



November 24, 2008

Florence E. Harmon  
Acting Secretary  
U.S. Securities and Exchange Commission  
100 F Street, NE  
Washington, DC 20549-1090

Re: MSRB Response to Comments on Proposed Rule Change Relating to the Establishment of a Continuing Disclosure Service of the Electronic Municipal Market Access System (EMMA) - File No. SR-MSRB-2008-05

Dear Ms. Harmon:

On July 29, 2008, the Municipal Securities Rulemaking Board (the “MSRB”) filed with the Securities and Exchange Commission (the “Commission”) a proposed rule change regarding the establishment of a continuing disclosure service of the Electronic Municipal Market Access system (“EMMA”) (the “proposed rule change”).<sup>1</sup> The proposed rule change consists of expanding EMMA to receive electronic submissions of, and making publicly available on the internet, continuing disclosure documents and related information from issuers, obligated persons and agents pursuant to continuing disclosure undertakings entered into consistent with Exchange Act Rule 15c2-12.

Simultaneously, the Commission proposed amendments to Rule 15c2-12 that would require an underwriter to reasonably determine that the issuer or obligated person has undertaken, in a written agreement or contract for the benefit of the holders of the issuer’s municipal securities, to provide certain enumerated continuing disclosures to the MSRB, instead of to nationally recognized municipal securities information repositories

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<sup>1</sup> Release No. 58256; File No. SR-MSRB-2008-05, 73 FR 46161 (August 6, 2008).

(“NRMSIRs”) and state information depositories (“SIDs”), where applicable (as the rule currently provides), in an electronic format with identifying information as prescribed by the MSRB (the “proposed Rule 15c2-12 amendments”).<sup>2</sup>

In response, the Commission received 17 comment letters<sup>3</sup> on the proposed rule change and has requested that the MSRB provide its response to the comments.

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<sup>2</sup> See Proposed Amendment to Municipal Securities Disclosure on July 30, 2008 (Release No. 58255; File No. S7-21-08, 73 FR 46137 (August 7, 2008)) (the “Commission proposing release”).

<sup>3</sup> Comments and letters from J. Douglas Adamson, Executive Vice-President, Technical Services Division, American Bankers Association (“ABA”) dated September 22, 2008 (“ABA Letter”); Fran Busby, public finance investment banker dated October 7, 2008 (“Busby Letter”); Denise L. Nappier, Treasurer, State of Connecticut, dated September 22, 2008 (“Treasurer of the State of Connecticut Letter”); Paula Stuart, Chief Executive Director, Digital Assurance Certification, L.L.C. (“DAC”) dated September 25, 2008 (“DAC Letter”); Peter J. Schmitt, CEO, DPC, DATA Inc. (“DPC Data”) dated September 18, 2008 (“DPC Data Letter”); R.T. McNamar, Chief Executive Officer, e-certus, Inc. (“e-certus”) dated September 22, 2008 (“e-certus Letter”); Philip D. Moyer, CEO & President, EDGAR Online (“EDGAR Online”) dated September 9, 2008 (“EDGAR Online Letter”); Susan A. Gaffney, Director, Federal Liaison Center, Government Finance Officers Association (“GFOA”), dated September 22, 2008 (“GFOA Letter”); Karrie McMillan, General Counsel, Investment Company Institute (“ICI”), dated September 22, 2008 (“ICI Letter”); Laura Slaughter, Executive Director, Municipal Advisory Council of Texas (“Texas MAC”) dated September 22, 2008 (“Texas MAC Letter”); William A. Holby, President, National Association of Bond Lawyers (“NABL”) dated September 22, 2008 (“NABL Letter”); Robert Donovan, Executive Director, Rhode Island Health and Educational Building Corporation, Stephen Fillebrown, Director of Research, Investor Relations and Compliance, New Jersey Healthcare Financing Authority and Charles A. Samuels, Of Counsel, Mintz Levin Cohen Ferris Glovsky and Popeo PC, on behalf of the National Association of Health and Educational Facilities Finance Authorities (“NAHEFFA”), dated September 22, 2008 (“NAHEFFA Letter”); Rob Yolland, Chairman, National Federation of Municipal Analyst (“NFMA”) dated September 17, 2008 (“NFMA Letter”); K.W. Gurney, Director, Ohio Municipal Advisory Council (“OMAC”) dated September 22, 2008 (“OMAC Letter”); Leslie M. Norwood, Managing Director and Associate General Counsel, Securities Industry and Financial Markets Association (“SIFMA”) dated September 22, 2008 (“SIFMA Letter”); Louis V. Eccleston, President, Standard & Poor’s Securities Evaluations, Inc. (“S&P”) dated September 22, 2008 (“S&P Letter”); and Christopher Alwine, Head of Municipal Money Market

