

*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](mailto:rule-comments@sec.gov). Please include File Number SR-MSRB-2007-07 on the subject line.

*Paper comments:*

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-MSRB-2007-07. 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-2007-07 and should be submitted on or before January 18, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>14</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-57004; File No. SR-MSRB-2007-06]

### Self-Regulatory Organizations; Municipal Securities Rulemaking Board; Notice of Filing of Proposed Rule Change Relating to an Amendment to the Municipal Securities Information Library® System To Establish a Pilot System for Consolidated Dissemination of Disclosure Documents and Related Information Through an Internet-Based Public Access Portal

December 20, 2007.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on November 15, 2007, the Municipal Securities Rulemaking Board ("MSRB" or "Board") 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 is filing with the Commission a proposed rule change establishing a pilot system for the consolidated dissemination, through an Internet-based public access portal, of disclosure documents and related information received by the MSRB through its existing facilities (the "pilot portal"). The proposed rule change consists of an amendment to the MSRB's existing Official Statement and Advance Refunding Document (OS/ARD) system of the Municipal Securities Information Library® ("MSIL"®) system,<sup>3</sup> under which the pilot portal would be established and operated pending establishment of a permanent Internet-based public access system (the "permanent system"). The MSRB expects the pilot portal to

become operational on the later of March 10, 2008 or 5 business days after SEC approval. The MSRB requests approval of the pilot portal for a period of one year from the date it becomes operational, subject to earlier termination upon completion of the transition to the permanent system. The text of the proposed rule change is available on the MSRB's Web site (<http://www.msrb.org>), 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

Rule G-36 requires that a broker, dealer or municipal securities dealer (a "dealer") that acts as managing or sole underwriter for most primary offerings of municipal securities send the official statement ("OS") and Form G-36(OS) to the MSIL system. In addition, if the offering is an advance refunding and an escrow deposit agreement or other advance refunding document ("ARD") has been prepared, the ARD and Form G-36(ARD) also must be sent to the MSIL system by the managing or sole underwriter. OSs and ARDs collected by the MSIL system currently are made available in paper form, subject to copying charges, at the MSRB's public access facility in Alexandria, Virginia, and electronically by paid subscription on a daily over-night basis and by purchase of annual back-log collections.

The proposed rule change will establish, on a pilot basis, an Internet-based public access portal (the "pilot portal") to provide free access to OSs and ARDs received by the MSRB under Rule G-36. Copies of all such OSs and ARDs received by the MSRB on or after implementation of the pilot portal will be made available to the public as portable document format (PDF) files for viewing, printing and downloading at the pilot portal promptly after

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> Municipal Securities Information Library and MSIL are registered trademarks of the MSRB. The MSIL system's OS/ARD system was initially approved by the Commission in 1991 and amended in 2001 to establish the current optional electronic submission system. See Securities Exchange Act Release No. 29298 (June 13, 1991), 56 FR 28194 (June 19, 1991) (File No. SR-MSRB-1990-2); Securities Exchange Act Release No. 44458 (June 20, 2001), 66 FR 34495 (June 28, 2001) (File No. SR-MSRB-2001-03).

<sup>14</sup> 17 CFR 200.30-3(a)(12).

acceptance and processing, and will remain publicly available for the life of the municipal securities through the pilot portal or the permanent system. The pilot portal will provide on-line search functions utilizing the MSIL system computer index to ensure that users of the pilot portal are able to readily identify and access documents that relate to specific municipal securities based on a broad range of search parameters. The pilot portal will be designed to provide a user searching for a particular municipal security with a comprehensive display of relevant information concerning such security available from the MSRB's various information systems on a single screen or related set of screens. The pilot portal will provide basic identifying information for the security, direct access to the OS submitted by the underwriter to the MSIL system, price information from the MSRB's Real-Time Transaction Reporting System ("RTRS") for the most recent trades in such security (as well as historical price information), and, if the security has been advance refunded by a refunding issue, any ARDs submitted by the underwriter to the MSIL system in connection with such advance refunding.

The pilot portal will operate for a limited period of time as the MSRB transitions to a permanent integrated system for electronic submissions of all OSs and ARDs to the MSRB and free public access to such documents through a centralized Internet-based portal to be implemented in conjunction with the expected adoption by the MSRB of an "access equals delivery" standard for OS dissemination under Rule G-32, on disclosures in connection with new issues.<sup>4</sup> The functions of the pilot portal, along with other key features of the current MSIL system and additional functional improvements (including but not limited to establishment of real-time subscriptions to the complete document collections processed through the permanent system for re-dissemination or other use by subscribers), will be incorporated into the permanent system. The

permanent system is expected to replace the MSIL system once this transition is completed and all critical functions and information stores (including but not limited to the complete OS/ARD backlog collection) of the MSIL system have been transferred to the new permanent system or are able to be handled by other Board processes.

