services and, therefore, 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 would justify any potentially negative impact on existing enterprises from the operation of EMMA.

#### **5. Self-Regulatory Organization’s Statement on Comments Received on the Proposed Rule Change by 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>8</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 EMMA web portal, the MSRB would make such disclosures available through a paid real-time data stream subscription for re-dissemination or other use by subscribers. One commentator asked whether periodic filings other than submissions of annual financial information, such as

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<sup>8</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.

quarterly or monthly financial results, would be accepted.<sup>9</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>10</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.

**6. Extension of Time Period of Commission Action**

The MSRB declines to consent to an extension of the time period specified in Section 19(b)(2) of the Exchange Act.

**7. Basis for Summary Effectiveness Pursuant to Section 19(b)(3) or for Accelerated Effectiveness Pursuant to Section 19(b)(2).**

Not applicable.

**8. Proposed Rule Change Based on Rules of Another Self-Regulatory Organization or of the Commission.**

Not applicable.

**9. Exhibits**

1. Federal Register Notice.
2. Notice and comment letters.

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

## **EXHIBIT 1**

### **SECURITIES AND EXCHANGE COMMISSION**

(Release No. 34- ; File No. SR-MSRB-2009-04)

Proposed Rule Change by the Municipal Securities Rulemaking Board Relating to the Voluntary Submission of Continuing Disclosure Documents to 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 (the “Exchange Act”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on April 14, 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 amend the continuing disclosure service of the MSRB’s Electronic Municipal Market Access system (“EMMA”) to accept, and to make publicly available on the Internet, voluntary electronic submissions by issuers, obligated persons and their agents of continuing disclosure documents provided other than in connection with Exchange Act Rule 15c2-12. The MSRB has requested approval of the proposed rule change on or prior to July 1, 2009.

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

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

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.

## **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 Commission has previously approved the establishment of the continuing disclosure service of EMMA, which will commence operation on July 1, 2009.<sup>3</sup> The EMMA continuing disclosure service will receive electronic submissions of, and will make publicly available on the Internet through the EMMA web portal,<sup>4</sup> continuing

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<sup>3</sup> 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 approval"). 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). Approval of the proposed rule change on or prior to July 1, 2009 would allow the permanent EMMA continuing disclosure service to accept such voluntary disclosures upon commencement of operations.

<sup>4</sup> The EMMA web portal is accessible at <http://emma.msrb.org>.

disclosure documents and related information from issuers, obligated persons and their agents pursuant to continuing disclosure undertakings entered into consistent with Exchange Act Rule 15c2-12. As approved, the EMMA continuing disclosure service will accept submissions of (i) continuing disclosure documents as described in Rule 15c2-12,<sup>5</sup> and (ii) other disclosure documents specified in continuing disclosure undertakings but not specifically described in Rule 15c2-12.

The proposed rule change would amend the EMMA continuing disclosure service to accept submissions of, and to make publicly available through the EMMA web portal, additional categories of continuing disclosure documents voluntarily submitted by issuers, obligated persons and their agents (“voluntary continuing disclosure document”). The proposed rule change would not establish an obligation upon any issuer or obligated person to make a submission of any voluntary continuing disclosure document. Voluntary continuing disclosure documents would be submitted, processed and disseminated in the same manner as provided with respect to disclosures made to the EMMA continuing disclosure service pursuant to continuing disclosure undertakings entered into consistent with Rule 15c2-12. In particular, such submissions would be

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<sup>5</sup> Such items consist of: (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 the following events, 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/sale of property securing repayment of the securities, and rating changes; and (D) notices of failures to provide annual financial information on or before the date specified in the continuing disclosure undertaking.

accepted solely in electronic form as portable document format (PDF) files accompanied by appropriate indexing information.

To facilitate organizing the submissions for easier access by the public, the proposed rule change would establish a number of additional categories in connection with voluntary continuing disclosure documents which the EMMA continuing disclosure service would accept and for which specific indexing information is to be provided to EMMA during the submission process.<sup>6</sup> These additional or voluntary categories would be applicable both to submissions pursuant to continuing disclosure undertakings of additional disclosure items beyond those items specified under Rule 15c2-12, as previously approved in the EMMA continuing disclosure service approval, and to continuing disclosures submitted voluntarily from time to time at the election of the issuer or obligated person pursuant to this proposed rule change (together categorized as “Additional/Voluntary Disclosures”). The categories of Additional/Voluntary Disclosure would be as follows:

**Other Financial/Operating Data Disclosures**

- quarterly/monthly financial information
- change in fiscal year/timing of annual disclosure
- change in accounting standard

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<sup>6</sup> These categories reflect types of additional information that issuers or obligated persons have sometimes agreed to provide in their continuing disclosure undertakings beyond those items specified under Rule 15c2-12, as well as categories derived from sources such as existing investor relations websites of municipal issuers, recommended practices published by the Government Finance Officers Association, recommended best practices published by the National Federation of Municipal Analysts and suggestions from the MSRB’s investor and issuer advisory groups and other industry participants.

- interim/additional financial information/operating data
- budget
- investment/debt/financial policy
- material provided to rating agency or credit/liquidity provider
- consultant reports
- other financial/operating data

**Other Event-Based Disclosures**

- amendment to continuing disclosure undertaking
- change in obligated person
- notice to investors pursuant to bond documents
- communication from the Internal Revenue Service
- tender offer/secondary market purchases
- bid for auction rate or other securities<sup>7</sup>
- capital or other financing plan
- litigation/enforcement action
- merger/consolidation/reorganization/insolvency/bankruptcy
- change of trustee, tender agent, remarketing agent, or other on-going party
- derivative or other similar transaction
- other event-based disclosures

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<sup>7</sup> This would include, but not be limited to, any notice pursuant to the SEC no-action letter regarding municipal auction rate securities dated March 14, 2008, available at <http://www.sec.gov/divisions/corpfin/cf-noaction/2008/mars031408.pdf>.



