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TREASURER

**State of Connecticut**  
Office of the Treasurer

HOWARD G. RIFKIN  
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September 22, 2008

Mr. Christopher Cox  
Chairman  
U.S. Securities and Exchange Commission  
100 F Street NE  
Washington, DC 20549

Re: File S7-21-08: Proposed Amendment to Municipal Securities  
Disclosure

Dear Chairman Cox:

I am pleased to have this opportunity to provide feedback to the Commission on its proposals to facilitate a single centralized municipal disclosure depository under the sponsorship of the Municipal Securities Rulemaking Board.

As Treasurer of the State of Connecticut, my office has responsibility for the State's issuance of debt obligations and management of its \$16 billion debt portfolio, including ongoing compliance with the State's continuing disclosure obligations under its continuing disclosure agreements entered into pursuant to Rule 15c2-12. I believe the Commission's proposed amendments to Rule 15c2-12 creating such a centralized depository would be a significant step forward in making municipal disclosure more transparent in its scope, more efficient in its delivery, more consistent and comparable across issuers, and more accessible for investors, particularly individual investors.

The existing decentralized NRMSIR system has a number of disadvantages, in my view. It is to be expected that some discrepancies will exist in filings at five locations, but it is not reasonable to expect an investor to search multiple locations for the same information. The manner in which the information is available, the cost to access the information, the infrequency with which it is accessed by individual investors, and the lack of other paths to it make the system needlessly obscure for most non-professional investors. The Commission's experience with EDGAR is instructive, for while company filings are available through the Commission for free, there are multiple means by which the investing public can access these filings, including through free websites, by subscription, or through brokerage services. I think establishing a single, free, common repository for municipal information will encourage similar links that will deliver current

information to the investing public through familiar channels, which will promote greater familiarity, greater usage, more transparency, and a more efficient market.

I have considered the method by which the Commission is pursuing implementation of a central depository. When the Commission embarked on a similar effort with respect to corporate issuers, it chose to implement the EDGAR system itself and did not build the system around either the stock exchanges or other self-regulatory bodies such as the National Association of Securities Dealers (now FINRA). Now it is moving to establish a similar system for municipal disclosure but is implementing it through a broker-dealer self-regulatory organization (SRO).

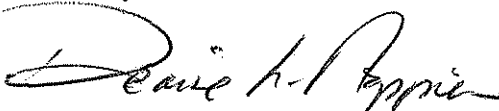
Certainly, the MSRB has shown leadership with its proposal to expand its existing EMMA system to accept not only primary offering filings but also filings under continuing disclosure agreements. It is a significant step forward, and I welcome and commend the MSRB for its initiative in doing so. Nevertheless, I wonder if such an ambitious and market encompassing project should be placed under the auspices of an entity that represents only one segment (broker/dealers) of the municipal market, when it seems that responsibility for such a task would more appropriately lie with the SEC. The SEC has the primary responsibility of protecting investors, and its management of EDGAR for corporate issuers has been highly successful.

I understand that building on the existing MSRB EMMA platform offers efficiency, but I believe that it is critical that the SEC maintain close oversight of the EMMA expansion and its implementation to ensure that the needs of all market participants are being addressed. I suggest that the Commission establish a periodic schedule to evaluate the EMMA expansion project during its implementation as well as after it becomes operational. Both the Commission and the MSRB should be mindful of the perspectives of issuers and investors and involve other organizations, such as the National Association of State Treasurers and the Government Finance Officers Association, in that process. The SEC should plan to set a date two to three years forward to revisit this matter and determine if the MSRB system is meeting expectations or whether the SEC should consider managing the EMMA system itself in the same manner as the EDGAR system.

Enclosed are some more detailed and technical comments on the proposed rules offered by the law firms responsible for the State's disclosure. I support their comments as well and hope that the Commission finds them useful.

Thank you for this opportunity to provide feedback. Please feel free to contact me if I can be of any further assistance.

Sincerely,



Denise L. Nappier  
Treasurer

Enclosure

## MEMORANDUM

**TO:** Treasurer, State of Connecticut

**FROM:** Edmund M. See  
Namita T. Shah  
(Day Pitney LLP)  
Ernest M. Lorimer  
(Finn Dixon & Herling LLP)

**DATE:** September 19, 2008

**SUBJECT:** File No. SR-MSRB-2008-05: Notice of Filing of Proposed Rule Change  
Relating to the Establishment of a Continuing Disclosure Service of the  
Electronic Municipal Market Access System (EMMA)

File S7-21-08: Proposed Amendment to Municipal Securities Disclosure

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At your request, we reviewed the captioned Proposed Rule Change filed with the Securities and Exchange Commission and the Commission's proposed amendment to Rule 15c2-12. We offer the following comments.