Although the MSRB currently operates CDINet, a service of the MSIL system designed to process and disseminate continuing disclosure information and notices of material events submitted to the MSRB under Exchange Act Rule 15c2-12, the MSRB does not anticipate including information received through CDINet in the pilot portal due to the very limited level of submissions of disclosure information received by CDINet from issuers and their agents.<sup>5</sup> The MSRB believes that making the limited collection of secondary market information available in CDINet accessible to the public through the pilot portal would represent a piecemeal approach that would not be beneficial to the public and could potentially be misleading under certain circumstances. In particular, investors would be required to search through various other sources to find secondary market information for the bulk of the outstanding issues for which information is not available through CDINet and, even if some secondary market information for a particular security is available through CDINet, investors would still need to search through the various other sources to ensure that no additional secondary market information about that security has been submitted elsewhere.

The MSRB recognizes the substantial benefits to the marketplace that would

be realized should the Commission determine to modify the existing secondary market disclosure system under Exchange Act Rule 15c2-12 to provide for a centralized electronic submission and dissemination model. The MSRB stands ready to expand its planned electronic submission system under the permanent system to also serve as the central electronic submission system for free filings of all secondary market disclosure under an amended Rule 15c2-12 and to integrate this complete collection of secondary market disclosure information with the MSRB's OS/ARD collection and RTRS data to provide a free comprehensive centralized public access portal for primary market disclosure information, secondary market disclosure information and transaction price information.

## 2. Statutory Basis

The MSRB believes that the proposed rule change is consistent with section 15(b)(2)(C) of the Act,<sup>6</sup> 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 because the pilot facility will serve as a necessary transitional step toward establishing a permanent system for free and timely public access to OSs and ARDs. Together, the pilot facility and permanent system will 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 will in general promote investor protection and the public interest by ensuring equal access for all market participants to the critical disclosure information needed by investors in the municipal securities market.

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

The MSRB does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act because documents and information provided

<sup>4</sup> Under current Rule G-32, a dealer selling a new issue municipal security to a customer during the period ending 25 days after bond closing must deliver the official statement to the customer on or prior to trade settlement. Under an "access equals delivery" standard, dealers selling most new issue municipal securities would be deemed to have satisfied this basic requirement for delivering OSs to customers by trade settlement since such OSs would be publicly available through the permanent system. The MSRB expects to propose amendments to Rules G-32 and G-36 to adopt an "access equals delivery" standard at a future date through a separate filing with the SEC.

<sup>5</sup> Exchange Act Rule 15c2-12 currently requires underwriters for most primary offerings of municipal securities to obtain an undertaking by the issuer or obligated person to provide certain types of continuing disclosure information to the marketplace, consisting of material event notices and annual filings of financial information. Annual filings are to be sent to all existing nationally recognized municipal securities information repositories ("NRMSIRs") and any state information depositories ("SIDs"), while material event notices may be sent either to all existing NRMSIRs or to the MSRB, as well as to any SIDs. The level of submissions of material event notices to the MSRB's CDINet has diminished dramatically since this provision was adopted such that CDINet receives only a small percentage of material event notices currently provided to the marketplace. The Commission has published proposed amendments to Exchange Act Rule 15c2-12 to eliminate the MSRB's limited role in the current secondary market disclosure system due in large measure to the low volume of usage as well as the need for significant upgrades to keep the CDINet operational. See Securities Exchange Act Release No. 54863 (December 4, 2006), 71 FR 71109 (December 8, 2006).

<sup>6</sup> 15 U.S.C. 78o-4(b)(2)(C).

through the pilot portal and the permanent system will be available to all persons on an equal basis. The MSRB will continue to make the OS/ARD collection available by subscription on an equal basis without imposing restrictions on subscribers from re-disseminating such documents or otherwise offering value-added services and products based on such documents on terms determined by each subscriber. The MSRB believes that any incidental impact of the proposed rule change on commercial enterprises would not create an unequal burden among such enterprises and would be substantially outweighed by the benefits provided by the proposed rule change in removing impediments to and helping to perfect the mechanisms of a free and open market in municipal securities, assisting in the prevention of fraudulent and manipulative acts and practices, and generally promoting investor protection and the public interest.

