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Self-Regulatory Organizations; Municipal Securities Rulemaking Board; Notice of Filing of Proposed Rule Change Relating to the Establishment of a Primary Market Disclosure Service and Trade Price Transparency Service of the Electronic Municipal Market Access System (EMMA®) and Amendments to MSRB Rules G–32 and G–36; Notice

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–59636; File No. SR–MSRB–2009–02]

Self-Regulatory Organizations; Municipal Securities Rulemaking Board; Notice of Filing of Proposed Rule Change Relating to the Establishment of a Primary Market Disclosure Service and Trade Price Transparency Service of the Electronic Municipal Market Access System (EMMA®) and Amendments to MSRB Rules G–32 and G–36

March 27, 2009.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b-4 thereunder,[2] notice is hereby given that on March 23, 2009, the Municipal Securities Rulemaking Board (''MSRB'') filed with the Securities and Exchange Commission (''Commission'' or ''SEC'') the proposed rule change as described in Items I, II, and III below, which Items have been substantially 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 Commission a proposed rule change to implement an electronic system for free public access to primary market disclosure documents and transaction price information for the municipal securities market through the MSRB's Electronic Municipal Market Access system (''EMMA''). The proposed rule change would: (i) Establish EMMA's permanent primary market disclosure service (the ''primary market disclosure service'') for electronic submission and public availability on EMMA's Internet portal (the ''EMMA portal'') of official statements, advance refunding documents and related primary market documents and information (the ''EMMA primary market disclosure proposal''); (ii) establish EMMA's permanent transparency service (the ''trade price transparency service'') making municipal securities transaction price data publicly available on the EMMA portal (the ''EMMA trade price transparency proposal''); (iii) establish a real-time subscription to the primary market document collection (the ''primary market disclosure subscription proposal''); (iv) terminate the existing pilot EMMA facility of the Municipal Securities Information Library (MSIL) system (the ''primary market pilot'') and suspend submissions of official statements, advance refunding documents and Forms G–36(OS) and G–36(ARD) to the MSIL system (the ''system transition proposal'') and (v) amend and consolidate current Rules G–32 and G–36 into new Rule G–32 on disclosures in connection with primary offerings, replace current Forms G–36(OS) and G–36(ARD) with new Form G–32, provide transitional submission requirements, and amend certain related recordkeeping requirements, to establish an ''access equals delivery'' standard for electronic official statement dissemination in the municipal securities market (the ''rule change proposal'').

The MSRB has requested approval to commence operation of EMMA's primary market disclosure service and trade price transparency service on a permanent basis, and to make the provisions of the rule change proposal effective, on the later of (i) May 11, 2009 or (ii) the date announced by the MSRB in a notice published on the MSRB Web site, which date shall be no earlier than ten business days after Commission approval of the proposed rule change and shall be announced no fewer than five business days prior to such date (the ''effective date'').

The text of the proposed rule change is available on the MSRB's Web site (*http://www.msrb.org/msrb1/sec.asp*), at the MSRB's principal office, and at the Commission's Public Reference Room.

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

The proposed rule change would implement an electronic system for free public access to primary market disclosure documents and transaction price information for the municipal securities market. The proposed rule change consists of: (i) The EMMA primary market disclosure proposal to provide for electronic submission and public availability on the EMMA portal of official statements, certain preliminary official statements, advance refunding documents and amendments thereto (''primary market disclosure documents''), together with related information; (ii) the EMMA trade price transparency proposal to make municipal securities transaction price data publicly available on the EMMA portal; (iii) the primary market disclosure subscription proposal to establish a real-time subscription to the primary market disclosure document collection; (iv) the system transition proposal to terminate the existing primary market pilot and suspend submissions to the MSIL system; and (v) the rule change proposal to amend and consolidate MSRB rules on official statement deliveries to establish an ''access equals delivery'' standard for electronic official statement dissemination in the municipal securities market.

Existing primary market disclosure document delivery requirements under MSRB rules are described briefly below, followed by a discussion of each of these proposals.

Current Delivery Requirements

Under current Rule G–32, a broker, dealer or municipal securities dealer (''dealer'') selling a new issue municipal security to a customer during the period ending 25 days after bond closing (the ''new issue disclosure period'') must, with certain limited exceptions, deliver the official statement to the customer on or prior to trade settlement. In cases where an official statement is not produced by the issuer, the dealer is required to instead provide a preliminary official statement, if available. The dealer also must provide certain additional information about the underwriting (including initial offering prices and information about underwriter compensation) if the issue was purchased by the underwriter in a negotiated sale. These additional items of information typically are disclosed in the official statement but must be provided separately by the selling dealer if not included in the official statement. Furthermore, selling dealers and the managing underwriter must send official statements to purchasing dealers promptly upon request, and dealer financial advisors that prepare the official statement must provide such official statement to the managing underwriter promptly.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

Current Rule G–36 requires dealers acting as underwriters, placement agents or remarketing agents for primary offerings of municipal securities (''underwriters'') to submit official statements, accompanied by Form G–36(OS), for most primary offerings of municipal securities to the MSRB. For offerings subject to Exchange Act Rule 15c2–12, the official statement must be sent within one business day after receipt from the issuer but no later than ten business days after the bond sale. With limited exceptions, official statements prepared for any other offerings must be sent by the later of one business day after receipt from the issuer or one business day after bond closing. Amendments to the official statement during the new issue disclosure period also must be submitted to the MSRB. In addition, if the offering is an advance refunding and an advance refunding document has been prepared, the advance refunding document and Form G–36(ARD) must be sent by the underwriter to the MSRB within five business days after bond closing. Official statements and advance refunding documents may currently be submitted in either paper or electronic format. These submissions are collected by the Municipal Securities Information Library (MSIL) system into a comprehensive library. The MSRB makes these documents available to paid subscribers as portable document format (PDF) files on a compact disk sent daily to subscribers, and also makes them available to the public, subject to copying charges, at the MSRB's public access facility in Alexandria, Virginia.

Description of the EMMA Primary Market Disclosure Proposal

The EMMA primary market disclosure proposal would establish, as a component of EMMA, the EMMA primary market disclosure service for the receipt of, and for making available to the public of, official statements, preliminary official statements and advance refunding documents, including amendments thereto (collectively, ''primary market disclosure documents''), and related information, to be submitted by or on behalf of underwriters under revised Rule G–32, as proposed in the rule change proposal described below.[3] As proposed, all primary market disclosure documents would be submitted to the MSRB, free of charge, through an Internet-based electronic submitter interface or electronic computer-to-computer data connection, at the election of the submitter. Public access to the documents and information would be provided through the EMMA primary market disclosure service on the Internet through the EMMA portal at no charge as well as through a paid real-time data stream subscription service.[4] In connection with each primary offering for which information is required to be submitted to EMMA pursuant to revised Rule G–32, the submitter would provide, at the time of submission, information required to be included on new Form G–32. The items of information to be included on new Form G–32 and the timing requirements for providing such information are set forth in the description of the rule change proposal below.

The MSRB proposes that submissions of primary market disclosure documents to the EMMA primary market disclosure service be made as portable document format (PDF) files configured to permit documents to be saved, viewed, printed and retransmitted by electronic means. If the submitted file is a reproduction of the original document, the submitted file must maintain the graphical and textual integrity of the original document. For any document submitted to the EMMA primary market disclosure service on or after January 1, 2010, such PDF file must be word-searchable (that is, allowing the user to search for specific terms used within the document through a search or find function available in most standard software packages), provided that diagrams, images and other non-textual elements would not be required to be word-searchable due to current technical hurdles to uniformly producing such elements in word-searchable form without incurring undue costs. Although the MSRB would strongly encourage submitters to immediately begin making submissions as word-searchable PDF files (preferably as native PDF or PDF normal files, which generally produce smaller and more easily downloadable files as compared to scanned PDF files), implementation of this requirement would be deferred as noted above to provide issuers, underwriters and other relevant market participants with sufficient time to adapt their processes and systems to provide for the routine creation or conversion of primary market disclosure documents as word-searchable PDF files.

All submissions to the EMMA primary market disclosure service pursuant to this proposal would be made through password protected accounts on EMMA by: (i) Underwriters, which may submit any documents with respect to municipal securities which they have underwritten; and (ii) designated agents, which may be designated by underwriters to make submissions on their behalf. Underwriters would be permitted under the proposal to designate agents to submit documents and information on their behalf, and would be able to revoke the designation of any such agents, through the EMMA on-line account management utility. Such designated agents would be required to register to obtain password-protected accounts on EMMA in order to make submissions on behalf of the designating underwriters.

As proposed, electronic submissions of primary market disclosure documents through the EMMA primary market disclosure service would be made by underwriters and their agents, at no charge, through secured, password-protected interfaces. Submitters would have a choice of making submissions to the proposed EMMA primary market disclosure service either through a Web-based electronic submission interface or through electronic computer-to-computer data connections with EMMA designed to receive submissions on a bulk or continuous basis.

All documents and information submitted through the EMMA primary market disclosure service pursuant to this proposal would be available to the public for free through the EMMA portal on the Internet, with documents made available for the life of the securities as

[3] EMMA was originally established, and began operation on March 31, 2008, as a complementary pilot facility of the MSRB's existing Official Statement and Advance Refunding Document (OS/ARD) system of the MSIL system. *See* Securities Exchange Act Release No. 57577 (March 28, 2008), 73 FR 18022 (April 2, 2008) (File No. SR–MSRB–2007–06) (approving operation of the EMMA pilot to provide free public access to the MSIL system collection of official statements and advance refunding documents and to the MSRB's Real-Time Transaction Reporting System historical and real-time transaction price data) (the ''Pilot Filing''). The pilot EMMA facility would be replaced, and EMMA would become a permanent facility of the MSRB, by the establishment of the EMMA primary market disclosure service and EMMA trade price transparency service proposed in this filing, together with such other EMMA services established by the MSRB from time to time. *See* Securities Exchange Act Release No. 59061 (December 5, 2008), 73 FR 75778 (December 12, 2008) (File No. SR–MSRB–2008–05) (approving the continuing disclosure service of EMMA with an effective date of July 1, 2009). *See also* Securities Exchange Act Release No.59212 (January 7, 2009), 74 FR 1741 (January 13, 2009) (File No. SR–MSRB–2008–07) (approving the establishment of the short-term obligation rate transparency service of EMMA). Although the MSIL system would no longer accept and process submissions by underwriters upon establishment of the EMMA primary market disclosure service as provided in the system transition proposal, it would continue to operate for a period of time primarily to serve certain internal MSRB functions.

[4] The pilot EMMA portal currently is accessible at *http://www.emma.msrb.org.*

PDF files for viewing, printing and downloading.[5] As proposed, the EMMA portal would provide on-line search functions to enable users to readily identify and access documents that relate to specific municipal securities based on a broad range of search parameters. The EMMA portal also would permit users to request to receive alerts, at no charge, if a primary market disclosure document has become available on the EMMA portal or has been updated or amended[6] and may also provide, at the election of the MSRB, summary data/statistical snapshots relating to documents and information submitted to the EMMA primary market disclosure service. In addition, the MSRB proposes that real-time data stream subscriptions to primary market disclosure documents submitted to EMMA would be made available for a fee as established under the primary market disclosure subscription proposal described below. The MSRB would not be responsible for the content of the information or documents submitted by submitters displayed on the EMMA portal or distributed to subscribers through the EMMA primary market disclosure subscription service.

The MSRB has designed EMMA, including the EMMA portal, as a scalable system with sufficient current capacity and the ability to add further capacity to meet foreseeable usage levels based on reasonable estimates of expected usage, and the MSRB would monitor usage levels in order to assure continued capacity in the future.

The MSRB may restrict or terminate malicious, illegal or abusive usage for such periods as may be necessary and appropriate to ensure continuous and efficient access to the EMMA portal and to maintain the integrity of EMMA and its operational components. Such usage may include, without limitation, usage intended to cause the EMMA portal to become inaccessible by other users, to cause the EMMA database or operational components to become corrupted or otherwise unusable, to alter the appearance or functionality of the EMMA portal, or to hyperlink to or otherwise use the EMMA portal or the information provided through the EMMA portal in furtherance of fraudulent or other illegal activities (such as, for example, creating any inference of MSRB complicity with or approval of such fraudulent or illegal activities or creating a false impression that information used to further such fraudulent or illegal activities has been obtained from the MSRB or EMMA). Measures taken by the MSRB in response to such unacceptable usage shall be designed to minimize any potentially negative impact on the ability to access the EMMA portal.

Description of the EMMA Trade Price Transparency Proposal

The EMMA trade price transparency proposal would establish, as a component of EMMA, the EMMA trade price transparency service to make available to the public historical and real-time transaction price information provided through the MSRB's Real-Time Transaction Reporting System (''RTRS''), together with related summary and statistical information. Free public access to the transaction price information would be provided through the EMMA trade price transparency service on the Internet through the EMMA portal.[7] The transaction price information provided through the EMMA trade price transparency service would consist of all data available through RTRS for public dissemination since the inception of RTRS on January 31, 2005. This information could be expanded to include historical price data available through earlier MSRB transaction reporting systems.

As proposed, the EMMA portal would provide on-line search functions to enable users to readily access transaction price information based on a broad range of search parameters. The MSRB may elect to expand its alert function on the EMMA portal to permit users to request to receive periodic alerts, at no charge, regarding whether trades have been reported in a specific security[8] and to provide on the EMMA portal summary data/statistical snapshots of price data available through RTRS. The MSRB would not be responsible for the information reported by dealers to RTRS that is displayed on the EMMA portal.

Description of the Primary Market Disclosure Subscription Proposal

The real-time data stream subscription to the EMMA primary market disclosure service to be provided through a Web service would be made available for an annual fee of $20,000.[9] The primary market disclosure subscription service would make available to subscribers all primary market disclosure documents and related information provided by submitters through the EMMA submission process that is posted on the EMMA portal. Such documents and information would be made available to subscribers simultaneously with the posting thereof on the EMMA portal.

Data with respect to the EMMA primary market disclosure service to be provided through the real-time data stream would consist of the following elements, among others and as applicable, as would be more specifically set forth in the EMMA Primary Market Subscriber Manual posted on the EMMA portal: (i) Submission data, including submission ID, submission type, submission status and submission transaction date/time; (ii) offering data, including offering type, underwriting spread/disclosure indicator, and official statement/preliminary official statement availability status; (iii) issue data, including issue type, security type, issuer name, issue description, state of issuer, six-digit CUSIP (for commercial paper issues), expected closing date, dated date and original dated date (for certain remarketings); (iv) security data, including nine-digit CUSIP, security-specific dated date (for certain securities not having CUSIP numbers), principal amount at maturity, initial offering price or yield, maturity date, interest rate, partial underwriting data and refunded security CUSIP numbers; (v) document data, including document ID, document type, document description, document posting date, document status indicators

[5] The MSRB understands that software currently is generally available for free that permits users to save, view and print PDF files, as well as to conduct word searches in word-searchable PDF documents. The MSRB would provide links for downloading such software on the EMMA portal.

[6] The timing and reliability of users receiving alerts issued by EMMA is subject to limitations inherent in any e-mail-based system and users should not rely exclusively on such alerts.

[7] In addition to being made available to the public for free through the EMMA portal on the Internet, transaction price information is made available through various subscription products offered by RTRS through existing RTRS mechanisms. *See http://www.msrb.org/msrb1/TRSweb/rtrssubscription.asp*. The EMMA trade price transparency service would be distinct from any such services or products provided directly by RTRS.

[8] For example, a user could receive an end-of-day e-mail alert on any day during which a particular security has been reported as having traded. Such alerts would not be available on a real-time basis and would not provide trade-by-trade alerts. The timing and reliability of users receiving alerts issued by EMMA is subject to limitations inherent in any e-mail-based system and users should not rely exclusively on such alerts.

[9] The proposed subscription price would cover a portion of the administrative, technical and operating costs of the EMMA primary market disclosure subscription service but would not cover all costs of such subscription service or of the EMMA primary market disclosure service. The MSRB has proposed establishing the subscription price at a fair and reasonable level consistent with the MSRB's objective that subscriptions be made available on terms that promote the broad dissemination of documents and data throughout the marketplace.

and refunding and refunded issue identifiers (for advance refunding documents); (vi) file data, including file ID, file posting date and file status indicators; and (vii) limited offering contact data, including contact name, address and phone number (for obtaining official statements not available on EMMA for certain primary offerings not subject to Rule 15c2–12 by virtue of paragraph (d)(1)(i) thereof).

The EMMA Primary Market Subscriber Manual would set forth a complete, up-to-date listing of all data elements made available through the primary market disclosure subscription service, including detailed definitions of each data element, specific data format information, and information about technical data elements to support transmission and data-integrity processes between EMMA and subscribers.

