

**SUPPORTING STATEMENT**  
**for the Paperwork Reduction Act Information Collection Submission for**  
**Rule 15c2-12**

**A. Justification**

(1) Necessity of Information Collection

At the time the securities laws first were enacted, the market for most municipal securities was largely confined to limited geographic regions. The localized nature of the market, arguably, allowed investors to be aware of factors affecting the issuer and its securities. Moreover, municipal securities investors were primarily institutions, which in other instances are accorded less structured protection under the federal securities laws. Since 1933, however, the municipal markets have become nationwide in scope and now include a broader range of investors. At the same time that the investor base for municipal securities has become more diverse, the structure of municipal financing has become more complex. In the era preceding the adoption of the Securities Act of 1933, municipal offerings consisted largely of general obligation bonds. Today, however, municipal issuers include greater proportions of revenue bonds that are not backed by the full faith and credit of a governmental entity and which, in many cases, may pose greater credit risks to investors. In addition, more innovative forms of financing have focused increased attention on call provisions and redemption rights in weighing the merits of individual municipal bond investment opportunities.

Today there are over \$2.6 trillion of municipal securities outstanding. Despite its reputation as a “buy and hold” market, trading volume is also substantial, with over \$6.6 trillion of long and short-term municipal securities traded in 2007 in more than nine million transactions. The availability of accurate information concerning municipal offerings is integral to the efficient operation of the municipal securities market. In the Commission’s view, a thorough, professional review of municipal offering documents by underwriters could encourage appropriate disclosure of foreseeable risks and accurate descriptions of complex put and call features, as well as novel financing structures now employed in many municipal offerings. In addition, with the increase in novel or complex financing, there may be greater value in having investors receive disclosure documents describing fundamental aspects of their investments. Yet, underwriters are unable to perform this function effectively when offering statements are not provided to them on a timely basis. Moreover, where sufficient quantities of offering statements are not available, underwriters are hindered in meeting present delivery obligations imposed on them by MSRB rules.

For these reasons, in 1989, pursuant to Sections 15(c)(1) and (2) of the Securities Exchange Act of 1934, the Commission adopted Rule 15c2-12 (the “Rule” or “Rule 15c2-12”), a limited rule designed to prevent fraud by enhancing the timely access of underwriters, public investors, and other interested persons to municipal offering statements. In the context of the access to offering statements provided by the Rule, the Commission also reemphasized the existence and nature of an underwriter’s obligation to

have a reasonable basis for its implied recommendation of any municipal securities that it underwrites.

While the availability of primary offering disclosure significantly improved following the adoption of Rule 15c2-12, there was a continuing concern about the adequacy of disclosure in the secondary market. To enhance the quality, timing, and dissemination of disclosure in the secondary municipal securities market, the Commission in 1994 adopted amendments to Rule 15c2-12 (“1994 Amendments”). Among other things, the 1994 Amendments placed certain requirements on brokers, dealers, and municipal securities dealers (“broker-dealers” or, when used in connection with primary offerings, “Participating Underwriters”). Specifically, under the 1994 Amendments, Participating Underwriters are prohibited, subject to certain exemptions, from purchasing or selling municipal securities covered by the Rule in a primary offering, unless the Participating Underwriter has reasonably determined that an issuer of municipal securities or an obligated person has undertaken in a written agreement or contract for the benefit of holders of such securities (“continuing disclosure agreement”) to provide specified annual information and event notices to certain information repositories. The information to be provided consists of: (1) certain annual financial and operating information and audited financial statements (“annual filings”); (2) notices of the occurrence of any of eleven specific events (“event notices”); and (3) notices of the failure of an issuer or other obligated person to make a submission required by a continuing disclosure agreement (“failure to file notices”) (annual filings, event notices and failure to file notices may be collectively referred to as “continuing disclosure documents”).

To further promote the more efficient, effective, and wider availability of municipal securities information to investors and market participants, on December 5, 2008, the Commission adopted amendments to Rule 15c2-12 (“2008 Amendments”) to provide for a single centralized repository, the MSRB, for the electronic collection and availability of information about outstanding municipal securities in the secondary market. Specifically, the 2008 Amendments require the Participating Underwriter to reasonably determine that the issuer or obligated person has undertaken in its continuing disclosure agreement to provide the continuing disclosure documents: (1) solely to the MSRB; and (2) in an electronic format and accompanied by identifying information, as prescribed by the MSRB.

