SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–59061; File No. SR–MSRB–2008–05]

Self-Regulatory Organizations; Municipal Securities Rulemaking Board; Notice of Filing of Amendment No. 1 and Order Granting Accelerated Approval of Proposed Rule Change, as Modified by Amendment No. 1 Thereto, Relating to the Establishment of a Continuing Disclosure Service of the Electronic Municipal Market Access System (EMMA)

December 5, 2008.

I. Introduction

On July 29, 2008, the Municipal Securities Rulemaking Board (''MSRB'' or ''Board'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] a proposed rule change to establish a continuing disclosure service (the ''continuing disclosure service'') of the MSRB's Electronic Municipal Market Access system (''EMMA''). The proposed rule change was published for comment in the **Federal Register** on August 7, 2008.[3] The Commission received eighteen comment letters regarding the MSRB's proposed rule change.[4] On November 5, 2008, the MSRB filed Amendment No. 1 to the proposed rule change.[5] The text of Amendment No. 1 is available on the MSRB's Web site (*http://www.msrb.org)*, at the MSRB's principal office, and at the Commission's Public Reference Room. On November 24, 2008, the MSRB submitted a letter responding to the comment letters.[6] This order provides notice of the proposed rule change as modified by Amendment No. 1 and approves the proposed rule change, as amended, on an accelerated basis.[7]

II. Description of the Proposed Rule Change

Under Rule 15c2–12(b)(5), an underwriter for a primary offering of municipal securities subject to the Rule currently is prohibited from underwriting the offering unless the underwriter has determined that the issuer or an obligated person[8] for whom financial information or operating data is presented in the final official statement has undertaken in writing to provide certain items of information to the marketplace.[9] Rule 15c2–12(b)(5) provides that such items include: (A) Annual financial information concerning obligated persons;[10] (B) audited financial statements for obligated persons if available and if not included in the annual financial information; (C) notices of certain events, if material;[11] and (D) notices of failures to provide annual financial information on or before the date specified in the written undertaking.[12] Annual filings, material event notices, and failure to file notices generally are referred to as ''continuing disclosure documents.''

The proposed rule change would establish, as a component of EMMA, the continuing disclosure service for the receipt of, and for making available to the public, continuing disclosure documents and related information to be submitted by issuers, obligated persons and their agents pursuant to continuing disclosure undertakings entered into consistent with Rule 15c2–12.[13] As proposed, all continuing

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 58256 (July 30, 2008), 73 FR 46161 (August 7, 2008) (''Release No. 34–58256'').

[4] Exhibit A contains the citation key to the comments noted herein. Copies of the comment letters received by the Commission are available on the Commission's Internet Web site, located at *http://www.sec.gov/comments/sr–msrb–2008–05/msrb200805.shtml* and in the Commission's Public Reference Room at its Washington, DC headquarters.

[5] In Amendment No. 1, the MSRB proposed to establish as the operative date of the continuing disclosure service the later of July 1, 2009 or the effective date of any amendments to Rule 15c2–12 under the Act (''Rule 15c2–12'' or ''Rule''), 17 CFR 240.15c2–12, that provide for the MSRB to serve as the sole repository for continuing disclosure documents, and to establish January 1, 2010 as the date on which submitters to the continuing disclosure service would be required to submit documents as word-searchable portable document format (PDF) files.

[6] *See* Letter from Ernesto A. Lanza, General Counsel, MSRB, to Florence E. Harmon, Acting Secretary, Commission, dated November 24, 2008 (''MSRB Response Letter'').

[7] On August 7, 2008, the Commission published for comment in the **Federal Register** proposed amendments to Rule 15c2–12 that relate to the MSRB's implementation of the continuing disclosure service. *See* Securities Exchange Act Release No. 58255 (July 30, 2008), 73 FR 46138 (August 7, 2008) (''Release No. 34–58255''). In a separate release issued today, the Commission is approving its proposed amendments to Rule 15c2–12 (''Rule 15c2–12 Amendments''). *See* Securities Exchange Act Release No. 59062 (December 5, 2008) (''Rule 15c2–12 Amendments Adopting Release'').

[8] Rule 15c2–12(f)(10) defines ''obligated person'' as any person, including an issuer of municipal securities, who is either generally or through an enterprise, fund, or account of such person committed by contract or other arrangement to support payment of all or part of the obligations on the municipal securities sold in a primary offering (other than providers of bond insurance, letters of credit, or other liquidity facilities).

[9] *See also* Rule 15c2–12(d)(2), which provides for an exemption from the requirements of paragraph (b)(5) of Rule 15c2–12.

[10] Rule 15c2–12(f)(9) defines ''annual financial information'' as 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.

[11] Under Rule 15c2–12(b)(5)(C), such events currently consist of principal and interest payment delinquencies; non-payment related defaults; unscheduled draws on debt service reserves reflecting financial difficulties; unscheduled draws on credit enhancements reflecting financial difficulties; substitution of credit or liquidity providers, or their failure to perform; adverse tax opinions or events affecting the tax-exempt status of the security; modifications to rights of security holders; bond calls; defeasances; release, substitution, or sale of property securing repayment of the securities; and rating changes.

[12] Under current Rule 15c2–12(b)(5)(i), participating underwriters must reasonably determine whether the issuer has undertaken to send annual filings to all existing nationally recognized municipal securities information repositories (''NRMSIRs'') and any applicable state information depositories (''SIDs''), while the undertaking with respect to material event notices and failure to file notices must provide that they be sent to all existing NRMSIRs or to the MSRB, as well as to any applicable SID. Under the Rule 15c2–12 Amendments adopted today, participating underwriters must reasonably determine whether the issuer has undertaken to send continuing disclosure documents to the MSRB. *See* Rule 15c2–12 Amendments Adopting Release, *supra* note 7. The MSRB, which currently operates CDINet to process and disseminate notices of material events submitted to the MSRB, previously petitioned the Commission to amend Rule 15c2–12 to remove the MSRB as a recipient of material event notices due to the very limited level of submissions received by the MSRB, constituting a negligible percentage of material event notices currently provided to the marketplace. *See* Letter from Diane G. Klinke, General Counsel, MSRB, to Jonathan G. Katz, Secretary, Commission, dated September 8, 2005. In 2006, the Commission published proposed amendments to Rule 15c2–12 to eliminate the MSRB as a repository for material event notices. *See* Exchange Act Release No. 54863 (December 4, 2006), 71 FR 71109 (December 8, 2006) (''2006 Proposed Rule 15c2–12 Amendments''). In light of the Rule 15c2–12 Amendments and this proposal, the MSRB has determined to withdraw its petition and has requested that the Commission withdraw the 2006 Proposed Rule 15c2–12 Amendments. *See* Letter from Ernesto A. Lanza, General Counsel, MSRB to Florence E. Harmon, Acting Secretary, Commission, dated October 22, 2008. In this letter, the MSRB also noted its intention to file a proposed rule change with the Commission to discontinue CDINet since its functions would be replaced by the continuing disclosure component of EMMA.

