

proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NYSE-2009-41 and should be submitted on or before May 20, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>11</sup>

Elizabeth M. Murphy,  
Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-59814; File No. SR-MSRB-2009-04]

### Self-Regulatory Organizations; Municipal Securities Rulemaking Board; Notice of Filing of Proposed Rule Change Relating to the Voluntary Submission of Continuing Disclosure Documents to Its Upcoming Continuing Disclosure Service of the Electronic Municipal Market Access System (EMMA®)

April 23, 2009.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on April 14, 2009, the Municipal Securities Rulemaking Board ("MSRB") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been substantially prepared by the MSRB. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

<sup>11</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The MSRB has filed with the Commission a proposed rule change to amend the continuing disclosure service of the MSRB's Electronic Municipal Market Access system ("EMMA") to accept, and to make publicly available on the Internet, voluntary electronic submissions by issuers, obligated persons and their agents of continuing disclosure documents provided other than in connection with Exchange Act Rule 15c2-12. The MSRB has requested approval of the proposed rule change on or prior to July 1, 2009.

The text of the proposed rule change is available on the MSRB's Web site (<http://www.msrb.org/msrb1/sec.asp>), at the MSRB's principal office, and at the Commission's Public Reference Room.

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the MSRB included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The MSRB has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

#### A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

##### 1. Purpose

The Commission has previously approved the establishment of the continuing disclosure service of EMMA, which will commence operation on July 1, 2009.<sup>3</sup> The EMMA continuing disclosure service will receive electronic submissions of, and will make publicly available on the Internet

<sup>3</sup> See Securities Exchange Act Release No. 59061 (December 5, 2008), 73 FR 75778 (December 12, 2008) (File No. SR-MSRB-2008-05) (approving the continuing disclosure service of EMMA with an effective date of July 1, 2009) (the "EMMA continuing disclosure service approval"). The EMMA continuing disclosure service is designed to commence operation simultaneously with the effectiveness of certain amendments to Exchange Act Rule 15c2-12 adopted by the Commission. See Securities Exchange Act Release No. 59062 (December 5, 2008), 73 FR 76104 (December 15, 2008) (adopting amendments to Exchange Act Rule 15c2-12). Approval of the proposed rule change on or prior to July 1, 2009 would allow the permanent EMMA continuing disclosure service to accept such voluntary disclosures upon commencement of operations.

through the EMMA web portal,<sup>4</sup> continuing disclosure documents and related information from issuers, obligated persons and their agents pursuant to continuing disclosure undertakings entered into consistent with Exchange Act Rule 15c2-12. As approved, the EMMA continuing disclosure service will accept submissions of (i) continuing disclosure documents as described in Rule 15c2-12,<sup>5</sup> and (ii) other disclosure documents specified in continuing disclosure undertakings but not specifically described in Rule 15c2-12.

The proposed rule change would amend the EMMA continuing disclosure service to accept submissions of, and to make publicly available through the EMMA web portal, additional categories of continuing disclosure documents voluntarily submitted by issuers, obligated persons and their agents ("voluntary continuing disclosure document"). The proposed rule change would not establish an obligation upon any issuer or obligated person to make a submission of any voluntary continuing disclosure document. Voluntary continuing disclosure documents would be submitted, processed and disseminated in the same manner as provided with respect to disclosures made to the EMMA continuing disclosure service pursuant to continuing disclosure undertakings entered into consistent with Rule 15c2-12. In particular, such submissions would be accepted solely in electronic form as portable document format (PDF) files accompanied by appropriate indexing information.

To facilitate organizing the submissions for easier access by the public, the proposed rule change would establish a number of additional categories in connection with voluntary continuing disclosure documents which the EMMA continuing disclosure service would accept and for which

<sup>4</sup> The EMMA web portal is accessible at <http://emma.msrb.org>.

<sup>5</sup> Such items consist of: (A) Annual financial information concerning obligated persons; (B) audited financial statements for obligated persons if available and if not included in the annual financial information; (C) notices of the following events, if material: Principal and interest payment delinquencies, non-payment related defaults, unscheduled draws on debt service reserves reflecting financial difficulties, unscheduled draws on credit enhancements reflecting financial difficulties, substitution of credit or liquidity providers or their failure to perform, adverse tax opinions or events affecting the tax-exempt status of the security, modifications to rights of security holders, bond calls, defeasances, release/substitution/sale of property securing repayment of the securities, and rating changes; and (D) notices of failures to provide annual financial information on or before the date specified in the continuing disclosure undertaking.