With respect to the submission process through EMMA, the various categories of continuing disclosure would be organized to differentiate between categories of items specified under Rule 15c2-12 and Additional/Voluntary Disclosures.<sup>8</sup> In most cases, submitters would be able to index a single submitted document into multiple applicable categories, including categories applicable to Rule 15c2-12 disclosures and to Additional/Voluntary Disclosures. Over time, the MSRB may combine two or more categories, may divide any category into two or more new categories or subcategories, or may form additional categories for purposes of indexing documents submitted in the “other financial/operating data” or “other event-based disclosures” general category as appropriate based on the types of documents received.

The categories of Additional/Voluntary Disclosures would be for the convenience of submitters and users of such documents and do not represent the MSRB’s opinion as to the appropriate items of disclosure with respect to any specific municipal security. The availability of such categories would not imply or create an obligation to make any disclosures, and it would not be uncommon for one or many of the categories to be inapplicable to any particular security. Further, the nature of the specific documents submitted for a particular category may vary widely. Only those categories for which

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<sup>8</sup> EMMA would not differentiate between an Additional/Voluntary Disclosure made pursuant to a continuing disclosure undertaking and an Additional/Voluntary Disclosure made outside of a continuing disclosure undertaking, and all categories of Additional/Voluntary Disclosures would be available for either type of submission.

submissions have been made for a particular security would be displayed on the EMMA web portal page for such security.<sup>9</sup>

## **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 EMMA continuing disclosure service, as amended by the proposed rule change, 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, and would serve to promote the statutory mandate of the MSRB to protect investors and the public interest. The inclusion of voluntary continuing disclosure documents in the EMMA continuing disclosure service would further 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. Broad access to continuing disclosure documents through the EMMA continuing disclosure service should assist in preventing fraudulent and manipulative acts

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<sup>9</sup> Thus, specific Rule 15c2-12 Disclosure and Additional/Voluntary Disclosure category headings would not be displayed on the EMMA web portal for a security or issue if there is no disclosure document available from EMMA for such category.

and practices by improving the opportunity for public investors to access material information about issuers and their securities. 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 generally available, if at all, through paid subscription services or on a per-document fee basis – should reduce transaction costs for dealers and investors.

**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 Exchange Act. Documents and information provided through the continuing disclosure service would be available to all persons simultaneously. In addition to making the 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 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. In particular, the MSRB believes that the proposed rule change will make most voluntary continuing disclosure documents available for the first time to a broader group of private information services and, therefore, 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 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 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>10</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 EMMA portal, the MSRB would make such disclosures available through a paid real-time data stream subscription for re-dissemination or other use by subscribers. One commentator asked whether periodic filings other than submissions of annual financial information, such as quarterly or

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<sup>10</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.

monthly financial results, would be accepted.<sup>11</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>12</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 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 find good cause, pursuant to Section 19(b)(2) of the Exchange Act, for approving the proposed rule change prior to the thirtieth day after publication of the notice of filing of the proposed rule change in the Federal Register. The Commission has previously approved the permanent EMMA continuing disclosure service to commence operation on July 1, 2009 after due public

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<sup>11</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>12</sup> See letter from Rob Yolland, Chairman, National Federation of Municipal Analysts, to Mr. Lanza, dated March 10, 2008.

notice and comment.<sup>13</sup> The MSRB believes that the Commission has good cause for granting accelerated approval of the proposed rule change since the continuing disclosure pilot 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 and the continuing disclosure pilot would not raise any issues or concerns not already addressed in connection with the approval of the permanent EMMA continuing disclosure service.

#### **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 ([www.sec.gov/rules/sro.shtml](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-2009-04 on the subject line.

##### Paper comments:

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

All submissions should refer to File Number SR-MSRB-2009-04. This file number should be included on the subject line if e-mail is used. To help the Commission process

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<sup>13</sup> See EMMA continuing disclosure service approval at footnote 3 *supra*.

and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site ([www.sec.gov/rules/sro.shtml](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. 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-2009-04 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>14</sup>

Elizabeth M. Murphy  
Secretary

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<sup>14</sup> 17 CFR 200.30-3(a)(12).



**MSRB Notice 2008-05  
(January 31, 2008)**

**MSRB Begins Planning for Continuing Disclosure  
Component of the New Electronic Municipal Market Access  
System (EMMA)**

The Municipal Securities Rulemaking Board (the “MSRB”) previously filed a proposed rule change with the Securities and Exchange Commission (the “SEC”) to implement, on a pilot basis, an Internet-based portal (the “pilot portal”) to provide free public access to official statements (“OSs”) and advance refunding documents (“ARDs”) submitted to the MSRB by underwriters of new issue municipal securities, together with real-time municipal securities trade price data from the MSRB’s Real-Time Transaction Reporting System (“RTRS”).<sup>1</sup> The pilot portal is a necessary first step toward establishing an “access equals delivery” standard for OS dissemination in the new issue municipal securities market, based on the “access equals delivery” rule for prospectus delivery for registered securities offerings adopted by the SEC in 2005.<sup>2</sup>

In its filing for the pilot portal, the MSRB noted that it would stand ready to expand the pilot to include secondary market disclosures (consisting of annual financial information and notices of specific material events provided by issuers and other obligated persons under Exchange Act Rule 15c2-12), should the SEC determine to modify Rule 15c2-12 to provide for a centralized electronic submission and dissemination model. In view of recent indications from the SEC that it expects to consider such a rule modification,<sup>3</sup> the MSRB has determined to take initial steps toward incorporating Rule 15c2-12 continuing disclosure submissions into its permanent on-line disclosure system, subject to final adoption of such modifications. The MSRB is seeking comment on certain basic elements relating to the incorporation of continuing disclosure into the MSRB’s new disclosure utility. **Comments on this notice are due no later than February 25, 2008.**

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<sup>1</sup> File No. SR-MSRB-2007-06. *See* MSRB Notice 2007-33 (November 15, 2007).