[13] EMMA was originally established, and began operation on March 31, 2008, as a complementary pilot facility of the MSRB's existing Official Statement and Advance Refunding Document (OS/ARD) system of the Municipal Securities Information Library (MSIL) system. *See* Securities Exchange Act Release No. 57577 (March 28, 2008), 73 FR 18022 (April 2, 2008) (File No. SR–MSRB–2007–06) (approving operation of the EMMA pilot to provide free public access to the MSRB's Municipal Securities Information Library (MSIL) system collection of official statements and advance refunding documents and to the MSRB's Real-Time Transaction Reporting System (RTRS) historical and

disclosure documents and related information would be submitted to the MSRB, free of charge, through an Internet-based electronic submitter interface or electronic computer-to-computer data connection, at the election of the submitter, and public access to the documents and information would be provided through the continuing disclosure service on the Internet (''EMMA portal'') at no charge, as well as through a fee-based real-time data stream subscription service.[14]

As proposed, the continuing disclosure service would accept submissions of (i) continuing disclosure documents as described in Rule 15c2–12, and (ii) other disclosure documents specified in continuing disclosure undertakings entered into consistent with Rule 15c2–12 but not specifically described in Rule 15c2–12. In connection with documents submitted to the continuing disclosure service, the submitter would provide, at the time of submission, information necessary to accurately identify: (i) The category of information being provided; (ii) the period covered by any annual financial information, financial statements or other financial information or operating data; (iii) the issues or specific securities to which such document is related or otherwise material (including CUSIP number, issuer name, state, issue description/securities name, dated date, maturity date, and/or coupon rate); (iv) the name of any obligated person other than the issuer; (v) the name and date of the document; and (vi) contact information for the submitter. Submitters would be responsible for the accuracy and completeness of all documents and information submitted to EMMA.

The MSRB proposed that submissions to the continuing disclosure service be made as portable document format (PDF) files configured to permit documents to be saved, viewed, printed and retransmitted by electronic means. If the submitted file is a reproduction of the original document, the submitted file must maintain the graphical and textual integrity of the original document. In addition, as of January 1, 2010, the MSRB would require that such PDF files must be word-searchable (that is, allowing the user to search for specific terms used within the document through a search or find function available in most standard software packages), provided that diagrams, images and other non-textual elements would not be required to be word-searchable due to current technical hurdles to uniformly producing such elements in word-searchable form without incurring undue costs.[15] Although the MSRB would strongly encourage submitters to immediately begin making submissions as word-searchable PDF files (preferably as native PDF or PDF normal files, which generally produce smaller and more easily downloadable files as compared to scanned PDF files), implementation of this requirement would be deferred as noted above to provide issuers, obligated persons and their agents with sufficient time to adapt their processes and systems to provide for the routine creation or conversion of continuing disclosure documents as word-searchable PDF files.

All submissions to the continuing disclosure service pursuant to this proposal would be made through password-protected accounts on EMMA by: (i) Issuers, which may submit any documents with respect to their municipal securities; (ii) obligated persons, which may submit any documents with respect to any municipal securities for which they are obligated; and (iii) designated agents, which may be designated by issuers or obligated persons to make submissions on their behalf. Issuers and obligated persons would be permitted under the proposal to designate agents to submit documents and information on their behalf, and would be able to revoke the designation of any such agents, through the EMMA on-line account management utility. Such designated agents would be required to register to obtain password-protected accounts on EMMA in order to make submissions on behalf of the designating issuers or obligated persons. Any party identified in a continuing disclosure undertaking as a dissemination agent or other party responsible for disseminating continuing disclosure documents on behalf of an issuer or obligated person would be permitted to act as a designated agent for such issuer or obligated person, without a designation being made by the issuer or obligated person as described above, if such party certifies through the EMMA on-line account management utility that it is authorized to disseminate continuing disclosure documents on behalf of the issuer or obligated person under the continuing disclosure undertaking. The issuer or obligated person, through the EMMA on-line account management utility, would be able to revoke the authority of such party to act as a designated agent.

The MSRB proposed that electronic submissions of continuing disclosure documents through the continuing disclosure service would be made by issuers, obligated persons and their agents, at no charge, through secured, password-protected interfaces. Continuing disclosure submitters would have a choice of making submissions to the proposed continuing disclosure service either through a Web-based electronic submission interface or through electronic computer-to-computer data connections with EMMA that would be designed to receive submissions on a bulk or continuous basis.

All documents and information submitted through the continuing disclosure service would be available to the public at no charge through the EMMA portal on the Internet, with documents made available for the life of the securities as PDF files for viewing, printing and downloading. As proposed, the EMMA portal would provide on-line search functions to enable users to readily identify and access documents that relate to specific municipal securities based on a broad range of search parameters. In addition, as noted above, the MSRB proposes that real-time data stream subscriptions to continuing disclosure documents submitted to EMMA would be made available for a fee.[16] The MSRB would not be responsible for the content of the information or documents submitted by submitters displayed on the EMMA portal or distributed to subscribers through the continuing disclosure subscription service.

According to the MSRB, it has designed EMMA, including the EMMA portal, as a scalable system with sufficient current capacity and the ability to add further capacity to meet foreseeable usage levels based on reasonable estimates of expected usage, and the MSRB would monitor usage levels in order to assure continued capacity in the future.

The MSRB may restrict or terminate malicious, illegal or abusive usage for such periods as may be necessary and appropriate to ensure continuous and efficient access to the EMMA portal and to maintain the integrity of EMMA and its operational components. Such usage may include, without limitation, usage

real-time transaction price data) (''pilot EMMA portal''). The pilot EMMA portal currently is accessible at *http://emma.msrb.org*.

[14] We note that the MSRB is required to file with the Commission a proposed rule change under Section 19(b) of the Act with respect to any fees it intends to charge subscribers in connection with a real-time data stream subscription service.

[15] *See* Amendment No. 1, *supra* note 5.

[16] We note that the MSRB is required to file with the Commission a proposed rule change under Section 19(b) of the Act with respect to any fees it intends to charge subscribers in connection with a real-time data stream subscription service.

intended to cause the EMMA portal to become inaccessible by other users; to cause the EMMA database or operational components to become corrupted or otherwise unusable; to alter the appearance or functionality of the EMMA portal; or to hyperlink to or otherwise use the EMMA portal or the information provided through the EMMA portal in furtherance of fraudulent or other illegal activities (such as, for example, creating any inference of MSRB complicity with or approval of such fraudulent or illegal activities or creating a false impression that information used to further such fraudulent or illegal activities has been obtained from the MSRB or EMMA). Measures taken by the MSRB in response to such unacceptable usage would be designed to minimize any potentially negative impact on the ability to access the EMMA portal.

