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September 15, 2006

Ernesto A. Lanza, Esq.  
Senior Associate General Counsel  
Municipal Securities Rulemaking Board  
1900 Duke Street, Suite 600  
Alexandria, VA 22314

RE: MSRB Notice 2006-19: Application of "Access Equals Delivery" Standard to  
Official Statement Dissemination for New Issue Municipal Securities

Dear Mr. Lanza:

The Bond Market Association ("Association")<sup>1</sup> appreciates this opportunity to respond to the notice ("Notice") issued by the Municipal Securities Rulemaking Board ("MSRB") on July 27, 2006<sup>2</sup> in which the MSRB requests comment on the application of the "access equals delivery" standard to official statement dissemination for new issue municipal securities. The Notice sets out the MSRB's proposals for implementation of an electronic system of primary market disclosure to promote significantly more effective and efficient delivery of material information to new issue customers and to the marketplace generally. The Notice describes a potential framework for instituting "access equals delivery" standards for MSRB rules, modeled, in part, on recent rule changes adopted by the Securities and Exchange Commission ("SEC") for prospectus dissemination in connection with the registered securities market.<sup>3</sup>

The key to the success of the SEC's implementation of "access equals delivery" in the registered market is that the relevant information is readily available on EDGAR in one central electronic location, "real-time" and free of charge<sup>4</sup>. The Association believes that

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<sup>1</sup> The Association is a trade association that represents approximately 200 securities firms, banks and asset managers that underwrite, trade and invest in fixed-income securities in the United States and in international markets. Fixed income securities include U.S. government and federal agency securities, municipal bonds, corporate bonds, mortgage-backed and asset-backed securities, money market instruments and funding instruments such as repurchase agreements. More information about the Association and its members and activities is available on its website [www.bondmarkets.com](http://www.bondmarkets.com). The Association is expected to merge with the Securities Industry Association in November 2006. More information about the SIA and its members and activities is available on its website [www.sia.com](http://www.sia.com).

<sup>2</sup> MSRB Notice 2006-19.

<sup>3</sup> See, Federal Register (Wed. Aug. 3, 2005).

<sup>4</sup> Please note that EDGAR filing fees are paid by corporate issuers and that this fee structure is different than that which exists currently in the municipal securities market. Different cost structures may be appropriate for different markets.

the key to success for implementation of a comparable system for the municipal marketplace is that the proposal meets the readily available, cost-effective standard, that it promotes efficiency in the market, that it meets criteria for "flow through" processing of information and that it provides customers a single location to access both primary and secondary market information.

A. *General Requirements for Access Equals Delivery Solutions*

1. *The Concept of a Central Repository Versus a Directory*

The Association does not believe that a "central directory" meets the readily available standard. A customer should not be required to access a directory that informs the customer where a disclosure document is located in a decentralized system where the actual document may be on one of many Internet sites. To maintain the comparability to the SEC's system for registered securities there should be a single site to locate and access the final official statement ("OS"). This conclusion suggests that the repository be one of the other two possibilities indicated in the Notice: a centralized Internet website established by the industry in the marketplace, or the MSRB itself.

Ideally, the repository, whether a centralized website or the MSRB, should be a repository for both primary market disclosure and secondary market disclosure filed pursuant to the continuing disclosure system under SEC Rule 15c2-12. This requirement would comply with the standard established by the SEC for registered securities in its EDGAR system to make both primary and secondary market information readily available. Of course, while filing primary and secondary market data for registered securities in the EDGAR system is mandated, in the decentralized municipal securities disclosure world, available information differs significantly at each repository and is generally only available for a fee. Customers seeking information about one or more issuers or securities in the new paradigm for municipal securities should not be forced to go to multiple sites for information.

The central repository should also receive and disclose other documents required to be filed under MSRB Rule G-36, namely advance refunding documents and Forms G-36(OS) and G-36 (ARD). In short, access to all filings required by Rule G-36 and SEC Rule 15c2-12 should be at one location, readily accessible to investors.

Rigorous analysis of the costs and how they are to be borne should be established ahead of time to ensure that whichever system is established is cost-effective. The Association feels that close attention should be paid to what entity can launch an "access equals delivery" solution in the most timely and cost-effective manner. Further discussion also needs to occur amongst industry members focused on what parties should bear the costs of this new system before any additional buildout costs or ongoing filing fees are imposed. In the current paradigm, the costs of the mechanical aspects of disclosure dissemination are shared by dealers and investors. Filings required by Rule G-36 and SEC Rule 15c2-12 currently are not free to investors from the nationally recognized

municipal securities information repositories (“NRMSIR”s)<sup>5</sup>. Dealers also currently support the MSIL and CDINet<sup>6</sup> systems through fees due to MSRB.

MSRB controls over this new system can be established by contract if the repository is a centralized internet website rather than the MSRB.