<sup>2</sup> *See* Securities Act Release No. 8591 (July 19, 2005), 70 FR 44722 (August 3, 2005) and Securities Act Rule 172, on delivery of prospectus, Rule 173, on notice of registration, and Rule 174, on delivery of prospectus by dealers and exemptions under Section 4(3) of the Securities Act of 1933, as amended. The MSRB has previously sought comment on the necessary rule changes to implement the “access equals delivery” standard. *See* MSRB Notice 2007-33 (November 15, 2007); MSRB Notice 2007-05 (January 25, 2007).

<sup>3</sup> *See* letter from Christopher Cox, Chairman, SEC, to Frank Y. Chin, Chairman, MSRB, dated November 21, 2007, available at [www.msrb.org/msrb1/Press/Release/CoxLetter--11-07.pdf](http://www.msrb.org/msrb1/Press/Release/CoxLetter--11-07.pdf) (the “SEC Letter”).



## **ELECTRONIC MUNICIPAL MARKET ACCESS (EMMA) SYSTEM**

The permanent system, to be known as the MSRB's Electronic Municipal Market Access system (EMMA), will serve as a centralized Internet-based system for free real-time public access to all primary market, secondary market and trade price data for municipal securities submitted to the MSRB. EMMA will provide a free public dissemination utility for municipal securities disclosure filings to parallel the SEC's public dissemination function for the registered securities market through its Electronic Data Gathering, Analysis, and Retrieval (EDGAR) system.<sup>4</sup> In addition, EMMA will provide trade pricing information for municipal securities to parallel the price dissemination functions offered by the self-regulatory organizations for various other securities markets.<sup>5</sup> All submissions to the MSRB through EMMA, including submissions of OSs and ARDs by underwriters and their agents and submissions of continuing disclosures by issuers and their agents under continuing disclosure agreements, would be made without charge solely by electronic means.

EMMA will be implemented in stages, with the initial stage consisting of the pilot portal for OSs and ARDs expected to become operational on or about March 10, 2008, subject to final approval by the SEC. This OS/ARD pilot portal is expected to operate for a limited period as the MSRB transitions to the "access equals delivery" standard for OS dissemination in the municipal securities market. EMMA's "access equals delivery" component is currently planned to become operational during the summer of 2008, subject to final rulemaking by the MSRB and SEC approval. At that time, the "access equals delivery" component will provide for free electronic submissions of all OSs and ARDs to the MSRB and free public access to such documents through the public EMMA website. The continuing disclosure component of EMMA also would be implemented in stages, with an initial pilot stage during which submissions of continuing disclosure information could be made on a voluntary basis and such voluntary submissions would be made publicly available through the EMMA website.<sup>6</sup> This continuing disclosure pilot stage would operate for a limited period until the effective date of any SEC rulemaking under Rule 15c2-12 to provide for the MSRB's role as the central submission and dissemination utility

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<sup>4</sup> The EMMA system's disclosure function will not operate in an identical manner to the EDGAR system due to considerable differences in the two marketplaces, necessitating differing approaches to indexing of and searching for disclosure information.

<sup>5</sup> See, for example, fixed-income prices provided by the Financial Industry Regulatory Authority; equity prices provided by the New York Stock Exchange, NASDAQ and others.

<sup>6</sup> Such voluntary filings would not substitute for any required filings under existing continuing disclosure undertakings but would be intended to provide submitters the opportunity to gain experience with the EMMA system prior to it becoming the central submission utility for continuing disclosure information.

for continuing disclosure information. At that time, EMMA's continuing disclosure component would become fully operational, providing 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, as described below.

## CONTINUING DISCLOSURES

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 OS, or a designated agent, has undertaken in writing to provide certain items of information to the marketplace.<sup>7</sup> The items to be provided include: (A) annual financial information concerning obligated persons;<sup>8</sup> (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;<sup>9</sup> 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 will 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)

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<sup>7</sup> Rule 15c2-12(f)(10) defines "obligated person" as any person, including an issuer of municipal securities, who is either generally or through an enterprise, fund, or account of such person committed by contract or other arrangement to support payment of all or part of the obligations on the municipal securities sold in a primary offering (other than providers of bond insurance, letters of credit, or other liquidity facilities). The rule provides for more limited disclosures for obligated persons with no more than \$10 million of outstanding municipal securities. *See* Rule 15c2-12(d)(2).

<sup>8</sup> Rule 15c2-12(f)(9) defines "annual financial information" as financial information or operating data, provided at least annually, of the type included in the final OS with respect to an obligated person, or in the case where no financial information or operating data was provided in the final OS with respect to such obligated person, of the type included in the final OS with respect to those obligated persons that meet the objective criteria applied to select the persons for which financial information or operating data will be provided on an annual basis.

<sup>9</sup> Such events consist of 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.

the 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.

If the SEC amends Rule 15c2-12 to provide that issuers file their continuing disclosures under the rule centrally with the MSRB in electronic form, the MSRB would expand EMMA's functionalities to also serve as the central electronic submission system for filing of all secondary market disclosures under amended Rule 15c2-12, at no charge to the submitter. The MSRB would integrate this collection of secondary market disclosure information with the MSRB's OS/ARD collection and RTRS data to provide a free comprehensive centralized public access portal for primary market disclosure information, secondary market disclosure information and transaction price information. EMMA would accept submissions of continuing disclosure information directly from issuers, obligated persons and their designated agents acting on their behalf. Continuing disclosures would be submitted to EMMA solely by electronic means in the same designated electronic format as will be required for submissions of OSs and ARDs by underwriters.<sup>10</sup> EMMA would be designed to accept such electronic submissions, including basic indexing information, either through a web-based interface or by computer-to-computer upload or data stream. In 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.

The MSRB expects to collect key indexing information for secondary market disclosures both at the time of the initial issuance of the securities and when such disclosures are submitted to the MSRB. At 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. ***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.***

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<sup>10</sup> The MSRB has proposed that submissions must be in an electronic format acceptable to the MSRB, must be word-searchable, and must permit the document to be saved, viewed, printed and retransmitted by electronic means using software generally available for free or on a commercial basis to non-business computer users. Documents in portable document format that are word-searchable and may be saved, viewed, printed and retransmitted by electronic means would be deemed to be in a designated electronic format. See MSRB Notice 2007-33 (November 15, 2007).

