



## Introducing EMMA: The Future of Municipal Continuing Disclosure and More

### Pre-Registration on EMMA Expected to Begin On or Around June 1

Beginning July 1, 2009 Securities and Exchange Commission (SEC) Rule 15c2-12 (the Rule) will require issuers of municipal securities and other obligated entities to provide annual information and material event notices to the Municipal Securities Rulemaking Board (MSRB) only, rather than to any of the previously recognized national information repositories (NRMSIRs). These filings with the MSRB must be made through the use of the MSRB's new electronic portal "EMMA," short for Electronic Municipal Market Access.

This required leap into the electronic age for all municipal issuers subject to the Rule results from an amendment to the Rule finalized by the SEC on December 5, 2008 (the Amendment). According to the SEC release accompanying the Amendment, the amended Rule is intended to "improve availability of information about the municipal securities to investors, market professionals, and the public generally." The Rule generally requires underwriters of municipal securities to obtain contractual undertakings (typically in the form of a Continuing Disclosure Agreement or Certificate) from issuers of municipal securities and other obligated entities (collectively, Issuers) to provide certain information, including annual financial information and material events notices, on a continuing basis.<sup>1</sup> Effective July 1, 2009 the Amendment requires Issuers to provide information covered by a Continuing Disclosure Agreement to the MSRB, instead of to multiple NRMSIRs and state information depositories (SIDs), as required under the previous Rule. The Amendment also eliminates the use of DisclosureUSA.org as a central filing location (the Central Post Office).

### What is EMMA?

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EMMA was originally established in March 2008 as a pilot facility that made certain documents filed by municipal underwriters, such as official statements and advance refunding documents, available for electronic review and downloading. EMMA is an Internet-based, centralized database that provides free public access to disclosure and transaction information about municipal bonds to the Issuers, investors and other municipal market participants. EMMA is the first free database of this kind. EMMA also provides access to official statements, advance refunding documents, real time and historical trade information, daily market information and other educational materials about municipal bonds.

The MSRB expects to be able to make the disclosure information available for public access within 15 minutes of submission - virtually "real-time" disclosure. Essentially, EMMA will make municipal disclosures available to investors and other market participants in a manner similar to the SEC's EDGAR system for corporate disclosures.

### **Type of Information That Can and Must Be Filed With EMMA**

As of July 1 future annual disclosure reports and material event notices under Continuing Disclosure Agreements must be filed through EMMA. EMMA will also accept other types of information on a voluntary basis from Issuers. This includes voluntary quarterly reports, bondholder notices or other market communications. Additionally, Issuers will be able (but not required) to submit prior annual disclosure reports and material event notices to provide historical financial information at one location.

### **Format for Documents Filed With EMMA**

The Amendment requires all information to be submitted as PDF files that can be saved, viewed, printed and electronically retransmitted. Additionally, beginning January 1, 2010, the MSRB will require that all such PDF files be "word-searchable." However this requirement will not apply to diagrams, images and other non-textual elements due to current technological challenges (and costs) involved in the conversion of this type of information to a searchable format. While this requirement may still present technological challenges for some Issuers, the MSRB believes the conversion application is available in most standard software packages.

### **Requirements for Issuers to Use EMMA**

Filings will be made through password-protected EMMA accounts. Issuers and their agents will be able to register through the EMMA Dataport online at [www.emma.msrb.org](http://www.emma.msrb.org) beginning on or around June 1, 2009. The MSRB recommends that Issuers and/or their agents register before the July 1 effective date. Once registered, a user ID and password will be assigned to the Issuer or agent representative.

With each document filed, the Issuer (or its agent) will be required to include the following identifying information:

- i. the category of information being provided (i.e., any annual financial information, financial statements, operating data, material events notice or voluntary information);
- ii. the period covered by information being filed;
- iii. Issuer name, state, issue description, CUSIP number, dated date, maturity date and/or coupon date;
- iv. the name and date of the document; and
- v. contact information for the Issuer or agent making the filing.

Issuers (or their agents) will have the option to choose between two submission methods: (i) an Internet-based upload to the EMMA website or (ii) a direct connection to the MSRB (primarily intended for large Issuers or agents that anticipate making numerous filings). Issuers without access to the Internet or appropriate software or licenses to create PDF files will need to associate themselves with third party agents, advisors or vendors to ensure compliance with the Rule after July 1.

#### **How the Amendment Affects Existing Continuing Disclosure Agreements**

As the MSRB will be the sole recognized NRMSIR as of July 1, 2009 any filing or disclosure required under an existing Continuing Disclosure Agreement (any agreement entered into prior to July 1) must be provided to the MSRB, through EMMA, in its capacity as the sole NRMSIR. No amendment of existing Continuing Disclosure Agreements will be required for this purpose. The SEC believes that providing the same location for all submissions will be less confusing and will simplify the submission process for Issuers, as well as for investors and other municipal market participants wishing to access the information.

#### **How EMMA Affects State Information Repositories**

Currently, Texas, Michigan and Ohio are the only states with SIDs. The Amendment will not affect the legal obligation of Issuers to submit documents and information to a SID, as may be required under state law or existing Continuing Disclosure Agreements. EMMA will not file documents or information with any SID. Thus, Issuers in states that have established SIDs may be required under state law or existing Continuing Disclosure Agreements to continue making separate filings with the appropriate SID after July 1.

#### **How the Amendment Affects the Small Issuer Exemption Under the Rule**

For small Issuers (those with less than \$10 million in outstanding debt), the Amendment alters the current small Issuer exemption from the annual filing requirement of the Rule and essentially eliminates this exemption for most small Issuers. The Amendment requires that Continuing Disclosure Agreements of small Issuers must provide that annual financial information or operating data, if customarily prepared and publicly available, will be submitted to the MSRB, through EMMA, instead of being supplied only upon request to any person or at least annually to any SID. Because most small government Issuers prepare and make available financial or other operating data in the normal course of operations, such Issuers will now be required to submit these materials through EMMA for bonds issued on or after July 1.

### Filing Fees

There will be no fee charged by the MSRB for the submission of documents to EMMA.

<sup>1</sup> The Rule has various other requirements, which include requiring underwriters to receive, review and disseminate official statements prepared by Issuers of most primary offerings of municipal securities and requiring broker-dealers to have access to such continuing disclosure in order to make recommendations of municipal securities in the secondary market.

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