



May 12, 2009

Elizabeth M. Murphy
Secretary
Securities and Exchange Commission
Station Place
100 F Street, NE
Washington, DC 20549

Re: File No. SR-MSRB-2009-02

Dear Ms. Murphy:

On March 23, 2009, the Municipal Securities Rulemaking Board (the “MSRB”) filed with the Securities and Exchange Commission (the “Commission”) a proposed rule change to implement an electronic system for free public access to primary market disclosure documents and transaction price information for the municipal securities market through the MSRB’s Electronic Municipal Market Access system (“EMMA”).¹ The proposed rule change would, among other things, establish EMMA’s permanent primary market disclosure service for electronic submission and public availability on EMMA’s Internet web site of official statements and other primary market documents and information, as well as amend and consolidate certain MSRB rules to establish an electronic dissemination standard for official statements in the municipal securities market.

The Commission published the proposed rule change for comment in the Federal Register (the “Federal Register Notice”).² The Commission received three comment letters,³ and the

¹ File No. SR-MSRB-2009-02.

² Exchange Act Release No. 59636 (March 27, 2009), 74 FR 15190 (April 2, 2009).

³ Letter from Douglas Adamson, Executive Vice President, Technical Services Division, American Bankers Association, to Elizabeth M. Murphy, Commission Secretary, dated

(continued . . .)

Commission has requested that the MSRB respond. This letter provides the MSRB's responses to the comment letters, together with the MSRB's request with regard to timing of approval of the proposed rule change.

Comments of the American Bankers Association

The American Bankers Association ("ABA") expresses concern regarding certain legal issues relating to its intellectual property and contractual rights in the CUSIP database (the "Database") that it states have not yet been resolved. The ABA notes that it is the owner of the Database, which is administered by the CUSIP Service Bureau ("CSB"), as its exclusive licensee. The ABA states that "[i]t is critical that these legal issues be resolved before the MSRB is allowed to move forward with the proposed expansion and full implementation of EMMA." The ABA further states that the operation of the EMMA web site must incorporate a variety of protections with respect to its intellectual property rights.

The MSRB, ABA and CSB have engaged in a number of discussions to establish a new contractual arrangement that would provide the appropriate protections for the intellectual property and other rights with respect to the use of the Database. Such new arrangement would reflect the change in use of such Database since our organizations came to agreement in connection with the initial adoption by the MSRB of its Rule G-34, which has effectively required, since 1983, that virtually all new issue municipal securities be assigned CUSIP numbers. The use of CUSIP numbers in the municipal securities market has greatly assisted in meeting industry goals with respect to the efficient and automated processing of securities transactions.

The parties have exchanged various proposals with regard to the protection of the Database and the ABA on May 1, 2009 indicated that, based upon the MSRB's comprehensive proposal of April 22, 2009, it felt that an agreement had been reached, subject to finalization of the specific terms of the new licensing agreement. This pending agreement would expand and reposition existing language on the EMMA web site to ensure that users of the EMMA web site have a fuller understanding of the sources of information displayed on the EMMA web site and

(... continued)

April 24, 2009; letter from Robert Schifellite, President, Broadridge Financial Solutions, Inc., to Elizabeth M. Murphy, Commission Secretary, dated May 5, 2009; letter from Leslie M. Norwood, Managing Director and Associate General Counsel, Securities Industry and Financial Markets Association, to Elizabeth M. Murphy, Commission Secretary, dated May 10, 2009.

of the proprietary rights of third parties (including but not limited to the proprietary rights of the ABA in the Database) in certain displayed data elements. Such language would advise users of the limitations on their use or re-use of any proprietary information accessed on the EMMA web site, and users would be required to acknowledge such limitations before being provided access to any portion of the Database. Additional systemic and reporting mechanisms would be implemented to further protect against inappropriate use of the Database. The MSRB is confident that the changes contemplated under the pending agreement would permit the EMMA web site to be implemented and operated in an effective manner as contemplated in the proposed rule change while providing the ABA with strong safeguards against the misuse of its intellectual property by users of the EMMA web site. The MSRB expects to reach final agreement in time to launch EMMA's permanent primary market disclosure service as contemplated in the proposed rule change.