At the time of submission of an item of continuing disclosure, specific indexing information relating to such item would be collected from the submitter. Such information would be designed to accurately identify the category of information being provided, such as annual financial information, audited financial statements, material event notice (including designation of which category or categories of events), or failure to make timely filing of annual financial information. In addition, such information would be designed to accurately identify the issues or specific securities, as well as the obligated person (if applicable), to which such disclosure applies. Such information could be provided either through data files submitted to EMMA's computer-to-computer interface or through data-entry screens on the EMMA web interface.

Many issuers currently allow continuing disclosure information to be provided through designated agents. The MSRB intends on providing an issuer with the ability to control through EMMA who may act as a submission agent on its behalf. ***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.***

## **SUBMISSION PROCESS AND EMMA SUBSCRIPTIONS**

The MSRB previously stated that EMMA would be designed to permit underwriters to designate third-party submission agents to act on their behalf with respect to their document and related information submission requirements.<sup>11</sup> In addition to using an upgraded version of the MSRB's current web-based electronic submission interface for individual documents, underwriters and their agents will be able to establish computer-to-computer data connections with EMMA to submit the documents and/or related information directly to EMMA. This direct document and data submission feature also would be available with respect to submissions of continuing disclosure information on behalf of issuers and obligated persons. In 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. The MSRB expects to begin soliciting feedback from potential submitters and subscribers to EMMA in the near future.

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<sup>11</sup> See MSRB Notice 2007-5 (January 25, 2007).

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Comments should be submitted by no later than February 25, 2008, and may be directed to Ernesto A. Lanza, Senior Associate General Counsel. Written comments will be available for public inspection at the MSRB's public access facility and also will be posted on the MSRB web site.<sup>12</sup>

January 31, 2008

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<sup>12</sup> All comments received will be made publicly available without change. Personal identifying information, such as names or e-mail addresses, will not be edited from submissions. Therefore, commentators should submit only information that they wish to make available publicly.

**Alphabetical List of Comment Letters on MSRB Notice 2008-05 (January 31, 2008)**

1. American Bankers Association: Letter from Cristeena G. Naser, Senior Counsel, dated February 28, 2008
2. Council of Infrastructure Financing Authorities: Letter from Rick Farrell, Executive Director, dated February 25, 2008
3. First Southwest Company: Letter from Jack Addams, Managing Director, dated February 25, 2008
4. Government Finance Officers Association, National Association of State Auditors, Comptrollers and Treasurers & National Association of State Treasurers (joint letter): Letter from Jeffrey L. Esser, Executive Director and CEO, GFOA, Vernon L. Larson, President, NASACT, & South Dakota State Treasurer, and Lynn Jenkins, President, NAST, & Kansas State Treasurer, dated February 25, 2008
5. Investment Company Institute: Letter from Heather Traeger, Assistant Counsel, dated February 25, 2008
6. National Association of Bond Lawyers: Letter from J. Foster Clark, President, dated February 25, 2008
7. National Association of Health and Educational Facilities Finance Authorities: Letter from Robert Donovan, Executive Director, Rhode Island Health and Educational Building Corporation, Stephen M. Fillebrown, Director of Research, Investor Relations and Compliance, NJ Health Care Facilities Financing Authority, and Charles A. Samuels & Meghan B. Burke, Mintz Levin Cohn Ferris Glovsky and Popeo PC, dated February 28, 2008
8. National Association of Independent Public Finance Advisors: Letter from Kathleen A. Aho, President, dated March 10, 2008
9. National Federation of Municipal Analysts: Letter from Rob Yolland, Chairman, dated March 10, 2008
10. Securities Industry and Financial Markets Association: Letter from Leslie M. Norwood, Managing Director and Associate General Counsel, dated February 25, 2008



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Since 1875*

**Cristeena G. Naser**  
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Center for Securities,  
Trust & Investments  
Phone: 202-663-5332  
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February 28, 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 - Continuing Disclosure Component of the  
New Electronic Municipal Market Access System (EMMA)  
January 31, 2008

Dear Mr. Lanza:

The American Bankers Association<sup>1</sup> ("ABA"), on behalf of its Corporate Trust Committee, is responding to the request for comment by the Municipal Securities Rulemaking Board ("MSRB") on the continuing disclosure component of its Electronic Municipal Market Access System, also known as "EMMA." ABA's Corporate Trust Committee is comprised of regional and nationwide corporate trustees who provide the vast majority of corporate trust services offered in the United States.

ABA supports the MSRB's initiative to enhance the availability of disclosure documents in the secondary market for municipal securities through the continuing disclosure component of EMMA. We stand ready to continue to assist issuers of municipal securities fulfill their secondary market disclosure obligations.

If you have any questions, please do not hesitate to contact the undersigned.

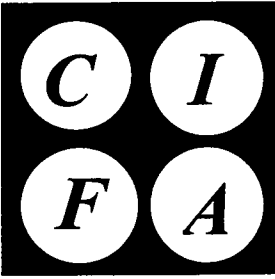
Sincerely,

A handwritten signature in cursive script that reads 'Cristeena G. Naser'.

Cristeena G. Naser

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<sup>1</sup> The American Bankers Association brings together banks of all sizes and charters into one association. ABA works to enhance the competitiveness of the nation's banking industry and strengthen America's economy and communities. Its members represent over 95 percent of the industry's \$12.7 trillion in assets and employ over 2 million men and women.



**Council of  
Infrastructure  
Financing  
Authorities**

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Montana

*Vice President*  
Joe S. Freeman  
Oklahoma

*Treasurer*  
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February 25, 2008

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


Dear Mr. Lanza:

The Council of Infrastructure Financing Authorities (CIFA) is pleased to provide comments responding to MSRB Notice 2008-05, *MSRB Begins Planning for Continuing Disclosure Component of the New Electronic Municipal Market Access System (EMMA)*.

