Federal Register

Monday,
December 15, 2008

Part II

Securities and Exchange Commission

17 CFR Part 240
Amendment to Municipal Securities Disclosure; Rule

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 240

[Release No. 34–59062; File No. S7–21–08]

RIN 3235–AK20

Amendment to Municipal Securities Disclosure

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: The Securities and Exchange Commission (''Commission'') is adopting amendments to a rule under the Securities Exchange Act of 1934 (''Exchange Act'') relating to municipal securities disclosure. This final rule amends certain requirements regarding the information that the broker, dealer, or municipal securities dealer acting as an underwriter in a primary offering of municipal securities must reasonably determine that an issuer of municipal securities or an obligated person has undertaken, in a written agreement or contract for the benefit of holders of the issuer's municipal securities, to provide. Specifically, the amendments require the broker, dealer, or municipal securities dealer to reasonably determine that the issuer or obligated person has agreed: To provide the information covered by the written agreement to the Municipal Securities Rulemaking Board (''MSRB'' or ''Board''), instead of to multiple nationally recognized municipal securities information repositories (''NRMSIRs'') and state information depositories (''SIDs''); and to provide such information in an electronic format and accompanied by identifying information as prescribed by the MSRB. The Commission's rulemaking is intended to improve the availability of information about municipal securities to investors, market professionals, and the public generally. Concurrently, we have approved a companion proposal by the MSRB relating to its Electronic Municipal Market Access (''EMMA'') system for municipal securities disclosures. Finally, we are withdrawing proposed amendments to the Rule, issued in 2006, that would have eliminated the MSRB as a location to which issuers could submit certain municipal disclosure documents.

DATES: *Effective Date:* July 1, 2009.

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SUPPLEMENTARY INFORMATION: We are adopting amendments to Rule 15c2–12 [1] under the Exchange Act.[2]

I. Executive Summary

On August 7, 2008, the Commission published for comment amendments to Rule 15c2–12 to provide for a single centralized repository for the electronic collection and availability of information about municipal securities outstanding in the secondary market.[3] The comment period for the proposed amendments expired on September 22, 2008. The proposed amendments would require the Participating Underwriter to reasonably determine that the issuer or obligated person has undertaken in its continuing disclosure agreement to provide continuing disclosure documents: (1) Solely to the MSRB; and (2) in an electronic format and accompanied by identifying information, as prescribed by the MSRB. We received twenty-three comment letters in response to our proposed amendments from a wide range of commenters.[4] The respondents included an issuer; a mutual fund complex; NRMSIRs; SIDs; the MSRB; trade organizations representing broker-dealers, investment advisors, financial analysts, government financial officials, and bond lawyers; and individual investors. The majority of commenters supported the proposed amendments and believed that the Commission's proposal would help improve disclosure for municipal securities, protect investors, restore confidence in the market, assist investors in making informed investment decisions, and make it easier for issuers and other obligated persons to comply with their continuing disclosure agreements. Of the comment letters we received, twenty expressed their support of the proposed amendments,[5] two NRMSIRs opposed the amendments [6] and one commenter neither expressed its support of nor opposition to the proposed amendments.[7] In addition, a number of commenters offered suggestions relating to the implementation and operation of the proposed disclosure system.[8]

In general, commenters supported the use of a single repository for receiving continuing disclosures and believed that such an arrangement would be more efficient than the current decentralized system.[9] Commenters generally expressed their support for the MSRB as the single repository and believed that the MSRB would be a logical operator of the proposed disclosure system.[10] Commenters also expressed their support for the use of an entirely electronic format for submissions to the single repository, with some commenters stating that paper copies should not be permitted.[11] In addition, commenters supported the indexing of information to be submitted to the single repository but had a variety of opinions on the scope of the information to be included in such indexing.[12] Some commenters expressed concern about access to information submitted to the single repository and the fees that could result from the use of such repository,[13] with

[1] 17 CFR 240.15c2–12.

[2] 15 U.S.C. 78a *et seq.*

[3] *See* Securities Exchange Act Release No. 58255 (July 30, 2008), 73 FR 46138 (August 7, 2008) (''Proposing Release'').

[4] Exhibit A, which is attached to this release, contains the full title of each comment letter cited herein and the citation key for these letters. Copies of all comments received on the proposed amendments are available on the Commission's Internet Web site, located at *http://www.sec.gov/comments/s7-21-08/s72108.shtml,* and in the Commission's Public Reference Room at its Washington, DC headquarters.

[5] *See* Busby Letter, GFOA Letter, Vanguard Letter, SIFMA Letter, MSRB Letter, NABL Letter, IAA Letter, Treasurer of the State of Connecticut Letter, e-certus Letter, Texas MAC Letter, NASACT Letter, OMAC Letter, ICI Letter, NAHEFFA Letter, Multiple-Markets Letter, NFMA Letter, EDGAR Online Letter, Dickman Letter, Mooney Letter, Grant Letter.

[6] *See* SPSE Letter and DPC DATA Letter.

[7] *See* DAC Letter.

[8] *See, e.g.*, GFOA Letter, NABL Letter, IAA Letter, e-certus Letter, NAHEFFA Letter, Multiple-Markets Letter, NFMA Letter, and EDGAR Online Letter.

[9] *See, e.g.*, OMAC Letter, NFMA Letter, and Treasurer of the State of Connecticut Letter.

[10] *See, e.g.*, GFOA Letter, Vanguard Letter, SIFMA Letter, NASACT Letter, ICI Letter, and NFMA Letter.

[11] *See, e.g.*, Vanguard Letter, at 3, and Multiple-Markets Letter, at 2.

[12] *See, e.g.*, GFOA Letter, Vanguard Letter, ICI Letter, OMAC Letter, NAHEFFA Letter, Multiple-Markets Letter, NFMA Letter, Edgar Online Letter, and DAC Letter. Neither the proposed nor the final Rule 15c2–12 amendments address the specific information to be indexed. Indexing information is addressed in the MSRB's proposed rule change and the Commission's approval order relating to the EMMA system and is considered separately. *See* Securities Exchange Act Release Nos. 58256 (July 30, 2008), 73 FR 46161 (August 7, 2008) (SR–MSRB–2008–05) (''MSRB EMMA Proposal'') and 59061 (December 5, 2008)(order approving MSRB EMMA Proposal) (''MSRB Approval Order'').

[13] *See, e.g.*, NFMA Letter, GFOA Letter, Vanguard Letter, IAA Letter, ICI Letter, and SPSE Letter.

some commenters opposing a system that would impose fees on issuers, obligated persons or investors.[14] One commenter believed that the exemptive provision in paragraph (d)(2) of the Rule, which generally is used by smaller issuers, should be retained in its current form.[15] A number of comment letters addressed both the proposed amendments and the MSRB's companion proposal to establish a continuing disclosure service within its EMMA system.[16] This release describes and addresses only those portions of the comment letters that are relevant to the proposed amendments; the portions of the comment letters pertaining to the continuing disclosure component of the MSRB's EMMA system are considered separately in the Commission's order approving the MSRB's proposal, which we also are issuing today.[17]

We have carefully considered all the comments we received regarding the proposed amendments and, as discussed below, are adopting the amendments, as proposed. In adopting these amendments, we are furthering our intent to deter fraud and manipulation in the municipal securities market by improving the availability of information about municipal securities outstanding in the secondary market.

II. Background

A. History of Rule 15c2–12

We have long been concerned with improving the quality, timing, and dissemination of disclosure in the municipal securities markets. In an effort to improve the transparency of the municipal securities market, in 1989, we adopted Rule 15c2–12 (''Rule'' or ''Rule 15c2–12'') and an accompanying interpretation modifying a previously published interpretation of the legal obligations of underwriters of municipal securities.[18] At the time of its adoption in 1989, Rule 15c2–12 required, and still requires, an underwriter acting in a primary offering of municipal securities of $1,000,000 or more: (1) To obtain and review an official statement ''deemed final'' by an issuer of the securities, except for the omission of specified information, prior to making a bid, purchase, offer, or sale of municipal securities; (2) in non-competitively bid offerings, to send, upon request, a copy of the most recent preliminary official statement (if one exists) to potential customers; (3) to send, upon request, a copy of the final official statement to potential customers for a specified period of time; and (4) to contract with the issuer to receive, within a specified time, sufficient copies of the final official statement to comply with the Rule's delivery requirement, and the requirements of the rules of the MSRB.[19]

While the availability of primary offering disclosure significantly improved following the adoption of Rule 15c2–12, there was a continuing concern about the adequacy of disclosure in the secondary market.[20] To enhance the quality, timing, and dissemination of disclosure in the secondary municipal securities market, in 1994 we adopted amendments to Rule 15c2–12.[21] Among other things, the 1994 Amendments placed certain requirements on brokers, dealers, and municipal securities dealers (''Dealers'' or, when used in connection with primary offerings, ''Participating Underwriters''). In adopting the 1994 Amendments, we intended ''to deter fraud and manipulation in the municipal securities market'' by prohibiting the underwriting and subsequent recommendation of transactions in municipal securities for which adequate information was not available on an ongoing basis.[22]

Specifically, under the 1994 Amendments, Participating Underwriters are prohibited, subject to certain exemptions, from purchasing or selling municipal securities covered by the Rule in a primary offering, unless the Participating Underwriter has reasonably determined that an issuer of municipal securities or an obligated person[23] has undertaken in a written agreement or contract for the benefit of holders of such securities (''continuing disclosure agreement'') to provide specified annual information and event notices to certain information repositories. The information to be provided consists of: (1) Certain annual financial and operating information and audited financial statements (''annual filings'');[24] (2) notices of the occurrence of any of eleven specific events (''material event notices'');[25] 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'').[26] The 1994 Amendments require the Participating Underwriter to reasonably determine that an issuer of municipal securities or an obligated person has undertaken in the continuing disclosure agreement to provide: (1) Annual filings to each NRMSIR; (2) material event notices and failure to file notices either to each NRMSIR or to the

[14] *See, e.g.*, GFOA Letter, Vanguard Letter, IAA Letter, ICI Letter, and NAHEFFA Letter.

[15] *See* NABL Letter, at 2.

[16] *See* MSRB EMMA Proposal, *supra* note 12.

[17] *See* MSRB Approval Order, *supra* note 12.

[18] *See* Securities Exchange Act Release No. 26985 (June 28, 1989), 54 FR 28799 (July 10, 1989) (''1989 Adopting Release'').

[19] 17 CFR 240.15c2–12.

[20] In 1993, the Commission's Division of Market Regulation (n/k/a the Division of Trading and Markets) conducted a comprehensive review of many aspects of the municipal securities market, including secondary market disclosure (''1993 Staff Report''). Findings in the 1993 Staff Report highlighted the need for improved disclosure practices in both the primary and secondary municipal securities markets. The 1993 Staff Report found that investors need sufficient current information about issuers and significant obligors to better protect themselves from fraud and manipulation, to better evaluate offering prices, to decide which municipal securities to buy, and to decide when to sell. Moreover, the 1993 Staff Report found that the growing participation of individuals as both direct and indirect purchasers of municipal securities underscored the need for sound recommendations by brokers, dealers, and municipal securities dealers. *See* Securities and Exchange Commission, Division of Market Regulation (n/k/a Division of Trading and Markets), *Staff Report on the Municipal Securities Market* (September 1993) (available at *http://www.sec.gov/info/municipal.shtml*).

[21] *See* Securities Exchange Act Release No. 34961 (November 10, 1994), 59 FR 59590 (November 17, 1994) (''1994 Amendments'').

In light of the growing volume of municipal securities offerings, as well as the growing ownership of municipal securities by individual investors, in March 1994, the Commission published the *Statement of the Commission Regarding Disclosure Obligations of Municipal Securities Issuers and Others. See* Securities Exchange Act Release No. 33741 (March 9, 1994), 59 FR 12748 (March 17, 1994). The Commission intended that its statement of views with respect to disclosures under the federal securities laws in the municipal market would encourage and expedite the ongoing efforts by market participants to improve disclosure practices, particularly in the secondary market, and to assist market participants in meeting their obligations under the antifraud provisions. *Id.*

[22] *See* 1994 Amendments, *supra* note 21.

[23] Obligated persons include persons, including the issuer, committed by contract or other arrangement to support payment of all or part of the obligations on the municipal securities to be sold in an offering. *See* 17 CFR 240.15c2–12(f)(10).

[24] 17 CFR 240.15c2–12(b)(5)(i)(A) and (B).

[25] 17 CFR 240.15c2–12(b)(5)(i)(C). The following events, if material, require notice: (1) Principal and interest payment delinquencies; (2) non-payment related defaults; (3) unscheduled draws on debt service reserves reflecting financial difficulties; (4) unscheduled draws on credit enhancements reflecting financial difficulties; (5) substitution of credit or liquidity providers, or their failure to perform; (6) adverse tax opinions or events affecting the tax-exempt status of the security; (7) modifications to rights of security holders; (8) bond calls; (9) defeasances; (10) release, substitution, or sale of property securing repayment of the securities; and (11) rating changes.

In addition, Rule 15c2–12(d)(2) provides an exemption from the application of paragraph (b)(5) of the Rule with respect to primary offerings if, among other things, the issuer or obligated person has agreed to a limited disclosure obligation, including sending certain material event notices to each NRMSIR or the MSRB, as well as the appropriate SID. *See* 17 CFR 240.15c2–12(d)(2).

[26] 17 CFR 240.15c2–12(b)(5)(i)(D). Annual filings, material event notices, and failure to file notices are referred to collectively herein as ''continuing disclosure documents.''

MSRB; and (3) in the case of states that established SIDs, all continuing disclosure documents to the appropriate SID. Finally, the 1994 Amendments revise the definition of ''final official statement'' to include a description of the issuer's or obligated person's continuing disclosure undertakings for the securities being offered, and of any instances in the previous five years in which the issuer or obligated person failed to comply, in all material respects, with undertakings in previous continuing disclosure agreements.

B. Disclosure Practices in the Secondary Market and Need for Improved Availability to Continuing Disclosure

Since the adoption of Rule 15c2–12 in 1989 and its subsequent amendment in 1994, the size of the municipal securities market has grown considerably.[27] There were over $2.6 trillion of municipal securities outstanding at the end of 2007.[28] Notably, at the end of 2007, retail investors held approximately 35% of outstanding municipal securities directly and up to another 36% indirectly through money market funds, mutual funds, and closed end funds.[29] There is also substantial trading volume in the municipal securities market. According to the MSRB, more than $6.6 trillion of long and short term municipal securities were traded in 2007 in more than 9 million transactions.[30] Further, the municipal securities market is extremely diverse, with more than 50,000 state and local issuers of these securities.[31]

Currently, there are four NRMSIRs[32] and three SIDs.[33] Each of the NRMSIRs utilizes the information obtained from continuing disclosure documents to create proprietary information products that are primarily sold to and used by dealers, institutional investors and other market participants who subscribe to such products. With respect to the availability of municipal securities information to retail investors, each of the NRMSIRs also makes continuing disclosure documents available for sale to non-subscribers.[34]

Although the existing practice for the collection and availability of municipal securities disclosures has substantially improved the availability of information to the market, we believe that improvements could achieve more efficient, effective, and wider availability of municipal securities information to market participants.[35] Among other things, improvements in information availability may allow investors to obtain information more readily and may help them to make more informed investment decisions. Specifically, we believe that municipal securities disclosure documents should be made more readily and more promptly available to the public and that all investors should have better access to important market information that may affect the price of a municipal security, such as information in financial statements and notices regarding defaults and changes in ratings, credit enhancement provider, and tax status.

Furthermore, we believe that improved access to the information in continuing disclosure documents not only would provide the investing public with important information regarding municipal securities, both during offerings and on an ongoing basis, but also would help fulfill the regulatory and information needs of municipal market participants, including Dealers, Participating Underwriters, mutual funds, and others. For example, many mutual funds include municipal securities in their portfolios that they routinely monitor for regulatory and other reasons.[36] They do so by reviewing annual filings, as well as material event notices and failure to file notices, obtained from NRMSIRs and SIDs.[37] In addition, the MSRB requires Dealers to disclose to a customer at the time of trade all material facts about a transaction known by the Dealer.[38] Further, the MSRB requires a Dealer to disclose material facts about a security when such facts are reasonably accessible to the market.[39] Accordingly, a Dealer is responsible for disclosing to a customer any material fact concerning a municipal security transaction made publicly available through sources such as NRMSIRs, the MSRB's Municipal Securities Information Library (''MSIL'') system,[40] the MSRB's Real-Time Transaction Reporting System (''RTRS''), rating agency reports and

[27] According to statistics assembled by SIFMA, the amount of outstanding municipal securities grew from $1.2616 trillion in 1996 to $2.617.4 trillion at the end of 2007. *See* SIFMA ''Outstanding U.S Bond Market Debt'' (available at *http://www.sifma.org/research/pdf/Overall_Outstanding.pdf*).

[28] *See* SIFMA ''Outstanding U.S. Bond Market Debt'' (available at *http://www.sifma.org/research/pdf/Overall_Outstanding.pdf*).

[29] *See* SIFMA ''Holders of U.S. Municipal Securities'' (available at *http://www.sifma.org/research/pdf/Holders_Municipal_Securities.pdf*).

[30] *See* MSRB's Real-Time Transaction Reporting Statistical Information, Monthly Summaries 2007 (available at *http://www.msrb.org/msrb1/TRSweb/MarketStats/statistical_patterns_in_the_muni.htm*).

[31] *See* Securities Exchange Act Release No. 33741, *supra* note 21.

[32] The four NRMSIRs are the Bloomberg Municipal Repository, DPC DATA, Interactive Data Pricing and Reference Data, Inc., and SPSE.

[33] The three SIDs are the Municipal Advisory Council of Michigan, Texas MAC, and OMAC.

[34] See *http://www.bloomberg.com/markets/rates/municontacts.html* (Bloomberg Municipal Repository); *http://www.munifilings.com/help/help.cfm* (DPC DATA); *http://www.interactivedata-prd.com/07company_info/about_us/MN/NRMSIR.shtml* (Interactive Data Pricing and Reference Data, Inc.); and *http://www.disclosuredirectory.standardandpoors.com/* (SPSE).

[35] The Commission notes that the aspects of the Rule that relate to the provision of continuing disclosure documents to multiple locations (*i.e.*, to each NRMSIR and SID) may have engendered certain inefficiencies in the current system. *See* 17 CFR 240.15c2–12(b)(5)(i)(A) through (D). For instance, there have been reports that NRMSIRs may not receive continuing disclosure documents concurrently, resulting in the uneven availability of documents from the various NRMSIRs for some period of time. There also have been reports of inconsistent document collections among NRMSIRs, possibly due to the failure of some issuers or obligated persons to provide continuing disclosure documents to each NRMSIR. Finally, there have been reports indicating possible weaknesses in document retrieval at the NRMSIRs. *See, e.g.*, Troy L. Kilpatrick and Antonio Portuondo, *Is This the Last Chance for the Muni Industry to Self-Regulate?*, The Bond Buyer, August 6, 2007, and comments made at the 2001 Municipal Market Roundtable—''Secondary Market Disclosure for the 21st Century'' held November 14, 2001 (''2001 Roundtable''), and the 2000 Municipal Market Roundtable held October 12, 2000 (available at *http://www.sec.gov/info/municipal/roundtables/thirdmuniround.htm* and *http://www.sec.gov/info/municipal/roundtables/2000participants.htm*, respectively).

[36] For example, Rule 2a–7 under the Investment Company Act of 1940 specifies the characteristics of investments that may be purchased and held by money market funds. Among other requirements, Rule 2a–7 requires a money market fund to limit its portfolio investments to those securities that the fund's board of directors determines present minimal credit risks (including factors in addition to any assigned rating). *See* Rule 2a–7(c)(3), 17 CFR 270.2a–7(c)(3).

[37] *See, e.g.*, the comments of Leslie Richards-Yellen, Principal, The Vanguard Group, at the 2001 Roundtable, *supra* note 35.

[38] *See* MSRB ''Interpretive Notice Regarding Rule G–17 on Disclosure of Material Facts'' (March 20, 2002) (available at *http://www.msrb.org/msrb1/rules/notg17.htm*). *See also* Securities Exchange Act Release No. 45591 (March 18, 2002), 67 FR 13673 (March 25, 2002) (SR–MSRB–2002–01) (order approving MSRB's proposed interpretation of the duty to deal fairly set forth in MSRB Rule G–17).

[39] *Id.*

[40] Municipal Securities Information Library and MSIL are registered trademarks of the MSRB. The Official Statement and Advance Refunding Document (''OS/ARD'') system of the MSIL system was initially approved by the Commission in 1991 and was amended in 2001 to establish the MSRB's current optional electronic system for underwriters to submit official statements and advance refunding documents. *See* Securities Exchange Act Release Nos. 29298 (June 13, 1991), 56 FR 28194 (June 19, 1991) (File No. SR–MSRB–90–2) (order approving MSRB's proposal to establish and operate the OS/ARD of the MSIL system, through which information collected pursuant to MSRB Rule G–36 would be made available electronically to market participants and information vendors) and 44643 (August 1, 2001), 66 FR 42243 (August 10, 2001) (File No. SR–MSRB–2001–03) (order approving MSRB's proposal to amend the OS/ARD system to establish an optional procedure for electronic submissions of required materials under MSRB Rule G–36).

other sources of information relating to the municipal securities transaction generally used by Dealers that affect transactions in the type of municipal securities at issue.[41] Dealers use the information contained in the continuing disclosure documents to carry out these obligations. Therefore, 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. For these reasons, we proposed, and are now adopting, amendments to Rule 15c2–12 that, in our view, will provide municipal market participants with more efficient access to information in continuing disclosure documents to satisfy their regulatory requirements and informational needs.

C. The MSRB's Electronic Systems

In 2006, the Commission published for comment proposed amendments to Rule 15c2–12 in response to a petition from the MSRB[42] that would permit the MSRB to close its Continuing Disclosure Information Net (''CDINet'') system, thereby eliminating the MSRB as a location to which issuers could submit material event notices and failure to file notices.[43] In the 2006 Proposed Amendments, we indicated our belief that, given the limited usage of the MSRB's CDINet system, among other things, the proposed elimination of the provision in Rule 15c2–12 that allows the filing of material event notices with the MSRB was warranted.[44]

We recently approved the MSRB's proposed rule change, filed under section 19(b) of the Exchange Act,[45] to establish a pilot program for an Internet-based public access portal (''pilot portal'') for the consolidated availability of primary offering information about municipal securities that currently is made available in paper form, subject to copying charges, at the MSRB's public access facility, and electronically by paid subscription on a daily over-night basis and by purchase of annual back-log collections.[46] The MSRB has implemented the pilot portal as a service of its new Internet-based public access system, which it designated as the EMMA system, as a pilot facility within the MSIL system.