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

*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").<sup>7</sup> The Concept Release described two critical factors that would need to be put into place: all OSs must be available electronically, and such electronic OSs must be easily and freely available to the public. The Concept Release described in general terms certain modifications that could be made to existing MSRB rules to implement the "access equals delivery" model.

With regard to public access to OSs under an "access equals delivery" standard for municipal securities, the Concept Release stated that electronic OSs would need to be made readily available to the investing public, at no cost, for the duration of the applicable new issue disclosure period, at a minimum. The MSRB expressed the belief that investors would be best served if such OSs were made available at a centralized Internet website, although other parties could of course make all or portions of such collection available at other websites or through other means as well. In the alternative, a central directory of such OSs could be

maintained, with the actual hosting of the electronic OS occurring by multiple parties (such as issuers, financial advisors, underwriters, information vendors, printers, etc.) that have undertaken to maintain free ready access to such documents throughout the new issue disclosure period. However, the MSRB observed that this second alternative would provide fewer assurances that electronic access to the OSs will in fact be maintained in a uniform manner for the required duration and likely would require third-party monitoring of these decentralized sources. 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.

*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 an electronic system for access to primary market disclosure in the municipal securities market (the "January 2007 Notice").<sup>8</sup> The electronic system would build on the MSIL system to provide through an Internet-based central access facility an assured source for free access to OSs and other related documents and information in connection with all new issue municipal securities to investors, other market participants and the public. 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 for OSs and other documents and information.

The MSRB noted in the January 2007 Notice that it would operate a public access portal that would post OSs and other documents and information directly on its centralized website and would make posted information available for free for the life of the securities to investors, other market participants and the general public. The MSRB indicated that multiple entities subscribing to the MSIL system document collection—which will be designed to provide nearly real-time access to documents as they are submitted and processed—could establish separate public access portals designed to make available publicly the basic documents and information provided through such subscription, together with such other documents, information and utilities (e.g., indicative data, transaction pricing data, secondary market information, analytic tools, etc.)

as each such operator shall determine. These separate portals could provide these services on such commercial terms as they deem appropriate.

The January 2007 Notice also stated that the MSRB intends to continue offering subscriptions to the MSIL system collection on terms that promote the broad dissemination of disclosure information throughout the marketplace without creating a significant negative impact on the pricing of dissemination services by subscribers. The MSRB hoped that multiple public access portals would provide free continuous access to OSs and other documents throughout the new issue disclosure period and a reasonable limited period of time thereafter and also would provide continuing access beyond the expiration of this period on favorable terms, with due consideration for promoting access by infrequent users (e.g., retail investors) for free or at greatly reduced rates. 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 OSs 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.

*SEC's "Access Equals Delivery" Rule*

The Concept Release and January 2007 Notice noted that the new dissemination system for municipal securities disclosure would be modeled in part on the "access equals delivery" rule for prospectus delivery for registered securities offerings adopted by the SEC in 2005.<sup>9</sup> The MSRB observed that issuers in the registered securities market are required to file registration statements and prospectuses electronically through the SEC's EDGAR (Electronic Data Gathering, Analysis, and Retrieval) system prior to an offering. The EDGAR system then makes electronic versions of filings available to the public at no charge on a "real-time" basis through the SEC's website. As a result, prospectuses for most registered offerings are available free of charge at a centralized site (as well as through other information services, in some

<sup>9</sup> See Securities Act Release No. 8591 (July 19, 2005), 70 FR 44722 (August 3, 2005). The MSRB's draft amendments 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.

<sup>7</sup> MSRB Notice 2006-19 (July 27, 2006).

<sup>8</sup> MSRB Notice 2007-5 (January 25, 2007).

cases for a fee) throughout the selling process. The MSRB observed that the SEC's "access equals delivery" standard is premised on, among other things, this immediate free availability of prospectuses and other filings through the EDGAR system and other electronic sources.