CIFA supports expanding MSRB's pilot to include secondary market disclosures as outlined in SEC Rule 15c2-12. A single no-cost repository for all disclosure information would provide important benefits for both issuers and investors and we endorse the SEC position that MSRB should host such a portal. We reserve a final position on EMMA until there is an opportunity to review SEC proposed changes to Rule 15c2-12 and the potential impact on the issuer community. We assume that MSRB will work closely with the issuer community to assure development of appropriate formats for the submission of documents.

We appreciate the opportunity to provide our views on this matter.

Sincerely,

  
Rick Farrell  
Executive Director

*Executive Director*  
Rick Farrell

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**Jack Addams**  
Managing Director  
Public Finance

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February 25, 2008

Mr. 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:

On behalf of First Southwest Company (First Southwest), we appreciate the opportunity to comment on the Municipal Securities Rulemaking Board's (MSRB) Notice 2008-05. First Southwest compliments the MSRB on its work to make the municipal marketplace more transparent and efficient.

With regard to the proposed notice as referenced above and the online EMMA system, First Southwest supports the MSRB's endeavors to make municipal disclosure easier for underwriters of municipal bonds to comply with SEC Rule 15c2-12, as amended (the Rule). In addition, as a broker dealer with a substantial financial advisory practice, we support technological initiatives that assist issuers with submission of annual disclosure documents as well as material events.

First, the MSRB has asked whether the items underwriters are required to report to the EMMA system upon initial issuance of bonds, "(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" is sufficient or whether additional items of information should be submitted. First Southwest believes that these three pieces of information are the impetus for the undertaking; and therefore, no additional items need to be reported. In addition, underwriters are already responsible for these items prior to buying or trading municipal bonds; and therefore, are inline with existing obligations under the Rule.

Second, First Southwest would encourage the MSRB to define real-time as "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." Would real-time be defined as sending batches of information at the end of the day, or would real-time be defined as an alternate timeframe, such as that required for reporting trades?

Third, although the EMMA system will be designed to replace the four nationally recognized municipal securities information repositories (NRMSIRs), the notice does not indicate whether EMMA will also replace the State Information Depositories (SIDs). The SIDs are useful



reference tools for issuers and underwriters of municipal bonds in states where they exist. First Southwest would support their continued existence.

In addition, although one central repository for filing of continuing disclosure documents would be more efficient than filing this information with four NRMSIRs, would historical documents be brought over from these repositories or would EMMA only contain documents filed beginning at a certain date in the future?

Finally, the MSRB seeks comment on whether the issuer has to affirmatively designate to EMMA whether a third party is authorized to act as the issuer's agent or if any registered EMMA user could submit disclosure documents on behalf of the issuer. First Southwest would agree that an issuer must make this designation to ensure only applicable and appropriate documentation related to an issuer's securities is provided.

Again, we appreciate the opportunity to provide comments on this important issue facing the municipal bond market.

Respectively,

Jack Addams  
Managing Director  
Public Finance

**Government Finance Officers Association  
National Association of State Auditors, Comptrollers and Treasurers  
National Association of State Treasurers**

February 25, 2008

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

Dear Mr. Lanza:

The organizations listed above appreciate the opportunity to respond to MSRB Notice 2008-05, *MSRB Begins Planning for Continuing Disclosure Component of the New Electronic Municipal Market Access System (EMMA)*.

Our organizations support the concept of expanding the MSRB's pilot Internet-based portal to include secondary market disclosures as specified in SEC Rule 15c2-12. We believe that providing a single no-cost repository for all disclosure information is an important step forward for both issuers and investors, and we support the SEC's public statements that the MSRB should host such portal. However, our organizations can not commit to fully supporting EMMA until we review the SEC's proposed changes to Rule 15c2-12, and the details of the system are carefully reviewed by the issuer community. To that end, we strongly encourage the MSRB to work with our associations and other issuer groups to ensure that EMMA provides a user-friendly format for those responsible for submitting documents.

We also suggest that the SEC allow submissions to EMMA during its pilot stage and that those submissions be fully in accordance with SEC Rule 15c2-12, so that issuers will not have to make submissions to both EMMA and the NRMSIRs during a transition time. Additionally, in reference to the MSRB's question about submission authorization, we believe that third parties should be able to submit on behalf of an issuer if and only if the issuer has affirmatively designated the third party agent to do so.

Lastly, we would like to reiterate our position that SEC Rule 15c2-12 should only be changed to allow for electronic submission of disclosure documents to one central location, and that no other changes to the Rule should be made.

We appreciate the MSRB's work to create a system that will benefit issuers and investors and we look forward to working with you as the EMMA system develops.

Sincerely,



Jeffrey L. Esser  
GFOA Executive Director and CEO



Vernon L. Larson  
NASACT President &  
South Dakota State Treasurer



Lynn Jenkins  
NAST President &  
Kansas State Treasurer



1401 H Street, NW, Washington, DC 20005-2148, USA  
202/326-5800 www.ici.org

February 25, 2008

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

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

Dear Mr. Lanza:

The Investment Company Institute<sup>1</sup> commends the Municipal Securities Rulemaking Board (“MSRB”) for its leadership in the continuing development of a centralized, Internet-based system for free, real-time public access to all primary market, secondary market and trade price data for municipal securities submitted to the MSRB. The current proposal, to expand the MSRB’s Electronic Municipal Market Access system (“EMMA”), is another step in the much-needed creation of increased transparency of municipal securities information for investors.

Readily available information is critical to investors, who participate heavily in the municipal securities markets through funds. For example, mutual funds collectively hold about 31 percent of all U.S. municipal securities, totaling over \$801 billion, and thus have a strong interest in ensuring timely and efficient access to municipal securities disclosure information.

