



Public Finance Alert

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EMMA has arrived and Rule 15c2-12 is changing

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Summary. On June 1, 2009, the Municipal Securities Rulemaking Board (the MSRB) issued its Notice 2009-28 (the Notice), which announced that the MSRB has implemented the Electronic Municipal Market Access system (EMMA). Among other matters, the Notice announced the following: (1) the MSRB has revised MSRB Rule G-32 to require underwriters to submit all municipal securities primary disclosure documents and related information to EMMA in an electronic format, (2) the MSRB has established EMMA as a permanent primary market disclosure service for electronic submission and public availability of primary market disclosure documents and information on EMMA's Internet portal, and (3) the MSRB has established on EMMA a permanent trade price transparency service. The Securities and Exchange Commission (SEC) has amended its Rule 15c2-12 promulgated under the Securities Exchange Act of 1934, as amended ("Rule 15c2-12"). One of the important changes to Rule 15c2-12, effective July 1, 2009, affects how an issuer can incorporate by reference its historical documents. **If you would like to see how you can access information on EMMA, go to the following website address: <http://emma.msrb.org>.**

Revised MSRB Rules Relating to Primary Market Disclosure Documents. The MSRB has revised Rule G-32 and Rule G-36 to incorporate the delivery of primary market disclosure documents through EMMA. Before June 1, 2009, in connection with any new issue of municipal securities, MSRB Rule G-32 required underwriters to deliver a physical copy of the official statement to customers, and in connection with a primary offering, MSRB Rule G-36 required underwriters to deliver a copy of the official statement directly to the MSRB together with information regarding the offering. As of June 1, 2009, the MSRB consolidated these two rules into a revised Rule G-32, which now requires (1) underwriters to submit all preliminary official statements, final official statements and advance refunding documents (collectively, "Primary Offering Documents") to EMMA; and (2) dealers, not later than trade settlement, either to provide copies of official statements to customers or to notify customers that the official statement is available through EMMA. All submissions by underwriters of official statements and advance refunding documents to the MSRB must now be made in electronic format under revised Rule G-32 through EMMA.

Requirement to Submit Primary Offering Documents to EMMA. Revised Rule G-32 requires underwriters of a primary offering of municipal securities to submit all Primary Offering Documents to EMMA. Here are some specifics regarding the requirements of the revised Rule G-32:

- What to file and when
 - Underwriters must submit official statements to EMMA for all primary offerings of municipal securities within one business day after receipt of the official statement by the issuer, but in no event later than the closing date of the offering.
 - Underwriters must submit advance refunding documents to EMMA no later than five business days after the closing date of a primary offering that advance refunds an outstanding issue and for which an advance refunding document has been prepared. Rule G-32 defines an advance refunding document as “the refunding escrow trust agreement or its equivalent prepared by or on behalf of the issuer.”

Rule G-32 also provides exemptions for certain limited offerings and allowances in circumstances in which no preliminary official statement or official statement is prepared.

- How to file
 - Underwriters must submit all Primary Offering Documents to EMMA in a portable document format (PDF) with files configured to permit documents to be saved, viewed, printed, and retransmitted by electronic means. For files submitted to EMMA on or after January 1, 2010, documents must be word-searchable (other than diagrams, images, and other nontextual elements).
 - Underwriters must submit Primary Offering Documents by means of a Form G-32, which provides information about the related primary offering. Form G-32 requests the following categories of information: underwriter identification, submission information, offering information, information for each issue and security in an offering and issues not underwritten by the submitting underwriter, advance refunding information, and document information.
 - Rule G-32 permits an underwriter to designate a submission agent to effect submissions to EMMA pursuant to procedures set forth in the *EMMA Dataport Manual*. However, any failure of a submission agent to comply with Rule G-32 is considered a failure of the underwriter to comply.

For more information regarding the EMMA submission process, underwriters should refer to the *EMMA Dataport Manual for Primary Market Submissions* available at: <http://dataport.emma.msrb.org/AboutDataport.aspx>.

Customer Disclosure Requirements. Under Rule G-32 in effect before June 1, 2009, brokers, dealers, and municipal securities dealers were required to directly deliver official statements to customers no later than the settlement of the transaction. Revised Rule G-32 continues to allow brokers, dealers, and municipal securities dealers to directly deliver official statements to customers in satisfaction of their delivery requirement. But brokers, dealers, and municipal securities dealers are deemed to comply with this requirement if they deliver a notice to the customer advising it (1) how to obtain an electronic copy of the official statement from EMMA and (2) that the broker, dealer or municipal securities dealer will provide the customer with a physical copy of the official statement upon request.

EMMA Primary Market Disclosure Service. EMMA allows for all submitted documents and information to be available to the public, at no charge, for the life of the related municipal securities. EMMA provides online 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. EMMA also permits users to request to receive alerts, at no charge, if a primary market disclosure document has become available on EMMA or has been updated or amended.

EMMA Trade Price Transparency Service. EMMA provides a trade price transparency service that provides the public, at no charge, historical and real-time transaction price information from MSRB's "Real-Time Reporting System" (RTRS), together with related summary and statistical information. EMMA's transaction price information will consist of all data available through RTRS for public dissemination since the inception of RTRS on January 31, 2005. EMMA provides online search functions to enable users to readily access transaction price information based on a broad range of search parameters.

Amendments to Rule 15c2-12. On December 5, 2008, the SEC adopted amendments to Rule 15c2-12 that make its final official statement delivery requirements consistent with the MSRB's revised Rule G-32. These amendments implement EMMA as the sole disclosure service for all Rule 15c2-12 filings. Under amended Rule 15c2-12, underwriters are required to deliver a final official statement to a customer only if the customer so requests. Another major change in amended Rule 15c2-12 affects how issuers can incorporate by reference into their final official statements by specific cross reference. The definition of final official statement in Rule 15c2-12 previously allowed issuers to incorporate by reference into their final official statements any documents that they previously provided to the NRMSIRs. Amended Rule 15c2-12 will permit issuers to incorporate by reference into their final official statements only those documents that they filed with EMMA. Thus, beginning July 1, 2009, it is important to note that issuers who filed with the NRMSIRs documents that they routinely incorporate by reference into final official statements may need to re-file those same documents with EMMA before incorporating them by reference into future final official statements.

If you have any questions or require further information regarding these or other matters, please call your regular Nixon Peabody contact or feel free to contact one of the attorneys listed below:

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