### **I. Rule 15c2-12 Amendment**

#### **Improving Efficiency**

The MSRB's current proposal limits the information to be made available through the EMMA portal to only the specific items of continuing disclosure described in Rule 15c2-12 and any additional disclosure items as specifically set forth in a continuing disclosure undertaking. The official statement for State of Connecticut bonds (similar to other states) includes an Annual Information Statement which is prepared once a year and is currently filed with the existing NRMSIRs in connection with the annual filing of our financial and operating information. The Annual Information Statement includes not only financial and operating data, but also general information with respect to the organization of our state government, financial procedures, litigation and the State's economy, among other things. The Rule or commentary should make clear that issuers can include with their annual filings information that exceeds the requirements of continuing disclosure agreements. Having a comprehensive annual information statement allows the State to provide a much shorter update of only material events with every bond issue, which has been helpful to investors so they can focus on the material updates once they become familiar with our general information, saving considerable time and resources. The State usually files the update with the NRMSIRs after each bond issue. If the EMMA portal will not allow us to file additional information it will be a disservice to investors because more current information will not be available from EMMA. We therefore strongly encourage the MSRB to permit such information on the EMMA portal.

We note that the Commission's proposed rule would define an official statement as one or more documents containing the necessary disclosure. We suggest the Commission expressly set forth that an official statement could incorporate by reference any other document the issuer or obligated person has on file with EMMA (assuming EMMA will allow for annual and interim information beyond the enumerated continuing disclosure requirements, as recommended above) or other information the issuer chooses to disclose. As drafted, the Rule only contemplates the incorporation of financial and operating data, a more limited body of information. The State's, official statement is a thick book because it includes the annual information statement of the State, a section updating the annual information statement to the time of the official statement, and information concerning the issue being marketed. We think the combination of the easy and free availability of annual information statements, coupled with the long experience of the non-municipal investment community with incorporation by reference, would establish incorporation by reference as an effective means of delivering all necessary information in an efficient manner.

### **Effect on Existing Continuing Disclosure Agreements**

One aspect of the Commission's indirect manner of mandating ongoing municipal disclosure is that it is implemented in the form of a contractual undertaking by the issuer. The State's existing continuing disclosure agreements are drafted carefully to require that the State's filings be made with "any nationally recognized municipal securities information repository recognized by the SEC from time to time." As a result, if the SEC designates the MSRB as the only NRMSIR, the State's future filings with only the MSRB would be consistent with the State's existing contractual undertakings. However, if the MSRB is not designated as the only NRMSIR, the State may be contractually bound to continue to make filings in multiple places, which will tend to perpetuate the undesirable aspects of the current system. Also, if the Commission simply eliminates the concept of NRMSIRs in favor of the MSRB filing, the nature of the State's continuing obligation would be uncertain.

The Commission's release properly identifies this question and this possible solution, but the text of the proposed rule does not include this solution and would have the effect of creating uncertainty about future compliance. We would encourage the Commission to amend the rule to expressly identify the MSRB as the only NRMSIR, at least for purposes of grandfathering existing agreements.

While we know that this will have the desired result with respect to the State's own obligations, we cannot say that it will have the same desired result under all the contractual undertakings of municipal issuers that may now exist. The Commission should review carefully the comments of issuers and other market participants in this respect. It may be appropriate for the Commission to provide, through rule, interpretative advice, or no action letter, guidance to the effect that future filings with the MSRB would be considered by the Commission to be consistent with an issuer's obligations under such an agreement, under Rule 15c2-12 and under Rule 10b-5, and also consistent with any underwriter's obligation to determine compliance with existing continuing disclosure agreements. It may also be desirable to give guidance that any amendment by an issuer to an existing continuing disclosure agreement, without the consent of any other party, to conform to amended Rule 15c2-12 would also be considered as appropriate and in compliance with the Rule.

## **Establishing Compliance**

Last, we would request that the Commission establish that compliance with the rule by an issuer is established by sending a required submission. We recommend that an acknowledgment of each filing be required to be given by the MSRB. The Rule will shift to the MSRB's new system a significant new volume of submissions, and issuers should not be responsible for the failure of the system to receive or post the documents sent by such issuers.