Most commentators were supportive of the MSRB's establishment of, as a component of EMMA, a continuing disclosure service for the receipt, and making available to the public of continuing disclosure documents and related information to be submitted by issuers. E-certus commented, "Establishing centralized sources of free information for the public is a major step in increasing market transparency..." while SIFMA noted that, "The availability of continuing disclosure documents in a defined electronic format...will considerably improve the efficiency by which investors, market participants and regulators have access to disclosure information." GFOA stated "Allowing issuers, obligated parties and dissemination agents to submit information to one location, electronically and free of charge in order to meet the obligations of Commission Rule 15c2-12, is very useful to the state and local government community."

One commentator did not express an opinion regarding the proposal,<sup>4</sup> while two other commentators opposed the MSRB's proposal to establish a continuing disclosure service under EMMA.<sup>5</sup> Both DPC Data and S&P opposed the rule change proposal and suggested alternative approaches to achieving the objectives of the MSRB and the Commission. DPC Data detailed several problems with the proposed rule change including, perceived violations of the Tower Amendment,<sup>6</sup> concerns with mandating the end of "Commission designated repositories" in favor of the MSRB, allowing "...the MSRB to impose restrictions on municipal issuers and obligated persons by limiting the filings to a single, electronic format" and believing that the proposed rule change would place the MSRB in "...direct competition with commercial vendors..." Specifically, DPC Data stated that, "...both the Commission and the MSRB have intentionally misled the public by misstating important attributes of the current Commission-designed and implemented municipal disclosure regime."<sup>7</sup> DPC Data recommended expanding the enforcement of existing rules and other changes within the existing disclosure system instead of supporting the proposed rule change.

S&P also expressed concerns regarding the establishment of a continuing disclosure service under EMMA. S&P believes the proposed rule change will not accomplish the goals of the Commission because it does not address the root of the current problems with the

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and Bond Groups Vanguard ("Vanguard"), dated September 24, 2008 ("Vanguard Letter").

<sup>4</sup> See ABA Letter.

<sup>5</sup> See DPC Data and S&P Letters.

<sup>6</sup> The Tower Amendment prohibits the Commission and the MSRB from requiring any municipal securities issuer, either directly or indirectly through an underwriter, to file any documents with the Commission or the MSRB prior to the sale of its securities.

<sup>7</sup> The MSRB firmly believes that it has in no way misled the public or misstated significant attributes of the current disclosure regime.

existing disclosure system. S&P also raised concerns regarding, "...the potential adverse effects of eliminating competition from the existing system." The S&P Letter and the DPC Data Letter expressed concerns pertaining to the Tower Amendment and the effect of the continuing disclosure service on market competition.<sup>8</sup>

The Texas Mac and OMAC Letters, while supporting the proposal, expressed a desire to have the MSRB's continuing disclosure service supply SIDs with a data stream of filings and indexing information.

Based on the MSRB's careful review of the various letters and comments, the MSRB believes that the creation of EMMA's continuing disclosure service as a central repository, and its operation as set forth in the proposed rule change, will enhance and improve the flow of disclosure information to the municipal securities market. The MSRB believes that the establishment of a single submission and dissemination venue through EMMA's continuing disclosure service would significantly improve upon the current situation as described by the commentators. A simple, secure and centralized submission system will simplify issuer submissions. In addition, the fact that continuing disclosure documents will be publicly available for free through a searchable website in which all filings for a particular issue are displayed as a single collection will serve, for the first time, to make it easy for issuers, investors and others to determine whether or not a filing is missing, whether due to an issuer failing to make a filing or otherwise. The MSRB also believes that the creation of a central repository serves as a significant tool in furthering the MSRB's mandate to, among other things, promote just and equitable principles of trade; foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in municipal securities; remove impediments to and protect the mechanisms of a free and open market in municipal securities; and protect investors and the public interest.<sup>9</sup> The MSRB further summarizes the commentator letters and provides its responses below.

