

MEMO# 22191

February 6, 2008

MSRB Proposes Incorporating Secondary Market Disclosure Requirements into EMMA

[22191]

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TO: MUNICIPAL SECURITIES ADVISORY COMMITTEE No. 5-08
FIXED-INCOME ADVISORY COMMITTEE No. 2-08
SEC RULES MEMBERS No. 12-08 RE: MSRB PROPOSES INCORPORATING SECONDARY MARKET DISCLOSURE REQUIREMENTS INTO EMMA

On January 31, 2008, the Municipal Securities Rulemaking Board issued a notice seeking comment on initial steps to incorporate secondary market disclosure submissions into its new, electronic disclosure system. [\[1\]](#) Comments are due to the MSRB no later than February 25, 2008.

Starting with its “access equals delivery” initiative, [\[2\]](#) the MSRB has been pursuing a plan to develop a centralized Internet-based system for free real-time public access to all primary market, secondary market and trade price data for municipal securities submitted to the MSRB. The permanent system will be known as the MSRB’s Electronic Municipal Market Access system, or EMMA.

In November of 2007, the MSRB filed a proposed rule change with the SEC to implement EMMA, on a pilot basis, with respect to primary market disclosure information – official statements and advance refunding documents – submitted to the MSRB by underwriters of new issue municipal securities. [\[3\]](#) In its proposed rule change to implement the EMMA pilot, the MSRB noted that it would stand ready to expand the pilot to include secondary

market disclosure information – annual financial information and material events notices – should the SEC determine to modify Exchange Act Rule 15c2-12 [\[4\]](#) to provide for a centralized electronic submission and dissemination model for such information. According to the Notice, the MSRB has determined to take initial steps toward incorporating secondary market disclosure submissions into EMMA based on recent indications from the SEC that it expects to consider such a modification. The Notice states that any permanent expansion of EMMA would be subject to the SEC’s adoption of the necessary modification to Rule 15c2-12.

In the Notice, the MSRB proposes that the secondary market disclosure component of EMMA be implemented in stages, with an initial pilot stage during which submissions of continuing disclosure information could be made on a voluntary basis. The MSRB states that EMMA would accept submissions directly from issuers, obligated persons and their designated agents acting on their behalf. Information would be submitted solely by electronic means through a web-based interface or by computer-to-computer upload or data stream in the same format as proposed for primary market disclosure information. The MSRB also states that secondary market information would be made available publicly on EMMA as well as on a real-time basis through paid subscriptions to the complete EMMA document collection for re-dissemination or other use by subscribers.

The MSRB proposes to collect key indexing information for secondary market disclosures both at the time of the initial issuance of the securities and when such disclosures are submitted to EMMA. Specifically, at initial issuance, underwriters of new issue securities would be required to provide the following items of information: (i) whether a continuing disclosure undertaking exists; (ii) the identity of any obligated persons other than the issuer; and (iii) the date identified in the undertaking by which annual financial information is expected to be disseminated.

At the time of submission of an item of secondary market disclosure, information would be collected to identify: (i) the category of information being provided (e.g., annual financial information or material event notice); (ii) the issues or specific securities; and (iii) the obligated person (if applicable) to which such disclosure applies.

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endnotes

[\[1\]](#) MSRB Notice 2008-05, MSRB Begins Planning for continuing Disclosure Component of the New Electronic Municipal Market Access System (EMMA) (January 31, 2008). The Notice

can be found at <http://www.msrb.org/msrb1/whatsnew/2008-05.asp>.

[2] See Memorandum to Fixed-Income Advisory Committee No. 4-07 and SEC Rules Members No. 29-07, dated March 5, 2007 [20926].

[3] See Memorandum to Municipal Securities Advisory Committee, Fixed-Income Advisory Committee No. 37-07 and SEC Rules Members No. 148-07, dated November 19, 2007 [21964].

[4] Rule 15c2-12 prohibits an underwriter for a primary offering of municipal securities from underwriting the offering unless the underwriter has determined that the issuer or an obligated person for whom financial information or operating data is presented in the final official statement, or a designated agent, has undertaken in writing to provide certain information to the market.

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