Currently, under paragraph (b) of Rule 15c2-12, a Participating Underwriter is required: (1) to obtain and review an official statement “deemed final” by an issuer of the securities, except for the omission of specified information, prior to making a bid, purchase, offer, or sale of municipal securities; (2) in non-competitively bid offerings, to send, upon request, a copy of the most recent preliminary official statement (if one exists) to potential customers; (3) to send, upon request, a copy of the final official statement to potential customers for a specified period of time; (4) to contract with the issuer to receive, within a specified time, sufficient copies of the final official statement to comply with the Rule’s delivery requirement, and the requirements of the rules of the MSRB; and (5) before purchasing or selling municipal securities in connection with an offering, to

reasonably determine that the issuer or obligated person has undertaken, in a written agreement or contract, for the benefit of holders of such municipal securities, to provide continuing disclosure documents to the MSRB in an electronic format as prescribed by the MSRB. In addition, under paragraph (c) of the Rule, a broker-dealer that recommends the purchase or sale of a municipal security must have procedures in place that provide reasonable assurance that it will receive prompt notice of any event specified in paragraph (b)(5)(i)(C) of the Rule and any failure to file annual financial information regarding the security.

Under paragraph (d)(1)(iii) of the current Rule, a primary offering of municipal securities in authorized denominations of \$100,000 or more is exempt from the Rule, if the securities, at the option of the holder thereof, may be tendered to an issuer of such securities or its designated agent for redemption or purchase at par value or more at least as frequently as every nine months until maturity, earlier redemption, or purchase by an issuer or its designated agent. These securities are referred to as demand securities or variable rate demand obligations (“VRDOs”). Paragraph (d)(5) of the Rule makes the continuing disclosure provisions of paragraphs (b)(5) and (c) of the Rule apply to a primary offering of demand securities.

Under paragraph (b)(5)(i)(C) of the Rule, Participating Underwriters would be required to reasonably determine that the issuer or obligated person has undertaken in a continuing disclosure agreement to provide event notices to the MSRB, in an electronic format as prescribed by the MSRB, in a timely manner not in excess of ten business days, when any of the following events with respect to the securities being offered in an offering occurs: (1) principal and interest payment delinquencies; (2) non-payment related defaults, if material; (3) unscheduled draws on debt service reserves reflecting financial difficulties; (4) unscheduled draws on credit enhancements reflecting financial difficulties; (5) substitution of credit or liquidity providers, or their failure to perform; (6) adverse tax opinions, the issuance by the I.R.S. of proposed or final determinations of taxability, Notices of Proposed Issue or other material notices or determinations with respect to the tax status of the security, or other material events affecting the tax status of the security; (7) modifications to rights of security holders, if material; (8) bond calls, if material, and tender offers; (9) defeasances; (10) release, substitution, or sale of property securing repayment of securities, if material; (11) rating changes; (12) bankruptcy, insolvency, receivership or similar event of the obligated; (13) the consummation of a merger, consolidation, or acquisition involving an obligated person or the sale of all or substantially all of the assets of the obligated person, other than in the ordinary course of business, the entry into a definitive agreement to undertake such an action or the termination of a definitive agreement relating to any such actions, other than pursuant to its terms, if material; (14) appointment of a successor or additional trustee or the change of a name of a trustee, if material.

(2) Purpose Use of the Information Collection

Under the current Rule 15c2-12, the municipal securities underwriter is required: (1) to obtain and review a copy of an official statement deemed final by an issuer of the

securities, except for the omission of specified information; (2) in non-competitively bid offerings, to make available, upon request, the most recent preliminary official statement, if any; (3) to contract with the issuer of the securities, or its agent, to receive, within specified time periods, sufficient copies of the issuer's final official statement to comply both with this rule and any rules of the MSRB; (4) to provide, for a specified period of time, copies of the final official statement to any potential customer upon request; (5) before purchasing or selling municipal securities in connection with an offering, to reasonably determine that the issuer or other specified person has undertaken, in a written agreement or contract, for the benefit of holders of such municipal securities, to provide certain information about the issue or issuer on a continuing basis to the MSRB; and (6) to obtain the information the issuer of the municipal security has undertaken to provide prior to recommending a transaction in the municipal security.

