

**MEMO# 26802**

December 21, 2012

## **MSRB Seeks Comment on Concept Proposal to Require Underwriters to Submit Preliminary Official Statements to EMMA; Conference Call Scheduled for January 7 from 3-4 p.m.**

[26802]

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TO: FIXED-INCOME ADVISORY COMMITTEE No. 31-12  
MUNICIPAL SECURITIES ADVISORY COMMITTEE No. 53-12 RE: MSRB SEEKS COMMENT ON CONCEPT PROPOSAL TO REQUIRE UNDERWRITERS TO SUBMIT PRELIMINARY OFFICIAL STATEMENTS TO EMMA; CONFERENCE CALL SCHEDULED FOR JANUARY 7 FROM 3-4 P.M.

The MSRB is requesting comment on a concept proposal to require brokers, dealers and municipal securities dealers, acting as underwriters of new issues of municipal securities, to submit an issuer's preliminary official statement relating to such new issue and all supplements thereto, if any such documents have been prepared by or on behalf of the issuer, to the EMMA® system. \* Comments are due by February 8, 2013.

The Institute will hold a call with members on Monday, January 7 from 3-4 p.m. (Eastern) to discuss the MSRB's request. Members interested in participating on the call should contact Jennifer Odom by phone (202-326-5833) or email [jodom@ici.org](mailto:jodom@ici.org) to obtain the call-in information. Members with thoughts on the concept proposal who are unable to participate in the call should provide your comments to the undersigned at 202-371-5410 or email ([jheinrichs@ici.org](mailto:jheinrichs@ici.org)) prior to the call.

The MSRB is considering whether to require an underwriter of a new issue of municipal securities to submit an issuer's preliminary official statement relating to the new issue and all supplements thereto, if such documents have been prepared, to the MSRB for display on EMMA. To ensure the widest possible access at the earliest possible time, any such requirement would provide for the underwriter to submit the preliminary official statement and supplements to EMMA by the end of the day on which it receives the preliminary official statement or supplement from the issuer. In light of the provisions of the Tower Amendment, however, an underwriter for a new issue for which the issuer restricts the posting of the preliminary official statement or supplement on EMMA prior to the bond sale

would instead be required to submit the preliminary official statement and all supplements thereto by no later than the time of first execution of trades in the new issue after the bond sale. Thereafter, the underwriter also would be required to submit to EMMA any additional supplements to the preliminary official statement, if prepared, by the end of the day on which it receives such supplement.

This requirement would be independent of the requirement under SEC Rule 15c2-12 that an underwriter send a preliminary official statement, if one is available and until a final official statement is available, to a potential investor upon request, and of the requirement under MSRB Rule G-17 that a dealer selling municipal securities to a customer provide material disclosures at or prior to the time of trade.

The concept proposal would not require, directly or indirectly, that a preliminary official statement or supplement be prepared and would leave full discretion with the issuer as to whether any preliminary official statement or supplement it does prepare may be posted on EMMA by the underwriter prior to the bond sale. Once the final official statement becomes available, the underwriter would be required to post such document to EMMA as currently provided for under MSRB Rule G-32.

The MSRB explains that the concept proposal would advance its long-standing goal of making information useful for an investment decision more easily available to all participants in the municipal securities market on an equal basis through a centralized, searchable, internet based repository. Although preliminary official statements may be available electronically either directly from an issuer's website or through a dealer, potential investors, including retail investors, are frequently unaware of this availability.

If the MSRB determines to proceed with rulemaking in this area after reviewing the comments received on this concept proposal, it would publish a request for comment seeking further industry input on specific requirements intended to achieve its goals before making a final decision whether to file such a proposal with the SEC for its approval.

Jane G. Heinrichs  
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#### **endnotes**

\*See Request for Comment on Concept Proposal to Require Underwriters to Submit Preliminary Official Statements to the MSRB's ElectronicMunicipalMarket Access (EMMA®) System,MSRB Notice 2012-61 (December 12, 2012), available at <http://msrb.org/Rules-and-Interpretations/Regulatory-Notices/2012/2012-61.aspx>.