

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-58256; File No. SR-MSRB-2008-05]

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

July 30, 2008.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),¹ and Rule 19b-4 thereunder,² notice is hereby given that on July 29, 2008, the Municipal Securities Rulemaking Board (“MSRB”) filed with the Securities and Exchange Commission (“Commission” or “SEC”) 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 is filing with the Commission a proposed rule change to establish a continuing disclosure service (the “continuing disclosure service”) of the MSRB’s Electronic Municipal Market Access system (“EMMA”). The continuing disclosure service would receive electronic submissions of, and would make publicly available on the Internet, 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. The MSRB requests approval of the continuing disclosure service to commence operation on the later of January 1, 2009 or the effective date of any provisions of Rule 15c2-12 providing for the MSRB to serve as the sole central repository for all electronic continuing disclosure information provided pursuant to Rule 15c2-12.

The text of the proposed rule change is available on the MSRB’s Web site at <http://www.msrb.org/msrb1/sec.asp>, at the MSRB’s principal office, and at the Commission’s Public Reference Room. If approved, the rule text for the continuing disclosure service of EMMA would be available on the MSRB’s Web site at <http://www.msrb.org/msrb1/>

rulesandforms under the heading Information Facilities.

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

In its filing with the Commission, the MSRB included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The MSRB has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

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

1. Purpose

The proposed rule change would establish, as a component of EMMA, the continuing disclosure service for the receipt of, and for making available to the public of, continuing disclosure documents and related information to be submitted by issuers, obligated persons and their agents pursuant to continuing disclosure undertakings entered into consistent with Rule 15c2-12.³ As proposed, all continuing disclosure documents and related information would be submitted to the MSRB, free of charge, through an Internet-based electronic submitter interface or electronic computer-to-computer data connection, at the election of the submitter, and public access to the documents and information would be provided through the continuing disclosure service on the Internet (the “EMMA portal”) at no charge as well as through a paid real-time data stream subscription service.⁴

Under 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 person⁵ for whom financial information or operating data is presented in the final official statement has undertaken in writing to provide certain items of information to the marketplace.⁶ Rule 15c2-12(b)(5) provides that such items include: (A) Annual financial information concerning obligated persons;⁷ (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;⁸ and (D) notices of failures to provide annual financial information on or before the date specified in the written undertaking.⁹

⁵ 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).

⁶ See also Rule 15c2-12(d)(2).

⁷ 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 official statement with respect to an obligated person, or in the case where no financial information or operating data was provided in the final official statement with respect to such obligated person, of the type included in the final official statement 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.

⁸ Under Rule 15c2-12(b)(5)(C), such events currently 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.

⁹ Under Rule 15c2-12(b)(5)(i), annual filings are to be sent to all existing nationally recognized municipal securities information repositories (“NRMSIRs”) and any applicable state information depositories (“SIDs”), while material event notices may be sent to all existing NRMSIRs or to the MSRB, as well as to any SIDs. The MSRB, which currently operates CDINet to process and disseminate notices of material events submitted to the MSRB, previously petitioned the Commission to amend Rule 15c2-12 to remove the MSRB as a recipient of material event notices due to the very limited level of submissions received by the MSRB, constituting a negligible percentage of material event notices currently provided to the marketplace. See Letter from Diane G. Klinke, General Counsel, MSRB, to Jonathan G. Katz, Secretary, Commission, dated September 8, 2005. The Commission has published proposed amendments to Rule 15c2-12 to this effect. See Exchange Act Release No. 54863 (December 4, 2006), 71 Fed. Reg. 71109 (December 8, 2006). In light of this proposed rule change, the MSRB is considering at this time whether to withdraw its petition. In addition, the MSRB intends, on a future date, to file a proposed rule change with the

³ EMMA was originally established, and began operation on March 31, 2008, as a complementary pilot facility of the MSRB’s existing Official Statement and Advance Refunding Document (OS/ARD) system of the Municipal Securities Information Library (MSIL) system. See Securities Exchange Act Release No. 57577 (March 28, 2008), 73 FR 18022 (April 2, 2008) (File No. SR-MSRB-2007-06) (approving operation of the EMMA pilot to provide free public access to the MSIL system collection of official statements and advance refunding documents and to the MSRB’s Real-Time Transaction Reporting System historical and real-time transaction price data) (the “Pilot Filing”).

