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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-88225; File No. SR-MSRB-2019-13]

Self-Regulatory Organizations; Municipal Securities Rulemaking Board; Order Granting Approval of a Proposed Rule Change to Amend the Information Facility of the MSRB's Electronic Municipal Market Access (EMMA) System

February 18, 2020.

I. Introduction

On November 19, 2019, the Municipal Securities Rulemaking Board (the “MSRB” or “Board”) filed with the Securities and Exchange Commission (the “SEC” or “Commission”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder,² a proposed rule change to amend the information facility of the MSRB’s Electronic Municipal Market Access (“EMMA”)³ system (the “EMMA IF”) to provide for (1) the automated calculation and static display of the number of days between (i) the annual fiscal period end date for an issuer or obligated person and (ii) the date an annual financial disclosure is submitted to the EMMA system for such annual fiscal period (the “Submission Calculator”) and (2) the reconfiguration of certain information shown on the EMMA public website (emma.msrb.org) (the “EMMA Portal”) to more prominently display an issuer’s or obligated person’s annual financial disclosures and related information (the “proposed rule change”). The proposed rule change was published for comment in the Federal Register on November 27,

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR § 240.19b-4.

³ EMMA is a registered trademark of the MSRB.

2019.⁴

The Commission received five comment letters on the proposed rule change.⁵ On February 6, 2020, the MSRB responded to those comments.⁶ This order approves the proposed rule change.

II. Description of Proposed Rule Change

As described further below and in the Notice of Filing, the MSRB proposes to amend the EMMA IF to provide for (1) the Submission Calculator and (2) the reconfiguration of certain

⁴ Securities Exchange Act Release No. 87583 (Nov. 21, 2019) (the “Notice of Filing”), 84 FR 65436 (Nov. 27, 2019).

⁵ See Letter to Secretary, Commission, from Scott Andreson, Chair, National Federation of Municipal Analysts (“NFMA”), dated December 13, 2019 (the “NFMA Letter”); Letter to Secretary, Commission, from Emily Swenson Brock, Director, Federal Liaison Center, Government Finance Officers Association (“GFOA”), dated December 18, 2019 (the “GFOA Letter”); Letter to Secretary, Commission, from Chuck Samuels, General Counsel, National Association of Health and Educational Facilities Finance Authorities (“NAHEFFA”), dated December 18, 2019 (the “NAHEFFA Letter”); Letter to Secretary, Commission, from Kenton Tsoodle, Assistant City Manager, Oklahoma City, GFOA Representative, David Erdman, Capital Finance Director, State of Wisconsin – Department of Administration, GFOA Representative, Cynthia Evangelisti, Treasurer, Chicago Park District, GFOA Representative, The Honorable Fiona Ma, Treasurer, State of California, National Association of State Treasurers Representative, Dennis Reilly, Executive Director, Wisconsin Health & Educational Facilities Authority, NAHEFFA Representative, Staci Henshaw, Deputy Auditor, Virginia Auditor of Public Accounts, National Association of State Auditors, Comptrollers and Treasurers Representative, Christine Crowley, Municipal Advisor, Fiscal Advisors & Marketing, Inc., National Association of Municipal Advisors (“NAMA”) Representative, Brian Reilly, Senior Municipal Advisor, Ehlers, Inc., NAMA Representative, Stacey Lewis, Partner, Pacifica Law Group LLP, National Association of Bond Lawyers (“NABL”) Representative, Bradley Patterson, Shareholder, Gilmore & Bell, P.C., NABL Representative, and Teri Guarnaccia, Partner, Ballard Spahr LLP, NABL Representative (collectively, the “Issuer Representatives Workgroup”), dated December 18, 2019 (the “Issuer Representatives Workgroup Letter”); and Letter to Secretary, Commission, from Vicki Hellenbrand, President, Baker Tilly Municipal Advisors, LLC (“Baker Tilly”), dated December 19, 2019 (the “Baker Tilly Letter”).

