

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-66522; File No. SR-MSRB-2012-02)

March 6, 2012

Self-Regulatory Organizations; Municipal Securities Rulemaking Board; Notice of Filing of Proposed Rule Change Consisting of Establishment of Historical Data Subscription from Submissions to the MSRB Electronic Municipal Market Access System (“EMMA”)

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Exchange Act”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on February 27, 2012, the Municipal Securities Rulemaking Board (“MSRB”) 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 MSRB. 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 Substance of the Proposed Rule Change

The MSRB has filed with the SEC a proposed rule change to establish a subscription containing historical documents and data obtained from submissions to the MSRB Electronic Municipal Market Access System (EMMA<sup>®</sup>).<sup>3</sup>

The text of the proposed rule change is available on the MSRB’s website at <http://www.msrb.org/Rules-and-Interpretations/SEC-Filings/2012-Filings.aspx>, at the MSRB’s principal office, and at the Commission’s Public Reference Room.

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<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> EMMA is a facility of the MSRB for receiving electronic submissions of municipal securities disclosure and other key documents and related information and for making such documents and information available to the public, at no charge on a web portal or by paid subscription feed.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the MSRB included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The MSRB has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

In June 2009, the MSRB implemented an electronic system for free public access to primary market disclosure documents and related information for the municipal securities market through EMMA (the "Primary Market Disclosure Service").<sup>4</sup> In July 2009, the MSRB implemented a permanent continuing disclosure service to receive electronic submissions of, and make publicly available access to, continuing disclosure documents and related information through EMMA (the "Continuing Disclosure Service").<sup>5</sup> EMMA provides subscription services, including the Primary Market Disclosure Subscription Service<sup>6</sup> and the Continuing Disclosure Subscription Service, that make documents and related indexing information available on a

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<sup>4</sup> See Exchange Act Release No. 59966 (May 21, 2009).

<sup>5</sup> See Exchange Act Release No. 59061 (December 5, 2008).

<sup>6</sup> The Primary Market Disclosure Subscription Service provides subscribers all primary market disclosure documents, including official statements, preliminary official statements, advance refunding documents ("primary market disclosure documents"), and any amendments thereto, together with related indexing information, provided by submitters through EMMA, for an annual fee of \$20,000.

current basis to subscribers through a real-time data stream.<sup>7</sup> The proposed rule change would clarify that subscribers to the Primary Market Disclosure Service and Continuing Disclosure Service would be able to access historical data for the most recent six months on a daily rolling basis and establish purchase agreements for historical products consisting of twelve consecutive complete month data sets of the documents and related indexing information obtained through submissions to the Primary Market Disclosure Service (the “Primary Market Disclosure Historical Product”) received since June 1, 2009<sup>8</sup> and submissions to the Continuing Disclosure Service (the “Continuing Disclosure Historical Product”) received since July 1, 2009.<sup>9</sup> The purpose of the proposed rule change is to provide historical products for the Primary Market Disclosure and Continuing Disclosure Subscription Services, which are currently only available on a current basis through the real-time data stream.

The Primary Market Disclosure Historical Product and the Continuing Disclosure Historical Product would be made available to purchasers in electronic format using a physical

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<sup>7</sup> The Continuing Disclosure Subscription Service provides subscribers all continuing disclosure documents, together with related indexing information, provided by submitters through EMMA, for an annual fee of \$45,000.

<sup>8</sup> The EMMA Primary Market Subscriber Manual provides a complete, up-to-date listing of all data elements made available through the EMMA Primary Market Disclosure Subscription Service. The primary market disclosure documents and data elements provided in the Primary Market Disclosure Historical Product are the same as those currently provided in the EMMA Primary Market Disclosure Subscription Service.

<sup>9</sup> The EMMA Continuing Disclosure Subscriber Manual provides a complete, up-to-date listing of all data elements made available through the EMMA Continuing Disclosure Subscription Service. The continuing disclosure documents and data elements provided in the Continuing Disclosure Historical Product are the same as those currently provided in the EMMA Continuing Disclosure Subscription Service.