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

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

As proposed, the continuing disclosure service would accept submissions of (i) continuing disclosure documents as described in Rule 15c2-12, and (ii) other disclosure documents specified in continuing disclosure undertakings entered into consistent with Rule 15c2-12 but not specifically described in Rule 15c2-12. In connection with documents submitted to the continuing disclosure service, the submitter would provide, at the time of submission, information necessary to accurately identify: (i) The category of information being provided; (ii) the period covered by any annual financial information, financial statements or other financial information or operating data; (iii) 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); (iv) the name of any obligated person other than the issuer; (v) the name and date of the document; and (vi) contact information for the submitter. Submitters would be responsible for the accuracy and completeness of all documents and information submitted to EMMA.

The MSRB proposes that submissions to the continuing disclosure service be made as portable document format (PDF) files configured to permit documents to be saved, viewed, printed and retransmitted by electronic means. If the submitted file is a reproduction of the original document, the submitted file must maintain the graphical and textual integrity of the original document. In addition, starting in the first calendar quarter beginning at least nine months after approval by the Commission of this filing, such PDF files must be word-searchable (that is, allowing the user to search for specific terms used within the document through a search or find function available in most standard software packages), provided that diagrams, images and other non-textual elements would not be required to be word-searchable due to current technical hurdles to uniformly producing such elements in word-searchable form without incurring undue costs. Although the MSRB would strongly encourage submitters to immediately begin making submissions as word-searchable PDF files (preferably as native PDF or PDF normal files, which generally produce smaller and more easily downloadable files as compared

to scanned PDF files), implementation of this requirement would be deferred as noted above to provide issuers, obligated persons and their agents with sufficient time to adapt their processes and systems to provide for the routine creation or conversion of continuing disclosure documents as word-searchable PDF files.

All submissions to the continuing disclosure service pursuant to this proposal would be made through password protected accounts on EMMA by: (i) Issuers, which may submit any documents with respect to their municipal securities; (ii) obligated persons, which may submit any documents with respect to any municipal securities for which they are obligated; and (iii) designated agents, which may be designated by issuers or obligated persons to make submissions on their behalf. Issuers and obligated persons would be permitted under the proposal to designate agents to submit documents and information on their behalf, and would be able to revoke the designation of any such agents, through the EMMA on-line account management utility. Such designated agents would be required to register to obtain password-protected accounts on EMMA in order to make submissions on behalf of the designating issuers or obligated persons. Any party identified in a continuing disclosure undertaking as a dissemination agent or other party responsible for disseminating continuing disclosure documents on behalf of an issuer or obligated person would be permitted to act as a designated agent for such issuer or obligated person, without a designation being made by the issuer or obligated person as described above, if such party certifies through the EMMA on-line account management utility that it is authorized to disseminate continuing disclosure documents on behalf of the issuer or obligated person under the continuing disclosure undertaking. The issuer or obligated person, through the EMMA on-line account management utility, would be able to revoke the authority of such party to act as a designated agent.

As proposed, electronic submissions of continuing disclosure documents through the continuing disclosure service would be made by issuers, obligated persons and their agents, at no charge, through secured, password-protected interfaces. Continuing disclosure submitters would have a choice of making submissions to the proposed continuing disclosure service either through a Web-based electronic submission interface or through electronic computer-to-computer data

connections with EMMA designed to receive submissions on a bulk or continuous basis.