Subscriptions would be provided through computer-to-computer data streams utilizing XML files for data and files in a designated electronic format (consisting of PDF files) for documents. Appropriate schemas and other technical specifications for accessing the Web services through which the real-time data stream are to be provided would be set forth in the EMMA Primary Market Subscriber Manual.

The MSRB would make the primary market disclosure subscription service available on an equal and non-discriminatory basis. In addition, the MSRB would not impose any limitations on or additional charges for redistribution of such documents by subscribers to their customers, clients or other end-users. Subscribers would be subject to all of the terms of the subscription agreement to be entered into between the MSRB and each subscriber, including proprietary rights of third parties in information provided by such third parties that is made available through the subscription. The MSRB would not be responsible for the content of the information or documents submitted by submitters distributed to subscribers through the primary market disclosure subscription service.

Description of System Transition Proposal

The system transition proposal would terminate the existing primary market pilot [10] by deleting the pilot provisions from the MSIL facility and would suspend the MSIL system's functions of receiving submissions of official statements and advance refunding documents.

Description of the Rule Change Proposal

The rule change proposal would effect extensive revisions to the official statement submission and dissemination requirements set forth in current MSRB rules in order to implement an ''access equals delivery'' model based on rules for final prospectus delivery for registered securities offerings adopted by the Commission in 2005.[11] The rule change proposal would consolidate and amend existing provisions of current Rules G–32 and G–36 into revised Rule G–32, on disclosures in connection with primary offerings, and would make conforming changes to Rule G–8, on recordkeeping, and Rule G–9, on preservation of records. Rule G–36 would be rescinded by the proposal. In addition, the rule change proposal would establish a new electronic Form G–32 in connection with submissions made by underwriters to EMMA and would discontinue current Form G–36(OS) and Form G–36(ARD).

Underwriters would be required under revised Rule G–32 to submit all primary market disclosure documents and related information to EMMA in electronic format, replacing the current submission process through the MSIL system pursuant to existing Rule G–36. Dealers selling most municipal securities in a primary offering to customers would be required under revised Rule G–32 to notify customers of the availability of official statements through EMMA (and, at the election of the dealer, any qualified portals) and to provide written copies of official statements to any customers requesting such copies. Except in the case of sales of municipal fund securities, dealers would no longer be required to provide printed copies of official statements to customers in primary offerings.

Underwriters should be especially sensitive to the necessity of timely and accurate submissions to EMMA of official statements, preliminary official statements (when required), any amendments thereto, and all related information to be supplied through Form G–32. In particular, with the adoption of the ''access equals delivery'' standard, submissions to EMMA will become the lynchpin to the municipal securities primary market disclosure system that ensures that official statements are available to investors and the general public in a timely manner. Thus, any failure by the underwriter to make the required submission to EMMA within one business day after receipt from the issuer, but in no event later than the closing date,[12] would have significant repercussions to the ability of investors to access the document. The MSRB expects that the timing requirements of revised Rule G–32 will be strictly adhered to and enforced to promote the purposes of the rule and the protection of investors.

The MSRB's disclosure rules with respect to newly issued municipal securities are multifaceted and require diligence on the part of dealers to ensure that mandated disclosures are made at certain key points in the process of selling such securities to customers. Thus, dealers are reminded that, in addition to their obligations under Rule G–32, they are required under Rule G–17, on fair practice, to provide to the customer, at or prior to the time of trade, all material facts about the transaction known by the dealer as well as material facts about the security that are reasonably accessible to the market.[13] The time of trade is generally the time at which an enforceable agreement is reached to execute a municipal securities transaction (sometimes referred to as trade execution). Disclosures made at or prior to the time of trade are intended to provide the customer with material information that he or she may use in making an investment decision.

The proposed rule change does not alter the time of trade disclosure obligation under Rule G–17. Disclosures made after the time of trade, such as by delivery of the official statement or by customer access to the official statement on EMMA at or near trade settlement, do not substitute for the required material disclosures that must be made at or prior to the time of trade pursuant to Rule G–17. In the new issue market,

[10] In establishing the primary market pilot, the MSRB had requested that the Commission approve the primary market pilot for a period of one year from the date it became operational, which was March 31, 2008. The MSRB has requested in a separate filing that the Commission approve the extension of the primary market pilot to the earlier of July 1, 2009 or the effective date of the permanent primary market disclosure service. *See* File No. SR–MSRB–2009–01.

[11] *See* Securities Act Release No. 8591 (July 19, 2005), 70 FR 44722 (August 3, 2005). The rule change proposal would incorporate (with modifications adapted to the specific characteristics of the municipal securities market) many of the key ''access equals delivery'' provisions in Securities Act Rule 172, on delivery of prospectus, Rule 173, on notice of registration, and Rule 174, on delivery of prospectus by dealers and exemptions under Section 4(3) of the Securities Act of 1933, as amended.

[12] The MSRB views it as critical that official statements be available to investors by no later than the new issue's closing date since such date represents the first time at which executed trades may be settled.

[13] *See* Rule G–17 Interpretation—Interpretive Notice Regarding Rule G–17, on Disclosure of Material Facts, March 20, 2002, *reprinted in* MSRB Rule Book.

the preliminary official statement, when available, often is used by dealers marketing new issues to customers and can serve as a primary vehicle for providing the required time-of-trade disclosures under Rule G–17, depending upon the accuracy and completeness of the preliminary official statement as of the time of trade. Dealers should note that additional or revised material information provided to the customer subsequent to the time of trade (such as in a revised preliminary official statement, the final official statement or through any other means) cannot cure a failure to provide the required material information at or prior to the time of trade.[14] However, a revised preliminary official statement or other supplemental information provided to customers after delivery of the original preliminary official statement, but at or prior to the time of trade, can be used to comply with the time-of-trade disclosure obligation under Rule G–17. The MSRB has previously emphasized the importance of making material disclosures available to customers in sufficient time to make use of the information in coming to an investment decision, such as through earlier delivery of the preliminary official statement.[15] The MSRB urges dealers to make preliminary official statements available to their potential customers in a timeframe that provides an adequate opportunity to make the appropriate assessments in coming to an investment decision.

The rule change proposal is described in more detail below.

Submissions to EMMA

Official Statement and Form G–32 Submission Requirement. Under revised Rule G–32(b)(i)(A), underwriters would be required to submit information through the electronic Form G–32 for all primary offerings of municipal securities, regardless of whether an official statement is produced for such offering.[16] The specific items of information to be submitted through Form G–32, and the manner and timing of such submission, are described below.

Under revised Rule G–32(b)(i)(B), except as described below, all submissions by underwriters of official statements would be required to be made within one business day after receipt from the issuer but by no later than the closing date[17] for the offering. Rule G–36 currently has separate submission timing for official statements based on whether the primary offering is subject to or exempt from Exchange Act Rule 15c2–12. For issues subject to such rule, current Rule G–36 establishes a final deadline of ten business days after the issuer agrees to sell the offering to the underwriter. This current timeframe does not ensure that official statements are always available by the closing date, particularly in those cases where an offering may be closed fewer than ten business days after the offering is sold. For issues exempt from Exchange Act Rule 15c2–12, current Rule G–36 requires submission of the official statement to the MSRB by the later of one business day after receipt from the issuer or one business day after the closing date. The revised provision is designed to ensure that the official statement is always available by the closing date, regardless of the type of offering.

If an official statement is being prepared for a primary offering but it is not submitted to EMMA by the closing date, the underwriter would be required under revised Rule G–32(b)(i)(B)(2) to provide notice of such failure to file and to submit the preliminary official statement, if any, by the closing date, along with notice that the official statement will be submitted to EMMA when it becomes available.[18] Once an official statement becomes available, the underwriter would be required to submit the official statement within one business day after receipt from the issuer. The submission of the preliminary official statement would not be a cure for a failure to submit the official statement in a timely manner but instead would be an additional obligation of the underwriter incurred upon failing to make timely submission of the official statement.

Exceptions from Official Statement Submission Requirement. If no official statement is prepared for an offering exempt from Exchange Act Rule 15c2–12, revised Rule G–32(b)(i)(C) would require the underwriter to provide notice of that fact to EMMA, together with the preliminary official statement, if any, by the closing date.[19] In the case of certain limited offerings,[20] revised Rule G–32(b)(i)(E) would permit the underwriter to elect not to submit the official statement to EMMA if it instead submits to EMMA, by no later than closing: (i) Notice that the offering is not subject to Exchange Act Rule 15c2–12 by virtue of paragraph (d)(1)(i) and that an official statement has been prepared but is not being submitted to EMMA, and (ii) specific contact information for underwriter personnel to whom requests for copies of the official statement should be made.[21] An underwriter withholding the official statement for a limited offering would be required to deliver the official statement to each customer purchasing the offered securities from the underwriter or from any other dealer, upon request, by the later of one business day after request or the settlement of the customer's transaction. In addition, submissions to EMMA in connection with roll-overs of commercial paper or remarketings of outstanding issues exempt from Rule 15c2–12 would not be required under revised Rule G–32(b)(i)(F) if no new official statement is prepared for the roll-over or remarketing or if an official statement has previously been submitted to EMMA in connection with such securities and no amendments or supplements to the official statement

[14] *See* Securities Act Rule 159(b) adopted under Section 17(a)(2) of the Securities Act of 1933. Rule 159(b) provides that, for purposes of determining whether a statement includes or represents any untrue statement of a material fact or any omission to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading at the time of sale (including, without limitation, a contract of sale), any information conveyed to the purchaser only after such time of sale (including such contract of sale) will not be taken into account.

[15] *See, e.g.*, MSRB Notice 2006–07 (March 31, 2006); MSRB Discussion Paper on Disclosure in the Municipal Securities Market (December 21, 2000), *published in* MSRB Reports, Vol. 21, No. 1 (May 2001); and Official Statement Deliveries Under Rules G–32 and G–36 and Exchange Act Rule 15c2–12 (July 15, 1999), *published in* MSRB Reports, Vol. 19, No. 3 (Sept. 1999).

[16] In contrast, submissions are required under current Rule G–36 only for primary offerings for which an official statement is produced.

[17] ''Closing date'' would be defined in revised Rule G–32(d)(ix) as the date of first delivery of the securities to the underwriter. For bond or note offerings, this would generally correspond to the traditional concept of the bond closing date. In the case of continuous offerings, such as for municipal fund securities, the closing date would be considered to occur when the first securities are delivered.

[18] Current Rule G–36 does not require submission of the preliminary official statement. If no preliminary official statement exists, the underwriter would be required to provide notice of that fact to EMMA under revised Rule G–32(b)(i)(D).

[19] Neither such notice nor the preliminary official statement is required to be submitted under current Rule G–36. If no preliminary official statement exists, the underwriter would be required to provide notice of that fact to EMMA under revised Rule G–32(b)(i)(D).

[20] Limited offerings consist of primary offerings under Exchange Act Rule 15c2–12(d)(1)(i) in which the securities have authorized denominations of $100,000 or more and are sold to no more than 35 persons who the underwriter reasonably believes: (a) have such knowledge and experience in financial and business matters that they are capable of evaluating the merits and risks of the prospective investment, and (b) are not purchasing for more than one account or with a view to distributing the securities.

[21] Under current Rule G–36, underwriters may withhold submission to the MSRB of the official statement for a limited offering without precondition.

have been made since such submission.[22]

Advance Refunding Submissions Requirement. As under current Rule G–36, revised Rule G–32(b)(ii) would require that underwriters submit advance refunding documents by no later than five business days after the closing date for primary offerings that advance refund an outstanding issue and for which an advance refunding document has been prepared. This proposed requirement would apply whenever an advance refunding document has been prepared in connection with a primary offering, not just for those offerings in which an official statement also has been prepared as under current Rule G–36.

Amendments and Cancellations. Underwriters would be required by revised Rule G–32(b)(iii) to submit amendments to official statements and advance refunding documents during the primary offering disclosure period[23] within one business day of receipt. In addition, underwriters would be required under revised Rule G–32(b)(iv) to submit prompt notice of any cancellation of an offering for which a submission of a document or information relating to the offering has previously been made to EMMA. If only a portion of an offering is cancelled, the underwriter's submission in connection with the remaining portion of the offering would be required to be corrected by no later than the closing date to reflect the partial cancellation of the offering. If the entire offering is cancelled, notice of such cancellation would be deemed under paragraph (vi)(C) of Rule G–32 to have been submitted to EMMA promptly under paragraph (vi)(C) of Rule G–32 if submitted by no later than five business days after the underwriter cancels its trades with customers and other dealers.[24]

Transitional Submissions. Revised Rule G–32(e) establishes transitional provisions for submitting official statements during the five business days preceding the effective date of revised Rule G–32 and the primary market disclosure service. In general, any submission to the MSRB of an official statement, advance refunding document or amendment thereto under current Rule G–36 becoming due during the five business days prior to the effective date may be held by the underwriter for submission to EMMA on the first two business days on which the primary market disclosure service is effective. The MSRB would reserve the right to require an underwriter that has sent a document in paper form to the MSRB during the five business days prior to the effective date that is received by the MSRB after the effective date to resubmit such document in a designated electronic format through EMMA and the MSRB would require such resubmission through EMMA for any documents sent in paper form to the MSRB on or after the effective date.

Designated Electronic Format of Submitted Documents

Revised Rule G–32(b)(vi)(A) would prescribe the format in which documents would be required to be submitted to EMMA as a designated electronic format. Revised Rule G–32(d)(iii) would establish PDF files as the initial sole designated electronic format, with files configured to permit documents to be saved, viewed, printed and retransmitted by electronic means. If the submitted file is a reproduction of the original document, the submitted file must maintain the graphical and textual integrity of the original document. In addition, starting on January 1, 2010, such PDF files must be word-searchable (that is, allowing the user to search for specific terms used within the document through a search or find function available in most standard software packages), provided that diagrams, images and other non-textual elements would not be required to be word-searchable due to current technical hurdles to uniformly producing such elements in word-searchable form without incurring undue costs. Although, the MSRB would strongly encourage submitters to immediately begin making submissions as word-searchable PDF files (preferably as native PDF or PDF normal files, which generally produce smaller and more easily downloadable files as compared to scanned PDF files), implementation of this requirement would be deferred as noted above to provide issuers, obligated persons and their agents with sufficient time to adapt their processes and systems to provide for the routine creation or conversion of continuing disclosure documents as word-searchable PDF files.

The MSRB may in the future designate additional computerized formats as acceptable electronic formats for submission or preparation of documents under Revised Rule G–32 by means of a filing with the Commission. As noted in the discussion below of comments received in connection with this proposal, the MSRB supports the Commission's Interactive Data and XBRL Initiatives for registered offerings and would consider designating XBRL as a designated electronic format for purposes of submissions to the EMMA primary market disclosure service at such time in the future as appropriate taxonomies for the municipal marketplace have been developed and as issuers begin the process of producing primary market disclosure documents using XBRL.

Submission of Documents as Multiple Files

Underwriters would be permitted to submit official statements and other required documents in the form of one or more electronic files. EMMA permits such submissions as multiple files as an accommodation for those situations where technical or other difficulties preclude or substantially impair the production and submission of the official statement or other document as a single electronic file. Barring such circumstances, underwriters, issuers and investors would be best served if all submissions of documents are made as a single electronic file rather than multiple files. In particular, underwriters should consider the risk of potentially disseminating to the public incomplete disclosure should they, inadvertently or otherwise, fail to submit on a simultaneous or immediately sequential basis all of the required files of a multi-file official statement submission.[25]

Form G–32

General. New Form G–32, which would replace current Form G–36(OS) and Form G–36(ARD), would include all information required to be submitted by underwriters under revised Rule G–

[22] Revised Rule G–32 provides for the same treatment of commercial paper official statements as under current Rule G–36 but extends that treatment to remarketings exempt from Exchange Act Rule 15c2–12, to the extent that no new official statement is produced in connection with such remarketing.

[23] The term ''new issue disclosure period'' under current Rule G–32 is renamed as ''primary offering disclosure period'' under revised Rule G–32(d)(ix) to emphasize that the rule applies to municipal securities remarketed in a primary offering, not just to new issues of municipal securities.

[24] *See* revised Rule G–32(b)(vi)(C).

[25] Underwriters should note that they are required to submit to EMMA, along with a document, the date such document is received from the issuer. In the case of the official statement, the MSRB would not consider the underwriter to have received the official statement until it has received the complete document. Thus, if the issuer were to provide the official statement to the underwriter in the form of multiple files, the underwriter should not consider the official statement to have been received from the issuer until the final file of such document necessary to complete the official statement has been received. In that case, the underwriter would report the date on which such final file was received as the date on which the official statement (including each file thereof, regardless of any earlier receipt of some such files) was received for purposes of the required information submission.