The EMMA pilot program currently encompasses only primary market disclosure information – official statements and advance refunding documents – submitted to the MSRB by underwriters of new issue municipal securities. It will be important, however, that EMMA be expanded, as proposed, to encompass secondary market disclosure – annual financial information and material events notices – as well as primary market disclosure.<sup>2</sup> A centralized source for *all* municipal securities disclosure information is required to ensure the consistency, and to improve the utility, of such information by

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<sup>1</sup> The Investment Company Institute is the national association of U.S. investment companies, including mutual funds, closed-end funds, exchange-traded funds (ETFs), and unit investment trusts (UITs). ICI seeks to encourage adherence to high ethical standards, promote public understanding, and otherwise advance the interests of funds, their shareholders, directors, and advisers. Members of ICI manage total assets of \$12.68 trillion and serve almost 90 million shareholders.

<sup>2</sup> See MSRB Notice 2008-05, *MSRB Begins Planning for continuing Disclosure Component of the New Electronic Municipal Market Access System (EMMA)* (January 31, 2008).

allowing investors in municipal securities to access comprehensive disclosure information for an issuer at a single source. Thus, it also will be critical for the Securities and Exchange Commission (“SEC”) to amend Rule 15c2-12 under the Securities Exchange Act of 1934 to provide for a centralized electronic submission and dissemination model for secondary market disclosure.<sup>3</sup>

The Institute has consistently endorsed making available to investors municipal security disclosures on a timely basis through an easily accessible venue, such as a system similar to the SEC’s EDGAR registration and periodic disclosure system for public companies. The Institute strongly supported the MSRB’s first step in its plan to create centralized disclosure for municipal securities – the proposal to adopt an “access equals delivery” standard for primary market disclosure.<sup>4</sup> At that time, the Institute had been concerned that the specific proposal could, as a practical matter, maintain the status quo of decentralized municipal securities disclosure. Accordingly, the Institute expressed its belief that any new electronic system should electronically submit primary market disclosure to all repositories (the current recipients of secondary market disclosure), providing investors with access to comprehensive disclosure information at a single source. This concern would be resolved by the current proposal, which would provide for a centralized source for *both* primary and secondary municipal market disclosure.

\* \* \* \* \*

The Institute appreciates the opportunity to comment on this proposal. If you have any questions or comments or would like any additional information, please contact the undersigned at 202/326-5920 or via email at [htraeger@ici.org](mailto:htraeger@ici.org).

Sincerely,

/s/ Heather Traeger

Heather Traeger  
Assistant Counsel

CC: Lynnette Hotchkiss, Executive Director  
Harold Johnson, Deputy General Counsel  
MSRB

Erik Sirri, Director  
Martha Haines, Chief, Office of Municipal Securities  
Division of Trading and Markets  
Securities and Exchange Commission

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<sup>3</sup> Rule 15c2-12 provides that secondary market disclosure information be filed with nationally recognized municipal securities information repositories, or NRMSIRs.

<sup>4</sup> See Letter from Elizabeth R. Krentzman, General Counsel, Investment Company Institute, to Ernesto A. Lanza, Senior Associate General Counsel, MSRB, dated September 14, 2006.



**National Association  
of Bond Lawyers**

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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 202/226-3482 ([fclark@balch.com](mailto:fclark@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  
Page 2 of 2



Thank you in advance for your consideration of these comments with respect to this important development in the municipal securities industry.

Sincerely,



J. Foster Clark

Enclosures

cc: Teri M. Guarnaccia  
Curt Gwathney  
William L. Hirata  
Michael T. Kersten  
Andrew Kintzinger  
John M. McNally  
Jeffrey C. Nave  
Rebecca J. Olsen  
Joseph E. Smith  
Walter J. St. Onge III  
Fredric A. Weber



# 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**

### NABL SECURITIES LAW AND DISCLOSURE COMMITTEE AD HOC SUBCOMMITTEE MEMBERS MSRB NOTICE 2008-05

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Elizabeth Wagner  
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# NAHEFFA

## National Association of Health and Education Facilities Finance Authorities

March 3, 2008 **[By Mail and e-Mail]**

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

RE: Comments on January 31, 2008 MSRB Notice 2008-05

Dear Mr. Lanza:

The National Association of Health and Educational Facilities Finance Authorities (NAHEFFA) appreciates the opportunity to comment on MSRB Notice 2008-05 relating to the new Electronic Municipal Market Access System ("EMMA"). NAHEFFA represents statewide issuers of tax-exempt bonds for non-profit healthcare, higher education and other charitable purposes.

We generally support the concept of expanding the existing pilot to contain a continuing disclosure component, as described in your notice. We need details about the operation of the system before we can fully comment or determine our support. The following are preliminary comments and questions.

First, it is important that the SEC modify Rule 15c2-12 to make clear that submission of information to EMMA, even during the pilot period, satisfies all filing obligations and that issuers will not be required also to make submissions through the NRMSIRs. Second, the provisions of the SEC Rule 15c2-12 should be limited to allowing electronic submission of disclosure documents to one central location and not be expanded for other purposes, including to further the SEC's announced interest in increasing regulation of issuers.

We support a requirement that there be an explicit designation by the issuer of a third party who may act as a submission agent on its behalf. It is important that issuers maintain control of who may file such submissions on their behalf and that MSRB be clear that specific authorization has been provided.

There are several matters raised in the notice which require clarification. For example, the notice states that underwriters will be required to provide certain information at initial issuance, including without limitation "the date on which the annual financial information will be provided." We request that the MSRB clarify the purpose of such information and, if such information is to reflect the obligations under the continuing disclosure agreement, that the data entry be flexible enough to reflect a deadline such as within a certain number of days (i.e., 180) from the end of the fiscal year, rather than a date certain. In addition, please clarify whether EMMA would accommodate regular, periodic filings in addition to annual ones, whether an obligation in the continuing disclosure agreement or elsewhere, such as a commitment of a borrower in a conduit financing to provide quarterly or monthly financial results.


