

MEMO# 23639

July 17, 2009

MSRB Proposes Additional Disclosures for Municipal Securities Market

[23639]

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TO: MUNICIPAL SECURITIES ADVISORY COMMITTEE No. 33-09
MONEY MARKET FUNDS ADVISORY COMMITTEE No. 28-09 RE: MSRB PROPOSES
ADDITIONAL DISCLOSURES FOR MUNICIPAL SECURITIES MARKET

The Municipal Securities Rulemaking Board ("MSRB") has issued three proposals designed to enhance primary and continuing municipal market disclosure through the MSRB's Electronic Municipal Market Access ("EMMA") web site.

Additional Disclosure for ARS and VRDOs

The MSRB has published a proposal that would enhance disclosure for market participants in the municipal short-term market. Specifically, the proposal would require additional disclosure for auction rate securities ("ARS") and variable rate demand obligations ("VRDOs"), including auction procedures and interest rate setting mechanisms for ARS, bidding information for ARS, and liquidity facilities for VRDOs. [\[1\]](#) The additional information would be available to the marketplace through EMMA.

Currently, the MSRB requires brokers, dealers, and municipal securities dealers (collectively, "dealers") that act as program dealers [\[2\]](#) for ARS or remarketing agents for VRDOs to report certain limited information following an ARS auction or VRDO interest rate reset to the MSRB no later than 6:30 p.m. Eastern Time on the day that an action or interest rate reset occurs. The MSRB would significantly expand this disclosure to require submission of the following additional documents and information for ARS and VRDOs.

ARS and VRDO Documents [\[3\]](#)

- ARS documents defining current auction procedures and interest rate setting mechanisms; and
- VRDO liquidity facility documents, including current letters of credit and stand-by bond purchase agreements.

ARS Bidding Information

- Interest rate and aggregate par amount of orders to sell at a specific interest rate and aggregate par amount of such orders that were executed;
- Aggregate par amount of orders to sell at any interest rate and aggregate par amount of such orders that were executed;
- Interest rate and aggregate par amount of orders to hold at a specific interest rate and aggregate par amount of such orders that were successfully held;
- Interest rate and aggregate par amount of orders to buy and aggregate par amount of such orders that were executed;
- Number of unique bidders submitting orders to buy, other than the program dealer bidding for its own account;
- Interest rate, aggregate par amount, and type of order – either buy, sell or hold – by a program dealer for its own account and aggregate par amounts of such orders, by type, that were executed; and
- Interest rate, aggregate par amount, and type of order – either buy, sell or hold – by an issuer or conduit borrower for such ARS and aggregate par amounts of such orders, by type, that were executed.

Additional VRDO Information

- Effective date that the interest rate reset is applicable;
- Identity of and contact information for the tender agent;
- Identity of the liquidity provider including an indication of those VRDOs for which an issuer provides “self liquidity” and the identity of the party providing such self-liquidity;
- Par amount of the VRDO, if any, held by the VRDO remarketing agent, a liquidity provider (“Bank Bond”) for the VRDO, and a party other than the remarketing agent or as a Bank Bond; and
- Interest rate paid to a liquidity provider that holds Bank Bonds.

Additional Submissions by Underwriter of Information on Continuing Disclosure Undertakings

The MSRB has filed a proposal with the Securities and Exchange Commission (“SEC”) that would require underwriters for primary offerings of municipal securities to submit to EMMA certain disclosure items as part of their primary offering submission obligation. [\[4\]](#) In particular, underwriters would be required to provide information about: (1) whether the issuer or other obligated person has undertaken to provide continuing disclosures; (2) the identity of any obligated persons other than the issuer; and (3) the timing by which such issuers or obligated persons have agreed to provide annual financial and operating data. [\[5\]](#) In addition, the proposal would mandate that underwriters provide contact information

for issuer or obligated person representatives with respect to new primary offerings. [\[6\]](#)

The proposal would require that an underwriter provide information regarding whether the issuer or other obligated persons have agreed to undertake to provide continuing disclosure information, as contemplated by Rule 15c2-12 under the Exchange Act of 1934, by no later than the date of first execution of a transaction in municipal securities sold in the primary offering. The remaining items of information would be required to be provided by the closing date of the primary offering. The proposal also would provide that an underwriter must update promptly any information it has previously provided which may have changed, or to correct promptly any inaccuracies in such information, and would be responsible for ensuring that such information provided by it is accurate as of the closing date. Having satisfied this requirement, an underwriter would not be obligated to update the information provided if there are any subsequent changes to such information.