The Commission received eighteen comment letters regarding the proposed rule change.[17] Fifteen commenters generally supported the proposed rule change[18] and many of these commenters also provided various observations and suggestions. Two commenters, both of which are NRMSIRs, opposed the proposed rule change and suggested alternative approaches to achieving the Commission's objectives.[19] One commenter neither supported nor opposed the proposal and addressed CUSIP licensing issues.[20] The Commission also received the MSRB's response to the comment letters.[21] These comment letters, as well as the MSRB's response to the comment letters, are more fully discussed below.

III. Discussion and Commission Findings

The Commission has carefully considered the proposed rule change, the comment letters received, and the MSRB's response to the comment letters and finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the MSRB[22] and, in particular, the requirements of Section 15B(b)(2)(C) of the Act[23] and the rules and regulations thereunder. In particular, the Commission finds that the proposal to establish the continuing disclosure service will remove impediments to and help perfect the mechanisms of a free and open market in municipal securities, assist in preventing fraudulent and manipulative acts and practices, and, in general, will protect investors and the public interest by improving access to continuing disclosure documents by investors and market participants, enabling them to make informed investment decisions regarding municipal securities.

The Commission believes that the MSRB's proposed continuing disclosure service will serve as an additional mechanism to remove impediments to and help perfect the mechanisms of a free and open market in municipal securities. The continuing disclosure service will help make information more easily available to all participants in the municipal securities market on an equal basis and without charge through a centralized, searchable Internet-based repository, thereby removing potential barriers to obtaining such information. Broad availability of continuing disclosure documents through the continuing disclosure service should assist in preventing fraudulent and manipulative acts and practices by improving the opportunity for investors to obtain information about issuers and their securities, and help investors make informed investment decisions.

The continuing disclosure service also should reduce the effort necessary for issuers and obligated persons to comply with their continuing disclosure undertakings because submissions will be made to a single venue[24] through use of an electronic submission process. Similarly, a single centralized and searchable venue that provides for free public access to disclosure information should promote a more fair and efficient municipal securities market in which transactions are effected on the basis of information available to all parties to such transactions, which should assist investors in having a more complete understanding of the terms of the securities and the potential investment risks. Access to this information without charge, which was previously available in most cases only through paid subscription services or on a per-document fee basis, also should help reduce informational costs for broker-dealers and municipal securities dealers, as well as other market participants, analysts, retail and institutional investors and the public generally. These changes are expected to further the objectives of Rule 15c2–12 of reducing the potential for fraud in the municipal securities market.

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. This conclusion is supported by various commenters.

As noted above, commenters generally supported the proposed rule change. In particular, one commenter expressed the opinion that allowing issuers, obligated parties and dissemination agents to submit information to one location,[25] electronically and free of charge in order to meet the obligations of Rule 15c2–12, is very useful to the state and local government community[26] and several commenters remarked that allowing investors to retrieve information from this location would be advantageous to the marketplace and investors.[27] Commenters believed that the single filing location would make the filing process easier for filers submitting filings and more efficient for investors accessing documents.[28] One commenter also remarked that the availability of continuing disclosure documents in one venue as a component of EMMA, where there will also be posted the final official statement (or similar primary

[17] *See supra* note 4.

[18] *See* Busby Letter, DAC Letter, Vanguard Letter, GFOA Letter, e-certus Letter, SIFMA Letter, NABL Letter, Treasurer of the State of Connecticut Letter, Texas MAC Letter, OMAC Letter, ICI Letter, NAHEFFA Letter, EDGAR Online Letter, MSRB Letter, and NFMA Letter.

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

[20] *See* ABA Letter.

[21] *See* MSRB Response Letter. A copy of the MSRB Response Letter is available on the Commission's Internet Web site at *http://www.sec.gov/comments/sr-msrb-2008-05/msrb200805.shtml* and in the Commission's Public Reference Room at its Washington, DC headquarters.

[22] In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

[23] 15 U.S.C. 78*o*–4(b)(2)(C). Section 15B(b)(2)(C) of the Act requires, among other things, that the MSRB's rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in municipal securities, to remove impediments to and perfect the mechanism of a free and open market in municipal securities, and, in general, to protect investors and the public interest; and not be designed to impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

[24] Some states may require issuers and/or obligated persons to submit disclosure information to state information depositories (''SIDs'') or other venues pursuant to state law. However, under the Rule 15c2–12 Amendments, participating underwriters no longer need to reasonably determine that issuers and/or obligated persons have undertaken to provide continuing disclosure documents to SIDs. *See* Rule 15c2–12 Amendments Adopting Release, *supra* note 7.

[25] *See id.*

[26] *See* GFOA Letter.

[27] *See, e.g.*, GFOA Letter, SIFMA Letter, Vanguard Letter, Treasurer of the State of Connecticut Letter, ICI Letter.

[28] *Id.*

market disclosure document), and pricing information, will provide readers the benefit of the proper context for reviewing the continuing disclosure.[29] Others expressed support for the MSRB's proposal to make the continuing disclosure service a free service for both issuers and other obligated persons [30] submitting documents as well as for investors and other market participants [31] accessing continuing disclosure information. One commenter expressed a belief that the proposed rule change would be a means of removing impediments to and helping to perfect the mechanisms of a free and open market in municipal securities within the meaning of the Act.[32]

One commenter recommended that the Commission maintain close oversight of EMMA, ensure proper testing of the system, and revisit this matter in two to three years.[33] A second commenter also expressed a belief that the Commission should establish rigorous ongoing inspection and oversight of EMMA.[34] We note that, because the MSRB is a self-regulatory organization (''SRO''), the Commission has, and exercises, oversight authority over the MSRB. The MSRB must file proposed rule changes with the Commission under Section 19(b) of the Act, including any changes to the EMMA system and any fees relating to the EMMA system. In addition, the MSRB is subject to the recordkeeping requirements of 17(a) of the Act [35] and is subject to the Commission's examination authority under Section 17(b) of the Act.[36] Through the Commission's recordkeeping requirements and examination and rule filing processes, the Commission oversees the MSRB and will ascertain whether the MSRB is implementing EMMA appropriately and meeting EMMA's stated objectives, as well as complying with all of its legal obligations under the Act.

