

## COMMENT LETTER

August 21, 2009

# ICI Letters on MSRB Proposals to Expand Disclosure Through EMMA (pdf)

August 21, 2009 Ms. Elizabeth M. Murphy Secretary U.S. Securities and Exchange Commission 100 F Street, N.E. Washington, D.C. 20549-1090 Re: MSRB Notice of Filing of Proposed Rule Change Relating to Rule G-32, on Disclosures in Connection with Primary Offerings, Form G-32, and the primary Market Disclosure and Primary Market Subscription Services of the MSRB's Electronic Municipal Market Access System (EMMA) (File No. SR-MSRB-2009-09) Dear Ms. Murphy: The Investment Company Institute<sup>1</sup> supports the Municipal Securities Rulemaking Board's ("MSRB") continuing efforts to increase transparency in the municipal securities market. The MSRB's current proposal,<sup>2</sup> which would require underwriters to provide the MSRB's Electronic Municipal Market Access system ("EMMA") with information related to an issuer's continuing disclosure commitments, is another step towards ensuring the accessibility and dissemination of important information to investors.<sup>3</sup>

<sup>1</sup> The Investment Company Institute is the national association of U.S. investment companies, including mutual funds, closed-end funds, exchange-traded funds (ETFs), and unit investment trusts (UITs) (collectively "funds"). ICI seeks to encourage adherence to high ethical standards, promote public understanding, and otherwise advance the interests of funds, their shareholders, directors, and advisers. Members of ICI manage total assets of \$10.5 trillion and serve over 93 million shareholders. <sup>2</sup> SEC Release No. 34-60314 (July 15, 2009), 74 FR 36300 (July 22, 2009). <sup>3</sup> Recently, the MSRB filed a series of proposals to enhance municipal securities disclosure through improvements to its EMMA system. We are highly supportive of these efforts and commend the MSRB for its initiatives. See, e.g., Letter from Heather Traeger, Associate Counsel, Investment Company Institute, to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, dated August 21, 2009 (regarding certain voluntary submissions to EMMA) and Letter from Heather Traeger, Associate Counsel, Investment Company Institute, to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, dated May 20, 2009 (regarding certain voluntary submissions to EMMA) ("May 2009 Letter"). Ms. Elizabeth M. Murphy August 21, 2009 Page 2 of 4 The need for comprehensive, accurate, and accessible disclosure in the municipal securities market is critical to investors because of the intricacies, variety, and number of securities in this market. At the end of 2008, investors held 33 percent of the \$2.7 trillion municipal securities market through funds and another 36 percent directly.<sup>4</sup> These investors need timely and efficient access to information to perform credit analyses, make informed investment decisions, monitor their securities portfolios, and protect themselves from fraud. Improving transparency and disclosure in the municipal securities market would not only provide investors with such needed access but also would strengthen investor confidence in the municipal securities market, benefiting investors and the marketplace as

a whole. MSRB Proposal Would Provide Important Information to Investors EMMA's continuing disclosure service is designed currently to accept submissions of: (1) continuing disclosure documents described in Rule 15c2-12 under the Securities Exchange Act of 1934;<sup>5</sup> (2) other disclosure documents specified in continuing disclosure undertakings but not specifically described in Rule 15c2-12; and (3) voluntary submissions of continuing disclosure documents provided other than in connection with Rule 15c2-12.6 The MSRB proposal would require underwriters to provide to EMMA information about whether an issuer or other obligated person has undertaken to provide continuing disclosures, the identity of any obligated person other than the issuer, and the timing by which such issuers or obligated person have agreed to provide annual financial and operating data. Such information would be provided by underwriters through the same submission process as, and simultaneously with, the information to be provided in connection with official statement submissions. We believe that submitting information about continuing disclosure agreements to EMMA would ensure the accessibility, and improve the utility, of such information for investors. It would also further the MSRB's regulatory objective to enhance transparency in the municipal securities market. As we have stated on a number of occasions, we support using EMMA as a central repository to improve municipal securities disclosure.<sup>7</sup> We therefore support the requirement that underwriters provide to EMMA the proposed items of information relating to continuing disclosure.

