

**MEMO# 23124**

December 15, 2008

## **SEC Adopts Amendments to Municipal Securities Disclosure and Approves MSRB Disclosure Proposal**

[23124]

December 15, 2008

TO: MUNICIPAL SECURITIES ADVISORY COMMITTEE No. 46-08  
SEC RULES COMMITTEE No. 89-08 RE: SEC ADOPTS AMENDMENTS TO MUNICIPAL  
SECURITIES DISCLOSURE AND APPROVES MSRB DISCLOSURE PROPOSAL

On December 5, 2008, the Securities and Exchange Commission adopted amendments to Rule 15c2-12 under the Securities Exchange Act of 1934 to require that secondary market disclosure for municipal securities be provided to a single repository – the Municipal Securities Rulemaking Board (“MSRB”) – in an electronic format accompanied by prescribed identifying information. [\[1\]](#) To facilitate the implementation of the amendments, the Commission simultaneously approved a proposed rule change by the MSRB to establish a service for receipt of secondary market disclosure information for municipal securities through its Electronic Municipal Market Access (“EMMA”) system. [\[2\]](#) The Institute submitted a comment letter supporting both of these proposals. [\[3\]](#) The primary components of the proposals are summarized below.

The amendments adopted by the Commission are identical to the proposed amendments, and will provide for the development of a centralized system for the electronic collection and availability of information about outstanding municipal securities. In the Adopting Release, the Commission stated that the amendments further its intent to deter fraud and manipulation in the municipal securities market by improving the availability of information about municipal securities outstanding in the secondary market.

Rule 15c2-12 currently provides that the following annual information and event notices (“continuing disclosure”) must be provided to certain information repositories: (1) certain annual financial and operating information and audited financial statements (“annual

filings"); (2) notices of the occurrence of any of eleven specified events ("material event notices"); and (3) notices of the failure of an issuer or other obligated person to make a submission required by a continuing disclosure agreement ("failure to file notices"). Under the rule, a broker-dealer, or municipal securities dealer underwriting a municipal issue must reasonably determine that an issuer or obligated person has undertaken in its continuing disclosure agreement to provide: (1) annual filings to each nationally recognized municipal securities information repository ("NRMSIR"); (2) material event notices and failure to file notices either to each NRMSIR or to the MSRB; and (3) in the case of states that established state information depositories ("SIDs"), all continuing disclosure documents to the appropriate SID. As amended, all references to NRMSIRs and SIDs in Rule 15c2-12 will be eliminated and replaced with references to the MSRB, [4] establishing one repository for continuing disclosure information. [5]

The amendments will require electronic submission of continuing disclosure documents. [6] In the Adopting Release, the Commission stated its belief that a single repository that receives submissions electronically should assist in facilitating and simplifying the process of submitting continuing disclosure documents under Rule 15c2-12, and will better enable information to be promptly posted and made available to the public without charge. In addition, all documents submitted to the MSRB will be accompanied by identifying information as prescribed by the MSRB (see discussion below). According to the Commission, such information will permit the repository to sort and categorize the documents efficiently and accurately, and will facilitate the ability of investors, market participants, and others to reliably search for and locate relevant disclosure documents.

With respect to the amendments generally, the Commission acknowledged in the Adopting Release that the amendments do not address all of the information challenges of the municipal market. Nonetheless, it stated its belief that the amendments will improve municipal securities information availability and help investors make more informed investment decisions by allowing them to obtain information more readily, completely, and promptly. It also stated that improving disclosure in this way will help fulfill the regulatory and information needs of municipal market participants, such as mutual funds, which include municipal securities in their portfolios that they routinely monitor for regulatory and other reasons. Specifically, the Commission explained that improving access to information in the continuing disclosure documents will help facilitate and simplify the process of gathering the necessary information to carry out their obligations.