Eleven commenters that supported the proposed rule change also believed that EMMA submissions should be accompanied by identifying information.[37] Several of these commenters suggested various specific types of identifiers that were sometimes different from, or in addition to, those set forth in the proposed rule change. In this regard, specific identifiers that were suggested by commenters included: The identification of obligated persons other than issuers and successor parties; [38] the issuer's investor contact information; [39] a link to issuer's Web site; [40] the CUSIP numbers for all primary and secondary market debt covered by relevant information; [41] the use of electronic ''cover sheets;'' [42] the pre-registration of identifying information; [43] a mechanism to readily locate CUSIP numbers by the issuer's six digit prefix and at the same time list by nine digit CUSIPs in certain circumstances; [44] and a CUSIP catalog.[45] In its response letter, the MSRB noted that the use of accurate identifiers for continuing disclosure submissions in EMMA is vitally important to ensure correct indexing and access to continuing disclosure documents.[46] The MSRB indicated that, except as noted below,[47] documents provided to it are required to be accompanied by identifying information relating to the nature of the document, the securities and entities to which it applies, and the entity making the submission, as prescribed by the MSRB. In connection with EMMA submissions, the MSRB noted that the submitter will be required to provide, at the time of submission, information necessary to correctly identify the following: The category of information being provided; the period covered by any financial information; the issues or specific securities to which such document is related or otherwise material (including CUSIP number, issuer name, state issue description, securities name, dated date, maturity date and/or coupon rate); the name of any obligated person other than the issuer; the name and date of the document; and the contact information for the submitter.[48] According to the MSRB, since all continuing disclosure documents submitted to EMMA will be made through a unique, password protected accounts by issuers, obligated persons and their designated agents, once the indexing information is provided, the EMMA system will match each document with the appropriate identifying information for the submitter. The MSRB believes that these processes will adequately address issues relating to the use of identifiers for the submission process. The MSRB also believes that the use of these identifiers ensures both that the submission process is not unduly burdensome and that standardized market identifiers commonly used in the municipal marketplace serve as the basis on which EMMA users would be able to conduct document searches. Furthermore, while the MSRB believes that the identifiers it proposed are appropriate and cover most of the identifying elements recommended by the commenters, the MSRB also will consider whether any additional identifiers would be appropriate. The Commission believes that it is appropriate for the MSRB to incorporate without change in the continuing disclosure service the indexing information that the MSRB initially had proposed. The Commission believes that the MSRB has provided valid reasons for not incorporating at this time the additional indexing information that commenters suggested. As the MSRB noted, the proposed identifiers are standardized market identifiers used in the municipal marketplace, which should help ensure that the transition to the continuing disclosure service will not be unduly burdensome for submitters. We note, however, that the MSRB indicated that it will consider additional identifiers in the future.[49]

One commenter, who neither supported nor opposed the proposal, questioned whether the MSRB would seek appropriate licensing for its use of the commenter's intellectual property rights with respect to the CUSIP

[29] *See* SIFMA Letter.

[30] *See* GFOA Letter.

[31] *See, e.g.*, GFOA Letter, Busby Letter, NFMA Letter, DAC Letter, Vanguard Letter, and EDGAR Online Letter.

[32] *See* SIFMA Letter.

[33] *See* Treasurer of the State of Connecticut Letter.

[34] *See* DAC Letter.

[35] 15 U.S.C. 78q(a).

[36] 15 U.S.C. 78q(b).

[37] *See* NFMA Letter, DAC Letter, GFOA Letter, Vanguard Letter, SIFMA Letter, NABL Letter, Treasurer of the State of Connecticut Letter, Texas MAC Letter, OMAC Letter, ICI Letter, and EDGAR Online Letter.

[38] *See* GFOA Letter, Treasurer of the State of Connecticut Letter, Vanguard Letter, and ICI Letter.

[39] *See* NFMA Letter.

[40] *Id.*

[41] *Id.*

[42] *See* GFOA Letter.

[43] *See* Treasurer of the State of Connecticut Letter.

[44] *Id.*

[45] *See* NFMA Letter.

[46] *See* MSRB Response Letter.

[47] *See infra* note 48.

[48] As the Commission noted in its adopting release for amendments to Rule 15c2–12 [Release No. 34–59062; File No. S7–21–08, December 5, 2008], 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. In its response, the MSRB indicated that the submitter making a submission pursuant to a continuing disclosure undertaking entered into prior to the effective date of the proposed Rule 15c2–12 amendments who seeks to make such submission without providing identifying information could do so.

[49] We note that the MSRB is required to file with the Commission a proposed rule change under Section 19(b) of the Act with respect to any additional indexing information that it may propose to prescribe.

database.[50] The MSRB stated in its response letter that it is continuing its discussions with the appropriate parties relating to the use of CUSIP data and expects that all necessary arrangements will be in place to operate the continuing disclosure service as anticipated by the July 1, 2009 implementation date.[51] If there are any unanticipated and unresolved issues in connection with the use of the CUSIP data, the MSRB stated that it will consult with the Commission and, if necessary, make any filings to modify data usage by EMMA or to adjust the implementation date. In light of the MSRB's assurances that this issue is expected to be resolved in advance of the continuing disclosure service's proposed implementation date of July 1, 2009, the Commission does not believe that it is necessary to delay its approval of the proposed rule change. Nonetheless, we will continue to monitor the progress of EMMA, including the issue relating to licensing rights to the CUSIP database, prior to EMMA's implementation.

Some commenters expressed their belief that EMMA should have a simple user interface and intuitive search functionality.[52] One commenter noted that ''[a]s demonstrated, we believe that there are ample ways for the public to locate particular documents, either through a CUSIP number or an entity's name. It is imperative for these fields to be applied to all securities and for the MSRB to determine the most efficient way to do so.'' [53] The MSRB stated its belief that its pilot of the primary market service of the EMMA portal is user-friendly and that the continuing disclosure service of EMMA will also be user-friendly, in part, because the continuing disclosure service will provide the same accessibility to information to municipal market participants and easy-to-use identifiers for submissions as currently provided by the pilot of the primary market service of the EMMA portal. For example, if users have a CUSIP number, they will be able to go directly to the related documents on the EMMA system and, similarly, a user can go to the market activity page and see all the disclosures that were posted on a certain date.[54] The MSRB also noted its intention to continue to make improvements to the system.[55] The Commission believes the MSRB has proposed a reasonably efficient way to apply identifying fields to the continuing disclosure documents submitted to the EMMA system and expects that the MSRB will continue to monitor the EMMA portal to ensure that document submission is easy and document access is efficient on an ongoing basis and that the MSRB will propose rule changes to the continuing disclosure service pursuant to Section 19(b) of the Act as changes are needed.[56]

Some commenters expressed concerns that access to previous filings made with NRMSIRs may no longer be available.[57] Nothing in the MSRB's proposal will prevent the NRMSIRs from continuing to make historical information available. We recognize, however, that the NRMSIRs may decide not to do so. The MSRB stated in its response letter that while it does not have the authority to mandate the submission of historical data by issuers, issuers, obligated persons and their agents will be free to submit to EMMA continuing disclosure documents and related information previously submitted to the NRMSIRs.[58] The MSRB also stated that it is willing to communicate with the NRMSIRs on the continued availability of historical documents and related information and believes that such communication will be fruitful.[59] As a practical matter, we believe that this is largely a transitional issue until EMMA has collected documents for a number of years and anticipate that requests for such documents from the NRMSIRs by those persons who are not already subscribers to their services may be expected to decline over time.

