



1401 H Street, NW, Washington, DC 20005-2148, USA
202/326-5800 www.ici.org

September 22, 2008

Ms. Florence Harmon
Acting Secretary
U.S. Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549-1090

Re: Proposed Amendment to Municipal Securities Disclosure (File No. S7-21-08)
and MSRB Proposed Rule Change Relating to the Establishment of a Continuing
Disclosure Service of the Electronic Municipal Market Access System (MSRB Notice
2008-05)

Dear Ms. Harmon:

The Investment Company Institute¹ strongly supports efforts by the Securities and Exchange Commission and the Municipal Securities Rulemaking Board (“MSRB”) to improve current disclosure of information regarding municipal securities. In particular, we support the SEC’s proposal to improve disclosure for municipal securities by requiring that secondary market disclosure information² be provided in an electronic format to a single repository – the MSRB.³ We also support the MSRB’s proposal to expand its Electronic Municipal Market Access system (“EMMA”) to accommodate secondary market disclosure information.⁴

¹ The Investment Company Institute is the national association of U.S. investment companies, including mutual funds, closed-end funds, exchange-traded funds (ETFs), and unit investment trusts (UITs). ICI seeks to encourage adherence to high ethical standards, promote public understanding, and otherwise advance the interests of funds, their shareholders, directors, and advisers. Members of ICI manage total assets of \$12.14 trillion and serve almost 90 million shareholders.

² Rule 15c2-12 of the Securities Exchange Act of 1934 provides that secondary market disclosures include: annual financial information concerning obligated persons; audited financial statements for obligated persons if available and if not included in the annual financial information; notices of certain events, if material; and notices of failure to provide annual financial information on or before the date specified in the written undertaking.

³ See *Proposed Amendment to Municipal Securities Disclosure*, SEC Release No. 58255 (July 30, 2008), 73 FR 46137 (August 7, 2008)(“Release”).

⁴ See *Notice of Filing of Proposed Rule Change Relating to the Establishment of a Continuing Disclosure Service of the Electronic Municipal Market Access System (EMMA)*, SEC Release No. 58256 (July 30, 2008), 73 FR 46161 (August 7, 2008).

Full, accurate, and accessible disclosure is critical to investors, who participate heavily in the municipal securities markets through funds. At the end of 2007, funds collectively held 36 percent of the \$2.6 trillion municipal securities market through 1,216 municipal securities funds. Retail investors held an additional 35 percent directly. These investors need timely and efficient access to primary *and* secondary municipal securities market disclosure information to perform credit analysis, make informed investment decisions, monitor their securities portfolios, and protect themselves from fraud.

Together the SEC and MSRB proposals would significantly improve the ability of investors to access current municipal securities disclosure. For example, we believe a centralized repository that receives electronic submissions, such as the one outlined in the MSRB's proposal to amend EMMA, would provide for a more efficient and effective process for the collection of secondary market disclosure documents, providing prompt and ready access to such documents for investors. This improvement in disclosure would enhance the overall efficiency of the secondary trading market for municipal securities.

These proposals are particularly important in today's environment, as the ability of credit rating agencies to effectively perform their ratings process has been questioned, and the SEC has proposed that investors no longer be able to rely exclusively on credit ratings when making certain determinations under several federal securities laws. Access to current and accurate information about municipal securities and issuers is critical to enable investors such as mutual funds to make the types of findings envisioned by these new proposals.

I. Proposed Amendments to Rule 15c2-12 – SEC Proposal

A. A Single Repository for Secondary Market Disclosure

The SEC's proposal would provide for the establishment of a centralized system for the electronic collection and availability of information about outstanding municipal securities. Under the current rule, an underwriter for a primary offering of municipal securities subject to Rule 15c2-12 is prohibited from underwriting an offering unless the underwriter has determined that the issuer, or an obligated person 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. Specifically, an issuer or obligated person must undertake in a "continuing disclosure agreement" to provide: (1) annual filings to each nationally recognized municipal securities information repository ("NRMSIR"); (2) material event notices and failure to file notices either to each NRMSIR or to the MSRB; and (3) in the case of states that established state information depositories ("SIDs"), all continuing disclosure documents to the appropriate SID. The SEC's proposal would eliminate all references to NRMSIRs and SIDs in Rule 15c2-12 and replace them with references to the MSRB, establishing one repository for secondary market disclosure information.