In the course of developing the primary offering information component of the EMMA system, the MSRB determined that it could incorporate in the EMMA system the collection and availability of continuing disclosure documents, thus eliminating the need for the Commission to adopt its proposed changes to Rule 15c2–12 to remove the MSRB as a repository of material event notices.[47] As a result, the MSRB submitted to the Commission a proposed rule change, filed under section 19(b) of the Exchange Act,[48] to expand the EMMA system to accommodate the collection and availability of annual filings, material event notices and failure to file notices.[49] We published the MSRB's proposal to incorporate continuing disclosure documents in the EMMA system simultaneously with the proposed amendments to Rule 15c2–12 that we are adopting today.[50] While the MSRB still intends to propose to terminate its CDINet System, subject to Commission approval,[51] the MSRB's subsequent decision to file a proposed rule change to expand the EMMA system to accommodate annual filings, material event notices, and failure to file notices[52] has led it to withdraw the MSRB Petition.[53] In the Proposing Release, we noted that, in light of our most recent proposed amendments, we were considering whether to withdraw our 2006 Proposed Amendments.[54] We received no comments regarding our proposed withdrawal of the 2006 Proposed Amendments. Therefore, in conjunction with the Commission's proposal today to amend Rule 15c2–12, the Commission is withdrawing its 2006 Proposed Amendments.

III. Discussion of Amendments and Comments Received

A. Amendments to Rule 15c2–12

We are adopting, without change, our proposed amendments to the Rule, which facilitate the collection and availability of information about outstanding municipal securities. For the reasons discussed in this release and the Proposing Release, we believe that the amendments are consistent with the Commission's mandate to, among other things, adopt rules reasonably designed to prevent fraud in the municipal securities market.

In summary, we are amending paragraph (b)(5) of Rule 15c2–12, which relates to a Participating Underwriter's obligation under the Rule to reasonably determine that issuers or obligated persons have contractually agreed to provide specified documents, in connection with primary offerings subject to the Rule. The final amendments require a Participating Underwriter to reasonably determine that the issuer or obligated person has agreed at the time of a primary offering: (1) To provide the continuing disclosure documents to the MSRB instead of to each NRMSIR and the appropriate SID, if any; and (2) to provide the continuing disclosure documents in an electronic format and accompanied by identifying information as prescribed by the MSRB.[55] In addition, the final amendments make comparable changes to paragraph (d)(2) of the Rule, which provides for a limited exemption from Rule 15c2–12(b)(5) as long as specified conditions are met. We also are making revisions to other provisions of Rule 15c2–12 to reflect that the MSRB will be the sole repository and we are providing for a transition mechanism to accommodate existing continuing disclosure agreements that refer to NRMSIRs. As noted above, the rule amendments as adopted are identical to the proposed amendments.

1. Use of a Single Repository

We are adopting amendments to Rule 15c2–12 to provide for a single centralized repository that will receive submissions in an electronic format. These amendments are expected to encourage a more efficient and effective process for the submission and availability of continuing disclosure

[41] *See supra* note 38.

[42] *See* Letter from Diane G. Klinke, General Counsel, MSRB, to Jonathan G. Katz, Secretary, Commission, dated September 8, 2005 (''MSRB Petition'') (File No. 4–508).

[43] *See* Securities Exchange Act Release No. 54863 (December 4, 2006), 71 FR 71109 (December 8, 2006) (''2006 Proposed Amendments''). According to the MSRB Petition, the CDINet system was designed to permit issuers to satisfy their undertakings to provide material event notices through a single submission to the MSRB, rather than through separate submissions to each of the NRMSIRs. The MSRB stated that relatively few issuers had opted to use the CDINet system, and, in recent years, usage of the CDINet system had diminished. *See* MSRB Petition, *supra* note 42.

[44] *See* 2006 Proposed Amendments, *supra* note 43.

[45] 15 U.S.C. 78s(b).

[46] *See* Securities Exchange Act Release No. 57577 (March 28, 2008), 73 FR 18022 (April 2, 2008) (File No. SR–MSRB–2007–06) (order approving the pilot portal). Primary offering information consists of the official statement and the advance refunding document that Participating Underwriters are required to send to the MSRB under MSRB Rule G–36.

[47] *See* MSRB EMMA Proposal, *supra* note 12.

[48] 15 U.S.C. 78s(b).

[49] *See* MSRB EMMA Proposal, *supra* note 12.

[50] *Id.*

[51] *Id.*

[52] *Id.*

[53] *See* letter to Florence E. Harmon, Acting Secretary, Commission, from Ernesto A. Lanza, General Counsel, MSRB, dated October 22, 2008.

[54] *See* Proposing Release, *supra* note 3, 73 FR at 46141.

[55] We note that, as part of its EMMA proposal filed with the Commission under Section 19(b) of the Exchange Act, the MSRB set forth the electronic format it proposes to use. *See* MSRB EMMA Proposal, *supra* note 12.

documents. In our view, a single repository that receives submissions electronically should assist in facilitating and simplifying the process of submitting continuing disclosure documents under the Rule. Issuers and obligated persons will be able to comply with their undertakings by submitting their continuing disclosure documents only to one repository, as opposed to multiple repositories.

We also believe that having a centralized repository that receives submissions in an electronic format will help provide ready and prompt access to continuing disclosure documents by investors and other municipal securities market participants. Rather than having to approach multiple locations, investors and other market participants will be able to go solely to one location to retrieve continuing disclosure documents, thereby allowing for a more convenient means to obtain such information. Moreover, we believe that having one repository electronically collect and make available all continuing disclosure documents will increase the likelihood that investors and other market participants will obtain complete information about a municipal security or its issuer, since the information will not be distributed across multiple repositories. In addition, we expect that the consistent availability of municipal secondary market disclosures from a single source can simplify compliance with regulatory requirements by Participating Underwriters and others, such as mutual funds and Dealers. Information vendors (including NRMSIRs and SIDs) and others also will have ready access to continuing disclosure documents from a single source for use in their value-added products.

We have long been interested in improving the availability of disclosure in the municipal securities market. At the time we adopted Rule 15c2–12 and amended it in 1994, disclosure documents were submitted in paper form. We believed that, in such an environment where document retrieval would be handled manually, the establishment of one or more repositories could be beneficial in widening the retrieval and availability of information in the secondary market, since the public could obtain the disclosure documents from multiple locations. Our objective of encouraging greater availability of municipal securities information remains unchanged. However, as indicated above, there have been significant inefficiencies in the current use of multiple repositories that likely have impacted the public's ability to retrieve continuing disclosure documents.[56] Although in the 1989 Adopting Release we supported the development of an information linkage among the repositories, none was established to help broaden the availability of the disclosure information. Since the adoption of the 1994 Amendments, there have been significant advancements in technology and information systems, including the use of the Internet, to provide information quickly and inexpensively to market participants and investors. In this regard, we believe that the use of a single repository to receive, in an electronic format, and make available continuing disclosure documents, in an electronic format, will substantially and effectively increase the availability of information about municipal issues, thereby preventing fraud, and enhance the efficiency of the secondary trading market.

In the Proposing Release, we requested comment on whether we should amend Rule 15c2–12 as proposed, or whether it would be preferable to continue to have multiple sources for such information. In addition, with respect to the transition to a sole repository for continuing disclosure documents, we requested comment on whether commenters foresee any differences that could occur between the existing structure of multiple NRMSIRs and one repository regarding the scope, quantity, and continuity of information.

Many commenters supported amending the Rule to provide for only one repository instead of multiple repositories for the submission of, and access to, continuing disclosure documents.[57] Generally, commenters expressed the view that the creation of a single repository would be a significant step forward in making municipal disclosure more transparent in its scope,[58] more efficient in its delivery,[59] more consistent[60] and comparable[61] across issuers, and more accessible for investors,[62] particularly individual investors, and others—enhancing the overall efficiency of the secondary trading market for municipal securities.[63] As discussed below, two commenters objected to the establishment of a single repository.[64]

In response to our question about whether having one repository instead of multiple repositories for the submission of, and access to, continuing disclosure documents would improve access to secondary market disclosure for investors and municipal securities market participants, commenters expressed the expectation that allowing only one entity to serve as the repository for continuing disclosure documents would greatly streamline the current system and resolve previous accessibility and consistency issues that resulted from submissions to several different information repositories.[65] In addition, commenters noted that having a single repository for secondary market disclosures would benefit investors by allowing them to obtain complete information without having to search for disclosures in multiple locations.[66] One commenter stated that its members reported that it is rare for municipal securities disclosure information currently to be found in one location.[67] This commenter expressed the view that a single repository would significantly improve information availability by allowing investors to obtain information more readily, increasing the likelihood that investors can obtain more complete information and enabling them to better protect themselves from misrepresentation or other fraudulent activities, and would assist investors in making more informed investment decisions.[68] Another commenter echoed this concern when, in discussing the discrepancies that currently exist, it stated that it is not reasonable to expect an investor to have to search multiple locations for the same information.[69] One commenter—a financial information disseminator—noted that it is not feasible under the current system for it to have access to municipal bond

[56] *See supra* note 35.

[57] *See, e.g.*, GFOA Letter, at 1, Vanguard Letter, at 1, SIFMA Letter, at 1, MSRB Letter, at 1, Treasurer of the State of Connecticut Letter, at 1, IAA Letter, at 1–2, Texas MAC Letter, at 1, NAHEFFA Letter, at 1, NFMA Letter, at 1, NASACT Letter, at 1, and Multiple-Markets Letter, at 1.

[58] *See* Treasurer of the State of Connecticut Letter, at 1, Mooney Letter, at 1, IAA Letter, at 1, and Multiple-Markets Letter, at 1.

[59] *See* Treasurer of the State of Connecticut Letter, at 1, Texas MAC Letter, and Multiple-Markets Letter, at 1.

[60] *See* Treasurer of the State of Connecticut Letter, at 1.

[61] *See* Treasurer of the State of Connecticut Letter, at 1, and EDGAR Online Letter.

[62] *See* GFOA Letter, at 2, Vanguard Letter, at 2, SIFMA Letter, at 2, MSRB Letter, at 3, Treasurer of the State of Connecticut Letter, at 2–3, IAA Letter, at 1, NASACT Letter, at 1, and ICI Letter, at 3.

[63] *See* Treasurer of the State of Connecticut Letter, at 1, EDGAR Online Letter, SIFMA Letter, at 1, IAA Letter, at 3, and NASACT Letter at 1.

[64] *See* SPSE Letter and DPC DATA Letter.

[65] *See* Treasurer of the State of Connecticut Letter, at 1, EDGAR Online Letter, SIFMA Letter, at 1, IAA Letter, at 3, and NASACT Letter at 1.

[66] *See* ICI Letter, at 3, and SIFMA Letter, at 2.

[67] *See* ICI Letter, at 3.

[68] *Id.*

[69] *See* Treasurer of the State of Connecticut Letter, at 1.

disclosures for the purpose of redistribution to investors because it would have to either: (1) obtain disclosures individually from each of 50,000 different issuers; or (2) pay a NRMSIR an annual subscription fee or a $25 per document fee, in which case it would still be unable to redistribute the disclosures because the NRMSIRs have copyrighted the documents by categorizing and reformatting the documents into a proprietary format.[70] This commenter further noted that obtaining what it referred to as a ''fundamental database'' of municipal disclosures is currently problematic because the disclosures are difficult to locate, financial reporting between municipalities differs greatly, and the volume of documents is too great.[71] Another commenter also supported the replacement of the current system and agreed with the Commission that a centralized location for the collection of information would eliminate the problem of an issuer failing to provide certain information to every repository, resulting in one repository not having a complete set of information.[72] In addition, a single source of secondary market information was anticipated by some commenters to reduce the costs incurred by market participants as a result of the existing fragmented system, which forces investors and others to seek information from multiple sources.[73] Furthermore, it was suggested that, as with the Commission's EDGAR system for reporting issuers, the establishment of a single repository for municipal information would encourage links with other information delivery sources that the investing public could access, such as free Web sites, subscriptions, or brokerage services, which would promote greater familiarity and usage and a more transparent and efficient market.[74]

We also requested comment on whether the availability of such information from a single source would simplify compliance with regulatory requirements by Participating Underwriters and others. Commenters anticipated that having a single site for continuing disclosure information would assist dealers in meeting their obligation to obtain the information necessary to establish a reasonable basis for making investment recommendations, improve the due diligence activities of underwriters of new offerings, and assist mutual funds in carrying out their regulatory obligations.[75] Some commenters indicated a belief that a single repository would simplify the manner in which municipal issuers, obligated persons and their agents make filings, and promote full compliance by issuers and obligated persons with the filing requirements contained in continuing disclosure agreements.[76]

Two commenters that are NRMSIRs opposed having a single repository.[77] Both commenters stated that the proposed amendments would not accomplish the Commission's information goals because the amendments do not address the root cause of current municipal disclosure problems, such as issuers who file late or fail to file.[78] One commenter stated the Commission's information goals would not be accomplished because of the absence of uniform accounting and financial reporting standards for issuers in the municipal market.[79] One commenter was of the opinion that the proposed amendment ''does nothing to improve the overall continuing disclosure regime, except to make the filing materials available free of charge to the public.''[80] This commenter further stated that many problems with the present system of municipal continuing disclosure would ''remain unaddressed in the proposed rule change, as do other publicly described and measured problems such as the significant level of municipal continuing disclosure delinquency'' and that the ''proposed rule change has no substantive benefit to offer.''[81] Another commenter, while noting that numerous inefficiencies exist within the current NRMSIR system, indicated that a single repository system still would depend on if, how, and when an issuer submits information.[82] The Commission understands that the proposed amendments will not necessarily solve every problem found in the current system based on NRMSIRs and SIDs. Under the current system, it is not possible to determine with certainty whether gaps in the continuing disclosure document collections of NRMSIRs are the result of failures by issuers to provide continuing disclosure documents as provided in their continuing disclosure agreements or failures of NRMSIRs to maintain accurate indices or adequate document retrieval systems. The Commission believes that the use of a single repository will make it easier for investors and others to identify issuers who fail to file. The Commission expects that, with the rule amendments, investors will be able to make better informed investment decisions and Participating Underwriters and Dealers will be able to fulfill their regulatory responsibilities more easily and accurately. At the same time, the Commission believes that the use of a single venue, from which all continuing disclosure documents will be available to the general public immediately upon being filed, will provide a comprehensive source of information to NRMSIRs and other vendors to utilize in their value added products.

One commenter, who opposed the amendments, suggested the use of a ''central post office'' approach whereby all filings would be supplied to a single location for immediate redistribution to all NRMSIRs and SIDs and an index of filings would be available to the general public at no charge.[83] Another commenter, who supported a single repository, requested that, in the event the Commission determines not to adopt the proposed amendments, it consider the establishment of a ''central post office'' facility.[84] One commenter, which currently operates such a ''central post office'' facility, also supported having of a single repository operated by the MSRB and indicated its belief that a single repository would be more efficient than the current decentralized system.[85] The Commission has considered a ''central post office'' approach. However, while a central post office may benefit NRMSIRs by providing a comprehensive source of continuing disclosure documents in an electronic format, it would not result in such documents being made available to the public at no charge. The Commission believes that direct access to such information from a single repository, without charge, will benefit investors, particularly individual investors, while providing a comprehensive source of continuing disclosure documents to information vendors and others who may wish to obtain all filings or a subset thereof, such as filings related to issuers and obligated persons in a single state.

One commenter noted that having a single repository might cause investors and broker-dealers unduly to rely on the

[70] *See* EDGAR Online Letter, at 2.

[71] *See* EDGAR Online Letter, at 4.

[72] *See* IAA Letter, at 2.

[73] *See* ICI Letter, at 3, and SIFMA Letter, at 2.

[74] *See* Treasurer of the State of Connecticut Letter, at 1–2.

[75] *See* SIFMA Letter, at 2, and ICI Letter, at 3.

[76] *See* GFOA Letter, at 1, and SIFMA Letter, at 2.

[77] *See* SPSE Letter and DPC DATA Letter.

[78] *See* SPSE Letter, at 8, and DPC DATA Letter, at 1.

[79] *See* SPSE Letter, at 8.

[80] *See* DPC DATA Letter, at 1.

[81] *Id.*

[82] *See* DAC Letter, at 3.

[83] *See* SPSE Letter, at 2.

[84] *See* GFOA Letter, at 2.

[85] *See* Texas MAC Letter.

repository's contents, which it believed would create a risk of undermining the purpose of protecting investors against fraud.[86] This commenter provided no reason for its view that documents supplied to the MSRB would be less reliable than those supplied to NRMSIRs and SIDs directly or through a ''central post office.''

While we acknowledge that today's amendments do not address all of the information challenges of the municipal market, we nonetheless believe that they will be a significant step forward in improving the availability of, and access to, secondary market municipal disclosures. As noted above, the vast majority of commenters on the proposed amendments believed that the adoption of the rule amendments will simplify and improve the current system. The Commission also believes that this will be the case. With respect to comments favoring a ''central post office,'' we believe that this approach would fail to achieve the benefits of the amendments. For example, with a central post office, there would continue to be no single location to which investors, particularly individuals, could turn for free access to information regarding municipal securities. Instead, individuals or entities that wish to obtain such information would find it necessary first to access the central post office to find out what documents might be available from NRMSIRs and SIDs and then to contact one or more NRMSIRs or SIDs and pay applicable fees to obtain the document or documents they seek. This would be a less efficient process than that contemplated by the final amendments, in which interested persons could directly access, view and print for free continuing disclosure documents from one place—the MSRB's Internet site.

Moreover, a ''central post office'' would not, to the same extent as the Commission's amendments, simplify compliance with regulatory requirements by Participating Underwriters, Dealers and others. This is because they would have to first access the ''central post office'' to determine what documents are available and then contact one or more NRMSIRs or SIDs to obtain these documents. In fact, one commenter that supported the proposed amendments indicated that the proposal, along with the MSRB EMMA Proposal, ''takes the notion of a central post office one step further by streamlining the process and removing the necessity and inefficiency of forwarding filings to several NRMSIRs and SIDs.''[87] We therefore anticipate that public access to all continuing disclosure documents on the Internet, as provided by the amendments, will promote market efficiency and deter fraud by improving the availability of information to all investors.

2. MSRB as the Sole Repository

In the Proposing Release, we sought comment concerning whether the MSRB should be the sole repository included in Rule 15c2–12 or whether another entity, such as a private vendor, should be the sole repository, instead of the MSRB, and requested that commenters provide reasons for their viewpoints. As proposed, we are revising Rule 15c2–12 to delete all references to NRMSIRs and SIDs and in their place refer solely to the MSRB.

Twelve commenters supported and two commenters opposed our proposal for the MSRB to be the single repository for secondary market disclosure.[88] Commenters favoring the MSRB as the sole repository expressed a belief that the Commission's oversight of the MSRB as a self-regulatory organization (''SRO'') and the MSRB's experience with the complexities of municipal securities and the municipal securities markets and the MSRB's direct experience in developing and maintaining electronic information systems for the municipal securities market (such as its MSIL and RTRS systems) would provide significant value to the framework of the proposed repository.[89] The two commenters that opposed having the MSRB as the sole repository believed that the current system should be retained and that they and other vendors of municipal information would be at a competitive disadvantage if the MSRB became the sole repository.[90]

Comment also was solicited regarding whether the MSRB's status as an SRO would be an advantage or disadvantage to its serving as the sole repository. Three commenters stated a belief that having the MSRB serve as the sole repository is reasonable because, as an SRO, it is subject to oversight by the Commission.[91] One of these commenters also noted that, as a result, a rule change relevant to the continuing disclosure service of EMMA would be subject to public comment and Commission approval.[92] However, a commenter that opposed the proposed amendments suggested that naming the MSRB to be the sole repository would not be appropriate because the MSRB would be reimbursed through mandatory fees assessed against broker-dealers rather than users.[93] This commenter expressed a belief that such costs ultimately would be passed along by broker-dealers to their customers.[94]

We also sought comment on whether the MSRB would be an appropriate operator of a centralized repository for the collection and availability of continuing disclosure information about municipal securities, and whether there is a more appropriate location or means through which such information could be made readily available to the public without charge. Some commenters noted that one benefit of having the MSRB act as sole repository would be the accessibility of comprehensive information regarding municipal securities, including official statements, continuing disclosure documents and pricing information, without charge at one location.[95] However, one commenter suggested that, by analogy to our EDGAR system, the Commission might be a more appropriate party to operate such a repository than the MSRB, which represents only one segment of the market (*i.e.*, brokers, dealers and municipal securities dealers).[96] In addition, one of the existing NRMSIRs indicated its view that it is inappropriate for a quasi-governmental entity such as the MSRB to operate a facility that would compete with private business.[97] Two commenters indicated an overall preference for maintenance of the existing structure of the Rule—pursuant to which private entities, not the MSRB, provide locations or means through which such information is made available to the public.[98]

We agree with the many commenters who believed that the MSRB is the appropriate entity to serve as the single repository. Established pursuant to an act of Congress[99] as an SRO for brokers,

[86] *See* SPSE Letter, at 2.

[87] *See* NASACT Letter, at 1.

[88] *See* GFOA Letter, Vanguard Letter, SIFMA Letter, MSRB Letter, Texas MAC Letter, NASACT Letter, OMAC Letter, ICI Letter, NAHEFFA Letter, Multiple-Markets Letter, NFMA Letter, and EDGAR Online Letter (each supporting the MSRB as the single repository). *See also* SPSE Letter and DPC DATA Letter (each opposing the MSRB as the single repository).

[89] *See* SIFMA Letter, NFMA Letter, and ICI Letter.

[90] *See* SPSE Letter, at 2, 7 and DPC DATA Letter, at 2.

[91] *See* Vanguard Letter, SIFMA Letter, and ICI Letter.

[92] *See* SIFMA Letter, at 3.

[93] *See* SPSE Letter, at 11.

[94] *Id.*

[95] *See, e.g.*, SIFMA Letter, at 2, and NASACT Letter, at 1.

[96] *See* Treasurer of the State of Connecticut Letter, at 2.

