

MEMO# 22766

August 5, 2008

SEC Proposes to Amend Municipal Securities Disclosure

[22766]

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TO: MUNICIPAL SECURITIES ADVISORY COMMITTEE No. 31-08
SEC RULES COMMITTEE No. 57-08 RE: SEC PROPOSES TO AMEND MUNICIPAL SECURITIES DISCLOSURE

The Securities and Exchange Commission has proposed to amend Rule 15c2-12 under the Securities Exchange Act of 1934 to require that certain periodic disclosures be provided to a single repository – the Municipal Securities Rulemaking Board (“MSRB”) – in an electronic format accompanied by prescribed identifying information. [\[1\]](#) The repository would contain documents from issuers, obligated persons, and their agents produced pursuant to undertakings entered into consistent with the rule. [\[2\]](#) To facilitate the proposed implementation of the Commission’s proposal, the Commission also has published a proposal by the MSRB to establish a service for receipt of the requisite ongoing disclosure information for municipal securities. [\[3\]](#) Comments on both proposals are due to the Commission by September 22, 2008.

We have scheduled a conference call for Wednesday, August 13, at 2 p.m. Eastern Time to discuss the SEC and MSRB proposals. The dial-in number for the conference call will be 1-877-546-1566 and the passcode for the call will be 53760. If you plan to participate on the call, please contact Jennifer Odom by email at jodom@ici.org or by phone at 202-326-5833.

Proposed Amendments

The proposal would provide for the development of a centralized system for the electronic collection and availability of information about outstanding municipal securities. 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. The Commission’s proposal would delete all references to NRMSIRs in Rule 15c2-12 and replace them with references to the MSRB, establishing one repository for continuing disclosure information. [\[4\]](#)

The proposal would require electronic submission of continuing disclosure documents. The Commission states that this method would better enable information to be promptly posted and made available to the public without charge. The Commission also suggests, in a footnote, that the availability of audited financial statements and other financial and statistical information in an electronic format by issuers subject to Rule 15c2-12 could encourage the establishment of the necessary taxonomies and permit states and local government to make use of XBRL in the future, should they wish to do so.

The Commission seeks comment on whether the proposal should allow for the submission of paper documents and, if so, whether any conditions should be imposed in connection with paper submissions. The Commission also seeks comment on whether the proposal should allow for the availability of paper copies upon request from the central repository.

The proposal would require that all documents submitted to the MSRB be accompanied with identifying information as prescribed by the MSRB. [\[5\]](#) The Commission states that such information would permit the repository to sort and categorize the document efficiently and accurately, and would facilitate the ability of investors, market participants, and others to reliably search for and locate relevant disclosure documents. In addition, issuers submitting continuing disclosure documents pursuant to the terms of undertakings entered into prior to the effective date of the proposal, that did not require identifying information, could submit documents to the MSRB without supplying identifying information.

With respect to the proposal generally, the Commission states that the proposal would improve municipal securities information availability and help investors make more informed investment decisions by allowing them to obtain information more readily, completely, and promptly. The Commission suggests that improving disclosure in this way would 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 states that improving access to information in the continuing disclosure documents would help facilitate and simplify the process of gathering the necessary information to carry out their obligations.

Competition

In the Release, the Commission undertakes a lengthy discussion of the effect on competition of establishing a centralized repository. It traces the advances in technology since it last explored this issue in 1994, preliminarily 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 states that ready access from a single source to continuing disclosure documents would 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 would not need to purchase the information from multiple locations.

The Commission seeks comment on whether it is preferable to continue to have multiple sources for continuing disclosure information, or whether there are alternative ways to improving the efficiency of the current disclosure structure, including the use of the existing NRMSIRs.

The Commission also examines the utility of selecting the MSRB as the sole repository for the continuing disclosure information. The Commission explains 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. [\[6\]](#)

The Commission seeks comment on whether another entity, such as a private vendor, should serve as the sole repository, instead of the MSRB.

Transition Period

The proposal only would effect continuing disclosure agreements that are entered into in connection with primary offerings occurring on or after the effective date of the proposal. [\[7\]](#) Accordingly, to create a mechanism by which issuers or obligated persons could comply with their existing undertakings by submitting the continuing disclosure documents to the MSRB, the Commission is considering: (1) withdrawing all “no-action” letters recognizing existing NRMSIRs and (2) designating the MSRB as the only NRMSIR.

The Commission seeks comment on alternative methods of transitioning from the current system of sending documents to multiple NRMSIRs; whether there are transitional issues with respect to terms in existing continuing disclosure agreements; whether there are concerns that NRMSIRs would not retain the historical continuing disclosure documents; whether commenters anticipate any problems in obtaining such documents from the current NRMSIRs, if they were no longer recognized as such; and, whether there would be a need to maintain the option of submitting documents in paper form either as a temporary option during a transition period or as a permanent option.

endnotes

[1] See Proposed Amendment to Municipal Securities Disclosure, SEC Release No. 34-58255 (July 30, 2008) (“Release”). The Release may be found at: <http://www.sec.gov/rules/proposed/2008/34-58255.pdf>.

[2] Under Rule 15c2-12, an underwriter for a primary offering of municipal securities subject to the rule is prohibited 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 has undertaken in writing to provide certain items of information to the marketplace.

[3] See Memorandum to Municipal Securities Advisory Committee No. 30-08 and SEC Rules Members No. 72-08, dated August 1, 2008 [22756]. In its proposal, the MSRB seeks to expand its Electronic Municipal Market Access (“EMMA”) system to accommodate the collection and availability of continuing disclosure documents.

[4] The proposal also would delete references to SIDs in Rule 15c2-12. The Commission explains in the Release, however, that there may be an obligation to provide continuing disclosure documents to a SID, if required by applicable state law.

[5] The MSRB would be required to file a proposed rule change with the Commission under Section 19(b) of the Securities Exchange Act of 1934 regarding the electronic format it proposes to use.

[6] For example, the MSRB would be required to file a proposed rule change with the Commission under Section 19(b) of the Securities Exchange Act of 1934 regarding any fees it proposes to charge for subscriptions to EMMA. See also *supra* note 4.

[7] The Commission clarifies in the Release that the proposal would have no effect on the obligations of issuers and obligated persons under outstanding continuing disclosure agreements entered into prior to any effective date of the proposal to submit documents to the appropriate SID.