4 2009 Investment Company Fact Book, 49th Edition.

5 Rule 15c2-12 provides that secondary market disclosures include: annual financial information concerning obligated persons; audited financial statements for obligated persons if available and if not included in the annual financial information; notices of certain events, if material; and notices of failure to provide annual financial information on or before the date specified in the written undertaking. 6 See SEC Release No. 34-60033 (June 3, 2009), 74 FR 27369 (June 9, 2009) (approving proposal to accept voluntary disclosures in EMMA). See also May 2009 Letter, *supra* note 3. 7 See, e.g., Letter from Karrie McMillan, General Counsel, Investment Company Institute, to Florence Harmon, Acting Secretary, Securities and Exchange Commission, dated September 22, 2008 (supporting the development and use of EMMA to improve municipal securities disclosure). Ms. Elizabeth M. Murphy August 21, 2009 Page 3 of 4 Benefits of Proposal Would Outweigh Potential Costs Several commenters have raised concerns regarding the MSRB's proposal. In general, these commenters have suggested that requiring underwriters to extract the proposed items of information from issuers' continuing disclosure agreements<sup>8</sup> and submit that information separately to EMMA: (1) is unnecessarily duplicative of current disclosure requirements; (2) could result in erroneous information on the EMMA system through transcription errors; (3) would place undue compliance burdens and risks on underwriters; and (4) would violate the integrity of the official statement by requiring an underwriter to extract selected information from the document for inclusion in another format without approval by the issuer.<sup>9</sup> We believe that the benefits to investors stemming from the proposal would outweigh the perceived costs and risks. Integrating and packaging the proposed information would greatly assist investors, and potential investors, in monitoring their investments by easily identifying for them whether and when they should expect to have access to key continuing disclosure information. In addition, collecting and formatting this information in a user-friendly manner that permits for indexing and search functions through the EMMA system would be valuable to investors who may have difficulty sifting through the official statement to quickly identify this information. Finally, the proposed disclosure is consistent with existing obligations because, as noted by several commenters, underwriters are already responsible for disclosure of these items prior to buying or trading municipal bonds. \* \* \* \* \* We look forward to working with the Commission as it continues to examine these issues. In

8 As noted by several commenters, the continuing disclosure agreement is often, although not always, appended to the official statement which is already required to be filed with EMMA. 9 In lieu of submitting the information as envisioned in the proposal, commenters also have suggested creating a best practices standard or having underwriters submit the continuing disclosure agreement itself to EMMA. Neither of these alternatives ensures ready access to, or utility of, this important information. Ms. Elizabeth M. Murphy August 21, 2009 Page 4 of 4 the meantime, if you have any questions, please feel free to contact me directly at (202) 326-5920 or Ari Burstein at (202) 371-5408. Sincerely, /s/ Heather Traeger Heather Traeger Associate Counsel cc: James Brigagliano, Acting Director Daniel Gallagher, Acting Director Martha Mahan Haines, Chief, Office of Municipal Securities Division of Trading and Markets U.S. Securities and Exchange Commission August 21, 2009 Ms. Elizabeth M. Murphy Secretary U.S. Securities and Exchange Commission 100 F Street, N.E. Washington, D.C. 20549-1090 Re: MSRB Notice of Filing of Proposed Rule Change Relating to the Additional Voluntary Submissions by Issuers to the MSRB's Electronic Municipal Market Access System (EMMA) (File No. SR-MSRB-2009-10) Dear Ms. Murphy: The Investment Company Institute<sup>1</sup> supports the Municipal Securities Rulemaking Board's ("MSRB") proposal<sup>2</sup> to permit issuers to submit certain additional primary market documents and continuing disclosure information to its Electronic Municipal Market Access system ("EMMA"). More detailed, consistent, and timely disclosure of information regarding municipal securities is critical to investors, who need timely and efficient access to information to perform credit analyses, make informed investment decisions, monitor their securities portfolios, and protect themselves from fraud. The proposal would address these needs by permitting issuers and their designated agents to submit to EMMA preliminary official statements and other related pre-sale documents, official statements, and advance refunding documents. It also would permit the submission to EMMA of information relating to the preparation and submission of audited financial statements and annual financial information and links to other disclosure information. The Institute strongly supports providing greater transparency to investors in the municipal securities markets.<sup>3</sup> As we have stated on a number of occasions, we support the submission of all