Several commenters also made observations and suggestions regarding the access and security features of the continuing disclosure service.[60] One commenter suggested that the MSRB should distinguish between the responsibilities of obligated persons and submitters.[61] Two commenters recommended a special methodology for conduit borrowers to access EMMA.[62] Three commenters stated that issuers and obligated persons should have the ability to verify information submitted to EMMA by third parties and to correct errors either by accessing the system directly or by reporting any errors to a ''hotline.'' [63]

The MSRB noted in its response letter that its proposal does not change the obligations of issuers or obligated persons and their designated agents, which are established pursuant to the terms of continuing disclosure agreements, and that all persons, including issuers, obligated persons and designated agents will be able to access filings on EMMA to verify their availability and the accuracy of their indexing. The MSRB also noted that all submission methods will provide appropriate feedback to submitters for error correction and submission confirmation purposes. The MSRB also provides a Web site that allows submitters to provide questions and comments associated with submissions, as well as a help desk with dedicated personnel during MSRB business hours. Furthermore, the proposal will allow issuers and obligated persons to maintain control over those persons who may submit filings on their behalf. The MSRB will permit only those persons identified as designated agents in continuing disclosure agreements to submit documents without advance approval through EMMA and will notify issuers of the identity of those persons who submit documents on their behalf. Issuers and obligated persons also will be able to revoke self-certification of dissemination agents through the EMMA on-line account management utility at any time.

With respect to conduit financings,[64] two commenters [65] expressed concern that EMMA does not appropriately accommodate issues relating to the real parties in interest in such financings. In conduit financings, the bond issuing authority (*e.g.*, a state or local government) may issue tax exempt bonds on behalf of certain entities (*e.g.*, not-for profit organizations). Under these arrangements, the entity for which the tax exempt bonds were issued may be regarded as the real obligated party with the responsibility of submitting continuing disclosure documents and ensuring that such submissions are

[50] *See* ABA Letter.

[51] *See* MSRB Response Letter.

[52] *See* EDGAR Online Letter, NFMA Letter and GFOA Letter.

[53] *See* GFOA Letter.

[54] *See* MSRB Response Letter.

[55] *Id.*

[56] We note that the MSRB is required to file with the Commission a proposed rule change under Section 19(b) of the Act with respect to the operation of the continuing disclosure service and with respect to any changes to the continuing disclosure service.

[57] *See, e.g.*, Vanguard Letter and ICI Letter.

[58] *See* MSRB Response Letter.

[59] As discussed more fully in the Rule 15c2–12 Amendments Adopting Release, the Commission believes that the current NRMSIRs could decide it is in their commercial interest to make historical information available.

[60] *See* NABL Letter, NAHEFFA Letter, GFOA Letter, and NFMA Letter.

[61] *See* NABL Letter.

[62] *See* NAHEFFA Letter and GFOA Letter.

[63] *See* NAHEFFA Letter, GFOA Letter, NFMA Letter.

[64] Conduit financings are financings in which authorities with bond issuing authority issue tax-exempt bonds on behalf of certain entities, including not-for profit organizations.

[65] *See* NAHEFFA Letter and NFMA Letter.

accurate. Accordingly, these commenters expressed concern that EMMA will not appropriately discriminate whether the bond issuing authority, or the certain entity on behalf of which the tax-exempt bonds are issued, is responsible for the continuing disclosure submissions. The MSRB responded that the proposal establishes, through the account opening process, a mechanism that would permit, on an optional basis, issuers of conduit financings to identify obligated persons and the securities for which such persons are obligated.[66] Furthermore, the MSRB plans to establish methods for submitters to contact it with questions and to report any problems submitters may discover with filings they electronically send to the EMMA system.[67] The Commission believes that the MSRB has established appropriate measures with respect to security and controls for the submission of documents to the continuing disclosure service.

Some commenters that supported the proposed rule change suggested incorporation of an interactive data standard (*i.e.*, XBRL).[68] The MSRB responded that it will take all such suggestions under consideration for future revisions to the continuing disclosure service. The MSRB noted, however, that documents need not be created in any particular manner in order to be saved or scanned into a PDF format. The MSRB indicated that it does not view establishing XBRL as a data standard for EMMA submissions as appropriate at this time, although it noted that it continues to be interested in working with the municipal market in the future on interactive data initiatives. The Commission believes that, in the future, access to continuing disclosure documents through the EMMA system could be enhanced by improved methods for the electronic presentation of information, but believes that the MSRB's technology choices for EMMA are appropriate at this time.

Seven of the commenters that supported the proposed rule change indicated that EMMA should have the capability to accept voluntary and non-periodic disclosures in addition to Rule 15c2–12 disclosures[69] or recommended the addition of features such as information regarding late or missing filings.[70] In its response letter, the MSRB stated that although the continuing disclosure service will not allow for the submission of continuing disclosure documents beyond those currently set forth in Rule 15c2–12 or those documents identified in an undertaking by the issuer or obligated person, the MSRB expects to propose in a future filing to accept submissions of a broader scope.[71] The Commission believes that limiting the scope of the documents to be submitted through the continuing disclosure service to those referenced in continuing disclosure agreements will fulfill the intended purpose of Rule 15c2–12 and thus is reasonable at this time.

One commenter expressed support for the dissemination of information in a bulk format.[72] Some commenters expressed concerns regarding fees to be charged by the MSRB for subscriptions to the real-time data feed and whether the transfer of documents through the data feed would be delayed.[73] In addition, three commenters suggested that the MSRB should provide SIDs with a data feed of filing information and one of these commenters stated that this data feed should be provided free of charge.[74] Further, one commenter expressed concern that broker-dealers would pass on fees to their customers to support the EMMA system.[75]

In its response letter, the MSRB stated that in addition to providing access to continuing disclosure documents through the EMMA portal without charge to all persons on an equal basis on its Internet website, the MSRB also will offer real-time subscriptions to EMMA's continuing disclosure documents and information as they are submitted and processed.[76] According to the MSRB, its goal is to ensure an efficient process for making available real-time data subscription products at a reasonable cost.[77] The MSRB also stated that it will work with the SIDs to ensure that they will have reasonable access to the documents submitted for issues in their respective states and will not incur costs related to the entire EMMA subscription product.[78]

The Commission notes that fees relating to the EMMA system, such as subscription fees for a data feed for access to documents submitted to the continuing disclosure service, also must be filed with the Commission as a proposed rule change under Section 19(b) of the Act. Accordingly, any fees relating to the continuing disclosure service would be published for public comment by the Commission and interested persons would have the opportunity to offer their views on them.

With respect to the comment that broker-dealers would pass on fees to their customers to support the EMMA system, the Commission again notes that the MSRB, as an SRO, would have to file any fees relating to the support or use of the continuing disclosure service with the Commission under Section 19(b) of the Exchange Act, to the extent such fees are not already covered by the MSRB's current fee schedule. 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 that effect transactions in municipal securities to establish and operate the EMMA system.[79] The MSRB has stated 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 continuing disclosure service of the EMMA system.[80]

Two commenters opposed the proposal and suggested alternative approaches to greater access to continuing disclosure documents by investors and others.[81] They believed that the MSRB's proposal would not improve the overall continuing disclosure regime and that it does not address the core problems with the current system, such as the significant level of delinquent filings. One of these commenters stated that the proposal imposes restrictions on filing formats (*i.e.*, single-electronic) and technology and misstates important attributes of the current municipal disclosure regime. This commenter urged enforcement of existing provisions of Rule 15c2–12 and otherwise working within the existing disclosure system. The other commenter believed that a ''central post office'' approach is preferable.[82]

[66] *See* MSRB Response Letter.