[97] *See* DPC DATA Letter, at 2. *See* discussion below in Section III.A.3.

[98] *See* SPSE Letter and DPC DATA Letter.

[99] 15 U.S.C. 78*o*–4.

dealers and municipal securities dealers engaged in transactions in municipal securities, the MSRB is subject to Commission oversight, as provided by the Exchange Act. As an SRO, the MSRB is required to file its rules and changes to those rules with the Commission for notice and comment under section 19(b) of the Exchange Act.[100] Pursuant to section 15B(b)(2)(C) of the Exchange Act, the MSRB's rules are required to be designed, in part, ''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.'' [101] The MSRB's existing RTRS and MSIL systems, and the primary offering information component of the EMMA system that has been approved by the Commission (relating to the submission of official statements and advance refunding documents),[102] were subject to notice and comment and Commission review. Similarly, the MSRB's proposal to establish a continuing disclosure component within the EMMA system was subject to notice and comment under section 19(b) of the Exchange Act, as would as any future changes to the system.[103] Further, we believe that, in addition to being subject to Commission oversight as an SRO, the MSRB is both familiar with the complexities of municipal securities and the municipal securities market and has experience in developing and maintaining electronic information systems for that market.[104] Collectively, these factors lead us to adopt amendments to Rule 15c2–12 to provide that the MSRB be the centralized location for collecting (in an electronic format) and making information about municipal securities available to the public at no cost.

Although two commenters opposed the proposal for the MSRB to be the sole repository,[105] the Commission believes that the MSRB's status as an SRO and experience with municipal market disclosure make it appropriate for the MSRB to be the sole repository. Moreover, as discussed in detail throughout the Proposing Release as well as this release, the Commission believes that the current NRMSIR model of disclosure needs to be improved. Many commenters agreed with this view.[106] Although one commenter suggested that the Commission should be the repository,[107] we believe that the MSRB, in light of its experience with municipal disclosure and its status as an SRO, will be in a better position to act as the repository more quickly and efficiently.

As discussed below, with respect to the comment that it is inappropriate for a quasi-governmental entity such as the MSRB to operate a facility that would compete with private business, the Commission believes that any competitive impact that may result from the MSRB's status as the sole repository is justified by the benefits that such status is expected to provide to investors, broker-dealers, mutual funds, vendors of municipal information, municipal security analysts, other market professionals, and the public generally.[108] Further, as discussed in section III.A.3. below, we believe that having the MSRB serve as the repository for the electronic submission and availability of continuing disclosure documents could foster competition for value-added products and services and thus it is not anti-competitive for the MSRB to serve as the repository.

With respect to the statement that broker-dealers would pass on fees to their customers to support the EMMA system, the Commission notes that the MSRB, as an SRO, would have to file any fees relating to the use of EMMA with the Commission under section 19(b) of the Exchange Act.[109] The Commission further notes that broker-dealers currently are charged fees for access to disclosure documents obtained from the NRMSIRs that they currently may or may not pass on to their customers. According to the MSRB, it presently anticipates no increase in fees on brokers, dealers, and municipal securities dealers who effect transactions in municipal securities to establish and operate the EMMA system.[110] The MSRB has indicated that it has funds on hand that, together with amounts it will collect in the future under its current fee schedule, it believes will be sufficient to establish and operate the EMMA system.[111]

Indeed, we anticipate that the accessibility of documents through the repository will greatly benefit dealers in satisfying their obligation to have a reasonable basis for investment recommendations and other regulatory responsibilities, in addition to investors and other market participants who seek information about municipal securities. All commenters who addressed this issue supported this conclusion.[112]

3. Competitive Concerns With a Single Repository

In the Proposing Release, we discussed the competitive implications generally of having a single repository for continuing disclosure documents and specifically of having the MSRB serve as the sole repository and sought commenters' views on potential competition issues. With respect to the Exchange Act goal of promoting competition, we note that, when we adopted Rule 15c2–12 in 1989, we strongly supported the development of one or more central repositories for municipal disclosure documents.[113] We ''recognize[d] the benefits that may accrue from the creation of competing private repositories,'' and indicated that ''the creation of central sources for municipal offering documents is an important first step that may eventually encourage widespread use of repositories to disseminate annual reports and other current information about issuers to the secondary markets.'' [114] Further, when we adopted the 1994 Amendments, we stated that the ''requirement to deliver disclosure to the NRMSIRs and the appropriate SID also allay[ed] the anti-competitive concerns raised by the creation of a single repository.'' [115]

Since the adoption of the 1994 Amendments, there have been significant advancements in technology

[100] 15 U.S.C. 78s(b).

[101] 15 U.S.C. 78*o*–4(b)(2)(C).

[102] *See* Securities Exchange Act Release No. 57577, *supra* note 46.

[103] *See* MSRB EMMA Proposal, *supra* note 12.

[104] For example, the MSRB is experienced with operating CDINet, the MSIL system, and the RTRS system.

[105] *See* SPSE Letter, at 2, DPC DATA Letter, at 3.

[106] *See, e.g.*, Vanguard Letter, at 2, NASACT Letter, at 1, ICI Letter, at 3, IAA Letter, at 1, and NFMA Letter, at 1.

[107] *See* Treasurer of the State of Connecticut Letter, at 2.

[108] *See* discussion above regarding the MSRB's status as an SRO and resulting Commission oversight, *infra* Section III.A.3.

[109] 15 U.S.C. 78s(b). Under Section 15B(b)(2)(J) of the Exchange Act, 15 U.S.C. 78*o*–4(b)(2)(J), among other requirements, any fees charged by the MSRB must be reasonable.

[110] Telephone conversation between Earnesto Lanza, General Counsel, MSRB, and Martha Mahan Haines, Chief of the Office of Municipal Securities and Assistant Director, Division of Trading and Markets, October 22, 2008.

[111] *Id.*

[112] *See* SIFMA Letter, at 2, ICI Letter, at 3, Dickman Letter, Grant Letter, and Mooney Letter.

[113] *See* 1989 Adopting Release at 54 FR 28807, *supra* note 18. *See also* Securities Exchange Act Release No. 33742 (March 9, 1994), 59 FR 12759 (March 17, 1994) (File No. S7–5–94) (proposing release for the 1994 Amendments) (''1994 Proposing Release'').

[114] *See* 1989 Adopting Release, *supra* note 18. *See also* 1994 Proposing Release, *supra* note 113.

[115] *See* 1994 Amendments, *supra* note 21.

and information systems that allow market participants and investors, both retail and institutional, easily, quickly, and inexpensively to obtain information through electronic means. The exponential growth of the Internet and the capacity it affords to investors, particularly individual investors, to obtain, compile and review information has likely helped to keep investors better informed. In addition to the Commission's EDGAR system, which contains filings by public companies required to file periodic reports and by mutual funds, we have increasingly encouraged and, in some cases required, the use of the Internet and Web sites by public reporting companies and mutual funds to provide disclosures and communicate with investors.[116]

Our adoption of the proposed amendments, which provide for having a single repository for the electronic collection and availability of continuing disclosure documents, will help further the Exchange Act objective of promoting competition because information about municipal securities will be more widely available to market professionals, investors, information vendors, and others as a result of the final amendments. For example, we believe that competition among vendors can increase because vendors can utilize this information to provide value-added services to municipal market participants. The rule amendments also may promote competition in the purchase and sale of municipal securities because the greater availability of information, delivered electronically through a single repository, may instill greater investor confidence in the municipal securities market. Moreover, this greater availability of information also may encourage improvement in the completeness and timeliness of disclosures by issuers and obligated persons and may foster interest in municipal securities by retail and institutional customers. As a result, more investors may be attracted to this market sector and broker-dealers may compete for their business.

In the Proposing Release, we acknowledged that adoption of the proposed amendments potentially could have an adverse impact on one or more existing NRMSIRs, especially if their business models depended on their status as a NRMSIR. Moreover, since NRMSIRs have received compensation for providing copies of continuing disclosure documents to persons who request them, we noted that one or more NRMSIRs possibly could be adversely affected by the rule amendments, if they no longer have available to them a steady flow of funds from providing for a fee copies of continuing disclosure documents to persons who request them. As a result of the final amendments, a NRMSIR could find that it would have to revise its current manner of doing business or face a significant downturn in its business operations. Vendors of information about municipal securities, other than NRMSIRs, also could be affected by the final amendments because the MSRB proposes to provide information electronically free of charge.

In addition, because there would be just one repository, in lieu of the four NRMSIRs, the Proposing Release noted that the proposed amendments could reduce competition with respect to services provided by NRMSIRs as information vendors. In addition to supplying municipal disclosure documents upon request, NRMSIRs also provide value-added market data services to municipal investors that incorporate continuing disclosure information. We noted in the Proposing Release that, if NRMSIRs are adversely affected by the proposed amendments, it is possible that there could be a reduction in these value-added market data services relating to municipal securities or a loss of innovation in offering competing information services regarding municipal securities.

We received comment letters from two NRMSIRs that raised concerns about the competitive effects of the proposed amendments.[117] The primary concerns, raised by both commenters, relate to the MSRB's role as the sole repository of continuing disclosure documents and the competitive effects that this would have on existing vendors of municipal disclosure information. One commenter stated that the Commission's proposal ''would allow the MSRB to impose restrictions on municipal issuers and obligated persons by limiting the filings to a single, electronic format.'' [118] In addition, this commenter noted that the Commission's proposal would place the MSRB ''in direct competition with commercial vendors who have served the market as practical implementers of Rule 15c2–12 without any subsidy for more than a decade.'' [119] This commenter also expressed concern that the MSRB would unfairly discriminate against private vendors by controlling their access to information through fee structures and dissemination of information.[120] The Commission acknowledges that the existing NRMSIR system was an improvement over the disclosure regime that was in place prior to its creation. However, we believe that there have been significant improvements in technology that will allow for increased access to municipal disclosure information to investors and others for free via the Internet. This supports having the MSRB serve as the sole repository. We continue to believe that our rule amendments being adopted today are a significant step forward in fostering greater availability of municipal disclosures to a broad range of market participants, investors, and other individuals and entities, thereby preventing fraud. Moreover, we note that a majority of commenters recognized there were inefficiencies with respect to the current municipal disclosure system and supported the proposed amendments.[121]

Another commenter echoed similar sentiments as the commenter above and cited to the Commission's statements in adopting Rule 15c2–12 in 1989 and amendments to the Rule in 1994, which discussed possible anti-competitive concerns regarding the use of a single repository.[122] This commenter noted that eliminating the NRMSIR function would upset the balance of its current business model and have an impact on its ability to provide value-added products and services.[123] The commenter disputed that the potential burdens on competition would be justified by the proposed amendments' adoption because, in its view, the current issues with municipal disclosure lie in the quality and timeliness of the information that is filed.[124] This commenter also urged the Commission to adopt an alternative approach.[125] Under this commenter's proposal, the MSRB would not be the sole repository for municipal disclosure

[116] *See, e.g.*, Securities Exchange Act Release Nos. 52056 (July 19, 2005), 70 FR 44722 (August 3, 2005) (File No. S7–38–04) (adopting amendments to encourage and, in some cases, mandate the use of an Internet site in securities offering); 56135 (July 26, 2007), 72 FR 42222 (August 1, 2007) (File No. S7–03–07) (adopting amendments to the proxy rules under the Exchange Act requiring issuers and other soliciting persons to post their proxy materials on an Internet Web site and providing shareholders with a notice of the Internet availability of the materials); and 58288 (August 1, 2008), 73 FR 45862 (August 7, 2008) (File No. S7–23–08) (interpretative release providing guidance on the use of company Web sites).

[117] *See* DPC DATA Letter and SPSE Letter.

[118] *See* DPC DATA Letter, at 1.

[119] *See* DPC DATA Letter, at 2.

[120] *Id.*

[121] *See supra* notes 57–64 and accompanying text.

[122] *See* SPSE Letter, at 5–7.

[123] *See* SPSE Letter, at 7.

[124] *See* SPSE Letter, at 7–8.

[125] *See* SPSE Letter, at 3–5.

information.[126] Instead, this commenter proposed having an unspecified entity serve as a central electronic post office for municipal disclosure information where ''issuers and obligors would file documents through a single electronic format'' and such entity ''would then forward the centrally-filed documents in real time to the NRMSIRs.'' [127] The commenter expressed no opinion regarding the identity of the entity that should serve as the central electronic post office or how such entity would be chosen.[128]

Although two commenters questioned whether the proposed amendments would benefit competition,[129] the Commission continues to believe that having a single repository will provide the benefits discussed throughout the release and will not have a significant adverse effect on the ability or willingness of private information vendors to compete to create and market value-added data products. Commercial vendors will be able to readily access the information made available by the MSRB to re-disseminate it or use it in whatever value-added products they may wish to provide.[130] In fact, we believe a single repository in which documents are submitted in an electronic format could encourage the private information vendors to disseminate municipal securities information by reducing the cost of entry into the information services market. We also believe that existing vendors may need to make some adjustments to their infrastructure, facilities, or services offered. However, we believe that some vendors could determine that they no longer will need to invest in the infrastructure and facilities necessary to collect and store continuing disclosure documents, and new entrants into the market will not need to obtain the information from multiple locations, but rather could readily access such information from one centralized source. Thus, we believe that all vendors should be able to obtain easily continuing disclosure documents and should be able to compete in providing value-added services.

We previously stated that we would specifically consider the competitive implications of the MSRB becoming a repository.[131] In addition, we stated that if we were to conclude that the MSRB's status as a repository might have adverse competitive implications, we would consider whether we should take any action to address these effects.[132] As noted earlier, we recognize that competition with respect to certain information services regarding municipal securities that are provided by the existing NRMSIRs could decline should the MSRB become the central repository. Two commenters suggested in their comment letters that a decrease in competition could occur as a result of the Commission's rulemaking.[133] As discussed in more detail above and in the Proposing Release, circumstances have changed since we last considered Rule 15c2–12 amendments in 1994. For example, technology developments have facilitated access to information and access to municipal information typically is subject to a fee and can be difficult for individuals to obtain. Further, the NRMSIRs did not develop a system of linkages with each other. We continue to believe that one of the benefits in having the MSRB as the sole repository will be the MSRB's ability to provide a ready source of continuing disclosure documents to other information vendors who wish to use that information for their products. Private vendors could utilize the MSRB in its capacity as a repository as a means to collect information from the continuing disclosure documents to create value-added products for their customers.[134]

With respect to concerns that the MSRB could control private vendors' access to information through unfair fee structures and biased dissemination of information, we note that, as an SRO, the MSRB will need to file its fee changes and rule proposals relating to its EMMA system with the Commission under section 19(b) of the Exchange Act. When the Commission publishes any such proposed rule changes, interested parties will have the opportunity to comment and bring to our attention any potential issues that they discern.

We do not believe that there are competitive implications that would uniquely apply to the MSRB in its capacity as the sole repository. As we have noted, we believe the MSRB's status as an SRO will provide an additional level of Commission oversight since changes to its rules relating to continuing disclosure documents will have to be filed for Commission consideration as a proposed rule change under section 19(b) of the Exchange Act. Accordingly, we believe that any competitive impact that may result from the MSRB's status as the sole repository is justified by the benefits that such status is expected to provide to investors, broker-dealers, mutual funds, vendors of municipal information, municipal security analysts, other market professionals, and the public generally.

4. Electronic Document Submission

Because the current environment differs markedly from the time when Rule 15c2–12 was adopted in 1989 and subsequently amended in 1994, we believe that it is appropriate to adopt an approach that utilizes the significant technological advances, such as the development and use of various electronic formats, which have occurred in the intervening years. Thus, we are adopting the proposed amendments that specify that continuing disclosure documents must be provided to the MSRB in an electronic format as specified by the MSRB.[135]

We believe that this method of submission will better enable the information to be promptly posted by the single repository and made available to the public without charge. Electronic submission also will eliminate the need for manual handling of paper documents, which can be a less efficient and more costly process. For instance, the submission of paper documents would require the repository to manually review, sort and store such documents. There is also a potential for a less complete record of continuing disclosure documents at the repository if such documents are submitted in paper to the repository and, for instance, are misplaced or misfiled. The

[126] *See* SPSE Letter, at 4.

[127] *See* SPSE Letter, at 2. *See* discussion above in Section III.A.1.

[128] *Id.*

[129] *See* DPC DATA Letter, at 2, and SPSE Letter, at 6–8.

[130] In addition to making available such information on the MSRB's Web site through EMMA, the MSRB has indicated that it will make continuing disclosure documents available by subscription for a fee to information vendors and other bulk data users on terms that will promote the development of value-added services by subscribers for use by market participants. *See* MSRB EMMA Proposal, 73 FR at 46163. The fees for this subscription service will be subject to a proposed rule change to be filed with the Commission under Section 19(b) of the Exchange Act.

[131] *See* Securities Exchange Act Release No. 28081 (June 1, 1990), 55 FR 23333 (June 7, 1990) (File No. SR–MSRB–89–9).

[132] *Id.*

[133] *See* DPC DATA Letter and SPSE Letter.

[134] The Commission notes that two commenters raised concerns with the potential subscription fees associated with having the MSRB as the single repository. The Commission notes that the MSRB will be required to file a proposed rule change with the Commission pursuant to Section 19(b) of the Exchange Act regarding any subscription fees for a data stream that it proposes as well as any changes to those fees.

[135] We note that the MSRB will be required to file a proposed rule change with the Commission pursuant to Section 19(b) of the Exchange Act regarding the electronic format that it wishes to prescribe as well as any changes to that format. In fact, the MSRB prescribed the format for submissions of continuing disclosure documents in a recent filing with the Commission. *See* MSRB EMMA Proposal, *supra* note 12.

Commission believes that submissions in an electronic format will not be burdensome on issuers or other obligated persons, since many continuing disclosure documents already are being created in an electronic format and, as a result, are readily transmitted by electronic means.

We requested comment on the proposed amendments to provide continuing disclosure documents in an electronic format, including whether submitting continuing disclosure documents in an electronic format would increase the efficiency of submission and availability of continuing disclosure documents, and whether submitting the documents in an electronic format would facilitate wider availability of the information. Furthermore, we requested comment concerning whether the proposed amendments should allow for the submission of paper documents and, if so, whether any conditions should be imposed in connection with paper submissions. Comments also were requested on whether the proposed amendments should allow for the availability of paper copies upon request from the central repository.

The commenters who addressed this topic supported the proposal that, under continuing disclosure agreements, continuing disclosure documents must be provided in an electronic format.[136] These commenters generally expressed the opinion that the current disclosure system, which relies on paper-based filings, should be updated in light of today's use of, and advances in, technology and that the electronic submission of documents would better enable the information to be promptly submitted, categorized, and posted on the Internet for investor use. In addition, one commenter noted that ''the proposed amendments provide for necessary flexibility in changes to technology by delegating to the MSRB the authority to determine electronic formatting and identifying information.'' [137] Further, one commenter mentioned that, while some issuers, especially smaller issuers, may have to purchase new software in order to submit electronic documents, the overall long-term savings that an electronic-based central repository would provide would benefit state and local governments and authorities.[138] However, as discussed in section III.A.6. below, two commenters expressed the opinion that smaller issuers may need additional time to adapt to the need to obtain documents in an electronic format.[139] No commenters suggested that the MSRB should accept paper documents.

Two commenters [140] urged the implementation of an interactive data format (*i.e.*, XBRL) for EMMA. In the Proposing Release, we noted that the availability of audited financial statements and other financial and statistical data in an electronic format by issuers and obligated persons could encourage the establishment of the necessary taxonomies and permit states and local governments and other obligated persons to make use of XBRL in the future, should they wish to do so.[141] The final amendments to the Rule do not designate the electronic format or formats that EMMA will accept; instead, they provide that the MSRB will prescribe the format, which will be subject to the section 19(b) rule filing process. Nevertheless, we note that this provision allows flexibility for future implementation of improved methods for the electronic presentation of information.

One commenter stated that the design of the electronic filing format should be entrusted to a joint industry committee.[142] This commenter further noted its belief that the notice and comment process would not be an adequate substitute for a joint industry working group because it would not permit ongoing dialogue.[143] While we do not believe that a joint industry committee is the only method by which the electronic filing format could be determined, we do believe that the notice and comment process is necessary to allow issuers, obligated persons and others a method for providing input in the determination of the electronic filing format. The Commission notes that our rule amendments do not preclude the formation of a joint industry committee that would be able to work with the MSRB in designing the electronic filing format. In addition, we expect that the MSRB would welcome an ongoing dialogue with those industry participants that wish to provide input on the electronic filing format and any other aspects of the continuing disclosure component of the EMMA system.

5. Identifying Information

To enable the continuing disclosure documents to be identified and retrieved accurately, we are adopting new subparagraph (b)(5)(iv) of Rule 15c2–12, as proposed to be amended, to require Participating Underwriters to reasonably determine that the issuer or obligated person has undertaken in writing to accompany continuing disclosure documents submitted to the MSRB with identifying information as prescribed by the MSRB. Similarly, the Commission is adopting a conforming change to subparagraph (d)(2)(ii)(C) of the Rule, relating to the limited undertaking set forth in Rule 15c2–12(d)(2)(ii), to specify that continuing disclosure agreements provide that the relevant continuing disclosure documents shall be provided to the MSRB and shall be accompanied by identifying information as prescribed by the MSRB.[144]

We believe that providing identifying information with each submitted document will permit the repository to sort and categorize the document efficiently and accurately. We also anticipate that the inclusion with each submission of the basic information needed to accurately identify the document will facilitate the ability of investors, market participants, and others to reliably search for and locate relevant disclosure documents. Facilitation of the efficient retrieval of information is designed to decrease the possibilities for fraudulent practices. Furthermore, we expect that there will be a minimal burden on Participating Underwriters to comply with this requirement because the only change is that they would need to determine reasonably that issuers and obligated persons have contractually agreed to supply the identifying information prescribed by the MSRB. On the other hand, there will be a significant benefit to investors and other municipal market participants as a result of this amendment because they will be able to more easily retrieve from the MSRB the information that they seek. Indeed, issuers and other obligated persons that choose to submit continuing disclosure documents through some existing dissemination agents and document delivery services already are supplying

[136] *See* Vanguard Letter, IAA Letter, e-certus Letter, NASACT Letter, ICI Letter, Multiple-Markets Letter, NFMA Letter, EDGAR Online Letter, SPSE Letter and DAC Letter.

[137] *See* SIFMA Letter, at 3.