## 2. *Availability Beyond the New Issue Disclosure Period*

The Association believes the final OS should remain available to customers, and other interested parties, at the central site beyond the new issue disclosure period, which is the required period for dealer delivery of final OSs under Rule G-32. The new issue disclosure period and the Rule G-32 delivery requirement end 25 days after the closing, but the value of having access to the final OS beyond that date cannot be overstated. The typical argument for deleting a primary market offering document from a website after a period of time is that information becomes stale, but that is not the case for much of the information in a municipal OS. The maturity schedule, redemption provisions, covenants to protect bondholders, additional bonds tests, refunding rights, defeasance provisions and legal opinions, among other items, do not become stale. Debt finance, generally, and public finance, particularly, have much material information that is based on documents that are in effect for the life of the bonds. Even the financial information and operating data that are time sensitive have value for the secondary market because continuing disclosure, pursuant to SEC Rule 15c2-12, is based on the financial information and operating data set forth in the final OS, and having the final OS available provides a valuable reference to give context to the review of annual disclosure. The use of archives and warnings are now sufficiently commonplace to give investors adequate notice of staleness issues.

In addition to archiving final official statements, other Rule G-36 filings and annual continuing disclosure or material event notices should also be archived.

## 3. *Requirement for Electronic Rule G-36 Submissions*

The Association believes that the proposal in the Notice to require all Rule G-36 submissions to the MSRB in electronic form would not place an unreasonable burden on the public finance industry. As stated in the Notice, the availability of electronic OSs is growing rapidly and the proposed rule change would probably further promote the move from paper to electronic disclosure. MSRB currently accepts electronic submissions of G-36 documents and G-36 forms, and we understand that approximately half of G-36 filings are currently submitted electronically. The Association recognizes that, because

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<sup>5</sup> The Association is aware that access to the MSRB’s physical MSIL collection is free if an interested party goes to the MSRB’s offices, however the MSRB does not currently have an electronic method for investors to search for and retrieve OSs. The MSIL system is available electronically from the MSRB only by a fee-based subscription service.

<sup>6</sup> The Association is aware that the MSRB plans to discontinue the CDINet system.

of limitations on MSRB jurisdiction to brokers, dealers and municipal securities dealers (collectively, "dealers"), there may be circumstances in which dealers will be required to scan documents to make electronic submissions, but we are of the opinion that any potential burden on dealers is not sufficient to oppose the requirement. However, we note that the current G-36 electronic filing format is not particularly user-friendly. It is imperative G-36 electronic filing be made as simple as possible.

Depository Trust and Clearing Company ("DTCC") also already encourages submission of electronic versions of the preliminary OS as well as the final OSs (the underwriter is charged a disincentive fee of \$200.00 per paper submission) for its underwriting eligibility process.

However, the Association does not believe the proposed rule change should contain any specific requirement for dealers to verify the accuracy of the submission. Each dealer firm is likely to have policies and procedures for Rule G-36 compliance, and those policies and procedures can be adapted to changes in the technology of electronic disclosure.

Underwriters should continue to be required to provide Rule G-36 submissions, not financial advisors. Underwriters have substantial liability if a filing is not done when and as required. It is important to underwriters that they control the filing process so that they can ensure compliance with the access equals delivery process, when implemented, and all applicable MSRB or SEC rules.

Again, regardless of what centralized site is used for the access equals delivery solution, the Association believes that all filing documents, such as advance refunding documents and the G-36 forms, as well as Rule 15c2-12 secondary market disclosure documents should be filed in the same place.

#### *4. The Timing of Rule G-36 Submissions*

The MSRB requests comment on whether the date for submission of the final OS to the MSRB should be changed from the current requirement of no later than 10 business days after the sale date to no later than the closing. The Notice further requests comment on whether there are any circumstances in which the final OS is not prepared by the closing date.

The Association does not recommend changing the Rule G-36 submission date for issues subject to SEC Rule 15c2-12 from one business day after receipt, but no later than 10 business days after the sale, to one business day after receipt, but no later than the closing. The Association also does not support changing the current version of Rule G-36 with respect to issues that are exempt from Rule 15c2-12 because there are circumstances in which the final OS is not prepared by the closing when the pricing does not occur until the morning of the closing. Current Rule G-36 was drafted to meet these situations and should not be changed. If anything, Rule G-36 should be revisited to

consider situations that are not exempt from Rule 15c2-12, but which may represent circumstances when filing a final official statement within 10 business days of sale (or the closing) is difficult or impractical. Some auction rate securities and forward delivery issues are in this category.

5. *Timing of Notice to Customers*

The Association supports the proposal to provide notice to customers within two business days of trade settlement to conform Rule G-32 to SEC Rule 173 for registered offerings with the understanding that operations people will give notice in the municipal securities market by confirmation disclosure comparable to Rule 173 notices.