[67] *Id.*

[68] *See, e.g.*, GFOA Letter, e-certus Letter, and EDGAR Online Letter.

[69] *See* ICI Letter, NFMA Letter, NABL Letter, GFOA Letter, Vanguard Letter and SIFMA Letter, Treasurer of the State of Connecticut Letter.

[70] *See, e.g.*, ICI Letter.

[71] *See* MSRB Response Letter.

[72] *See, e.g.*, EDGAR Online Letter.

[73] *See* DPC DATA Letter, NFMA Letter and GFOA Letter.

[74] *See* Texas Mac Letter, OMAC Letter, and GFOA Letter.

[75] *See* SPSE Letter.

[76] *See* MSRB Response Letter.

[77] *Id.*

[78] *Id.*

[79] *See* MSRB Response Letter.

[80] *Id.*

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

[82] Under a central post office approach, issuers and obligors would file documents through a single electronic venue in a standardized format. The central post office would then forward the

Continued

In its response letter, the MSRB expressed its belief that the establishment of single submission and dissemination venue through EMMA's continuing disclosure service would significantly improve upon the current municipal disclosure system.[83] The MSRB believed that a simple, secure and centralized system will simplify issuers' submissions. According to the MSRB, for example, the fact that continuing disclosure documents will be publicly available for free through a searchable Web site in which all filings for a particular issue are displayed as a single collection will serve, for the first time, to make it easy for issuers, investors and others to determine whether or not filings are missing, whether due to an issuer failing to make a filing or otherwise.

While the Commission acknowledges that the MSRB's proposal does not address all of the information challenges of the municipal market, the Commission continues to believe that the MSRB's proposal is a significant step forward in facilitating the submission of, and access to, secondary market municipal disclosures. As noted previously, a large majority of the commenters supported the MSRB's proposal and believed that it will improve the overall continuing disclosure regime. The Commission also believes that this will be the case. We anticipate that public access to all continuing disclosure documents on the Internet, as provided by the proposal, will promote market efficiency and help deter fraud and manipulation in the municipal securities market by improving the availability of information to all investors. With respect to one commenter's concern that the proposal would impose restrictions on filing formats, impose technology requirements that do not exist under the current system and provide no appreciable benefit, the Commission notes that the availability of continuing disclosure documents at a single repository that can be readily accessed and easily searched through electronic means will provide significant benefits that are not available under the current NRMSIR system. The Commission notes that the submission of continuing disclosure documents in an electronic format will allow the information to be posted and disseminated promptly. The Commission also notes that the MSRB's proposed filing format and choice of technology will eliminate the need for manual handling of paper documents, which is less efficient and more costly, and will increase the potential for a more complete record of continuing disclosure documents that otherwise might be misfiled or lost under a manual system. Furthermore, the Commission believes that submissions in an electronic format will not be burdensome on issuers or obligated persons since many documents are now routinely created in an electronic format and can be readily transmitted by electronic means. With respect to the comment that the existing disclosure system should be retained and the existing provisions of the Rule 15c2–12 enforced, the Commission believes that enforcement of the provisions of Rule 15c2–12 is an important mechanism for the protection of municipal securities investors and the efficient operation of the marketplace. However, the Commission also believes that the quality, timing, and availability of disclosure in the municipal securities markets will be substantially improved by the MSRB's proposal.

With respect to the comment favoring a ''central post office,'' the Commission believes that this approach is less likely to make access to continuing disclosure documents as efficient as the MSRB's continuing disclosure service and therefore would not achieve the goal. 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 the MSRB's proposal, 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 MSRB's EMMA system, simplify compliance with regulatory requirements by, and reduce compliance costs of, broker-dealers, municipal securities 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 for a fee or subscribe to commercial services to do so on their behalf. We believe that greater benefits will be achieved by providing public access to all continuing disclosure documents on the Internet, as provided by the proposal. We anticipate that access to all continuing disclosure documents without charge through the MSRB's Internet site will better promote market efficiency and help deter fraud and manipulation in the municipal securities market by improving the availability of information to all investors.

Two commenters, both of which are NRMSIRs, also raised concerns about the potential adverse effects on competition and raised issues about the proposal's consistency with Congressional intent regarding the regulation of municipal securities.[84] Both of these commenters believed that the proposal is contrary to Section 15B(d) of the Act,[85] commonly referred to as the Tower Amendment. One of these commenters also expressed its belief that the proposal would reduce current value-added products and services provided by existing NRMSIRs and other vendors; narrow competing information services regarding municipal securities; and result in a loss of innovation in offering competing information services regarding municipal securities.[86] This commenter also expressed its belief that the proposal is anti-competitive and would unfairly displace private vendors that have made significant investment under the current system with a ''quasi-governmental organization'' that is subsidized and could provide value-added services for free.[87] The other commenter expressed a belief that the proposal places the MSRB in direct competition with commercial vendors.[88]

With respect to their comments regarding competition, the MSRB responded that it did not believe that the proposed rule change would impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.[89] The MSRB expressed its belief that existing vendors would continue to have rapid access to all of the same documents they previously received, now accompanied by consistent indexing information, and would fully be able to provide value added products based on such documents. Additionally, the MSRB responded that it believed that the availability of continuing disclosure

centrally-filed documents in real time to the NRMSIRs. *See also* SPSE Letter, at 3–5.

[83] *See* MSRB Response Letter.

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

[85] 15 U.S.C. 78*o*–4(d).

[86] *See* SPSE Letter.

[87] *Id.*

[88] *See* DPC DATA Letter.

[89] *See* MSRB Response Letter.

documents through the EMMA portal and the continuing disclosure subscription service would promote competition among private data vendors and other enterprises engaged in, or interested in becoming engaged in, the market for information services by eliminating existing barriers to new entrants into the market for municipal securities information. The MSRB added that none of the functionalities of the continuing disclosure service constitute value-added services that compete inappropriately with the private sector. Rather, the MSRB noted that these functionalities are critical for the continuing disclosure services operation as a free, centralized source of information for retail investors that provides investors with the necessary tools to find the information for which they are searching and to understand such information once it is found. Furthermore, the MSRB expressed its belief that its operation of the continuing disclosure service would serve as a basis on which private enterprises could themselves concentrate more of their resources on developing and marketing value-added services. In the MSRB's opinion, the shift in the flow of continuing disclosure documents from the current NRMSIRs to EMMA (from which such entities and others could still obtain documents on a real-time basis accompanied by indexing information) would represent only a temporary dislocation in the processes by which current vendors that produce value-added services obtain the raw documents on which these services are based.

