withhold shares of the Company's common stock or purchase shares of the Company's common stock from the Participants to satisfy tax withholding obligations related to the vesting of Restricted Stock and the exercise of options to purchase shares of the Company's common stock granted pursuant to the Plans or the Amended Plans. The Amended Plans further provide the Company's Board with discretion to permit the Participants to pay the exercise price of options to purchase shares of the Company's stock with shares of the Company's stock already held by such Participants or pursuant to net share settlement.

Applicant's Legal Analysis

1. Section 23(c) of the Act, which is made applicable to BDCs by section 63 of the Act, generally prohibits a BDC from purchasing any securities of which it is the issuer except in the open market, pursuant to tender offers or under other circumstances as the Commission may permit to ensure that the purchase is made on a basis that does not unfairly discriminate against any holders of the class or classes of securities to be purchased. Applicant states that the withholding or purchase of shares of Restricted Stock and common stock in payment of applicable withholding tax obligations or of common stock in payment for the exercise price of a stock option might be deemed to be purchases by the Company of its own securities within the meaning of section 23(c) and therefore prohibited by the Act.

2. Section 23(c)(3) provides that the Commission may issue an order that would permit a BDC to repurchase its shares in circumstances in which the repurchase is made in a manner or on a basis that does not unfairly discriminate against any holders of the class or classes of securities to be purchased. Applicant states that it believes that the requested relief meets the standards of section 23(c)(3).

3. Applicant states that these purchases will be made on a basis which does not unfairly discriminate against the stockholders of the Company because all purchases of the Company's stock will be at the closing price of the common stock on the NASDAQ Global Select Market (or any other such exchange on which the shares may be traded in the future) on the date of the transaction. Applicant further states that no transactions will be conducted pursuant to the requested order on days where there are no reported market transactions involving the Company's shares. Applicant submits that because all transactions would take place at the public market price for the Company's common stock, the transactions would not be significantly different than could be achieved by any stockholder selling in a market transaction.

4. Applicants submit that the proposed purchases do not raise concerns about preferential treatment of the Company's insiders because the Amended Plans are bona fide compensation plans of the type that is common among corporations generally. Further, the vesting schedule is determined at the time of the initial grant of the Restricted Stock and the option exercise price is determined at the time of the initial grant of the options. Applicant represents that all purchases may be made only as permitted by the Amended Plans. Applicant argues that granting the requested relief would be consistent with policies underlying the provisions of the Act permitting the use of equity compensation as well as prior exemptive relief granted by the Commission for relief under section 23(c) of the Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–13154 Filed 6–1–10; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Public Law 94–409, that the Securities and Exchange Commission will hold a Closed Meeting on Thursday, June 3, 2010 at 2 p.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the Closed Meeting. Certain staff members who have an interest in the matters also may be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(3), (5), (7), (8), 9(B) and (10) and 17 CFR 200.402(a)(3), (5), (7), (8), 9(ii) and (10), permit consideration of the scheduled matters at the Closed Meeting.

Commissioner Paredes, as duty officer, voted to consider the items listed for the Closed Meeting in a closed session.

The subject matter of the Closed Meeting scheduled for Thursday, June 3, 2010 will be:

Institution and settlement of injunctive actions;

Institution and settlement of administrative proceedings;

A regulatory matter regarding a financial institution; and

Other matters relating to enforcement proceedings.

At times, changes in Commission priorities require alterations in the scheduling of meeting items.

For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact:

The Office of the Secretary at (202) 551–5400.

Dated: May 27, 2010.

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–13329 Filed 5–28–10; 4:15 pm]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–62183, File No. SR–MSRB–2009–10]

Self-Regulatory Organizations; Municipal Securities Rulemaking Board; Notice of Filing of Amendment No. 2 and Order Granting Accelerated Approval of Proposed Rule Change, as Modified by Amendment Nos. 1 and 2 Thereto, Relating to Additional Voluntary Submissions by Issuers to the MSRB's Electronic Municipal Market Access System (EMMA®)

May 26, 2010.

I. Introduction

On July 14, 2009, the Municipal Securities Rulemaking Board ("MSRB"), filed with the Securities and Exchange Commission ("Commission" or "SEC"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Exchange Act"),[1] and Rule 19b–4 thereunder,[2] a proposed rule change relating to additional voluntary submissions by issuers to the MSRB's Electronic Municipal Market Access System ("EMMA"). The proposed rule change was published for comment in the **Federal Register** on July 22, 2009.[3] The Commission received 27 comment

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

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 60315 (July 15, 2009), 74 FR 36294 ("Original Notice") (the "original proposed rule change").

letters about the proposed rule change.[4] On December 18, 2009, the MSRB filed with the Commission, pursuant to Section 19(b)(1) of the Exchange Act [5] and Rule 19b-4 thereunder,[6] Amendment No. 1 to the proposed rule change. Amendment No. 1 to the proposed rule change was published for comment in the **Federal Register** on January 5, 2010.[7] The Commission received three comment letters concerning Amendment No. 1.[8] On May 21, 2010, the MSRB filed with the Commission, pursuant to Section 19(b)(1) of the Exchange Act [9] and Rule 19b-4 thereunder,[10] Amendment No. 2 to the proposed rule change, which clarified an aspect of the proposed rule change relating to an issuer's undertaking and requested an additional three months to develop, test, and implement the proposal. The text of Amendment No. 2 is available on the MSRB's Web site (*http://www.msrb.org*), at the MSRB's principal office, and for Web site viewing and printing in the Commission's Public Reference Room. This order provides notice of Amendment No. 2 and approves the proposed rule change as modified by Amendment Nos. 1 and 2 on an accelerated basis.

II. Description of the Proposed Rule Change, as Modified by Amendment Nos. 1 and 2 to the Proposed Rule Change

Preliminary Official Statements and Other Primary Market Documents

The proposed rule change would amend the EMMA primary market disclosure service to permit issuers and their designated agents to make voluntary submissions to the primary market disclosure service of official statements, preliminary official statements and related pre-sale documents, and advance refunding documents (collectively, "primary market documents").[11] Pre-sale documents other than a preliminary official statement (including but not limited to notices of sale or supplemental disclosures) would be accepted only if accompanied or preceded by the preliminary official statement.[12] An issuer seeking to make submissions of primary market documents to the EMMA primary market disclosure service would use the same accounts established with respect to submissions of continuing disclosure documents to the EMMA continuing disclosure service, subject to additional verification procedures to affirmatively establish the account holder's authority to act on behalf of the issuer in connection with such primary market disclosure submissions.

Submissions of primary market documents by issuers and their designated agents would be accepted on a voluntary basis if, at the time of submission, they are accompanied by information necessary to accurately identify: (i) The category of document being submitted; (ii) the issues or specific securities to which such document is related; and (iii) in the case of an advance refunding document, the specific securities being refunded pursuant thereto. The primary market documents and related indexing information would be displayed on the EMMA Web portal and also would be included in EMMA's primary market disclosure subscription service.

Additional Continuing Disclosure Submissions and Undertakings

The proposed rule change also would amend the EMMA continuing disclosure service to permit issuers, obligated persons and their agents to make voluntary submissions to the continuing disclosure service of additional categories of disclosures, as well as information about their continuing disclosure undertakings. Such additional continuing disclosures and related indexing information would be displayed on the EMMA Web portal and also would be included in EMMA's continuing disclosure subscription service. Such additional items [13] are:

- An issuer's or obligated person's undertaking to prepare audited financial statements pursuant to generally accepted accounting principles ("GAAP") as established by the Governmental Accounting Standards Board ("GASB"), or pursuant to GAAP as established by the Financial Accounting Standards Board ("FASB"), as applicable to such issuer or obligated person and as further described below (the "voluntary GAAP undertaking"); [14]
- An issuer's or obligated persons' undertaking to submit annual financial information to EMMA within 120 calendar days after the end of the fiscal year or, as a transitional alternative that may be elected through December 31, 2013, within 150 calendar days after the end of the applicable fiscal year, as further described below (the "voluntary annual filing undertaking"); [15] and
- Uniform resource locator (URL) of the issuer's or obligated person's Internet-based investor relations or other repository of financial/operating information.

Voluntary GAAP Undertaking. The voluntary GAAP undertaking would consist of a voluntary undertaking by an issuer or obligated person, either at the time of a primary offering or at any time thereafter, that the issuer or obligated person will prepare its audited financial statements in accordance with GAAP. The MSRB contemplates that State or local governments or any other entities to which GASB standards are applicable would apply GAAP as established by GASB and that any other entities to which FASB standards are applicable would apply GAAP as established by FASB.

