
MSRB Improves Bank Loan Disclosure on EMMA After Issuer Complaints.

WASHINGTON – The Municipal Securities Rulemaking Board has improved its EMMA system to make it easier for issuers to disclose bank loans and other alternative financings after state and local officials complained the process was too confusing and seemed to lose some of these disclosures.

The self-regulator, which has been a frequent advocate for voluntary disclosure of bank loans, introduced new, step-by-step instructions for issuers to use when submitting information on alternative financings to EMMA. The system now includes a bank loan disclosure tab on issuer homepages and contains an advanced search function that will allow users to search for securities associated with bank loan disclosures.

The MSRB will also hold an educational webinar on the new process geared toward issuers from 3:00 to 4:00 p.m. on Oct. 13.

"Feedback from issuer representatives suggested that a simplified method of submitting bank loan disclosures to EMMA would support making this important information available to investors and the public," said MSRB executive director Lynnette Kelly. "With the new and streamlined process, the MSRB hopes to see more issuers submitting bank loan disclosures for display on EMMA."

Bank loans and other financings have become popular for issuers because they can be used as a cheaper and less regulated alternative to municipal bonds. However, there is no requirement that issuers disclose such financings and any disclosure that does occur is done on a voluntary basis.

Under the new submission guidelines, issuers are instructed to begin by finding the area for creating a bank loan or alternative financing filing under the "continuing disclosure" tab on the EMMA Dataport Submission Portal. They will then be able to enter a description of the financing, disclose the date of the financing, and be given the choice of three options, depending on whether they know the CUSIP numbers that they want to associate with the loan. If they know the CUSIPs, they will be able to add them in an additional box. If they do not have CUSIP information, they can either search for the specific securities they want to associate by issuer name or state, or choose to only enter the issuer name and state without tying the financing to CUSIPs.

The new disclosure capabilities come after several discussions between the MSRB and market participants that took place earlier this year.

Issuers on the Government Finance Officers Association's debt committee vented their frustrations about the complexity of bank loan disclosure on EMMA to MSRB chair Nat Singer during a meeting the committee held as part of GFOA's annual conference in Toronto in late May. They emphasized that the problem has less to do with issuers not disclosing and more with the complexity of the system that was in place making it hard to correctly submit and find the disclosed information.

Ivan Samstein, chief financial officer for Cook County, Ill., and a committee member, told Singer that while there may be a problem with a lack of disclosure, it is overstated.

Jonas Biery, vice chair of the debt committee and senior business operations manager at the City of Portland, Ore.'s Bureau of Environmental Services, said that issuers didn't know where to post the information and investors didn't know how to find it, which led to the appearance of issuers largely under-disclosing.

"From our perspective, we have this potential momentum to create this structure that facilitates issuer posting, but the EMMA system just didn't quite seem to accommodate that," Biery said at the time.

The MSRB circulated a concept release in March that asked market participants to weigh in on whether it should pursue a rule to require municipal advisors to disclose information about the bank loans or privately placed munis of their issuer clients. The MSRB said it considered requiring the disclosures from MAs because issuers had not readily responded to prior requests for voluntary bank loan disclosures on EMMA.

Most commenters on the concept release applauded the MSRB's intent to increase disclosure but presented a host of reasons for why the concept of having MAs disclose bank loans is flawed. The main concerns centered on the likely threat to an MA's fiduciary duty to its issuer client if the issuer didn't want to disclose a bank loan but the MA was required to disclose it. Other commenters also questioned whether the MSRB had the statutory authority to require such disclosure.

The general consensus among commenters was that the issue would be better addressed with a change to the SEC's Rule 15c2-12 on disclosure. The idea to change 15c2-12 has proved popular in the market and lawyers in the Securities and Exchange Commission's Office of Municipal Securities have said they are exploring possible regulatory solutions that could address whether issuers should in some way be required to disclose information about their bank loans and privately placed securities.

The Bond Buyer

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