The MSRB believes that the information which would be required by the proposal is of significant value to investors and the general public because it would permit ready identification of which obligated persons are expected to submit continuing disclosure information and when such disclosures should become available each year.

Additional Voluntary Submissions by Issuers to EMMA

The MSRB has filed a proposal with the SEC that would permit issuers and their designated agents to submit additional documents to both the primary market disclosure and continuing disclosure services of EMMA. [\[7\]](#)

Primary Market Disclosure

The proposal would permit the submission of preliminary official statements (“POS”) and other related pre-sale documents, official statements, and advance refunding documents. Pre-sale documents other than POS would be accepted only if accompanied or preceded by a POS. To ensure proper posting on EMMA, submissions of any primary market documents must be accompanied by specific identifying information including the category of document, the issues or securities to which the document is related, and, in the case of an advance refunding document, the specific securities being refunded.

In the proposal, the MSRB explains the methods by which investors using EMMA would identify the various versions of official statements that will be available within the system. It states that POS, if available, are required to be submitted by the underwriter by closing solely in the circumstance where an official statement is not being prepared by the issuer or if the official statement is not available for submission to EMMA by closing. Once the official statement is provided to EMMA by the underwriter, a POS generally is moved to a document archive that is accessible through EMMA directly from the page where the link to the official statement is provided. In addition, investors are able to request to receive e-

mail notifications for updates to the disclosure document for a specific security. This function would enable an investor to be notified in the situation where an official statement is submitted to EMMA following an initial submission of the POS.

In support of the proposal, the MSRB states its belief that there is considerable value in providing a means for centralized access to POS at or prior to the time of trade and in sufficient time to make use of the information in coming to an investment decision. The MSRB notes, however, that the proposal calls for voluntary submissions because the MSRB is precluded from mandating pre-sale submission of POS pursuant to Section 15B(d)(1) of the Exchange Act.

Continuing Disclosure

The proposal would permit the submission of information relating to the preparation and submission of audited financial statements, annual financial information, and links to other disclosure information. Specifically, the proposed additional disclosure items would include:

- An issuer's or obligated person's undertaking to prepare audited financial statements pursuant to generally accepted accounting principles as established by the Governmental Accounting Standards Board;
- An issuer's or obligated person's undertaking to submit annual financial information to EMMA within 120 calendar days after the end of the fiscal year; [8]
- Certificate of Achievement for Excellence in Financial Reporting awarded by the Government Finance Officers Association in connection with the preparation of a Comprehensive Annual Financial Report of an issuer; and
- Uniform resource locator (or URL) of the issuer's or obligated person's Internet-based investor relations or other repository of financial/operating information.

The fact that an issuer or obligated person has entered into one of these undertakings would be prominently disclosed on EMMA.

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endnotes

[1] See Request for Comment on Additional Increases in Transparency of Municipal Auction Rate Securities and Variable Rate Demand Obligations, MSRB Notice 2009-43 (July 14, 2009), available at: <http://www.msrb.org/msrb1/whatsnew/2009-43.asp>. Comments are due to the MSRB by September 1, 2009.

[2] ARS program dealers are dealers that submit an order directly to an auction agent for their account or on behalf of another account to buy, hold or sell ARS through the auction process.

[3] For existing ARS and VRDOs, the proposal would require dealers to provide the current versions of documents to the MSRB within thirty days after the effective date of the draft

amendments. On an ongoing basis, dealers would be required to provide any new or amended versions of these documents within one business day of receipt.

[4] See SEC Release No. 60314 (July 15, 2009), available at: <http://www.sec.gov/rules/sro/msrb.shtml>. Comments are due to the SEC twenty-one days after the proposal is published in the Federal Register.

[5] The timing undertaken for submission of annual financial information would be identified as a specific month and day, accurate as of the closing of the primary offering.

[6] Currently, this information may be submitted to EMMA on a voluntary basis for current and past primary offerings.

[7] See SEC Release No. 60315 (July 15, 2009), available at: <http://www.sec.gov/rules/sro/msrb.shtml>. Comments are due to the SEC twenty-one days after the proposal is published in the Federal Register.

[8] In the proposal, the MSRB explains that it selected a 120-day period to accommodate additional steps that state and local governments often must take – under state law, pursuant to their own requirements, or otherwise – in completing the work necessary to prepare their annual financial information as contemplated under the Exchange Act.