### **Discussion of Comments**

***Voluntary Disclosures and Late Filings*** – Seven of the commentators that supported the proposed rule change indicated that EMMA should have the capacity to accept voluntary and non-periodic disclosures in addition to Rule 15c2-12 disclosures and/or the addition of

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<sup>8</sup> See S&P Letter. S&P believes that, "...the filing "requirements" of Rule 15c2-12 were intentionally structured not to be directly enforceable by the Commission or the MSRB, thus issuer/obligor non-compliance with the filing provisions appears to persist with impunity."

<sup>9</sup> *Securities Exchange Act of 1934 Section 15B(b)(2)(C)*.

features such as information regarding late or missing filings.<sup>10</sup> Specifically, ICI noted that Rule 15c2-12 currently requires only limited disclosure and dissemination of information by underwriters in municipal securities offerings and stated that “The MSRB should encourage issuers to submit to EMMA information not currently required by MSRB and the Commission’s rules” and that “...the documents to be made publicly available through the EMMA portal not be limited to those specific items of continuing disclosure described in Rule 15c2-12 and any additional disclosure items as specifically set forth in a continuing disclosure undertaking....” SIFMA noted that “...we would support MSRB’s possible expansion of the continuing disclosure service to include additional voluntary secondary market disclosure (beyond those specified in a continuing disclosure undertaking).” Vanguard also noted, “In order to truly be a centralized disclosure repository, however, municipal issuers should be required to make non-periodic filings in EMMA as well as Rule 15c2-12 disclosure.”

The MSRB agrees that allowing the submission of disclosure beyond those listed in Rule 15c2-12 will “...enhance the value of EMMA to investors in municipal securities.”<sup>11</sup> Although the proposed rule change does not provide for the submission of continuing disclosure documents beyond those currently listed in Rule 15c2-12 or those identified in an undertaking by the issuer or obligated person, the MSRB, in a future filing, expects to propose to accept submissions of a broader scope of continuing disclosure documents to reflect current disclosure practices. The MSRB will ensure that the EMMA continuing disclosure service is not more limited in scope than the existing disclosure regime. The MSRB will also consider suggestions for the addition of certain features, such as information regarding missing or late filings.

**Identifiers** – Eleven commentators<sup>12</sup> believed that EMMA submissions should be accompanied by identifying information. Several of these commentators suggested specific types of identifiers that were sometimes different from, or in addition to, those set forth in the proposed rule change. The specific identifiers that were suggested by commentators included: the identification of obligated persons other than issuers and successor parties; the issuer’s investor contact information; a link to the issuer’s website; the CUSIP numbers of all primary and secondary market debt covered by relevant information; the use of electronic “cover sheets;” the pre-registration of identifying information; a central post office feature; and a CUSIP catalog. The Treasurer of the State of Connecticut stated, “The MSRB should develop some system that clearly identifies the obligated person making any submission (which could be either the issuer or some other obligated person), and clearly makes the

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<sup>10</sup> See GFOA, ICI, NABL, NAHEFFA, NFMA, SIFMA and Vanguard Letters.

<sup>11</sup> See ICI Letter.

<sup>12</sup> See e-certus, Treasurer of the State of Connecticut, EDGAR Online, ICI, GFOA, NAHEFFA, NFMA, OMAC, SIFMA, Texas MAC and Vanguard Letters.

obligated person responsible for the content of the information...” while EDGAR Online noted, “We strongly support the need for filers to include the indexable fields described in the rule.”

The MSRB agrees that the use of accurate identifiers for continuing disclosure submissions on EMMA is vitally important to ensure correct indexing and access to continuing disclosure documents. In connection with EMMA submissions, the submitter will be required to provide, at the time of submission, information necessary to correctly identify the following:

- The category of information being provided;
- The period covered by any annual financial information;
- 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 of any obligated person other than the issuer;
- The name and date of the document; and
- Contact information for the submitter.