The voluntary GAAP undertaking would assist investors and other market participants in understanding how audited financial statements were prepared. The fact that an issuer or obligated person has entered into a voluntary GAAP undertaking, and the

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[4] 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-2009–10/msrb200910.shtml* and for Web site viewing and printing in the Commission's Public Reference Room at its Washington, DC headquarters.

[5] 15 U.S.C. 78s(b)(1).

[6] 17 CFR 240.19b–4.

[7] *See* Securities Exchange Act Release No. 61237 (December 23, 2009), 75 FR 485 (January 5, 2010) ("Amendment No. 1 Notice").

[8] Exhibit A contains the citation key for all comment letters received on the proposed rule change and on Amendment No. 1.

[9] 15 U.S.C. 78s(b)(1).

[10] 17 CFR 240.19b–4.

[11] Obligated persons would be permitted to submit primary market documents through the EMMA primary market disclosure service only if designated as an agent by the issuer.

[12] The MSRB believes that posting of such pre-sale documents without the related disclosure information provided in a preliminary official statement would be inconsistent with the core disclosure purposes of EMMA.

[13] In Amendment No. 1, the MSRB proposes to modify the original proposed rule change by eliminating one item of additional voluntary submissions relating to the award of the Certificate of Achievement for Excellence in Financial Reporting awarded by the Government Finance Officers Association ("GFOA") in connection with the preparation of a Comprehensive Annual Financial Report ("CAFR") of an issuer. The MSRB notes that CAFRs are already frequently submitted to EMMA by issuers, and in most cases the issuers include the GFOA certificate in the submitted CAFR. According to the MSRB, EMMA already effectively serves as a venue through which CAFRs and GFOA certificates are made available to investors.

[14] In response to the comments received on the original proposed rule change, the MSRB in Amendment No. 1 proposes to modify the original proposed rule change by permitting issuers and obligated persons to elect either the GASB standard or the FASB standard for GAAP, as appropriate. The original proposed rule change contemplated the use of the GASB standard only.

[15] In response to the comments received on the original proposed rule change, the MSRB in Amendment No. 1 proposes to modify the original proposed rule change by permitting issuers and obligated persons to elect to undertake to submit annual financial information either within 120 days or 150 days after the end of the fiscal year. The original proposed rule change contemplated a 120-day timeframe only.

standard under which audited financial statements are to be prepared, would be prominently disclosed on the EMMA Web portal as a distinctive characteristic of the securities to which such undertaking applies.

In Amendment No. 2, the MSRB proposes to clarify that the EMMA indicator with regard to the voluntary GAAP undertaking would be indicative of an issuer's or obligated person's voluntary undertaking, entered into as a contractual obligation, for the benefit of bondholders, under a continuing disclosure agreement or another contract, that it will prepare its audited financial statements in accordance with GAAP, either based on GASB or FASB standards as appropriate. If the issuer or obligated person later rescinds such undertaking through an amendment to its continuing disclosure agreement or other contractual arrangement, the issuer or obligated person would be expected to remove the indicator of its voluntary GAAP undertaking on EMMA. Amendment No. 2 clarifies that the voluntary EMMA GAAP indicator solely could be used in situations where the issuer has entered into an undertaking via a contractual obligation. While this is consistent with a number of statements in Amendment No. 1, there was a statement by the MSRB in Amendment No. 1 to the effect that the making of a voluntary GAAP undertaking through EMMA by an issuer or obligated person would reflect the *bona fide* intent of the issuer or obligated person to perform as undertaken but would not, by itself, necessarily create a contractual obligation of such issuer or obligated person. This statement may have caused some confusion with regard to the issuer's need to undertake, in a continuing disclosure agreement or separate contract, that it will prepare its audited financial statements in accordance with GAAP, either based on GASB or FASB standards as appropriate in order to use the voluntary EMMA GAAP indicator.

The MSRB would not review whether an entity has selected the appropriate accounting standard, would not review or confirm the conformity of submitted audited financial statements to GAAP, and would not review whether the information submitted by such entity to the EMMA continuing disclosure service regarding the voluntary GAAP undertaking accurately reflects the provisions of, or is included within, the continuing disclosure agreement or other contractual arrangement of such entity.

Voluntary Annual Filing Undertaking. The voluntary annual filing undertaking would consist of a voluntary undertaking by an issuer or obligated person, either at the time of a primary offering or at any time thereafter, that the issuer or obligated person, as appropriate, would submit to EMMA its annual financial information as contemplated by Rule 15c2–12 under the Act by no later than 120 calendar days after the end of such issuer's or obligated person's fiscal year (the "120-day undertaking").[16] Alternatively, to and including December 31, 2013, the EMMA continuing disclosure service would provide the option for an issuer or obligated person to indicate its undertaking to submit to EMMA its annual financial information by no later than 150 calendar days after the end of such issuer's or obligated person's fiscal year (the "transitional 150-day undertaking").[17] An issuer or obligated person that has made a transitional 150-day undertaking could convert such election to a 120-day undertaking at any time. On and after January 1, 2014, the transitional 150-day undertaking option would no longer be available for selection.

The voluntary annual filing undertaking would assist investors and other market participants in understanding when the annual financial information is expected to be available in the future. The fact that an issuer or obligated person has entered into a voluntary annual filing undertaking would be prominently disclosed on the EMMA Web portal as a distinctive characteristic of the securities to which such undertaking applies. A transitional 150-day undertaking would continue to be displayed on the EMMA Web portal through June 30, 2014, and would automatically cease to be displayed on the EMMA Web portal after such date, unless the issuer or obligated person has previously changed or rescinded such undertaking.

Amendment No. 2 clarifies that the EMMA indicator with regard to the voluntary annual filing undertaking would be indicative of an issuer's or obligated person's voluntary undertaking, entered into as a contractual obligation, for the benefit of bondholders, under a continuing disclosure agreement or another contract, that it will submit to EMMA its annual financial information as contemplated under Rule 15c2–12 by no later than 120 calendar days (or 150 calendar days, in the case of the transitional 150-day undertaking option) after the end of such issuer's or obligated person's fiscal year. If the issuer or obligated person later modifies the timeframe for submitting the annual financial information in its continuing disclosure agreement or other contractual arrangement to a period longer than contemplated by the voluntary annual filing undertaking, the issuer or obligated person would be expected to remove the indicator of its voluntary annual filing undertaking on EMMA. While Amendment No. 1 in several places clearly stated the MSRB's view that such an undertaking would be contained in a continuing disclosure agreement or a separate contract,[18] one statement in Amendment No. 1 may have caused some confusion.[19] Amendment No. 2 thus clarifies that the voluntary EMMA indicator could be used solely in situations where an issuer had made such an undertaking as a contractual obligation (whether in a continuing disclosure agreement or in a separate contract).

The MSRB would not review or confirm the compliance of an issuer or obligated person with its voluntary annual filing undertaking and would not review whether the information submitted by such entity to the EMMA continuing disclosure service regarding the voluntary annual filing undertaking accurately reflects the provisions of, or is included within, the continuing disclosure agreement or other contractual arrangement of such entity.

Investor Relation URL Posting. The proposed rule change would permit issuers or obligated persons to post the URLs for their Internet-based investor relations or other repository of

[16] According to the MSRB, under the Exchange Act, smaller public reporting companies, as non-accelerated filers, generally are required to file their annual reports on Form 10–K with the Commission within 90 days after the end of their fiscal year. The MSRB States that the longer 120-day period included in the voluntary annual filing undertaking of the proposed rule change is designed to accommodate additional steps that State and local governments often must take—under state law, pursuant to their own requirements, or otherwise—in completing the work necessary to prepare their annual financial information as contemplated under Exchange Act Rule 15c2–12.

[17] The MSRB states that the option to elect, through December 31, 2013, a transitional 150-day undertaking acknowledges that the 120-day undertaking may not be immediately achievable by most issuers and obligated persons, and is designed to provide a means by which to recognize issuers and obligated persons that are taking steps toward ultimately making their annual financial information available within 120 days of fiscal year end in the future.

[18] *See, e.g.,* Amendment No. 1 Notice at 486.

[19] "The MSRB contemplates that the making of a voluntary GAAP undertaking through EMMA by an issuer or obligated person would reflect the *bona fide* intent of the issuer or obligated person to perform as undertaken but would not, by itself, necessarily create a contractual obligation of such issuer or obligated person." *See* Amendment No. 1 Notice at 486.

financial/operating information, which would provide investors with an additional avenue for obtaining further financial, operating or other investment-related information about such issuer or obligated person.