[138] *See* GFOA Letter, at 2.

[139] *See* NASACT Letter, at 2, and GFOA Letter, at 2.

[140] *See* e-certus Letter, at 2, and EDGAR Online Letter, at 6.

[141] *See* Proposing Release, 73 FR at 46144 n.64.

[142] *See* SPSE Letter, at 9.

[143] *Id.*

[144] The MSRB proposed certain identifying information to be required in the MSRB EMMA Proposal, which the Commission is also approving. *See supra* note 12. We note that the MSRB would be required to file a proposed rule change with the Commission pursuant to Section 19(b) of the Exchange Act regarding any additional identifying information and any changes to that information that it wishes to prescribe.

identifying information with their submissions.[145]

The Proposing Release also requested comments regarding supplying identifying information as prescribed by the MSRB and regarding alternative methods that would assist investors and municipal market participants in locating specific information about a municipal security that is submitted under the Rule.

Commenters generally supported requiring Participating Underwriters to reasonably determine that the issuer or obligated person has undertaken in writing to accompany all documents submitted to the MSRB with identifying information as prescribed by the MSRB.[146] In addition, one commenter did not believe that this determination would impose an unreasonable burden on underwriters.[147] The need for such information was generally perceived as essential to permit investors and others to access continuing disclosure documents from the MSRB.[148] Two commenters observed that in order for the EMMA system to sort and categorize disclosure documents efficiently and accurately, submissions to EMMA should include specific identifying information.[149] Two other commenters noted that the need for identifying information is essential.[150] The Commission believes that it is in the interest of issuers and obligated persons to provide accurate indexing information. Moreover, under rule changes in this release and the MSRB Approval Order, identifying information will be required by Commission and MSRB rules. Several commenters suggested specific items of identifying information that should be prescribed by the MSRB or sought clarification about such items.[151] Because these comments are pertinent to the MSRB's EMMA proposal, and not to the Commission's adoption of these amendments, they are addressed in the Commission order approving the continuing disclosure document component of the EMMA system.[152]

6. Exemptive Provision

We are amending Rule 15c2–12(d)(2)(ii), as proposed, which provides for a limited exemption from the requirements of paragraph (b)(5) of the Rule, as long as the conditions specified in paragraph (d)(2) are met. The exemption in Rule 15c2–12(d)(2) provides that paragraph (b)(5) of the Rule, which relates to the submission of continuing disclosure documents pursuant to continuing disclosure agreements, does not apply to a primary offering if three conditions are met. These conditions are: (i) The issuer or the obligated person has less than or equal to $10 million of debt outstanding;[153] (ii) the issuer or obligated person has undertaken in a written agreement or contract (''limited undertaking'') to provide: (A) upon request to any person or at least annually to the appropriate SID, if any, financial information or operating data regarding each obligated person for which financial information or operating data is presented in the final official statement, which financial information and operating data shall include, at a minimum, that financial information and operating data which is customarily prepared by such obligated person and is publicly available,[154] and (B) to each NRMSIR or to the MSRB, and to the appropriate SID, if any, material event notices;[155] and (iii) the final official statement identifies by name, address and telephone numbers the persons from which the foregoing information, data and notices can be obtained.[156] The rule amendments revise the limited undertaking set forth in 15c2–12(d)(2)(ii)(A) and (B) by deleting references to NRMSIRs and SIDs, and by solely referencing the MSRB.[157] Accordingly, under the amendment to Rule 15c2–12(d)(2)(ii), a Participating Underwriter will be exempt from its obligations under paragraph (b)(5) of the Rule if an issuer or obligated person has agreed in its limited undertaking to provide annual financial information, operating data and material event notices to the MSRB in an electronic format as prescribed by the MSRB, and the exemption's other conditions are met.

One commenter stated that the practical effect of the proposed amendments would be the repeal of the small issuer exemption.[158] The commenter stated that, while small issuers receive few requests for continuing disclosure documents from investors, many of these issuers are subject to public disclosure laws and make financial information and operating data publicly available that exceeds that which would be included in an official statement or required of other issuers pursuant to a continuing disclosure agreement under Rule 15c2–12(b)(5). The commenter believed that the practical effect of this proposal would be to cause small issuers to incur increased costs associated with filing such information electronically because they believed that the information may be considerably more extensive than that submitted by other issuers. The commenter suggested that the Commission either retain the small issuer exemption in its current form or delete paragraph (d)(2) of Rule 15c2–12 altogether.

We recognize that one effect of the amendments will be that some small issuers will submit annual financial information and operating data to the MSRB when currently they do not regularly submit such disclosures to any repository. We do not believe that electronically formatting information a small issuer already has and makes publicly available will be a significant burden. Further, we do not believe that the final amendments would result in small issuers providing the voluminous filings the commenter suggests. This amendment does not affect the nature of a Participating Underwriter's obligation to reasonably determine that a small issuer has undertaken to deliver continuing disclosure documents to fulfill the conditions of the exemption; rather, it affects what the Participating Underwriter needs to determine regarding the undertaking with respect to the location where such documents are to be sent. Specifically, the final amendments do not revise the provision limiting the commitment to provide annual financial or operating data only if such information is customarily

[145] The commitment by an issuer to provide identifying information exists only if it were included in a continuing disclosure agreement. As a result, issuers submitting continuing disclosure documents pursuant to the terms of undertakings that were entered into prior to the effective date of the final amendments and that did not require identifying information will be able to submit documents without supplying identifying information. Nevertheless, we encourage such issuers to include identifying information when they or their agent submit continuing disclosure documents to the repository. *See also* Section III.C., *infra* discussing transition issues.

[146] *See, e.g.*, GFAO Letter, at 2, Vanguard Letter, at 4, SIFMA Letter, at 2, Texas MAC Letter, OMAC Letter, ICI Letter, at 5, Multiple-Markets Letter, at 2–3, NFMA Letter, at 1, and Edgar Online Letter, at 3.

[147] *See* SIFMA Letter, at 2.

[148] *See, e.g.*, Vanguard Letter, at 4, Texas MAC Letter, NFMA Letter, at 2, and ICI Letter, at 5.

[149] *See* Vanguard Letter, at 4, and NFMA Letter, at 1.

[150] *See* Texas MAC Letter and OMAC Letter.

[151] *See, e.g.*, Edgar Online Letter, at 3, DAC Letter, at 6, Multiple-Markets Letter, at 3, NFMA Letter, at 2, and NAHEFFA Letter, at 2.

[152] *See* MSRB Approval Order, *supra* note 12.

[153] 17 CFR 240.15c2–12(d)(2)(i).

[154] 17 CFR 240.15c2–12(d)(2)(ii)(A).

[155] 17 CFR 240.15c2–12(d)(2)(ii)(B).

[156] Although this provision provides an exemption for Participating Underwriters in a primary offering of municipal securities, as long as its conditions are satisfied, it is commonly referred to as the ''small issuer exemption.''

[157] *See* Section III.A.7. *infra* for a discussion of the deletion from the Rule of references to SIDs.

[158] *See* NABL Letter, at 2.

prepared by such obligated person and is publicly available. Furthermore, if a small issuer customarily prepares and makes publicly available information that is more extensive than that provided in the final official statement, the Participating Underwriter may rely on an undertaking that is limited to providing the information that would comprise annual financial information for non-exempt offerings.[159]

Under our amendments, a condition of the exemption available to Participating Underwriters now will require the undertaking to provide that annual financial information or operating data, if customarily prepared and publicly available, will be submitted to the MSRB, rather than being supplied only upon request to any person or at least annually to the appropriate SID, if any.[160] Participating Underwriters seeking an exemption from subparagraph (b)(5) would no longer need to reasonably determine that small issuers will provide annual financial information or operating data to any person, upon request, pursuant to the small issuer's undertaking. If such requests are received, small issuers will be able to refer investors or others to the MSRB to obtain the information. Nevertheless, we recognize that today some small issuers that reside in a state without a SID and that historically receive no requests from investors or others for such annual financial information are not obligated by their continuing disclosure agreement to provide this information to each NRMSIR, the MSRB, or any other entity.[161] In contrast, as a condition of the exemption, the final amendments will provide that a Participating Underwriter must reasonably determine that a small issuer undertakes to provide annual financial information, to the extent the issuer prepares it and makes it publicly available, to the MSRB in an electronic format.

At this time, we believe that our proposed amendment of the small issuer exemption is preferable to the commenter's alternative suggestion to eliminate the small issuer exemption altogether.[162] We note that the final amendments do not alter the provision that specifies that the undertaking by small issuers to provide annual financial information or operating data need be satisfied only to the extent that such information is customarily prepared by the obligated person and is publicly available.[163] We understand that most small governmental issuers prepare and make publicly available annual financial statements or other financial and operating data as a matter of course. For such issuers, we recognize that the difference between our amendment to the exemption and elimination of the exemption entirely, as a practical matter, may be minimal. However, we note that small obligated persons, such as private conduit borrowers, also benefit from the small issuer exemption. Such obligated persons and some small issuers may not customarily prepare financial and operating data for public availability. We believe that it is preferable to take a measured approach and observe the actual impact of the final amendments before considering elimination of the small issuer exemption entirely. Accordingly, the Commission has determined not to eliminate at this time the small issuer exemption as the commenter suggested.[164]

We believe that the exemptive provision of the amended Rule—that paragraph (b)(5) of the Rule will not apply under the revised conditions described above—is justified despite the increased burden on some small issuers by the amended Rule's objective that this information be more widely available to investors, market professionals, and others. The availability of this information should help brokers to fulfill their obligations and investors to make better informed investment decisions regarding municipal securities, thereby helping to deter fraud in the municipal securities market.

7. SIDs

We are amending subparagraphs (A) through (D) of Rule 15c2–12(b)(5)(i), as proposed to be amended, to delete references to SIDs, in addition to references to each NRMSIR. Thus, Participating Underwriters no longer will need to reasonably determine that issuers or obligated persons have agreed in continuing disclosure agreements to provide continuing disclosure documents to the appropriate SID, if any. We also are revising paragraph (d)(2) of the Rule, which provides for an exemption from paragraph (b)(5) of the Rule if specified conditions are met.[165] The final amendments revise the limited undertaking set forth in Rule 15c2–12(d)(2)(ii) by deleting references to each NRMSIR and the appropriate SID, if any, and solely referencing the MSRB and specifying that the financial information, operating data, and material event notices are to be provided to the MSRB in an electronic format and accompanied by identifying information as prescribed by the MSRB. As noted above, under paragraph (d)(2) of the Rule, Participating Underwriters will be exempt from their obligation under paragraph (b)(5) of the Rule if the issuer or obligated person has agreed in its limited undertaking to provide financial information, operating data, and material event notices to the MSRB in an electronic format and accompanied by identifying information as prescribed by the MSRB, and if the provision's other conditions are met.

We requested comment on the proposal to omit references to the SIDs in the Rule. In particular, comment was requested concerning the impact of removing the references to the SIDs in the Rule, including the impact of this proposal on the obligations of Participating Underwriters, issuers and obligated persons. We also requested comment on the effect of the proposed amendment on SIDs and on their role in the collection and disclosure of continuing disclosure documents.

Five commenters addressed the proposed removal of references to SIDs from the Rule.[166] Four of the commenters stated that the MSRB should provide a data feed to SIDs of documents related to issuers in their states so that those issuers that may be required by their states to send continuing disclosure documents to a SID need not provide them to both the

[159] *See* response to question 18 in letter to John S. Overdorff, Chair, and Gerald J. Laporte, Vice-Chair, of the Securities Law and Disclosure Committee of NABL, from Robert L.D. Colby, Deputy Director, Division of Market Regulation, dated June 23, 1995, 1995 SEC No–Act. LEXIS 563.

[160] *See* Section V.B., *infra* for a discussion of the costs small issuers may incur in connection with submitting continuing disclosure documents to the MSRB.

[161] We understand that, in some cases, state laws may provide for the public availability or distribution of such information. However, these requirements vary widely.

[162] *See* NABL Letter, at 2.

[163] 17 CFR 15c2–12(d)(2)(ii)(A).

[164] It is possible that this provision could provide a disincentive to an obligated person to prepare the information and make it publicly available. As noted above, we understand that most small governmental issuers routinely prepare and make publicly available annual financial statements or other financial and operating data, although some small obligated persons, such as private conduit borrowers, may not prepare this information and make it publicly available. We will monitor the extent to which the exemption as currently crafted fosters a disincentive to preparing annual financial information and operating data and making it publicly available and will consider whether any further amendment to the small issuer exemption is warranted.

[165] *See* Section III.A.6. *supra* for a discussion of the exemptive provision contained in Rule 15c2–12(d)(2).

[166] *See* GFOA Letter, SIFMA Letter, Texas MAC Letter, OMAC Letter, and Multiple-Markets Letter.

MSRB and a SID.[167] They believed that this approach would be more efficient for both issuers and SIDs and result in more complete and consistent data availability of information from the MSRB and SIDs. Furthermore, two of these commenters expressly indicated that there should be no charge to SIDs to receive such a data feed.[168] One commenter supported the proposal to remove references to SIDs from the Rule, noting that there are just three SIDs and that the ease of public access to the MSRB's EMMA system renders specific reference to SIDs, unnecessary.[169]

Because we are amending the Rule to provide for a single repository for the electronic collection and availability of continuing disclosure documents that, in our view, will efficiently and effectively improve disclosure in the municipal securities market, we believe that it is no longer necessary to specifically require in the Rule that Participating Underwriters reasonably determine that issuers and obligated persons have contractually agreed to provide continuing disclosure documents to the SIDs or that the provision that provides an exemption from this requirement refer to SIDs. Nevertheless, the amendments will not affect the legal obligation of issuers and obligated persons to provide continuing disclosure documents, along with any other submissions, to the appropriate SID, if any, as required under the appropriate state law. In addition, the amendments will have no effect on the obligations of issuers and obligated persons under outstanding continuing disclosure agreements entered into prior to the effective date of the amendments to the Rule to submit continuing disclosure documents to the appropriate SID, if any, as stated in their existing continuing disclosure agreements, nor on their obligation to make any other submissions that may be required under the appropriate state law. We agree with the opinions of those commenters who underscored the importance for the document collections of the MSRB and SIDs to be consistent to avoid uneven access to information that otherwise might result. However, the commenters' suggestions relating to data feeds, including free access to such feeds, relate to the operation of the MSRB's continuing disclosure component of the EMMA system, rather than to the instant rulemaking and therefore are addressed in connection with the MSRB Approval Order.[170]

8. Other Amendments

We are adopting a change to Rule 15c2–12(b)(4)(ii), as proposed, which currently refers to a NRMSIR with respect to the time period in which the Participating Underwriter must send the final official statement to any potential customer. Specifically, under Rule 15c2–12(b)(4), from the time the final official statement becomes available until the earlier of: (1) Ninety days from the end of the underwriting period; or (2) the time when the official statement is available to any person from a NRMSIR, but in no case less than twenty-five days following the end of the underwriting period, the Participating Underwriter in a primary offering is required to send to any potential customer, upon request, the final official statement. We are amending the language in Rule 15c2–12(b)(4)(ii), as proposed, to refer to the MSRB instead of to a NRMSIR. Accordingly, Participating Underwriters will have the time period from when the final official statement becomes available until the earlier of: (1) Ninety days from the end of the underwriting period; or (2) the time when the official statement is available to any person from the MSRB, but in no case less than twenty-five days following the end of the underwriting period, to send the final official statement to a potential customer, upon request.

In addition, we are adopting similar changes to Rule 15c2–12(f)(3) and (f)(9), as proposed, which define the terms ''final official statement'' and ''annual financial information,'' respectively. Rule 15c2–12(f)(3) defines the term ''final official statement'' to mean a document or set of documents prepared by an issuer of municipal securities or its representatives that is complete as of the date delivered to the Participating Underwriter and that sets forth information concerning, among other things, financial information or operating data concerning such issuers of municipal securities and those other entities, enterprises, funds, accounts, and other persons material to an evaluation of the offering. Rule 15c2–12(f)(9) defines the term ''annual financial information'' to mean financial information or operating data, provided at least annually, of the type included in the final official statement with respect to an obligated person, or in the case where no financial information or operating data was provided in the final official statement with respect to such obligated person, of the type included in the final official statement with respect to those obligated persons that meet the objective criteria applied to select the persons for which financial information or operating data will be provided on an annual basis. Both definitions allow for financial information or operating data to be set forth in the document or set of documents, or be included by specific reference to documents previously provided to each NRMSIR, and to a SID, if any, or filed with the Commission. We are amending Rule 15c2–12(f)(3) and (f)(9), as proposed, to replace references to each NRMSIR and the appropriate SID, if any, with references to the MSRB's Internet Web site. Accordingly, the amendments to paragraphs (f)(3) and (f)(9) of the Rule will allow issuers to reference financial information or operating data set forth in specified documents available to the public from the MSRB's Internet Web site (or filed with the Commission) as part of the final official statements and annual financial information, instead of referencing specific documents previously provided to each NRMSIR and SID.

We received one comment letter that addressed the proposed amendment to the definition of ''final official statement.''[171] The commenter expressed technical concerns regarding the first sentence of paragraph (f)(3), noting that issuers obligated by undertakings made before the effective date of the final amendments would not have entered into a ''written contract or agreement specified in paragraph (b)(5)(i)'' (because paragraph (b)(5)(i) currently requires different terms of the continuing disclosure undertaking). However, we have not made the change suggested in the comment letter because we do not believe that it is necessary. We believe that the amendment as adopted makes clear that, in reporting any instances in the previous five years in which each person specified pursuant to paragraph (b)(5)(ii) of the Rule failed to comply, in all material respects, with any previous undertakings in a written contract or agreement specified in paragraph (b)(5)(i) of the Rule, a final official statement must include any such failures over such period with respect to both written contracts or agreements entered into in conformance with paragraph (b)(5)(i) of the Rule prior to the effective date of the amendments and written contracts or agreements

[167] *See* GFOA Letter, at 3, Texas MAC Letter, OMAC Letter, and Multiple-Markets Letter, at 2.

[168] *See* GFOA Letter, at 3, and Multiple-Markets Letter, at 3.

[169] *See* SIFMA Letter, at 3.

[170] As noted above, the MSRB is required to file any new fees or changes to its fees with the Commission under Section 19(b) of the Exchange Act.

[171] *See* NABL Letter, at 2–3.

entered into in conformance with paragraph (b)(5)(i) of the Rule as amended.

B. Other Comments

Two commenters [172] questioned the Commission's authority to adopt the proposed amendments in light of the provisions of section 15B(d) of the Exchange Act, commonly referred to as the ''Tower Amendment.'' [173] One of the commenters stated its belief that the Tower Amendment prohibits federal regulation of state issuers; the proposed amendments place ''de facto regulatory power in the hands of a federal regulatory body;'' and ''the body in whose hands regulatory power is placed is a group constituted of those who stand to profit from underwriting of state-issued securities.'' [174] The other commenter stated that the proposed amendments, in combination, with the MSRB's EMMA Proposal, go further than the 1994 Amendments into the area protected by the Tower Amendment, because they establish, as the sole repository, a single Commission-supervised body, the MSRB, that is also subject to the Tower Amendment.[175] In addition, this commenter stated a belief that because the proposed amendments and the MSRB's related rule filing ''are akin to a joint initiative between the SEC and the MSRB,'' they should be subject to the limits of both provisions of Section 15B(d). Because the commenter questions whether the Commission's and MSRB's proposals would in fact improve the availability of municipal securities disclosure, it believed that it is ''even harder to link the [proposed amendments and related MSRB rule filing] to preventing fraud, which is the basis for the Commission's authority.'' [176]

Three commenters that supported the proposed amendments expressed their concern about any actions that would allow the Commission to impose disclosure requirements on issuers.[177] One of these commenters, however, expressly noted that ''the proposal's sole purpose of having the MSRB operate a system to accept and post disclosure documents does not violate the Tower Amendment.'' [178]

As we have noted in the past,[179] with the passage of the Securities Acts Amendments of 1975 (''1975 Amendments''), Congress provided for a limited regulatory scheme for municipal securities.[180] Prior to the passage of the 1975 Amendments, municipal issuers were exempt from the registration and continuous reporting provisions of both the Securities Act of 1933 [181] and the Exchange Act. While municipal issuers continued to be exempt from all but the antifraud provisions of the federal securities laws, the 1975 Amendments required the registration of municipal securities brokers and dealers,[182] and established the MSRB,[183] granting it the authority to promulgate rules governing the sale of municipal securities effected by brokers, dealers and municipal securities dealers.

While narrowly tailoring the authority of the MSRB to require that disclosure documents be provided to investors, Congress was careful to preserve the authority of the Commission under section 15(c)(2) of the Exchange Act.[184] Section 15B(d)(2) expressly indicates that ''[n]othing in this paragraph shall be construed to impair or limit the power of the Commission under any provision of this title.'' [185] Thus, while prohibiting the Commission from requiring municipal issuers to file reports or documents prior to issuing securities in section 15B(d)(1),[186] Congress expanded the Commission's authority to adopt rules reasonably designed to prevent fraud. The Commission does not believe the amendments to Rule 15c2–12 are inconsistent with the limitations in Exchange Act section 15B(d). As discussed in detail throughout this release, as well as the Proposing Release, the Commission believes that the amendments to Rule 15c2–12 are consistent with its Congressional mandate to, among other things, adopt rules reasonably designed to prevent fraud in the municipal securities market.[187] It is important for investors, market professionals, analysts, and others to have access to complete and timely descriptive information about municipal securities and municipal securities issuers. The proposed amendments are expected to improve access to information about municipal securities for those who effect transactions in the municipal markets. Better access to the disclosure is designed to allow them to compare that information against any other information disseminated with respect to municipal securities. In furtherance of the fundamental purpose of Rule 15c2–12, this accessibility should allow these market participants to more easily detect potentially fraudulent information. Finally, we do not believe that this Commission rulemaking implicates section 15B(d)(2), which applies only to the MSRB. Indeed, this rulemaking comports with section 15B(d)(2)'s explicit reservation of the Commission's authority under the Exchange Act to, among other things, promulgate regulations reasonably designed to prevent fraud, thereby protecting investors and preserving the integrity of the market for municipal securities.

