



## Impact of Recent Amendments to Rule 15c2-12 and Approval of MSRB's EMMA System

The following information is intended to be only a brief summary of the amendments to Rule 15c2-12. It does not constitute legal advice with respect to any specific project or issue and may not be relied upon as advice.

### **Rule 15c2-12 Background**

The Securities and Exchange Commission ("SEC") originally adopted Rule 15c2-12 (the "Rule") in 1989, as a means to improve the dissemination of information in connection with primary offerings of municipal securities. The Rule was subject to significant amendment in 1994, as the SEC expanded its scope to cover both primary and secondary market disclosure. Through the 1994 amendments, the SEC implemented a requirement that broker-dealers (called "Participating Underwriters" in the Rule) review the secondary market disclosure practices of the issuer at the time the securities are initially issued.

Subject to certain exempted transactions, the Rule prevents a Participating Underwriter from purchasing or selling municipal securities with an aggregate principal amount of \$1,000,000 or more unless they have first reasonably determined that the issuer will provide certain annual information and notice of the occurrence of specific material events and of failures to file required information. To satisfy their obligations under the Rule, Participating Underwriters require that issuers enter into continuing disclosure agreements in connection with new bond issues.

The Rule mandates when disclosure of information is to be made and where such information must be sent. Today, issuers must file information with the nationally recognized municipal securities information repositories ("NRMSIRs") and with the appropriate state information depository ("SID"), if any, either directly or through an agent. As detailed below, this practice will change significantly in a few months.

### **December 2008 Amendments to Rule 15c2-12; New "EMMA" System**

On December 5, 2008, the SEC (i) adopted amendments to the Rule and (ii) issued its order granting approval of the proposed rule changes submitted by the Municipal Securities Rulemaking Board ("MSRB") in connection with their Electronic Municipal Market Access ("EMMA") system (<http://emma.msrb.org/>). Starting July 1, 2009 (the effective date of the rule changes), the Rule requires Participating Underwriters to reasonably determine that the issuer (or obligated person) has agreed at the time of the primary offering to provide the necessary continuing disclosure documents to the MSRB (instead of to the NRMSIRs), in an electronic format with accompanying identifying information as prescribed by the MSRB. The bottom line is that the MSRB (through EMMA) will be the sole repository for continuing disclosure filings, starting July 1, 2009.

To deal with what would be conflicting language (existing continuing disclosure agreements which require filings with the current NRMSIRs vs. the new Rule requirement of filing only with the MSRB), the SEC will be withdrawing their NRMSIR "no action" letters, effective at midnight on June 30, 2009, making the MSRB the sole approved NRMSIR. Thus, effective July 1, 2009, all continuing disclosure filings (including specifically those made under existing (pre-July 1, 2009) disclosure agreements) must be made with the MSRB, through EMMA.

The amendments also affect the small issuer exemption to the Rule (set forth in paragraph (d)(2)). The key change to the Rule for this purpose is the deletion of "upon request to any person" in 15c2-12(d)(2)(ii)(A); this results in the "limited undertaking" becoming much less limited. Under the amended Rule, if an issuer (or obligated person) customarily prepares and makes available financial information and operating data, then that issuer (or obligated person) must file the information with the MSRB, in the electronic form prescribed by the MSRB (rather than just providing the information upon request to any person or at least annually to the SID, if any). These amendments materially change the disclosure regime for those small issuers that prepare annual financial information but (i) are located in a state without a SID, and (ii) historically receive no requests from investors or others for financial information. This class of issuers has not been required to provide annual continuing disclosure filings in the past, but will have to file information with the MSRB for bonds issued after July 1, 2009.

## MSRB's EMMA System

As stated above, effective July 1, 2009, all continuing disclosure documents will be submitted to the MSRB electronically, with no charge, through its web-based EMMA system. With each filing of documents, the submitter must include the following information: (i) the category of information being provided; (ii) the period covered by any annual financial information / financial statements or operating data; (iii) the issues or specific securities to which such document is related (including CUSIP number, issuer name, state, issue description, dated date, maturity date and 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. The filing of this information must be via PDF files. Furthermore, starting January 1, 2010, the MSRB will require that all such PDF files be word-searchable (meaning scanned versions of documents will not be accepted).

Filings with the MSRB may be made through password-protected EMMA accounts by: (i) issuers; (ii) obligated persons; and (iii) designated agents on behalf of issuers or obligated persons. Issuers may, but are not required to, re-file historical continuing disclosure information through EMMA. Finally, with respect to conduit issuers, the MSRB has established a mechanism that permits, on an optional basis, issuers of the conduit bonds to identify obligated persons and the related bonds.

## Summary of Key Points Effective on July 1, 2009

- All continuing disclosure submissions are provided to the MSRB, through its EMMA system
- The MSRB will be the sole approved NRMSIR
- Submissions must be in an electronic format (PDF), and effective January 1, 2010, such filings must be in a word-searchable PDF format (no scanned versions)
- Submissions must include identifying information, as prescribed by the MSRB
- The amendments materially alter the current "small issuer" or "limited undertaking" exemption
  - no longer can use "upon request to any person" language for determining when to distribute financial information
  - to the extent the issuer / obligated person customarily prepares and makes available financial information and operating data, then they must file the same with the MSRB
- When the EMMA system is operational, issuers / obligors (or their designated agents) will need to set up an account at <http://emma.msrb.org>

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