The most recent amendments to the Rule would: (i) specify the time period for submission of event notices; (ii) expand the Rule's current categories of events; and (iii) modify an exemption in the current Rule used for demand securities. The amendments are intended to promptly make available to broker-dealers, institutional and retail investors, and others important information about significant events relating to municipal securities and their issuers. The amendments would help enable investors and other municipal securities market participants to be better informed about important events that occur with respect to municipal securities and their issuers, including with respect to demand securities, and thus would allow investors to better protect themselves against fraud. In addition, the amendments would provide brokers, dealers, and municipal securities dealers with access to important information about municipal securities that they can use to carry out their obligations under the securities laws. This information could be used by individual and institutional investors; underwriters of municipal securities; other market participants, including broker-dealers and municipal securities dealers; analysts; municipal securities issuers; the MSRB; vendors of information regarding municipal securities; Commission staff; and the public generally.

### (3) Consideration Given to Information Technology

Since the 1994 Amendments to the Rule, there have been significant advancements in technology and information systems that allow market participants and investors, both retail and institutional, easily, quickly, and inexpensively to obtain information through electronic means. The exponential growth of the Internet and the capacity it affords to investors, particularly retail investors, to obtain, compile and review information has likely helped to keep investors better informed. In addition to the Commission's EDGAR system, which contains filings by public companies and mutual funds, the Commission has increasingly encouraged, and in some cases required, the use of the Internet and websites by public reporting companies and mutual funds to provide disclosures and communicate with investors.

The Commission believes that, at present, information about municipal issuers and their securities may not be as consistently available or comprehensive as information about other classes of issuers and their securities. This may be due, in part, to the lack of

a central point of collection and availability of information in the municipal securities sector. Therefore, in the 2008 Amendments the Commission adopted amendments to Rule 15c2-12 to provide for a single centralized repository, the MSRB, to receive submissions in an electronic format as a means to encourage a more efficient and effective process for the collection and availability of continuing disclosure documents.

(4) Duplication

The information collection requested from the underwriter is not duplicative, since this information would not otherwise be required by the Commission.

(5) Effect on Small Entities

The Rule is one of general applicability that does not depend on the size of a broker-dealer. Since the Rule is designed to apply to all registered broker-dealers, the Rule must apply in the same manner to small as well as large broker-dealers. The Commission believes that many of the substantive requirements of the Rule have been observed by underwriters and issuers as a matter of business practice or to fulfill their existing obligations under the MSRB rules and the general anti-fraud provisions of the federal securities laws. Moreover the Rule focuses only on offerings of municipal securities of \$1 million or more, in which any additional costs imposed by the establishment of specific standards are balanced by the potential harm to the large number of investors that may purchase securities on the basis of inaccurate information. The Commission is sensitive to concerns that the Rule not impose unnecessary costs on municipal issuers. When the Rule was proposed, many commenters, including the MSRB and the Public Securities Association (n/k/a the Securities Industry and Financial Markets Association (SIFMA)), indicated that the Rule would not impose unnecessary costs or force a majority of responsible issuers to depart from their current practices. The commenters suggested that the Rule should, however, encourage more effective disclosure practices among those issuers that did not currently provide adequate and timely information to the market. The Rule also contains exemptions for underwriters participating in certain offerings of municipal securities issued in large denominations that are sold to no more than 35 sophisticated investors or have short-term maturities. The current Rule also contains an exemption for underwriters participating in certain offerings of municipal securities issued in large denominations that have short-term tender or put features, which would be modified by the Commission's proposal.

(6) Consequences of Not Conducting Collection

Providing underwriters with a more flexible standard may jeopardize the protection that Rule 15c2-12 provides. The Commission understands that the Rule imposes an additional burden on underwriters; however, the Commission seeks to accomplish this goal in the least intrusive manner, by imposing minimal additional costs on broker-dealers while enhancing investor protection. Moreover, the Commission has already limited application of the Rule to primary municipal offerings of \$1 million or more and has incorporated a limited placement exemption into the Rule.