We support the creation of a single source for municipal securities secondary market disclosure. A single source would significantly improve information availability by allowing investors to obtain information more readily, increasing the likelihood that investors obtain more complete information⁵ and enabling them to better protect themselves from misrepresentation or other fraudulent activities by brokers, dealers, and municipal securities dealers, and assisting investors in making more informed investment decisions. Facilitating and simplifying the process of gathering secondary market disclosure information also would assist market participants, including mutual funds, in carrying out their regulatory obligations.⁶ In addition, a single source of secondary market information would reduce the costs incurred by market participants as a result of the existing fragmented system, which forces investors to seek information from multiple sources.

For similar reasons, we support the proposed requirement for electronic submission of the requisite disclosure. We believe that electronic submission of documents is essential to the value of the proposed centralized repository because it would better enable the information to be promptly submitted, categorized, and posted for investor use. The proposal also would require underwriters to reasonably determine that the issuer or obligated person has undertaken in writing to accompany all documents submitted to the MSRB with specific identifying information, as prescribed by the MSRB. As we discuss below, the manner in which submissions would be catalogued in the repository is extremely important to ensuring that investors are able to efficiently – both accurately and quickly – search for and locate secondary market disclosure information for a particular municipal securities issue.

B. MSRB as the Single Repository for Secondary Market Disclosure

We support the SEC's proposal to designate the MSRB as the single repository for secondary market disclosure. We believe that the SEC's oversight of the MSRB as a self-regulatory organization and the MSRB's experience with the complexities of municipal securities and the municipal securities markets provide significant value to the framework of the proposed repository. As demonstrated by the creation of EMMA, the Real-Time Transaction Reporting Service (RTRS) and the Municipal Securities Information Library (MSIL), the MSRB also has direct experience in developing and maintaining electronic information systems for the municipal securities market. Building on the MSRB's existing EMMA system offers two additional benefits. First, necessary improvements to the

⁵ Members report that it is rare that municipal securities disclosure information currently can be found in one location.

⁶ For example, as explained in the SEC's Release, Rule 2a-7 under the Investment Company Act requires a money market fund to limit its portfolio investments to those securities that the fund's board of directors determines present minimal credit risks. To satisfy this requirement, money market funds must have accurate and reliable disclosure information to be able to routinely monitor the characteristics and quality of the investments in their portfolio.

municipal securities secondary market disclosure regime should be implemented quickly.⁷ Second, all primary market, secondary market, and trade price data for municipal securities submitted to the MSRB will be accessible to investors in one central location – *i.e.*, EMMA.

C. Transition Period

In the proposal, the SEC raised several questions regarding the transition to a single repository from the current system. We recommend that the SEC withdraw the “no-action” letters recognizing the existing NRMSIRs and designate the MSRB as the only NRMSIR. According to the Release, the proposal would have no effect on the obligations of issuers and obligated persons under outstanding continuing disclosure agreements entered into prior to any effective date of the proposed amendments to Rule 15c2-12. Therefore, these actions are necessary to provide a date certain by which all secondary market disclosure documents are submitted to the MSRB, including those for municipal securities issues that pre-date adoption of the proposal by the SEC. We also recommend that the SEC ensure that NRMSIRs retain the historical continuing disclosure documents already in their possession for outstanding municipal securities issues or develop a process to transfer such documents to the MSRB using a reasonable transition period.