C. Transition

The amendments to Rule 15c2–12 will require Participating Underwriters to reasonably determine whether continuing disclosure agreements for primary offerings occurring on or after the effective date of the amendments comply with the provisions of the amendments, including containing a specific reference to the MSRB as the sole repository to receive an issuer's or obligated person's continuing disclosure documents. Commenters generally confirmed that an issue exists with respect to the handling of continuing disclosure documents submitted under continuing disclosure agreements entered into by issuers and obligated persons prior to the effective date of the

[172] *See* SPSE Letter, at 12–15, and DPC DATA Letter, at 1.

[173] The so-called ''Tower Amendment,'' added Section 15B(d), 15 U.S.C. 78*o*–4(d) to the Exchange Act. It states: ''(1) Neither the Commission nor the Board is authorized under this title, by rule or regulation, to require any issuer of municipal securities, directly or indirectly through a purchaser or prospective purchaser of securities from the issuer, to file with the Commission or the Board prior to the sale of such securities by the issuer any application, report, or document in connection with the issuance, sale, or distribution of such securities. (2) The Board is not authorized under this title to require any issuer of municipal securities, directly or indirectly through a municipal securities broker or municipal securities dealer or otherwise, to furnish to the Board or to a purchaser or a prospective purchaser of such securities any application, report, document, or information with respect to such issuer: Provided, however, That the Board may require municipal securities brokers and municipal securities dealers to furnish to the Board or purchasers or prospective purchasers of municipal securities applications, reports, documents, and information with respect to the issuer thereof which is generally available from a source other than such issuer. Nothing in this paragraph shall be construed to impair or limit the power of the Commission under any provision of this title.'' 15 U.S.C. 78*o*–4(d).

[174] *See* DPC DATA Letter, at 1.

[175] *See* SPSE Letter, at 14.

[176] *See* SPSE Letter, at 14.

[177] *See* GFOA Letter, at 1, NASACT Letter, at 2, and NAHEFFA Letter, at 2.

[178] *See* GFOA Letter, at 3.

[179] *See* 1994 Proposing Release, *supra* note 113.

[180] The Securities Acts Amendments of 1975, Pub. L. 94–29, 89 Stat. 97 (June 4, 1975).

[181] 15 U.S.C. 77a *et seq.*

[182] 15 U.S.C. 78*o*–4(a)(1).

[183] 15 U.S.C. 78*o*–4(b)(1).

[184] 15 U.S.C. 78*o*(c)(2).

[185] 15 U.S.C. 78*o*–4(d)(2).

[186] 15 U.S.C. 78*o*–4(d)(1).

[187] Rule 15c2–12 was adopted under a number of Exchange Act provisions, including Section 15(c); 15 U.S.C. 78*o*(c).

final rule amendments.[188] To address issues that may arise if continuing disclosure documents submitted pursuant to existing continuing disclosure agreements must be filed in different locations from those documents submitted in connection with offerings occurring on or after the amendments' effective date, we requested comment on directing Commission staff to withdraw the ''no action'' letters provided to the current NRMSIRs and designating the MSRB as the sole NRMSIR.[189]

While some commenters [190] supported this approach, others advocated various alternative transition processes.[191] For example, one commenter suggested that the Commission could require any continuing disclosure made pursuant to the amended Rule provide that issuers make filings with the MSRB electronically with respect to new undertakings and all undertakings previously entered into by such issuers.[192] In the alternative, this commenter suggested that the Commission issue an interpretive letter stating that an issuer that chooses to satisfy existing undertakings (namely, that documents be provided to NRMSIRs and SIDs) by transmitting them to the MSRB would be acting in a manner consistent with the Rule as amended.[193] Another commenter supported the proposed alternative approaches.[194] The Commission observes that under the commenter's primary suggestion, the Commission in effect would mandate the amendment of existing contracts without the parties' consent. We do not believe that it would be appropriate to interfere with the terms of existing contracts, which were the subject of negotiation among the parties. In addition, we note that the submission to the MSRB of continuing disclosure documents for past offerings would not occur until a subsequent offering occurs. As many issuers and obligated persons do not offer securities annually—many do so only occasionally—there would be a potentially lengthy period during which some issuers would supply continuing disclosure documents to the MSRB, while others would continue to supply them to the NRMSIRs and SIDs under existing continuing disclosure agreements. The commenter's suggested alternative, that the Commission issue an interpretive letter stating that an issuer or obligated person that chooses to satisfy an existing undertaking by transmitting documents to the MSRB would be acting in a manner consistent with the Rule, as amended, would also be inappropriate because it would ignore the plain meaning of those existing contracts that require continuing disclosure documents to be provided to NRMSIRs and SIDs.

We believe that it would be inefficient, confusing and burdensome for issuers to submit continuing disclosure documents for offerings that occurred prior to the effective date of the final amendments to different locations than for offerings occurring afterwards. Moreover, having such a bifurcated system would not be in the best interests of investors and others who seek information about municipal issuers because it could result in the MSRB collecting only a portion of new information. We believe that one commenter's suggestion that new continuing disclosure agreements amend all prior disclosure agreements of the same issuer would incorporate existing continuing disclosure into the new centralized system only if and when an issuer returns to the market, and therefore is not as effective a transition mechanism as the Commission's approach.

We believe that it will be more efficient and effective to implement a sole repository expeditiously. In our view, this can best be accomplished by creating a mechanism by which issuers or obligated persons may comply with their existing undertakings by submitting their continuing disclosure documents to one location, thereby providing investors and municipal market participants with prompt and easy access to continuing disclosure documents at no charge. Our proposed approach to withdraw the ''no action'' letters to the existing NRMSIRs and have the MSRB be the sole NRMSIR for the submission of continuing disclosure documents pursuant to continuing disclosure agreements entered into prior to the effective date of the final amendments was supported by a number of commenters who addressed this issue.[195] We believe that, given the MSRB's proposal to implement the continuing disclosure feature of its EMMA system that we are approving today, it is reasonable and sensible for the MSRB also to serve as the sole NRMSIR.

Accordingly, the Commission has determined to implement the approach that it outlined in the Proposing Release.[196] We hereby direct Commission staff to withdraw all ''no action'' letters recognizing existing NRMSIRs [197] as of 12 midnight (ET) of the day preceding the effective date of the final amendments to Rule 15c2–12. In addition, by amending Rule 15c2–12, we are designating the MSRB as the sole NRMSIR. Consequently, beginning on the effective date of the final amendments, continuing disclosure documents that are provided pursuant to existing continuing disclosure agreements—*i.e.*, those agreements entered into prior to the effective date of the final amendments (which typically reference the NRMSIRs as locations to which a submission should be made)—should be provided to the MSRB in its capacity as the sole NRMSIR.[198] Providing all submissions—for both past and future offerings—to the same location is expected to be less confusing to, and is expected to simplify the submission process for, issuers and other obligated persons subject to continuing disclosure agreements, as well as to investors and others who wish to obtain such information.[199]

[188] *See, e.g.*, ICI Letter, at 4, NABL Letter, at 1–2, SPSE Letter, at 15, and Vanguard Letter, at 3.

[189] *See* Proposing Release, 73 FR at 46146.

[190] *See* SIFMA Letter, at 3–4, ICI Letter, at 3–4, and Vanguard Letter, at 2–3.

[191] *See* GFOA Letter, at 3, NABL Letter, at 1–2, NASACT Letter, at 2, and NFMA Letter, at 1.

[192] *See* NABL Letter, at 1–2.

[193] *Id.*

[194] *See* GFOA Letter, at 3.

[195] *See* ICI Letter, at 4, SIFMA Letter, at 4, and Vanguard Letter, at 3.

[196] *See* Proposing Release, 73 FR at 46146.

[197] *See* Letters from Brandon Becker, Director, Division of Market Regulation (n/k/a Division of Trading and Markets), Commission, to: Michael R. Bloomberg, President, Bloomberg L.P., dated June 26, 1995, and Aaron L. Kaplow, Vice President, Kenny S&P Information Services, dated June 26, 1995; and Letters from Robert L.D. Colby, Deputy Director, Division of Market Regulation (n/k/a Division of Trading and Markets), Commission, to: Peter J. Schmitt, President, DPC DATA, dated June 23, 1997, and John King, Chief Operating Officer, Interactive Data, dated December 21, 1999.

[198] Issuers or obligated persons with existing limited undertakings under Rule 15c2–12(d)(2)(ii)(B) that reference the MSRB rather than the NRMSIRs as the location to submit material event notices would not be affected by this approach because they would continue to submit such notices to the MSRB as stated in their limited undertaking. However, issuers or obligated persons with existing limited undertakings that reference the NRMSIRs as the location to submit material event notices would provide such notices to the MSRB in its capacity as the sole NRMSIR.

[199] We note that this approach will result in issuers located in the three states with SIDs providing continuing disclosure documents for undertakings entered into prior to the effective date of the final amendments to both the MSRB and the appropriate SID. This situation is unavoidable even though SIDS no longer will be referenced in the Rule as amended, because the obligation to provide documents to the appropriate SID under existing agreements is not being affected as a result of our direction to withdraw outstanding ''no action'' letters to the NRMSIRs and designating the MSRB as the sole NRMSIR for purposes of outstanding continuing disclosure agreements.

To assist issuers and obligated persons during the period between the date the Commission adopts the amendments and their effective date, municipal advisers and lawyers may wish to consider noting to their clients that the MSRB will become the only NRMSIR on the effective date and that all continuing disclosure documents should thereafter be provided to the MSRB alone. We note that the MSRB has indicated plans for an extensive outreach program to educate issuers and other obligated persons regarding use of its EMMA system's continuing disclosure service and to assist filers who have been accustomed to providing paper documents, which should help further alleviate the potential for transitional problems.[200]

In determining that the MSRB should become the sole NRMSIR on the effective date of the final amendments, we considered the continued accessibility to the public of the documents provided to the existing NRMSIRs. In the Proposing Release, we sought comment on whether there are concerns that the NRMSIRs would not retain the historical continuing disclosure documents and whether commenters anticipate any problems in obtaining such documents from the current NRMSIRs, if they were no longer recognized as such. In addition, we requested that, if commenters foresaw any such problems, they suggest alternative approaches for the retention of and access to historical information.

One NRMSIR requested that, in the event that the Commission determined no longer to designate it as a NRMSIR, it not have any continuing obligation to serve as a NRMSIR for existing documents and historical documents.[201] However, other commenters expressed a concern that such documents might not remain accessible.[202] The Commission understands that each NRMSIR is an information vendor that has been in that business for a number of years.[203] While Rule 15c2–12, as amended, will no longer contemplate use of the current NRMSIRs for future continuing disclosure documents from issuers and obligated persons after the effective date of the final amendments, the Commission believes that the current NRMSIRs could determine it is in their interest to continue to provide public access to the continuing disclosure documents they obtained while serving as NRMSIRs, in order to be able to earn revenue from their respective collections. As a practical matter, requests for such documents from the NRMSIRs by those who are not already subscribers to their services may be expected to decline over time, because more current continuing disclosure documents will become available without charge from the MSRB.

We also requested comment on any issues or problems that could arise if investors seek to obtain and compare information from multiple repositories—*e.g.*, historical continuing disclosure documents from the NRMSIRs and current continuing disclosure documents from the MSRB—and whether there are any alternative methods that would allow them to obtain complete information about municipal securities, including obtaining historical information. Two commenters, however, favored transferring continuing disclosure information to the MSRB if the NRMSIRs do not retain historical documents.[204]

We note that transitional issues regarding access to continuing disclosure documents generally are time limited. Investors presumably desire to obtain information for only the most recent years. Further, since final official statements of offerings subject to the Rule must disclose the failures of an issuer or obligated person to comply with continuing disclosure undertakings only for the previous five years,[205] Participating Underwriters presumably do not desire access to older information. The Commission believes that the benefits that it anticipates in connection with the final amendments justify the transitory challenges of the Rule's conversion from the NRMSIR model to a model in which the MSRB will be the sole repository.

Some commenters advocated a short transition period[206] whereas other commenters stressed that the Commission should allow sufficient time to allow small issuers to prepare for an electronic-only process.[207] We have established July 1, 2009 as the effective date of these amendments.[208] We believe that the approximately eight month period will be adequate to address commenters' concerns regarding the need for adequate time for issuers to become informed about the MSRB's new role as the only NRMSIR; become familiar with the continuing disclosure component of EMMA; arrange to obtain necessary documents in or convert such documents into the electronic format designated by the MSRB; and generally adapt their policies and procedures for providing continuing disclosure documents.

IV. Paperwork Reduction Act

The Rule, as amended, contains ''collection of information requirements'' within the meaning of the Paperwork Reduction Act of 1995 (''PRA'').[209] In accordance with 44 U.S.C. 3507 and 5 CFR 1320.11, the Commission submitted revisions to the currently approved collection of information titled ''Municipal Securities Disclosure'' (17 CFR 240.15c2–12) (OMB Control No. 3235–0372) to the Office of Management and Budget (''OMB''). An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number. In the Proposing Release, the Commission solicited comments on the collection of information requirements. The Commission noted that the estimates of the effect that the proposed amendments to the Rule would have on the collection of information were based on data from various sources, including the most recent PRA submission for Rule 15c2–12, the MSRB, and municipal industry participants. Although the Commission received twenty-three comment letters on the proposed rulemaking, none of the commenters addressed the estimates regarding its collection of information aspects. After further consideration, the Commission has refined the cost estimate that issuers could incur to obtain technology resources. The Commission continues to believe that all other burden estimates provided in the Proposing Release are appropriate.

A. Summary of Collection of Information

Prior to these amendments, under paragraph (b) of Rule 15c2–12, a Participating Underwriter is required: (1) To obtain and review an official statement ''deemed final'' by an issuer of the securities, except for the omission of specified information, prior to making a bid, purchase, offer, or sale of municipal securities; (2) in non-competitively bid offerings, to send, upon request, a copy of the most recent preliminary official statement (if one

[200] *See* MSRB EMMA Proposal, *supra* note 12, 73 FR at 46165.

[201] *See* SPSE Letter, at 15.

[202] *See* Vanguard Letter, at 3, and ICI Letter, at 4.

[203] *See supra* note 197.

[204] *See* ICI Letter, at 4, and Vanguard Letter, at 3.

[205] *See* Rule 15c2–12(f)(3), 17 CFR 15c2–12(f)(3).

[206] *See* NFMA Letter, at 1, and Vanguard Letter, at 3.

[207] *See* GFOA Letter, at 2, and NASACT, at 2.

[208] Because commenters also addressed the proper length of the transition period in the context of the MSRB EMMA Proposal, we also are addressing the issue in the MSRB Approval Order, *supra* note 12.

[209] 44 U.S.C. 3501 *et seq.*

exists) to potential customers; (3) to send, upon request, a copy of the final official statement to potential customers for a specified period of time; (4) to contract with the issuer to receive, within a specified time, sufficient copies of the final official statement to comply with the Rule's delivery requirement, and the requirements of the rules of the MSRB; and (5) before purchasing or selling municipal securities in connection with an offering, to reasonably determine that the issuer or obligated person has undertaken, in a written agreement or contract, for the benefit of holders of such municipal securities, to provide annual filings, material event notices, and failure to file notices (*i.e.*, continuing disclosure documents) to each NRMSIR (or, alternatively, to the MSRB in the case of material event notices and failure to file notices).[210] Under the Rule, as amended, Participating Underwriters will be required to reasonably determine that the issuer or obligated person has undertaken in a continuing disclosure agreement to provide continuing disclosure documents to the MSRB, in an electronic format and accompanied by identifying information, in each case as prescribed by the MSRB. The final rule amendments will not substantively change any of the current obligations of Participating Underwriters, except to the extent that Participating Underwriters will have to reasonably determine that the issuer or obligated person has agreed in the continuing disclosure agreement to provide continuing disclosure documents to a single repository, *i.e.*, the MSRB, instead of to multiple NRMSIRs.

The final amendments also will revise Rule 15c2–12(d)(2)(ii), which is part of an exemptive provision from the requirements of Rule 15c2–12(b)(5). Prior to the amendments adopted today, the exemption in Rule 15c2–12(d)(2) provided that paragraph (b)(5) of the Rule, which relates to the submission of continuing disclosure documents pursuant to continuing disclosure agreements, would not apply to a primary offering if three conditions were met: (1) The issuer or the obligated person has $10 million or less of debt outstanding;[211] (2) the issuer or obligated person has undertaken in a written agreement or contract to provide: (A) Financial information or operating data regarding each obligated person for which financial information or operating data is presented in the final official statement, including financial information and operating data which is customarily prepared by such obligated person and is publicly available, upon request to any person or at least annually to the appropriate SID,[212] and (B) material event notices to each NRMSIR or the MSRB, as well as the appropriate SID;[213] and (3) the final official statement identifies by name, address and telephone number the persons from which the foregoing information, data and notices can be obtained. The final amendments revise the limited undertaking set forth in 15c2–12(d)(2)(ii)(A) and (B) by deleting references to the NRMSIRs and SIDs and solely referencing the MSRB. Accordingly, under the amendment to Rule 15c2–12(d)(2)(ii), a Participating Underwriter will be exempt from its obligations under paragraph (b)(5) of the Rule if an issuer or obligated person has agreed in its limited undertaking to provide financial information, operating data and material event notices to the MSRB in an electronic format as prescribed by the MSRB, and the exemption's other conditions are met.

B. Use of Information

The final amendments will provide for a single repository that receives submissions in an electronic format to encourage a more efficient and effective process for the collection and availability of continuing disclosure documents. The final amendments are intended to improve the availability of continuing disclosure documents that provide current information about municipal issuers and their securities. As a result, investors and other municipal securities market participants should be able to have ready and prompt access to the continuing disclosure documents of municipal securities issuers. This information could be used by retail and institutional investors; underwriters of municipal securities; other market participants, including broker-dealers and municipal securities dealers; municipal securities issuers; vendors of information regarding municipal securities; the MSRB and its staff; Commission staff; and the public generally.

C. Respondents

The final amendments require that a Participating Underwriter in a primary offering of municipal securities reasonably determine that the issuer or an obligated person has undertaken in a continuing disclosure agreement to submit specified continuing disclosure documents to the MSRB in an electronic format and accompanied by identifying information, as prescribed by the MSRB. In the Proposing Release, we estimated that the respondents impacted by the paperwork collection associated with the Rule would consist of: 250 broker-dealers, 10,000 issuers, and the MSRB. The Commission included this estimated number of respondents in the Proposing Release and received no comments on this estimate. The Commission continues to believe that these estimates are appropriate.

D. Total Annual Reporting and Recordkeeping Burden

We estimate the aggregate information collection burden for the amended Rule to consist of the following:

1. Broker-Dealers

We estimate that the Rule, as amended, will impose a paperwork collection burden for 250 broker-dealers and will require each of these broker-dealers an average burden of one hour per year to comply with the Rule. This burden accounts for the time it will take a broker-dealer to reasonably determine that the issuer or obligated person has undertaken, in a written agreement or contract, for the benefit of holders of such municipal securities, to provide annual filings, material event notices, and failure to file notices (*i.e.*, continuing disclosure documents) to the MSRB.

In addition, we estimate that a broker-dealer will incur a one-time paperwork burden to have its internal compliance attorney prepare and issue a notice advising its employees who work on primary offerings of municipal securities about the final amendments to Rule 15c2–12. We estimate that it will take the internal compliance attorney approximately 30 minutes to prepare a notice describing the broker-dealer's obligations in light of the revisions to the Rule. The task of preparing and issuing a notice advising the broker-dealer's employees about the adopted amendments is consistent with the type of compliance work that a broker-dealer typically handles internally. Accordingly, we estimate that 250 broker-dealers each will incur a one-time, first-year burden of 30 minutes to prepare and issue a notice to its employees regarding the broker dealer's obligations under the adopted amendments.

Therefore, under the final amendments, the total burden on broker-dealer respondents will be 375

[210] 17 CFR 240.15c2–12(b).

[211] 17 CFR 240.15c2–12(d)(2)(i).

[212] 17 CFR 240.15c2–12(d)(2)(ii)(A).

[213] 17 CFR 240.15c2–12(d)(2)(ii)(B).

hours for the first year[214] and 250 hours for each subsequent year.[215] The Commission included these estimates in the Proposing Release and received no comments on them. The Commission continues to believe that these estimates are appropriate.

2. Issuers

The Commission believes that issuers prepare annual filings and material event notices as a usual and customary practice in the municipal securities market. Issuers' undertakings regarding the submission of annual filings, material event notices, and failure to file notices that are set forth in continuing disclosure agreements contemplated by the Rule impose a paperwork burden on issuers of municipal securities. We estimate that, in connection with the final amendments to the Rule, 10,000 municipal issuers with continuing disclosure agreements will prepare approximately 12,000 to 15,000 annual filings yearly.[216]

The Rule, as amended, provides that, under continuing disclosure agreements, continuing disclosure documents are to be submitted electronically to the MSRB, but does not revise the categories of persons who can submit the documents. Issuers can continue to submit continuing disclosure documents directly to the repository or can do so indirectly through an indenture trustee or a designated agent. An issuer might engage the services of a designated agent as a matter of convenience to advise it of the timing and type of continuing disclosure documents that need to be submitted to the repository. We estimate that approximately 30% of issuers will utilize the services of a designated agent to submit disclosure documents to the MSRB.

We estimate that, under the final amendments, an issuer will take approximately 45 minutes to submit an annual filing to the MSRB in an electronic format and accompanied by identifying information. This estimate includes approximately 30 minutes to prepare the annual filing, which is consistent with the prior paperwork collection associated with the Rule, plus a new burden of an additional 15 minutes to convert the information into an electronic format and add any identifying information that the repository may prescribe. Therefore, under the final amendments, the total burden on issuers of municipal securities to submit 15,000 annual filings to the MSRB is estimated to be 11,250 hours.[217]

We estimate that, under the final amendments, the MSRB annually will receive approximately 50,000 to 60,000 notices of the occurrence of a material event.[218] We also estimate that, under the final amendments, an issuer will take approximately 45 minutes to submit a material event notice to the MSRB in an electronic format and accompanied by identifying information. This estimate includes approximately 30 minutes to prepare the material event notice, which is consistent with the prior paperwork collection associated with the Rule, plus an additional 15 minutes to convert the information into an electronic format and add any identifying information that the repository may prescribe. Therefore, under the final amendments, the total burden on issuers to submit material event notices to the MSRB will require 45,000 hours.