(7) Inconsistencies with Guidelines in 5 CFR 1320.5(d)(2)

The requirements of the Rule are not inconsistent with the Guidelines of 5 CFR 1320.5(d)(2)

(8) Consultation Outside the Agency

Commission staff consults with issuers, investors, bond lawyers, broker-dealers and other market participants on issues relating to municipal securities on an ongoing basis. Commission staff regularly attends municipal market conferences and meets with representatives of various organizations from major segments of the municipal finance industry. The Commission held Municipal Market Roundtables in 1999, 2000 and 2001 to discuss a broad range of municipal market issues, including disclosure issues in the secondary market. In June 2009, when the Commission proposed amendments to the most the Rule (2010 Amendments), the Commission received comments with respect to the collection of information and the cost and benefits aspects of the proposal.<sup>1</sup> The comments are summarized below from the Adopting Release.<sup>2</sup>

To address commenters' concerns about the impact of the proposal on existing demand securities, the 2010 Amendment does not apply to remarketings of demand securities that are outstanding in the form of demand securities on the day preceding the amendments' compliance date and that continuously have remained outstanding in the form of demand securities (i.e., such securities can qualify for a limited grandfather provision).

One commenter believed that the proposal failed to assess the "substantial additional time and expense" required by Participating Underwriters and remarketing agents to review and verify disclosure about obligated persons in offerings of demand securities, unless the amendments to the Rule were clarified to exclude offerings of LOC-backed demand securities without primary or continuing disclosure about the underlying obligor. This comment appears to relate to a Participating Underwriter's review of issuers' primary offering disclosure. As discussed in Section III above, the amendments are not eliminating the exemption for demand securities from paragraphs (b)(1) – (4) of the Rule, which relate to primary offering disclosure. As a result, Participating Underwriters in offerings of demand securities will continue to be exempt from the primary offering provisions of the Rule. For this reason, the Commission does not believe that a Participating Underwriter will incur "substantial additional time and expense" in connection with the amendments, as suggested by the commenter. The Commission has considered this comment, reviewed its estimate in the Proposing Release in light of the comment, and believes that it is unnecessary to revise the total hourly burden for broker-dealers from its estimate in the Proposing Release. Therefore, the Commission continues to believe that its estimate that 250 broker-dealers will incur an

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<sup>1</sup> See Securities Exchange Act Release No. 60332 (July 17, 2009), 74 FR 36831 (July 24, 2009).

<sup>2</sup> See Securities Exchange Act Release No. 62184A (May 26, 2010), 75 FR 33100 (June 10, 2010).

estimated average burden of 300 hours per year to comply with the Rule, as amended, is appropriate.<sup>3</sup>

Several commenters offered their views on the impact of the proposal to modify the exemption for demand securities. Of these commenters, one expressed concern that the revision of the exemption for demand securities could have an “insurmountable administrative burden” on smaller issuers and non-profit obligated persons that issued securities before the compliance date of the proposed amendments. This commenter believed that the proposal could be difficult for these entities to comply with, if they were required to enter into continuing disclosure agreements years after the original issuance of the bonds. Although this commenter did not specifically define what it meant by “administrative burden,” this commenter may be concerned about the paperwork collection hourly burden on smaller issuers and obligated persons resulting from this amendment.

As proposed by the Commission, the 2010 Amendment would have applied to any initial offering and remarketing that is a primary offering of demand securities occurring on or after the compliance date of the amendments. However, to address commenters’ concerns about the impact of the proposal on outstanding demand securities, the Commission adopted a limited grandfather provision that provides that the amendments will not apply to a remarketing of demand securities that were issued prior to the amendments’ compliance date and that continuously have remained outstanding as demand securities. While the Commission continues to acknowledge that the amendment will place some additional burden on issuers of demand securities issued on or after the compliance date of the amendments,<sup>4</sup> the 2010 Amendment as adopted is forward-looking and generally will not apply to securities issued before the compliance date of the proposed amendments. Therefore, the Commission does not believe that the amendments will create an “insurmountable administrative burden” for issuers, including smaller issuers and obligated persons, as expressed by the above commenter. The Commission believes that the limited grandfather provision should largely alleviate the concerns expressed by this commenter with respect to demand securities that are currently outstanding.