II. Proposed Expansion of EMMA – MSRB Proposal

The MSRB’s proposal would establish a service for disclosure of secondary market municipal securities information through its EMMA system.⁸ The service would receive electronic submissions of, and make publicly available on the Internet, secondary market disclosure documents from issuers, obligated persons, and their agents, pursuant to continuing disclosure agreements. Specifically, it would accept submissions of (1) secondary market disclosure documents described in Rule 15c2-12 and (2) other disclosure documents specified in continuing disclosure agreements entered into consistent with Rule 15c2-12.

The EMMA pilot program currently encompasses only primary market disclosure information – official statements and advance refunding documents – submitted to the MSRB by underwriters of new issue municipal securities. As previously discussed, we believe a centralized source for all municipal securities disclosure information is required to ensure the availability, and to improve the utility, of such information by allowing investors in municipal securities to access disclosure information for an issuer at a single source. It is important, therefore, that EMMA be expanded, as proposed, to also

⁷ The MSRB has represented that it is prepared to commence operation of the expanded EMMA system on the later of January 1, 2009 or the effective date of any provisions of Rule 15c2-12 providing for the MSRB to serve as the sole central repository for all electronic secondary market information provided pursuant to the rule.

⁸ EMMA was originally established, and began operation on March 31, 2008, as a complimentary pilot facility of the MSRB’s existing Official Statement and Advance Refunding Document system.

encompass secondary market disclosure, such as annual financial information and material events notices.

The features of EMMA are important to its success, to ensure that municipal securities disclosure is made through an easily accessible and navigable venue. Enhanced search capabilities, such as the proposed “word-searchable” requirement, are critical to facilitate investor access to, and maximize the utility of, a central repository. We also support requiring submissions to be made as portable document format (PDF) files (or similar format, to allow flexibility for future technological innovations) to ensure a consistent file format among all disclosure documents. Providing this information free of charge is consistent with investor access in the corporate securities market, where investors enjoy free access to information in both the primary and the secondary markets.⁹

Under the MSRB proposal, submissions to EMMA must be accompanied by specific identifying information.¹⁰ We believe the proposed identifying information would: (1) assist the MSRB in properly sorting, categorizing and posting such information in EMMA and (2) enable investors to more easily search for and locate information for individual municipal securities issues. It also may contribute to oversight efforts by the SEC and MSRB to determine whether an issuer is complying with its continuing disclosure undertakings.¹¹ We recommend that the required information regarding the name of any obligated person other than the issuer include identifying information on any successor parties, such as successor trustees or substituted credit providers. This would provide data about the parties to a transaction, particularly substituted trustees, who have ongoing responsibilities as to the securities, allowing investors to properly monitor their portfolio securities.

⁹ In the SEC’s proposal, it notes that the MSRB would be required to file a proposed rule change regarding any fees it proposes to establish for subscription services to EMMA. As the sole repository of secondary market disclosure information, the MSRB will control access to this critical source of information. Thus, we support this requirement and believe that a proposed rule change, subject to public notice and comment, is the appropriate process for establishing fees for EMMA. The rate charged for subscriptions to EMMA must be reasonable to ensure that information vendors continue to assimilate and distribute the municipal securities disclosure information.

¹⁰ The proposed information would include 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.

¹¹ Under Rule 15c2-12, an underwriter for a primary offering of municipal securities subject to the rule is prohibited from underwriting the offering unless the underwriter has determined that the issuer or an obligated person 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.

III. Additional Disclosure in the Municipal Securities Market

The SEC and MSRB proposals are important steps to improving the collection and dissemination of existing secondary market disclosure. To truly improve disclosure in the municipal securities market, however, the Institute believes that additional steps must be taken to improve the content and timing of required disclosures for municipal securities.