medium (such as an optical disc, flash memory card or external hard drive),<sup>10</sup> pursuant to the terms of the MSRB Historical Product Purchase Agreement, which would be executed by purchasers prior to delivery of either historical product.<sup>11</sup> The MSRB proposes to charge \$10,000 for any twelve consecutive complete month data set for the Primary Market Disclosure Historical Data Product and \$22,500 for any twelve consecutive complete month data set for the Continuing Disclosure Historical Data Product.<sup>12</sup> In general, no smaller data sets for either historical product will be made available. A one-time set-up fee of \$2,000 (the “set-up fee”) would be charged to new purchasers of the Primary Market Disclosure and Continuing Disclosure Historical Products, unless the purchaser subscribes to an MSRB Subscription Service, including, but not limited to, the MSRB Real-Time Transaction Data Subscription Service, Comprehensive Transaction Data Subscription Service, Short-Term Obligation Rate Transparency Subscription Service, Primary Market Disclosure Subscription Service, or the Continuing Disclosure Subscription Service, or has previously purchased a historical product.<sup>13</sup>

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<sup>10</sup> The MSRB will choose an appropriate physical medium for delivering the EMMA primary market disclosure historical product based upon the quantity of data included in a data set and technological advances in physical media.

<sup>11</sup> Purchasers would be subject to all of the terms of the MSRB Historical Product Purchase Agreement to be entered into between the MSRB and each purchaser, including terms relating to the proprietary and intellectual property rights of third parties in information provided by such third parties that is made available through the products.

<sup>12</sup> The purchase price does not include sales tax as required by Virginia state law. The purchase price is a one-time charge for the Primary Market Disclosure and Continuing Disclosure Historical Products, as applicable, and will not include any future additions or enhancements that may be added to the data. The MSRB could, in its discretion, waive or reduce the purchase price for not-for-profit organizations that desire the product for non-profit or research purposes consistent with their stated charitable or other public purpose.

<sup>13</sup> The MSRB could, in its discretion, waive or reduce the product set-up fee(s) for not-for-profit organizations that desire the product for non-profit or research purposes consistent with their stated charitable or other public purpose.

## 2. Statutory Basis

The MSRB has adopted the proposed rule change pursuant to Section 15B(b)(2)(C) of the Exchange Act, which provides that MSRB's rules shall:

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 and municipal financial products, to remove impediments to and perfect the mechanism of a free and open market in municipal securities and municipal financial products, and, in general, to protect investors, municipal entities, obligated persons, and the public interest; and

The MSRB has also adopted the proposed rule change pursuant to Section 15B(b)(3)(B)(ii) of the Exchange Act, which provides that the MSRB shall:

not be prohibited from charging commercially reasonable fees for automated subscription-based feeds or similar services, or for charging for other data or document-based services customized upon request of any person, made available to commercial enterprises, municipal securities market professionals, or the general public, whether delivered through the Internet or any other means, that contain all or part of the documents or information, subject to approval of the fees by the Commission under section 19(b).

The MSRB believes that the proposed rule change is consistent with the Exchange Act. The proposed rule change would establish a subscription service that would make information collected by EMMA's Primary Market Disclosure Service and the Continuing Disclosure Service available to market participants through an additional avenue. Broad access to the information collected by EMMA, in addition to the public access through the EMMA web portal, should further assist in preventing fraudulent and manipulative acts and practices by improving the opportunity for public investors to access material information about primary market disclosure information and continuing disclosure information. The proposed rule change also provides for commercially reasonable fees to partially offset costs associated with operating the

Primary Market and Continuing Disclosure Services of EMMA and producing and disseminating information products to purchasers.

B. Self-Regulatory Organization's Statement on Burden on Competition

The MSRB does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act since it will apply equally to all persons who choose to purchase<sup>14</sup> the Primary Market Disclosure Historical Product and the Continuing Disclosure Historical Product, and those who choose not to pay the charge may view the same information for free on the EMMA web portal.

C. Self-Regulatory Organization's Statement on Comments Received on the Proposed Rule Change by Members, Participants, or Others

Written comments were neither solicited nor received on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve or disapprove such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Exchange Act.

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<sup>14</sup> The MSRB notes that purchasers may be subject to proprietary rights of third parties in information provided by such third parties that is made available through the purchase agreement.

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](mailto:rule-comments@sec.gov). Please include File Number SR-MSRB-2012-02 on the subject line.

Paper comments:

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

All submissions should refer to File Number SR-MSRB-2012-02. 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 website (<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 website 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 10:00 am and 3:00 pm. Copies of such filing also will be available for inspection and copying at the MSRB's offices. 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-2012-02 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>15</sup>

Kevin M. O'Neill  
Deputy Secretary

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<sup>15</sup> 17 CFR 200.30-3(a)(12).