As the Commission stated in the Proposing Release, it does not anticipate a significant increase in disclosure burdens with respect to demand securities. The

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<sup>3</sup> In addition to the comment discussed relating to broker-dealers’ obligations with respect to demand securities, one commenter stated generally that its “review of [the Proposing Release] does not suggest any unnecessary burden on municipal underwriters.” This commenter observed that, “[b]y contrast, [the Proposing Release] suggests that past practices have been too lax, and the Commission is simply making underwriters’ due diligence burden reasonable.” This commenter supported the proposal and suggested additional changes to strengthen Participating Underwriters’ obligations under the Rule. The Commission has considered all of the comments relating to the paperwork collection burden applicable to broker-dealers and, for the reasons discussed above, continues to believe that its estimates are appropriate.

<sup>4</sup> Issuers of demand securities with fixed-rate debt outstanding already would be subject to a continuing disclosure agreement in which they undertake to provide continuing disclosure documents, so they would be subject to minimal – if any – increased burdens.

Commission acknowledges that, if issuers or obligated persons with respect to demand securities have not previously issued securities subject to continuing disclosure agreements, they will be entering into such agreements for the first time and thereby will incur some time and expense to provide continuing disclosure documents to the MSRB. The Commission believes that its estimate of a 20% increase in the number of issuers or obligated persons that may be affected by the Rule appropriately reflects the increase in the number of issuers that will have a paperwork burden. The commenter did not dispute this estimate. In addition, as the Commission noted in proposing these amendments, many issuers and obligated persons with respect to demand securities are likely to have outstanding fixed rate securities and already have entered into continuing disclosure agreements consistent with the Rule. Because any existing continuing disclosure agreement would obligate an issuer or an obligated person to provide annual filings, event notices, or failure to file notices with respect to these fixed rate securities, providing disclosures with respect to these demand securities is not expected to be a significant additional burden.

Another commenter stated that the Proposing Release “largely failed to assess the substantial additional time and expense required by issuers and other obligated persons to prepare (and for underwriters and remarketing agents to professionally review and check) disclosure about obligated persons in offerings of demand securities, unless the proposed amendments are clarified so as not to preclude offerings of LOC-backed demand securities without primary or continuing disclosure about the underlying obligor.”<sup>5</sup> As discussed above, the amendments are not eliminating the exemption for demand securities from paragraphs (b)(1) – (4) of the Rule, which relate to primary offering disclosure. As a result, under the amendments, issuers of demand securities will not have a paperwork burden with respect to primary offering disclosures. Accordingly, the commenter’s concern appears misplaced.

Several commenters offered their views on the impact of the proposal to establish a ten business day time frame for the submission of event notices. A number of these commenters expressed concern that the requirement would increase the burden for issuers. The concerns expressed by these commenters included: (i) the impracticability of meeting the ten business day time period because of limited staff and resources, especially for smaller issuers; (ii) the increased burdens and costs due to the additional monitoring to comply with the ten business day time frame; (iii) the difficulty in reporting events in which the issuer does not control the information (e.g., rating changes, changes to the trustee, changes to tax status of bonds under an IRS audit) within the ten business day time period; and (iv) the use of the “occurrence of the event” as the trigger for the obligation to submit a notice. Many of these commenters focused their concerns on the potential burdens associated with reporting rating changes within the ten business day time frame. These commenters noted that ratings information is not within the issuer’s control and that rating organizations do not directly notify issuers’ of rating changes.

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<sup>5</sup> The Commission notes that this commenter disputed that the Commission’s 45 minute estimate in connection with the amendment to the time frame for the submission of event notices. This comment is addressed below.



The Commission has considered commenters' concerns about the potential costs and burdens associated with the ten business day time frame for submission of event notices, especially for smaller issuers with limited staff and resources. As discussed above, the Commission estimates that 12,000 issuers will file 74,605 event notices annually. Thus, an issuer will file on average approximately 6 event notices each year ( $74,605/12,000 = 6.05$ ) and spend a total of approximately 4.5 hours annually on average preparing them.<sup>6</sup> The Commission does not believe that spending approximately 4.5 hours annually on average preparing and submitting event notices would be particularly burdensome for issuers, even those with limited staff and resources.