32(b)(i)(A) and (b)(vi).[26] Form G–32 would consist of a collection of data elements provided to EMMA in connection with a primary offering of municipal securities. When making primary market submissions using the Web-based interface, related indexing information would be entered into an on-line form or uploaded through an extensible markup language (XML) file, and documents would be uploaded in a designated electronic format. Computer-to-computer submissions would utilize XML files for data and PDF files for documents. The proposal would permit Form G–32 to be completed in a single session or in multiple sessions, with the initiation of the Form G–32 submission process generally occurring earlier than the current Form G–36 submission process.[27] Appropriate procedures and schemas for on-line and computer-to-computer submissions would be published on the EMMA portal and MSRB Web site and would be described in detail in the EMMA Dataport Manual.

As proposed, underwriters would be required to make a submission through Form G–32 in connection with each official statement (or preliminary official statement, where no official statement exists), as well as in connection with each offering for which no official statement or preliminary official statement is to be made available through EMMA.[28] Information relating to advance refunding documents executed in connection with a primary offering also would be submitted under the proposal through the Form G–32 submission process. Submissions during the primary offering disclosure period of amendments to previously submitted documents would be made through the same Form G–32 submission initiated in connection with the original documents.

Designated Agents. Underwriters would be permitted under revised Rule G–32(b)(vi)(C) to designate agents to make submissions on their behalf through the MSRB's user account management and authentication system known as MSRB Gateway.[29] All submissions made on behalf of an underwriter by a designated agent would be the responsibility of the designating underwriter, and any failure by the designated agent to provide documents or information in a complete, timely and conforming manner would be deemed to be a failure by the designating underwriter.

The MSRB notes that Rule G–34(a)(ii)(C)(1) requires underwriters for most new issues of municipal securities to provide certain information regarding the new issue to an automated electronic new issue information dissemination system (''NIIDS'') within two hours of the time of formal award of the issue. The MSRB may consider in the future permitting an underwriter to designate to the MSRB that information it has submitted to NIIDS under revised Rule G–34 should also be used for purposes of completing new Form G–32, although it would not be anticipated that NIIDS would provide documents to EMMA and such submissions would be the responsibility of the underwriter or another designated agent. The MSRB would publish a notice advising if such functionality becomes available.

Standard of Care With Respect to Information Submitted by Underwriters. Much of the information to be provided by underwriters and their agents on new Form G–32 normally would be made available to the public through the EMMA portal on a real-time basis under the rule change proposal. The underwriter must exercise due care with respect to the accuracy of the items of information provided on Form G–32, although it is understood that much of this information would be subject to change until an issue has reached closing. Until closing, the underwriter would be expected to update promptly any information previously provided by it on Form G–32 which may have changed or to correct promptly any inaccuracies in such information, and would be responsible for ensuring that such information provided by it is accurate as of the closing date. Except with regard to the submission of advance refunding documents or amendments to the official statement as described below, the underwriter would not be obligated to update information provided by it on Form G–32 due to changes in such information occurring after the closing date, although the underwriter would remain responsible for correcting any information it provided that was erroneous as of the later of the time the information was submitted or the closing date. Information would be deemed to be provided by the underwriter if it has been supplied by the underwriter or a designated agent of the underwriter directly to EMMA or it has been pre-populated by the EMMA Web-based interface to the extent that such information is editable on the EMMA Web-based interface by the underwriter or its designated agent.[30]

As noted above, the MSRB expects that the requirement that all information to be supplied through Form G–32 be accurately and completely submitted by the applicable deadlines, and particularly by the closing date, will be strictly enforced to promote the purposes of the revised Rule G–32 and the protection of investors.

Use of Form G–32 in Connection With Offerings and Issues. For purposes of submitting Form G–32 under the proposal, an offering would consist of all securities described in the official statement, and the offering could consist of one or more issues.[31] An issue

[26] New Form G–32 is included in Exhibit 3 to the proposed rule change.

[27] Under current Rule G–36, Form G–36 is submitted simultaneously with the official statement. The rule change proposal would no longer require that the submission of information and the dissemination of such information on EMMA be delayed until the related official statement has become available.

[28] Where no official statement or preliminary official statement is being submitted to EMMA, the underwriter would be required to provide notice thereof to EMMA. Such information would be designed in part to provide through the EMMA portal notice to customers and others that no official statement or preliminary official statement will be available. The proposal would provide for limited exceptions for commercial paper roll-overs and remarketings exempt from Rule 15c2–12 where no new disclosure document is prepared.

[29] Current Rule G–36 does not permit submissions to the MSRB by agents on behalf of underwriters.

[30] The underwriter would be obligated to review and make any necessary corrections to such editable data. The underwriter would not be responsible for any items of information pre-populated by EMMA which are not editable by the underwriter or its designated agent. With respect to the CUSIP numbers assigned by the CUSIP Service Bureau and other information that is presented during the submission process on EMMA as non-editable information, the underwriter would not be obligated to make corrections to such information. However, the underwriter would be obligated to ensure that each security in a primary offering is correctly associated with the submission the underwriter is making. Thus, pursuant to instructions to be included in the EMMA Dataport Manual, the underwriter would be required to review the collection of security-specific information pre-populated by EMMA during the submission process to ensure that all such securities have properly been associated with the submission, and the underwriter would be obligated to add additional information (including but not limited to any relevant CUSIP numbers) not pre-populated by EMMA to the extent necessary to fully associate all applicable securities with the submission and to indicate that information for a security that has been pre-populated by EMMA should be removed because such security is not in fact associated with the submission.

[31] As used in this context, an offering generally would correspond to the definition of a primary offering under revised Rule G–32 and Exchange Act Rule 15c2–12. Multiple issues (including but not limited to separately designated series of an offering) on a single official statement would be treated as part of the same offering for purposes of Form G–32 submissions even if issued by different issuers and/or underwritten by different underwriters. However, to the extent that a primary offering is offered through more than one official statement (*e.g.*, separate official statements for separate issues within a single primary offering), offering-level information to be provided through a Form G–32 submission would relate solely to the portion of the primary offering described in the official statement that is the subject of the specific submission, and the remainder of the information related to such primary offering would be provided

generally would consist of all securities in an offering having the same issuer, the same issue description (including same series designation or named obligor, if applicable) and the same dated date. In cases where no official statement is produced, each issue not described in an official statement would be considered a separate offering for purposes of Form G–32.

Basic Submission Process for Form G–32. The basic information to be provided through Form G–32 and the timing of the submission of such information for a typical submission to EMMA under revised Rule G–32 would be as set forth below. An underwriter would be responsible for providing all information described below to the extent so required for all maturities of any issue underwritten in whole or in part by such underwriter.[32] In the case in which an underwriter does not underwrite any portion of one or more issues in an offering, the underwriter would be responsible for providing only the nine-digit CUSIP number for the latest maturity of any such non-underwritten issue.[33]

Information on date of first execution of transaction. The underwriter would be required under revised Rule G–32(b)(i)(A) and (b)(vi)(C)(1)(a) to initiate the Form G–32 submission process by no later than the date of first execution of transactions in securities sold in the offering, at which time the underwriter would provide the following items of information with respect to each issue it underwrites:

- Issue-specific information consisting of the full issuer name and issue description, as such items are expected to appear in the official statement,[34] and the expected closing date of the issue;[35] and
- Security-specific information consisting of the nine-digit CUSIP number, the principal amount at maturity of each security, and the initial offering price or yield for each security in the issue (including initial offering price or yield of any securities otherwise considered not-reoffered).[36]

Document and information at time of submission of official statement. The official statement would be required under revised Rule G–32(b)(i)(B)(1) to be submitted to EMMA, along with related Form G–32 information, within one business day after receipt from the issuer or its designated agent, but by no later than the closing date. The underwriter would be required to submit, along with or prior to the submission of the official statement, the following items with respect to each issue:

- Official statement document as a PDF file, as well as information on the date the official statement was received from the issuer and confirmation of the full issuer name and issue description, as such items actually appear in the official statement;[37] and
- Underwriting spread or agency fee paid by the issuer to the underwriter for a negotiated offering, if not disclosed within the official statement.[38]

In the typical offering, the submission of the document to EMMA within one business day of receipt from the issuer would be preceded by the required initial submission of information on or prior to the date of first execution of a transaction in the securities. However, in those cases where the official statement submission deadline precedes the date of first execution (for example, if the underwriter has received the official statement in advance of the date of first execution), the underwriter would be required to submit, along with or prior to the submission of the official statement and the items of information identified above, the following additional items with respect to each issue (which otherwise would be required to be submitted by no later than the date of first execution):[39]

- Issue-specific information consisting of the full issuer name and issue description, as such items appear in the official statement, and the expected closing date of the issue;[40] and
- Security-specific information consisting of the nine-digit CUSIP number for each security in the issue, if then available.[41]

Summary of Basic Information Requirements. The items of information to be submitted and the timing of such submissions through Form G–32 under revised Rule G–32 for submissions not

through a separate Form G–32 submission for the other official statement.

[32] For example, if an underwriter only underwrites two maturities of an issue consisting of ten maturities, the underwriter would be responsible for reporting information regarding all ten maturities in the issue. *See also* footnote 31 *supra*.

[33] For example, if an offering consists of three issues, only two of which were underwritten in any part by a particular underwriter, such underwriter would be responsible for providing the full information required under Form G–32 for the two issues it underwrites but would only be responsible for providing the nine-digit CUSIP number for the latest maturity of the issue it does not underwrite. *See also* footnotes 31 and 32 *supra*.

[34] For an issue that is ineligible for CUSIP number assignment, the state of the issuer and dated date also would be provided. For an issue of municipal fund securities, the state of the issuer also would be provided. For an issue of commercial paper, the six-digit CUSIP number assigned to the issue also would be provided in connection with the initiation of the commercial paper program (but not in connection with subsequent roll-overs, unless such information has changed). For a remarketed issue, the original dated date of the issue when originally issued also would be provided if a new dated date has been assigned to the remarketed issue.

[35] If the closing date has not yet been firmly established on the date of first execution, the underwriter would provide a reasonable estimate of such closing date at that time and would be obligated to update such estimated closing date when such date is determined. Thus, if the actual closing date differs from the expected closing date supplied on the date of first execution, the underwriter would be responsible to provide the correct closing date by no later than the actual closing date. For an issue of municipal fund securities, the expected closing date would be the date on which the first deliveries of securities in the issue are expected to be made.

[36] The initial offering price could be expressed either in terms of dollar price or yield. For an issue that is ineligible for CUSIP number assignment, the nine-digit CUSIP number would be omitted but the maturity date and interest rate would be provided. For issues of municipal fund securities and commercial paper, no security-specific information would be required. If the underwriter did not underwrite any portion of an issue in the offering, the underwriter would only be required to provide the nine-digit CUSIP number for the latest maturity of such non-underwritten issue.

[37] For an issue of commercial paper, the official statement would be submitted in connection with the initiation of the commercial paper program but, pursuant to revised Rule G–32(b)(i)(F), would not be required in connection with subsequent roll-overs, unless the official statement has been modified. For a remarketed issue, the underwriter/remarketing agent would be required to indicate whether the submitted document is the complete disclosure document or supplements the original official statement produced in connection with the initial offering of the remarketed issue. Pursuant to revised Rule G–32(b)(i)(F), no official statement is required in connection with a remarketing if no such document or supplement was created. The underwriter would also be required to make any corrections to the full issuer name and issue description provided at the time of first execution to the extent necessary to reflect the information as it actually appears on the official statement.

[38] Thus, if such information is provided in the official statement as is currently the custom, the underwriter would not be required to enter it into Form G–32.

[39] Other items normally required to be submitted by no later than the time of first execution would continue to be required by such deadline.

[40] For an issue of commercial paper, the six-digit CUSIP number assigned to the issue also would be provided unless such CUSIP number has not yet been assigned, in which case such number would be required to be submitted promptly after assignment but by no later than the time of first execution.

[41] If CUSIP numbers have not yet been assigned, then such numbers would be required to be submitted promptly after assignment but by no later than the date of first execution, unless the issue is ineligible for CUSIP number assignment or the issue consists of municipal fund securities or commercial paper.

requiring additional information (as described below) is summarized in the following table:

Item	Timing
Full issuer name/issue description	Earlier of (i) date of first execution and (ii) date of official statement submission.
9-digit CUSIP number	Earlier of (i) date of first execution and (ii) later of (a) official statement submission or (b) assignment of CUSIP number.
Principal amount	Date of first execution.
Initial offering price/yield	Date of first execution.
Expected closing date	Date of first execution.
Official statement document	Date of official statement submission.
Date official statement received	Date of official statement submission.
Underwriting spread/agency fee	Date of official statement submission.

Additional Items in Connection With Special Cases. No additional information would be required beyond the information described above unless (i) the official statement is not available for submission by closing, (ii) the offering consists solely of one or more limited offerings for which the official statement will not be made available by the underwriter through EMMA, (iii) any issue in the offering advance refunds outstanding securities, (iv) the underwriter underwrote only a portion of an issue, (v) the offering qualifies for an exemption from the MSRB's underwriting assessment under Rule A–13(a) or a reduced underwriting assessment rate under Rule A–13(b), (vi) the official statement is amended, or (vii) corrections are necessary to information previously provided. Additional information that the underwriter would be required to submit through Form G–32 and the timing of the submission of such information for these special cases are as set forth below:

Information and/or document by closing for special cases. Additional information, as applicable, would be required to be submitted by no later than closing as follows:

- If an official statement will be produced but is not yet available, the preliminary official statement document as a PDF file, if available, or a notice that no preliminary official statement has been prepared, as required under revised Rule G–32(b)(i)(B)(2)(c) and (b)(i)(D)(1), and notice that the official statement document will be submitted when it becomes available, as required under revised Rule G–32(b)(i)(B)(2)(a);
- If an official statement will not be produced, the preliminary official statement document as a PDF file, if available, or a notice that no preliminary official statement has been prepared, as required under revised Rule G–32(b)(i)(C)(2) and (b)(i)(D)(1), notice that no official statement has been prepared, as required under revised Rule G–32(b)(i)(C)(1), and an indication of which exception under Rule 15c2–12 applies with regard to the official statement;
- If an underwriter elects to withhold an official statement from EMMA for a limited offering under Exchange Act Rule 15c2–12(d)(1)(i), notice that the offering is a limited offering and that the official statement will not be made available through EMMA, as required under revised Rule G–32(b)(i)(E)(2)(a), and contact information for requests for copies of the official statement, as required under revised Rule G–32(b)(i)(E)(2)(b);
- If an issue advance refunds outstanding securities, notice to that effect; or
- If an underwriter believes that it is entitled to an exemption from the underwriting assessment or a reduced assessment rate, information as to the basis for such modified assessment.[42]

Document and information at time of submission of advance refunding document. If an issue advance refunds outstanding securities, the advance refunding document would be required under revised Rule G–32(b)(ii) to be submitted to EMMA, along with related Form G–32 information, by no later than five business days after the closing on the refunding issue. The underwriter would be required to submit, along with or prior to the submission of the advance refunding document, the following items:

- Advance refunding document as a PDF file, as well as information on the date the advance refunding document was received from the issuer;
- Information identifying the refunding issues relating to the advance refunding document; and
- Security-specific information for the refunded securities, consisting of the original nine-digit CUSIP number for each security refunded and, if any new CUSIP numbers are assigned in connection with any refunded or unrefunded portions of the security, the maturity date of such security and any such newly issued CUSIP numbers.[43]

Document and information at time of submission of amendment to official statement or preliminary official statement. Amendments to the official statement or preliminary official statement occurring during the primary offering disclosure period would be required under revised Rule G–32(b)(iii) to be submitted by the underwriter to EMMA within one business day of receipt from the issuer.[44] The underwriter would be required to submit, along with or prior to the submission of the amendment to the official statement, the following items:

- The amendment document as a PDF file, as well as information on the date the amendment was received from the issuer;[45] and
- Information on whether the submitted document supplements the original official statement or preliminary official statement and should be displayed by EMMA along

[42] Such information would include an indication (i) that the underwriter underwrote less than the full principal amount of an issue and the amount underwritten by the underwriter, (ii) as to which category of underwriting assessment exemption under Rule A–13(a) would apply to the entire offering, or (iii) as to which category of reduced underwriting assessment under Rule A–13(b) would apply to the entire offering.

[43] New CUSIP numbers are required to be obtained with respect to securities advance refunded in part pursuant to Rule G–34(a)(i)(D). For a refunded security that does not have a nine-digit CUSIP number, the issuer name, state of issuer, issue description and maturity date would be required to be provided.