## **II. MSRB Rule Change**

### **Format of Filings**

We note that the MSRB proposes to phase in a requirement that continuing disclosure filings with it be in a word-searchable format. We are not certain all of the implications of this have been understood. In particular, the State has historically included in its filings significant amounts of information in a scanned format. This includes the report of the State Comptroller, the report of the State's Public Auditors, and its basic and supplemental financial statements. The State does this in order to assure the other important participants in our disclosure process that documentation produced by them in the course of their statutory duties cannot be altered in the course of inclusion in the annual information statement and therefore does not need to be re-proofread or re-verified before it is disseminated. This is true also of other financial information the State submits, such as for the State's Special Transportation Fund and Clean Water Fund. We expect the submission of such materials in word-searchable format cannot be done without significant burden, and request that a longer transition period than nine months be permitted. We note that the submissions will need to be indexed in some way. Perhaps this is sufficient for easy review rather than requiring word-searchable documents.

The MSRB's proposal creates a bifurcated system in which Official Statements are submitted by underwriters under MSRB Rule G-36, while continuing disclosure documents are submitted by issuers and obligated persons. G-36 submissions by underwriters are not required to be in electronic form and when entered into an electronic form by the MSRB, will not be in a word-searchable form. The result is a system in which some documents will be in a word searchable form and some will be in a full scan form. The MSRB should take steps to harmonize its collection practices in this respect in a time frame which is no earlier than the continuing disclosure transition.

### **Proper Allocation of Responsibility for Filings**

Rule 15c2-12 creates a structure which requires any obligated person to submit continuing disclosure information with respect to an issuer's securities. The MSRB should develop some system that clearly identifies the obligated person making any submission (which could be either the issuer or some other obligated person), and clearly makes the obligated person responsible for the content of the information which the obligated person is required to submit.

In addition, the MSRB should develop some system that clearly identifies the date as of which any submission is made and as of which it speaks, and that, beyond the requirements of the Rule and an issuer's continuing disclosure agreement the submitter assumes no responsibility to update the information submitted. This could be accomplished by a disclaimer upon entering the EMMA portal or by rule.

Last, the MSRB's rule should distinguish between the responsibility of the obligated person and the responsibility of the submitter, such as a dissemination agent. A dissemination agent should be required to be authorized to make any submission and should not be responsible for the content of a submission. As written, we do not think the Rule is clear enough.

### **Practicalities of the Filing Process**

We would urge the Commission and the MSRB to give additional thought to the mechanics of the filing process, as we are skeptical that the complexities have been fully grasped. We note the MSRB's proposal would require each submission be identified as "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)". This information is all known at the time of issue and could be pre-registered in some fashion. If all this information is required for each submission, it could take many days of close detail work to prepare a filing. We encourage the Commission to apply its experience with EDGAR and DisclosureUSA's experience with NRMSIR filings to the practicalities of the MSRB system. We also urge the Commission to test the MSRB system with real-world filing examples before the system comes into effect. For example, when the State files its annual information statement, the filing is made with respect to its general obligation bonds. It is also made with respect to certain issues of other issuers which have State backing (such as a variety of State created authorities), but not all issues of such issuers have such backing. A single bond issue can contain between 20 – 30 individual CUSIP numbers and an issuer such as the State averages around a dozen bond issues each year. This does not include the other issuers that use the State's backing. The current CUSIP-based system for tracking which bonds the filing applies to is not a suitable mechanism; in our case thousands of CUSIPs are involved. The mechanism employed by DisclosureUSA's central post office is much better. We would recommend a system similar to Disclosure USA's central post office so that we can readily locate the CUSIP numbers by the issuer's six digit pre-fix while at the same time have the mechanism for listing by nine figure CUSIPs where the issuer's six digit covers some issues to which the State's disclosures apply and some to which they do not apply and permits choosing only the separate issues to which the State's disclosure does apply.

The MSRB's portal currently presents on a single page not only an issuer's filings but also derivatives based on the underlying securities. This presentation is confusing and should more clearly identify filings by an issuer or obligated person with respect to securities, and filings by others with respect to their securities. It may be that derivatives should be listed separately and link to the underlying securities.

## **Responsibility for Other Services**

The MSRB has created some value-added services of its own already, such as the ability to look up selected words in an on-line dictionary. The MSRB should consider appropriate disclaimer language for these services as well, as they are beyond the control of the submitters, and should not be their responsibility.

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