1 The Investment Company Institute is the national association of U.S. investment companies, including mutual funds, closed-end funds, exchange-traded funds (ETFs), and unit investment trusts (UITs) (collectively "funds"). ICI seeks to encourage adherence to high ethical standards, promote public understanding, and otherwise advance the interests of funds, their shareholders, directors, and advisers. Members of ICI manage total assets of \$10.5 trillion and serve over 93 million shareholders. 2 SEC Release No. 34-60315 (July 15, 2009), 74 FR 36294 (July 22, 2009). 3 See Letter from Karrie McMillan, General Counsel, Investment Company Institute, to Florence Harmon, Acting Secretary, Securities and Exchange Commission, dated September 22, 2008 ("September 2008 Letter"). Ms. Elizabeth M. Murphy August 21, 2009 Page 2 of 3 available municipal securities disclosure information to a centralized source to ensure the availability, and to improve the utility, of such information.<sup>4</sup> We therefore support the expansion of EMMA to accept voluntary disclosure information as described above. This information is of considerable value to investors and would assist them and other market participants in understanding how audited financial statements were prepared and when such information is expected to be available in the future. It also would provide a source for obtaining additional financial, operating, or other investment-related information. We are particularly supportive of the proposed disclosure regarding an issuer's decision to undertake submitting annual financial information to EMMA within 120 calendar days after the end of the fiscal year. We believe allowing issuers to disclose their intent to pursue this undertaking is a positive step for issuers committed to producing more timely disclosure to

the municipal marketplace. We also support the proposal providing for the submission of updates to EMMA to address situations in which an issuer later determines it is unable to meet the voluntary timeframe and therefore needs to rescind the undertaking. While the proposal addresses the voluntary submission of information by issuers, the Institute continues to recommend the establishment of a meaningful, mandatory timeframe for filing financial reports.<sup>5</sup> Disclosure of annual financial information can take anywhere from three months to twelve months, or even longer.<sup>6</sup> Yet, the financial status of an issuer can change materially during the course of a year -- a fact which has been highlighted by the recent credit crisis. Consequently, failure to make timely financial information available does not allow investors to react in a timely manner to any changes in credit quality or risk. We recognize that establishing a specific timeframe for filing financial reports after the end of the fiscal year would necessitate a significant shift in current practices employed by municipal issuers. We believe, however, that such a change is not only warranted but also long overdue.<sup>7</sup>

4 See, e.g., Letter from Heather Traeger, Assistant Counsel, Investment Company Institute, to Ernesto A. Lanza, Senior Associate General Counsel, Municipal Securities Rulemaking Board, dated February 25, 2008 and Letter from Heather Traeger, Associate Counsel, Investment Company Institute, to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, dated May 20, 2009. 5 See supra note 3. We previously recommended a 180-day deadline as an incremental improvement over the industry practice of 270 days. 6 See, e.g., Letter from Karrie McMillan, General Counsel, Investment Company Institute, to Florence Harmon, Acting Secretary, Securities and Exchange Commission, dated July 25, 2008 and September 2008 Letter, supra note 3. 7 To assist with the transition to a disclosure deadline, implementation could, for example, follow the course of tiered compliance, focusing first on the largest municipal issuers, allowing time for the issuers and the government auditing industry to adjust to the new demands. Ms. Elizabeth M. Murphy August 21, 2009 Page 3 of 3 \* \* \* \* \* We look forward to working with the Commission as it continues to examine these issues. In the meantime, if you have any questions, please feel free to contact me directly at (202) 326-5920 or Ari Burstein at (202) 371-5408. Sincerely, /s/ Heather Traeger Heather Traeger Associate Counsel cc: James Brigagliano, Acting Director Daniel Gallagher, Acting Director Martha Mahan Haines, Chief, Office of Municipal Securities Division of Trading and Markets U.S. Securities and Exchange Commission