We estimate that, under the final amendments, the MSRB annually will receive approximately 1,500 to 2,000 failure to file notices. We also estimate that, under the final amendments, an issuer will take approximately 30 minutes to submit a failure to file notice to the MSRB in an electronic format and accompanied by identifying information. This estimate includes approximately 15 minutes to prepare the failure to file notice, plus an additional 15 minutes to convert the information into an electronic format and add any identifying information that the repository would prescribe. Therefore, under the adopted amendments, the total burden on issuers to prepare and submit failure to file notices to the MSRB will be 1,000 hours.[219] Thus, the estimated 1,000 hours to prepare and submit failure to file notices to the MSRB represents a new paperwork burden of 1,000 hours.

Accordingly, under the final amendments, the total burden on issuers to submit annual filings, material event notices and failure to file notices to the MSRB would be 57,250 hours.[220] The Commission included these estimates in the Proposing Release and received no comments on them. The Commission continues to believe that these estimates are appropriate.

3. The MSRB

Under the final amendments, the MSRB will be the sole repository and will receive disclosure documents in an electronic, rather than paper, format. We estimate that the burden on the MSRB to collect, index, store, retrieve, and make available the pertinent documents would be the number of hours that its employees would be assigned to the system for collecting, storing, retrieving, and making available the documents. In the Proposing Release, we noted that the MSRB advised that three full-time employees and one half-time employee would be assigned to these tasks and that each full-time employee would spend approximately 2,000 hours per year working on these tasks. Therefore, under the final amendments, the total burden on the MSRB to collect, store, retrieve, and make available the disclosure documents covered by the amendments will be 7,000 hours per year.[221] The Commission included this estimate in the Proposing Release and received no comments on it. The Commission continues to believe that this estimate is appropriate.

4. Annual Aggregate Burden for Proposed Amendments

Accordingly, we estimate that the ongoing annual aggregate information collection burden for the amended Rule will be 64,500 hours.[222] The Commission included this estimate in the Proposing Release and received no comments on it. The Commission continues to believe that this estimate is appropriate.

E. Total Annual Cost Burden

1. Issuers

The Commission expects that some issuers may be subject to some costs associated with the electronic

[214] (250 (maximum estimate of broker-dealers impacted by the final amendments) × 1 hour) + (250 (maximum estimate of broker-dealers impacted by the final amendments) × .5 hour (estimate for one-time burden to issue notice regarding broker-dealer's obligations under the final amendments)) = 375 hours.

[215] 250 (maximum estimate of broker-dealers impacted by the final amendments) × 1 hour = 250 hours.

[216] The estimate for the number of annual filings includes the submission of annual financial information or operating data described in Rule 15c2–12(d)(2)(ii)(A).

[217] 15,000 (maximum estimate of annual filings) × 45 minutes = 11,250 hours.

[218] This estimate for material event notices includes the submission of material event notices described in Rule 15c2–12(d)(2)(ii)(B).

[219] 2,000 (maximum estimate of failure to file notices) × 30 minutes = 1,000 hours.

[220] 11,250 hours (estimated burden for issuers to submit annual filings) + 45,000 hours (estimated burden for issuers to submit material event notices) + 1,000 hours (estimated burden for issuers to submit failure to file notices) = 57,250 hours.

[221] 2,000 hours × 3.5 (3 full time employees and 1 half-time employee) = 7,000 hours.

[222] 250 hours (total estimated burden for broker-dealers) + 57,250 hours (total estimated burden for issuers) + 7,000 hours (total estimated burden for MSRB) = 64,500 hours. The initial first-year burden would be 64,625 hours: 375 hours (total estimated burden for broker-dealers in the first year) + 57,250 hours (total estimated burden for issuers) + 7,000 hours (total estimated burden for MSRB) = 64,625 hours.

submission of annual filings, material event notices and failure to file notices, particularly if they (or their agent) were submitting paper copies of these documents to the repositories. It is likely, however, that many issuers of municipal securities currently have the computer equipment and software necessary to convert paper copies of continuing disclosure documents to electronic copies and to electronically transmit the documents to the MSRB. For issuers that currently have such capability, the start-up costs to provide continuing disclosure documents to the MSRB will be minimal because they already possess the necessary resources internally. Some issuers may have the necessary computer equipment to transmit documents electronically to the MSRB, but may need to upgrade or obtain the software necessary to submit documents to the MSRB in the electronic format that it prescribes. For these issuers, the start-up costs will be the costs of upgrading or acquiring the necessary software. Issuers that presently do not provide their annual filings, material event notices and/or failure to file notices in an electronic format and that are currently sending paper copies of their documents to the repositories pursuant to their continuing disclosure agreements (or only providing disclosures upon request) may incur some costs to obtain electronic copies of such documents if they are prepared by a third party (*e.g.*, accountant or attorney) or, alternatively, to have a paper copy converted into an electronic format. These costs can vary depending on how the issuer elects to convert its continuing disclosure documents into an electronic format. An issuer may elect to have a third-party vendor transfer its paper continuing disclosure documents into the appropriate electronic format. An issuer also may decide to undertake the work internally, and its costs will vary depending on the issuer's current technology resources.

The cost for an issuer to have a third-party vendor transfer its paper continuing disclosure documents into an appropriate electronic format can vary depending on what resources are required to transfer the documents into the appropriate electronic format. One example of such a transfer is the scanning of paper-based continuing disclosure documents into an electronic format. We estimate that the cost for an issuer to have a third-party vendor scan documents will be $6 for the first page and $2 for each page thereafter. We estimate that material event and failure to file notices consist of one to two pages, while annual filings range from eight to ten pages to several hundred pages, but average about 30 pages in length. Accordingly, the approximate cost for an issuer to use a third party vendor to scan a material event notice or failure to file notice will be $8 each, and the approximate cost to scan an average-sized annual financial statement will be $64. We further estimate that an issuer will submit one to five continuing disclosure documents annually. We included these estimates in the Proposing Release and received no comments on them. We continue to believe that these estimates are appropriate.

Alternatively, an issuer that currently does not have the appropriate technology can elect to purchase the resources to electronically format the disclosure documents on its own.[223] We estimate that an issuer's initial cost to acquire these technology resources could range from $750 to $4,300.[224] Some issuers may have the necessary hardware to transmit documents electronically to the MSRB, but may need to upgrade or obtain the software necessary to submit documents to the MSRB in the electronic format that it prescribes. We estimate that an issuer's cost to update or acquire this software can range from $50 to $300.[225] We included these estimates in the Proposing Release and received no comments on them. We continue to believe that these estimates are appropriate.

In addition, issuers without direct Internet access may incur some costs to obtain such access to submit the documents. However, Internet access is now broadly available to and utilized by businesses, governments, organizations and the public, and we expect that most issuers of municipal securities currently have Internet access. In the event that an issuer does not have Internet access, we estimate the cost of such access to be approximately $50 per month. Otherwise, there are multiple free or low cost locations that an issuer can utilize, such as various commercial sites, which could help an issuer to avoid the costs of maintaining continuous Internet access solely to submit documents to the MSRB.

Accordingly, the Commission estimates that the costs to some issuers to submit continuing disclosure documents to a single repository in electronic format includes: (1) An approximate cost of $8 per notice to use a third party vendor to scan a material event notice or failure to file notice, and an approximate cost of $64 to use a third party vendor to scan an average-sized annual financial statement; (2) an approximate cost ranging from $750 to $4,300 to acquire technology resources to convert continuing disclosure documents into an electronic format; (3) an approximate cost ranging from $50 to $300 solely to upgrade or acquire the software to submit documents in an electronic format; and (4) approximately $50 per month to acquire Internet access.

For an issuer that does not have Internet access and elects to have a third party convert continuing disclosure documents into an electronic format (''Category 1 issuers''), the total maximum external estimated cost such issuer will incur is $752 per year.[226] For an issuer that does not have Internet access and elects to acquire the technological resources to convert continuing disclosure documents into an electronic format internally (''Category 2 issuers''), the total maximum external estimated cost such issuer will incur is $4,900 for the first year and $600 per year thereafter.[227] As

[223] Generally, the technology resources necessary to transfer a paper document into an electronic format are a computer, scanner and possibly software to convert the scanned document into the appropriate electronic document format. Most scanners include a software package that is capable of converting scanned images into multiple electronic document formats. An issuer will need to purchase software only if the issuer (1) has a scanner that does not include a software package that is capable of converting scanned images into the appropriate electronic format, or (2) purchases a scanner that does not include a software package capable of converting documents into the appropriate electronic format.

[224] The estimated cost for an issuer to upgrade or acquire the necessary technology to transfer its paper continuing disclosure documents into an electronic format is based on the following estimates for purchasing the necessary equipment from a commercial vendor: (1) $500 to $3,000 for a computer; (2) $200 to $1,000 for a scanner; and (3) $50 to $300 for software to submit documents in an electronic format.

[225] Issuers that need solely to upgrade existing software may incur costs closer to the lower end of this estimate, while those issuers that need to purchase completely new software packages may incur costs closer to the higher end of this estimate.

[226] [$64 (cost to have third party convert annual filing into an electronic format) × 2 (maximum estimated number of annual filings filed per year per issuer)] + [$8 (cost to have third party convert material event notice or failure to file notice into an electronic format) × 3 (maximum estimated number of material event or failure to file notices filed per year per issuer)] + [$50 (estimated monthly Internet charge) × 12 months] = $752. We estimate that an issuer would file one to five continuing disclosure documents per year. These documents generally consist of no more than two annual filings and three material event or failure to file notices.

[227] [$4,300 (maximum estimated one-time cost to acquire technology to convert continuing disclosure documents into an electronic format)] + [$50 (estimated monthly Internet charge) × 12 months] = $4,900. After the initial year, issuers who acquire the technology to convert continuing disclosure

Continued

noted in the Proposing Release, the estimated total cost for issuers, if they all were classified as Category 1 issuers, is $7,520,000 per year, and the estimated total cost for issuers, if they all were classified as Category 2 issuers, is $49,000,000 for the first year and $6,000,000 per year thereafter.[228] We included these cost estimates in the Proposing Release and received no comments on them.

After further consideration, we believe that the actual total costs that are likely to be incurred by issuers to convert continuing disclosure documents into an electronic format will be less than the estimated maximum external costs described above. We note that these total annual cost estimates are based on the assumption that all issuers subject to continuing disclosure agreements would have to acquire technology resources necessary to submit continuing disclosure documents in an electronic format to the MSRB. In the Proposing Release, we noted our belief that this was a conservative estimate, and that in all likelihood, many issuers either currently submit continuing disclosure documents in an electronic format or currently have the necessary technology resources to submit continuing disclosure documents in an electronic format.

In this regard, we noted in the Proposing Release that approximately 30% of issuers currently utilize the services of a designated filing agent to submit documents electronically to NRMSIRs. Moreover, all NRMSIRs currently allow electronic filing of continuing disclosure documents. We further note that it was reported in 2002 that approximately 89% of all municipal governments in New York, Pennsylvania and West Virginia had access to computer technology and used it in their operations.[229]

Finally, even if all issuers currently lack the necessary technology, we assume that they would be more likely to choose the lower cost option, *i.e.*, Category 1 with an estimated annual cost of $7,520,000. To be conservative for purposes of the PRA, however, the Commission estimates that the annual costs for those issuers that need to acquire technology resources to submit documents to the MSRB will be approximately $9,800,000[230] for the first year after the adoption of the final amendments and approximately $1,200,000[231] for each year thereafter.

Alternatively, an issuer may elect to use the services of a designated agent to submit continuing disclosure documents to the MSRB. As noted above, we believe that approximately 30% of municipal issuers that submit continuing disclosure documents today rely on the services of a designated agent. Generally, when issuers utilize the services of a designated agent, they enter into a contract with the designated agent for a package of services, including the submission of continuing disclosure documents, for a single fee. As noted in the Proposing Release, it is anticipated that five of the largest designated agents will submit documents electronically to the MSRB via a direct computer-to-computer interface. We estimate that the start-up cost for an entity to develop a direct computer-to-computer interface with the MSRB will range from approximately $69,360 to $138,720.[232] Thus, the maximum estimated total start-up cost of developing a direct computer-to-computer interface by each of the five designated agents for the submission of continuing disclosure documents to the MSRB is $693,600. The Commission included these cost estimates in the Proposing Release and received no comments on them. The Commission continues to believe that these estimates are appropriate.

The Commission believes that, in light of the estimated cost to develop and implement a computer-to-computer interface with the MSRB, it is unlikely that issuers will elect to proceed with this approach given the availability of less expensive alternatives to submitting continuing disclosure documents electronically to the MSRB. However, some issuers may choose to submit their continuing disclosure documents to the MSRB through a designated agent. A designated agent may submit continuing disclosure documents along with identifying information to the MSRB on behalf of numerous issuers. Depending on its business model, a designated agent may submit continuing disclosure documents along with identifying information to the MSRB via the Internet or through a direct computer-to-computer interface. In either case, the issuer will incur a cost associated with the designated agent's electronic submission of the pertinent continuing disclosure document and any identifying information to the MSRB. We estimate that this cost is approximately $16 per continuing disclosure document.[233] We continue to believe that this estimate is appropriate.

2. MSRB

The MSRB will incur costs to develop the computer system to allow it to collect, store, process, retrieve, and make available continuing disclosure documents furnished to it by issuers of municipal securities. The MSRB's start-up costs associated with developing the portal for continuing disclosure documents, including hardware, an additional hosting site, and software licensing and acquisition costs, is estimated to be approximately $1,000,000. In addition, the MSRB's annual operating costs for this system, excluding salary and other costs related to employees, is estimated to be approximately $350,000. Accordingly, we estimate that the total costs for the MSRB is $1,350,000 for the first year and $350,000 per year thereafter, exclusive of salary and other costs related to employees.[234] The

documents into an electronic format internally only will have the cost of securing Internet access. $50 (estimated monthly Internet charge) × 12 months = $600.

[228] Total cost for Category 1 issuers: 10,000 issuers × $752 (annual cost per issuer to have a third party convert continuing disclosure documents into an electronic format and for Internet access) = $7,520,000. Total cost for Category 2 issuers: 10,000 issuers × $4,900 (one-time cost to acquire technology to convert continuing disclosure documents into an electronic format and annual cost for Internet access) = $49,000,000. 10,000 issuers × $600 (annual cost per issuer for Internet access) = $6,000,000.

[229] *See* Timothy M. Kelsey, Michael J. Dougherty and Michael Hattery, *Information Technology Use by Local Governments in the Northeast: Assessment and Needs*, 40 Journal of Extension 5, October 2002 (available at *http://www.joe.org/joe/2002october/a4.shtml*) (''Journal of Extension'').

[230] 2,000 (Category 2 issuers) × $4,900 = $9,800,000. This estimate assumes 20% of issuers incur Category 2 costs at $4,900 per issuer. To be conservative, we are using a number approximately double the percentage of issuers estimated in the Journal of Extension article. We acknowledge that this estimate yields a sum greater than the total Category 1 cost.

[231] 2,000 (Category 2 issuers) × $600 = $1,200,000.

[232] As noted in the Proposing Release, the MSRB estimated that it would take an entity approximately 240 to 480 hours of computer programming to develop the computer-to-computer interface with the MSRB. $289 (hourly wage for a senior programmer) × 240 hours = $69,360. $289 (hourly wage for a senior programmer) × 480 hours = $138,720. The $289 per hour estimate for a senior programmer is from SIFMA's Office Salaries in the Securities Industry 2007, modified by Commission staff to account for an 1,800-hour work-year and multiplied by 5.35 to account for bonuses, firm size, employee benefits and overhead.

[233] This estimate includes the cost of having the designated agent's compliance clerk submit electronically the pertinent continuing disclosure document and any identifying information to the MSRB. 15 minutes (.25 hours) (estimated time per document to gather identifying information) × $62 (hourly wage for a compliance clerk) = $15.50 (approximately $16). The $62 per hour estimate for a compliance clerk is from SIFMA's Office Salaries in the Securities Industry 2007, modified to account for an 1,800-hour work-year and multiplied by 2.93 to account for bonuses, firm size, employee benefits and overhead.

[234] $1,000,000 (cost to establish computer system) + $350,000 (annual operation costs for computer system, excluding salary and other related costs for employees) = $1,350,000 (first year cost to MSRB). After the first year, the only cost would be the

Commission included these cost estimates in the Proposing Release and did not receive any comments on them. The Commission continues to believe that these estimates are appropriate.

F. Retention Period of Recordkeeping Requirements

The final amendments to the Rule do not contain any recordkeeping requirements. However, as an SRO subject to Rule 17a–1 under the Exchange Act,[235] the MSRB is required to retain records of the collection of information for a period of not less than five years, the first two years in an easily accessible place.

G. Collection of Information Is Mandatory

The collection of information pursuant to the Rule, as amended, is a mandatory collection of information.

H. Responses to Collection of Information Will Not Be Kept Confidential

The collection of information pursuant to the Rule, as amended, will not be confidential and will be publicly available.

V. Costs and Benefits of Proposed Amendments to Rule 15c2–12

In the Proposing Release the Commission considered certain costs and benefits of the amendments to Rule 15c2–12. As noted below, the Commission received a few general comments relating to the costs or benefits of the proposed amendments. As discussed below, the Commission is refining its cost analysis relating to the costs that issuers could incur to obtain technology resources. Other than this cost revision, the Commission is not modifying its costs and benefits analysis from that presented in the Proposing Release.

A. Benefits

Under the Rule, as amended, a Participating Underwriter will be prohibited from purchasing or selling municipal securities covered by the Rule in a primary offering, unless it has reasonably determined that the issuer of a municipal security has undertaken in a continuing disclosure agreement to provide continuing disclosure documents to the MSRB.[236] The Commission believes that providing for a single repository that receives submissions in an electronic format, rather than multiple repositories, will encourage a more efficient and effective process for the collection and availability of continuing disclosure information. In the Commission's view, a single electronic point of collection and accessibility of continuing disclosure documents can assist issuers and obligated persons in complying with their undertakings. Submission of continuing disclosure documents to one repository only rather than multiple repositories will reduce the resources issuers and obligated persons need to devote to the process of gathering and submitting continuing disclosure documents. Because the final amendments will provide for the electronic submission and availability of continuing disclosure documents, the costs to issuers and obligated persons of gathering and submitting this information ultimately could be reduced because these entities no longer will have to gather and submit documents in a paper format.

Most commenters were supportive of the proposed amendments and believed that a single repository for the collection, storage, and dissemination of continuing disclosure documents would greatly benefit investors and other municipal market participants.[237] Commenters indicated that the benefits of the proposed amendments include: (1) Increased transparency of municipal securities disclosure;[238] (2) simplifying and improving the efficiency of filing municipal disclosure information;[239] (3) improved accessibility to municipal disclosure information for investors and other market participants;[240] (4) assisting broker-dealers and mutual funds in meeting their regulatory obligations;[241] and (5) reducing the potential for fraudulent activities.[242] In addition, commenters noted that the submission of municipal disclosure information in an electronic format with indexing information would: (1) Make finding and using municipal disclosure information easier for investors and other municipal market participants;[243] and (2) help facilitate the creation of new value-added services by municipal disclosure vendors.[244]

As described more fully in section IV. above, we estimate that the ongoing annual information collection burden under the adopted amendments will be 64,500 hours.[245] This represents a reduction of 59,350 burden hours from the immediately preceding collection of information.[246] This overall reduction in the Rule's paperwork burden—and the costs associated with that burden—principally will benefit issuers or obligated persons.

The Commission also believes that having a single repository that receives and makes available submissions in an electronic format will provide ready and prompt access to this information by investors and municipal securities market participants. Investors and market participants will be able to go solely to one location to retrieve continuing disclosure documents rather than having to approach multiple locations, thereby allowing for a more convenient means to obtain such information. In addition, we believe that having one repository that electronically collects and makes available all continuing disclosure documents will increase the likelihood that investors and other market participants will obtain more complete information about municipal securities, thereby decreasing the potential for fraud.

We expect that a single repository that receives submissions in an electronic format could simplify compliance with regulatory requirements by broker-dealers and others, such as mutual funds, by providing them with consistent availability of continuing disclosure documents from a single

annual operation cost of $350,000. These costs do not include the salary and other overhead costs related to the employees who would maintain the system. The Proposing Release noted that MSRB staff advised Commission staff that the personnel costs associated with operating the portal for continuing disclosure documents will be approximately $400,000 per year.

[235] 17 CFR 240.17a–1.

[236] Under the adopted amendments to paragraph (d)(2)(ii) of the Rule, a Participating Underwriter would be exempt from its obligations under paragraph (b)(5) of the Rule as long as an issuer or obligated person has agreed in its limited undertaking that the publicly available financial information or operating data described in paragraph (d)(2)(ii)(A) of the Rule would be submitted to the MSRB annually, instead of upon request to any person or at least annually to the appropriate SID, if any, and that the material event notices described in paragraph (d)(2)(ii)(B) of the Rule would be submitted to the MSRB, instead of to each NRMSIR or the MSRB and to the appropriate SID, if any, and as long as the other conditions of the exemption are met.

[237] *See* GFOA Letter, Vanguard Letter, SIFMA Letter, MSRB Letter, Treasurer of the State of Connecticut Letter, IAA Letter, NASACT Letter, EDGAR Online Letter, NFMA Letter, NAHEFFA Letter, ICI Letter, Texas Mac Letter, and Multiple-Markets Letter.

[238] *See* Treasurer of the State of Connecticut Letter, at 1, and IAA Letter, at 1.

[239] *See* Texas MAC Letter, at 1, and IAA Letter, at 2.

[240] *See* SIFMA Letter, at 2, NASACT Letter, at 1, and ICI Letter, at 3.

[241] *See* SIFMA Letter, at 2, and ICI Letter, at 3.

[242] *See* ICI Letter, at 3.

[243] *See* ICI Letter, at 3, and IAA Letter, at 3.

[244] *See* Multiple-Markets Letter, at 2.

[245] The estimated annual information collection burden for the first year under the final amendments is 64,625 hours.

[246] For the first year, there is a reduction of 59,225 burden hours relative to the immediately preceding collection of information.

source. Information vendors (including those NRMSIRs and SIDs that had been information repositories for Rule 15c2–12 purposes) and others also will have ready access to all continuing disclosure documents that they in turn can use in any value-added products that they create. The Commission also expects that having a single repository that receives submissions in an electronic format will make municipal disclosure information more accessible for all municipal market participants.

Moreover, providing for a single repository may reduce the paperwork and other costs that NRMSIRs currently incur because they no longer will have to maintain personnel and other resources solely in connection with their status as a NRMSIR. Also, the Commission believes that the proposed amendments may encourage the dissemination of information in the information services markets by providing easier access to continuing disclosure documents. As a result, there potentially may be an increase in the number of information vendors disseminating continuing disclosure documents and offering value-added products because the cost of entry into the municipal securities information services market may be reduced.