Currently, the Tower Amendment, adopted in 1975, prohibits the SEC and the MSRB from directly or indirectly requiring issuers of municipal securities to file documents with them before the securities are sold.¹² Because of these restrictions, the disclosure regime for municipal securities is woefully inadequate,¹³ and the regulatory framework is insufficient for investors in today's complex marketplace.¹⁴ In particular, current disclosure is limited, non-standardized, and often stale and the disparities from the corporate issuer disclosure regime are numerous.¹⁵ As active participants in the municipal securities markets, our members are keenly interested in having timely access to relevant and reliable information relating to municipal securities offerings.

While legislative action regarding the Tower Amendment will likely be necessary to fully develop an adequate disclosure regime for municipal securities, there are some important steps that can be taken now, without legislative action, to improve disclosure within the current regulatory regime and to enhance the value of EMMA to investors in municipal securities. For example, and as described in more detail below, we recommend the SEC expand the list of disclosures regarding the information that a broker, dealer, or municipal securities dealer acting as an underwriter in an offering of municipal

¹² 15 U.S.C. § 78o-4(d)(1) and (2).

¹³ See, e.g., Letter from Karrie McMillan, General Counsel, Investment Company Institute, to Florence Harmon, Acting Secretary, U.S. Securities and Exchange Commission, dated July 25, 2008 and Letter from Amy B.R. Lancellotta, Senior Counsel, Investment Company Institute, to Martha M. Haines, Director, Office of Municipal Securities, U.S. Securities and Exchange Commission, November 12, 2001.

¹⁴ See, e.g., Securities and Exchange Commission, "Disclosure and Accounting Practices in the Municipal Securities Market," White Paper to Congress, July 2007 and "Integrity in the Municipal Market," speech by Christopher Cox, Chairman, Securities and Exchange Commission, Town Hall, Los Angeles, California, July 18, 2007 (commenting on need to improve municipal securities disclosure framework to meet current needs of the marketplace).

¹⁵ A recent study by DPCDATA, a NRMSIR, indicated that, "nondisclosure is an established practice and a growing trend among obligators...affect[ing] an increasing amount of public debt." The study revealed that, over a ten year period, "across all bond classes, market sections, and issuer geographies, more than 50% of bonds outstanding for nine or more years have one of more years of disclosure delinquency, and more than 25 percent are in chronic delinquency, missing three or more years of disclosures." *Estimating Municipal Securities Continuing Disclosure Compliance, A Litmus Test Approach*, DPCDATA, Peter J. Schmitt, 2008.

securities must reasonably determine that an issuer of municipal securities has undertaken to provide.¹⁶ In contrast to the registration requirements for corporate securities, Rule 15c2-12 currently requires only limited disclosure and dissemination of information by underwriters in municipal securities offerings.

For primary offerings, additional information should include: (1) indentures; (2) loan agreements; (3) master trust indentures; (4) security documents; (5) legal opinions (*e.g.*, tax, validity, or defeasance opinions); (6) tax certificates; and (7) certain escrow agreements. For secondary offerings, additional information should include material events that more fully reflect the types of events that are material to today's investors. These events include: (1) material litigation pending or threatened; (2) material acquisitions or dispositions; (3) material casualty events; (4) changes in senior management; (5) change in control; (6) change in accountants; (7) loss of licensure for operation of the facility; and (8) bankruptcy or receivership filings. Any or all of this information would assist investors in better understanding the particular components and risks of a specific municipal issue.

We believe the MSRB has a role to play here too. The MSRB should encourage issuers to submit to EMMA information not currently required by MSRB and SEC rules. The MSRB proposal discussed above states that EMMA would accept submissions of other disclosure documents specified in continuing disclosure undertakings but not specifically described in Rule 15c2-12. We support this facet of the proposal but believe the MSRB should expand EMMA to accept disclosure information beyond what it has currently proposed. In addition, the SEC and MSRB should publicly encourage issuers to submit information for *all* classes of municipal securities to EMMA, including securities not subject to Rule 15c2-12, such as variable rate demand obligations.¹⁷ As with municipal securities subject to Rule 15c2-12, the quality and quantity of available information for these other securities is poor. We believe that EMMA can be used as a central repository to close the disclosure gap in this area as well. Investors, municipal analysts, investment advisers, and the broker-dealers who effect transactions in municipal securities would benefit significantly from access to current, high-quality disclosure comparable to that in other markets.