[44] Revisions made to the preliminary official statement in order to convert such document into the final official statement would not be considered an amendment to the preliminary official statement requiring submission to EMMA. Instead, the underwriter would submit the final official statement itself as required under Rule G–32.

[45] A single submission of the PDF file of the amendment would meet the document submission requirement with respect to the original official statement.

with the original, or the submitted document is the complete disclosure document and should replace the original official statement or preliminary official statement as the document to be displayed by EMMA.[46]

Disclosures to Customers

Subsection (a)(i) of revised Rule G–32 would retain the basic official statement dissemination requirements for dealers selling offered municipal securities[47] to customers as set forth in current Rule G–32. However, under subsection (a)(ii), dealers selling offered municipal securities, other than municipal fund securities, would be deemed to have satisfied this basic requirement for delivering official statements to customers by trade settlement since such official statements would be publicly available for free through the EMMA portal. In the case of a dealer that is the underwriter for the primary offering, such satisfaction would be conditioned on the underwriter having submitted the official statement to EMMA. Dealers selling municipal fund securities would remain subject to the existing official statement delivery requirement.

Under subsection (a)(iii) of revised Rule G–32, a dealer selling offered municipal securities with respect to which the official statement delivery obligation is deemed satisfied as described above would be required to provide or send to the customer, by no later than trade settlement, either a copy of the official statement or a written notice[48] advising how to obtain the official statement from the EMMA portal and that a copy of the official statement would be provided upon request.[49] Dealers may include in such notice additional information about obtaining the official statement from a qualified portal.[50] Dealers may, but are not required to, provide such notice on or with the trade confirmation. Under Rule G–15(a)(i), confirmations are required to be given or sent to customers at or prior to trade settlement. If the customer requests a copy of the official statement, the dealer would be required to send it within one business day of the request by first class mail or by such other equally prompt means. Dealers would be required to honor any customer's explicit standing request for copies of official statements for all of his or her transactions with the dealer.

The MSRB would view the obligation to provide the first portion of the customer notice regarding the availability of the official statement as having been presumptively fulfilled if the notice provides the uniform resource locator (URL) for the specific EMMA portal page from which the official statement may be viewed and downloaded[51] or the 9-digit CUSIP number for the security and the URL for the EMMA portal search page through which a search based on such CUSIP number may be undertaken.

Revised Rule G–32(a)(iv) would not substantially change the delivery obligation with respect to sales of municipal fund securities from those that exist under current Rule G–32(a).[52] The selling dealer would be required to deliver the official statement (*e.g.*, program disclosure document, information statement, etc.) to the customer by trade settlement, provided that the dealer could satisfy this delivery obligation for its repeat customers (*i.e.*, customers participating in periodic municipal fund security plans or non-periodic municipal fund security programs) by promptly sending any updated disclosure material to the customer as it becomes available, as set forth in paragraph (a)(iv)(A).[53] In addition, the dealer would continue to be required under revised paragraph (a)(iv)(B) to disclose any distribution-related fee received as agent for the issuer.[54]

Recordkeeping

Subsections (a)(xiii) and (a)(xv) of Rule G–8 currently require that records be maintained in connection with deliveries of official statements to customers and submissions of official statements, advance refunding documents and Forms G–36(OS) and (ARD) to the MSRB. The rule change proposal would modify certain of these requirements to reflect the changes to Rule G–32 and consolidate the requirements of revised Rule G–32 into subsection (a)(xiii). Subsection (b)(x) of

[46] In general, an official statement submitted for an issue in which a preliminary official statement was previously submitted to EMMA would replace the preliminary official statement as the ''active'' disclosure document on EMMA, although the preliminary official statement would continue to be accessible through the archive for the particular issue. Issues of municipal fund securities remain continuously in the primary offering disclosure period for so long as securities continue to be sold in connection with such issue and therefore numerous amendments may occur over the course of many years. Such amendments may initially supplement the original official statement until such time as the issuer produces an entirely new official statement, which new official statement would be treated as an amendment that replaces the original document and all preceding supplements. Thereafter, this new official statement may itself be supplemented by one or more amendments and, after a period of time, the new official statement and supplements may again be replaced by a new official statement. This sequence generally would continue for so long as the issuer continues selling securities in such issue.

[47] The term ''new issue municipal securities'' under current Rule G–32 is renamed as ''offered municipal securities'' under revised Rule G–32(d)(vi) to emphasize that the rule applies to municipal securities remarketed in a primary offering, not just to new issues of municipal securities.

[48] Dealers wishing to provide such notice in electronic form should consider guidance previously published by the MSRB concerning the use of electronic communications where standards for notice, access and evidence to show delivery are met. *See* Rule G–32 Interpretation—Notice Regarding Electronic Delivery and Receipt of Information by Brokers, Dealers and Municipal Securities Dealers, November 20, 1998, *reprinted in* MSRB Rule Book (the ''1998 Electronic Delivery Notice'').

[49] Current Rule G–32 requires that the official statement be delivered to customers by settlement, whereas revised Rule G–32 would require the official statement or notice of availability of the official statement to be provided or sent by settlement. The official statement itself would continue to be available by settlement through EMMA but the timing of the notice is designed to permit such information to be included on or with the transaction confirmation.

[50] Revised Rule G–32(d)(x) would define qualified portal to mean an Internet-based utility providing access by any purchaser or potential purchaser of offered municipal securities to the official statement for such offered municipal securities in a designated electronic format, and allowing such purchaser or potential purchaser to search for (using the nine-digit CUSIP number and other appropriate search parameters), view, print and save the official statement, at no charge, for a period beginning on the first business day after such official statement becomes available from EMMA and ending no earlier than 30 calendar days after the end of the primary offering disclosure period for such offered municipal securities; provided that any such utility shall not be a qualified portal unless notice to users that official statements are also available from EMMA is posted and a hyperlink to EMMA are posted on the page on which searches on such utility for official statements may be conducted.

[51] Currently, the page for such viewing and downloading on EMMA for a particular security to which a 9-digit CUSIP number has been assigned will have an URL of the format ''*http://emma.msrb.org/SecurityView/SecurityDetails.aspx?cusip*= [ENTER 9-DIGIT CUSIP NUMBER]''. The MSRB will provide advance notice if the format of such URL is changed in the future.

[52] Although the ''access equals delivery'' model would not be available for municipal fund securities, underwriters (*i.e.*, primary distributors) of such securities would be required to submit the official statements to EMMA electronically. Dealers wishing to fulfill their official statement delivery requirements using electronic official statements should consider guidance previously published by the MSRB concerning the use of electronic communications where standards for notice, access and evidence to show delivery are met. *See* the 1998 Electronic Delivery Notice, *supra* footnote 48.

[53] This provision is substantially identical to the provisions of current Rule G–32(a)(i)(A).

[54] This is the same disclosure that currently is required in connection with sales of municipal fund securities under current Rule G–32(a)(ii)(B). With respect to municipal securities other than municipal fund securities sold on a negotiated basis, the underwriting spread, agency fee and initial offering prices required to be disclosed by dealers selling new issue municipal securities under current Rule G–32(a)(ii) would be disclosed on EMMA under revised Rule G–32 by means of the underwriter submitting such information through Form G–32.

Rule G–9 relating to preservation of such records would also be modified to conform to the changes to Rule G–8. In general, underwriters would be required to retain electronic copies of documents and XML data files they submit to EMMA, and EMMA would provide underwriters with the ability to save for their records copies of data entered into EMMA's Web-based electronic submission interface.[55]

2. Statutory Basis

The MSRB has adopted the proposed rule change pursuant to Section 15B(b)(2)(C) of the Act,[56] which provides 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 foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in municipal securities, to remove impediments to and perfect the mechanism of a free and open market in municipal securities, and, in general, to protect investors and the public interest.

The MSRB believes that the proposed rule change is consistent with the Act. The EMMA primary market disclosure service and EMMA trade price transparency service would serve as additional mechanisms by which the MSRB works toward removing impediments to and helping to perfect the mechanisms of a free and open market in municipal securities. The services would help make information useful for making investment decisions more easily available to all participants in the municipal securities market on an equal basis throughout the life of the securities without charge through a centralized, searchable Internet-based repository, thereby removing potential barriers to obtaining such information. Broad access to primary market disclosure documents and price transparency information through the EMMA portal should assist in preventing fraudulent and manipulative acts and practices by improving the opportunity for public investors to access material information about issuers, their securities and the prices at which such securities trade.

Furthermore, a single centralized and searchable venue for free public access to disclosure and transaction price information should promote a more fair and efficient municipal securities market in which transactions are effected on the basis of material information available to all parties to such transactions, which should allow for fairer pricing of transactions based on a more complete understanding of the terms of the securities, the potential investment risks, and trade pricing activity in the marketplace. The electronic dissemination of primary market disclosure documents should allow issuers to reduce their issuance costs by eliminating the need to print and to distribute in paper official statements in connection with their primary offerings, thereby resulting in lower costs to issuers and savings to their citizens. Lower printing and dissemination costs also may result in lower expenses for underwriters and potentially lower prices for investors. Free access to such documents—previously available in most cases only through paid subscription services or on a per-document fee basis—should reduce transaction costs for dealers and investors.

All of these factors serve to promote the statutory mandate of the MSRB to protect investors and the public interest.

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

The MSRB 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. The proposed rule change would apply equally to all dealers selling offered municipal securities to customers, as well as to all underwriters underwriting primary offerings of municipal securities. Documents and information provided through the EMMA portal would be available to all persons simultaneously. In addition to making the documents and information available for free on the EMMA portal to all members of the public, the MSRB would make primary market disclosure documents and information available by subscription on an equal and non-discriminatory basis without imposing restrictions on subscribers from, or imposing additional charges on subscribers for, re-disseminating such documents or otherwise offering value-added services and products based on such documents on terms determined by each subscriber.

The MSRB has considered carefully a commentator's concern regarding the MSRB's plans to develop EMMA,[57] as well as expressions of interest from private enterprises in entering this market.[58] One commentator on the Pilot Filing[59] stated that the MSRB's intention to combine primary market and other disclosures with trade price data ''breaks new ground among regulatory bodies in terms of value-added content available to the public at no charge,'' arguing that the MSRB would ''effectively take over the business of providing value-added content.''[60] This commentator had previously stated that providing official statements for free to the public would impose a cost to the dealer community to subsidize the system's development and operation, which it argued would ''appear[] to be more biased and unfair than recovering the costs from the users of the system based on usage,'' and noted that providing official statements for free through public access portals would ''impair the economic interests of information vendors that currently make OSs available on a commercial basis.''[61]

Another commentator on the Pilot Filing argued in favor of the creation of a ''publicly accessible storage and dissemination system'' for all filings in

[55] Underwriters would continue to maintain historical records under Rule G–36 pursuant to Rule G–8(a)(xv), as revised to reflect the rescission of Rule G–36, for so long as required under Rule G–9(b)(xi).

[56] 15 U.S.C. 78o–4(b)(2)(C).

[57] *See* comments from Peter J. Schmitt, CEO, DPC DATA Inc. (''DPC''), dated January 23, 2008. DPC's comments are discussed in greater detail in section 5 of this filing under the heading ''Discussion of Comments—Structure of the Centralized Electronic System.''

[58] *See* letter from Philip C. Moyer, CEO, EDGAR Online, Inc. (''EDGAR Online''), to Ernesto A. Lanza, Senior Associate General Counsel, MSRB, dated December 17, 2007. EDGAR Online's comments are discussed in greater detail in section 5 of this filing under the heading ''Discussion of Comments—Structure of the Centralized Electronic System.'' In addition, the MSRB has received several inquiries through the pilot EMMA portal's feedback (*http://www.emma.msrb.org/AboutEMMA/Feedback.aspx*) and contact (*http://www.emma.msrb.org/AboutEMMA/ContactUs.aspx*) Web forms from members of the public seeking information on using EMMA documents and data, through the EMMA portal or subscription services, for the purposes of redissemination to their customers.

[59] *See* footnote 2 *supra*.

[60] *See* comments of DPC on the Pilot Filing. DPC further stated, ''There is precedent of other Self-Regulatory Organizations (SROs) offering such sophisticated value-added information to the market, but only on a fee basis.'' DPC also stated that ''the MSRB's sample pilot portal at *http://www.msrb.org/msrb1/accessportal/SampleComprehensiveDisclosureDisplay.htm* provides a glimpse of specific value-added features the MSRB intends to offer the public free of charge. Among these are nine-digit CUSIP searches, hyperlinks to bond issuers Web sites, an 'alerts' service to users of the portal, sophisticated document viewing options, links to other related documents in the portals disclosure archive, and subsequent event notifications that equate to custom research. These features and capabilities are well in excess of the system that the MSRB has pointed to as its model, the SEC's own EDGAR.''

[61] *See* comments of DPC on MSRB Notice 2007–5 (January 25, 2007). DPC further stated that the MSRB's proposal to require dealers to provide notices to customers with a URL at a public access portal where the official statement could be obtained would be ''prejudicial to the economic interests of existing vendors whose delivery services required that the definitive PDF file be archived on their Web sites for public access.''

the municipal securities market, stating that the current municipal securities disclosure model ''severely limits innovation and access'' to disclosures and ''locks up public documents in private hands while the proposed portal run by a public entity will encourage transparency in the municipal securities market and create a healthy ecosystem of information that will ultimately benefit both the investment community and the municipalities that seek access to public markets.'' [62]

The MSRB observes that free access to official statements by the public through the EMMA portal and other qualified portals is a fundamental characteristic necessary for establishment of an ''access equals delivery'' standard for official statement dissemination to customers purchasing offered municipal securities, as proposed under the rule change proposal, and would be similar in many respects to the free access to prospectuses provided through the Commission's Electronic Data Gathering, Analysis, and Retrieval system (EDGAR). Access through EDGAR serves as an important element in the treatment of final prospectus delivery for registered offerings under Commission rules adopted in 2005.[63] The costs of development and operation would be paid from MSRB revenues which are derived from assessments on dealers that are imposed under MSRB Rules A–12 (initial fee), A–13 (underwriting and transaction assessments) and A–14 (annual fee), as well as from subscription fees to be charged for the real-time subscriptions. The fees charged under MSRB rules are fairly apportioned and apply equally to all equally-situated dealers and therefore would have no impact on competition among dealers active in the municipal securities market. The MSRB does not believe that investors in municipal securities should be charged for disclosure information produced by issuers with the intention that it be used for making informed investment decisions and for understanding the terms of the securities they own, although the MSRB acknowledges that direct or indirect costs of providing disclosure may impact on the fees paid by investors in effecting transactions. However, the MSRB believes that potential savings on transaction costs due to reduced costs of printing and distributing paper official statements under the ''access equals delivery'' model, as described in section 3(b) of this filing, together with the other benefits provided by the EMMA primary market disclosure service and EMMA trade price transparency service identified herein, would justify the costs of development and operation of the EMMA primary market disclosure service.

The MSRB believes that the availability of primary market disclosure documents through the EMMA portal and the primary market subscription service, without the imposition of limitations on or additional charges for redistribution of such documents to customers, clients or other end-users of the subscriber,[64] as well as the availability of price transparency information through the EMMA portal,[65] would promote, rather than hinder, further competition, growth and innovation in this area. The MSRB further believes that the operation by the MSRB of the EMMA primary market disclosure service and the EMMA trade price transparency service would not result in the MSRB taking over the business of providing value-added content but instead serve as a basis on which private enterprises could themselves concentrate more of their resources on developing and marketing value-added services. The MSRB believes that much of the impact of the proposed rule change on commercial enterprises would result from the increased competition in the marketplace resulting from the entry of additional commercial enterprises in competition with such existing market participants with respect to value-added services, rather than from the operation of the EMMA primary market disclosure service and EMMA trade price transparency service as sources of raw documents and information to the public. The MSRB believes that the benefits realized by the investing public from the broader and easier availability of disclosure and price transparency information in connection with municipal securities that would be provided through the EMMA primary market disclosure service and EMMA trade price transparency service would justify any potentially negative impact on existing enterprises from the operation of EMMA.

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

The MSRB has published a series of notices seeking comment on the establishment of an ''access equals delivery'' standard for official statement dissemination. These notices, the comments received, and the MSRB's responses are discussed below.