Since all continuing disclosure submissions to EMMA will be made through unique, password protected accounts by issuers, obligated persons and their designated agents once the indexing information is provided, the EMMA system will match each document with the appropriate indentifying information for the submitter. The MSRB believes that these processes will adequately address issues relating to the use of identifiers for the submission process.<sup>13</sup>

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<sup>13</sup> Except as noted below, all documents provided to the MSRB will be required to be accompanied by identifying information relating to the nature of the document, the securities and entities to which it applies, and the entity making the submission, as prescribed by the MSRB. A submitter making a submission pursuant to a continuing disclosure undertaking entered into prior to the effective date of the proposed Rule 15c2-12 amendments who seeks to make such submission without providing identifying information (in reliance on the Commission’s statements in the Commission proposal permitting such submission) could opt-out of providing such information, although the MSRB believes that issuers, obligated persons and all other interested parties would be far better served if all submissions are fully indexed and that the process of providing such indexing information will not be burdensome. All submitted documents, regardless of whether they are accompanied by indexing information, will be made available to the public through the EMMA portal, although the lack of indexing information for a continuing disclosure document may impair the effectiveness of such disclosure.

The MSRB believes that the identifiers it has proposed are appropriate and cover most of the identifying elements named by the commentators. The use of these identifiers ensures both that the submission process is not unduly burdensome and that standardized market identifiers used in the municipal marketplace and obtainable by investors and others through alternative means (such as on trade confirmations, account statements, financial information websites and data vendors) serve as the basis on which EMMA users would be able to conduct document searches. The MSRB will continue to consider any additional identifiers raised by the commentators that the MSRB has not implemented and will also continue to review proposed identifiers that may be raised from time to time and consider the addition of such identifiers, as advisable.

With respect to CUSIP number identifiers, the ABA stated, "Because the MSRB is a current CUSIP licensee, we believe it is important that the MSRB, the CUSIP Service Bureau and ABA, as commercial parties to that license, review not only current licensing obligations, but also amendments that will be necessary going forward...." The ABA Letter requests that the MSRB review its current licensing obligations and necessary amendments with the ABA and the MSRB is continuing such discussions with the appropriate parties relating to the use of the CUSIP data. The MSRB expects that all necessary arrangements will be in place in order to operate the continuing disclosure service on EMMA as anticipated, by the July 1, 2009 implementation date. However, if there are any unanticipated and unresolved issues in connection with the use of the CUSIP data, the MSRB will, of course, consult with the Commission and, if necessary, make any filings to modify the data usage by EMMA or to adjust the implementation date.

***Designated Agents and Obligated Persons*** - Three commentators supported the concept that issuers and obligated persons should have the ability to verify information submitted to EMMA by third parties and to correct errors by either accessing the system directly or by reporting any errors to a "hotline".<sup>14</sup> Specifically GFOA noted that, "...we would request that the system verify with the issuer that the third party is a designated agent before allowing such agents to make submissions."

Issuers and obligated persons will be permitted to designate agents to submit documents and information on their behalf. In addition, 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 will 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 MSRB's on-line account management utility that it is authorized to disseminate continuing

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<sup>14</sup> See NAHEFFA, GFOA and Treasurer of the State of Connecticut Letters.

disclosure documents on behalf of the issuer or obligated person under the continuing disclosure undertaking.<sup>15</sup> Issuers and obligated persons will receive electronic notice of any designated agents that register with EMMA to act as an agent through this self-certification process.<sup>16</sup> The issuers and obligated persons will be able to revoke such self-designation through the on-line account management utility at any time. All submission methods will provide appropriate feedback to submitters for error correction and submission confirmation purposes. The MSRB also provides a website that allows submitters to provide questions and comments associated with submissions, as well as a help desk with dedicated personnel during MSRB business hours.