The SEC also should require that issuer financial information be provided more frequently to the public than is currently required under Rule 15c2-12. The rule currently requires information

¹⁶ Specifically, Rule 15c2-12 sets forth certain obligations of (1) underwriters to receive, review and disseminate official statements prepared by issuers of most primary offerings of municipal securities, (2) underwriters to obtain continuing disclosure agreements from issuers and other obligated persons to provide material event disclosures and annual financial information on a continuing basis, and (3) broker-dealers to have access to such continuing disclosure in order to make recommendations of municipal securities in the secondary market.

¹⁷ The MSRB has requested comment on a proposal to increase transparency for variable rate disclosure obligations by requiring reporting of specific information to the MSRB for posting on its website. See *Request for Comment: Plan for Increasing Information Available for Municipal Variable Rate Demand Obligations*, MSRB Notice 2008-24 (May 23, 2008).

about municipal securities issuers to be provided annually, in contrast to corporate issuers, which are subject to quarterly reporting requirements. The financial status of an issuer can change materially during the course of a year. Consequently, failure to make interim financial information available deprives investors of the opportunity to react in a timely manner to any such changes. Moreover, the rule does not provide any outside deadline for the disclosure of financial information, thus leaving the timing completely to the discretion of the issuer, which can occur anywhere from three months up to twelve months, or even longer, following the end of a fiscal year. As a result, investors are provided financial information that is often stale upon receipt.

Accordingly, the Institute recommends the SEC establish meaningful timeframes for the delivery of information required pursuant to the undertakings in an issuer's continuing disclosure agreement. For example, issuers should be required to reduce the time for filing financial reports from 270 days to 180 days. Also, if audited financial statements are not available within the recommended timeframe, then issuers should be required to issue unaudited financials in the interim, as appropriate, in accordance with guidelines established by the National Federation of Municipal Analysts.¹⁸ More timely reporting of disclosure information would enhance the usefulness of the information reported, including alerting investors to those issuers who may be experiencing serious or systemic problems. In addition, establishing reasonable timeframes would be consistent with the practice established in the corporate securities market.

Should the SEC act to improve the timeliness of municipal securities disclosure, the MSRB should quickly expand EMMA's capabilities to provide the market with notification when disclosure documents are filed later than the required timeframe. Identifying timely compliance with disclosure obligations would alert investors to those issuers that may be experiencing serious or systemic problems.

* * * * *

We look forward to working with the SEC and MSRB as it continues to examine these critical issues. In the meantime, if you have any questions, please feel free to contact me directly at (202) 326-5815, or Ari Burstein at (202) 371-5408 or Heather Traeger at (202) 326-5920.

Sincerely,

/s/ Karrie McMillan

Karrie McMillan
General Counsel

¹⁸ *Recommended Best Practices in Disclosure*, National Federation of Municipal Analysts, 2004.

Ms. Florence Harmon

September 22, 2008

Page 9 of 9

cc: The Honorable Christopher Cox, Chairman
The Honorable Kathleen L. Casey
The Honorable Elisse B. Walter
The Honorable Troy A. Paredes
The Honorable Luis A. Aguilar

Erik Sirri, Director
Robert L.D. Colby, Deputy Director
Daniel Gallagher, Deputy Director
Martha Haines, Chief, Office of Municipal Securities, Assistant Director
Division of Trading and Markets
U.S. Securities and Exchange Commission

Lynnette Hotchkiss, Executive Director
Harold Johnson, Deputy General Counsel
Ernesto A. Lanza, Senior Associate General Counsel
MSRB