All documents and information submitted through the continuing disclosure service pursuant to this proposed rule change would be available to the public for free through the EMMA portal on the Internet, with documents made available for the life of the securities as PDF files for viewing, printing and downloading.¹⁰ As proposed, the EMMA portal would provide on-line search functions to enable users to readily identify and access documents that relate to specific municipal securities based on a broad range of search parameters. In addition, the MSRB proposes that real-time data stream subscriptions to continuing disclosure documents submitted to EMMA would be made available for a fee.¹¹ The MSRB would not be responsible for the content of the information or documents submitted by submitters displayed on the EMMA portal or distributed to subscribers through the continuing disclosure subscription service.

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

The MSRB may restrict or terminate malicious, illegal or abusive usage for such periods as may be necessary and appropriate to ensure continuous and efficient access to the EMMA portal and to maintain the integrity of EMMA and its operational components. Such usage may include, without limitation, usage intended to cause the EMMA portal to become inaccessible by other users, to cause the EMMA database or operational components to become corrupted or otherwise unusable, to alter the appearance or functionality of the EMMA portal, or to hyperlink to or otherwise use the EMMA portal or the information provided through the EMMA portal in furtherance of fraudulent or other illegal activities

¹⁰ The MSRB understands that software currently is generally available for free that permits users to save, view and print PDF files, as well as to conduct word searches in word-searchable PDF documents. The MSRB would provide links for downloading such software on the EMMA portal.

¹¹ Fees for subscriptions to the continuing disclosure collection would be established in a separate filing to be submitted to the Commission pursuant to Section 19(b)(2) of the Exchange Act prior to the commencement of operation of the continuing disclosure service, if approved by the Commission.

Commission for permission to discontinue CDINet in view of the establishment of EMMA's continuing disclosure service.

(such as, for example, creating any inference of MSRB complicity with or approval of such fraudulent or illegal activities or creating a false impression that information used to further such fraudulent or illegal activities has been obtained from the MSRB or EMMA). Measures taken by the MSRB in response to such unacceptable usage shall be designed to minimize any potentially negative impact on the ability to access the EMMA portal.

2. Statutory Basis

The MSRB believes that the proposed rule change is consistent with Section 15B(b)(2)(C) of the Act,¹² 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 MSRB believes that the proposed rule change is consistent with the Act. The continuing disclosure service would serve as an additional mechanism by which the MSRB works toward removing impediments to and helping to perfect the mechanisms of a free and open market in municipal securities. The continuing disclosure service would help make information useful for making investment decisions more easily available to all participants in the municipal securities market on an equal basis throughout the life of the securities without charge through a centralized, searchable Internet-based repository, thereby removing potential barriers to obtaining such information. Broad access to continuing disclosure documents through the continuing disclosure service should assist in preventing fraudulent and manipulative acts and practices by improving the opportunity for public investors to access material information about issuers and their securities.

Furthermore, the continuing disclosure service should reduce the effort necessary for issuers and obligated persons to comply with their continuing disclosure undertakings by making submissions to a single venue¹³ using an electronic submission process, which should result in lower costs to issuers

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

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

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

The MSRB does not believe that the proposed rule change would impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. 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.

The MSRB has considered carefully a commentator's concern regarding the MSRB's plans to develop EMMA,¹⁴ as well as expressions of interest from private enterprises in entering this market.¹⁵ One commentator on the Pilot Filing¹⁶ stated that the MSRB's intention to combine continuing

disclosures with primary market disclosures and trade price data “breaks new ground among regulatory bodies in terms of value-added content available to the public at no charge,” arguing that the MSRB would “effectively take over the business of providing value-added content.”¹⁷ Another commentator on the Pilot Filing argued in favor of the creation of a “publicly accessible storage and dissemination system” for all filings in the municipal securities market, stating that the current municipal securities disclosure model “severely limits innovation and access” to disclosures and “locks up public documents in private hands while the proposed portal run by a public entity will encourage transparency in the municipal securities market and create a healthy ecosystem of information that will ultimately benefit both the investment community and the municipalities that seek access to public markets.”¹⁸