B. Costs

The Commission does not expect broker-dealers to incur any additional recurring costs as a result of the Rule 15c2–12 amendments, because the amendments will not alter substantively the existing Rule's requirements for these entities, except with respect to the place to which issuers would agree to make filings. The final amendments will change the location where the continuing disclosure documents of issuers or obligated persons will be submitted pursuant to continuing disclosure agreements. As noted above, we estimate that the annual information collection burden for each broker-dealer under the Rule will be one hour. This annual burden is identical to the burden that a broker-dealer previously had under the Rule. Accordingly, we estimate that it will cost each broker-dealer $270 annually to comply with the Rule, as amended.[247]

We further estimate that a broker-dealer may have a one-time internal cost associated with having an in-house compliance attorney prepare and issue a memorandum advising the broker-dealer's employees who work on primary offerings of municipal securities about the amendments to Rule 15c2–12. Our estimate is that it will take internal counsel approximately 30 minutes to prepare this memorandum, for a cost of approximately $135.[248]

We believe that the ongoing obligations of broker-dealers under the Rule will be handled internally because compliance with these obligations is consistent with the type of work that a broker-dealer typically handles internally. We do not believe that a broker-dealer will have any recurring external costs associated with the amendments to the Rule.

The Commission received one comment letter regarding the obligations of a broker-dealer under the revised Rule, particularly with respect to its reasonably determining that the issuer or obligated person has contractually agreed to provide identifying information as prescribed by the MSRB.[249] This commenter stated that this requirement would not be unreasonably burdensome on broker-dealers that are Participating Underwriters. The Commission included in the Proposing Release the foregoing cost estimate regarding a broker-dealer's obligations under the Rule, as amended, and received no comments regarding this cost estimates.

Although Rule 15c2–12 relates to the obligations of broker-dealers, issuers or obligated persons indirectly could incur costs as a result of the adopted amendments. In connection with today's amendments, issuers of municipal securities will undertake in their continuing disclosure agreements to provide continuing disclosure documents to the MSRB, either directly or indirectly through an indenture trustee or a designated agent. In either case, some issuers may be subject to the costs associated with the electronic filing of annual filings, material event notices and failure to file notices, particularly if they (or their agent) were submitting paper copies of these documents to the NRMSIRs. For those issuers that delivered their continuing disclosure documents electronically to the NRMSIRs, there is expected to be minimal change in costs as a result of the Rule's new requirement that documents be submitted electronically.

Issuers that had not been providing their annual filings, material event notices and/or failure to file notices in an electronic format and were sending paper copies of their documents to the NRMSIRs pursuant to their continuing disclosure agreements may incur some costs to obtain electronic copies of such documents from the party who prepared them or, alternatively, to have a paper copy converted into an electronic format. These costs will vary depending on how the issuer elects to convert their continuing disclosure documents into an electronic format. An issuer can elect to have a third-party vendor transfer their paper continuing disclosure documents into the appropriate electronic format. An issuer also can decide to undertake the work internally, and its costs will vary depending on the issuer's technology resources. An issuer also will need to have Internet access to submit documents electronically and will incur the costs of maintaining such service, if the issuer currently does not have Internet access, unless it relies on other sources of Internet access.

It is likely, however, that most issuers of municipal securities currently possess the computer equipment and software necessary to convert paper copies of continuing disclosure documents to electronic copies and to electronically transmit the documents to the MSRB. For issuers that currently have such capability, the start-up costs to provide continuing disclosure documents to the MSRB will be minimal because they already will have the necessary resources internally.

As described more fully in section IV. above, we estimate that the costs to some issuers to submit continuing disclosure documents to the MSRB in an electronic format may include: (1) An approximate cost of $8 per notice to use a third party vendor to scan a material event notice or failure to file notice, and an approximate cost of $64 to use a third party vendor to scan an average-sized annual financial statement; (2) an approximate cost ranging from $750 and $4,300 to acquire technology resources to convert continuing disclosure documents into an electronic format; (3) approximately $50 to $300 to upgrade or acquire the software to submit documents in an electronic format; (4) approximately $50 per month to acquire Internet access; and (5) an approximate cost of $16 per continuing disclosure document to have a designated agent submit electronically continuing disclosure documents and identifying information to the MSRB. As noted in the Proposing Release, for an issuer that does not have Internet access and elects to have a third party convert continuing disclosure documents into an electronic format, the maximum external estimated cost such issuer will incur is $752 per

[247] 1 hour (estimated annual information collection burden for each broker-dealer) × $270 (hourly cost for a broker-dealer's internal compliance attorney) = $270. The hourly rate for the compliance attorney is from SIFMA's Management & Professional Earnings in the Securities Industry 2007, modified to account for an 1,800-hour work-year and multiplied by 5.35 to account for bonuses, firm size, employee benefits and overhead.

[248] *See* Section IV.D.1., *supra.*

[249] *See* SIFMA Letter, at 3.

year.[250] As noted in the Proposing Release, for an issuer that does not have Internet access and elects to acquire the technological resources to convert continuing disclosure documents into an electronic format internally, the maximum external estimated cost such issuer will incur is $4,900 for the first year and $600 per year thereafter.[251] As noted in the Proposing Release, the estimated total cost for issuers, if they all were classified as Category 1 issuers, is $7,520,000 per year, and the estimated total cost for issuers, if they all were classified as Category 2 issuers, is $49,000,000 for the first year and $6,000,000 per year thereafter.[252] We included these cost estimates in the Proposing Release and received no comments on them. In the Proposing Release, the Commission indicated that we believe that most issuers either currently submit continuing disclosure documents in an electronic format, or currently have the necessary technology resources to submit continuing disclosure documents in an electronic format. Accordingly, we believe that the actual total costs that will be incurred by issuers to convert continuing disclosure documents into an electronic format will be less than the estimated maximum external costs described above and discussed more fully in section IV. above.

The Commission estimates that the annual costs for those issuers that need to acquire technology resources to submit documents to the MSRB will be approximately $9,800,000[253] for the first year after the adoption of the final amendments and approximately $1,200,000[254] for each year thereafter.

Also, as more fully described in section IV. above, the total estimated cost of five designated agents to develop computer-to-computer interfaces for the submission of documents to the MSRB is $693,600. The Commission included this cost estimate in the Proposing Release and received no comments regarding it. The Commission continues to believe that this estimate is appropriate.

Issuers or obligated persons also will have to provide certain identifying information to the repository pursuant to their undertakings in continuing disclosure agreements. As described more fully in section IV. above, we estimate that each issuer will submit one to five continuing disclosure documents annually to the MSRB, for a maximum estimated annual labor cost of approximately $232.50 per issuer,[255] which equates to a total maximum annual cost of $2,325,000 for all issuers ($232.50 × 10,000 issuers). The Commission included these cost estimates for issuers in the Proposing Release and received no comments regarding these estimates. The Commission continues to believe that these estimates are appropriate.

The Commission expects that the costs to issuers may vary somewhat, depending on the issuer's size. In the Proposing Release, we noted our belief that any such difference would be attributable to the fact that larger issuers may tend to have more issuances of municipal securities; thus, larger issuers may tend to submit more documents than smaller issuers. We indicated that the costs of submitting documents under the proposal could be greater for larger issuers. Although no commenters took issue with any of the specific cost estimates set forth in the Proposing Release, two commenters discussed generally the potential costs of aspects of the proposed amendments, particularly with respect to smaller issuers.[256] One of these commenters noted that small issuers relying on the exemption contained in paragraph (d)(2) of the Rule would incur increased costs associated with the electronic filing of the information set forth in the exemption.[257] Prior to today's amendments, the exemption in paragraph (d)(2) of the Rule would not apply to a primary offering if, among other conditions, the issuer or obligated person has undertaken in a written agreement or contract to provide financial information or operating data regarding each obligated person for which financial information or operating data is presented in the final official statement, including financial information and operating data which is customarily prepared by such obligated person and is publicly available, upon request to any person or at least annually to the appropriate SID.[258] After today's amendments, Participating Underwriters seeking to utilize the exemption will need to reasonably determine that such issuer or obligated person has undertaken to provide such information to the MSRB annually. The amendment to paragraph (d)(2) of the Rule does not affect the nature of a Participating Underwriter's obligation to reasonably determine that a small issuer has undertaken to deliver continuing disclosure documents to fulfill the conditions of the exemption; rather, it affects what the Participating Underwriter needs to determine regarding the undertaking with respect to the location where such documents are to be sent. Specifically, the final amendments do not revise the provision limiting the commitment to provide annual financial or operating data only if such information is customarily prepared by such obligated person and is publicly available. We recognize that one effect of the amendments will be that some small issuers will submit annual financial information and operating data to the MSRB when currently they do not regularly submit such disclosures to any repository. We do not believe that electronically formatting information a small issuer already has and makes publicly

[250] [$64 (cost to have third party convert annual filing into an electronic format) × 2 (maximum estimated number of annual filings filed per year per issuer)] + [$8 (cost to have third party convert material event notice or failure to file notice into an electronic format) × 3 (maximum estimated number of material event or failure to file notices filed per year per issuer)] + [$50 (estimated monthly Internet charge) × 12 months] = $752. We estimate that an issuer would file one to five continuing disclosure documents per year. These documents generally consist of no more than two annual filings and three material event or failure to file notices.

[251] [$4,300 (maximum estimated one-time cost to acquire technology to convert continuing disclosure documents into an electronic format)] + [$50 (estimated monthly Internet charge) × 12 months] = $4,900. After the initial year, issuers who acquire the technology to convert continuing disclosure documents into an electronic format internally only will have the cost of securing Internet access. $50 (estimated monthly Internet charge) × 12 months = $600.

[252] Total cost for Category 1 issuers: 10,000 issuers × $752 (annual cost per issuer to have a third party convert continuing disclosure documents into an electronic format and for Internet access) = $7,520,000. Total cost for Category 2 issuers: 10,000 issuers × $4,900 (one-time cost to acquire technology to convert continuing disclosure documents into an electronic format and annual cost for Internet access) = $49,000,000. 10,000 issuers × $600 (annual cost per issuer for Internet access) = $6,000,000. To provide an estimate of the total costs to issuers that would not be under-inclusive, we assumed that all 10,000 issuers are Category 1 issuers and Category 2 issuers.

[253] 2,000 (Category 2 issuers) × $4,900 = $9,800,000. This estimate assumes 20% of issuers incur Category 2 costs at $4,900 per issuer. To be conservative, we are using a number approximately double the percentage of issuers estimated in the *Journal of Extension* article. We acknowledge that this estimate yields a sum greater than the total Category 1 cost.

[254] 2,000 (Category 2 issuers) × $600 = $1,200,000.

[255] 5 (maximum estimated number of continuing disclosure filed per year per issuer) × $62 (hourly wage for a compliance clerk) × 45 minutes (.75 hours) (average estimated time for compliance clerk to submit a continuing disclosure document electronically) = $232.50. The $62 per hour estimate for a compliance clerk is from SIFMA's Office Salaries in the Securities Industry 2007, modified to account for an 1,800-hour work-year and multiplied by 2.93 to account for bonuses, firm size, employee benefits and overhead. In order to provide an estimate of total costs for issuers that would not be under-inclusive, the Commission elected to use the higher end of the estimate of annual submissions of continuing disclosure documents.

[256] *See* NABL Letter, at 2, and GFOA Letter, at 2.

[257] *See* NABL Letter, at 2.

[258] 17 CFR 240.15c2–12(d)(2)(ii)(A).

available will be a significant burden. In addition, we do not believe that the final amendments would result in small issuers providing voluminous filings. Further, the costs that these issuers could incur to send documents electronically to the MSRB are included in the cost estimates for issuers discussed above. The only difference between the prior provision and the amended Rule is that, while issuers previously provided such information and data upon request, they now must provide it to the MSRB annually. The other commenter noted that some smaller issuers may have to purchase new software to submit electronic documents, but it further stated that the overall savings that an electronic-based repository will provide will benefit state and local governments and authorities.[259]

Further, the Commission does not anticipate that issuers will incur any costs associated with the need to revise the template for continuing disclosure agreements. The Proposing Release noted that, based on conversations between Commission staff and NABL staff, NABL members advised that the cost of revising the template for continuing disclosure agreements to reflect the rule amendments will be insignificant and thus unlikely to be passed on to issuers. We received no comments regarding this estimate and continue to believe that it is appropriate.

As discussed in section IV. above, the MSRB will incur costs to develop the computer system to allow it to collect, store, process, retrieve, and make available continuing disclosure documents furnished to it by issuers of municipal securities. We stated in the Proposing Release that the MSRB's start-up costs associated with developing the portal for continuing disclosure documents, including hardware, an additional hosting site, and software licensing and acquisition costs, will be approximately $1,000,000; that the MSRB's ongoing costs of operating the system, including allocated costs associated with such items as office space and licensing fees, will be approximately $1,350,000 for the first year and $350,000 per year thereafter; and that the MSRB's personnel costs associated with operating the portal for continuing disclosure documents will be approximately $400,000 per year.[260] We received no comments regarding these estimates and continue to believe that they are appropriate.

Some NRMSIRs and other vendors of municipal disclosure information may incur costs in transitioning their business models as a result of the final amendments that call for the MSRB to serve as the single repository for continuing disclosure documents. In the Proposing Release, we noted that any NRMSIR that provided municipal disclosure documents as its primary business model could face a significant decline in its business, and thus in income, as a result of the proposed amendments, as well as the possible withdrawal of the ''no action'' letters issued to the NRMSIRs and the designation of the MSRB as the sole NRMSIR for existing continuing disclosure agreements. As a result, the NRMSIRs could experience an immediate decline in income with respect to those parts of their business that provide municipal disclosure documents to persons who request them. We also noted that NRMSIRs could have some costs if they continued to maintain historical continuing disclosure information that they have already received under existing continuing disclosure agreements. Two commenters that are NRMSIRs submitted comment letters opposing the proposed amendments.[261] One of these commenters acknowledged generally that the proposed amendments could affect its business model.[262] However, neither of these commenters provided any specific cost estimates of the impact of the proposed amendments on their operations. In addition, one potential consequence of the final amendments is that there could be fewer value-added products available to investors, market participants and others, and the potential reduction in such products is not quantifiable.[263] The Commission included a discussion of the potential costs for NRMSIRs under the amended Rule in the Proposing Release and received no specific comments addressing these costs. The Commission believes that the potential costs discussed in the Proposing Release are still appropriate.

Finally, under the final amendments, Rule 15c2–12 no longer will refer to SIDs. The rule amendments will not affect the legal obligations of issuers or obligated persons to provide continuing disclosure documents, along with any other submissions, to the appropriate SID, if any, that may be required under the appropriate state law. In addition, the final amendments will have no effect on the obligations of issuers and obligated persons under outstanding continuing disclosure agreements entered into prior to the effective date of today's amendments to the Rule, to submit continuing disclosure documents to the appropriate SID, if any, as stated in their existing continuing disclosure agreements, nor on their obligation to make any other submissions that may be required under the appropriate state law. SIDs are membership organizations and use information submitted to them in products for their members. While SIDs can charge fees for requested documents, we do not believe that this is a primary source of revenue for them. As discussed above, the Commission received a number of comments regarding the proposed removal of references to SIDs from the Rule.[264] However, none of these comments included any discussions of the cost implications of removing references to SIDs from the Rule. In the Proposing Release, the Commission indicated that it does not expect that SIDs will experience a decline in operations or incur any costs as a result of the proposed amendments. The Commission received no comments regarding this statement and we continue to believe that this statement is appropriate.

In summary, the Commission estimates that the total annual cost for all respondents in the first year, under the amended Rule, is approximately $14,602,350.[265] The Commission also estimates that the total annual cost for all respondents after the first year, under the amended Rule, is approximately $4,275,000.[266]

[259] *See* GFOA Letter, at 2.

[260] This figure represents the estimated personnel costs associated with the MSRB's devoting three and one-half persons to the operation of the continuing disclosure portal.

[261] *See* DPC Data Letter and SPSE Letter.

[262] *See* DPC Data Letter at 1.

[263] *See* Section VI. *infra* for a discussion of the competitive impact of the amendments on the NRMSIRs.

[264] *See* GFOA Letter, SIFMA Letter, Texas MAC Letter, OMAC Letter, and Multiple-Markets Letter.

[265] ($33,750 (estimated annual cost for broker-dealers in year one) + (($9,800,000 (estimated annual cost for issuers to acquire technology resources) + $2,325,000 (estimated annual cost for all issuers' labor hours) + $693,600 (estimated one-time cost for development of designated agents computer interface)) total estimated annual costs for issuers in year one) + $1,750,000 (maximum estimated annual cost for the MSRB in year one)) = $14,602,350.

[266] ($1,200,000 (estimated annual cost for issuers to convert documents into an electronic format) + $2,325,000 (estimated annual cost for all issuers' labor hours)) estimated annual costs for issuers) + $750,000 (maximum estimated annual cost for the MSRB)) = $4,275,000.

VI. Consideration of Burden and Promotion of Efficiency, Competition, and Capital Formation

Section 3(f) of the Exchange Act [267] requires the Commission, whenever it engages in rulemaking and is required to consider or determine whether an action is necessary or appropriate in the public interest, to consider whether the action would promote efficiency, competition, and capital formation. In addition, section 23(a)(2) of the Exchange Act [268] requires the Commission, when adopting rules under the Exchange Act, to consider the impact such rules would have on competition. Section 23(a)(2) of the Exchange Act also prohibits the Commission from adopting any rule that would impose a burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act.

In the Proposing Release, we considered the proposed amendments to Rule 15c2–12 in light of the standards set forth in the above-noted Exchange Act provisions. We solicited comment on whether, if adopted, the proposed amendments would result in any anti-competitive effects or would promote efficiency, competition, and capital formation. We asked commenters to provide empirical data or other facts to support their views on any anti-competitive effects or any burdens on efficiency, competition, or capital formation that might result from adoption of the proposed amendments.

We believe that the amendments to the Rule will help make the municipal securities disclosure process more efficient and help conserve resources for municipal security issuers, as well as for investors and market participants. Under the regulatory framework that existed prior to today's amendments, issuers of municipal securities in their continuing disclosure agreements undertook to submit continuing disclosure documents to four separate NRMSIRs, and they submitted such documents in paper or electronic form. The Commission anticipates that the final rule amendments likely will promote the efficiency of the municipal disclosure process by reducing the resources municipal security issuers will need to devote to the process of submitting continuing disclosure documents.

As noted above, the Commission has long been interested in reducing the potential for fraud in the municipal securities market. At the time the Commission adopted Rule 15c2–12 in 1989 and adopted the 1994 Amendments, disclosure documents were submitted in paper form. The Commission believed that, in such an environment where document retrieval would be handled manually, the establishment of one or more repositories could be beneficial in widening the retrieval and availability of information in the secondary market, since the public could obtain the disclosure documents from multiple locations. The Commission's objective of deterring the potential for fraud by facilitating greater availability of municipal securities information remains unchanged.

However, there have been significant inefficiencies in the current use of multiple repositories that likely have affected the public's ability to retrieve continuing disclosure documents.[269] In this regard, the Commission noted in the 1989 Adopting Release that ''the creation of multiple repositories should be accompanied by the development of an information linkage among these repositories'' so as to afford ''the widest retrieval and dissemination of information in the secondary market.'' [270] Although the Commission in the 1989 Adopting Release supported the development of an information linkage among the repositories, none was established to help broaden the availability of the disclosure information. Also, since the adoption of the 1994 Amendments, there have been significant advancements in technology and information systems, including the use of the Internet, to provide information quickly and inexpensively to market participants and investors. In this regard, the Commission believes that the use of a single repository to receive, in an electronic format, and make available continuing disclosure documents in an electronic format will substantially and effectively increase the availability of municipal securities information about municipal issues and enhance the efficiency of the secondary trading market for these securities.

In addition, we believe that having a single repository for electronically submitted information will provide investors, market participants, and others with a more efficient and convenient means to obtain continuing disclosure documents and will help increase the likelihood that investors, market participants, and others will make more informed investment decisions regarding whether to buy, sell or hold municipal securities. The Commission believes that the final amendments will foster a more efficient means of municipal disclosure and, as a result, the Commission is approving the adoption of the proposed amendments to Rule 15c2–12.

With respect to the Exchange Act goal of promoting competition, the Commission notes that, when we adopted Rule 15c2–12 in 1989, we strongly supported the development of one or more central repositories for municipal disclosure documents.[271] The Commission ''recognize[d] the benefits that may accrue from the creation of competing private repositories,'' and indicated that ''the creation of central sources for municipal offering documents is an important first step that may eventually encourage widespread use of repositories to disseminate annual reports and other current information about issuers to the secondary markets.'' [272] Further, when we adopted the 1994 Amendments, the Commission stated that the ''requirement to deliver disclosure to the NRMSIRs and the appropriate SID also allay[ed] the anti-competitive concerns raised by the creation of a single repository.'' [273]

There have been significant advances in technology and information collection and delivery since that time, as discussed throughout this release and the Proposing Release, that indicate that having multiple repositories may not be necessary because the widespread availability and dissemination of information can be achieved through different, more efficient, means. Because the current environment differs markedly from the time when Rule 15c2–12 was adopted in 1989 and subsequently amended in 1994, the Commission believes that it is appropriate to adopt an approach that utilizes the significant technological advances, such as the development and use of various electronic formats, which have occurred in the intervening years.

The Commission's adoption of amendments to the Rule to provide for the use of a single repository for continuing disclosure documents will help further the Exchange Act objective of promoting competition because information about municipal securities, provided in an electronic format, will be more widely available to market professionals, investors, information vendors, and others as a result of the final amendments. For example, the Commission believes that competition

[267] 15 U.S.C. 78c(f).

[268] 15 U.S.C. 78w(a)(2).

[269] *See supra* note 35.

[270] *See* 1989 Adopting Release, *supra* note 18.

[271] *See* 1989 Adopting Release at 54 FR 28807, *supra* note 18. *See* also 1994 Proposing Release, *supra* note 113.

[272] *See* 1989 Adopting Release, *supra* note 18. *See also* 1994 Proposing Release, *supra* note 113.