### Discussion of Comments

The MSRB received comments on the Concept Release from 29 commentators and on the January 2007 Notice from 12 commentators.<sup>10</sup> 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.<sup>11</sup> After reviewing these comments, the MSRB approved the proposed rule change for filing with the

<sup>10</sup> The MSRB received comments on the Concept Release from the American Bar Association, Section of State and Local Government; American Government Financial Services Company ("AGFS"); Automated Data Process, Inc.; Bernardi Securities, Inc. ("Bernardi"); Bond Market Association ("BMA"); brokersXpress, LLC ("brokersXpress"); College Savings Plans Network ("CSPN"); Commerce Bancshares, Inc. ("Commerce"); Digital Assurance Certification LLC; DPC DATA Inc. ("DPC"); Edward D. Jones & Co., LP ("Edward Jones"); First Southwest Company ("First Southwest"); Griffin, Kubik, Stephens & Thompson, Inc. ("Griffin Kubik"); Investment Company Institute ("ICI"); J.J.B. Hilliard, W.L. Lyons, Inc. ("Hilliard Lyons"); Morgan Keegan & Company, Inc. ("Morgan Keegan"); Municipal Advisory Council of Texas ("Texas MAC"); National Association of Bond Lawyers ("NABL"); National Federation of Municipal Analysts ("NFMA"); Regional Municipal Operations Association ("RMOA"); Securities Industry Association ("SIA"); Standard & Poor's CUSIP Service Bureau ("S&PCUSIP"); Daniel E. Stone; TRB Associates; UBS Securities LLC ("UBS"); UMB Bank, N.A. ("UMB"); USAA Investment Management Company ("USAA"); Wells Fargo Institutional Brokerage & Sales ("Wells Fargo"); and Zions Bank Public Finance ("Zions"). The MSRB received comments on the January 2007 Notice from American Municipal Securities, Inc. ("AMS"); Bear, Stearns & Co., Inc. ("Bear Stearns"); Bernardi; CSPN; DPC; Griffin Kubik; Ipreo Holdings LLC ("Ipreo"); NABL; Securities Industry and Financial Markets Association ("SIFMA"); Merry Jane Tissier; UMB; and Wulff, Hansen & Co. ("Wulff").

<sup>11</sup> AGFS, AMS, Bear Stearns, Bernardi, BMA, brokersXpress, CSPN, Commerce, DPC, Edward Jones, First Southwest, Griffin Kubik, Hilliard Lyons, ICI, Ipreo, Morgan Keegan, Texas MAC, NABL, NFMA, RMOA, SIA, SIFMA, S&P CUSIP, UBS, UMB, USAA, Wells Fargo, Wulff, Zions. Although DPC supported the concept of electronic access to OSs, it expressed concerns regarding several basic concepts discussed in the January 2007 Notice, as discussed below. A number of these commentators (e.g., ADP, AGFS, BMA, CSPN, Griffin Kubik, ICI, Hilliard Lyons, RMOA, SIA), as well as Mr. Stone and Ms. Tissier, made specific suggestions on details relating to the manner of implementing the "access equals delivery" standard. See footnote 12 *infra*. While supporting a central dissemination system for OSs, 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.

SEC. The comments relating to the dissemination system are discussed below.<sup>12</sup> Document Format. PDF was the preferred OS file format of most commentators responding to the Concept Release.<sup>13</sup> Some commentators suggested that other OS formats also should be accepted,<sup>14</sup> 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.<sup>15</sup> RMOA stated that a single format should be prescribed, and other commentators believed that allowing multiple formats could prove problematic.<sup>16</sup> 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 noted that there may be benefits to market participants in permitting 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.

The January 2007 Notice indicated that PDF would be the acceptable document format, although the system would retain flexibility to permit other appropriate file formats as they are developed and become available for general public use. SIFMA, AMS, DPC,

Ipreo and NABL generally agreed with this approach. 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 OSs: (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.<sup>17</sup>

In addition, the MSRB supports the SEC's Interactive Data and XBRL Initiatives for registered offerings. Although the MSRB will initially accept documents into the pilot portal solely as PDF files and will not be in a position to accept documents or data in XBRL format upon initial launch of the pilot portal or the permanent system, the MSRB will 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.

### Duration of Availability of OSs On-Line and Impact on Commercial Vendors

Most commentators stated that OSs should remain publicly available for the life of the securities.<sup>18</sup> Some commentators noted that, although financial and operating information in OSs quickly becomes stale, many portions of the OS remain useful throughout the life of a bond issue.<sup>19</sup> BMA stated that the financial and operating information included in the OS serve as valuable points of reference when reviewing secondary market financial and operating information provided to NRMSIRs pursuant to Rule 15c2-12.<sup>20</sup> 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 OSs 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 OSs available solely for the current 25 day new issue disclosure

<sup>17</sup> DPC suggested that required data elements accompanying documents be captured in formatted fields and that such data be parsed automatically into extensible markup language (XML) for distribution. The current electronic submission process in the MSIL system provides an option for XML uploads of such data and the MSRB expects to continue providing this or similar capabilities in the new system.