6. *Straight Through Processing*

The repository should be part of a linkage in the movement towards the straight through processing of information. Similarly to automated comparison, clearance and settlement under Rule G-12, the final OS has a number of locations it must reach, including, the MSRB, CUSIP, DTCC, underwriters, dealers and customers. The managing underwriter initiating the flow should be able to send the document to one location and have it automatically processed through to the other required locations. For example, if there is a central repository other than the MSRB, the managing underwriter should be able to transmit the document to the central repository and have it automatically processed through to the DTCC, CUSIP and the MSRB and make the document available for access in real time by underwriters, dealers and customers at the repository. Alternatively, the document could be routed to DTCC, CUSIP and then on to the MSRB and the repository (if separate from the MSRB). Or the flow could start at the MSRB – as long as the technology allows for real-time retransmittal of the filing documents to the other required sites.

The underwriter submits electronic OS's to not only DTCC but also to CUSIP and sometimes the NRMSIR's. One submission to one designated entity would provide availability of data to all interested parties simultaneously, as these electronic submissions are generally accomplished at the same time. Keeping the process simple will provide easier compliance by underwriters with less chance of accidental error.

7. *Format of Filings*

While security is extremely important, any rule should be flexible enough to deal with advances in electronic technology that meet or exceed the current parameters for PDF. The form of filing should allow the underwriter to e-mail a final official statement that is in e-mail form from the issuer to avoid the problem of downloading and resubmitting in batches that sometimes overload memory capacity.

8. *Addenda or Supplements*

Investors should be informed of any addenda or supplements to a filed OS. Generally, as is the current rule, if an amended OS is required then providing an amended replacement OS should be sufficient. Technology, however, may be useful to highlight changes from the original filing, if possible. Alternatively, any supplements should be tagged to the OS to which it relates to ensure that investors are aware that it has been updated.

B. *Exceptions to the Proposed Rule Change*

The Association does not believe the access equals delivery model should apply to the following:

1. Municipal Fund Securities, as defined by the MSRB, for the reasons stated by the MSRB in the Notice; and
2. Limited offerings exempt from Rule 15c2-12 under Rule 15c2-12(d)(i) because there is no reason for public access to the disclosure material in connection with such offerings.

*C. Location of the Central Repository*

The Association has been advised that the Municipal Advisory Council of Texas, the developer and operator of the Central Post Office (the "CPO")<sup>7</sup> which serves as a central location for the filing of secondary market information, has offered to configure its website to allow it to be a single location for the filing and hosting of primary market final OSs. We note the strong record of the CPO, and the significant progress being made towards a more efficient secondary market disclosure process. The Association at this time, however, is not stating a preference for the CPO, the MSRB, or any other potential hosting site. The Association does, however, believe that whether the central repository is the MSRB, the CPO, or some other centralized Internet website, there are criteria that must be met and the Association would be interested in learning more about the parameters that the MSRB sets before advocating any one hosting site over another. An important consideration is how quickly the designated central repository can become functional as we believe the sooner "access equals delivery" can be implemented, the better.

The Association believes that if the MSRB does not become the repository for purposes of "access equals delivery" of official statements, it would be beneficial for the MSRB to review the process for filing G-36 forms and related documents to see if a more streamlined process can be developed for obtaining the information it needs. Requiring the filing of the same documents with multiple entities through multiple processes is an unnecessarily costly and time-consuming activity yielding no additional benefits to any party.

We look forward to discussing these issues further with the MSRB Board and staff and appreciate your consideration of our comments on this proposal. Please contact the undersigned at 646.637.9230 or via email at [Lnorwood@bondmarkets.com](mailto:Lnorwood@bondmarkets.com) with any questions that you might have.

Sincerely,

/s/ Leslie M. Norwood

Leslie M. Norwood  
Vice President and  
Assistant General Counsel

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<sup>7</sup> The Municipal Advisory Council of Texas developed and operates the CPO under agreement with the Muni Council, an organization composed of trade groups representing the major constituents of the municipal securities industry.

Ernesto A. Lanza, Esq.  
Municipal Securities Rulemaking Board  
September 15, 2006  
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cc: ***Municipal Securities Rulemaking Board***

Mr. Christopher Taylor, Municipal Securities Rulemaking Board  
Diane Klinke, Esq., Municipal Securities Rulemaking Board  
Hal Johnson, Esq., Municipal Securities Rulemaking Board

***The Bond Market Association***

Municipal Executive Committee  
Municipal Legal Advisory Committee  
Municipal Credit Research, Strategy & Analysis Committee  
Municipal Operations Committee  
Municipal Sales and Marketing Committee  
Municipal Syndicate & Trading Committee  
Municipal Brokers Brokers Committee  
Municipal IDB Working Group