The MSRB believes that the availability of continuing disclosure documents through the EMMA portal and the continuing disclosure subscription service, without the imposition of limitations on or additional charges for redistribution of such documents to customers, clients or other end-users of the subscriber,¹⁹

¹⁷ See comments of DPC. DPC further stated, “There is precedent of other Self-Regulatory Organizations (SROs) offering such sophisticated value-added information to the market, but only on a fee basis.” DPC also states that “the MSRB's sample pilot portal at <http://www.msrb.org/msrb1/accessportal/> *SampleComprehensiveDisclosureDisplay.htm* provides a glimpse of specific value-added features the MSRB intends to offer the public free of charge. Among these are nine-digit CUSIP searches, hyperlinks to bond issuers Web sites, an ‘alerts’ service to users of the portal, sophisticated document viewing options, links to other related documents in the portals disclosure archive, and subsequent event notifications that equate to custom research. These features and capabilities are well in excess of the system that the MSRB has pointed to as its model, the SEC's own EDGAR.”

¹⁸ See letter from EDGAR Online. EDGAR Online further stated, “In spite of a great deal of work by the Municipal Issuers on their disclosures—a small group of companies control access for the entire market to the documents that are supposed to be public. * * * The rigid control of public information dissuades other information providers from trying to enter or innovate for this market. This means that there are few people working on improving ease of use, depth of analysis, thoroughness of information or more effective means of delivery * * * The process of managing these documents consumes most of the resources of these few information providers and the time of investors. As a result, the information contained in these documents—risks and opportunities—are usually lost because there are few sources of good comparability and data.”

¹⁹ The MSRB notes that subscribers may be subject to proprietary rights of third parties in information provided by such third parties that is made available through the subscription.

¹⁴ See comments from Peter J. Schmitt, CEO, DPC DATA Inc. (“DPC”), dated January 23, 2008.

¹⁵ See letter from Philip C. Moyer, CEO, EDGAR Online, Inc. (“EDGAR Online”), to Ernesto A. Lanza, Senior Associate General Counsel, MSRB, dated December 17, 2007. In addition, the MSRB has received several inquiries through the pilot EMMA portal's feedback (<http://emma.msrb.org/AboutEMMA/Feedback.aspx>) and contact (<http://emma.msrb.org/AboutEMMA/ContactUs.aspx>) Web forms from members of the public seeking information on using EMMA documents and data, through the EMMA portal or subscription services, for the purposes of re-dissemination to their customers.

¹⁶ See footnote 3 *supra*.

¹² 15 U.S.C. 78o-4(b)(2)(C).

¹³ Some states may require issuers and/or obligated persons to submit disclosure information to state information depositories or other venues pursuant to state law.

would promote competition among private data vendors and other enterprises engaged in or interested in becoming engaged in information services by eliminating existing barriers to new entrants into the market for municipal securities information services. Private enterprises would be able to obtain a complete collection of all continuing disclosure documents submitted by issuers, obligated persons and their agents as contemplated by Exchange Act Rule 15c2-12 from a single source using a single consistent indexing method since all such documents would be submitted to the continuing disclosure service and would be indexed as received using a single indexing logic. Currently, parties wishing to obtain a complete collection of continuing disclosure documents must consider whether continuing disclosure documents have been uniformly provided to all existing nationally recognized municipal securities information repositories as contemplated under Rule 15c2-12 and, if not, might need to undertake the effort and expense of obtaining continuing disclosure documents from two or more of the existing sources, which may have differing terms of use that may limit the ability to re-disseminate such documents.

Furthermore, the availability of all continuing disclosure documents in a defined electronic format in one venue should make document handling, storage and dissemination more efficient than under the current situation in which documents may exist in paper form as well as in various different electronic formats. The existence of a single consistent indexing logic to be used by the continuing disclosure service, and the inclusion of key indexing information on the EMMA portal and in the continuing disclosure subscription service, would relieve the burden that private information vendors would otherwise have of creating such an index. The standardized continuing disclosure document collection and indexing information provided through the continuing disclosure service would be available equally to existing information vendors and parties seeking to enter the market, thereby promoting competition among all such private parties in a non-discriminatory manner with respect to the value-added services they may wish to offer based on the continuing disclosure document collection. Such parties would likely bear some initial burden of ensuring that their infrastructure and facilities are capable of receiving and processing the information provided through the

continuing disclosure service, but the MSRB believes that such parties would realize savings from the efficiencies described above.