Moreover, the MSRB expressed its belief that the proposal will prove to be of long-term benefit to such vendors. The MSRB noted that much of the impact of the proposed rule change on commercial enterprises will result from increased competition in the marketplace resulting from the entry of additional commercial enterprises to compete with existing market vendors for value-added services, rather than from the operation of the continuing disclosure service. Furthermore, the MSRB stated its belief that the benefits realized by the investing public from the broader and easier availability of disclosure information about municipal securities justifies any potential negative impact on existing enterprises resulting from the operation of EMMA. The MSRB emphasized that its activities are subject to the supervision of the Commission and that any changes to EMMA and related systems must be filed with the Commission. The MSRB further commented that it has worked closely with all of the marketplace's key constituencies, including issuers, bond attorneys, financial advisers, and others in the development of EMMA and represented that it will continue to do so as EMMA becomes fully operational.

The Commission believes that the proposal will modernize the method of availability of continuing disclosure documents by issuers and, by making use of the Internet, will make these documents readily accessible to investors and others at no charge. The continuing disclosure service will not alter the availability of such documents to commercial vendors or their ability to disseminate such information, together with whatever value-added products they may wish to provide. The Commission notes that the MSRB has represented that documents provided through EMMA will be available to all persons on an equal basis and that the MSRB will continue to make the full collection of documents available by subscription on an equal basis, without imposing restrictions on subscribers from re-disseminating such documents or from otherwise offering value-added service and products, based on such documents on terms determined by each subscriber.[90] Further, the Commission notes that the MSRB has represented that EMMA will be designed to provide real-time access to documents and information as they are submitted and processed [91] and that all continuing disclosures received by the MSRB will be available through a data-stream subscription simultaneously with posting on the EMMA portal.[92]

The Commission believes that the proposed rule change will encourage, rather than restrict, competition in the municipal securities information marketplace. The Commission further believes that any burdens on competition that may result from the proposed rule change are more than justified by the benefits that will flow from ready and free availability of municipal disclosure documents to broker-dealers, municipal securities dealers, mutual funds, analysts, retail and institutional investors, and the public generally. Both existing private vendors and new market entrants seeking to provide value-added products and services will be able to access all available continuing disclosure documents from EMMA for free, or for a subscription fee if they elect to receive a real-time data feed. Consequently, existing vendors and potential new market entrants no longer will have to pay multiple subscription fees or document charges to multiple NRMSIRs to access the continuing disclosure information that is necessary for value-added products and services. The MSRB's proposal is designed to help spur innovation and competition for value-added products and services and is expected to reduce barriers to entry for new market participants. The Commission also notes that because continuing disclosure information will be available at the MSRB, existing vendors and new market entrants can conserve resources that otherwise would be utilized to obtain a full complement of available continuing disclosure information that is spread out across multiple NRMSIRs. In addition, while the Commission acknowledges that some existing vendors may need to make some adjustments to their line of business or services offered, these vendors and others may determine that they no longer need to invest in the infrastructure and facilities necessary to collect and store continuing disclosure information. The Commission believes that the proposed rule change likely will have a net benefit on the competitive landscape for municipal securities disclosure information services and further the purposes of the Act by deterring the potential for fraud in the municipal securities market.

With respect to concerns that the MSRB could control private vendors' access to information through unfair fee structures and biased dissemination of information for the purpose of conditioning the market to use EMMA and the MSRB's own services,[93] the Commission notes that the MSRB is required to file its fee changes and rule proposals relating to the EMMA system with the Commission under Section 19(b) of the Act. Thus, interested parties will have the opportunity to comment on any such proposal and bring to the Commission's attention any potential issues. The Commission has carefully considered the comments of the two NRMSIRs regarding competition, and the MSRB's response letter, and does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. To the contrary, as discussed above, the Commission believes that any competitive impact that may result from the proposed rule change is justified by the benefits that will be provided to investors, broker-dealers, mutual funds, vendors of municipal information, municipal

[90] *See* MSRB Response Letter.

[91] *See* MSRB Response Letter.

[92] *See* Release No. 34–58256, *supra* note 3.

[93] *See* DPC DATA Letter.

security analysts, other market professionals and the market generally.

With respect to the comments of the two NRMSIRs regarding the Tower Amendment, the MSRB responded that it believes its proposal to create a continuing disclosure service is consistent with the MSRB's statutory authority under Section 15B(d) of the Act, *i.e.*, the Tower Amendment.[94] The MSRB believes that the continuing disclosure service of EMMA will serve as a necessary step to better facilitate the free and timely public access to continuing disclosure documents and related information. The service will remove impediments to and help perfect the mechanisms of a free and open market in municipal securities thereby, effectively, promoting investor protections and the public interest by ensuring equal access for all market participants to the critical disclosure information needed by investors in the municipal securities market. The MSRB believes that all of the continuing disclosure service's functionalities relate to the core mission of the MSRB and such functionalities are not inconsistent with any statutory limitations placed on MSRB activities. The MSRB believes that municipal securities disclosure documents should be made more readily and promptly available to the public and that all investors should have better access to important market information.

The Commission also does not believe that the proposed rule change is inconsistent with the Tower Amendment. The Tower Amendment prohibits the MSRB from directly or indirectly requiring an issuer of municipal securities to file with it any documents relating to the issuance, sale or distribution of such securities before such securities are sold.[95] The Tower Amendment also prohibits the MSRB from directly or indirectly requiring an issuer of municipal securities, directly or indirectly through a municipal securities broker or dealer or otherwise, to furnish to it documents relating to the issuer, unless such information is available from a source other than the issuer.[96] The MSRB's proposed rule change does not implicate Section 15B(d)(1) or (2) of the Act because it imposes no requirements on issuers. Instead, through the establishment of the continuing disclosure service of EMMA as an information venue, the proposed rule change enhances access to continuing disclosure information provided to the MSRB subsequent to the sale of municipal securities as a consequence of continuing disclosure agreements entered into consistent with a rule of the Commission's Rule 15c2–12, which is designed to deter fraud in the municipal securities market. The proposed rule change does not alter market participants' existing obligations, but rather it enhances the system for the receipt of, and for making available to the public of, the continuing disclosure documents. For these reasons, the Commission does not believe that the proposed rule change is contrary to Section 15B(d) of the Act.

Several commenters that supported the proposed rule change also made suggestions regarding the transition to the proposed system.[97] For example, one commenter believed that there should be a three- to six-month transition period for submissions to EMMA and a twelve-month transition period for the submissions of searchable PDFs.[98] Another commenter believed that there should be a nine-month transition period to a word searchable format.[99] Another commenter believed that parties who have made paper filings in the past should be allowed additional time to transition to electronic filings.[100] A fourth commenter noted that issuers and obligated persons may be confused as to where they should file continuing disclosure documents during the period of transition and suggested that these concerns could be addressed during a short transition period.[101] The MSRB responded that, in view of the comments it received and discussions it has had with industry participants, and to further ensure a smooth transition for submitters and end users of continuing disclosures, it has filed Amendment No. 1 to delay the effectiveness of the continuing disclosure service until the later of July 1, 2009 or the effective date of the Rule 15c2–12 Amendments and to extend the transition to a word-searchable format until January 1, 2010. Furthermore, the MSRB stated that it expects to file with the Commission to establish a pilot program for the continuing disclosure service that would allow for system testing through voluntary submissions of continuing disclosures prior to the effectiveness of the amendments to Rule 15c2–12 and the launch of the permanent continuing disclosure service.