<sup>18</sup> Bernardi, BMA, Griffin Kubik, Morgan Keegan, NABL, NFMA, RMOA, SIA, Texas MAC, UBS, UMB, Wells Fargo, Zions.

<sup>19</sup> BMA, Griffin Kubik, NFMA, RMOA, SIA, Texas MAC, UBS.

<sup>20</sup> Griffin Kubik, SIA and UBS agreed.

<sup>12</sup> Comments relating to the draft amendments to Rules G-32 and G-36 that would institute an "access equals delivery" standard to replace the current physical delivery paradigm will be addressed in the MSRB's expected rule filing relating to such amendments.

<sup>13</sup> Bernardi, BMA, brokersXpress, CSPN, Commerce, DPC, Edward Jones, Griffin Kubik, Hilliard Lyons, Morgan Keegan, Texas MAC, NABL, SIA, UBS, UMB, Wells Fargo, Zions.

<sup>14</sup> Bernardi, Wells Fargo.

<sup>15</sup> BMA, Edward Jones, Griffin Kubik, SIA, Texas MAC, UBS, Zions.

<sup>16</sup> DPC, NABL, UBS, Zions.

period would be sufficient,<sup>21</sup> with DPC stating that maintaining public access beyond this 25-day period would impair the economic interests of information vendors that currently make OSs available on a commercial basis and would ultimately negatively impact the marketplace.<sup>22</sup> DPC stated that, although OSs may be made available for free to those accessing them through a public access portal, there will be a cost to the dealer community to subsidize the dissemination system's development and operation. DPC further noted 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."

The MSRB agrees that there is significant value to maintaining OSs available for the life of the securities and therefore will make OSs available through the pilot portal and the permanent system until the maturity of the securities. The MSRB also agrees with the approach taken by the SEC 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 SEC 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.

<sup>21</sup> brokersXpress, Commerce, DPC, First Southwest.

<sup>22</sup> DPC argued that some aspects of the system's operations as proposed "could be construed as interfering with standard commercial processes of private businesses." DPC viewed the MSRB's proposal in the January 2007 Notice that customer notices provide a specific URL for the OS 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 also did not approve of the proposal in the January 2007 Notice to the effect that a public access portal referred to in the customer notice would need to provide free OS access to customers for a limited period of time after issuance of the securities, although the January 2007 Notice made clear that private portal operators could provide value-added services, as well as access to OSs after the initial free period, on such commercial terms as they deem appropriate. Concerns regarding the potential impact on existing commercial interests of the amendments necessary to institute the "access equals delivery" standard will be addressed in the MSRB's expected rule filing relating to such amendments. See footnote 12 *supra*.

*OS Amendments and POSs.* BMA noted that investors should be informed of any amendments to an OS available on the system, and BMA and AGFS suggested the possibility of highlighting changes made in such amendments. BMA and DPC emphasized the importance of tracking and properly linking amendments and the original OSs to which they relate.

Some commentators suggested preliminary official statements ("POSs") should also be made available electronically through the system.<sup>23</sup> DPC suggested that the MSRB explore making the submission of all POSs mandatory, while SIFMA, AMS and NABL emphasized that POS submissions should not be made mandatory. SIFMA and DPC noted the importance of ensuring version control where both POSs and OSs are made available (as well as in handling "stickers" to OSs), suggesting that the MSRB include a mechanism for notification to the public when the final OS is posted in cases where a POS has previously been submitted. DPC suggested that POSs be deleted when final OSs are submitted, while NABL suggested that underwriters be permitted to request that the POS be removed from the system once the "timeliness of a POS has ended," noting that its continued availability may confuse investors. However, SIFMA opposed the removal of the POS.

The MSRB will continue to receive and will post all amendments to OSs, with such amendments properly linked to the original OS. The MSRB also intends to make POSs voluntarily submitted available on the permanent system, but POSs are not expected to be available on the pilot portal. Once POSs become part of the permanent system, the MSRB expects to provide a feature that would alert investors who have accessed an earlier version to be alerted of the posting of updated information, such as where an OS is posted after an initial posting of a POS or where a posted OS is subsequently stickered.

*Secondary Market Disclosure.* Some commentators stated that secondary market disclosures should be made available on the same platform as OSs.<sup>24</sup> ICI stated that the "access equals delivery" system should disseminate OSs to the NRMSIRs so that investors can view OSs and secondary market disclosures at a single source.