Concept Release

In a concept release published on July 27, 2006, the MSRB sought comment on whether the establishment of an ''access equals delivery'' model in the municipal securities market would be appropriate and on the general parameters relating to such a model (the ''Concept Release'').[66] With regard to public access to official statements under an ''access equals delivery'' standard for municipal securities, the Concept Release stated that electronic official statements would need to be made readily available to the investing public, at no cost, throughout the new issue disclosure period, at a minimum. The MSRB expressed the belief that investors would be best served if such official statements were made available at a centralized Internet Web site but sought comment on a possible alternative using a central directory of official statements with hosting of electronic official statements undertaken by issuers, financial advisors, underwriters, information vendors, printers and others maintaining free ready access to such documents. The MSRB also sought comment on whether it should undertake the central access function, or whether other market participants or vendors could undertake such function subject to appropriate supervision.

The Concept Release had originally proposed that Rule G–32 be revised to permit a dealer selling new issue municipal securities to a customer to provide notice to the customer that the official statement is available electronically as an alternative to physical delivery of the official statement to the customer. The selling dealer would be required to provide a

[62] *See* letter from EDGAR Online. EDGAR Online further stated, ''In spite of a great deal of work by the Municipal Issuers on their disclosures—a small group of companies control access for the entire market to the documents that are supposed to be public.* * * The rigid control of public information dissuades other information providers from trying to enter or innovate for this market. This means that there are few people working on improving ease of use, depth of analysis, thoroughness of information or more effective means of delivery.* * * The process of managing these documents consumes most of the resources of these few information providers and the time of investors. As a result, the information contained in these documents—risks and opportunities—are usually lost because there are few sources of good comparability and data.''

[63] *See* Securities Act Release No. 8591 (July 19, 2005), 70 FR 44722 (August 3, 2005).

[64] The MSRB notes that subscribers may be subject to proprietary rights of third parties in information provided by such third parties that is made available through the subscription.

[65] Price transparency information is already available by subscription through existing RTRS products.

[66] MSRB Notice 2006–19 (July 27, 2006).

printed version of the official statement upon request. The requirements in current Rule G–32 with respect to inter-dealer distribution of official statements would be deleted as the official statements would be readily available electronically. Finally, dealer financial advisors that prepare official statements on behalf of issuers would be required to provide electronic versions to the underwriters.

The Concept Release also proposed that Rule G–36 be revised to require underwriters of all primary offerings of municipal securities for which official statements are prepared to submit the official statements to the MSRB solely in electronic form. The timeframe for submission of official statements could be simplified to require the underwriter to submit the official statement for any offering (regardless of its status under Exchange Act Rule 15c2–12) by no later than the business day following receipt from the issuer, but in no event later than the bond closing date.

Rule G–36 would continue to require underwriters to submit much of the information currently included on Form G–36(OS) but would no longer require that such information be provided simultaneously with the official statement or in a single submission. Such information submission would be accepted solely in electronic form, either through a Web-based interface or by upload or data stream using XML or other appropriate format. In addition, underwriters would be permitted to designate submission agents for the official statement and required information submissions, although the underwriters would remain responsible for accurate and timely submissions. The underwriter would be required to make an initial submission of information, consisting of CUSIP numbers and list offering prices of all maturities in the issue, on or prior to the first execution of a transaction in such issue.[67] The underwriter would thereafter submit further required information and the electronic official statement as they become available. Information submissions under Rule G–36 would be required for all new issues, even if no official statement is being produced. If an official statement is not being produced, the underwriter would be required to report that fact.

The Concept Release sought comment on whether the ''access equals delivery'' model should be available on all new issues or whether certain classes of new issues should continue to be subject to a physical delivery requirement, such as issues of municipal fund securities or issues exempt from Exchange Act Rule 15c2–12. The Concept Release also asked whether notice to the customer should be provided by trade settlement, matching the current timing of official statement delivery under Rule G–32, or two business days after trade settlement, as is required under Securities Act Rule 173 with respect to registered offerings.

January 2007 Notice

In a subsequent notice published on January 25, 2007, the MSRB sought comment on draft amendments to Rules G–32 and G–36 to implement the ''access equals delivery'' standard (the ''January 2007 Notice'').[68] The January 2007 Notice sought comment on extensive proposed revisions to the official statement submission and dissemination requirements under MSRB rules. Current Rules G–32 and G–36 would be consolidated into a single substantially revised Rule G–32 and Rule G–36 would be rescinded.

Revised Rule G–32 would retain the official statement dissemination requirements for dealers selling new issue municipal securities to customers but dealers selling new issue municipal securities would be deemed to have satisfied this requirement.[69] A dealer selling new issue municipal securities would be required to provide to the customer, within two business days following trade settlement, either a copy of the official statement or a written notice stating that the official statement is available from the centralized electronic system, providing a Web address where such official statement may be obtained, and stating that a copy of the official statement would be provided upon request. In addition, if the customer requests a copy of the official statement, the dealer would be required to send it promptly and to honor any customer's explicit standing request for copies of official statements for all of his or her transactions with the dealer. The January 2007 Notice noted that the notice to customers must include the URL assigned to the specific official statement referred to in the notice and sought comment on whether the notice to customers must refer specifically to the centralized electronic system or may identify a different source.

The January 2007 Notice sought comment on whether offerings described under Exchange Act Rule 15c2–12(d)(1)(i) (''limited offerings'') should be excluded from the ''access equals delivery'' model or, in the alternative, whether an exclusion should be provided at the election of the underwriter with a required information submission to the centralized electronic system to provide public notice of such election.

All submissions by underwriters of official statements to the centralized electronic system would be required to be made within one business day after receipt from the issuer but by no later than the closing date.[70] If no official statement is prepared or if an official statement is being prepared but is not yet available from the issuer by the closing date, the underwriter would be required to submit the preliminary official statement, if any, to the centralized electronic system by the closing date. Once an official statement becomes available, the underwriter would be required to submit the official statement within one business day after receipt from the issuer. If no official statement is prepared for an offering, the underwriter also would be required to provide notice of that fact.

Underwriters would continue to be required to submit advance refunding documents by no later than five business days after the closing date. The requirement would apply whenever an advance refunding document has been prepared in connection with a primary offering, not just for those offerings in which an official statement also has been prepared as under current Rule G–36. Amendments to official statements and advance refunding documents would be required to be submitted within one business day of receipt throughout the new issue disclosure period. In addition, underwriters would be required to provide notice of any cancellation of an issue for which a submission has previously been made.

Under revised Rule G–32, all official statements, preliminary official statements and advance refunding documents, as well as any amendments thereto, would be submitted to the centralized electronic system by electronic means in a designated electronic format. Paper submissions would no longer be accepted, with all

[67] The Concept Release noted that underwriters are already required to disseminate CUSIP information within this same timeframe under current Rule G–34 for virtually all new issues. The list offering price information disclosure under revised Rule G–36 would take the place of such disclosure to customers under current Rule G–32.

[68] MSRB Notice 2007–5 (January 25, 2007).

[69] Dealers selling municipal fund securities would remain subject to the existing physical delivery requirements. In the case of a dealer that is the underwriter for the new issue, such satisfaction would be conditioned on the underwriter having submitted the official statement to the centralized electronic system.

[70] The revised rule would not provide an exception from the electronic submission requirement for official statements relating to municipal fund securities.

submissions limited at the outset to PDF files. The centralized electronic system would be designed to accept such electronic submissions either through an upgraded version of the existing MSIL Web-based interface known as the e-OS system or by upload or data stream initially using XML.

Current Form G–36(OS) and Form G–36(ARD), which can be completed either on paper or electronically, would be replaced by a single Form G–32 that would be completed electronically. Underwriters would be required to submit a Form G–32 in connection with each official statement (or preliminary official statement, where no official statement exists), as well as in connection with each offering for which no official statement or preliminary official statement is available. The January 2007 Notice anticipated that the Form G–32 submission process would be initiated by the submission of the CUSIP number information and initial offering prices for each maturity shortly after the bond sale (*e.g.*, by the time of the first execution of a transaction within the meaning of Rule G–34). Other items of information to be submitted through the Form G–32 submission process, including the underwriting spread, if any, and the amount of any fee received by the underwriter as agent for the issuer in the distribution of the securities (to the extent such information is not included in the official statement), as well as many of the items currently required on Form G–36(OS) in connection with the MSRB's underwriting assessment under Rule A–13, would be provided by the underwriter as they become available. Form G–32 would be completed by the closing date, although for certain items that may not become available until after the closing date (*e.g.*, advance refunding documents, amendments to official statements, etc.), submissions could continue to be made as necessary up to the end of the new issue disclosure period. All submissions of advance refunding documents, amendments and notices of issue cancellation would be made by means of a Form G–32 previously initiated in connection with the related official statement or offering.

Underwriters would be permitted to designate one or more submission agents to submit documents and information required under the rule. The rule would not limit who may act as such submission agent on behalf of the underwriter but, as an agent, the underwriter would be bound by the actions of such agent.

Revised Rule G–32 would require any dealer acting as financial advisor that prepares the official statement for the issuer in any offering of municipal securities to make the official statement available to the managing or sole underwriter in a designated electronic format promptly after it has been approved by the issuer for distribution.

Existing definitions in Rules G–32 and G–36 would be consolidated into revised Rule G–32, with the definition of ''new issue municipal securities'' no longer excluding commercial paper and the definition of ''new issue disclosure period'' modified to emphasize that the period ends 25 days after the final delivery by the issuer of any securities of the issue. New definitions for ''designated electronic format'' and ''closing date'' would be added.

Rules G–8 and G–9 also would be modified to reflect recordkeeping changes as they relate to revised Rule G–32.

The January 2007 Notice also described certain basic features of the planned centralized electronic system, noting that, in addition to the public access portal that the MSRB anticipated operating, other portals using the document collection from the MSRB obtained through real-time subscriptions could be established by other entities as parallel sources for official statements and other documents and information. These separate portals could provide these services on such commercial terms as they deem appropriate. The January 2007 Notice stated that the MSRB's goal in promoting the establishment of parallel public access portals would be to provide all market participants with a realistic opportunity to access official statements and other documents and information throughout the life of the securities in a non-cost prohibitive manner while encouraging market-based approaches to meeting the needs of investors and other market participants.

November 2007 Notice

On November 15, 2007, the MSRB sought comment on certain revisions to the draft amendments to Rules G–32 and G–36 (the ''November 2007 Notice'').[71] In particular, the MSRB sought further comment on the nature of the notice to be provided to customers regarding the availability of electronic official statements, underwriter submission requirements to EMMA for limited offerings, and the timing of initiation of the submission process to EMMA.

The November 2007 Notice sought comment on a revised provision to Rule G–32 that would require a dealer selling a new issue security to advise the customer as to how to obtain the official statement from the centralized electronic system. The November 2007 Notice stated that the MSRB would view this obligation as having been presumptively fulfilled if the notice provides the URL for the specific official statement or for the search page of an access portal at which the official statement may be found pursuant to a search.

The November 2007 Notice sought comment on a provision that would make submission of official statements for limited offerings optional. For those limited offerings in which the underwriter submits the official statement to the centralized electronic system, the ''access equals delivery'' standard would apply and the official statement would be available through the public access portal. However, the underwriter could elect to withhold submission of the official statement for a limited offering if it provides the following items to the dissemination system for posting on the public access portals: (i) A certification affirming that the issue meets all of the requirements of Exchange Act Rule 15c2–12(d)(1)(i) as a limited offering; (ii) notice that the official statement is not available on-line but that the underwriter would provide a copy to any customer purchasing such limited offering; and (iii) specific contact information for underwriter personnel to whom requests for copies of the official statement should be made.

The November 2007 Notice also sought comment on a revised definition of designated electronic format, which was modified to consist of an electronic format acceptable to the MSRB that is word-searchable and must permit the document to be saved, viewed, printed and retransmitted by electronic means using software generally available for free or on a commercial basis to non-business computer users. Documents in portable document format that are word-searchable and may be saved, viewed, printed and retransmitted by electronic means would be deemed to be in a designated electronic format.

Finally, the November 2007 Notice sought comment on a revised provision that would explicitly require underwriters to initiate the submission process by no later than the Time of First Execution, as defined in proposed amendments to Rule G–34 then pending.

[71] MSRB Notice 2007–33 (November 15, 2007). The November 2007 Notice also announced the filing with the Commission of a proposed rule change to establish the pilot EMMA portal, which became operational on March 31, 2008 after Commission approval. *See* Pilot Filing at footnote 2 *supra*.

September 2008 Notice

On September 24, 2008, the MSRB sought comment on preliminary specifications for computer-to-computer processes for submissions to the EMMA primary market disclosure service and subscriptions under the EMMA primary market disclosure subscription service (the ''September 2008 Notice'').[72] The September 2008 Notice set forth the expected processes, data elements and file formats for computer-to-computer submissions and subscriptions.

Discussion of Comments

The MSRB received comments on the Concept Release from 29 commentators,[73] on the January 2007 Notice from 12 commentators,[74] and on the November 2007 Notice from four commentators.[75] The MSRB received no comments on the September 2008 Notice. In addition, two commentators submitted comment letters on the MSRB's Pilot Filing with the Commission.[76] After reviewing these comments, the MSRB approved the proposed rule change for filing with the Commission. The principal comments are discussed below.

Support for ''Access Equals Delivery'' and Centralized Internet Access to Official Statements. Commentators were nearly unanimous in their support of adoption of an ''access equals delivery'' standard and the establishment of a centralized Internet-based system for dissemination of municipal securities disclosure.[77] Many commentators state that official statements are increasingly available in electronic form and that the potential burden on dealers of having to produce an electronic version from a paper official statement supplied by an issuer from time to time is out-weighed by the benefits.[78] Commentators generally agreed that an ''access equals delivery'' would decrease overall costs[79] and should make disclosure information available more quickly and more broadly.[80] GFOA ''compliment[ed] the MSRB on its work to date on this project and support[ed] its efforts to create a system that works well for all participants in the marketplace.'' NABL ''strongly supports the concept of 'access equals delivery' that is embodied in the proposed draft amendments.'' SIFMA observed that:

> the key to success for implementation of a comparable system (to the SEC's [access equals delivery] system) for MSRB rules is that the proposal must meet the readily available, free of charge standard, that it promotes efficiency in the market and that it meets criteria for ''flow through'' processing of information. The Association believes the Notice promotes these objectives and that the MSRB should continue the process of eventually achieving these goals.

The MSRB believes that there is widespread support throughout the municipal securities industry for the MSRB's plan to implement an ''access equals delivery'' standard for official statement dissemination.

Physical Delivery. AGFS and ADP noted that there are more elderly individual investors who may be less technologically savvy in the municipal securities market than in other markets. Mr. Stone expressed a desire not to be required to request delivery of a printed

[72] MSRB Notice 2008–40 (September 24, 2008).

[73] *See* letters from Edward J. Sullivan, Chair, American Bar Association, Section of State and Local Government, to Mr. Lanza, dated October 9, 2006; Robert W. Doty, President, American Government Financial Services Company (''AGFS''), to Mr. Lanza, dated September 15, 2006; Gerard F. Scavelli, Senior Vice President and General Manager, Automated Data Process, Inc., to Mr. Lanza, dated September 15, 2006; Eric Bederman, Chief Compliance Officer, Bernardi Securities, Inc. (''Bernardi''), to Mr. Lanza, dated August 7, 2006; Leslie M. Norwood, Vice President and Assistant General Counsel, Bond Market Association (''BMA''), to Mr. Lanza, dated September 15, 2006; Blaine Schwartz, President and COO, brokersXpress, LLC (''brokersXpress''), to Mr. Lanza, dated September 15, 2006; Jackie T. Williams, Chair, College Savings Plans Network (''CSPN''), to Mr. Lanza, dated September 22, 2006; Michael A. Dardis, Manager of Trust and Investment Products Compliance, Commerce Bancshares, Inc. (''Commerce''), to Mr. Lanza, dated September 13, 2006; Paula Stuart, Chief Executive Officer, Digital Assurance Certification LLC, to Mr. Lanza, dated September 29, 2006; Mr. Schmitt, DPC, to Mr. Lanza, dated September 13, 2006; Robert Beck, Prinicipal, Municipal Bonds, Edward D. Jones & Co., LP (''Edward Jones''), to Mr. Lanza, dated September 13, 2006; Richard A. DeLong, Senior Vice President, Municipal Trading and Underwriting, First Southwest Company (''First Southwest''), to Mr. Lanza, dated September 15, 2006; Robert J. Stracks, Counsel, Griffin, Kubik, Stephens & Thompson, Inc. (''Griffin Kubik''), to Mr. Lanza, dated September 14, 2006; Elizabeth R. Krentzman, General Counsel, Investment Company Institute (''ICI''), to Mr. Lanza, dated September 14, 2006; Ronald J. Dieckman, Senior Vice President, Director of Public Finance/Municipals, J.J.B. Hilliard, W.L. Lyons, Inc. (''Hilliard Lyons''), to Mr. Lanza, dated August 4, 2006; Jerry L. Chapman, Managing Director, Municipal Product Manager, Morgan Keegan & Company, Inc. (''Morgan Keegan''), to Mr. Lanza, dated August 31, 2006; Gary P. Machak, Chairman, Municipal Advisory Council of Texas (''Texas MAC''), to Mr. Lanza, dated September 14, 2006; Walter J. St. Onge III, President, National Association of Bond Lawyers (''NABL''), to Mr. Lanza, dated September 14, 2006; Eric Friedland, Chairman, National Federation of Municipal Analysts (''NFMA''), to Mr. Lanza, dated September 15, 2006; Thomas Sargant, President, Regional Municipal Operations Association (''RMOA''), to Mr. Lanza, dated September 27, 2006; Elizabeth Varley, Vice-President and Director of Retirement Policy, and Michael D. Udoff, Vice-President, Associate General Counsel and Secretary, Securities Industry Association (''SIA''), to Mr. Lanza, dated September 20, 2006; Gerard Faulkner, Director—CUSIP Operations, Standard & Poor's CUSIP Service Bureau (''S&P CUSIP''), to Mr. Lanza, dated September 15, 2006; Daniel E. Stone to Mr. Lanza, dated September 2, 2006; Ruth D. Brod, Consultant, TRB Associates, to Mr. Lanza, dated September 14, 2006; Terry L. Atkinson, Managing Director, UBS Securities LLC (''UBS''), to Mr. Lanza, dated September 15, 2006; James C. Thompson, Divisional Executive Vice President, UMB Bank, N.A. (''UMB''), to Mr. Lanza, dated September 14, 2006; Eileen M. Smiley, Vice President and Assistant Secretary, USAA Investment Management Company (''USAA''), to Mr. Lanza, dated September 15, 2006; John McCune, President, Wells Fargo Institutional Brokerage & Sales (''Wells Fargo''), to Mr. Lanza, September 14, 2006; and Eric Pehrson, Vice President, Zions Bank Public Finance (''Zions''), to Mr. Lanza, dated September 8, 2006.

