

Municipal Bond Issuers and Increased Transparency in the Market: EMMA and the New Submission Process for Continuing Disclosure

**By: Beth Grob and Minnette Bucklin
Ahlers & Cooney, P.C.**

The Securities and Exchange Commission, through recent amendments to Rule 15c2-12, has established a single repository for electronically filing continuing disclosure documents in order to simplify filing requirements for municipal issuers and to promote greater transparency in the municipal bond market for investors. For the most part, the amendments do not impose additional disclosure requirements on current municipal issuers or obligors; instead the amendments affect the process of submitting such documents.

Beginning July 1, 2009, municipal bond issuers, obligors, and designated dissemination agents must file their continuing disclosure documents, *which includes annual financial statements and material event notices*, with the Municipal Securities Rulemaking Board (MSRB). The filing must be made by electronically posting the information in PDF format on the Electronic Municipal Market Access (EMMA) website. ***Effective January 1, 2010, electronic files submitted to EMMA must be “word searchable” PDF format.*** This means municipal issuers should request their auditor to provide an electronic copy of the audited financial statements in “word searchable” PDF format.

Historically, municipal issuers have submitted continuing disclosure documents to Nationally Recognized Municipal Securities Information Repositories, known as NRMSIRs. As of July 1, 2009, the MSRB (through electronic submission to EMMA) will serve as a single repository for issuers, obligors or their agents to submit continuing disclosure documents in order to satisfy reporting requirements. As for bond offerings underwritten before July 1, 2009, issuers will satisfy their continuing disclosure obligations by making electronic submissions to EMMA. In effect, posting on the EMMA website replaces electronic filing with Disclosure USA and physical filing with each NRMSIR.

Additionally, small issuers, defined as those having \$10 million or less in aggregate municipal securities outstanding, now must submit annual financial and operating information, if such data is customarily prepared and publicly available, to EMMA on or after July 1, 2009. Historically, small issuers were eligible for the “limited undertaking” exemption; such exempt issuers were required to provide annual financial and operating information to investors only upon request. ***This means information, such as audited financial statements and Certified Annual Reports, annually must be submitted to EMMA, beginning July 1, 2009, and in “word searchable” PDF format beginning January 1, 2010.***

An Overview: Changes to the Submission Process

- Effective July 1, 2009, all periodic/annual financial information and event notices must be filed electronically, in PDF format in a single, designated location - the Electronic Municipal Market Access (EMMA) website at <http://emma.msrb.org>.

- Effective January 1, 2010, all electronic submissions must be in “word-searchable” PDF format.
- No costs are associated with filing.
- EMMA is the single filing location to be used by new issuers and issuers with current disclosure obligations. An issuer’s obligation to submit continuing disclosure documents to the multiple NRMSIRs under an existing continuing disclosure agreement will be satisfied by submitting the information to EMMA.
- To the extent that issuers and obligors with less than \$10 million in municipal securities outstanding customarily prepare and make available annual financial statements and operating data, such information must be submitted to EMMA on or after July 1, 2009.

The purpose of this article is to identify issues. It does not purport to be exhaustive or to render legal advice. You should consult with qualified counsel or other professionals in developing responses to specific situations.