Thus, although the MSRB recognizes that the continuing disclosure service might require private enterprises to modify some aspects of the way they undertake their current business activities, the MSRB believes that the continuing disclosure service would promote, rather than hinder, further competition, growth and innovation in this area. The MSRB further believes that the operation by the MSRB of the continuing disclosure service would not result in the MSRB taking over the business of providing value-added content but instead serve as a basis on which private enterprises could themselves concentrate more of their resources on developing and marketing value-added services. The MSRB believes that much of the impact of the proposed rule change on commercial enterprises would result from the increased competition in the marketplace resulting from the entry of additional commercial enterprises in competition with such existing market participants with respect to value-added services, rather than from the operation of the continuing disclosure service as a source of the raw documents and related information to the public. 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 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

In a notice published by the MSRB on January 31, 2008, the MSRB described its plan for implementing a continuing disclosure service that would be integrated into other services to be offered through EMMA (the "2008 Notice").²⁰ In particular, the MSRB stated its plan to institute the continuing disclosure service to accept submissions of continuing disclosure information in a designated electronic format directly from issuers, obligated persons and their designated agents acting on their behalf. EMMA's continuing disclosure service would be designed to accept such electronic submissions, including basic indexing information, either through a Web-based

²⁰ See MSRB Notice 2008-05 (January 31, 2008).

interface or by computer-to-computer upload or data stream. In addition to making continuing disclosures available 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. In publishing the 2008 Notice, the MSRB sought comment on certain basic elements relating to the incorporation into EMMA of continuing disclosure information provided by issuers and obligated persons under Rule 15c2-12, as discussed below. The 2008 Notice had been published by the MSRB following a series of other notices for comment (the "Prior Notices")²¹ and the filing with the Commission of the Pilot Filing in connection with the establishment of the MSRB's proposed centralized disclosure utility.

Several commentators on the Prior Notices discussed issues relating to continuing disclosure. These commentators stated that continuing disclosures should be made available on the same platform as other disclosures,²² with some commentators supporting the MSRB's willingness to establish a comprehensive disclosure system that included continuing disclosure.²³ The MSRB's plan to establish the continuing disclosure service as a component of EMMA would ensure that continuing disclosure documents would be made available to the public through the EMMA portal.

A commentator on the Pilot Filing suggested that, if the Commission were to make the MSRB the sole secondary market disclosure filing venue for issuers and obligated persons, the Commission would move "closer to the

²¹ See MSRB Notice 2006-19 (July 27, 2006); MSRB Notice 2007-5 (January 25, 2007); MSRB Notice 2007-33 (November 15, 2007). Only those comments of the commentators on the Prior Notice and the Pilot Filing relating to the continuing disclosure service are discussed in this filing.

²² See letters from Leslie Norwood, Vice President and Assistant General Counsel, Bond Market Association (now known as Securities Industry and Financial Markets Association, or "SIFMA"), to Mr. Lanza, dated September 15, 2006; Thomas Sargant, President, Regional Municipal Operations Association, to Mr. Lanza, dated September 27, 2006; Gary P. Machak, Chairman, Municipal Advisory Council of Texas, to Mr. Lanza, dated September 14, 2006; Elizabeth R. Krentzman, General Counsel, Investment Company Institute ("ICI"), to Mr. Lanza, dated September 14, 2006; Ruth Brod, Consultant, TRB Associates, to Mr. Lanza, dated September 14, 2006; Terry L. Atkinson, Managing Director, UBS Securities LLC, to Mr. Lanza, dated September 15, 2006.