[74] *See* letters from J. Cooper Petagna, Jr., President, American Municipal Securities, Inc. (''AMS''), to Mr. Lanza, dated March 12, 2007; Vincent A. Mazzaro, Senior Managing Director and Controller of Municipals, Bear, Stearns & Co., Inc. (''Bear Stearns''), to Mr. Lanza, dated March 19, 2007; Mr. Bederman, Bernardi, to Mr. Lanza, dated March 5, 2007; Ms. Williams, CSPN, to Mr. Lanza, dated September 20, 2007; Mr. Schmitt, DPC, to Mr. Lanza, dated March 9, 2007; Mr. Stracks, Griffin Kubik, to Mr. Lanza, dated March 14, 2007; Kevin Colleran, Vice President, Ipreo Holdings LLC (''Ipreo''), to Mr. Lanza, dated March 9, 2007; Carol L. Lew, President, NABL, to Mr. Lanza, dated March 12, 2007; Ms. Norwood, Securities Industry and Financial Markets Association (''SIFMA''), to Mr. Lanza, dated March 16, 2007; Merry Jane Tissier to Mr. Lanza, dated March 8, 2007; Mr. Thompson, UMB, to Mr. Lanza, dated February 25, 2007; and Chris Charles, President, Wulff, Hansen & Co. (''Wulff''), to Mr. Lanza, dated March 7, 2007.

[75] *See* letters from Frank R. Hoadley, Chairman, Governmental Debt Committee, Government Finance Officers Association (''GFOA''), to Mr. Lanza, dated December 20, 2007; J. Foster Clark, President, NABL, to Mr. Lanza, dated December 17, 2007; S. Lauren Heyne, Chief Compliance Officer, R.W. Smith & Associates, Inc. (''RW Smith''), to Mr. Lanza, dated December 17, 2007; and Ms. Norwood, Managing Director and Associate General Counsel, SIFMA, to Mr. Lanza, dated December 14, 2007.

[76] *See* Pilot Filing at footnote 2 *supra*. The MSRB received a comment letter from EDGAR Online, *see* footnote 57 *supra*, and the Commission received a comment letter from DPC, *see* footnote 56 *supra*.

[77] AGFS, AMS, Bear Stearns, Bernardi, BMA, brokersXpress, CSPN, Commerce, DPC, EDGAR Online, Edward Jones, First Southwest, GFOA, Griffin Kubik, Hilliard Lyons, ICI, Ipreo, Morgan Keegan, Texas MAC, NABL, NFMA, RMOA, RW Smith, SIA, SIFMA, S&P CUSIP, UBS, UMB, USAA, Wells Fargo, Wulff, Zions. Although DPC supported the concept of electronic access to official statements, it expressed concerns regarding several basic concepts, as discussed below. While supporting a central dissemination system for official statements, TRB stated that it was unclear whether the proposal would make any improvement on what it viewed as most important—the availability of current information on all municipal bonds on an ongoing basis.

[78] BMA, Commerce, DPC, ICI, NABL, Wells Fargo. Griffin Kubik and SIA stated that they agreed with the positions set forth in BMA's comment letter. UBS withheld judgment pending more details on implementation. RMOA and S&P CUSIP note that the Depository Trust and Clearing Corporation charges a ''disincentive fee'' for underwriter submissions of paper official statements.

[79] AGFS, Bernardi, Hilliard Lyons, Morgan Keegan, UBS, UMB, USAA, Zions. However, ADP argued that this standard would shift printing costs to investors. Hilliard Lyons stated that, although issuer costs may be reduced in negotiated offerings, it is typical that the underwriter incurs the printing and shipping costs for official statements in competitive offerings.

[80] AGFS, ADP, Bernardi, DPC, Morgan Keegan, NFMA, TRB, UBS, USAA.

official statement every time he makes a purchase. Ms. Tissier stated that the burden should not be on investors to request a paper copy and expressed concern regarding spam and fraudulent materials on the computer and the need for a paper trail for recordkeeping purposes. RMOA also noted that certain segments of the municipal securities investment community may not have at-home access to the Internet and expected that dealers would honor requests for physical deliveries, although it believed that regulations requiring this would be excessive. Hilliard Lyons believed that there should be a requirement to provide a physical copy if requested.

The MSRB has proposed in revised Rule G–32 that physical delivery of the official statement would be required for any customer requesting a copy of the official statement. Thus, if the customer requests a copy of the official statement, the dealer would be required to send it within one business day of request by first class mail or other equally prompt means. Dealers would be required to honor standing requests for paper official statements from customers—thus, customers would not be required to request physical delivery each time they purchase offered municipal securities if they have informed their dealer of a desire to always receive physical delivery.

ADP believed that electronic delivery of official statements would offer an opportunity for enhancing information access in municipal securities offerings.[81] However, ADP opposed shifting the disclosure dissemination system to an ''access equals delivery'' model and instead advocated a system of ''dual distribution'' in which customers would receive delivery of official statements in both printed and electronic (via e-mail) forms. ADP argued that a significant proportion of investors still do not have ready access to electronic information, that many investors are unwilling to access their investment information on-line, that investors are more likely to view electronic information if it is pushed to them rather than requiring that they actively seek it out, and that electronic delivery would shift printing costs to investors.

AGFS suggested that the ''access equals delivery'' concept only be available in transactions in which investors have had actual access to the preliminary official statement, either through physical delivery or by providing consent to electronic delivery. In addition, AGFS suggested that dealers be required to circulate the official statement if there have been material changes made from the preliminary official statement. AGFS also warned that, once the cost savings from not preparing a printed official statement become apparent, some situations may arise where further cost savings are sought by foregoing the preparation of printed preliminary official statements as well.

As noted above, the MSRB agrees that there is considerable value in ensuring access to the preliminary official statements, particularly in connection with ensuring that customers receive material disclosures at or prior to the time of trade and in sufficient time to make use of the information in coming to an investment decision.[82] The MSRB expects to provide the opportunity for voluntary submissions of and access to preliminary official statements through EMMA, consistent with the MSRB's statutory authority, pursuant to a future filing with the Commission. However, the MSRB believes that the ''access equals delivery'' standard to be effectuated for the municipal securities market should not create a dual distribution paradigm and should not be preconditioned on deliveries of preliminary official statements.

Offerings to Which ''Access Equals Delivery'' Standard Should Apply. Many commentators believed that ''access equals delivery'' should apply to all issues of municipal securities.[83] However, some commentators argued that the ''access equals delivery'' standard should not apply to certain categories of offerings, as discussed below:

Limited offerings under Exchange Act Rule 15c2–12(d)(1)(i). AMS and DPC believed that underwriters should be required to submit all limited offering official statements to the centralized electronic system for public dissemination. DPC stated that removing the exemption for limited offerings would better serve the interests of the market as a whole and would favor transparency. SIFMA and NABL believed that limited offerings should not be required to participate in the centralized electronic system, although SIFMA acknowledged that there were differing opinions on this issue.[84] SIFMA and NABL were concerned about limited offerings that represent ''private placements'' where the issuer and underwriter did not intend on making a public offering and sought not to have the official statement broadly disseminated. SIFMA suggested that a submission requirement also could serve as a disincentive to producing official statements for such offerings. SIFMA recognized that dealers selling securities issued in a limited offering would not be able to rely on the access equals delivery standard but would instead be required to provide physical delivery of official statements to customers. SIFMA recognized that including limited offerings in the centralized electronic system would make information about the securities more widely available in connection with secondary market trading and therefore suggested permitting voluntary submissions of official statements for limited offerings for this purpose. NABL also believed that voluntary submissions should be allowed. NABL suggested that, if the MSRB were to require submission of official statements for limited offerings, the MSRB could provide for access to the official statement with password restriction if requested by the underwriter.

NABL and SIFMA supported the modified provisions for handling limited offerings, as described in the November 2007 Notice, where an underwriter submitting the official statement to the dissemination system would trigger the ''access equals delivery'' standard but an underwriter election to withhold submission of the official statement for a limited offering would trigger a requirement that the underwriter submit a certification affirming that the issue meets all of the requirements of Rule 15c2–12(d)(1)(i) as a limited offering; a notice that the official statement is not available on-line but that the underwriter would provide a copy to any purchasing

[81] ADP stated that the nature of the information flowing to investors throughout the offering process is more significant in registered offerings as compared to municipal securities offerings and noted potential areas in which the disclosure information currently produced by municipal issuers could be qualitatively improved. ADP did not suggest that such differences precluded the adoption of an ''access equals delivery'' standard but stated that significant changes to current municipal market practices would be needed to put the information flow in the two markets on an equal footing.

[82] *See* footnote 15 *supra*.

[83] Bernardi, brokersXpress, Commerce, DPC, First Southwest, Hilliard Lyons, NABL, UMB, Wells Fargo, Zions.

[84] BMA (now SIFMA) had originally stated in response to the Concept Release that the ''access equals delivery'' model should not apply to limited offerings exempt under Rule 15c2–12(d)(1)(i) because there is no reason for public access to disclosures for such offerings. SIA and UBS stated that they agreed with the positions set forth in BMA's comment letter. Griffin Kubik, which supported BMA's comments on all other issues, explicitly disagreed with BMA on this point. Griffin Kubik suggested, however, that if such an exception is provided, underwriters should be able to use the ''access equals delivery'' model for limited offerings on a voluntary basis.

customer; and contact information for requesting copies of the official statement.

The MSRB has determined to include such modified provisions in the proposed rule change. Thus, revised Rule G–32(b)(i)(E) would permit the underwriter of a limited offering to elect to withhold submission of the official statement to EMMA if it submits the following to EMMA: (i) A notice that the offering is exempt from Exchange Act Rule 15c2–12(d)(1)(i) as a limited offering; (ii) notice that the official statement has been prepared but is not being submitted to EMMA by the underwriter; and (iii) specific contact information for underwriter personnel to whom requests for copies of the official statement should be made. The underwriter would be required to deliver the official statement to each customer purchasing such securities upon request by the later of one business day after the request or the settlement of the customer's transaction.

Commercial paper. Revised Rule G–32 would eliminate an existing exemption for commercial paper from the requirement that dealers provide an official statement to customers since such official statements would now be available through the centralized electronic system. DPC supported eliminating the commercial paper exemption. SIFMA recommended excluding commercial paper from the definition of ''new issue municipal securities'' because it believed that the rule language would require the underwriter to file a notice that no official statement is being prepared for each rollover where no new disclosure is produced. NABL opposed elimination of the commercial paper exemption but supported voluntary submission of commercial paper official statements to the centralized electronic system. The MSRB has determined to eliminate the exemption for commercial paper that currently exists under the new issue disclosure requirement of Rule G–32 but to retain a limitation on the requirement to submit the official statement to the MSRB for commercial paper roll-overs where there is no new disclosure document produced under revised Rule G–32(b)(i)(D).

Municipal fund securities. BMA and SIA stated that the ''access equals delivery'' model should not apply to 529 college savings plans and other municipal fund securities because mutual funds were excluded by the Commission from the ''access equals delivery'' standard for registered offerings. SIA stated that the MSRB would benefit by deferring any action with respect to municipal fund securities until further information is available regarding how the Commission would approach extending the ''access equals delivery'' standard to mutual funds.[85] ICI stated that it supported increased reliance on electronic disclosure for mutual funds and 529 college savings plans, recommending that the MSRB consider the Commission's ongoing initiative with respect to mutual fund disclosure rules in moving forward on the ''access equals delivery'' model.

In contrast, USAA stated that 529 college savings plan disclosure materials should not be excluded from the ''access equals delivery'' standard, stating that this model is particularly appropriate for such offerings because Internet access and usage by investors in 529 college savings plans is significantly higher than the percentages noted by the Commission in justifying adoption of the ''access equals delivery'' standard for the registered market. USAA stated that paper delivery of disclosure materials for 529 college savings plans could actually hamper the efficient and timely delivery of information to the sources on which 529 college savings plan investors rely. CSPN noted several issues unique to the 529 college savings plan market that the ''access equals delivery'' model would raise, including the Commission's stance toward prospectus dissemination for mutual funds. In view of these factors, CSPN suggested that the MSRB retain a presumption that 529 college savings plan disclosure documents would be physically delivered to customers but that customers may opt-in to an ''access equals delivery'' model for 529 college savings plans. CSPN added that, because 529 college savings plan disclosure documents are already available as PDF files on the issuers' Web sites, implementation of the ''access equals delivery'' for 529 college savings plans would not be difficult.

The MSRB has determined to require that the underwriter or primary distributor for 529 college savings plans and other municipal fund securities submit the official statement electronically for display on the EMMA portal. However, dealers selling such securities to customers would not be permitted to rely on the ''access equals delivery'' standard, thereby generally requiring physical delivery of the official statement.[86]

Notice to Customers. The January 2007 Notice sought comment on a provision that would require dealers to provide to customers, within two business days following trade settlement, either a copy of the official statement or a written notice advising as to how to obtain the official statement from the central dissemination system and that a copy of the official statement would be provided upon request. Some commentators stated that the timing for providing such notice should match the requirement for such notice for registered offerings (*i.e.*, within two business days of trade settlement).[87] Edward Jones and UMB suggested that the MSRB should permit such disclosure to be made on the trade confirmation,[88] and UMB asked if there are specific requirements as to how such notice should be given. Other commentators stated that the timing should remain unchanged from the current official statement delivery timeframe set forth in Rule G–32 (*i.e.*, by trade settlement).[89]

The MSRB has determined that the timing of the notice for customers should permit a process for providing such notices that is similar to the processes currently used in connection with certain types of registered offerings under the Securities Act. Therefore, the MSRB has provided in the rule change proposal that the notice must be provided or sent by trade settlement. The MSRB notes that this notice timing is independent of the timing for official statements to be made available to investors and the general public for free on EMMA, where official statements will become available within one business day of receipt from the issuer but no later than the first settlements of trades in the securities upon closing of the underwriting.

The January 2007 Notice proposed that the specific URL for an official statement be included in the notice to be delivered to a new issue customer

[85] SIA stated that if the Commission extends ''access equals delivery'' to mutual funds, it might include municipal fund securities within its scope and, if not, the Commission approach as designed for mutual funds could serve as a template for the MSRB extending ''access equals delivery'' to municipal fund securities.

[86] Although the ''access equals delivery'' model would not be available for municipal fund securities, electronic official statements could still be used to fulfill the official statement delivery requirement under prior guidance concerning the use of electronic communications where standards for notice, access and evidence to show delivery are met. *See* the 1998 Electronic Delivery Notice, *supra* footnote 48.