As noted above, the MSRB stands ready to expand its planned electronic submission system under the permanent

system to also serve as the central electronic submission system for free filings of all secondary market disclosure under an amended Rule 15c2-12 and to integrate this complete collection of secondary market disclosure information with the MSRB's OS/ARD collection and RTRS data to provide a free comprehensive centralized public access portal for primary market disclosure information, secondary market disclosure information and transaction price information, should the SEC determine to pursue such option.

*Basic Identifying Information and Search Function.* Some commentators suggested that the information submitted on Form G-36(OS) should be made available to the public.<sup>25</sup> 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.

As noted above, the MSRB will use its MSIL indexing data to provide appropriate identifying information on the pilot portal and to develop a robust search function to facilitate quickly finding the appropriate document on the system.

*Method of Posting Documents.* Nearly all commentators stated that the central access facility should post OSs directly on a central website, rather than serving as a directory of links to OSs posted by underwriters, issuers, financial advisors, printers or others at other sites.<sup>26</sup> 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.<sup>27</sup> 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

<sup>25</sup> BMA, RMOA, TRB.

<sup>26</sup> Bernardi, BMA, brokersXpress, Commerce, DPC, First Southwest, Griffin Kubik, Hilliard Lyons, ICI, Morgan Keegan, NABL, NFMA, RMOA, SIA, Texas MAC, UBS, Wells Fargo, Zions.

<sup>27</sup> BMA, brokersXpress, DPC, Griffin Kubik, ICI, NFMA, SIA, UBS, Zions.

<sup>23</sup> AMS, Bear Stearns, DPC, Griffin Kubik, Ipreo, NABL, SIFMA, TRB, UMB, Zions.

<sup>24</sup> BMA, RMOA, Texas MAC, TRB, UBS.

effective to link the MSRB website to the appropriate posting site for each OS, with the MSRB monitoring and/or restricting these posting sites, "just as it does for the NRMSIRs." CSPN noted that it viewed its own centralized web-based disclosure utility for the 529 college savings plan market as the appropriate central access facility for that market.

As noted above, the MSRB will post OSs and related items directly on its central access portal, rather than merely posting hyperlinks to other sources.

*Operation of Public Access Sites.* AMS and UMB generally supported a single central access portal, while SIFMA, DPC, Ipreo, and NABL preferred that OSs be made available from multiple sources. Many commentators felt that the MSRB could operate the central access facility,<sup>28</sup> with several indicating that the MSRB is their first choice to do so.<sup>29</sup> Many commentators suggested that the central access facility also could be operated by an outside contractor with oversight by the MSRB pursuant to contract.<sup>30</sup> Wells Fargo stated that the MSRB should investigate a centralization function that will not unequally empower a single data vendor.

Several private sector organizations expressed interest in their comment letters in participating in the proposed electronic dissemination system.<sup>31</sup> NABL stated that proposed approaches by market participants and others will 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. 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.<sup>32</sup>

<sup>28</sup> Bernardi, BMA, Commerce, First Southwest, Griffen Kubik, Hilliard Lyons Morgan Keegan, NFMA, RMOA, SIA, UBS, Zions.

<sup>29</sup> 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 can be covered at the MSRB's discretion.

<sup>30</sup> BMA, First Southwest, Griffen Kubik, NMFA, RMOA, SIA, Texas MAC, UBS.

<sup>31</sup> ADP, DPC, S&P CUSIP and Texas MAC.

<sup>32</sup> BMA, Griffen Kubik, SIA, UBS.

Although the MSRB has determined to establish the pilot portal and expects to transition such pilot portal to the permanent system, the MSRB's public access portal need not operate as the sole public access facility. Rather, multiple entities that subscribe to the MSIL system document collection—which will be designed to provide nearly real-time access to documents—could establish separate access portals to make available publicly the basic documents and information provided through the MSIL system subscription, 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. These separate public access portals could provide these services on commercial terms. The MSRB would hope that multiple public access portals would provide free continuous access to OSs for a defined period after initial issuance and continuing access beyond this period on favorable terms, with due consideration for promoting access by infrequent users (e.g., retail investors) for free or at greatly reduced rates. The MSRB's goal in promoting the establishment of parallel public access portals is to provide market participants with an effective opportunity to access OSs 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](mailto:rule-comments@sec.gov). Please include File Number SR-MSRB-2007-06 on the subject line.

#### *Paper Comments:*

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-MSRB-2007-06. 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-2007-06 and should be submitted on or before January 18, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>33</sup>

**Florence E. Harmon,**  
*Deputy Secretary.*

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<sup>33</sup> 17 CFR 200.30-3(a)(12).