Manner of Submission. Issuers and obligated persons would indicate the existence of a voluntary GAAP undertaking or voluntary annual filing undertaking through a data input election on EMMA. Changes to or rescissions of such voluntary contractual undertakings could also be indicated through the same EMMA interface process.[20]

Effective Date of Proposed Rule Change

The MSRB originally requested an effective date for the proposed rule change of a date to be announced by the MSRB in a notice published on the MSRB Web site, which date shall be no later than nine months after Commission approval of the proposed rule change and shall be announced no later than sixty (60) days prior to the effective date.[21] In Amendment No. 2, the MSRB requested that the Commission approve a revised effective date for the proposed rule change of a date to be announced by the MSRB in a notice published on the MSRB Web site, which date shall be no later than one year after Commission approval of the proposed rule change and shall be announced no later than sixty (60) days prior to the effective date.

III. Discussion and Commission Findings

The Commission has carefully considered the proposed rule change, the comment letters received, and the MSRB's responses to the comment letters and finds that the proposed rule change is consistent with the requirements of the Exchange 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 Exchange Act[23] and the rules and regulations thereunder. Section 15B(b)(2)(C) of the Exchange 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.[24] In particular, the Commission finds that the proposed rule change is consistent with the Exchange Act in that it serves to remove impediments to and help perfect the mechanisms of a free and open market in municipal securities and would serve to promote the statutory mandate of the MSRB to protect investors and the public interest. Voluntary dissemination of preliminary official statements through EMMA, particularly if made available prior to the sale of a primary offering to the underwriters, would provide timely access by investors and other market participants to key information useful in making an investment decision in a manner that is consistent with the Exchange Act. The voluntary GAAP undertaking would assist investors' understanding of how such information was prepared and may provide them with the knowledge that the financial statements were prepared according to generally accepted accounting principles. The voluntary annual filing undertaking would assist investors' understanding regarding when such information is expected to be available in the future and may encourage greater timeliness in the preparation and dissemination of municipal financial information. A URL provided by an issuer or obligated person would provide investors with an additional avenue for obtaining further financial, operating or other investment-related information about the issuer or obligated person.

General Summary of Comment Letters

The Commission received 27 comment letters responding to the Original Notice and three comment letters responding to the Amendment No. 1 Notice. Two comment letters concerned procedural issues with the filing.[25] Most of the remaining 25 comment letters responding to the Original Notice generally supported the proposed rule change, except that most commenters believed that the 120-day voluntary annual filing undertaking would be too burdensome or not feasible.[26] Several commenters, including a commenter representative of buyers of municipal securities, strongly supported the voluntary annual filing undertaking.[27] Most commenters supported the proposals to submit voluntary information to EMMA, the voluntary GAAP undertaking and the issuer's ability to post links to other sources of disclosure information,[28] although some commenters raised concerns about various aspects of the proposals, suggested alternatives, or requested clarifications.[29] As noted above, Amendment No. 1 proposed to add a transitional alternative of a 150-day voluntary filing deadline through December 31, 2013, to provide a means by which to recognize issuers and obligated persons for taking steps toward voluntarily making their annual financial information available within 120 days of their fiscal year end. The three commenters who responded to the Amendment No. 1 Notice believed that the voluntary 150-day transitional alternative also was too burdensome and not achievable.[30] On May 21, 2010, the MSRB submitted Amendment No. 2 to the proposed rule change. The comment letters received regarding the Original Notice and the Amendment No. 1 Notice, as set forth in Amendment Nos. 1 and 2, as well as the MSRB's response to the comment letters, as set forth in Amendment Nos. 1 and 2, are more fully discussed below.

Preliminary Official Statements and Other Primary Market Documents

The proposal would amend the EMMA primary market disclosure service to permit issuers and their designated agents to make voluntary submissions to the primary market disclosure service of official statements, preliminary official statements and related pre-sale documents, and advance refunding documents. Pre-sale documents other than a preliminary

[20] The Commission notes that continuing disclosure undertakings pursuant to Rule 15c2–12 under the Exchange Act cannot be unilaterally rescinded or amended by either the issuer, an obligated person, or by any other party. *See* Securities Exchange Act Release No. 34961 (November 10, 1994), 59 FR 59560 (November 17, 1994); Letter from Robert L.D. Colby, Deputy Director, Division of Trading and Markets, Commission, to Securities Law and Disclosure Committee, National Association of Bond Lawyers, dated June 23, 1995 (Question 2).

[21] *See* Original Notice.

[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. 78o–4(b)(2)(C).

[24] *Id.*

[25] The MSRB Letter indicated that it was filing an extension of time for the Commission to act. One commenter requested an extension of the comment period (Virginia GFOA Letter I).

[26] *See* Michigan Letter, NAHEFFA Letter, Tennessee Letter, GFOA Letter I, Virginia GFOA Letter II, GFOA Letter II, Inland Letter, Rutherford Letter, Greendale Letter, Utah GFOA Letter, Brookfield Letter, Portland Letter, OMFOA Letter, Consortium Letter, Lower Merion Letter, Rock Hill Letter, NAST Letter, Rio Rancho Letter.

[27] *See* ICI Letter, SIFMA Letter, Hinsdale Letter.

[28] *See, e.g.* VGFOA Letter II, Inland Letter, Brookfield Letter, OMFOA Letter, Rock Hill Letter.

[29] *See, e.g.* SIFMA Letter, NABL Letter, GFOA Letter II, Consortium Letter, NAST Letter.

[30] *See* GFOA Letter III, Connecticut Letter II, NAIPFA Letter.

official statement (including but not limited to notices of sale or supplemental disclosures) would be accepted only if accompanied or preceded by the preliminary official statement.

Most commenters who addressed the matter specifically supported the amendment of the EMMA primary market disclosure service to allow voluntary submissions.[31] One commenter welcomed the expansion of the EMMA system to allow the voluntary submission of primary market documents because the expansion would allow issuers that offer their bonds through a competitive bidding process to be able to utilize the same distribution channels as issuers with offerings made on a negotiated basis.[32] This commenter also suggested that the usefulness of the EMMA system would be enhanced by the ability to make and retrieve submissions identified in a manner other than by CUSIP numbers, such as by issuer.[33]

Only one commenter raised concerns about this aspect of the proposal.[34] This commenter recommended that the submitters of primary disclosure documents continue to be restricted to underwriters and their agents except for submission of pre-sale documents prepared in connection with competitively sold municipal securities, in order to avoid the submission of duplicate or contradictory filings by underwriters and issuers or obligated persons.[35]

The MSRB addressed these comments in Amendment No. 1. The MSRB stated that it believes that there is considerable value in providing a means for centralized access to preliminary official statements at or prior to the time of the trade and in sufficient time for an investor to make use of the information in coming to an investment decision.[36] The MSRB indicated that it expects to provide search capabilities tailored to the types of indexing information that would be available for preliminary official statements, including issuer name, issue description, State, and appropriate date ranges, among other things.[37] Submissions made by issuers would be noted as such on the EMMA Web portal.[38] The MSRB believed that postings of preliminary official statements by issuers should be available for any new issue, not just those sold on a competitive basis, and the EMMA primary market submission process would be designed to discourage duplicative submissions by issuers and underwriters.[39] The Commission agrees that it is appropriate that postings of preliminary official statements by issuers be available for offerings sold on a negotiated as well as competitive basis, and believes that the MSRB has adequately addressed the commenters' concerns and suggestions about duplicative filings and indexing.

Additional Continuing Disclosure Submissions and Undertakings

One commenter believed that all four of the proposed additional categories to the EMMA continuing disclosure service (the GASB–GAAP undertaking, the annual filing undertaking, the originally proposed GFOA–CAFR Certificate undertaking and the URL of the issuer's or obligated person's Internet-based investor relations or other repository of financial/operating information) were unnecessary because this feature of EMMA already contains a catch-all category that is broad enough to include any of the proposed categories.[40] Several commenters expressed concern that the undertakings created by the proposal could lead to mistaken impressions by investors regarding the soundness or quality of the disclosures that either are or are not highlighted by these categories[41] and one commenter expressed concern that by prominently highlighting certain voluntary undertakings, the MSRB could be construed to have recommended the creditworthiness of the municipal securities.[42] The MSRB indicated in Amendment No. 1 and in Amendment No. 2 that it will include explanations of the nature of both the voluntary annual filing undertaking and the voluntary GAAP undertaking on the EMMA Web portal. The Commission believes that users of the EMMA system will benefit from the additional disclosures provided by these undertakings and that concerns that the additional disclosures provided on EMMA could lead to erroneous impressions can be monitored by the Commission through its oversight of the MSRB.