⁶ See Letter to Secretary, Commission, from Gail Marshall, Chief Compliance Officer, Municipal Securities Rulemaking Board (“MSRB”), dated February 6, 2020 (the “MSRB Response Letter”).

information shown on the EMMA Portal to more prominently display an issuer's or obligated person's annual financial disclosures and related information.⁷ The MSRB has stated that it believes the proposed rule change would further promote transparency and efficiency in the municipal securities market without imposing significant additional burdens on brokers, dealers, and municipal securities dealers (collectively, "dealers"), municipal issuers, or obligated persons.⁸

A. Submission Calculator

The proposed rule change would amend the EMMA IF to provide for the Submission Calculator. The MSRB states that the Submission Calculator would automatically calculate and statically display the elapsed number of days between (1) the end date of the annual fiscal period covered by an annual financial disclosure (the "Fiscal Period End Date") for an issuer or obligated person, as such date is entered by a submitter through the process of publishing an annual financial disclosure on the EMMA Portal, and (2) the time and date of the submission of the annual financial disclosure to the EMMA system (the "Posted Date") of an annual financial disclosure submitted to the EMMA system for such annual fiscal period, both of which dates are currently visible on the EMMA Portal.⁹ The MSRB notes that the Submission Calculator would be based on the existing information required to be provided by a submitter, calculating the number of days elapsed based solely on the entry of the Fiscal Period End Date and the Posted Date for an annual financial disclosure.¹⁰ The day of the Posted Date would be included in the

⁷ See Notice of Filing, 84 FR at 65437.

⁸ Id. at 65439.

⁹ Id.

¹⁰ Id.

calculation, as further described in the Notice of Filing, and this number of days elapsed would be displayed on the EMMA Portal at the individual security details level.¹¹ Importantly, the MSRB notes that it would not evaluate the substantive content of the documents and information submitted, and the Submission Calculator would not analyze the relevant content to evaluate an issuer's or obligated person's compliance with the terms of an applicable continuing disclosure agreement or any applicable law, regulation, or other legal obligation.¹² The MSRB states that, consistent with the EMMA system's current functionality, if a submitter enters an erroneous Fiscal Period End Date for an annual financial disclosure, the Submission Calculator would perform its calculation based on the erroneous Fiscal Period End Date entered by the submitter.¹³

To illustrate how the Submission Calculator would operate, the MSRB provided several examples in the Notice of Filing, including a single submission of annual financial information, a multi-year series of submissions of annual financial information, sequential submissions of portions of an issuer's annual financial information for a single fiscal period, and sequential submissions of annual financial information for a single issue of municipal securities with multiple obligated persons.¹⁴

B. Changes to the EMMA Display

The proposed rule change would amend the EMMA IF to reconfigure certain information shown on the EMMA Portal to more prominently display an issuer's or obligated person's

¹¹ The EMMA Portal's security details pages enable users to access documents and information associated with a particular municipal security, such as an official statement, continuing disclosure document, and/or trade report.

¹² See Notice of Filing, 84 FR at 65439.

¹³ Id.

¹⁴ Id. at 65440.

annual financial disclosures and related information.¹⁵ More specifically, the MSRB states that the revised EMMA Portal would more prominently display the information reported about an annual financial disclosure for a municipal security, including the Fiscal Period End Date, the Posted Date, and the results of the Submission Calculator.¹⁶ The MSRB states that the proposed rule change also would increase the prominence of the links provided by any issuer through its customized homepage to other websites containing relevant information.¹⁷ With these changes to the EMMA Portal and the implementation of the Submission Calculator, the MSRB notes that the security details page for a municipal security generally would provide the information shown in Figure 1 below, which is shown as processed with the hypothetical facts and resulting calculation from the first example provided in the Notice of Filing.¹⁸

Figure 1

<u>Timing of Annual Financial Disclosure</u>	
Fiscal Period End Date: 06/30/2020	
Posted Date: 12/23/2020	
Timing of Disclosure: 176 Days	
<u>Hyperlink to Disclosure Document PDF(s)</u>	
<u>Hyperlink(s) to Other Website(s) if Provided</u>	

The MSRB states that, although each of these data points, other than the Submission Calculator results shown as the Timing of Disclosure in Figure 1, are currently available on the

¹⁵ Id. at 65441.