specific indexing information is to be provided to EMMA during the submission process.<sup>6</sup> These additional or voluntary categories would be applicable both to submissions pursuant to continuing disclosure undertakings of additional disclosure items beyond those items specified under Rule 15c2–12, as previously approved in the EMMA continuing disclosure service approval, and to continuing disclosures submitted voluntarily from time to time at the election of the issuer or obligated person pursuant to this proposed rule change (together categorized as “Additional/Voluntary Disclosures”). The categories of Additional/Voluntary Disclosure would be as follows:

#### Other Financial/Operating Data Disclosures

- Quarterly/monthly financial information
- Change in fiscal year/timing of annual disclosure
- Change in accounting standard
- Interim/additional financial information/operating data
- Budget
- Investment/debt/financial policy
- Material provided to rating agency or credit/liquidity provider
- Consultant reports
- Other financial/operating data

#### Other Event-Based Disclosures

- Amendment to continuing disclosure undertaking
- Change in obligated person
- Notice to investors pursuant to bond documents
- Communication from the Internal Revenue Service
- Tender offer/secondary market purchases
- Bid for auction rate or other securities<sup>7</sup>
- Capital or other financing plan
- Litigation/enforcement action
- Merger/consolidation/reorganization/insolvency/bankruptcy
- Change of trustee, tender agent, remarketing agent, or other on-going party

<sup>6</sup> These categories reflect types of additional information that issuers or obligated persons have sometimes agreed to provide in their continuing disclosure undertakings beyond those items specified under Rule 15c2–12, as well as categories derived from sources such as existing investor relations websites of municipal issuers, recommended practices published by the Government Finance Officers Association, recommended best practices published by the National Federation of Municipal Analysts and suggestions from the MSRB’s investor and issuer advisory groups and other industry participants.

<sup>7</sup> This would include, but not be limited to, any notice pursuant to the SEC no-action letter regarding municipal auction rate securities dated March 14, 2008, available at <http://www.sec.gov/divisions/corpfin/cf-noaction/2008/mars031408.pdf>.

- Derivative or other similar transaction
  - Other event-based disclosures
- With respect to the submission process through EMMA, the various categories of continuing disclosure would be organized to differentiate between categories of items specified under Rule 15c2–12 and Additional/Voluntary Disclosures.<sup>8</sup> In most cases, submitters would be able to index a single submitted document into multiple applicable categories, including categories applicable to Rule 15c2–12 disclosures and to Additional/Voluntary Disclosures. Over time, the MSRB may combine two or more categories, may divide any category into two or more new categories or subcategories, or may form additional categories for purposes of indexing documents submitted in the “other financial/operating data” or “other event-based disclosures” general category as appropriate based on the types of documents received.

The categories of Additional/Voluntary Disclosures would be for the convenience of submitters and users of such documents and do not represent the MSRB’s opinion as to the appropriate items of disclosure with respect to any specific municipal security. The availability of such categories would not imply or create an obligation to make any disclosures, and it would not be uncommon for one or many of the categories to be inapplicable to any particular security. Further, the nature of the specific documents submitted for a particular category may vary widely. Only those categories for which submissions have been made for a particular security would be displayed on the EMMA web portal page for such security.<sup>9</sup>

#### 2. Statutory Basis

The MSRB has adopted the proposed rule change pursuant to Section 15B(b)(2)(C) of the Act,<sup>10</sup> which provides that the MSRB’s rules shall:

be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing,

settling, processing information with respect to, and facilitating transactions in municipal securities, to remove impediments to and perfect the mechanism of a free and open market in municipal securities, and, in general, to protect investors and the public interest.

The EMMA continuing disclosure service, as amended by the proposed rule change, would serve as an additional mechanism by which the MSRB works toward removing impediments to and helping to perfect the mechanisms of a free and open market in municipal securities, and would serve to promote the statutory mandate of the MSRB to protect investors and the public interest. The inclusion of voluntary continuing disclosure documents in the EMMA continuing disclosure service would further help make information useful for making investment decisions more easily accessible to all participants in the municipal securities market on an equal basis throughout the life of the securities. Broad access to continuing disclosure documents through the EMMA continuing disclosure service should assist in preventing fraudulent and manipulative acts and practices by improving the opportunity for public investors to access material information about issuers and their securities. A single centralized and searchable venue for free public access to disclosure information should promote a more fair and efficient municipal securities market in which transactions are effected on the basis of material information available to all parties to such transactions, which should allow for fairer pricing of transactions based on a more complete understanding of the terms of the securities and the potential investment risks. Free access to this information—previously generally available, if at all, through paid subscription services or on a per-document fee basis—should reduce transaction costs for dealers and investors.