Voluntary Annual Filing Undertaking

The original proposed rule change would amend the EMMA continuing disclosure service to permit issuers and obligated persons to undertake, on a voluntary basis, to submit annual financial information to EMMA within 120 calendar days after the end of the fiscal year. This provision would consist of a voluntary undertaking by an issuer or obligated person, either at the time of a primary offering or at any time thereafter, that the issuer or obligated person, as appropriate, would submit to EMMA its annual financial information as contemplated under Rule 15c2–12 (including audited financials, when and if available) by no later than 120 calendar days after the end of such issuer's or obligated person's fiscal year.

Most commenters, the majority of whom were representative of issuers or obligated persons, believed that the 120-day deadline for voluntary annual financial filings was too burdensome, arbitrary, unnecessary, harmful or not feasible,[43] and many believed a majority of issuers could not meet this deadline.[44] One commenter stated that often governments now struggle to meet the 180-day filing deadline to meet the requirements of the GFOA's Certificate of Achievement Program, which promotes the preparation of comprehensive annual financial reports (CAFRs) that go beyond the requirements of GAAP.[45] This commenter believed that promoting a 120-day deadline might reasonably be expected to persuade any number of issuers to abandon a CAFR altogether in favor of a plain set of basic financial statements, which, in its view, would likely be harmful to the quality of financial reporting.[46]

Many commenters noted that external factors can inhibit the ability of issuers to complete annual financial reporting within 120 days, such as the need to obtain financial data from multiple component units, the need for outside governmental or governing body reviews of financial statements, required investment valuations by third parties, receipts and adjusting entries occurring after the close of the fiscal year, conflicts with State law and a limited

[31] *See* Virginia GFOA Letter II, Connecticut Letter I, ICI Letter, Brookfield Letter, OMFOA Letter, Rock Hill Letter, NAST Letter, NAIPFA Letter.

[32] *See* Connecticut Letter I.

[33] *Id.*

[34] *See* NABL Letter.

[35] *Id.*

[36] *See* Amendment No. 1.

[37] *Id.*

[38] *Id.*

[39] *Id.*

[40] *See* NABL Letter.

[41] *See* NABL Letter, NAHEFFA Letter, Connecticut Letter I.

[42] *See* NABL Letter.

[43] *See* Michigan Letter, NAHEFFA Letter, Tennessee Letter, GFOA Letter I, Virginia GFOA Letter II, GFOA Letter II, Inland Letter, Rutherford Letter, Greendale Letter, Utah GFOA Letter, Brookfield Letter, Portland Letter, OMFOA Letter, Consortium Letter, Lower Merion Letter, Rock Hill Letter, NAST Letter, Rio Rancho Letter.

[44] *See* Tennessee Letter, GFOA Letter I, GFOA Letter II, Inland Letter, Rutherford Letter, Portland Letter, OMFOA Letter, Consortium Letter.

[45] *See* GFOA Letter II.

[46] *Id.*

number of auditing firms well qualified to complete governmental audits.[47]

Commenters also noted that many issuers have limited resources to prepare financial statements.[48] Many commenters believed that the voluntary timeframe would increase costs and impose significant financial and personnel burdens while providing questionable benefits.[49] Several commenters observed that small issuers may not be able to meet this timeframe and that small issuers often are given low priority by their auditors as compared to larger clients.[50] Other commenters also noted the variances among issuers,[51] including one commenter who stated that there could be unintended adverse consequences with respect to a "one-size-fits-all" 120-day deadline.[52]

Several commenters expressed concern that pressure to meet the voluntary deadline could cause professional staff and their auditors to produce less accurate information that would reduce the quality of financial reporting and auditing standards [53] and would lead to greater reliance on estimated financial data.[54] Other commenters expressed concern that the 120-day deadline would encourage governments to engage the services of auditing firms that are not well qualified in governmental accounting and auditing standards.[55]

Several commenters distinguished the municipal market from the corporate market; indicated that State and local governments surpass their private sector counterparts in financial reporting transparency; or stated that financial reporting goals applicable to the corporate market should not apply to the municipal market.[56] One commenter stated that governments should not be under the same pressure to provide instantaneous and quarterly financial information because governments do not exist to make profits.[57] This commenter also believed that there is no demand for quicker completion of governmental audits in the marketplace.[58]

A number of commenters addressed whether 120 days would be an appropriate number of days for the voluntary timeframe.[59] Some commenters suggested that the 120-day timeframe be deleted altogether.[60] Others noted that the 120-day standard would conflict with the 180-day standard used by GFOA in connection with its CAFR program,[61] and some commenters stated that the 180-day standard is a more appropriate timeframe.[62] Others suggested that additional studies be performed before a timeframe is selected.[63] One commenter cited difficulties in simultaneously meeting GFOA's CAFR timeframe and State law requirements.[64] Two commenters recommended that issuers certify that they are making filings in compliance with their continuing disclosure agreements, without a specific deadline.[65]

Another commenter was concerned that issuers might engage in deceptive practices by highlighting an undertaking, but then failing to comply with it.[66] This commenter noted that there appears to be nothing to preclude the issuer from effectively advertising the undertaking on EMMA irrespective of actual compliance.[67] Others were concerned that a decision not to make an undertaking would create prejudicial and unjustified marketplace distinctions or "a figurative black eye in the mind of investors." [68]

A number of commenters expressed concern that the voluntary annual filing undertaking likely would become a *de facto* standard that issuers would feel compelled to meet, or that the voluntary standard would set the stage for mandating over time the proposed 120-day schedule.[69]

A few commenters supported the 120-day deadline or enhanced disclosure about the timeliness of issuer financial reporting.[70] One commenter, the only commenter primarily representative of buyers of municipal securities, was particularly supportive of the proposed disclosure regarding an issuer's decision to undertake submitting annual financial information to EMMA within 120 calendar days after the end of the fiscal year, and also recommended the establishment of a meaningful, mandatory timeframe for filing financial reports.[71] This commenter noted that disclosure of annual financial information currently can take anywhere from three months to twelve months, or even longer, and that the financial status of an issuer can change materially during the course of a year—a fact that it observed has been highlighted by the recent credit crisis.[72] This commenter recognized that establishing a specific timeframe for filing financial reports after the end of the fiscal year would necessitate a significant shift in current practices employed by municipal issuers, but believed that such a change is not only warranted but also long overdue.

Another commenter stated that "the proposed 120 day period for submitting annual financial information is a good start toward meeting the objective of making financial statements of governments timely and useful in the public securities market." [73] A third commenter that supported this part of the proposal remarked that municipal securities issuers should have the same mandatory reporting requirement for timely financials as public corporations.[74]

In light of the commenters' widespread concerns regarding the attainability of the 120-day timeframe, the MSRB in Amendment No. 1 provided a transitional option for issuers and obligated persons to elect a 150-day undertaking as an alternative to the 120-day undertaking. This alternative election is intended to provide issuers and obligated persons seeking to make the voluntary annual filing undertaking, but that are not currently able to meet a 120-day timeframe, with a reasonable opportunity to overcome existing

[47] *See* NAHEFFA Letter, Virginia GFOA Letter II, GFOA Letter II, Inland Letter, Utah GFOA Letter, Portland Letter, OMFOA Letter, Consortium Letter, Rock Hill Letter, NAST Letter, Rio Rancho Letter, GFOA Letter III, Connecticut Letter II.

[48] *See* Inland Letter, Greendale Letter, Utah GFOA Letter.

[49] *See* Virginia GFOA Letter II, GFOA Letter II, Portland Letter, OMFOA Letter.

[50] *See* Brookfield Letter, Greendale Letter, Inland Letter, OMFOA Letter, Portland Letter, Rock Hill Letter, and Consortium Letter.

[51] *See* GFOA Letter II, NAHEFFA Letter.

[52] *See* GFOA Letter II.

[53] *See* Inland Letter, Lower Merion Letter, Consortium Letter.

[54] *See* GFOA Letter II, OMFOA Letter, Consortium Letter.

[55] *See* GFOA Letter I, Consortium Letter.

[56] *See* Rock Hill Letter, Consortium Letter, Inland Letter, GFOA Letter II.

[57] *See* Rock Hill Letter.

[58] *Id.*

[59] *See* Utah GFOA Letter, Portland Letter, OMFOA Letter, Tennessee Letter, Virginia GFOA Letter II, Inland Letter, OMFOA Letter, Consortium Letter, NAST Letter, Michigan Letter, Inland Letter, Rutherford Letter.