The Commission has considered comments that the Commission did not fully account for the increased burdens and costs due to additional monitoring to comply with the ten business day time frame, particularly with respect to rating changes. As noted above, one or more commenters believed that the "actual knowledge" of the occurrence of the event should be used as the trigger for the obligation to submit an event notice. These commenters expressed their concerns relatively generally, and in most cases did not present any specific evidence to support their conclusions or alternatives to the Commission's estimates.

The Commission has considered the comments and believes that most of the events currently specified in paragraph (b)(5)(i)(C) of the Rule, and the additional event items included in the amendments, are significant and should become known to the issuer or obligated person expeditiously.<sup>7</sup> Further, many events, such as payment defaults, tender offers, and bankruptcy filings, generally involve the issuer's or obligated person's participation.<sup>8</sup> Other events (e.g., failure of a credit or liquidity provider to perform) are of such importance that an issuer or obligated person likely will become aware of such events,<sup>9</sup> or will expect an indenture trustee, paying agent, or other transaction participant to bring them to the issuer's or obligated person's attention within a very short period of time.<sup>10</sup>

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<sup>6</sup> The Commission estimates that issuers will spend approximately 45 minutes on average to prepare and submit each event notice. The comments that the Commission received relating to this estimate are discussed below.

<sup>7</sup> The only events specified in the Rule that may not be known to an issuer or obligated person expeditiously are rating changes and trustee name changes.

<sup>8</sup> In addition, as the Commission noted in the Proposing Release, involvement of the issuer or obligated person is often required for substitution of credit or liquidity providers; modifications to rights of security holders; release, substitution, or sale of property securing repayment of the securities; and optional redemptions. See Form Indenture and Commentary, National Association of Bond Lawyers, 2000.

<sup>9</sup> For example, as the Commission noted in the Proposing Release, issuers or obligated persons should have direct knowledge of principal and interest payment delinquencies, proposed or final determinations of taxability from the IRS, tender offers that they initiate, and bankruptcy petitions that they file.

<sup>10</sup> The Commission believes that indenture trustees generally would be aware of principal and interest payment delinquencies; material non-payment related defaults; unscheduled draws on

One commenter also expressed concern that the addition of paragraphs (b)(5)(i)(C)(12) of the Rule (pertaining to notices of bankruptcy, insolvency, receivership or similar event of an issuer or obligated person) and (b)(5)(i)(C)(13) of the Rule (pertaining to notices of mergers, consolidations and acquisitions or asset sales with respect to an issuer or obligated person) would impose a burden on issuers to undertake continuous monitoring of obligated persons to determine whether such events occurred unless limited to certain obligated persons and accompanied by a materiality condition. Bankruptcies and similar events involving municipal issuers or obligated persons are relatively rare and issuers may avoid directly monitoring obligated persons by obtaining an agreement from them at the time of the primary offering to notify the party responsible for making event notice filings of such an event if and when it occurs. Similar to its discussion regarding bankruptcies and similar events, the Commission believes that there are a variety of methods by which issuers and obligated persons could avoid having to directly monitor the activities of other obligated persons, such as obtaining, at the time of the primary offering, an agreement from them to provide information pertaining to a merger, consolidation, acquisition or similar asset sale to the party responsible for filing event notices.

One commenter believed that the time that would be required for issuers and other obligated persons to establish and implement procedures to provide notice of rating changes within ten business days after their occurrence exceeds the Commission's estimate of 45 minutes per event notice filing. This commenter believed that the Commission's estimates did not include the time necessary to monitor for rating changes, and that issuers would spend 26 to 52 hours per year on such monitoring. Another commenter stated that, during the 2008-2009 fiscal year, it filed 169 separate "material event notices" relating to rating changes and that submission of such notices consumed 340 to 420 hours of staff time. This commenter further believed that the ten business day time frame would exacerbate its burden since it would have to devote more staff time to monitor for rating changes. A third commenter believed that the ten business day time frame for submission of event notices for rating changes would double compliance time.