[87] BMA, brokersXpress, Texas MAC, Zions. Griffin Kubik, SIA and UBS stated that they agreed with the positions set forth in BMA's comment letter.

[88] BMA noted that notice generally would be given by confirmation disclosure comparable to the ''access equals delivery'' practice in the registered market.

[89] NABL, Wells Fargo.

with respect to the availability of the official statement through the centralized electronic system. SIFMA, AMS and Bernardi opposed the use of document-specific URLs, instead suggesting a more general referral in the customer notice to the centralized electronic portal where investors would use a search function to locate the specific official statement.[90] Bernardi stated that, if unique URLs are ultimately required, such URLs should be as short as possible and be based on characteristics, such as CUSIP number, that would allow an automated method for notifying customers of such URLs. NABL stated that, if used, the system should be designed to ensure that unique URLs do not inhibit the ability of the public to undertake searches to find official statements. SIFMA provided several examples of difficulties that would arise if document-specific URLs were required. In addition to eliminating the requirement of identifying such URL on the customer notice, SIFMA recommended that ''a short, generic, plain English statement comparable to the corporate reference to a 'registration statement''' be used. SIFMA also suggested that the MSRB confer with the industry on operations issues regarding the formatting of such customer notice.

The November 2007 Notice proposed a revised version of this provision under which the notice obligation would be presumptively fulfilled if the dealer's notice to its customer provides the URL for the specific official statement or for the search page of an access portal at which such official statement may be found using the search function. SIFMA noted that dealers would expect to include the notice to customers on the confirmation as in the corporate market. SIFMA suggested that the following language be viewed as satisfying the notice requirement: ''Official statement can be accessed at *http://www.MSIL-Access.com* at or before the date of settlement. Printed copies will be provided upon request.'' NABL suggested that if a notice provides the URL for a search page rather than for the official statement itself, ''such notice also include the appropriate data entry, if any is needed, to navigate from the search page to the OS sought.''

Under subsection (a)(iii) of revised Rule G–32 as proposed by the MSRB, a dealer would be required to provide or send to the customer, by settlement, either a copy of the official statement or a written notice advising the customer how to obtain the official statement from the EMMA portal and that a copy of the official statement would be provided upon request.[91] This obligation to provide the first portion of the customer notice regarding how to obtain the official statement would be presumptively fulfilled if the notice provides (i) the URL for the specific EMMA portal page from which the official statement may be viewed and downloaded[92] or (ii) the 9-digit CUSIP number for the security and the URL for the EMMA portal search page through which a search based on such CUSIP number may be undertaken.[93] Revised Rule G–32(d)(x) would define qualified portal to mean an Internet-based utility providing access by any purchaser or potential purchaser of offered municipal securities to the official statement for such offered municipal securities in a designated electronic format, and allowing such purchaser or potential purchaser to search for (using the nine-digit CUSIP number and other appropriate search parameters), view, print and save the official statement, at no charge, for a period beginning on the first business day after such official statement becomes available from EMMA and ending no earlier than 30 calendar days after the end of the primary market disclosure period for such offered municipal securities; provided that any such utility shall not be a qualified portal unless notice to users that official statements are also available from EMMA and a hyperlink to EMMA are posted on the page on which searches on such utility for official statements may be conducted.

Submissions of Preliminary Official Statements and Other Items. SIFMA,[94] along with AMS, DPC, Ipreo, NABL, TRB, UMB and Zions, supported the concept of voluntary submissions of preliminary official statements. DPC suggested that the MSRB explore making the submission of all preliminary official statements mandatory, while SIFMA, AMS and NABL emphasized that preliminary official statement submissions should not be made mandatory. SIFMA and DPC noted the importance of ensuring version control where both preliminary official statements and official statements are made available (as well as in handling ''stickers'' to official statements), suggesting that the MSRB include a mechanism for notification to the public when the final official statement is posted in cases where a preliminary official statement has previously been submitted. DPC suggested that preliminary official statements be deleted when final official statements are submitted, while NABL suggested that underwriters be permitted to request that the preliminary official statement be removed from the centralized electronic system once the ''timeliness of a POS has ended,'' noting that its continued availability may confuse investors. However, SIFMA opposed the removal of the preliminary official statement.

The MSRB is precluded from mandating pre-sale submission of preliminary official statement pursuant to Exchange Act Section 15B(d)(1). Under the rule change proposal, preliminary official statements, if available, would be required to be submitted by the underwriter by closing solely in the circumstance where an official statement is not being prepared by the issuer or if the official statement is not available for submission to EMMA by the closing. Once the official statement is provided by the underwriter, the preliminary official statement generally would be moved to a document archive that would be accessible through the EMMA portal directly from the page where the link to the official statement is provided. Users of the EMMA portal would be able to request to receive e-mail notifications for updates to the disclosure document for a specific security, which would apply to the situation where an official statement is submitted to EMMA following an initial submission of the preliminary official statement. The MSRB expects to consider expanding the EMMA primary market disclosure service to accept voluntary submissions of preliminary official statements in the future.

Several commentators stated that amendments to official statements should be included in the ''access equals delivery'' framework,[95] and that

[90] Other commentators, although not directly addressing this issue, appeared by inference also to oppose or to be uncomfortable with the concept of requiring that official statements be identified by a unique URL.

[91] Dealers may, but are not required to, provide the notice on or with the trade confirmation provided to customers under Rule G–15(a)(i), so long as the timing requirement is met. Dealers also would be permitted to include in the notice information regarding the availability of the official statement from a qualified portal.

[92] Customers should be directed to the appropriate ''Issue Details'' or ''Security Details'' page, rather than directly to the PDF file of the official statement, as such detail pages provide users with the opportunity to view whether the original official statement has been supplemented or amended.

[93] The search page on the current pilot EMMA portal is at *http://www.emma.msrb.org/Search/Search.aspx*. Dealers providing links to the appropriate search page must ensure that they provide the then current URL.

[94] Bear Stearns and Griffin Kubik stated that they participated in the formulation of SIFMA's comments and fully supported SIFMA's positions.

[95] BMA, CSPN, DPC, Texas MAC, NFMA.

advance refunding documents also should be included within the framework.[96] BMA noted that investors should be informed of any amendments to a submitted official statement, and BMA and AGFS suggested the possibility of highlighting changes made in updated submissions from an earlier submission. BMA and DPC emphasized the importance of tracking and properly linking amendments and the original official statements to which they relate.

The rule change proposal would require underwriters to submit to EMMA any amendments to the official statement occurring during the primary offering disclosure period, which ends 25 days after closing. The amendment would be displayed, along with the original official statement, on the EMMA portal and would be made available for download by EMMA portal users in a single compacted folder. Users of the EMMA portal would be able to request to receive e-mail notifications for updates to the disclosure document for a specific security, which would apply to the situation where an official statement is subsequently amended.

Format of Official Statements. PDF was the preferred official statement format of most commentators.[97] Some commentators suggested that other official statement formats also should be accepted,[98] with Wells Fargo emphasizing that PDF is the licensed product of a single software vendor and, although popular, the municipal securities industry should not encourage a situation that may require firms to purchase essential technology from only one vendor. Other commentators stated that the system should have the flexibility to allow new formats that may in the future meet or exceed the current parameters for PDF.[99] RMOA believed a single format should be prescribed, and other commentators believed that allowing multiple formats could prove problematic.[100] Zions stated that other electronic formats that may require specific formatting, such as hypertext markup language (html) or ASCII (American Standard Code for Information Interchange), would be unacceptable. However, ADP stated that the Concept Release does not discuss the benefits to market participants of Extensible Business Reporting Language (XBRL) and TRB suggested that PDF does not permit analysis and comparison between different investments. UBS observed that submissions using files that originate electronically yield smaller, better quality files than do scanned files, and that larger scanned files can sometimes cause technological difficulties, particularly for smaller retail customers. UBS suggested that the MSRB and industry remain cognizant of any emerging, widely utilized, non-proprietary, freely available format that would retain the desirable characteristics of PDF documents but create smaller scanned files.

SIFMA, AMS, DPC, Ipreo and NABL generally agreed with the approach of initially requiring that all documents be provided as PDF files, although flexibility should be retained to permit other appropriate file formats as they are developed and become available for general public use. With regard to formats other than PDF that may be developed in the future, NABL suggested the following as basic parameters before permitting such format to be used for official statements: (i) Software to read files should be free, user-friendly and readily available; (ii) software should protect the integrity of files; and (iii) consumers should be familiar with the format before adoption.

In the November 2007 Notice, the MSRB proposed that all documents be submitted in a designated electronic format, meaning that the document must be in an electronic format acceptable to the MSRB, word-searchable, and must permit the document to be saved, viewed, printed and retransmitted by electronic means using software generally available for free or on a commercial basis to non-business computer users. PDF files that are word-searchable and may be saved, viewed, printed and retransmitted by electronic means would be deemed to be in a designated electronic format. GFOA ''strongly encourage[s] standardization on the PDF format.'' GFOA believed that readily available technology currently exists to make all PDF files word searchable, including scanned PDF files. GFOA stated, ''Future success of this system requires that it start with the best technology available and its ongoing challenge will be to keep up with changing technology while allowing backwards compatibility and conversion.'' SIFMA supported the revised definition but observed that neither the MSRB nor the Commission has the authority to mandate that issuers produce documents in a specific format. SIFMA also noted that not all portions of an official statement may be word-searchable, particularly if they include images. NABL recommended against including the requirement that PDF files be word-searchable since many documents that pre-date the new rule would still have to be submitted to the new system but would not be in such format.

The MSRB has determined to initially limit submissions of documents to the EMMA primary market disclosure service to PDF files, configured to permit documents to be saved, viewed, printed and retransmitted by electronic means. If the submitted file is a reproduction of the original document, the submitted file must maintain the graphical and textual integrity of the original document. In addition, starting on January 1, 2010, such PDF files must be word-searchable (that is, allowing the user to search for specific terms used within the document through a search or find function available in most standard software packages), provided that diagrams, images and other non-textual elements would not be required to be word-searchable. Implementation of this requirement would be deferred to provide issuers, underwriters and other relevant market participants with sufficient time to adapt their processes and systems to provide for the routine creation or conversion of primary market disclosure documents as word-searchable PDF files. The MSRB understands that software currently is generally available for free that permits users to save, view and print PDF files, as well as to conduct word searches in word-searchable PDF documents. The MSRB has provided links for downloading such software on the pilot EMMA portal and would continue to do so in the future.

The MSRB notes that documents converted into PDF files from other electronic formats can generally be made word-searchable through such conversion process, although this may not be the case where the PDF file is created by scanning paper versions of original documents. Documents originally authored as PDF files or converted into PDF files from other electronic formats (sometimes referred to as ''native PDF'' or ''PDF normal'') generally are made word-searchable through such conversion process. On the other hand, PDF files created by scanning paper versions of original documents generally can be made word-searchable only through an optical character recognition or other comparable process (''OCR'').

[96] BMA, Texas MAC.

[97] Bernardi, BMA, brokersXpress, CSPN, Commerce, DPC, Edward Jones, Hilliard Lyons, Morgan Keegan, Texas MAC, NABL, UBS, UMB, Wells Fargo, Zions. Griffin Kubik and SIA stated that they agree with the positions set forth in BMA's comment letter.

[98] Bernardi, Wells Fargo.

[99] BMA, Edward Jones, Texas MAC, UBS, Zions. Griffin Kubik and SIA stated that they agreed with the positions set forth in BMA's comment letter.

[100] DPC, NABL, UBS, Zions.

Documents submitted to EMMA that have been made word-searchable through an OCR process must maintain the graphical and textual integrity of the original document. This would typically be achieved by creating a single document that includes both a scanned image of the original document and a transparent layer consisting of the word-searchable OCR output (sometimes referred to as a ''PDF searchable image'' file). Submitters should not submit documents consisting of a visible word-searchable OCR output (sometimes referred to as ''formatted text and graphics'') as such output generally does not maintain with sufficient accuracy the graphical and textual integrity of the original document without significant post-scanning manual processing by the producer of the document. The MSRB would strongly encourage submitters to submit all documents to EMMA as native PDF or PDF normal files, which by their nature are word-searchable and also would provide benefits to the submitter in that such files generally are more easily created and result in substantially smaller file size (thereby speeding the submission process) than scanned PDF searchable image files. Native PDF or PDF normal files also would provide benefits to EMMA users because of their smaller, more easily downloadable file size.

The MSRB may in the future determine to designate additional computerized formats as acceptable electronic formats for submission or preparation of documents under Revised Rule G–32 by means of a filing with the Commission. The MSRB anticipates that any such additional designated electronic formats would permit documents to be saved, viewed, printed and retransmitted by electronic means, using software generally available at the time such document is provided under this rule for free or on a commercial basis to non-business computer users, and such documents are substantially word-searchable (without regard to diagrams, images and other non-textual elements).

In addition, the MSRB supports the Commission's Interactive Data and XBRL Initiatives for registered offerings. Although the MSRB would initially accept documents solely as PDF files and would not be in a position to accept documents or data in XBRL format upon launch of the primary market disclosure service, the MSRB would seek to explore with other industry participants the possibility of incorporating into the permanent system at a later date an option to make submissions using XBRL once appropriate taxonomies for the municipal marketplace have been developed and as issuers begin the process of producing primary market disclosure documents using XBRL.

Accessibility of Official Statements. Most commentators stated that official statements should remain publicly available for the life of the securities.[101] Some commentators noted that, although financial and operating information in official statements quickly becomes stale, many portions of the official statement remain useful throughout the life of a bond issue.[102] BMA stated that the financial and operating information included in the official statement serve as valuable points of reference when reviewing secondary market financial and operating information provided to nationally recognized municipal securities information repositories pursuant to Exchange Act Rule 15c2–12.[103] UBS suggested that appropriate disclaimers be used with respect to the potential staleness of information beyond the current new issue disclosure period. RMOA stated that official statements could be made available for free during the 25-day new issue disclosure period and a fee could be charged for access after that period. Other commentators stated that making the official statements available solely for the current 25-day new issue disclosure period would be sufficient,[104] with DPC stating that maintaining public access beyond this 25-day period would impair the economic interests of information vendors that currently make official statements available on a commercial basis and would ultimately negatively impact the marketplace.

The MSRB agrees that there is significant value to maintaining official statements available for the life of the securities and therefore would make official statements available through the EMMA portal for the life of the securities. The MSRB also agrees with the approach taken by the Commission in the registered securities market of providing such access to disclosure at no charge to the public. The MSRB believes that a free flow of basic disclosure information to all market participants on an equal basis is essential to pursuing one of the MSRB's congressionally mandated core functions of removing impediments to and perfecting a free and open market in municipal securities. By making these basic disclosure documents—most of which exist and are available to commercial enterprises solely by virtue of the mandates set forth by the Commission in its Rule 15c2–12—also available to the general public for free, the MSRB does not in any way inhibit the free market in value-added services based on such documents.[105]

Data Elements and Search Function. Some commentators suggested that the information submitted on Form G–36(OS) should be made available to the public.[106] UBS noted that Form G–36 data should be used to develop a flexible indexing system, perhaps using XML, to allow for searches on a broad range of fields. NFMA also emphasized the importance of the search function. TRB stated that a cover sheet including primary information such as issuer, CUSIP numbers, security, maturity dates, ratings, callability, etc. is needed. TRB believed that the task of creating a data base from such information that is available to investors would be the most significant contribution that could be made by the MSRB to the municipal marketplace. EDGAR Online suggested that the following items of information be captured in connection with each OS submission: CUSIP number, date of issue, issuer, issuer state, original par amount, type of bond, type of security, description of issuer (1–2 paragraphs), description of use of proceeds (1–2 paragraphs) and description of bond security (1–2 paragraphs). In addition, EDGAR Online suggested the following search criteria: CUSIP number, date of issue, issuer, issuer state, original par amount, type of bond and full text search. DPC suggested that the required data be captured in formatted fields and that such data be parsed automatically into XML for distribution.

New Form G–32 would request a number of key items of information from underwriters making submissions to EMMA, as described in section 3(a) of this filing above, in order to properly identify the document being submitted, to ensure that such document is associated with the appropriate securities, and to provide for an effective search function on the EMMA portal. The EMMA portal would initially permit users to search for documents based on CUSIP number, issuer name, issue description, state, maturity date, issuance date and interest rate, and such search capabilities might be expanded in the future. The MSRB would use data submitted by underwriters to EMMA and other data

[101] Bernardi, BMA, Griffin Kubik, Morgan Keegan, NABL, NFMA, RMOA, SIA, Texas MAC, UBS, UMB, Wells Fargo, Zions.

[102] BMA, Griffin Kubik, NFMA, RMOA, SIA, Texas MAC, UBS.