[60] *See* Utah GFOA Letter, Portland Letter, OMFOA Letter.

[61] *See* Tennessee Letter, Virginia GFOA Letter II, Inland Letter, OMFOA Letter, Consortium Letter, NAST Letter.

[62] *See* Michigan Letter, Inland Letter, Rutherford Letter, Utah GFOA Letter, Portland Letter.

[63] *See* Tennessee Letter, Virginia GFOA Letter II.

[64] *See* Virginia GFOA Letter II.

[65] *See* GFOA Letter II, NAHEFFA Letter.

[66] *See* NAHEFFA Letter.

[67] *Id.*

[68] *See* NAHEFFA Letter, Inland Letter.

[69] *See* Brookfield Letter, Connecticut Letter I, Inland Letter, Consortium Letter, NAHEFFA Letter, NAST Letter, Connecticut Letter II, NAIPFA Letter.

[70] *See* ICI Letter, SIFMA Letter, Hinsdale Letter.

[71] *See* ICI Letter.

[72] *Id.*

[73] *See* Hinsdale Letter.

[74] *See* E-Certus Letter.

barriers to more rapid dissemination of financial information in an orderly and cost-effective manner.

The MSRB accordingly modified the original proposed rule change to allow the election, through December 31, 2013, of a transitional 150-day alternative, which election would be displayed on the EMMA Web portal through June 30, 2014, unless the issuer or obligated person changed or rescinded such undertaking. On and after January 1, 2014, the transitional 150-day undertaking option no longer would be available. An issuer or obligated person that made a transitional 150-day undertaking could convert such election to a 120-day undertaking at any time. An issuer or obligated person that believed that it is able to meet the 120-day timeframe could make the 120-day undertaking immediately upon the effectiveness of the proposed rule change. The fact that an issuer or obligated person entered into such an undertaking, including the timeframe elected, would be prominently disclosed on the EMMA Web portal as a distinctive characteristic of the securities to which such undertaking applies. The EMMA Web portal would not include information regarding the availability or existence of the voluntary annual filing undertaking in those cases where an issuer or obligated person did not make a voluntary annual filing undertaking.

The MSRB reiterated in Amendment No. 1 that the voluntary annual filing undertaking would in fact be voluntary. The MSRB would include an explanation of the nature of the voluntary annual filing undertaking on the EMMA Web portal. In particular, the MSRB would disclose that the voluntary annual filing undertaking is voluntary; is solely indicative of the timing by which the annual financial information is intended to be made available; and is not indicative of the accuracy or completeness of the annual financial information or of the financial health of the issuer or obligated person. Further, the MSRB would disclose that a decision by an issuer or obligated person not to make such an undertaking would not raise a negative inference with regard to the accuracy or completeness of the issuer's or obligated person's annual financial information or of the financial health of the issuer or obligated person.

As previously noted, the Commission received three comment letters in response to the Amendment No. 1 Notice.[75] The three commenters responding to the Amendment No. 1 Notice believed that the voluntary 150-day transitional alternative also was too burdensome and not achievable.[76] Two of the commenters reiterated and expanded upon comments they had made previously with respect to the original proposed rule change.[77] The third commenter stated that the established GASB and FASB requirements for preparing the audited statements are a significant impediment to developing statements in less than 180 days.[78]

The MSRB addressed the issues raised by the comment letters on the original proposed rule change in Amendment No. 1, and addressed the comments on the original proposed rule change as well as the comments on the Amendment No. 1 Notice in Amendment No. 2.

In Amendment No. 2, the MSRB stated that the determination to establish 120 days as the timeframe in the original proposed rule change was not arbitrary.[79] The MSRB indicated that, under the Federal securities laws, smaller public reporting companies, as non-accelerated filers, generally are required to file their annual reports on Form 10–K with the Commission within 90 days after the end of their fiscal year.[80]

The MSRB stated that, after consulting with Commission staff, it believed that providing issuers and obligated persons with 120 days to voluntarily submit annual financial information for purposes of the undertaking would provide an ample timeframe to accommodate the additional steps that State and local governments often must take—under State law, pursuant to their own requirements, or otherwise—in completing the work necessary to prepare their annual financial information as contemplated under Rule 15c2–12.[81] The MSRB noted that the alternative 150-day timeframe was added in Amendment No. 1 to provide additional time for undertaking such steps during a transitional period in response to concerns that, as State and local governments currently prepare their financial information, the additional 30 days beyond the Form 10–K timeframe for non-accelerated filers would not be sufficient for many municipal issuers.[82] The MSRB stated that the timeframe provided for under the proposed rule change, as amended, is appropriate and was arrived at on a rational basis.[83]

According to the MSRB, issuers that seek to make their financial information available under the voluntary annual filing undertaking also would be bringing the timing of their disclosures into closer conformity with the timeframes that investors in the registered securities market have come to rely upon.[84] The MSRB noted that recent experiences of issuers who have begun to issue Build America Bonds that are marketed at least in part to investors who typically did not purchase municipal securities suggest that important benefits both to investors and issuers may be realized from moving toward a more universal disclosure timeframe.[85]

The MSRB in Amendment No. 2 also recognized the voluntary nature of the annual filing undertaking in responding to concerns that the undertaking would be impracticable or impossible and does not take into account variances in the size and complexities of issuers. The MSRB stated that it is aware that the nature of municipal issuers varies widely and that these significant differences may in fact make it more difficult for some types of issuers, or issuers in certain States, or issuers facing certain sets of facts and circumstances, to make and comply with the voluntary undertaking. In this regard, the MSRB noted that some issuers may be separate and distinct units in governmental structures that require information from third parties to complete their audited financial statements, and such third parties may operate under timeframes that differ from the issuers' own fiscal year cycles, thereby creating additional barriers to meeting the timeframe of the voluntary undertaking.

Given this complex variety of issuer types, the MSRB believed that a single consistent voluntary submission timeframe available to all issuers provides an appropriately uniform initial target under the voluntary annual filing undertaking. The MSRB did not attempt to parse the essential structure of the marketplace to develop numerous separate timeframes based on very limited information. After a period of experience with the uniform timeframe of the undertaking, the MSRB advised that it could revisit the question of whether multiple timeframes for different types of issuers would be appropriate.

[75] *See* Exhibit A.

[76] *See* GFOA Letter III, Connecticut Letter II, NAIPFA Letter.

[77] *See* GFOA Letter III, Connecticut Letter II.

[78] *See* NAIPFA Letter.

[79] *See* Amendment No. 2.

[80] *Id.*

[81] *Id.*

[82] *Id.*

[83] *Id.*

[84] *Id.*

[85] *Id.*

In Amendment No. 2, the MSRB also addressed concerns of some commenters that the existence of the annual filing undertaking could create negative perceptions of issuers that do not make the voluntary undertaking and thereby create a two-tiered market.[86] The MSRB stated that, in its view, the decision by an issuer not to submit annual financial information under the voluntary annual filing undertaking would not, by itself, cause an inappropriate negative perception of such issuer.[87] According to the MSRB, the EMMA portal would provide clear disclosure of the purpose of the voluntary undertaking and that the undertaking should not be viewed as indicative of the accuracy or completeness of financial information or of the financial health of the issuer.[88] Thus, the MSRB noted, the voluntary undertaking as disclosed on the EMMA portal would be an accurate representation of an issuer's affirmative undertaking as to the timing of its disclosure, and nothing more.[89] The MSRB stated that no indicator would be provided for issuers that choose not to make the voluntary undertaking.[90]

The MSRB did not believe that there is any significant risk of a tiered market perception developing in the near future based solely on the voluntary undertaking.[91] The MSRB indicated that it would make the appropriate EMMA portal disclosures regarding the limited nature of the undertaking to help minimize the possibility that market participants would place undue emphasis on a single factor when making an investment decision.[92] The MSRB opined that the marketplace would correctly view the voluntary undertaking as an initial step in a process toward more rapid dissemination of disclosure information to the public.[93]

The MSRB did not believe that the voluntary annual filing undertaking would create an excessive burden on issuers or that issuers would reduce the quality of disclosures in order to meet the timeframe.[94] The MSRB remarked that the existence of this optional undertaking is not intended to create an inference that issuers should sacrifice the quality of the information provided in their annual filings in order to meet a specific timeframe, and it did not believe that the undertaking would have such a negative effect.[95]