¹⁶ Id.

¹⁷ Id.

¹⁸ Id.

EMMA Portal, the proposed rule change is intended to improve users' awareness of this information, and that nothing about this proposed display would be evaluative of an issuer's or obligated person's compliance with the applicable terms of a continuing disclosure agreement.¹⁹ The MSRB further states that proposed rule change would not modify how submitters provide this information to the EMMA system, nor require submitters to input any new data, but it would augment the display of information reported to the EMMA system to make it more apparent to users.²⁰

C. Proposed Changes to Text of EMMA IF

The proposed rule change would amend the text of the EMMA IF to provide for the development and otherwise describe the operation of the Submission Calculator. More specifically, the MSRB states that the proposed rule change would amend the EMMA IF to define the term "EMMA metrics" to mean the calculations, data, and metrics derived from municipal securities disclosure documents and related information submitted to the EMMA system, thereby including the calculations, data, and metrics generated by the Submission Calculator would be in the definition.²¹ The MSRB notes that this revised definition is intended to provide greater clarity regarding the various types of information that may be disseminated by the EMMA system in light of the Submission Calculator's new functionality, including more precisely delineating the distinctions between disclosure documents, related information, indexing information, and EMMA metrics.²²

¹⁹ Id.

²⁰ Id.

²¹ Id.

²² Id.

III. Summary of Comments Received and MSRB's Responses to Comments

As noted previously, the Commission received five comment letters on the proposed rule change, as well as the MSRB Response Letter.

A. Stakeholder Consultation and Education

Four commenters expressed concerns that, prior to filing the proposed rule change with the Commission, the MSRB did not formally invite market participants to provide input through a public request for comment or through other MSRB-organized stakeholder consultation, such as beta-testing and user focus groups,²³ with three of such commenters recommending that the proposed rule change be withdrawn until such consultation could occur.²⁴ The MSRB stated that although it believes that engaging in such stakeholder outreach can be valuable, the legal standard under the Act for Commission approval of a proposed rule change does not require such engagement prior to the filing of a proposed rule change with the Commission, and therefore the lack of any such engagement should not be a basis for disapproval by the Commission of the proposed rule change.²⁵

The MSRB stated that it appreciates the willingness of commenters to provide constructive feedback on the proposed rule change, and that it would value the opportunity for stakeholders to preview the proposed changes to the EMMA Portal contemplated by the proposed rule change in advance of the date such changes would become visible to the public, as well as for stakeholders to provide input on possible future MSRB education initiatives and

²³ See GFOA Letter, NAHEFFA Letter, Issuer Representatives Workgroup Letter, Baker Tilly Letter.

²⁴ See GFOA Letter, NAHEFFA Letter, Issuer Representatives Workgroup Letter.

²⁵ See MSRB Response Letter.

market transparency enhancements.²⁶ Further, the MSRB stated that, subject to the Commission’s approval of the proposed rule change, the MSRB believes that it can, and intends to, provide the sort of stakeholder consultation requested by the commenters during the period between the publication of the Commission’s approval order and the date the proposed enhancements become visible to the public on the EMMA Portal.²⁷

B. Potential for Erroneous Submissions

Five commenters raised concerns about the potential for erroneous submissions to EMMA to result in erroneous displays of information in the Submission Calculator.²⁸ For example, one such commenter stated, “submission errors, including classification errors and incorrect dates, that are frequent in today’s EMMA system, pose a high risk that a meaningful number of calculations will be based on inaccurate information.”²⁹ Another commenter expressed concerns that the Submission Calculator could itself generate errors.³⁰

The MSRB stated that it appreciates commenters’ concerns about improving the accuracy and completeness of information displayed on the EMMA Portal. The MSRB noted that, as stated in the Notice of Filing, the changes to the EMMA Portal contemplated by the proposed rule change would not alter the process for users to submit annual financial disclosures to EMMA nor change the type of information collected in the publication of such disclosures.³¹ The

²⁶ Id.