Comments of Broadridge Financial Solutions, Inc.

Broadridge Financial Solutions, Inc. ("Broadridge") believes that the adoption of the proposed rule change would "unintentionally result in less viewing of information by a growing number of individual investors" and suggests certain alternatives to improve "industry efficiencies offered by the MSRB's proposal without reducing the number of investors that view information contained in official statements." Broadridge cites internal statistics generated in connection with the Commission's adoption of rules on Internet availability of proxy materials⁴ in support of its view. Broadridge also cites the Commission's recently adopted rules on delivery of summary mutual fund prospectuses and posting of the statutory prospectuses on the Internet⁵ as an alternative method of providing disclosure to investors while realizing cost savings.

Broadridge's comparison of on-line access to proxy materials with on-line access to official statements is inapposite in a number of respects. Proxy statements are posted in a highly decentralized manner, whereas official statements are available on the centralized EMMA web site specifically crafted for their presentation; proxy statements often are posted without any additional meaningful contextual information, whereas official statements are posted on EMMA along with transaction prices, rate/yield information and other relevant disclosures for the security being purchased and for all other securities in the marketplace, together with educational information to assist the individual investor in understanding the information in the official statement; proxy statements are unsolicited communications to a large group of investors

⁴ Exchange Act Release No. 55146 (January 22, 2007), 72 FR 4148 (January 29, 2007).

⁵ Securities Act Release No. 8998 (January 13, 2009), 74 FR 4546 (January 26, 2009).

triggered by company action (*i.e.*, the investor is passive), whereas the MSRB's official statement dissemination requirement is triggered by an investor taking action to purchase a municipal security; proxy statements typically relate to matters of a generalized importance relating to a company and normally do not relate directly to an investment, whereas official statements have direct relevance to the investor's investment; proxy statements are intended to provide information prior to an investor voting his or her proxy, whereas official statements (much like prospectuses) often serve to disclose the detailed terms of a security after the investment decision has already been made;⁶ and proxy statements generally have little value once the vote occurs, whereas official statements retain significant value for the remaining life of the security and would remain available to all investors throughout that period in EMMA's permanent library.

Finally, Broadridge places too much emphasis on cost savings as a reason for approving the proposed rule change. Although the MSRB believes that there will in fact be sizeable cost savings associated with the establishment of an electronic dissemination standard for official statements, the MSRB has proposed the establishment of EMMA and has adopted the proposed rule change primarily because of the significant improvements in the municipal securities disclosure system that would result from such standard. Individual investors are placed on an equal footing with investment professionals with respect to access to key information and such information flows to the marketplace more quickly with an all-electronic system. The MSRB firmly believes that its proposal is in the best interest of individual investors and is in the public interest.

With regard to summary mutual fund prospectuses, the MSRB views this new development in the mutual fund market with great interest and will monitor the level of adoption in that market, as well as the impact the use of summary prospectuses may have on the quality and timeliness of disclosure for mutual funds. The MSRB notes that it has no authority over the nature, content or timing of issuer disclosures in the municipal securities market and therefore could not adopt a requirement for the creation and use of summary official statements by municipal issuers. Nonetheless, the MSRB believes that the experience in the mutual fund

⁶ MSRB Rule G-17 establishes a separate obligation on dealers to disclose to their customers at or prior to the time of trade (*i.e.*, by the investment decision) material information about their investment. *See* Rule G-17 Interpretation – Interpretive Notice Regarding Rule G-17, on Disclosure of Material Facts, March 20, 2002, *reprinted in* MSRB Rule Book. This separate time-of-trade disclosure obligation would not be modified by the proposed rule change.

market with summary prospectuses could potentially be instructive in crafting future disclosure initiatives in the municipal securities market.