Rule 15c2-12 currently provides a limited exemption to the submission of continuing disclosure documents pursuant to continuing disclosure agreements for small issuers satisfying certain conditions. [7] By eliminating references to NRMSIRs and SIDs in the rule, the amendments will have the effect of requiring some small issuers to submit annual financial information and operating data to the MSRB when currently they do not regularly submit such disclosures to any repository (i.e., currently providing it only upon request to any person or at least annually to the appropriate SID).

In the Adopting Release, the Commission undertook a lengthy discussion of the effect on competition of establishing a centralized repository, responding to concerns raised by commenters. [8] It traced the advances in technology since it last explored this issue in 1994, concluding that a single repository would not have a significantly adverse effect on the ability or willingness of information vendors and others to compete to create and market value-added products. Instead, the Commission stated that ready access from a single source to continuing disclosure documents should facilitate and stimulate use of this information by vendors and others in their value-added products. Further, some vendors

may benefit from the proposal because they might determine they no longer need to incur the cost of obtaining and storing continuing disclosure documents, and new entrants into the information services market will not need to purchase the information from multiple locations.

The Commission also examined the utility of selecting the MSRB as the sole repository for the continuing disclosure information. The Commission explained that, as a self-regulatory organization, the MSRB is subject to Commission oversight. In addition, the systems used by the MSRB for collecting, disseminating, or making available municipal securities disclosure information, including EMMA, are subject to public notice and comment and Commission review. Accordingly, the Commission concluded that any competitive impact that may result from the MSRB's status as the sole repository is justified by the benefits that such status is expected to provide to investors, broker-dealers, mutual funds, vendors of municipal information, municipal security analysts, other market professionals, and the public generally.

The amendments will apply to continuing disclosure agreements that are entered into in connection with primary offerings occurring on or after the effective date of July 1, 2009. To create a mechanism by which issuers or obligated persons can comply with their existing undertakings by submitting the continuing disclosure documents to the MSRB, the Commission determined to: (1) withdraw all "no-action" letters recognizing existing NRMSIRs and (2) designate the MSRB as the only NRMSIR. The Commission stated that providing all submissions (for both past and future offerings) to the same location will be less confusing to, and will simplify the submission process for, issuers and other obligated persons subject to continuing disclosure agreements, and investors and others who wish to obtain such information. With respect to historical disclosure documents currently on file with the existing NRMSIRs, the Commission expressed its belief that these NRMSIRs could determine it is in their interest to continue to provide public access to the continuing disclosure documents they obtained while serving as NRMSIRs, in order to earn revenue from their respective collections.

Several commenters questioned the Commission's authority to adopt the amendments in light of the so-called "Tower Amendments" – the 1994 amendments to the Securities Exchange Act of 1934 that limit the authority of the Commission and MSRB with respect to regulating municipal securities. In the Adopting Release, the Commission stated that Congress provided the Commission with authority to adopt rules reasonably designed to prevent fraud. It emphasized that the amendments will improve access to information about municipal securities for those who effect transactions in the municipal markets, allowing those market participants to more easily detect potentially fraudulent information.

As noted above, the Commission approved the MSRB's proposal to expand its EMMA system to accept continuing disclosure information and related information for municipal securities, [9] establishing EMMA as the single repository for secondary municipal market information as prescribed in the Commission's amendments to Rule 15c2-12. In its Order, the Commission noted that the continuing disclosure information will be submitted electronically to the MSRB, free of charge, and public access to the documents will be provided on the Internet through the EMMA portal at no charge, as well as through a fee-based real-time data stream subscription service. [10] The effective date for the expanded EMMA service is July 1, 2009, coinciding with the effective date for the Commission's amendments to Rule 15c2-12.

In connection with the submission of documents, the submitter must provide 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. [\[11\]](#) The Commission found in the Order that the proposed identifiers are appropriate and will facilitate the indexing of submitted information in the EMMA system.