²⁷ Id.

²⁸ See GFOA Letter, NAHEFFA Letter, Issuer Representatives Workgroup Letter, Baker Tilly Letter, NFMA Letter.

²⁹ See NFMA Letter.

³⁰ See Baker Tilly Letter.

³¹ See MSRB Response Letter.

MSRB further noted that the information that would be used in the proposed changes – including the calculation generated by the Submission Calculator – is presently being input by users and published for public view on the EMMA Portal.³² In this sense, the MSRB stated that it believes that commenters’ assertions about the inevitability and frequency of submission errors are more aptly characterized as market behaviors that would be expected to persist regardless of the proposed rule change, rather than outcomes that will specifically result from the proposed rule change.³³

Consequently, to the degree that the Submission Calculator and the other proposed enhancements would provide new prominence to the information submitted, the MSRB stated that it believes that submitters would have an additional incentive to properly categorize and describe annual financial disclosures, and the incidences of submissions with erroneous information would be expected to marginally decline from current rates.³⁴ Similarly, to the degree that submitters exert greater diligence in completing the disclosure submission process in response to the proposed rule change, the MSRB stated that it believes that any additional burden created by this change in market behavior is exceeded by the benefits of greater market transparency through the improved availability and understanding of market information displayed on the EMMA Portal.³⁵ Accordingly, the MSRB concluded, commenters’ assertions about the consequences of erroneous submissions do not change the MSRB’s determinations

³² Id.

³³ Id.

³⁴ Id.

³⁵ Id.

about the overall benefits of the Submission Calculator.³⁶

With respect to comments that the MSRB undertake “greater oversight of the submission process”³⁷ or otherwise prevent “inconsistent and unclear data,”³⁸ the MSRB stated that it believes that submitters should retain ultimate responsibility for the accuracy and completeness of the content they submit for publication on the EMMA Portal, including identification of the applicable disclosure category (or categories) of an annual financial disclosure, and comments about the need for improved data quality and greater MSRB oversight of information input by disclosure submitters do not alter the MSRB’s determinations in this regard.³⁹

With respect to the potential for the Submission Calculator to malfunction and display incorrect calculations, the MSRB stated that it has established policies and procedures to maintain the performance of the EMMA system.⁴⁰

C. Correction of Submission Mistakes

Two commenters sought clarity regarding whether disclosure submitters will be able to correct submission mistakes.⁴¹ The MSRB stated that the EMMA system currently provides issuers and obligated persons the ability to modify prior continuing disclosure submissions, including by selecting different categories, adding or replacing submitted files, editing dates and descriptive information, adding or removing securities associated with a submission, and

³⁶ Id.

³⁷ See NFMA Letter.

³⁸ See Issuer Representatives Workgroup Letter.

³⁹ See MSRB Response Letter.

⁴⁰ Id.

⁴¹ See GFOA Letter, NAHEFFA Letter.

changing the contact information for the submission.⁴² The MSRB noted that it is already pursuing several user interface and functionality improvements to EMMA independent of the proposed rule change.⁴³ The MSRB further noted that one commenter had requested several additional technological improvements to EMMA that are unrelated to the Submission Calculator,⁴⁴ which the MSRB believes are outside the scope of the proposed rule change.⁴⁵

D. Potential for Investor Confusion

Four commenters expressed concerns about how investors might use the information provided by the Submission Calculator, including whether it could be used erroneously to compare the timing of disclosures for different types of municipal securities or municipal issuers.⁴⁶ One commenter stated that, “[t]here is no apples to apples comparison between issuers that can be represented by this calculator,” and that “some issuers could be unfairly judged by investors that information may not be ‘timely’ when in fact it is submitted as quickly as possible – and within the timeframe noted in a [continuing disclosure agreement] – pending the completion of audited financials.”⁴⁷ Another commenter similarly expressed a concern about pooled financings and other municipal securities with multiple obligated persons, stating, “we do not understand how such financings with borrowers who may have different fiscal periods will

⁴² See MSRB Response Letter.