Comments of Securities Industry and Financial Markets Association

The Securities Industry and Financial Markets Association (“SIFMA”) states that it is very supportive of the EMMA system and focuses its comments on certain operational and timing issues. SIFMA notes that, in the registered corporate securities context, dealers are required to send an investor a paper copy of a primary market disclosure document upon request, but that the proposed rule change provides that dealers selling new issue municipal securities would be required to honor any customer’s explicit standing request for copies of official statements for all of his or her transactions with the dealer. SIFMA notes that dealers’ systems and processes currently are designed to accommodate investors desiring paper copies of disclosure documents by request but not on a standing basis and requests that the proposed rule change be conformed to the rules applicable in the registered securities market. SIFMA argues that dealers would be required to “undertake an enormous amount of expense to accommodate a limited number of retail investors who neither want to receive documents electronically nor ask for paper copies on a transaction by transaction basis,” and that the costs of such changes would “seem to far outweigh the perceived benefits” and would interfere with the ability of issuers and other market participants to achieve anticipated cost savings.

The MSRB believes it is important to allow investors to establish standing instructions with their dealers to receive paper copies of official statements for all of their new issue purchases and not to obligate them to make transaction by transaction requests for paper copies. Although the potential for costs savings was an important factor in the MSRB’s proposal, such factor does not trump the needs of individual investors to obtain the disclosures they are due. Revised Rule G-32 would not obligate dealers to rely on access to electronic official statements on EMMA and those dealers who are not yet prepared procedurally or operationally to do so upon launch of the new rule provisions could continue to meet their official statement dissemination obligation through actual delivery of the official statement to customers as under current Rule G-32. Therefore, the MSRB does not believe that any change is merited.

SIFMA notes that MSRB Rule G-34 requires underwriters for most new issues of municipal securities to provide certain information on new issues to the new issue information dissemination system (“NIIDS”) operated by the Depository Trust Company and “urges the MSRB to permit an underwriter to designate to the MSRB that information it has submitted to NIIDS under revised Rule G-34 should also be used for purposes of completing new Form G-32.” SIFMA notes the significant resources expended to develop and implement NIIDS and that the datafeed methods for submission of information to NIIDS and EMMA do not match. SIFMA requests that the MSRB “make a firm commitment to take the outbound information feed from

NIIDS to pre-fill the G-32 forms beginning no later than 90 days after SEC approval of the rule change proposal.”

As noted in the filing with the SEC of the proposed rule change, the MSRB will continue working toward permitting dealers to designate to the MSRB that information they have submitted to NIIDS under Rule G-34 should also be used for purposes of completing new Form G-32. The MSRB will publish a notice advising dealers of the availability of such functionality once it becomes available. The MSRB is not prepared at this time to commit to a specific timeframe for making this functionality available and does not believe that approval of the proposed rule change should be contingent on such a commitment.

SIFMA requests that the MSRB provide dealers at least 30 calendar days’ notice prior to implementing the proposed rule change, citing various factors regarding holiday and vacation schedules and lack of training and usage materials. The MSRB will be announcing training sessions for use of the EMMA submission system in the coming days, will be publishing its user manual in the near future and will have staff available to assist users in transitioning to the new submission process. Although the MSRB cannot commit to providing the length of notice requested, the MSRB will provide notification of the operational date as soon as it becomes available.

Requested Approval of Proposed Rule Change

The MSRB had originally requested approval to commence operation of EMMA’s primary market disclosure service on a permanent basis and to implement the other portions of the proposed rule change on the later of (i) May 11, 2009 or (ii) the date announced by the MSRB in a notice published on the MSRB website, which date would be no earlier than ten business days after Commission approval of the proposed rule change and would be announced no fewer than five business days prior to such date. The MSRB acknowledges that, due to the timing of the comment period, the receipt of comment letters and this response to the comment letters, the proposed rule change will not be approved in time to launch the permanent primary market disclosure service on May 11, 2009. The MSRB hereby requests approval of the proposed rule change so as to allow commencement of operations of the permanent primary market disclosure service and related EMMA services as described in the proposed rule change on the date announced by the MSRB in a notice published on the MSRB website, which date shall be no earlier than five business days after Commission approval of the proposed rule change and shall be announced no fewer than five business days prior to such date.

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

Sincerely,



Ernesto A. Lanza
General Counsel

cc: Martha Mahan Haines, Chief,
Office of Municipal Securities, SEC