Two commentators have raised concerns regarding the submission of information in “conduit-financings”<sup>17</sup> because under such financings, the obligated party is the conduit borrower and not the issuer of the bonds.<sup>18</sup> The commentators want the MSRB to recognize that “...those institutions are required to submit documents and bear the burden of the continuing disclosure requirements under the MSRB rules”<sup>19</sup> and that “...the ultimate responsibility for disclosure lies with the obligor and...it is essential that the obligor verify that a filing has been made and is accurate.”<sup>20</sup>

The MSRB’s proposed rule change in no way impacts the identity of which party is obligated to make disclosures under continuing disclosure undertakings or Rule 15c2-12. The EMMA system will allow obligated persons to submit continuing disclosure documents and

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<sup>15</sup> For purposes of making submissions on behalf of an issuer or obligated person, an indenture trustee would be treated in the same manner as any other party identified in a continuing disclosure undertaking as a dissemination agent or as responsible for disseminating continuing disclosure documents on behalf of such issuer or obligated person. Thus, an indenture trustee would be permitted to act as a designated agent, without a designation being made by the issuer or obligated person through the on-line account management utility, if the indenture trustee makes the appropriate certification regarding its authority to disseminate continuing disclosure documents on behalf of the issuer or obligated person, as described in the MSRB’s filing.

<sup>16</sup> In addition, issuers and obligated persons could choose to receive notification each time a continuing disclosure submission is made with regard to their securities.

<sup>17</sup> Conduit financings are financings in which authorities with bond issuing authority issue tax-exempt bonds on behalf of certain entities, including not-for-profit organizations.

<sup>18</sup> See NAHEFFA and NFMA Letters.

<sup>19</sup> See NAHEFFA Letter.

<sup>20</sup> See NFMA Letter.



related information under the applicable continuing disclosure undertaking documents. Based on the letters, comments and subsequent discussions with relevant industry participants, the MSRB will establish, through the submission account opening process, a mechanism that would permit, on an optional basis, issuers of conduit financings to identify obligated persons and the securities for which such persons are obligated for purposes of the submission accounts. Furthermore, the MSRB plans to establish methods for submitters to contact it with questions and to report any problems they discover with filings they have submitted.

***Tower Amendment*** – As noted above, some commentators<sup>21</sup> were not supportive of the proposed rule change and expressed concern that the proposal violates and goes into the area protected by the Tower Amendment. DPC Data believes the, “...proposal clearly violates the Tower Amendment to the Securities Exchange Act of 1934” and that, “...the proposed rule change would allow the MSRB to impose restrictions on municipal issuers and obligated persons by limiting the filings to a single, electronic format.....and provides no benefit not already enjoyed by the market through the existing NRMSIR system.” However, another commentator supported the proposed rule change with the caveat that the expansion of the EMMA system, “...not be used by the Commission or MSRB as a stalking horse or precursor for attempts, by law or fact, to repeal or revise the “Tower Amendment”.”<sup>22</sup>

The MSRB firmly believes that the comments touching on the power of the MSRB and the Commission to undertake the proposals in light of the Tower Amendment, and of the impact of the proposals on competition, raise no new concerns that were not fully addressed in the filing with the Commission of the proposed rule change or in the Commission’s own proposal, and the MSRB hereby reaffirms its statements in this regard included in our filing. The MSRB believes that the continuing disclosure service is consistent with the MSRB’s statutory mandate under Section 15B of the Exchange Act and substantially further protects investors and promotes a fair and efficient market. In particular, the MSRB believes that the proposed continuing disclosure service would in no way violate the restrictions placed on the MSRB’s activities by the Tower Amendment, and that no substantial new Tower Amendment concerns are implicated by the current proposals than were raised when Rule 15c2-12 was first adopted or amended to provide for continuing disclosures.

The continuing disclosure service of EMMA will serve as a necessary step to increase the free and timely public access to continuing disclosure documents and related information. The service will remove impediments to and help perfect the mechanisms of a free and open market in municipal securities thereby, effectively, promoting investor protections and the public interest by ensuring equal access for all market participants to the critical disclosure information needed by investors in the municipal securities market. The MSRB believes that

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<sup>21</sup> See S&P and DPC Data Letters.