In discussing financial disclosure standards for municipal securities, the MSRB noted that in the past, any *de facto* standards have been the result of slow evolution in the market through natural economic forces or the result of collaboration among the various interested parties, such as with the evolving *de facto* standard for quarterly information provided by many hospital borrowers arising from the collaborative work of issuers, obligated persons and investors in recent years.[96] The MSRB believed that the single consistent voluntary submission timeframe under the voluntary annual filing undertaking, available to all issuers with the full knowledge that only some issuers would be able to make the voluntary undertaking at the current time, would serve to provide an appropriately uniform initial target for those market participants seeking to work toward more timely availability of financial information in the marketplace.[97]

In response to some commenters' recommendation that EMMA should allow issuers to specify a specific date by which annual financial information is expected to be submitted and should indicate whether the issuer was in compliance with such deadline, the MSRB noted that it has filed a separate proposed rule change with the Commission that addresses these concerns.[98] The MSRB remarked that that filing would require underwriters, in connection with new issues that they underwrite, to provide to EMMA information regarding the deadline for submitting annual financial information by issuers to EMMA pursuant to their continuing disclosure agreements.[99] The MSRB noted that this deadline would be displayed on the EMMA portal in close proximity to information showing the timing of actual submissions made by issuers of their annual financial information, thus achieving the objectives set out by the commenters.[100] According to the MSRB, information regarding the voluntary undertaking also would be displayed in close proximity to information showing the timing of actual submissions made by issuers, thus providing a method for investors to check on the issuer's performance in connection with the undertaking.[101] The Commission notes that it has approved the MSRB's filing to allow these displays on EMMA at the same time it is approving the instant proposed rule change, and believes that the enhancements to EMMA relating to underwriters' requirements will address the commenters' recommendations concerning issuers' compliance with existing undertakings regarding submission of financial information.[102]

In response to some commenters' suggestion that the timeframe be 180 days, the MSRB noted that the timeframe set forth in the voluntary undertaking should be shorter than other timeframes currently in use, such as the GFOA CAFR certificate program's 180-day timeframe, and that the transitional 150-day timeframe included in Amendment No. 1 would provide a mid-point between the original 120-day timeframe of the voluntary undertaking and the GFOA's 180-day timeframe.[103]

The Commission believes that the MSRB has adequately addressed the concerns of commenters with respect to the voluntary annual filing undertaking. Importantly, the Commission notes that this undertaking is voluntary and will provide investors, as well as broker-dealers, analysts and other market professionals, with financial information about municipal securities within a timeframe voluntarily agreed to by the issuer. The Commission is sensitive to the great variety of municipal issuers and obligated persons and the many fiscal and other pressures that they face, but is also sensitive to the concerns of investors and other participants in our capital markets, who need timely information to make informed decisions. The Commission believes that investors, broker-dealers, analysts and other users of the EMMA system will greatly benefit from the ability to easily identify those issuers and obligated persons that have committed to providing financial information by a specific deadline. The 120- and 150-day timeframes are voluntary and will assist investors in making investment decisions and in monitoring their securities portfolios; will reward those issuers and obligated persons that are able to achieve greater timeliness in financial reporting; and may encourage greater timeliness by other issuers and obligated persons over time as they work to surmount the obstacles that currently prevent them from preparing and disseminating financial information within the

[86] *See* Amendment No. 2.
[87] *Id.*
[88] *Id.*
[89] *Id.*
[90] *Id.*
[91] *Id.*
[92] *Id.*
[93] *Id.*
[94] *Id.*
[95] *Id.*
[96] *Id.*
[97] *Id.*
[98] *Id. See* Securities Exchange Act Release Nos. 60314 (July 15, 2009), 74 FR 36300 (July 22, 2009) and 61238 (December 23, 2009), 75 FR 492 (January 5, 2010) (File No. SR–MSRB–2009–09).
[99] *See* Amendment No. 2.
[100] *Id.*
[101] *Id.*
[102] *See* Securities Exchange Act Release No. 62182 (May 26, 2010) (SR–MSRB–2009–09).
[103] *See* Amendment No. 2.

proposed timeframes and without sacrificing the quality of their reporting.

Voluntary GAAP Undertaking

The original proposed rule change would amend the EMMA continuing disclosure service to permit issuers and obligated persons to undertake, on a voluntary basis, to prepare audited financial statements pursuant to GAAP as established by GASB. This would consist of a voluntary undertaking by an issuer or obligated person (in the case of an obligated person that is a State or local governmental entity), either at the time of a primary offering or at any time thereafter, that the issuer or obligated person would prepare its audited financial statements in accordance with GAAP as established by GASB.

Commenters generally supported the voluntary "GAAP as established by GASB" undertaking, although several commenters noted that certain issuers do not use GASB accounting standards and suggested alternative recommendations.[104] Two commenters recommended that the proposal not include the accounting standard setting body (indicating only compliance with GAAP),[105] and one commenter recommended the inclusion of the accounting standard setting body, GASB or any other standard setting body, in order for the reader of the financial statements to distinguish which standards are being followed.[106] Another commenter expressed concern that an issuer that does not elect a voluntary GAAP undertaking would be stigmatized as less creditworthy even where it follows other standards, including statutory standards, and noted that financial statements are accompanied by a statement of the accounting principles applied.[107] In Amendment No. 1, the MSRB agreed with commenters that many obligated persons may be subject to FASB standards rather than GASB standards.[108] The MSRB therefore modified the voluntary GAAP undertaking to permit the submitter to select either the GASB or FASB standards for GAAP.

As noted above, the Commission received three comment letters in response to the Amendment No. 1 Notice. One of these commenters suggested the allowance of modified GAAP.[109] This commenter questioned the usefulness of the GASB GAAP undertaking and stated that use of GASB GAAP may not always be clear; because it prepares its information on a modified GAAP basis, it would probably not be able to make this undertaking.[110] The second commenter did not support the amended proposal to have a field that references "a particular standard-setting body" and noted that "it is redundant for the MSRB to also include the body in which GAAP standards are established."[111] The third commenter agreed with the provision to have issuers and obligated persons designate whether their audited financials are prepared pursuant to GAAP but not the use of GASB standards because some issuers may be required to use other GAAP standards.[112]

The MSRB stated that permitting investors to understand the standards applied to the preparation of an issuer's or obligated person's financial statements would be valuable.[113] The MSRB indicated that the fact that an issuer or obligated person has entered into a voluntary GAAP undertaking, including whether the financial statements are to be prepared pursuant to GASB or FASB standards, would be prominently disclosed on the EMMA Web portal as a distinctive characteristic of the securities to which such undertaking applies.[114] The MSRB noted that it would include an explanation of the nature of the voluntary GAAP undertaking on the EMMA Web portal.[115] In particular, the MSRB would disclose that the voluntary GAAP undertaking is voluntary; is solely indicative of the accounting standards that the issuer or obligated person intends to use in preparing its financial statements; and is not indicative of the accuracy or completeness of the financial statements or of the financial health of the issuer or obligated person.[116] Further, the MSRB advised that it would disclose that a decision by an issuer or obligated person not to make such an undertaking does not raise a negative inference in regard to the accuracy or completeness of its financial statements or of the financial health of the issuer or obligated person.[117] According to the MSRB, each of the undertakings pursuant to the proposal, including the voluntary GAAP undertaking, would permit a free text input field permitting issuers and obligated persons to include additional information relating to each such item that they may deem appropriate with respect thereto for public dissemination.[118] The MSRB believed that this feature should provide such issuers and obligated persons with adequate opportunity to disclose appropriate information to investors.[119]

The Commission believes that the proposed voluntary GAAP undertaking will assist investors and other users of the EMMA system in determining how financial statements are prepared. The uniformity provided by audited financial statements that are prepared by issuers and obligated persons pursuant to GAAP in accordance with GASB or FASB standards will reduce the need by investors to reconcile the use of disparate accounting principles. The features of the EMMA continuing disclosure service permitting issuers and obligated persons to include additional information should address commenters' concerns about special situations that require clarification.

Investor Relation URL Posting

The proposal would amend the EMMA continuing disclosure service to permit issuers and obligated persons to post the URLs for their Internet-based investor relations or other repository of financial/operating information. The URL of an issuer's or obligated person's investor relations or other repository of financial/operating information would be entered through a text/data input field on EMMA and no document would be required to be submitted to EMMA.

