

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-59964, File No. SR-MSRB-2009-03)

May 21, 2009

Self-Regulatory Organizations; Municipal Securities Rulemaking Board; Order Granting Approval of Proposed Rule Change Relating to the Establishment of a Pilot Phase of Its Upcoming Continuing Disclosure Service of the Electronic Municipal Market Access System (EMMA[®])

On March 25, 2009, the Municipal Securities Rulemaking Board (“MSRB”), filed with the Securities and Exchange Commission (“Commission” or “SEC”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),¹ and Rule 19b-4 thereunder,² a proposed rule change to establish a pilot phase (the “continuing disclosure pilot”) of the continuing disclosure service of the MSRB’s Electronic Municipal Market Access system (“EMMA”). The proposed rule change was published for comment in the Federal Register on April 6, 2009.³ The Commission received one comment letter about the proposed rule change.⁴ On May 8, 2009 and May 18, 2009, the MSRB filed responses to the comment letters.⁵ This order approves the proposed rule change.

The proposed rule change would establish the continuing disclosure pilot of the continuing disclosure service of the MSRB’s EMMA system. The continuing disclosure

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 59643 (Mar. 27, 2009), 74 FR 15530 (Apr. 6, 2009) (“Commission’s Notice”).

⁴ See letter from Douglas Adamson, Executive Vice President, Technical Services Division, American Bankers Association (“ABA”), dated April 24, 2009.

⁵ See letters from Ernesto A. Lanza, General Counsel, MSRB, to Elizabeth M. Murphy, Secretary, SEC, dated May 8, 2009 (“Response Letter I”) and May 18, 2009 (“Response Letter II”).

pilot would receive electronic submissions of, and would make publicly available on the Internet, continuing disclosure documents and related information voluntarily submitted by issuers, obligated persons and their agents. The MSRB originally requested approval of the continuing disclosure pilot to commence operation on May 11, 2009, or such later date as may be announced by the MSRB in a notice published on the MSRB Web site, which date shall be no later than 30 days after Commission approval of the proposed rule change. In addition, the MSRB requested approval of the continuing disclosure pilot for a period ending on July 1, 2009.⁶ The MSRB has now requested approval of this proposed rule change by no later than May 22, 2009, so that the MSRB may commence operation of the pilot continuing disclosure service on June 1, 2009.⁷ A full description of the proposal is contained in the Commission's Notice.

As previously noted, the Commission received one comment letter relating to the proposed rule change.⁸ The ABA expressed concerns regarding certain legal issues relating to the protection of its intellectual property and contractual rights in the CUSIP database (the "Database") that it states have not yet been resolved. The ABA noted that it was the owner of the Database, which is administered by the CUSIP Service Bureau

⁶ The Commission has previously approved the establishment of the continuing disclosure service of EMMA, which will commence operation on July 1, 2009. See Securities Exchange Act Release No. 59061 (December 5, 2008), 73 FR 75778 (December 12, 2008) (File No. SR-MSRB-2008-05) (approving the continuing disclosure service of EMMA with an effective date of July 1, 2009). The EMMA continuing disclosure service is designed to commence operation simultaneously with the effectiveness of certain amendments to Exchange Act Rule 15c2-12 adopted by the Commission. See Securities Exchange Act Release No. 59062 (December 5, 2008), 73 FR 76104 (December 15, 2008) (adopting amendments to Exchange Act Rule 15c2-12).

⁷ See Response Letter II, supra note 5.

⁸ See supra note 4.

(“CSB”), as its exclusive licensee, and believed it was critical that these legal issues be resolved before the MSRB be allowed to move forward with the proposed expansion and full implementation of EMMA. It further requested that the operation of the EMMA Web site incorporate a variety of protections with respect to its intellectual property rights, including compliance with CSB’s current licensing practices, permissible use guidelines, appropriate copyright notices and adequate security.⁹

In response to the ABA’s concerns, the MSRB and the CSB, as the ABA’s exclusive licensee, have entered into a memorandum of understanding dated May 15, 2009 (the “MOU”) in which CSB expressly permits use of the CUSIP database for purposes, among other things, of displaying information on the MSRB’s EMMA public Web portal and for inclusion in data disseminated by the MSRB to subscribers of the EMMA data feed. The MSRB has agreed in the MOU to provide certain safeguards with respect to the ABA’s intellectual property and contractual rights of the ABA in the CUSIP database.¹⁰ The Commission believes that the MSRB has taken sufficient action to ensure that all necessary arrangements will be in place in order to operate the continuing disclosure pilot as anticipated by the implementation date.

⁹ See letter from the ABA, supra note 4.

¹⁰ See Response Letter II, supra note 5. The MSRB stated that this 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 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. See Response Letter I, supra note 5.

The Commission has carefully considered the proposed rule change, the comment letter received, and the MSRB's responses to the comment letter and finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the MSRB¹¹ and, in particular, the requirements of Section 15B(b)(2)(C) of the Act¹² and the rules and regulations thereunder. Section 15B(b)(2)(C) of the Act requires, among other things, that the MSRB's rules 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.¹³ In particular, the Commission finds that the proposed rule change is consistent with the Act because the EMMA continuing disclosure service, including the pilot phase thereof, 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 pilot phase would be an important transitional step toward ensuring the effective and efficient operation of the permanent EMMA continuing disclosure service upon launch on July 1, 2009.

¹¹ In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

¹² 15 U.S.C. 78o-4(b)(2)(C).

¹³ Id.

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,¹⁴ that the proposed rule change (SR-MSRB-2009-03), be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁵

Florence E. Harmon
Deputy Secretary

¹⁴ 15 U.S.C. 78s(b)(2).

¹⁵ 17 CFR 200.30-3(a)(12).