Mr. Ernesto A. Lanza  
March 3, 2008

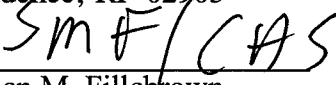
Our conceptual support for EMMA is based on the understanding that it will not require additional cost to prepare data submissions. In that regard, the statement in the notice that "information could be provided either through data files submitted to EMMA's computer-to-computer interface or through data-entry screens on the EMMA web interface" raises the question whether special software or other arrangements will need to be purchased by issuers. How accessible is the interface? Are standard e-mail systems capable of this interface or are there additional buried transaction costs which should be made clear? Please also confirm that issuers will receive electronic confirmation that disclosure materials were received by EMMA.

Finally, the notice states that "in addition to making continuing disclosures available publicly through the EMMA website, 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." This raises the issue of two different levels of access to this data. We request information about the nature of the special access that your real-time subscribers will obtain and how that differs from the benefits to the general public. How many hours or days gap will there be between access by the special paid subscribers and the general public? We believe that issuers as well as private sector participants ought to have essentially the same benefit from EMMA without having to pay MSRB for a subscription.

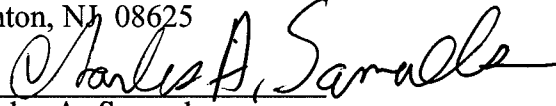
We appreciate the opportunity to comment and look forward to working closely with MSRB. We believe that it is critical that MSRB make a special effort to reach out to issuers on the continuing development of this system.

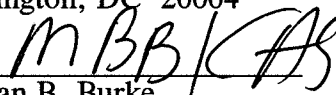
**On behalf of NAHEFFA:**

  
\_\_\_\_\_  
Robert Donovan  
Executive Director  
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Providence, RI 02903

  
\_\_\_\_\_  
Stephen M. Fillebrown  
Director of Research, Investor Relations and Compliance  
NJ Health Care Facilities Financing Authority; P O Box 366  
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**Of Counsel:**

  
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Mintz Levin Cohn Ferris Glovsky and Popeo PC  
One Financial Center  
Boston, MA 02111

cc: Lynnette Kelly Hotchkiss, Esquire



National Association of Independent  
Public Finance Advisors  
[www.naipfa.com](http://www.naipfa.com)

March 10, 2008

Ms. Lynnette Hotchkiss, Esquire, Executive Director  
Municipal Securities Rulemaking Board  
1900 Duke Street, Suite 600  
Alexandria, Virginia 22314

Re: **EMMA Proposal**

Dear Ms. Hotchkiss:

The Board of Directors of the National Association of Independent Public Finance Advisors has considered the pending proposal of the Municipal Securities Rulemaking Board regarding the establishment of the EMMA service for delivery of official statements and continuing disclosure documents to investors in electronic form at a central location.

NAIPFA is a national professional association of independent public finance advisors to state and local governments. We train, test and certify advisors and undertake educational and informational activities.

In general, we favor a system with cost reduction benefits as well as an effort to speed document delivery and improve investor access. Much will depend upon the details of the system, but the concept is one that we believe should be pursued. In particular, we are unclear about how the EMMA system would function in the context of competitive bids. Clarification would be appreciated, especially with regard to postings by financial advisors and/or issuers.

Thank you for this opportunity to comment on the EMMA concept.

Yours very truly,  
National Association of Independent Public Finance Advisors

Kathleen A. Aho, CIPFA  
President



March 10, 2008

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

RE: MSRB Notice 2008-05: MSRB Begins Planning for Continuing Disclosure Component of the New Electronic Municipal Market Access System (EMMA)

Dear Mr. Lanza:

The National Federation of Municipal Analysts (“NFMA”) is an association consisting of approximately 1,000 municipal credit analysts and portfolio managers across the country. The NFMA appreciates the opportunity to comment on the continuing disclosure component of the new electronic municipal market access system as captioned above.

As you know, the NFMA has been an advocate for better and timelier disclosure throughout its 25 year existence and we consider EMMA to be a significant step in furthering market disclosure. The NFMA fully supports the MSRB's initiative and looks forward to working more closely with the MSRB as this initiative proceeds.

In general, the NFMA fully supports the concept of a system where all interested parties can receive disclosure free of charge to the user. However, we strongly believe that EMMA should be capable of housing all disclosure documents, extending beyond those specifically required by rule 15c2-12. As outlined in our previous letters to the MSRB, NFMA believes it is in the best interest of all market participants to file primary and secondary market disclosure documents with one centralized system and EMMA would apparently allow all prospective users to access disclosure documents in one location.

There are a few items NFMA would like to comment on, both in response to questions raised in the notice, and thinking ahead to implementation of the EMMA system:

1. To the extent issuers follow NFMA’s recommended best practices papers, or otherwise agree or covenant to provide secondary market disclosure beyond the minimums specifically required by rule 15c2-12, the NFMA anticipates EMMA would be capable of storing and making available this information. Although we recognize that EMMA is designed to address disclosure requirements of rule 15c2-12, NFMA could only support a system that allows access to other pertinent information.

Mr. Ernesto A. Lanza  
RE: MRSB Notice 2008-03  
Page Two

2. The NFMA would like EMMA to include the name and phone number of each issuer's investor contact, a link to the issuer's web site, and a list of CUSIP numbers for all primary and secondary market debt covered by the relevant information.
3. The NFMA is concerned with the ability to access secondary market information in an efficient manner. With the significant number of municipal credits (50,000+) and the expected daily influx of secondary market data, it is imperative the system has a search functionality that is intuitive and user friendly. We would suggest an ability to catalog a list of CUSIPs where the disclosure information is pushed through email or login to the analyst instead of each analyst searching every relative CUSIP daily. An email/alert system would be most beneficial. A CUSIP-based search would also be helpful, as would a system that would allow searches by sector, state, coupon, maturity, and issue date. There are a variety of forms this can take, and we think it would be prudent to speak with the investing public to best determine how to proceed.
4. The NFMA believes this system would be most useful to investors, and the market in general, if there is a way to immediately populate all primary and secondary market information for all issues.
5. The NFMA does not take issue with designated agents supplying the repositories with disclosure material; however, the ultimate responsibility for disclosure lies with the obligor and we believe it essential that the obligor verify that a filing has been made and is accurate. If the agent fails to post the information, the responsibility lies with the issuer and not the agent.
6. There is some ambiguity in this release concerning free information to the public and information available on a real-time basis through paid subscription; however, we are comforted by the clarification in the *Bond Buyer* article on February 27, 2008.