²³ See letters from Ms. Norwood, Managing Director and Associate General Counsel, SIFMA, to Mr. Lanza, dated December 14, 2007; S. Lauren Heyne, Chief Compliance Officer, R.W. Smith & Associates, Inc., to Mr. Lanza, dated December 17, 2007.

Tower Amendment danger zone.”²⁴ As noted in section 3(b) of this filing, the MSRB believes that the continuing disclosure service is consistent with the MSRB’s statutory mandate under Section 15B of the Act. In particular, the MSRB believes that the operation of the continuing disclosure service would in no way violate the restrictions placed on the MSRB’s activities by the so-called Tower Amendment.²⁵ The MSRB believes that the proposed continuing disclosure service is consistent with the MSRB’s mandate under the Act to adopt rules that, among other things, protect investors and the public interest by providing a free centralized source of information for retail investors.

As discussed in greater detail in section 4 of this filing, this commentator also stated that the MSRB’s intention to combine continuing disclosures with primary market disclosures and trade price data “breaks new ground among regulatory bodies in terms of value-added content available to the public at no charge,” expressing the view that the MSRB would “effectively take over the business of providing value-added content.”²⁶ Another commentator on the Pilot Filing argued in favor of the creation of a “publicly accessible storage and dissemination system” for all filings in the municipal securities market, stating that the current municipal securities disclosure model “severely limits innovation and access” to disclosures and “locks up public documents in private hands while the proposed portal run by a public entity will encourage transparency in the municipal securities market and create a healthy ecosystem of information that will ultimately benefit both the investment community and the municipalities that seek access to public markets.”²⁷

As discussed in greater detail in section 4 of this filing, the MSRB believes that the operation by the MSRB of the continuing disclosure service would not result in the MSRB taking over the business of providing value-added content but instead serve as a basis on which private enterprises could themselves concentrate more of their resources on developing and marketing value-added services. The MSRB believes that much of the impact of the proposed rule change on commercial enterprises would result from the increased competition in the

marketplace resulting from the entry of additional commercial enterprises in competition with such existing market participants with respect to value-added services, rather than from the operation of continuing disclosure service as a source of the raw documents and related information to the public. Although the MSRB recognizes that the continuing disclosure service might require private enterprises to modify some aspects of the way they undertake their current business activities, the MSRB believes that the continuing disclosure service would promote, rather than hinder, further competition, growth and innovation in this area.

Most commentators on the 2008 Notice were supportive of the MSRB’s decision to begin planning for the continuing disclosure service,²⁸ although some commentators would not commit fully to support this process until reviewing possible Commission amendments to Rule 15c2–12 necessary for the development of the MSRB’s continuing disclosure service, as well as specific details relating to the implementation by the MSRB of the proposed continuing disclosure service.²⁹ Commentators representative of issuers encouraged the MSRB to work with the issuer community in

developing the submission process.³⁰ The MSRB has participated in a series of meetings and demonstrations with issuer organizations to discuss the development of EMMA, including the continuing disclosure service. The MSRB would continue to work with the issuer community, as well as with the other relevant segments of the municipal securities marketplace, as development of the continuing disclosure service proceeds. In addition, the MSRB intends to work with issuer organizations to assist issuers in adapting to the process for submitting continuing disclosure documents to EMMA, including coordinated efforts targeted at issuers making submissions under continuing disclosure undertakings entered into prior to the continuing disclosure service becoming operational, with a view to ensuring that means for making submissions of continuing disclosure documents through EMMA are available for issuers that have not yet fully adapted to EMMA’s all-electronic submission process.