⁴³ Id.

⁴⁴ See NFMA Letter.

⁴⁵ See MSRB Response Letter.

⁴⁶ See GFOA Letter, NAHEFFA Letter, NFMA Letter, Baker Tilly Letter.

⁴⁷ See GFOA Letter.

be handled without providing significantly misleading information.”⁴⁸ Another commenter stated its view that the Submission Calculator should only perform a calculation on filings marked as audited financial filings, not for unaudited annual financial filings, because there would be an “opportunity for manipulation” of the calculation, and also expressed concern about investors being misled by the display of a calculation based on out-of-date annual financial disclosures.⁴⁹ Another commenter suggested that the proposed rule change could alter market behavior by encouraging quick but “inadequate” filings.⁵⁰

The MSRB stated that although it does not disagree with the observations underlying many of these comments, it believes that the comments do not necessarily demonstrate flaws unique to the proposed rule change, but are more generally representative of the variation and complexity of disclosure practices in the municipal securities market.⁵¹ The MSRB further stated its belief that it can, and intends to, mitigate some potential investor confusion by making various investor education resources available on the EMMA Portal in conjunction with the proposed rule change.⁵² Moreover, the MSRB stated, it continues to believe that the design of the Submission Calculator adequately accounts for the broad variety of common disclosure practices in the municipal securities market and promotes greater transparency, including by making financial information more readily apparent to investors, market professionals, and the general

⁴⁸ See NAHEFFA Letter.

⁴⁹ See NFMA Letter.

⁵⁰ See Baker Tilly Letter.

⁵¹ See MSRB Response Letter.

⁵² Id.

public through the EMMA Portal.⁵³

The MSRB further noted that, as described in the Notice of Filing,⁵⁴ the Board evaluated various alternatives to and iterations of the Submission Calculator.⁵⁵ After significant deliberation and review of the data currently reported to the EMMA system, the MSRB determined that the Submission Calculator would be superior to other alternatives because it could account for the lack of common uniformity in the reporting of financial information characteristic to the municipal securities market, while also creating no new burdens on issuers and obligated persons submitting information to the EMMA Portal.⁵⁶ Nevertheless, in consideration of the comments to the proposed rule change, the MSRB emphasized that it is committed to work with stakeholders on future enhancements to the EMMA Portal.⁵⁷

IV. Discussion and Commission Findings

The Commission has carefully considered the proposed rule change, the comment letters received, and the MSRB Response Letter. The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the MSRB.

The Commission believes that the proposed rule change is consistent with Section 15B(b)(2)(C) of the Act, which provides in part that the MSRB's rules shall:

be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to

⁵³ Id.

⁵⁴ See Notice of Filing, 84 FR at 65442.

⁵⁵ See MSRB Response Letter.

⁵⁶ Id.

⁵⁷ Id.

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.⁵⁸

For the reasons set forth below, the Commission believes that the proposed rule change would promote the protection of investors and the public interest, and prevent fraudulent and manipulative acts and practices, and is therefore consistent with Section 15B(b)(2)(C) of the Act.