<sup>22</sup> See NAHEFFA Letter.

all of the continuing disclosure service's functionalities relate to the core mission of the MSRB and such functionalities are not inconsistent with any statutory limitations placed on MSRB activities. The MSRB believes that municipal securities disclosure documents should be made more readily and promptly available to the public and that all investors should have better access to important market information. Further, the MSRB agrees that EMMA will "...make disclosure filings more streamlined and easier for governments to file and investors to access."<sup>23</sup>

***Impact on Competition and Regulatory Concerns*** –S&P notes, "Taking away the NRMSIR function would, in itself, upset the balance of our current business model and have an impact on our ability to provide our value-added products and services." DPC Data noted its conclusion that the MSRB's intention is, "...to inflict commercial harm on vendors..." Concern was also expressed that EMMA would be "...placed under the auspices of an entity that represents only one segment (broker/dealer) of the municipal market, when it seems that responsibility for such a task would more appropriately lie with the Commission."<sup>24</sup>

The MSRB does not believe that the proposed rule change would impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act. The MSRB believes that the proposal would modernize the method of delivery of continuing disclosure documents and related information to investors and others and make them more readily accessible by investors and others. Existing vendors will continue to have rapid access to all of the same documents they previously received, now accompanied by consistent indexing information, and will be fully able to provide value added products based on such documents. The MSRB believes that the availability of continuing disclosure documents through the continuing disclosure subscription service 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. The inclusion of information in the continuing disclosure service of EMMA will not significantly alter the current competitive situation for information vendors, who may obtain this information and provide associated value-added products, if they desire to do so.

None of the functionalities of the continuing disclosure service constitute value-added services that compete inappropriately with the private sector. Rather, these functionalities are critical for the continuing disclosure services operation as a free centralized source of information for retail investors and others that provides investors with the necessary tools to find the information for which they are searching and to understand such information once it is found.

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<sup>23</sup> See GFOA Letter.

<sup>24</sup> See Treasurer of the State of Connecticut Letter.

The MSRB believes that the operation by the MSRB of the continuing disclosure service would serve as a basis on which private enterprises could themselves concentrate more of their resources on developing and marketing value-added services. The shift in the flow of continuing disclosure documents from the current NRMSIRs to EMMA (from which such entities and others would be able to obtain the documents on a real-time basis accompanied by consistent indexing information) would, in the opinion of the MSRB, represent at most only a temporary dislocation in the processes by which current vendors that produce value-added services obtain the raw documents on which such services are based, and would prove to be a long-term benefit to such vendors.

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 also 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 the continuing disclosure service on EMMA.

In addition, the MSRB believes that any incidental impact on commercial enterprises would not create an unequal burden among such enterprises and would be substantially outweighed by the benefits provided by the continuing disclosure service of EMMA in removing impediments to and helping to perfect the mechanisms of a free and open market in municipal securities, assisting in the prevention of fraudulent and manipulative acts and practices, and generally promoting investor protection and the public interest. The MSRB believes that the experience of private enterprises involved in the dissemination of EDGAR materials and related value-added services, such as those described by EDGAR Online, supports the MSRB's conclusion that the continuing disclosure service will not have an inappropriate impact on the marketplace for such services and in fact may very well promote further growth and innovation in this area.

Finally, the MSRB would like to emphasize that its activities are subject to the supervision of the Commission and that any changes to EMMA and its related systems must be filed with and approved by the Commission. The MSRB has worked closely with all of the municipal marketplace's key constituencies, including issuers, bond attorneys, financial advisers, and others and will act objectively to ensure a fair and efficient submission and dissemination process.

### ***NRMSIR Status***

In the MSRB's comment letter to the Commission, the MSRB noted, in its role as the central venue for submissions of continuing disclosure documents, that the MSRB would serve as successor to the NRMSIRs under Rule 15c2-12 and, as such successor, would be the proper recipient for continuing disclosure undertakings executed prior to the effective date of the proposed amendment to Rule 15c2-12. The MSRB continues to believe, as expressed in its comment letter, that designating the MSRB as the single NRMSIR is not necessary and may result in confusion to submitters and public users of continuing disclosure. Rather, designating the MSRB as the successor to the NRMSIRs should accomplish the same goals. Nonetheless, the MSRB is prepared to proceed with EMMA's continuing disclosure service should the Commission determine it necessary to designate the MSRB as the sole NRMSIR.