Commenters generally supported the proposal to permit issuers and obligated persons to provide a hyperlink to their investor relations or similar Web page.[120] One commenter thought that this field would provide investors with valuable information and would likely be the most useful voluntary field proposed by the MSRB.[121] Another commenter noted that this hyperlink may be more useful to the general public than CUSIP-based EMMA filings for general financial information that is not issue-specific.[122]

One commenter requested that issuers be given an ability to correct or withdraw URLs to ensure that links are accurate, recommended the allowance of multiple links, and requested guidance on the responsibilities of issuers with regard to the posting of

[104] *See* NAHEFFA Letter, GFOA Letter II, Connecticut Letter I.

[105] *See* GFOA Letter II, Consortium Letter.

[106] *See* NAST Letter.

[107] *See* NABL Letter.

[108] *See* Amendment No. 1.

[109] *See* Connecticut Letter II.

[110] *See* Connecticut Letter I, Connecticut Letter II.

[111] *See* GFOA Letter III.

[112] *See* NAIPFA Letter.

[113] *See* Amendment No. 2.

[114] *Id.*

[115] *See* Amendment No. 1.

[116] *Id.*

[117] *Id.*

[118] *See* Amendment No. 2.

[119] *Id.*

[120] *See, e.g.,* Connecticut Letter I, GFOA Letter III.

[121] *See* GFOA Letter III.

[122] *See* Connecticut Letter I.

hyperlinks on EMMA.[123] Another commenter asked about the role and obligations of dealers if the proposal is adopted; expressed liability concerns regarding the use of a URL in municipal securities offering documents and EMMA submissions during the underwriting period of a primary offering; and suggested a limit on the use of the URL during the underwriting period of a primary offering.[124]

The MSRB noted that issuers and obligated persons would be able to make appropriate changes to the URLs posted through EMMA.[125] The hyperlinks would be posted in a manner designed to segregate access to the URL from postings of official statements for new issues.[126] The MSRB intends to provide flexibility to issuers and obligated persons regarding the posting of appropriate links, including multiple links, and would provide the ability to correct or withdraw URLs to ensure that links are accurate.[127]

The Commission believes that a URL provided by an issuer or obligated person would provide investors, broker-dealers, analysts and others with an important additional means to obtain further financial operating or other investment-related information about such issuer or obligated person.

Elimination of Proposed GFOA–CAFR Certificate

The original proposed rule change would have amended the EMMA continuing disclosure service to permit issuers to submit the Certificate of Achievement for Excellence in Financial Reporting awarded by GFOA in connection with the preparation of its CAFR.

In Amendment No. 1, the MSRB stated that it determined not to proceed with this element of the proposal. The MSRB noted that CAFRs already are frequently submitted to EMMA by issuers as the audited financial statements element of their annual financial information filings, and in most cases the issuers include the GFOA certificate in the submitted CAFR.[128] The MSRB stated that as part of its routine EMMA update and maintenance process, it expected to modify the input process for all continuing disclosure submissions to permit issuers and obligated persons to input specific document titles and/or subcategories, which would permit submitters of CAFRs to indicate that their submitted audited financial statements are CAFRs.[129] According to the MSRB, this document title/subcategory would be displayed on the EMMA Web portal.[130]

GFOA, in commenting on the Amendment No. 1 Notice, recommended that this voluntary field be included within EMMA, noting that such a field is useful to investors as it tells them which governments have exceptional reporting standards.[131] In Amendment No. 2, the MSRB stated that the current channels for disseminating CAFRs and the related GFOA certificate are adequate but that it may consider further action in this area in the future.[132] The Commission believes that the MSRB's decision to eliminate the GFOA certificate field is reasonable given that GFOA certificates are typically submitted to EMMA with CAFRs.

Other General Comments

One commenter recommended that the Commission defer action on the MSRB's proposal to add additional voluntary submissions by issuers until after the proposed Rule 15c2–12 amendments are considered and adopted in order to accommodate an orderly integration of revised Rule 15c2–12 submissions and EMMA voluntary submissions.[133] The Commission notes that the amendments to Rule 15c2–12 are being adopted at the same time that it approves the instant proposed rule change.[134]

One commenter on the Amendment No. 1 Notice provided a series of comments and suggestions relating to various elements of the proposal.[135] These included a suggested edit in the facility language for the EMMA primary market disclosure service regarding issuers being able to designate an agent for purposes of making primary market submissions; support for voluntary submission of information on swaps, swaptions and variable rate debt; and encouragement for the MSRB to pursue submission of ratings from rating agencies. In Amendment No. 2, the MSRB indicated that, with regard to the suggestion regarding facility language, the proposed EMMA revisions contained in Amendment No. 1 appropriately ensure that an issuer can designate an agent and remarked that the filing indicates that the term "designating underwriter" has been changed to "designating party" specifically to permit an issuer to make such designation.[136] In addition, in Amendment No. 2 the MSRB noted that it currently is in the early stages of developing a process to receive electronic feeds of municipal securities credit rating information from Nationally Recognized Statistical Rating Organizations for purposes of displaying on the EMMA portal.[137]

Another commenter recommended that the Commission maintain close oversight of EMMA and revisit this matter in two to three years to determine whether the MSRB system is meeting expectations and whether the needs of all market participants are being addressed.[138] The Commission notes 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 Exchange 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 Exchange Act[139] and is subject to the Commission's examination authority under Section 17(b) of the Exchange Act.[140] Through the Commission's recordkeeping requirements and examination and rule filing processes, the Commission oversees the MSRB and will be able to ascertain whether the MSRB is implementing EMMA appropriately and meeting EMMA's stated objectives, as well as whether it is complying with its legal obligations under the Exchange Act.

With regard to all other issues raised by the commenters, the Commission believes that the MSRB has adequately addressed the commenters' concerns.

IV. Order Granting Accelerated Approval of Proposed Rule Change

Pursuant to Section 19(b)(2) of the Act,[141] the Commission may not approve any proposed rule change, or amendment thereto, prior to the 30th day after the date of publication of notice of the filing thereof, unless the Commission finds good cause for so doing and publishes its reasons for so

[123] *See* GFOA Letter II, GFOA Letter III.

[124] *See* SIFMA Letter.

[125] *See* Amendment No. 1.

[126] *Id.*

[127] *See* Amendment No. 2.

[128] *See* Amendment No. 1.

[129] *Id.*

[130] *Id.*

[131] *See* GFOA Letter III.

[132] *See* Amendment No. 2.

[133] *See* NABL Letter.

[134] *See* Press Release 2010–85 (May 26, 2010).

[135] *See* NAIPFA Letter.

[136] *See* Amendment No. 2.

[137] *Id.* The Commission notes that, on May 20, 2010, the MSRB filed a proposed rule change relating to the posting of credit rating information on its EMMA system.

[138] *See* Connecticut Letter I.

[139] 15 U.S.C. 78q(a).

[140] 15 U.S.C. 78q(b).

[141] 15 U.S.C. 78s(b)(2).

finding. The Commission hereby finds good cause for approving the proposed rule change, as modified by Amendment Nos. 1 and 2, before the 30th day after the date of publication of notice of filing thereof in the **Federal Register**. The Commission notes that the original proposed rule change and Amendment No. 1 were published in the **Federal Register** on July 15, 2009 [142] and January 5, 2010,[143] respectively. The Commission does not believe that Amendment No. 2 significantly alters the proposal. In Amendment No. 2, the MSRB requested an additional three months to develop, test, and implement the proposal and clarified that, consistent with statements in Amendment No. 1, the voluntary undertakings to be submitted to the MSRB's EMMA continuing disclosure service must be entered into as contractual undertakings for the benefit of bondholders. The Commission believes that these revisions are consistent with the proposal's purpose and raise no new significant issues. Accordingly, pursuant to Section 19(b)(2) of the Act,[144] the Commission finds good cause to approve the proposed rule change, as amended, on an accelerated basis.

V. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Exchange 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–2009–10 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–2009–10. 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 Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the MSRB. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–MSRB–2009–10 and should be submitted on or before June 23, 2010.

VII. Conclusion

For the foregoing reasons, the Commission finds that the proposed rule change, as amended, is consistent with the Exchange Act and the rules and regulations thereunder applicable to the MSRB [145] and, in particular, the requirements of Section 15B(b)(2)(C) of the Exchange Act [146] and the rules and regulations thereunder. The proposal will become effective on a date to be announced by the MSRB in a notice published on the MSRB Web site, which date shall be no later than one year after Commission approval of the proposed rule change and shall be announced no later than sixty (60) days prior to the effective date.

It is therefore ordered, pursuant to Section 19(b)(2) of the Exchange Act,[147] that the proposed rule change (SR–MSRB–2009–10), as amended, be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[148]

Florence E. Harmon,

Deputy Secretary.