Thank you for the opportunity to reply to this proposal. We are thrilled the MSRB has agreed to host this site and look forward to its full implementation. If you have any questions concerning this letter, please feel free to contact me at (650)312-3023 or ryolland@frk.com.

Sincerely,

/s/Rob Yolland

Rob Yolland  
Chairman  
NFMA







February 25, 2008

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

Re: MSRB Notice 2008-05: Plans to Establish an  
Electronic Access System for Continuing Disclosure

Dear Mr. Lanza:

The Securities Industry and Financial Markets Association (“Association”)<sup>1</sup> appreciates this opportunity to respond to Notice 2008-05 issued by the Municipal Securities Rulemaking Board (“MSRB”) on January 31, 2008 (“Notice”) in which the MSRB requests comment on its proposal to expand the pilot portal being developed by the MSRB, in connection with official statements and advance refunding documents, to include secondary market submissions of continuing disclosure in the event the Securities and Exchange Commission (“SEC”) amends Rule 15c2-12 to provide for a centralized electronic submission and dissemination model.

The Association fully supports the development by the MSRB of a pilot portal, as an internet-based public access portal, to provide free access to secondary market disclosures (consisting of annual financial information, notices of specific material events and related filings pursuant to Rule 15c2-12). The pilot portal, along with the pilot portal for primary market disclosure, would be in anticipation of a permanent system, to be known as the MSRB’s Electronic Municipal Market Access system (“EMMA”). The Association further wishes to express its appreciation to the MSRB for its efforts to create a single electronic portal for both primary and secondary market disclosure, which we believe will improve market efficiency and facilitate comprehensive disclosure in the municipal securities markets. The MSRB is to be congratulated for its rapid response to recommendations from the Association and other market participants

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<sup>1</sup> The Association, or “SIFMA,” brings together the shared interests of more than 650 securities firms, banks and asset managers. SIFMA’s mission is to promote policies and practices that work to expand and perfect markets, foster the development of new products and services and create efficiencies for member firms, while preserving and enhancing the public’s trust and confidence in the markets and the industry. SIFMA works to represent its members’ interests locally and globally. It has offices in New York, Washington D.C., and London and its associated firm, the Asia Securities Industry and Financial Markets Association, is based in Hong Kong.

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that there be a single location for free access by investors of both primary and secondary market information.

#### Submission of Indexing Information

The MSRB seeks comment on the proposal in the Notice that underwriters submit certain indexing information at the time of initial issuance of municipal securities. At the time of initial issuance, underwriters would be required to provide the following items of information: (i) whether a continuing disclosure undertaking exists, (ii) the identity of any obligated person other than the issuer, and (iii) the date identified in the undertaking by which annual financial information is expected to be disseminated.

The Notice does not identify the time or format required for this information other than that it would be at the time of initial issuance. Presumably, the information would be part of the new G-32 form submitted when the official statement is filed with EMMA. The second item, which is the identification of any obligated person, may, in some cases, have little value because a financing can have numerous obligated persons, but continuing disclosure is not required with respect to an obligated person unless information about the obligated person is material and the official statement thus contains financial or operating data about the obligated person. If the reason for this information is for the portal site to have a line item disclosing obligated persons about whom continuing disclosure will be provided, it should also be recognized that many obligated persons file on EDGAR pursuant to the Securities Exchange Act of 1934, and the EDGAR filing will normally satisfy the continuing disclosure agreement. Attempting to disclose which obligated persons can be expected to file on EMMA seems unnecessarily complicated since the official statement itself, which is on the portal, has a summary paragraph stating who will be filing continuing disclosure and where it will be filed. The continuing disclosure agreement, in full, is also usually in the official statement.

The third item of information, stating the date by which annual financial information is expected to be disseminated is likely to be vague and, thus, not useful. Typically, the continuing disclosure agreement has a formula, such as “within 90 days after the close of the issuer’s fiscal year.” We doubt this statement has much utility. Once the annual information is filed on EMMA, a pattern will develop that will indicate to investors when the information is likely to be filed each year.

#### Designated Agents

The MSRB seeks comment 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.

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The Association is concerned that if EMMA does not accept continuing disclosure from a third party, unless an issuer specifically authorizes the third party to EMMA, there will be cases of issuer inaction preventing timely disclosure. Many issuers appoint dissemination agents or rely on obligated persons to submit continuing disclosure. Posting disclosure should not be delayed by a requirement of authorization by an issuer, who is not involved in making continuing disclosure, because a delay in authorization would create an increased likelihood of a failure to provide information on or before the date specified in the continuing disclosure agreement and, thus, a new notice required of a failure to comply as well as disclosure in a subsequent official statement of a failure to comply. We believe the current practice set forth in the standard Municipal Secondary Market Disclosure Information Cover Sheet should be continued, which requires the person/entity submitting information to represent affirmatively that the person is authorized to submit the information.

We appreciate the opportunity to comment on the proposed pilot portal for secondary market disclosure. If you have any questions concerning these comments, or would like to discuss these comments further, please feel free to contact the undersigned at 212.313.1130 or via email at [lnorwood@sifma.org](mailto:lnorwood@sifma.org).

Respectfully,

A handwritten signature in black ink, appearing to be 'L. Norwood', written over a faint, large, stylized letter 'A' that serves as a watermark or background for the signature.

Leslie M. Norwood  
Managing Director and  
Associate General Counsel

Ernesto A. Lanza  
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cc: ***Securities Industry and Financial Markets Association***  
Municipal Executive Committee  
Municipal Policy Committee  
Municipal Legal Advisory Committee  
Municipal Operations Committee  
Municipal Syndicate & Trading Committee  
Municipal Credit Research, Strategy and Analysis Committee  
Municipal Access Equals Delivery Task Force