[273] *See* 1994 Amendments, *supra* note 21.

among vendors may increase because vendors can utilize this information to provide value-added services to municipal market participants. Our adoption of amendments to the Rule also may promote competition in the purchase and sale of municipal securities because the greater availability of information, delivered electronically through a single repository, may instill greater investor confidence in the municipal securities market. Moreover, this greater availability of information also may encourage improvement in the completeness and timeliness of issuer disclosures and may foster interest in municipal securities by individual and institutional customers. As a result, more investors may be attracted to this market sector and broker-dealers may compete for their business.

The Commission received two comment letters from NRMSIRs that raised concerns about the competitive effects of the proposed amendments.[274] The primary concerns, raised by both commenters, relate to the MSRB's role as the sole repository of continuing disclosure documents and the competitive effects this would have on existing vendors of municipal disclosure information. One of these commenters stated that the Commission's proposal ''would allow the MSRB to impose restrictions on municipal issuers and obligated persons by limiting the filings to a single, electronic format.'' [275] In addition, this commenter noted that the Commission's proposal would place the MSRB ''in direct competition with commercial vendors who have served the market as practical implementers of Rule 15c2–12 without any subsidy for more than a decade.'' [276] The other commenter expressed similar sentiments and cited to the Commission's statements in adopting Rule 15c2–12 in 1989 and amendments to the Rule in 1994, which discussed possible anti-competitive concerns over the creation of a single repository.[277] This commenter noted its view that eliminating the NRMSIR function would upset the balance between its current business model and have an impact on its ability to provide value-added products and services.[278] It disputed the Commission's view that the potential burdens on competition would be justified by the proposed amendments' adoption because, in its view, the current issues with municipal disclosure lie in the quality and timeliness of the information that is filed.[279] The commenter also urged the Commission to adopt an alternative approach.[280] Under its proposal, the MSRB would not be the sole repository for municipal disclosure information.[281] Instead, the commenter proposed having an unspecified entity serve as a central electronic post office for municipal disclosure information where ''issuers and obligors would file documents through a single electronic format'' and such entity ''would then forward the centrally-filed documents in real time to the NRMSIRs.'' [282] The commenter expressed no opinion regarding the identity of the entity that should serve as the central electronic post office or how such entity would be chosen.[283]

Although these commenters raised concerns about the competitive impact of the proposed amendments, circumstances have changed since we last considered Rule 15c2–12 amendments in 1994, as discussed throughout this release and in the Proposing Release. The NRMSIRs did not develop a linkage, technology developments have occurred to make it easier to access information; and access to municipal information remains costly and not easy to obtain for many individuals. For these reasons, we believe that there should be one repository. We continue to believe that one of the benefits in having the MSRB as the sole repository will be the MSRB's ability to provide a ready source of continuing disclosure documents to other information vendors who wish to use that information for their products. Private vendors can utilize the MSRB in its capacity as a repository as a means to collect information from the continuing disclosure documents to create value-added products for their customers.[284] Commercial vendors will be able to readily access the information made available by the MSRB to re-disseminate it or use it in whatever value-added products they may wish to provide. In fact, a single repository in which documents are submitted in an electronic format may encourage the private information vendors to disseminate municipal securities information by reducing the cost of entry into the information services market. Existing vendors may need to make some adjustments to their infrastructure, facilities, or services offered. However, some vendors may determine that they no longer need to invest in the infrastructure and facilities necessary to collect and store continuing disclosure documents, and new entrants into the market will not need to obtain the information from multiple locations, but rather can readily access such information from one centralized source. Thus, all vendors are expected to be able to obtain easily continuing disclosure documents and to be able to compete in providing value-added services. With respect to the comment regarding the ''quality and timeliness'' of the information issuers file, the Commission believes that the greater availability of information which will result from the final amendments to the Rule also may encourage improvement in the completeness and timeliness of disclosures by issuers and obligated persons and may foster interest in municipal securities by retail and institutional customers.

We previously stated that we would specifically consider the competitive implications of the MSRB becoming a repository.[285] In addition, we stated that if we were to conclude that the MSRB's status as a repository might have adverse competitive implications, we would consider whether we should take any action to address these effects.[286] As noted earlier, we recognize that competition with respect to certain information services regarding municipal securities that are provided by the existing NRMSIRs may decline should the MSRB become the central repository. The two commenters that raised competitive concerns suggested that a decrease in competition could occur as a result of the Commission's rulemaking.[287] We continue to believe that one of the benefits in having the MSRB as the sole repository will be the MSRB's ability to provide a ready source of continuing disclosure documents to other information vendors who wish to use that information for their products. Private vendors can utilize the MSRB in its capacity as a repository as a means to collect information from the continuing

[274] *See* DPC DATA Letter and SPSE Letter.

[275] *See* DPC DATA Letter, at 1.

[276] *See* DPC DATA Letter, at 2.

[277] *See* SPSE Letter, at 5–7.

[278] *See* SPSE Letter, at 7.

[279] *See* SPSE Letter, at 7–8.

[280] *See* SPSE Letter, at 3–5.

[281] *See* SPSE Letter, at 4.

[282] *Id.*

[283] *Id.*

[284] The Commission notes that both the DPC DATA Letter and the SPSE Letter raised concerns with the potential subscription fees associated with having the MSRB as the single repository. The Commission notes that the MSRB will be required to file a proposed rule change with the Commission pursuant to Section 19(b) of the Exchange Act regarding any subscription fees for a data stream that it proposes as well as any changes to those fees.

[285] *See* Securities Exchange Act Release No. 28081, *supra* note 131.

[286] *Id.*

[287] *See* DPC DATA Letter and SPSE Letter.

disclosure documents to create value-added products for their customers.

Regarding the comment that our proposal would permit the MSRB to impose restrictions on municipal issuers and obligated persons by limiting the filings to a single format, we note that the MSRB must file with the Commission under section 19(b) of the Exchange Act the format it proposes to prescribe and any changes to that format. Thus, the format that the MSRB proposes to prescribe, and any subsequent changes to that format, would have to be consistent with the Exchange Act. With regard to the comments favoring a central electronic post office, as we noted above, we believe that this approach is less likely to achieve the benefits of the proposed amendments. For example, with a central post office there would continue to be no single location to which investors, particularly individuals, could turn for free access to information regarding municipal securities. Instead, individuals or entities that wish to obtain such information would find it necessary first to access the central post office to find out what documents might be available from NRMSIRs and SIDs and then to contact one or more NRMSIRs or SIDs and pay their fees to obtain the document or documents they seek. This would be a less efficient process than that contemplated by the final amendments, in which interested persons could directly access, view and print for free continuing disclosure documents from one place—the MSRB's Internet site.

We do not believe that there are competitive implications that will uniquely apply to the MSRB in its capacity as the sole repository as opposed to any another entity that could be the sole repository. In fact, we believe that, because the MSRB will be the sole repository, its status as an SRO will provide an additional level of Commission oversight, as changes to its rules relating to continuing disclosure documents will have to be filed for Commission consideration as a proposed rule change under section 19(b) of the Exchange Act. Accordingly, we believe that any competitive impact that could result from the MSRB's status as the sole repository would be justified by the benefits that such status could provide.

We, therefore, believe that any potential effect on competition that may arise from the adoption of the Rule 15c2–12 amendments is justified by the more efficient and effective process for the collection and availability of continuing disclosure documents that will result. A single repository for the electronic collection and availability of these documents will foster the Exchange Act objective of promoting competition by simplifying the method of submission of continuing disclosure documents to one location and making the documents more readily accessible to investors and others by virtue of the documents being in an electronic format.

We believe that the proposed amendments may have a positive effect on capital formation by municipal securities issuers. The Rule is addressed to the obligations of broker-dealers participating in a primary offering of municipal securities (*i.e.*, Participating Underwriters). Because continuing disclosure documents will be submitted electronically to a single repository, investors and other market participants will be able to obtain information about these issuers more readily than they could in the past. They no longer will have to contact several NRMSIRs to make sure that they have obtained complete information about the municipal issuer. Easier access to continuing disclosure documents regarding municipal securities may provide investors and other market participants with more complete information about municipal issuers. Moreover, this ready availability of continuing disclosure documents may encourage investors to consider purchasing new issuances of municipal securities because they will be able to readily access information from a single repository and review that information in light of other available information when making an investment decision, decreasing the potential for fraud. As a result, we believe that our amendments to Rule 15c2–12 will help foster the Exchange Act goal of capital formation.

We proposed to delete references to the SIDs in Rule 15c2–12. Since we are adopting amendments to the Rule that provide for a single repository for the electronic collection and availability of continuing disclosure documents that are aimed at improving disclosure in the municipal securities market, we believe that it is no longer necessary to require in the Rule that Participating Underwriters reasonably determine that issuers and obligated persons have contractually agreed to provide continuing disclosure documents to the appropriate SID.

Five commenters specifically addressed the deletion of SIDs from the Rule.[288] Most of them commented that the MSRB should provide a data feed to SIDs of documents related to issuers in their states in order that issuers who may be required by their states to send continuing disclosure documents to a SID need not provide them to both the MSRB and a SID.[289] They believed this would be more efficient for both issuers and SIDs and result in more complete and consistent data availability of information from SIDs and the MSRB. Furthermore, some of these commenters suggested that there should be no charge to SIDs to receive such a data feed.[290] We agree that it is important for the document collections of the MSRB and SIDs to be consistent to avoid uneven access to information that could result, depending on the source from which continuing disclosure documents were obtained. However, the specific operations of the MSRB's repository, such as data feeds, are related to the MSRB's operation of the collection system and are subject to the rule filing process under section 19(b) of the Exchange Act and are not an issue before us with respect to the amendments to the Rule.[291]

We note that the amendments will not affect the legal obligations of issuers and obligated persons to provide continuing disclosure documents, along with any other submissions, to the appropriate SID, if any, that are required under the relevant state law. In addition, the amendments will 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 amendments to the Rule to submit continuing disclosure documents to the appropriate SID, if any, as stated in their existing continuing disclosure agreements, nor on their obligation to make any other submissions that are required under the relevant state law. Accordingly, the Commission does not believe that its deletion of references to SIDs in Rule 15c2–12 will have any potential effect on efficiency, competition or capital formation.

VII. Regulatory Flexibility Act Certification

The Commission certified, under section 605(b) of the Regulatory Flexibility Act,[292] that, when adopted, the proposed amendments to the Rule would not have a significant economic impact on a substantial number of small entities. This certification was set forth in section VIII. of the Proposing

[288] *See* GFOA Letter, SIFMA Letter, Texas MAC Letter, OMAC Letter, and Multiple-Markets Letter.

[289] *See* GFOA Letter, Texas MAC Letter, OMAC Letter, and Multiple-Markets Letter.

[290] *See* GFOA Letter and Multiple-Markets Letter.

[291] *See* MSRB Approval Order, *supra* note 12.

[292] 5 U.S.C. 605(b).

Release.[293] The Commission solicited comments regarding this certification and received no comments. The Commission continues to believe this certification is appropriate.

VIII. Statutory Authority

Pursuant to the Exchange Act, and particularly Sections 2, 3(b), 10, 15(c), 15B and 23(a)(1) thereof, 15 U.S.C. 78b, 78c(b), 78j, 78*o*(c), 78*o*-4, and 78w(a)(1), the Commission is adopting amendments to § 240.15c2–12 of Title 17 of the *Code of Federal Regulations* in the manner set forth below.

List of Subjects in 17 CFR Part 240

Brokers, Reporting and recordkeeping requirements, Securities.

■ For the reasons set out in the preamble, Title 17, Chapter II, of the Code of Federal Regulations is amended as follows.

Text of Rule Amendments

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

■ 1. The authority citation for part 240 continues to read in part as follows:

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77z–2, 77z–3, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78d, 78e, 78f, 78g, 78i, 78j, 78j–1, 78k, 78k–1, 78*l*, 78m, 78n, 78o, 78p, 78q, 78s, 78u–5, 78w, 78x, 78*ll*, 78mm, 80a–20, 80a–23, 80a–29, 80a–37, 80b–3, 80b–4, 80b–11, and 7201 *et seq.*; and 18 U.S.C. 1350, unless otherwise noted.

* * * * *

■ 2. Section 240.15c2–12 is amended by:

■ a. Revising paragraph (b)(4)(ii), the introductory text of paragraph (b)(5)(i), and paragraphs (b)(5)(i)(A) and (B);

■ b. In the introductory text of paragraph (b)(5)(i)(C) and in paragraph (b)(5)(i)(D) remove the phrase ''to each nationally recognized municipal securities information repository or to the Municipal Securities Rulemaking Board, and to the appropriate state information depository, if any,'';

■ c. In paragraph (b)(5)(ii)(C) remove the phrase '', and to whom it will be provided'';

■ d. Adding paragraph (b)(5)(iv);

■ e. Revising paragraph (d)(2)(ii); and

■ f. Revising paragraphs (f)(3) and (f)(9).

The additions and revisions read as follows.

§ 240.15c2–12 Municipal securities disclosure.

* * * * *

(b) * * *

(4) * * *

(ii) The time when the official statement is available to any person from the Municipal Securities Rulemaking Board, but in no case less than twenty-five days following the end of the underwriting period, the Participating Underwriter in an Offering shall send no later than the next business day, by first-class mail or other equally prompt means, to any potential customer, on request, a single copy of the final official statement.

(5)(i) A Participating Underwriter shall not purchase or sell municipal securities in connection with an Offering unless the Participating Underwriter has reasonably determined that an issuer of municipal securities, or an obligated person for whom financial or operating data is presented in the final official statement has undertaken, either individually or in combination with other issuers of such municipal securities or obligated persons, in a written agreement or contract for the benefit of holders of such securities, to provide the following to the Municipal Securities Rulemaking Board in an electronic format as prescribed by the Municipal Securities Rulemaking Board, either directly or indirectly through an indenture trustee or a designated agent:

(A) Annual financial information for each obligated person for whom financial information or operating data is presented in the final official statement, or, for each obligated person meeting the objective criteria specified in the undertaking and used to select the obligated persons for whom financial information or operating data is presented in the final official statement, except that, in the case of pooled obligations, the undertaking shall specify such objective criteria;

(B) If not submitted as part of the annual financial information, then when and if available, audited financial statements for each obligated person covered by paragraph (b)(5)(i)(A) of this section;

* * * * *

(iv) Such written agreement or contract for the benefit of holders of such securities also shall provide that all documents provided to the Municipal Securities Rulemaking Board shall be accompanied by identifying information as prescribed by the Municipal Securities Rulemaking Board.

* * * * *

(d) * * *

(2) * * *

(ii) An issuer of municipal securities or obligated person has undertaken, either individually or in combination with other issuers of municipal securities or obligated persons, in a written agreement or contract for the benefit of holders of such municipal securities, to provide the following to the Municipal Securities Rulemaking Board in an electronic format as prescribed by the Municipal Securities Rulemaking Board:

(A) At least annually, financial information or operating data regarding each obligated person for which financial information or operating data is presented in the final official statement, as specified in the undertaking, which financial information and operating data shall include, at a minimum, that financial information and operating data which is customarily prepared by such obligated person and is publicly available; and

(B) In a timely manner, notice of events specified in paragraph (b)(5)(i)(C) of this section with respect to the securities that are the subject of the Offering, if material; and

(C) Such written agreement or contract for the benefit of holders of such securities also shall provide that all documents provided to the Municipal Securities Rulemaking Board shall be accompanied by identifying information as prescribed by the Municipal Securities Rulemaking Board; and

* * * * *

(f) * * *

(3) The term *final official statement* means a document or set of documents prepared by an issuer of municipal securities or its representatives that is complete as of the date delivered to the Participating Underwriter(s) and that sets forth information concerning the terms of the proposed issue of securities; information, including financial information or operating data, concerning such issuers of municipal securities and those other entities, enterprises, funds, accounts, and other persons material to an evaluation of the Offering; and a description of the undertakings to be provided pursuant to paragraph (b)(5)(i), paragraph (d)(2)(ii), and paragraph (d)(2)(iii) of this section, if applicable, and of any instances in the previous five years in which each person specified pursuant to paragraph (b)(5)(ii) of this section failed to comply, in all material respects, with any previous undertakings in a written contract or agreement specified in paragraph (b)(5)(i) of this section. Financial information or operating data may be set forth in the document or set of documents, or may be included by specific reference to documents available to the public on the Municipal

[293] *See* Proposing Release, *supra* note 3.

Securities Rulemaking Board's Internet Web site or filed with the Commission.

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(9) The term *annual financial information* means financial information or operating data, provided at least annually, of the type included in the final official statement with respect to an obligated person, or in the case where no financial information or operating data was provided in the final official statement with respect to such obligated person, of the type included in the final official statement with respect to those obligated persons that meet the objective criteria applied to select the persons for which financial information or operating data will be provided on an annual basis. Financial information or operating data may be set forth in the document or set of documents, or may be included by specific reference to documents available to the public on the Municipal Securities Rulemaking Board's Internet Web site or filed with the Commission.

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By the Commission.

Dated: December 5, 2008.

Florence E. Harmon,

Acting Secretary.

Note: Exhibit A to the Preamble will not appear in the Code of Federal Regulations

Exhibit A

Key to Comment Letters Cited in Adopting Release Amendment to Municipal Securities Disclosure (File No. S7–21–08)

1. Letter from Fran Busby to 21st Century Disclosure Initiative, Commission, dated October 7, 2008 (''Busby Letter'').
2. Letter from Susan Gaffney, Director, Federal Liasion Center, Government Finance Officers Association (''GFOA''), to Florence E. Harmon, Acting Secretary, Commission, dated September 24, 2008 (''GFOA Letter'').
3. Letter from Christopher Alwine, Head of Municipal Money Market and Bond Groups, The Vanguard Group, Inc. (''Vanguard''), to Florence E. Harmon, Acting Secretary, Commission, dated September 24, 2008 (''Vanguard Letter'').
4. Letter from Leslie M. Norwood, Managing Director and Associate General Counsel, Securities Industry and Financial Markets Association (''SIFMA''), to Florence E. Harmon, Acting Secretary, Commission, dated September 22, 2008 (''SIFMA Letter'').
5. Letter from Paula Stuart, Chief Executive Officer, Digital Assurance Certification, LLC (''DAC''), to Florence E. Harmon, Acting Secretary, Commission, dated September 22, 2008 (''DAC Letter'').
6. Letter from Louis V. Eccleston, President, Standard & Poor's Securities Evaluations, Inc. (''SPSE''), to Florence E. Harmon, Acting Secretary, Commission, dated September 22, 2008 (''SPSE Letter'').
7. Letter from Frank Chin, Chair, Municipal Securities Rulemaking Board (''MSRB''), to Florence E. Harmon, Acting Secretary, Commission, dated September 22, 2008 (''MSRB Letter'').
8. Letter from William A. Holby, President, National Association of Bond Lawyers (''NABL''), to Florence E. Harmon, Acting Secretary, Commission, dated September 22, 2008 (''NABL Letter'').
9. Letter from Jennifer S. Choi, Assistant General Counsel, Investment Adviser Association (''IAA''), to Florence E. Harmon, Acting Secretary, Commission, dated September 22, 2008 (''IAA Letter'').
10. Letter from Denise L. Nappier, Treasurer, State of Connecticut, to Christopher Cox, Chairman, Commission, dated September 22, 2008 (''Treasurer of the State of Connecticut Letter'').
11. Letter from Richard T. McNamar, Chief Executive Officer, e-certus, Inc. (''e-certus''), to Christopher Cox, Chairman, Commission, and to Ernesto A. Lanza, Senior Associate General Counsel, MSRB, dated September 22, 2008 (''e-certus Letter'').
12. Letter from Laura Slaughter, Executive Director, Municipal Advisory Council of Texas (''Texas MAC''), to Christopher Cox, Chairman, Commission, and to Ernesto A. Lanza, Senior Associate General Counsel, MSRB, dated September 22, 2008 (''Texas MAC Letter'').
13. Letter from Thomas H. McTavish, President, National Association of State Auditors, Comptrollers and Treasurers (''NASACT''), to Florence E. Harmon, Acting Secretary, Commission, dated September 22, 2008 (''NASACT Letter'').
14. Letter from K.W. Gurney, Director, Ohio Municipal Advisory Council (''OMAC''), to Christopher Cox, Chairman, Commission, and to Ernesto A. Lanza, Senior Associate General Counsel, MSRB, dated September 22, 2008 (''OMAC Letter'').
15. Letter from Karrie McMillan, General Counsel, Investment Company Institute (''ICI''), to Florence E. Harmon, Acting Secretary, Commission, dated September 22, 2008 (''ICI Letter'').
16. Letter from Robert Donovan, Executive Director, Rhode Island Health and Educational Building Corporation, and Steven Fillebrown, Director of Research, Investor Relations and Compliance, New Jersey Healthcare Financing Authority, on behalf of the National Association of Health and Education Facilities Finance Authorities (''NAHEFFA''), to Florence E. Harmon, Acting Secretary, Commission, dated September 22, 2008 (''NAHEFFA Letter'').
17. Letter from Cate Long, Multiple-Markets (''Multiple-Markets''), to Florence E. Harmon, Acting Secretary, Commission, dated September 19, 2008 (''Multiple-Markets Letter'').
18. Letter from Robert Yolland, Chairman, National Federation of Municipal Analysts (''NFMA''), to Florence E. Harmon, Acting Secretary, Commission, dated September 19, 2008 (''NFMA Letter'').
19. Letter from Peter J. Schmitt, Chief Executive Officer, DPC DATA, Inc. (''DPC DATA''), to Florence E. Harmon, Acting Secretary, Commission, dated September 18, 2008 (''DPC DATA Letter'').
20. Letter from Philip D. Moyer, Chief Executive Officer and President, EDGAR Online, Inc. (''EDGAR Online''), to Christopher Cox, Chairman, Commission, and to Ernesto Lanza, Senior Associate General Counsel, MSRB, dated September 9, 2008 (''EDGAR Online Letter'').
21. Letter from Al B. Dickman, Professional Investor, to Florence E. Harmon, Acting Secretary, Commission, dated September 5, 2008 (''Dickman Letter'').
22. Letter from Elizabeth V. Mooney, to Florence E. Harmon, Acting Secretary, Commission, dated August 21, 2008 (''Mooney Letter'').
23. Letter from Aramintha Grant, to Florence E. Harmon, Acting Secretary, Commission, dated August 17, 2008 (''Grant Letter'').

[FR Doc. E8–29336 Filed 12–12–08; 8:45 am]

BILLING CODE 8011–01–P