

NAHEFFA COMMENTS
September 22, 2008

Comments of the National Association of Health and Educational Facilities Finance
Authorities With Respect to SEC Request for Comments on (a) Release
No. 34-58255, File No. S7-21-08, 73 Fed. Reg. 46137-4160; and (b) SEC Release
No. 34-58256, File No. MSRB - 2008-05, 73 Fed. Reg. 46161-4167.

The National Association of Health and Educational Facilities Finance Authorities (NAHEFFA) appreciates the opportunity to comment on (a) Release No. 34-58255, File No. S7-21-08, 73 Fed. Reg. 46137-4160; and (b) SEC Release No. 34-58256; File No. MSRB - 2008-05, 73 Fed. Reg. 46161-4167. All of these proposals relate to the new ELECTRONIC MUNICIPAL MARKET ACCESS SYSTEM ("EMMA").

EMMA would establish an electronic continuing disclosure service. We support the grant by the SEC of MSRB authority to operate EMMA. It makes sense for there to be one central and electronic filing location. This will assist investors and their advisors.

NAHEFFA represents statewide issuers of tax-exempt bonds for non-profit healthcare, education and other charitable purposes. This comment was preceded by our March 3, 2008 comments to the Municipal Securities Rulemaking Board with respect to MSRB Notice 2008-05.

We generally support the concept of expanding the existing pilot to mandate an exclusive (switch from NRMSIR's) and continuing disclosure component, as described in the notices. We believe that most of the significant issues raised in our previous comments to MSRB have been dealt with substantially. We appreciate the ability to communicate with MSRB and its responsiveness.

In March, we said that SEC must modify Rule 15c2-12 to make clear submission to MSRB satisfies all filing obligations and we will not have to file with NRMSIRs. We believe that is the case.

We also requested that no one may file documents without our authority. The MSRB has done this to some extent but has allowed a party to claim that it is an agent with the possibility of that status being revoked if it is not authorized. How this operates in practice will need careful surveillance.

We also requested that additional information beyond the required information be allowed to be submitted to EMMA. We believe that has been allowed.

We stated that we did not want EMMA to effectively require additional costs to prepare data submissions. We understand that MSRB has stated that information can be provided either through data files submitted to EMMA's computer interface or through data entry screens on the EMMA web interface which only require software that may be obtained for free.

NAHEFFA COMMENTS
September 22, 2008

We, finally, wanted to ensure that paid subscribers do not have special access to data. We understand the MSRB notice to state that, although subscribers will receive real time communications, they will receive no additional information that any person may not obtain by simply going to the website.

There are two caveats to our general support for EMMA. First, this system should not be used by SEC or MSRB as a stalking horse or precursor for attempts, by law or fact, to repeal or revise the "Tower Amendment," i.e., that, aside from the important anti-fraud provisions, issuers are not directly subject to the SEC's disclosure requirements.

Second, we are concerned that it is not clear that EMMA has been developed with specific thought about or accommodation for the real parties in interest in a so-called "conduit financing," or, in NAHEFFA's case, state authorities issuing tax-exempt bonds on behalf of non-profits — 501(c)(3) entities such as hospitals and colleges. The real obligated party, the borrower and obligor is the non-profit institution. Those institutions are required to submit documents and bear the burden of the continuing disclosure requirements under the MSRB rules.

We are concerned that the EMMA structure seems to require filers to use the issuer's password or the CUSIP number which may assume issuers are delegating their responsibility. It should be clarified in the final documentation and construct of EMMA that those non-profit institutions which bear the disclosure requirements are, in fact, allowed to submit information directly on their own behalf and that it does not implicate or affect any liability or create any new responsibility on the issuer. We believe that the notices' discussion of "obligated parties" may cover this point but it is not absolutely clear.

We recommend that EMMA develop a specific mechanism for the issuer to designate at issuance the borrower as the responsible entity.

Thank you for the opportunity to file these comments with the Commission, and indirectly with the MSRB which will receive a copy of NAHEFFA's comments. NAHEFFA looks forward to work closely with the SEC and MSRB on the important

NAHEFFA COMMENTS

September 22, 2008

points of how 501(c)(3) financing will operate under the EMMA system. If there are any other questions, please do not hesitate to contact the undersigned.

On behalf of NAHEFFA

Handwritten signature of Robert Donovan in cursive, followed by the initials "/CAS".

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