A few commentators were concerned with the continued availability of historical data if NRMSIRs are succeeded by the MSRB. Vanguard noted that, "...the issue of the retention of historical continuing disclosure documents by NRMSIRs must be addressed," while ICI noted that the Commission needs to, "...ensure that NRMSIRs retain the historical continuing disclosure documents already in their possession for outstanding municipal securities issues or to develop a process to transfer such documents to the MSRB using a reasonable transition period." While the MSRB does not have the authority to mandate the submission of historical data by issuers, issuers, obligated persons and their agents will be free to submit to EMMA continuing disclosure documents and related information, previously submitted to the NRMSIRs, which may assist issuers and underwriters in establishing with confidence that the historical data is available from the central EMMA venue. In addition, the MSRB is willing to communicate with the NRMSIRs to ensure the continued availability of historical continuing disclosure documents and related information and believes that such communication will be fruitful.

***Use of XBRL and PDF documents*** - One commentator suggested the use of extensible markup language (XML) as the data standard for continuing disclosure submissions on EMMA "...would be suboptimal"<sup>25</sup> and another commentator suggests that the MSRB implement "...XBRL reporting requirements alongside the EMMA electronic document requirements in the municipal market."<sup>26</sup> However, in view of the current regulatory structure of the municipal securities market, particularly the lack of authority on the part of the MSRB to dictate the manner in which issuer disclosure documents are produced, the MSRB is confident that the technology choices made in connection with the development of the continuing disclosure service of EMMA, as outlined in the proposed rule change, are appropriate.

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<sup>25</sup> See e-certus Letter.

<sup>26</sup> See EDGAR Online Letter.

EMMA is designed to provide access to issuers' whole documents, rather than to provide analysis of the content of such documents. Such analysis is left to the private sector as value added services based in part on the documents provided through EMMA. Under the proposed rule change, continuing disclosure documents need not be created in any particular manner in order to be saved or scanned into a portal document format (PDF) file. The data to be supplied to EMMA in XML files is limited to basic indexing and related information and does not represent the full substance of the disclosure documents themselves. In contrast, XBRL has been viewed as a format to be used for entire sets of disclosures in a document that permit such document to be parsed and analyzed without re-keying of information from the document into other applications. The MSRB does not view establishing XBRL as a data standard for EMMA submissions as appropriate at this time, although the MSRB continues to be interested in working with the municipal market in the future on interactive data initiatives.

Some commentators expressed beliefs that the continuing disclosure service on EMMA should have a simple user interface and intuitive search functionality. NFMA believes, "...it is imperative that EMMA has a search functionality that is intuitive and user friendly." As noted by the GFOA, "As demonstrated, we believe that there are ample ways for the public to locate particular documents, either through a CUSIP number or an entity's name. It is imperative for these fields to be applied to all securities and for the MSRB to determine the most efficient way to do so." The MSRB believes that its current EMMA portal for the existing primary market service is user friendly and that the continuing disclosure service of EMMA will also be user friendly, in part, because it will provide the same accessibility of information to municipal market participants and easy to use identifiers for submissions as currently provided by the primary market service. For example, if users have their CUSIP number, they will be able to go directly to their documents on the EMMA system and, similarly, a user can go to the market activity page and see all disclosures that posted on a certain date. The MSRB will continue to consider and propose improvements in this regard.

S&P also requested that the Commission set up a process for involving the NRMSIRs in the design of the electronic filing format. There is nothing in the current filing that prevents the formation of a joint industry committee that would be able to provide comments to the MSRB in designing the electronic filing format. The MSRB would welcome, and undertake, an ongoing dialogue with any industry participant that wishes to provide input on the electronic filing format on EMMA.

***Transition Period*** – One commentator requested that the Commission establish a one-year transition period before making electronic filings on EMMA mandatory as a result of the submissions needing to be submitted as PDF-word searchable files.<sup>27</sup> Other commentators

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<sup>27</sup> See GFOA Letter. The MSRB also noted in its comment letter that a transitional period would be appropriate.

noted a need to address smaller issuers who may need additional time to familiarize themselves with an electronic system.<sup>28</sup> Specifically, Vanguard noted that "...municipal issuers and obligated persons may be confused as to where they should file continuing disclosure documents during the period of transition from the current system to the EMMA system." and, subsequently suggested that these concerns "...could be addressed during a short transition period...". As noted in our comment letter, the MSRB is committed to working with issuers, other industry participants and the Commission to help ensure a rational and efficient transition to the new rule requirements and related EMMA system enhancements. To further ensure a smooth transition for submitters and end users of continuing disclosures, the MSRB requests that the Commission approve the proposed changes to Rule 15c2-12 with a delayed effectiveness of July 1, 2009. The MSRB has filed as amendment with the Commission that will delay the implementation of the continuing disclosure service of EMMA to July 1, 2009, as well as delay the effectiveness of the provision of the proposed rule change relating to word searchable PDF files until January 1, 2010.<sup>29</sup>