One commentator asked whether periodic filings other than submissions of annual financial information, such as quarterly or monthly financial results, would be accepted.³¹ A second commentator sought clarification on whether continuing disclosure information for offerings sold prior to the launch of the continuing disclosure service would be accepted and made publicly available.³² Another commentator asked whether historical documents would be included.³³

The MSRB understands that issuers and obligated persons have often sought to disseminate to the marketplace items of continuing disclosure that are in addition to the specific items of continuing disclosure described in Rule 15c2–12. Such additional items may include, but are not limited to, quarterly or monthly financial information and notices of other events. In some cases such additional items of disclosure may be specified under a continuing disclosure undertaking entered into consistent with Rule 15c2–12. The continuing disclosure documents to be made publicly available through the EMMA portal would consist of the specific items of continuing disclosure described in Rule 15c2–12 and any additional disclosure items as specifically set forth in a continuing

²⁸ See letters from Rob Yolland, Chairman, National Federation of Municipal Analysts, to Mr. Lanza, dated March 10, 2008; Kathleen A. Aho, President, National Association of Independent Public Finance Advisors (“NAIPFA”), to Lynnette Hotchkiss, Executive Director, MSRB, dated March 10, 2008; 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 and Meghan B. Burke, Mintz Levin Cohn Ferris Glovsky and Pope PC, on behalf of National Association of Health and Educational Facilities Finance Authorities (“NAHEFFA”), to Mr. Lanza, dated March 3, 2008; Cristeena G. Naser, Senior Counsel, American Bankers Association, to Mr. Lanza, dated February 28, 2008; Rick Farrell, Executive Director, Council of Infrastructure Financing Authorities (“CIFA”), to Mr. Lanza, dated February 25, 2008; Jack Addams, Managing Director, First Southwest Company (“First Southwest”), to Mr. Lanza, dated February 25, 2008; Jeffrey L. Esser, Executive Director and CEO, Government Finance Officers Association (“GFOA”), Vernon L. Larson, President, National Association of State Auditors, Comptrollers and Treasurers (“NASACT”), & South Dakota State Treasurer, and Lynn Jenkins, President, National Association of State Treasurers (“NAST”), & Kansas State Treasurer, jointly, to Mr. Lanza, dated February 25, 2008; Heather Traeger, Assistant Counsel, ICI, to Mr. Lanza, dated February 25, 2008; Ms. Norwood, SIFMA, to Mr. Lanza, dated February 25, 2008.

²⁹ See letters from CIFA; GFOA, NASACT and NAST; NAHEFFA; NAIPFA. GFOA, NASACT and NAST also stated, and NAHEFFA agreed, that “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.”

³⁰ See letters from CIFA; GFOA, NASACT and NAST; NAHEFFA.

³¹ See letter from NAHEFFA.

³² See letter from J. Foster Clark, President, National Association of Bond Lawyers (“NABL”), to Mr. Lanza, dated February 25, 2008.

³³ See letter from First Southwest.

²⁴ See comments of DPC. See also footnote 14 *supra*.

²⁵ See Exchange Act Section 15B(d).

²⁶ See comments of DPC.

²⁷ See letter from EDGAR Online. See also footnote 15 *supra*.

disclosure undertaking.³⁴ Continuing disclosure documents would be made available for any issue for which such documents have been submitted to EMMA, regardless of whether the continuing disclosure undertaking was entered into before or after the establishment of the continuing disclosure service. EMMA would make available only those continuing disclosures submitted to EMMA on or after the launch of the continuing disclosure service.³⁵

One commentator asked whether all continuing disclosure documents and information would be available for free on the EMMA portal or whether some portions would only be available to paid subscribers.³⁶ Other commentators sought clarification on the timing of information that would be provided through a subscription as compared to the time of posting the information on the EMMA portal.³⁷ As noted in this filing, all continuing disclosures received by the MSRB would be accessible for free on the EMMA portal and would also be available, simultaneously with posting on the EMMA portal, through a data-stream subscription for a fee. The subscription would not provide any documents or information in addition to what is made public through the EMMA Web site.