IV. Order Granting Accelerated Approval of Proposed Rule Change

As noted above, the MSRB now seeks pursuant to Amendment No. 1 to commence operation of the EMMA portal for continuing disclosure documents on July 1, 2009,[102] which is commensurate with the effective date of the Rule 15c2–12 Amendments that we also are adopting today.[103] In addition, Amendment No. 1 requests that the Commission delay the effectiveness of the provision of the proposed rule change relating to word searchable PDF files until January 1, 2010. The MSRB requests that the Commission find good cause, pursuant to Section 19(b)(2) of the Act, for approving Amendment No. 1 prior to the thirtieth day after publication of notice of filing of Amendment No. 1 in the **Federal Register**. The MSRB believes that the Commission has good cause for granting accelerated approval of the proposed rule change because the amendment does not substantively alter the original proposed rule change other than changing two effective dates to allow more time for implementation.

The Commission finds good cause to approve the proposed rule change on an accelerated basis. The proposed rule change was published in the **Federal Register** on August 7, 2008.[104] The Commission believes that the proposal includes an appropriate transition period and believes that parties that have made paper filings in the past or that do not presently use word searchable formats will have sufficient time to transition to electronic filings as of July 1, 2009 and to a word searchable

[94] Section 15B(d) of the Exchange Act states as follows: (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)(1) and (2).

[95] 15 U.S.C. 78*o*–4(d)(1).

[96] 15 U.S.C. 78*o*–4(d)(2).

[97] *See, e.g.*, GFOA Letter, e-certus Letter, Treasurer of the State of Connecticut Letter, and NABL Letter.

[98] *See* GFOA Letter.

[99] *See* Treasurer of the State of Connecticut Letter.

[100] *See* NABL Letter.

[101] *See* Vanguard Letter.

[102] *See* Amendment No. 1, *supra* note 5.

[103] *See* Rule 15c2–12 Amendments Adopting Release, *supra* note 7.

[104] *See* Release No. 34–58256, *supra* note 3.

PDF format as of January 1, 2010, respectively.

V. Solicitation of Comments

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

Electronic Comments

- Use the Commission's Internet comment form *(http://www.sec.gov/rules/sro.shtml)*; or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–MSRB–2008–05 on the subject line.

Paper Comments

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

All submissions should refer to File Number SR–MSRB–2008–05. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the MSRB. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–MSRB–2008–05 and should be submitted on or before January 2, 2009.

VI. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule change is consistent with the requirements of the Act and in particular Section 15B(b)(2)(C) of the Act and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[105] that the proposed rule change (SR–MSRB–2008–05), as modified by Amendment No. 1, be, and it hereby is, approved on an accelerated basis.

By the Commission.

Florence E. Harmon,

Acting Secretary.

[105] 15 U.S.C. 78s(b)(2).

Exhibit A

Key to Comment Letters Cited in Order Relating to the Establishment of a Continuing Disclosure Service of the Electronic Municipal Market Access System (EMMA) (File No. SR–MSRB–2008–05)

1. Letter from Fran Busby, to 21st Century Disclosure Initiative, Commission, dated October 7, 2008 (''Busby Letter'').
2. Letter from Paula Stuart, Chief Executive Officer, Digital Assurance Certification, L.L.C. (''DAC''), to Florence E. Harmon, Acting Secretary, Commission, dated September 25, 2008 (''DAC 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 Susan A. Gaffney, Director, Federal Liaison Center, Government Finance Officers Association (''GFOA''), to Florence E. Harmon, Acting Secretary, Commission, dated September 24, 2008 (''GFOA Letter'').
5. 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'').
6. Letter from R.T. McNamar, CEO, e-certus, Inc. (''e-certus''), to Christopher Cox, Chairman, Commission, and Ernesto A. Lanza, Senior Associate General Counsel, MSRB, dated September 22, 2008 (''e-certus Letter'').
7. 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'').
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 Denise L. Nappier, Treasurer, State of Connecticut, to Christopher Cox, Chairman, Commission, dated September 22, 2008 (''Treasurer of the State of Connecticut Letter'').
10. Letter from J. Douglas Adamson, Executive Vice President, Technical Services Division, American Bankers Association (''ABA''), to Florence E. Harmon, Acting Secretary, Commission, dated September 22, 2008 (''ABA Letter'').
11. Letter from Laura Slaughter, Executive Director, Municipal Advisory Council of Texas (''Texas MAC''), to Christopher Cox, Chairman, Commission, and Ernesto A. Lanza, Senior Associate General Counsel, MSRB, dated September 22, 2008 (''Texas MAC Letter'').
12. Letter from K.W. Gurney, Director, Ohio Municipal Advisory Council (''OMAC''), to Christopher Cox, Chairman, Commission, and Ernesto A. Lanza, Senior Associate General Counsel, MSRB, dated September 22, 2008 (''OMAC Letter'').
13. Letter from Karrie McMillan, General Counsel, Investment Company Institute (''ICI''), to Florence E. Harmon, Acting Secretary, Commission, dated September 22, 2008 (''ICI Letter'').
14. 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 Educational Facilities Finance Authorities (''NAHEFFA''), to Florence E. Harmon, Acting Secretary, Commission, dated September 22, 2008 (''NAHEFFA Letter'').
15. Letter from Peter J. Schmitt, CEO, DPC DATA Inc. (''DPC DATA''), to Florence E. Harmon, Acting Secretary, Commission, dated September 18, 2008 (''DPC DATA Letter'').
16. Letter from Philip D. Moyer, CEO & President, EDGAR Online (''EDGAR Online''), to Christopher Cox, Chairman, Commission, and Ernesto A. Lanza, Senior Associate General Counsel, MSRB, dated September 9, 2008 (''EDGAR Online Letter'').
17. Letter from Lynette Kelly Hotchkiss, Executive Director, MSRB, to Christopher Cox, Chairman, and James L. Eastman, Counsel, Commission, dated September 8, 2008 (''MSRB Letter'').
18. Letter from Rob Yolland, Chairman, National Federation of Municipal Analysts (NFMA), to Ernesto A. Lanza, Senior Associate General Counsel, MSRB, Commission, dated March 10, 2008 (''NFMA Letter'').

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DEPARTMENT OF STATE

[Public Notice 6449]

Bureau of Educational and Cultural Affairs (ECA) Request for Grant Proposals: Youth Programs Academic Year Disability Components

Announcement Type: New Grant.

Funding Opportunity Number: ECA/PE/C/PY–09–05.