These amendments will allow all industry participants the opportunity to make voluntary or test submission to and access information from the continuing disclosure component of EMMA prior to fully transitioning to the EMMA system. The MSRB would file a proposal with the Commission to implement a pilot continuing disclosure component of EMMA in connection with voluntary or test submissions made prior to the effectiveness of the Commission's proposed changes to Rule 15c2-12. The MSRB would seek to assist potential users of the continuing disclosure service of EMMA through the use of the pilot<sup>30</sup>, during which time users of EMMA will be able to familiarize themselves with the EMMA system and receive assistance to establish user accounts.

### *SIDs*

Three commentators<sup>31</sup> suggested that the MSRB provide SIDs a data feed of filing information and one also suggested that the data feed should be provided free of charge. Specifically, GFOA stated that "...in order for the SIDs to maintain their systems, the information delivered to EMMA should be provided to them free of charge." OMAC noted that the revised rule should require the MSRB to "...furnish any SID with a data stream of

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<sup>28</sup> See NABL Letter.

<sup>29</sup> See SR-MSRB-2008-05, Amendment No. 1 (November 5, 2008); see also, MSRB Notice 2008-45 (November 5, 2008).

<sup>30</sup> During the pilot of the continuing disclosure service of EMMA, the MSRB would support the concept of having submissions of continuing disclosures be deemed as fulfilling continuing disclosure undertaking requirements of Rule 15c2-12.

<sup>31</sup> See GFOA, OMAC and Texas Mac Letters.

filings and indexing information, similar to that provided currently by the CPO, thus avoiding issuers having to make multiple filings.” and Texas MAC requested that “...the revised rule require the MSRB to supply SIDs with a data stream of filings and indexing information to avoid having a decentralized system in the three states with SIDs. The MSRB will work with SIDs to ensure that such entities have access to the documents submitted for issues in their respective states and will not incur costs related to the entire EMMA subscription product

### *Subscriptions*

EDGAR Online expressed support for the dissemination of information in a bulk format to the market. In addition to providing continuing disclosure documents through the EMMA portal without charge to all persons on an equal basis on its Internet website, the MSRB will also offer real-time subscriptions to EMMA’s continuing disclosure 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 making available real-time subscription products at a reasonable cost.

### *Fees*

One commentator is concerned that the EMMA system will not be “free”.<sup>32</sup> S&P states that “The MSRB will pay for this repository service with fees assessed against its constituent broker-dealers and municipal securities dealers.” Broker-dealers currently are charged fees for access to disclosure documents obtained from the NRMSIRs that they currently may or may not pass on to their customers. The MSRB presently anticipates no increase in fees on brokers, dealers, and municipal securities dealers who effect transactions in municipal securities solely to establish and operate the continuing disclosure service of the EMMA system. However, the MSRB, as a self regulatory organization would have to file any fees relating to the use of EMMA with the Commission under Section 19(b) of the Exchange Act. The MSRB currently has funds on hand that, together with amounts it will collect in the future under its current fee schedule, it believes will be sufficient to establish and operate the continuing disclosure service of the EMMA system as approved by the Commission. The MSRB reserves the right to periodically review its fee schedule to better align fees collected from regulated parties with the activities of the Board, and notes that any changes in its fee schedule must be approved by the Commission.

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<sup>32</sup> See S&P Letter.

*Future actions*

Commentators have asked that "...if changes are made to EMMA that impact the manner in which issuers interface with the site or in other ways that impact issuers, the MSRB propose these changes and allow for public comment."<sup>33</sup> Should the MSRB make significant changes to the continuing disclosure service of EMMA, the MSRB is required to submit such changes as rule change proposals to the Commission for publication for comment and approval through a formal rule filing process.

Sincerely,

/s/ Ernesto A. Lanza

Ernesto A. Lanza  
General Counsel

cc: Martha Haines  
Leslie Carey

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<sup>33</sup>

*See* GFOA Letter





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