

PUBLIC & COMMERCIAL FINANCE ALERT

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SEC Approves "EMMA" as Centralized Repository for Municipal Disclosure

On December 8, 2008, the Securities and Exchange Commission (SEC) unanimously agreed to designate the Electronic Municipal Market Access (EMMA) program as the central repository for ongoing disclosures by municipal issuers. The Municipal Securities Rulemaking Board (MSRB) will provide the EMMA system, which marks an overhaul in how disclosures are made under Rule 15c2-12.

The SEC anticipates that EMMA will simplify and streamline compliance under Rule 15c2-12, which mandates that municipal bond underwriters review official statements and obtain written confirmation from issuers that they will file annual financial information, operating information and material event notices with the Nationally Recognized Municipal Securities Information Repositories (NRMSIRs). There are currently four NRMSIRs to which an issuer must file disclosure documentation: DPC Data Inc; Standard and Poor's Securities Evaluation Inc.; Interactive Data Pricing and Reference Data Inc.; and Bloomberg Municipal Repository. The need for an overhaul arose when it became clear that many issuers were not sending disclosure documents to all four repositories. Moreover, even if the documents were disclosed correctly to all four repositories, each NRMSIR labeled and maintained the disclosure documents differently, making it difficult both for underwriters to comply with Rule 15c2-12 and for investors to obtain disclosure information. The creation and designation of a single NRMSIR, EMMA, should help eliminate these issues and ease compliance.

Beginning July 1, 2009, issuers will be able to electronically post official statements, annual reports, material event notices and other continuing disclosure documentation using EMMA. Under the current system, access to such disclosure information is available for a fee. In contrast, EMMA will offer free and easy access of these documents by underwriters and investors, in much the same way the SEC's EDGAR system has allowed corporate investors access to disclosure information. EMMA is currently operating in a pilot format, but the MSRB plans to introduce the system in a three-phase process beginning this year. The first phase, the Short-term Obligation Rate Transparency System (SHORT), is expected to launch on April 1, 2009, to provide price transparency, bidding information and documentation for short-term auction-rate securities and variable-rate demand obligation markets. The second phase will allow issuers to post continuing disclosure documents beginning July 1, 2009, and the third phase will require that all secondary-market submissions be made in PDF format beginning January 1, 2010.