Further, information must be submitted to the MSRB as PDF files configured to permit documents to be saved, viewed, printed, and retransmitted by electronic means. As of January 1, 2010, such PDF files must be word-searchable, provided that diagrams, images, and other non-textual elements will not be required to be word-searchable due to current technical hurdles to uniformly producing such elements without incurring undue costs. According to the Order, the MSRB has indicated that it does not view establishing XBRL as a data standard for EMMA submissions as appropriate at this time, although it continues to be interested in working with the municipal market in the future on interactive data initiatives. The Commission further noted that the MSRB: (1) plans to establish methods for submitters to contact it with questions and to report any problems submitters may discover with filings they electronically send to EMMA and (2) will not be responsible for the accuracy and completeness of all documents and information submitted to EMMA.

Heather L. Traeger  
Assistant Counsel

#### **endnotes**

[\[1\]](#) See Amendment to Municipal Securities Disclosure, SEC Release No. 59062 (December 5, 2008), 73 FR 76103 (December 15, 2008) (“Adopting Release”).

[\[2\]](#) See Notice of Filing of Amendment No. 1 and Order Granting Accelerated Approval of Proposed Rule Change Relating to the Establishment of a Continuing Disclosure Service of the Electronic Municipal Market Access System, SEC Release No. 59061 (December 5, 2008), 73 FR 75778 (December 12, 2008) (“Order”).

[\[3\]](#) See Letter from Karrie McMillan, General Counsel, Investment Company Institute, to Florence Harmon, Acting Secretary, Securities and Exchange Commission, dated September 22, 2008 (supporting the proposals but urging further municipal securities disclosure reform).

[\[4\]](#) The Commission clarified in the Adopting Release that the amendments will not affect the legal obligation of issuers and obligated persons to provide continuing disclosure documents, along with any other submissions, to the appropriate SID, if any, as required under the appropriate state law.

[\[5\]](#) In adopting the amendments, the Commission is withdrawing its 2006 proposed amendments to Rule 15c2-12 in response to a petition from the MSRB that would permit the MSRB to close its Continuing Disclosure Information Net system. See Proposed Amendments to Municipal Securities Disclosure, SEC Release No. 54863 (December 4,

2006), 71 FR 71109 (December 8, 2006).

[6] The amendments do not designate the electronic format or formats that EMMA will accept. Instead, they provide that the MSRB will stipulate the format, which will be subject to the Section 19(b) rule filing process with the Commission. As discussed below, the MSRB has determined that documents must be filed as portable document format (“PDF”) files.

[7] These conditions are: (i) the issuer of the obligated person has less than or equal to \$10 million of debt outstanding; (ii) the issuer or obligated person has undertaken in a written agreement or contract to provide: (a) upon request to any person or at least annually to the appropriate SID, if any, financial information or operating data regarding each obligated person for which financial information or operating data is presented in the final official statement, which financial information and operating data shall include, at a minimum, that financial information and operating data which is customarily prepared by such obligated person and is publicly available, and (b) to each NRMSIR or to the MSRB, and to the appropriate SID, if any, material event notices; and (iii) the final official statement identifies by name, address and telephone numbers the persons from which the foregoing information, data and notices can be obtained.

[8] The Commission specifically considered the “central post office” alternative to a centralized repository – whereby all filings would be supplied to a single location for immediate redistribution to all NRMSIRs and SIDs and an index of filings would be available to the general public at no charge – concluding that it would not achieve the benefits of the amendments. The Commission determined that a central post office may benefit NRMSIRs by providing a comprehensive source of continuing disclosure documents in an electronic format but would not result in such documents being made available to the public at no charge.

[9] In response to comments from the Institute and others, the MSRB has indicated that it expects to propose in a future filing to accept submission of a broader scope of municipal securities disclosure documents and information.

[10] According to the Order, the MSRB must file with the Commission a proposed rule change under Section 19(b) of the Securities Exchange Act with respect to any fees it intends to charge subscribers in connection with a real-time data stream subscription service.

[11] In response to comments from the Institute and others, the MSRB has indicated that it will consider additional identifiers in the future.