A commentator asked whether special software or other arrangements would be necessary for issuers, obligated persons and their agents to make submissions of continuing disclosure documents. This commentator also asked whether submitters would be provided with electronic confirmation that disclosure materials were received by the continuing disclosure service.³⁸ Continuing disclosure documents may be converted from other electronic formats to PDF using various free or commercially available software programs or plug-ins. In those cases where the original continuing disclosure document exists solely in paper format (which the MSRB believes is not common and should become

increasingly rare), submitters may use the services of widely available commercial copying and document handling enterprises or may use existing or newly acquired scanning hardware. The Web-based data-entry process that would be established for on-line submissions to the continuing disclosure service would require no special software other than a Web browser. Similarly, on-line uploads of data files in extensible markup language (XML) do not require any special software but would require programming to create XML files and to provide a process for accurately populating the XML files with necessary data. Computer-to-computer connections, an optional means for submitting continuing disclosures expected to be used primarily by agents acting on behalf of multiple issuers and/or obligated persons, would require submitters to use commercially available products or to undertake programming (at the election of the submitter) to interface with an EMMA Web service. All submission methods would provide appropriate feedback to submitters for error correction and submission confirmation purposes, which may require some programming by submitters to ensure they realize the full benefit of such feedback.

The 2008 Notice sought comment on whether the continuing disclosure service should accept continuing disclosure submissions from a third party with respect to an issuer's securities only if the issuer has affirmatively designated 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.

Three commentators jointly stated 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 [emphasis in original]."³⁹ Two other commentators agreed,⁴⁰ while another disagreed,⁴¹ stating that it was "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." This commentator stated that, to avoid potential delays in the dissemination of disclosure to the marketplace caused by

a requirement that the issuer authorize an agent to act on its behalf, it believed that "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."⁴²

The MSRB believes that the ultimate authority to determine who may submit documents on behalf of the issuer or obligated person should lie with such issuer or obligated person and, as a result, the MSRB is proposing to provide that issuers and obligated persons may designate agents to submit documents and information on their behalf, and may revoke such designation, through the EMMA on-line account management utility, and such designated agents must register to obtain password-protected accounts on EMMA in order to make submissions on behalf of the designating issuers or obligated persons. Any party identified in a continuing disclosure undertaking as a dissemination agent or other party responsible for disseminating continuing disclosure documents or other disclosure documents specified pursuant to such continuing disclosure undertaking may also act as a designated agent for such issuer or obligated person, without the necessity of the issuer or obligated person making a designation through the EMMA on-line account management utility, upon such party certifying through the EMMA on-line account management utility as to its authority to make submissions on behalf of the issuer or obligated person under the continuing disclosure undertaking. The issuer or obligated person, through the EMMA on-line account management utility, may revoke such authority to act as a designated agent.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

⁴² See second letter from SIFMA. The Cover Sheet referenced in the comment is a voluntary form created by industry participants for use in connection with submissions of continuing disclosures.

³⁴ The MSRB supports the dissemination of additional continuing disclosures beyond the baseline established by Rule 15c2-12 and may consider in the future the possible expansion of the continuing disclosure service to include additional voluntary secondary market disclosures, which would be the subject of future filings with the Commission.

³⁵ While EMMA would not include historical documents, the continuing disclosure documents that would be received by EMMA through the continuing disclosure service would constitute the most up-to-date disclosures made by or on behalf of submitting issuers and obligated persons applicable to their securities.

³⁶ See letter from NABL.

³⁷ See letters from NAHEFFA; First Southwest.

³⁸ See letters from NAHEFFA.

³⁹ See letter from GFOA, NASACT and NAST.

⁴⁰ See letters from NAHEFFA; First Southwest.

⁴¹ See second letter from SIFMA.

A. By order approve such proposed rule change, or

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

The MSRB has consented to an extension of the time period specified in Section 19(b)(2) of the Exchange Act to 120 days after the date of publication of notice of filing of this proposed rule change.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File

Number SR-MSRB-2008-05 on the subject line.

Paper Comments

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

All submissions should refer to File Number SR-MSRB-2008-05. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the

public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. 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-2008-05 and should be submitted on or before September 22, 2008.

By the Commission.

Florence E. Harmon,

Acting Secretary.

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