#### *B. Self-Regulatory Organization’s Statement on Burden on Competition*

The MSRB does not believe that the proposed rule change would impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. Documents and information provided through the continuing disclosure service would be available to all persons simultaneously. In addition to making the documents and information available for free on the EMMA portal to all members of the public, the MSRB would make such documents and information available by subscription on an equal and non-

<sup>8</sup> EMMA would not differentiate between an Additional/Voluntary Disclosure made pursuant to a continuing disclosure undertaking and an Additional/Voluntary Disclosure made outside of a continuing disclosure undertaking, and all categories of Additional/Voluntary Disclosures would be available for either type of submission.

<sup>9</sup> Thus, specific Rule 15c2–12 Disclosure and Additional/Voluntary Disclosure category headings would not be displayed on the EMMA web portal for a security or issue if there is no disclosure document available from EMMA for such category.

<sup>10</sup> 15 U.S.C. 78o–4(b)(2)(C).

discriminatory basis without imposing restrictions on subscribers from, or imposing additional charges on subscribers for, re-disseminating such documents or otherwise offering value-added services and products based on such documents on terms determined by each subscriber. In particular, the MSRB believes that the proposed rule change will make most voluntary continuing disclosure documents available for the first time to a broader group of private information services and, therefore, would promote, rather than hinder, further competition, growth and innovation in this area. The MSRB believes that the benefits realized by the investing public from the broader and easier availability of disclosure information about municipal securities that would be provided through the EMMA continuing disclosure service would justify any potentially negative impact on existing enterprises from the operation of EMMA.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

Written comments were neither solicited nor received on the proposed rule change. However, in a notice published by the MSRB on January 31, 2008, the MSRB described and sought comment on its plan for implementing a continuing disclosure service that would be integrated into other services to be offered through EMMA (the "2008 Notice").<sup>11</sup> In particular, the MSRB stated its plan to institute the continuing disclosure service to accept submissions of continuing disclosure documents pursuant to continuing disclosure undertakings consistent with Rule 15c2-12. In addition to making continuing disclosures available at no cost through the EMMA portal, the MSRB would make such disclosures available through a paid real-time data stream subscription for re-dissemination or other use by subscribers. One commentator asked whether periodic filings other than submissions of annual financial information, such as quarterly or monthly financial results, would be accepted.<sup>12</sup> Another commentator stated

<sup>11</sup> See MSRB Notice 2008-05 (January 31, 2008). The comments received on this notice are discussed in SR-MSRB-2008-05 (July 29, 2008). See also Securities Exchange Act Release No. 58256 (July 30, 2008) 73 FR 46161 (August 7, 2008) (File No. SR-MSRB-2008-05) (proposing the establishment of the continuing disclosure service of EMMA). Comments relating to voluntary filings of continuing disclosure documents not contemplated under Exchange Act Rule 15c2-12 are discussed herein.

<sup>12</sup> See letter from Robert Donovan and Stephen M. Fillebrown, National Association of Health and

that it strongly believed that EMMA should be capable of housing all disclosure documents, extending beyond those specifically required by Rule 15c2-12, and could only support a system that allows access to other pertinent information.<sup>13</sup> The MSRB supports the dissemination of additional continuing disclosures beyond the baseline established by Rule 15c2-12 and is providing for such submission and dissemination in this filing.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

- A. by order approve such proposed rule change, or
- B. institute proceedings to determine whether the proposed rule change should be disapproved.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-MSRB-2009-04 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-MSRB-2009-04. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will

Education Facilities Finance Authorities, to Ernesto A. Lanza, Senior Associate General Counsel, MSRB, dated March 3, 2008.

<sup>13</sup> See letter from Rob Yolland, Chairman, National Federation of Municipal Analysts, to Mr. Lanza, dated March 10, 2008.

post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the MSRB. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-MSRB-2009-04 and should be submitted on or before May 20, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>14</sup>

**Elizabeth M. Murphy,**  
*Secretary.*

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**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-59816; File No. SR-NYSEAmex-2009-13]

**Self-Regulatory Organizations; NYSE Amex LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending NYSE Amex Equities Rules 15 and 123C Regarding the Operation of Its NYSE Amex Order Imbalance Information Service To Modify the Reference Price at Which the Exchange Reports the Order Imbalance Information and Clarify What Information Is Included and Excluded From the Order Imbalance Information Reports**

April 23, 2009.

Pursuant to Section 19(b)(1)<sup>1</sup> of the Securities Exchange Act of 1934 (the "Act")<sup>2</sup> and Rule 19b-4 thereunder,<sup>3</sup> notice is hereby given that, on April 17,

<sup>14</sup> 17 CFR 200.30-3(a)(12).

<sup>15</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 15 U.S.C. 78a.

<sup>3</sup> 17 CFR 240.19b-4.