Exhibit A

Key to Comment Letters Cited in Approval Order Relating to Additional Voluntary Submissions by Issuers to the MSRB's Electronic Municipal Market Access System (EMMA®)

File No. SR–MSRB–2009–10

Comments Relating to Original Proposed Rule Change

1. Ernesto A. Lanza, General Counsel, MSRB, dated August 6, 2009 ("MSRB Letter").
2. Robert J. Kleine, Michigan State Treasurer, dated August 10, 2009 ("Michigan Letter").
3. Memorandum from the Office of the Chairman regarding a meeting with representatives of Division of Investment Management, Division of Trading and Markets, and the Government Finance Officers Association, dated August 11, 2009 ("August 11th Memorandum").
4. Robert Donovan, Executive Director, Rhode Island Health and Educational Building Corporation, Chair, National Association of Health and Educational Facilities Finance Authorities ("NAHEFFA") Advocacy Committee, dated August 12, 2009 ("NAHEFFA Letter").
5. Jan I. Sylvis, Chief of Accounts, State of Tennessee, dated August 12, 2009 ("Tennessee Letter").
6. Leon J. Bijou, Managing Director and Associate General Counsel, Securities Industry and Financial Markets Association ("SIFMA"), dated August 12, 2009 ("SIFMA Letter").
7. Susan Gaffney, Director, Federal Liaison Center, Government Finance Officers Association ("GFOA"), dated August 12, 2009 ("GFOA Letter I").
8. John Wallingford, Executive Board Member, Virginia Government Finance Officers Association ("Virginia GFOA"), dated August 12, 2009 ("Virginia GFOA Letter I").
9. William A. Holby, President, The National Association of Bond Lawyers ("NABL"), dated August 13, 2009 ("NABL Letter").
10. Marycarol C. White, CPA, CPFO, President, Virginia Government Finance Officers' Association ("Virginia GFOA"), dated August 14, 2009 ("Virginia GFOA Letter II").
11. Jeffrey L. Esser, Executive Director and CEO, The Government Finance Officers Association ("GFOA"), dated August 17, 2009 ("GFOA Letter II").
12. Dean Martin, Chief Financial Officer, Inland Empire Utilities Agency, dated August 18, 2009 ("Inland Letter").
13. Lisa Nolen, CPA, CGFM, Rutherford County Finance Director, Murfreesboro, Tennessee, dated August 19, 2009 ("Rutherford Letter").

[142] *See* Release No. 34–60315, *supra* note 3.

[143] *See* Release No. 34–61237, *supra* note 7.

[144] 15 U.S.C. 78s(b)(2).

[145] 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).

[146] 15 U.S.C. 78o–4(b)(2)(C).

[147] 15 U.S.C. 78s(b)(2).

[148] 17 CFR 200.30–3(a)(12).

14. Kathryn Kasza, CMTW, Clerk-Treasurer, Village of Greendale, Greendale, Wisconsin, dated August 19, 2009 ("Greendale Letter").

15. Denise L. Nappier, Connecticut State Treasurer, dated August 20, 2009 ("Connecticut Letter I").

16. Heather Traeger, Associate Counsel, Investment Company Institute ("ICI"), dated August 21, 2009 ("ICI Letter").

17. David Muir, President, Utah Government Finance Officers Association ("Utah GFOA"), Finance Director, Cottonwood Heights City, dated August 25, 2009 ("Utah GFOA Letter").

18. Robert Scott, CPA, CPFO, Director of Finance, City of Brookfield, Wisconsin, dated August 30, 2009 ("Brookfield Letter").

19. Kenneth L. Rust, Chief Administrative Officer, and Eric H. Johansen, Debt Manager, City of Portland, Oregon, dated September 1, 2009 ("Portland Letter").

20. Bernice Bagnall, President, Oregon Municipal Finance Officers Association ("OMFOA"), Tualatin Valley Water District, dated September 2, 2009 ("OMFOA Letter").

21. Gerry Fink, Village of Hinsdale, Illinois, dated September 3, 2009 ("Hinsdale Letter").

22. Beth Kellar, International City/County Management Association; Steve Traylor, National Association of Counties; Cornelia Chebinou, National Association of State Auditors, Comptrollers and Treasurers; Lars Etzkorn, National League of Cities; Larry Jones, U.S. Conference of Mayors; Amy Hille, American Public Power Association; and Rick Farrell, Council on Infrastructure Financing Authorities; dated September 3, 2009 ("Consortium Letter").

23. Richard C. Kristof, Director of Financial Services, City of Rio Rancho, Rio Rancho, New Mexico, dated September 3, 2009 ("Rio Rancho Letter").

24. Eileen Bradley, Assistant Director of Finance, Township of Lower Merion, dated September 4, 2009 ("Lower Merion Letter").

25. R.T. McNamar, President, E-Certus, Inc., dated September 8, 2009 ("E-Certus Letter").

26. David B. Vehaun, Assistant City Manager, City of Rock Hill, South Carolina, dated September 23, 2009 ("Rock Hill Letter").

27. Jeb Spaulding, President, National Association of State Treasurers ("NAST"), Treasurer, State of Vermont, dated September 25, 2009 ("NAST Letter").

Comments Relating to Amendment No. 1

1. Jeffrey L. Esser, Executive Director and CEO, Government Finance Officers Association, dated January 25, 2010 ("GFOA Letter III").

2. Denise L. Nappier, Connecticut State Treasurer, dated January 27, 2010 ("Connecticut Letter II").

3. Steven Apfelbacher, President, National Association of Independent Public Finance Advisors ("NAIPFA"), dated February 5, 2010 ("NAIPFA Letter").

[FR Doc. 2010–13155 Filed 6–1–10; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–62176; File No. SR–NASDAQ–2010–063]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Routing Fees

May 26, 2010.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") [1], and Rule 19b–4 thereunder,[2] notice is hereby given that on May 26, 2010, The NASDAQ Stock Market LLC ("NASDAQ" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The Exchange proposes to modify Rule 7050 governing pricing for NASDAQ members using the NASDAQ Options Market ("NOM"), NASDAQ's facility for executing and routing standardized equity and index options. Specifically, NOM proposes to expand the list of options that will be assessed routing fees of $0.30 per contract for customer orders and $0.55 per contract for Firm and Market Maker orders that are routed from NOM to NASDAQ OMX PHLX, Inc. ("Phlx").

While changes to the Fee Schedule pursuant to this proposal are effective upon filing, the Exchange has designated these changes to be operative for transactions on June 1, 2010.

The text of the proposed rule change is set forth below. Proposed new text is in italics and deleted text is in brackets.

* * * * *

7050. NASDAQ Options Market

The following charges shall apply to the use of the order execution and routing services of the NASDAQ Options Market by members for all securities.

(1)–(3) No Change.

(4) Fees for routing contracts to markets other than the NASDAQ Options Market shall be assessed as provided below. The current fees and a historical record of applicable fees related to orders routed to other exchanges shall be posted on the NasdaqTrader.com Web site.

Exchange	Customer	Firm	MM
BATS	0.36	0.55	0.55
BOX	0.06	0.55	0.55
CBOE	0.06	0.55	0.55
ISE	0.06	0.55	0.55
NYSE Arca Penny Pilot	0.50	0.55	0.55
NYSE Arca Non Penny Pilot	0.06	0.55	0.55
NYSE AMEX	0.06	0.55	0.55
PHLX (for all options other than the below listed options)	0.06	0.55	0.55
PHLX (for the following options only): AA, AAPL, *ABK, ABX,* AIG, ALL, AMD, AMR, AMZN, *ARIA, AXP,* BAC, BRCD, C, CAT, *CIEN, CIGX,* CSCO, DELL, DIA, *DNDN,* DRYS, *EBAY,* EK, F, FAS, FAZ, GDX, GE, GLD, *GLW,* GS, *HAL,* IBM, INTC, IWM, *IYR,* JPM, LVS, MGM, *MOT,* MSFT, MU, NEM, NOK, *NVDA, ONNN, ORCL,* PALM, PFE, POT, QCOM, *QID,* QQQQ, *RIG,* RIMM, *RMBS,* SBUX, *SDS,* SIRI, SKF, SLV, SMH, SNDK, SPY, T, *TBT,* TZA, UAUA, UNG, USO, UYG, *V, VALE,* VZ, WYNN, X, *XHB,* XLF, *XRX and YHOO*	0.30	0.55	0.55

* * * * *

The text of the proposed rule change is available on the Exchange's Web site at *http://www.nasdaqomx.cchwallstreet.com,* at

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

[2] 17 CFR 240.19b–4.