[103] Griffin Kubik, SIA and UBS agreed.

[104] brokersXpress, Commerce, DPC, First Southwest.

[105] *See also* section 4 of this filing.

[106] BMA, RMOA, TRB.

sources for purposes of the search function but does not intend on itself extracting information from submitted documents for this purpose.

With regard to the MSRB's request for comment in the January 2007 Notice regarding a potential requirement that underwriters submit on Form G–32 the names of syndicate members as a means by which to pre-populate a portion of each syndicate member's Form G–37 under Rule G–37, AMS supported such a process, but SIFMA, on balance, suggested that the MSRB not include a Form G–37 process at this time. The MSRB has determined not to seek such information.

Submission Process. Some commentators suggested that the current timeframes under Rule G–36 for submission of official statements to the MSRB—no later than 10 business days after the bond sale for issues subject to Exchange Act Rule 15c2–12 and the later of one business day after receipt or one business day after closing for issues exempt from Rule 15c2–12—be retained.[107] BMA suggested expanding certain exceptions to the 10 business day timeframe. However, other commentators supported a single deadline for all issues of the bond closing date.[108] Bernardi suggested that, in those instances where the official statement is not available by the bond closing, the preliminary official statement should be submitted.[109]

The January 2007 Notice stated that the new Form G–32 submission process would be initiated by the submission of CUSIP number information and initial offering prices for each maturity shortly after the bond sale. This timing was designed to coincide with the timing under Rule G–34 relating to CUSIP numbers and other new issue information requirements, with the intention that this submission timing would coincide with the timing of information submissions to NIIDS. SIFMA agreed that the MSRB should coordinate the finalization of the timeframe for information submissions on Form G–32 with information submission requirements that would be established with respect to NIIDS but that the requirement should be timed to coordinate with successful testing of NIIDS. SIFMA recommended that this part of the proposed rule be delayed until NIIDS has been tested and dealers are able to use the system. DPC supported the proposed timeframe, although it points out that the system would need to be able to initiate a filing without CUSIP numbers if it were to accept preliminary official statement submissions. AMS would prefer maintaining the current timing for information submissions.

BMA and UBS noted that the submission process should be made to conform to the straight through processing ideal that each document or item of information needed by multiple parties should only be required to be submitted by the underwriter once, and also seeks a more user-friendly format for submissions. However, BMA believed that underwriters should remain primarily responsible for submission and that the responsibility for submission should not be shifted to dealer financial advisors in those issues where such a financial advisor is involved. Wells Fargo and Zions disagreed, stating that if the financial advisor prepares the official statement, it should have primary responsibility for submitting the official statement. Some commentators noted difficulties with independent financial advisors,[110] with Hilliard Lyons suggesting that a solution would be to petition the Commission to bring them under the regulatory control of the Commission or MSRB. BMA and RMOA believed that e-mail attachments should be an acceptable method of submission. Several commentators mentioned the importance of return receipts for official statement submissions and/or the ability of submitters to review their submissions.[111]

The MSRB has determined to establish a single timeframe for submissions of official statements to EMMA for all types of primary offerings, being one business day after receipt but no later than the closing date. Underwriters would be required to initiate the Form G–32 submission process by the date of first execution, which would be defined under revised Rule G–32(d)(xi) as the date on which the underwriter executes its first transactions with a customer or another dealer in any issue security offered in a primary offering. In the case of new issues where the underwriter is required under Rule G–34(a)(ii)(C) to provide new issue information to NIIDS, such date of first execution would mean the date corresponding to the Time of First Execution (being no less than two hours after all such information has been transmitted to NIIDS), as defined in Rule G–34(a)(ii)(C)(1)(b). For purposes of the timing for initiating the Form G–32 submission process under Rule G–32(b)(i)(A) and (b)(vi)(C)(1)(a), the date of first execution would be deemed to occur by no later than the closing date, even if the date of first execution would be a later date under Rule G–34. In most cases, the submission process would be initiated by submission of the CUSIP numbers, initial offering prices and certain other basic identifying information, although the Form G–32 submission requirements would provide alternative information submission requirements for cases where the securities are not eligible for CUSIP number assignment or for other types of offerings, such as commercial paper issues, issues of municipal fund securities, and remarketings, as described in section 3(a) of this filing above.

The MSRB is proposing to permit underwriters to designate agents to submit documents and related information to EMMA, thereby permitting underwriters to structure their submission process in the manner that is most efficient for their purposes. Although underwriters would not be able to fulfill their information submission requirements under revised Rule G–32 and Rule G–34 with a single submission of such information to NIIDS upon initial launch of the EMMA primary market disclosure service, the MSRB anticipates providing such functionality at a future date. Underwriters would be responsible for the accuracy, completeness and timeliness of information they or their agents provide to EMMA.

Structure of the Centralized Electronic System. The Concept Release sought comment on whether the central access utility should host all official statement documents or should serve as a central directory of official statements with hyperlinks to documents hosted by other entities that have undertaken to maintain access to such documents. The Concept Release also sought comment on whether the MSRB should undertake the central access function, or whether other market participants or vendors could undertake such function subject to appropriate supervision.

Nearly all commentators responding to the Concept Release stated that the central access facility should post official statements directly on a central Web site, rather than serving as a directory of links to official statements posted by underwriters, issuers, financial advisors, printers or others at

[107] BMA, First Southwest. Griffin Kubik, SIA and UBS stated that they agreed with the positions set forth in BMA's comment letter.

[108] Bernardi, brokersXpress, Morgan Keegan, NABL, Wells Fargo, Zions.

[109] AGFS would require the submission of the preliminary official statement as a precondition to applying the ''access equals delivery'' standard to official statement deliveries.

[110] Hilliard Lyons, Morgan Keegan.

[111] NFMA, Texas MAC, UBS.

other sites.[112] Some commentators noted that a decentralized system with a central hyperlinked directory could be problematic with regard to ensuring continuous access, uniformity of handling and ease of use.[113] Morgan Keegan stated that a decentralized model could be acceptable if access and data input requirements are uniformly applied to all vendors, but that long-term free access would be problematic. TRB stated that it would be more effective to link the MSRB Web site to the appropriate posting site for each official statement, with the MSRB monitoring and/or restricting these posting sites. UMB asked whether it would be able to direct its customers to its own Web site, from which it would link to the central access facility.

Most commentators felt that the MSRB could operate the central access facility,[114] with several indicating that the MSRB was their first choice to do so.[115] Many commentators suggested that the central access facility also could be operated by an outside contractor with oversight by the MSRB pursuant to contract.[116] Wells Fargo stated that the MSRB should investigate a centralization function that would not unequally empower a single data vendor. NABL stated that proposed approaches by market participants and others would need careful consideration to determine the optimal choice for the municipal securities market, and RMOA stated that vendors offering their services would need to insure the industry that they would accept oversight by established regulatory authorities and would be subject to penalties for non-performance. UBS stated that, if an entity other than the MSRB operates the central access facility, the MSIL system's existing OS/ARD library and full database would need to be made available to such entity. ADP, DPC, S&P CUSIP and Texas MAC expressed a willingness to explore participation in the operation of the central access facility, with DPC and Texas MAC noting that the Commission operates EDGAR through contracts with commercial vendors. CSPN stated that a centralized Web-based disclosure utility for the 529 college savings plan market that it was developing would be the appropriate central access facility for the 529 college savings plan market. If 529 college savings plan disclosure documents were to be hosted on a Web site other than the CSPN utility or the 529 college savings plan's own Web site, CSPN stated that the issuers would need assurances that the offering materials delivered to such centralized Web site would become publicly available exactly as transmitted by the issuer or the primary distributor for the 529 college savings plan.

Several commentators emphasized that, in deciding which entity should operate the central access facility, cost should be an important factor, including which parties should bear such costs, before additional build-out costs or ongoing filing fees are imposed.[117] UBS stated that the ''access equals delivery'' processes needed to be further developed to enable an informed projection of benefits and costs. BMA emphasized the importance of how quickly and how cost-effectively the central access facility could be made operational in deciding which entity launches the facility.[118] Commerce noted that adequate lead-time should be allowed for dealers to upgrade their system and implement the proposal.

The January 2007 Notice provided additional details of a proposed structure for the centralized electronic system that would build on the MSIL system to provide through an Internet-based central access facility an assured source for free access to official statements and other related documents and information in connection with all new issues. The MSRB noted in the January 2007 Notice that it would operate a public access portal that would post official statements and other documents and information directly on its centralized Web site and would make posted information available for free for the life of the securities to investors, other market participants and the general public. The January 2007 Notice stated that additional public access portals using the document collections from the MSIL system obtained through real-time subscriptions could be established by other entities as parallel sources to the public.

AMS and UMB generally supported a single central electronic portal, while SIFMA, DPC, Ipreo, and NABL stated a preference that official statements be made available from multiple sources. NABL would not limit accessibility just through the centralized electronic portal but also to any source that (i) is either free or approved by the customer and (ii) maintains a record of posting. DPC expressed reservations that the MSRB's proposal would provide for official statements to be posted solely on the MSRB's centralized electronic portal, raising concerns regarding the reliability of a single source.

With regard to the January 2007 Notice, DPC observed that, although official statements may be made available for free to those accessing them through the access portals, there would be a cost to the broker-dealer community to subsidize the system's development and operation. DPC stated that having the industry subsidize the cost ''appears to be more biased and unfair than recovering the costs from the users of the system based on usage.'' DPC further stated that the EDGAR system, which ''is subsidized by American taxpayers,'' operates through vendors under contract with the Commission. DPC also stated that some aspects of the centralized electronic system's operations ''could be construed as interfering with standard commercial processes of private businesses.'' DPC viewed the MSRB's proposal that the customer notice provide an official statement's URL at an access portal as ''prejudicial to the economic interests of existing vendors whose delivery services required that the definitive PDF file be archived on their Web sites for public access.'' DPC stated that providing official statements for free through access portals would ''impair the economic interests of information vendors that currently make OSs available on a commercial basis.''

In response to the Pilot Filing submitted by the MSRB to the Commission, DPC noted that it is a Nationally Recognized Municipal Securities Information Repository (NRMSIR) that has made its municipal disclosure archive fully accessible on the Internet since 1999. DPC supported the broad concept of access equals delivery as a matter of general market efficiency. DPC stated:

> It is our opinion, however, that the MSRB's plans for its proposed [MSIL]-based Web portal go well beyond its organizational mandate as stated in section 15B(b)(2)(C) of

[112] Bernardi, BMA, brokersXpress, Commerce, DPC, First Southwest, Hilliard Lyons, ICI, Morgan Keegan, NABL, NFMA, RMOA, Texas MAC, UBS, Wells Fargo, Zions. Griffin Kubik, SIA and UBS stated that they agreed with the positions set forth in BMA's comment letter.

[113] BMA, brokersXpress, DPC, ICI, NFMA, UBS, Zions. Griffin Kubik, SIA and UBS stated that they agreed with the positions set forth in BMA's comment letter.

[114] Bernardi, BMA, Commerce, First Southwest, Hilliard Lyons, Morgan Keegan, NFMA, RMOA, UBS, Zions. Griffin Kubik and SIA stated that they agreed with the positions set forth in BMA's comment letter.

[115] Bernardi, Commerce, Hilliard Lyons, Morgan Keegan, RMOA, UBS, Zions. Morgan Keegan noted that the industry has already paid to establish the MSIL system and that the additional expense could be covered at the MSRB's discretion.

[116] BMA, First Southwest, NFMA, RMOA, Texas MAC. Griffin Kubik, SIA and UBS stated that they agreed with the positions set forth in BMA's comment letter.

[117] BMA, UBS. Griffin Kubik and SIA stated that they agreed with the positions set forth in BMA's comment letter.

[118] Griffin Kubik, SIA and UBS stated that they agreed with the positions set forth in BMA's comment letter.

the 1934 Act. If the existing prototype and stated plans are an indication, the MSRB will not only be assuming the role of the Access Equals Delivery venue for the municipal marketplace, but will go much further, breaking new ground in providing enhanced services to the market by a capital markets regulatory body. This also would be an apparent violation of the SEC's long-held public policy that the MSRB should not compete with vendors in offering value-added features and services related to handling of disclosure documents.

DPC compared certain functionalities illustrated on a sample pilot portal posted on the MSRB Web site to the functionalities offered by EDGAR and concluded that such ''features and capabilities are well in excess of the system that the MSRB has pointed to as its model, the SEC's own EDGAR.'' DPC asked why certain features on the sample pilot portal that it viewed as value-added—such as ''nine-digit CUSIP searches, hyperlinks to bond issuer[']s Web sites, an 'alert' service to users of the portal, sophisticated document viewing options, links to other related documents in the portal[']s disclosure archive, and subsequent event notifications that equate to custom research''—are not being left to the competitive forces of the market. It viewed the MSRB's stated plans to provide free on-line access to an integrated display of primary market and other disclosure with transaction price data as breaking new ground as compared to the offerings of other self-regulatory organizations. DPC noted the investments made by that firm and others to offer value-added services to the municipal securities market ''largely in reliance on the SEC's public statements that it is not in favor of the MSRB competing directly with vendors.'' DPC disagreed with the MSRB's view that EMMA would not create an unequal burden on competition. DPC also noted that at least one NRMSIR would be willing, under regulatory oversight, to make its disclosure archive available to the public for free for a modest annual subsidy to such NRMSIR. DPC concluded by urging ''the Commission to support the MSRB's proposed rule change that will promote Access Equals Delivery in the municipal securities market, but restrain the MSRB from offering value-added content and features that will necessarily inflict economic harm on existing data vendors, and inflict the harm unevenly.''

EDGAR Online stated:

> We believe that the current model of four Nationally Recognized Municipal Securities Information Repositories (NRMSIRs) severely limits innovation and access to these important disclosures. The current model locks up public documents in private hands while the proposed portal run by a public entity will encourage transparency in the municipal securities market and create a healthy ecosystem of information that will ultimately benefit both the investment community and the municipalities that seek access to public markets.

EDGAR Online detailed its views regarding the limitations on public access to existing disclosures and on the ability of other information providers to re-disseminate such disclosures, stating:

> Ultimately, investors and the municipalities pay the price for this lack of a viable information ecosystem. The rigid control of public information dissuades other information providers from trying to enter or innovate for this market. This means that there are few people working on improving ease of use, depth of analysis, thoroughness of information or more effective means of delivery.

EDGAR Online recommended that the Commission create a publicly accessible storage and dissemination system for all municipal securities disclosure filings.

The MSRB has carefully reviewed the statements made by these commentators and, as noted in section 3(b) of this filing as well as in the Pilot Filing, continues to believe that EMMA is consistent with its statutory mandate under the Act. The EMMA portal would provide free and timely public access to official statements and advance refunding documents, with such access to official statements being a fundamental element of the MSRB's planned ''access equals delivery'' standard for official statement dissemination to customers under the rule change proposal. Further, EMMA would remove impediments to and help perfect the mechanisms of a free and open market in municipal securities, assist in preventing fraudulent and manipulative acts and practices, and would in general promote investor protection and the public interest by ensuring equal access for all market participants to the disclosure information needed by investors in the municipal securities market.

As described in greater detail in section 4 of this filing as well as in the Pilot Filing, the MSRB believes that EMMA would not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. In weighing the potential alternative approaches to implementing EMMA, the MSRB concluded that developing EMMA through the adaptation and upgrading of existing internal MSRB systems—including but not limited to the MSIL system, RTRS and the MSRB's in-house access control systems—combined with the creation of a custom user interface designed for use by retail investors, would be the most prudent and efficient manner of achieving the MSRB's goals for EMMA. Although the MSRB has determined to establish the EMMA portal, the EMMA portal need not operate as the sole source of official statements and other documents and information in the municipal securities market. Rather, private enterprises could establish separate services, whether as qualified portals or otherwise, to make available publicly the basic documents and information they obtain from EMMA, together with such other documents, information and utilities (*e.g.*, indicative data, transaction pricing data, secondary market information, analytic tools, etc.) as each operator determines, provided on such commercial terms as may be appropriate for their own business model. The MSRB's goal in promoting broad dissemination of the documents and information made available through EMMA is to provide market participants with an effective opportunity to access official statements throughout the life of the securities in a non-cost prohibitive manner while encouraging market-based approaches to meeting the needs of investors and other participants in the municipal securities market.

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

Within 35 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 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 Act. 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*. Please include File Number SR–MSRB–2009–02 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–2009–02. 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 Web site (*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 inspection and copying in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the MSRB. 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–2009–02 and should be submitted on or before May 4, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[119]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–7340 Filed 4–1–09; 8:45 am]

BILLING CODE

[119] 17 CFR 200.30–3(a)(12).