The Commission has long been concerned with disclosure in both the primary and secondary markets for municipal securities, and has regularly encouraged municipal issuers to provide timely and accurate information to investors and the trading markets.⁵⁹ For example, in the 1994 Interpretive Release, the Commission observed that “[t]he timeliness of financial information is a major factor in its usefulness.”⁶⁰ In the 2008 Adopting Release, through which the Commission designated EMMA as the sole repository for issuer and obligated person continuing disclosures, the Commission noted that its “objective of encouraging greater availability of municipal securities information remains unchanged.”⁶¹ More recently, the

⁵⁸ 15 U.S.C. 78o-4(b)(2)(C).

⁵⁹ See Exchange Act Release No. 34961 (November 10, 1994), 59 FR 59590 (November 17, 1994); Exchange Act Release No. 33741 (March 9, 1994), 59 FR 12748 (March 17, 1994) (the “1994 Interpretive Release”); Exchange Act Release No. 59062 (December 5, 2008), 73 FR 76104, 76108 (December 15, 2008) (“2008 Adopting Release”); Securities and Exchange Commission, Report on the Municipal Securities Market (July 31, 2012) (“2012 Report”), available at <https://www.sec.gov/news/studies/2012/munireport073112.pdf>; Exchange Act Release No. 83885 (August 20, 2018), 83 FR 44700 (August 31, 2018).

⁶⁰ See 1994 Interpretive Release, 59 FR at 12753.

⁶¹ See 2008 Adopting Release, 73 FR at 76108.

Commission has noted that, among other things, timeliness of disclosures is a major challenge in the secondary market for municipal securities.⁶²

The Commission believes that the changes to the EMMA Portal contemplated by the proposed rule change would promote the protection of investors and the public interest by increasing their awareness and understanding of the type and timing of financial information available in the municipal securities market, which could enable investors to make more informed investment decisions. The Commission believes that the changes to the EMMA Portal contemplated by the proposed rule change also would enable investors and others to more readily locate and access the financial information available on the EMMA Portal and provide investors and others with additional tools to evaluate an issuer's disclosure practices.

The Commission further believes that the proposed rule change would promote the prevention of fraudulent and manipulative acts and practices by fostering a better understanding among investors and other market participants of the type and timing of annual financial information available in the municipal securities market by making the type and timing of financial information more readily apparent on the EMMA Portal. In the Commission's view, the proposed rule change could mitigate certain information asymmetries that may exist in the market and thereby enable investors to make more informed investment decisions and protect themselves from fraud.

In approving the proposed rule change, the Commission has considered the proposed rule change's impact on efficiency, competition, and capital formation.⁶³ Section 15B(b)(2)(C) of the

⁶² See 2012 Report at 74.

⁶³ 15 U.S.C. 78c(f).

Act⁶⁴ requires that MSRB rules not be designed to impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The Commission does not believe that the proposed rule change would impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act, because it would not require issuers and other submitters of information to EMMA to provide any additional information in their submissions. Furthermore, the Commission believes that the potential for increased transparency and awareness regarding the timing of financial information available on the EMMA Portal could improve competition by assisting investors in their analysis of a municipal security's financial information by clearly and prominently displaying a measure of the timing of that information.

The Commission has reviewed the record for the proposed rule change and notes that the record does not contain any information to indicate that the proposed rule change would have a negative effect on capital formation. The Commission believes that the proposed rule change includes provisions that help promote efficiency. By promoting transparency and awareness of the timing of annual financial information, the proposed rule change could enable more efficient analysis by investors and others of the age of the financial information available about an issuer and its securities.

As noted above, the Commission received five comment letters on the filing. The Commission believes that the MSRB, through its responses, has addressed commenters' concerns. For the reasons noted above, the Commission believes that the proposed rule change is consistent with the Act.

⁶⁴ 15 U.S.C. 78o-4(b)(2)(C).

V. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,⁶⁵ that the proposed rule change (SR-MSRB-2019-13) be, and hereby is, approved.

For the Commission, pursuant to delegated authority.⁶⁶

Jill M. Peterson,

Assistant Secretary.

⁶⁵ 15 U.S.C. 78s(b)(2).

⁶⁶ 17 CFR 200.30-3(a)(12).