The Commission notes that issuers and obligated persons, under current continuing disclosure agreements, contract to provide event notices, including those relating to rating changes, "in a timely manner." The amendments add a maximum time frame of ten business days for submission of an event notice, and the Commission acknowledges that some issuers may have to monitor for certain events more frequently than in the past, if they have been interpreting "in a timely manner" as allowing them to submit event notices more than ten business days after the event occurred. The Commission's PRA estimate encompasses the average amount of time spent monitoring for all of the events in the Rule. As noted above, most of the Rule's events, except perhaps rating changes and, in some cases, trustee name changes, should become known

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credit enhancements reflecting financial difficulties; the failure of credit or liquidity providers to perform; and adverse tax opinions. The Commission notes that issuers and obligated persons may wish to consider negotiating a provision in indentures to which they are a party to require a trustee promptly to notify the issuer or obligated person in the event the trustee knows or has reason to believe that an event specified in paragraph (b)(5) of the Rule has or may have occurred.

to the issuer prior to the event, or immediately or within a short period of time after the event.<sup>11</sup> While the commenters asserted, either generally or based on their own experience, that the Commission underestimated the time required to monitor for rating changes, the Commission emphasizes that the continuing disclosure agreements that issuers enter into under the current Rule already require them to submit notices for rating changes, which necessarily entails some degree of monitoring. Furthermore, information about rating changes is readily available on the Internet Web sites of the rating agencies.

With respect to changes in trustees, the Commission believes that issuers can minimize monitoring burdens simply by adding a notice provision to the trust indenture that requires the trustee to provide the issuer with notice of the appointment of a new trustee or any change in the trustee's name.

The Commission continues to expect that issuers and obligated persons generally will become aware of events subject to event notices well within the ten business day time frame for submission of event notices to the MSRB.<sup>12</sup> The Commission believes that its burden analysis takes into account compliance by issuers with the ten business day time frame for preparing and submitting event notices, including with respect to rating changes and trustee changes. The Commission stresses that its estimate is an average of the burden associated with all event notices referenced in the Rule. Although some issuers may need to monitor more actively for certain events than they have in the past, in particular for ratings changes, the Commission believes its 45 minute estimate continues to reflect, on average, the amount of time required to prepare and submit an event notice, as most event notices concern events that are within the issuer's control and therefore require little if any monitoring.

For the foregoing reasons, the Commission continues to believe that, with respect to the amendment to the Rule regarding the ten business day time frame for submission of event notices, its estimated burden of 45 minutes to prepare and submit an event notice is appropriate.

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<sup>11</sup> With respect to one commenter's assertion that monitoring for rating changes would take 26-52 hours each year, the Commission notes that 45 minutes per event notice is an average. With respect to the comment that, during the fiscal year 2008-2009, one commenter spent 340-420 hours of staff time preparing and submitting notices of rating changes, the Commission notes that this commenter is one of the very largest municipal securities issuers and, as such, likely has a large number of issues of municipal securities outstanding with a variety of credit ratings that may change at a variety of times. Accordingly, this issuer likely spends much more time than the average issuer preparing and submitting event notices. In addition, the Commission notes that the time period referenced by this commenter encompasses the period prior to the establishment of the MSRB's EMMA system as a single repository for continuing disclosure, when issuers submitted continuing disclosure documents to four information repositories. Accordingly, the Commission would expect that the time spent by the average issuer to monitor for rating changes would be substantially less than the estimate provided by this commenter.

<sup>12</sup> Those issuers or obligated persons required by Section 13(a) or Section 15(d) of the Exchange Act to report certain events on Form 8-K (17 CFR 249.308) would already make such information public in a Form 8-K. The Commission believes that such persons should be able to file material event notices, pursuant to the issuer's or obligated person's undertakings, within a short time after the Form 8-K filing. See 15 U.S.C. 78m and 78o(d).

Several commenters offered their views on the impact of the proposal to delete the condition in paragraph (b)(5)(i)(C) of the Rule that previously provided that notice of all of the listed events need be made only “if material.” Two of these commenters expressed concern that this change would increase the burden for issuers, but did not specify whether the Commission’s estimate of increased burdens was inaccurate, or offer an alternative estimate.

One commenter believed that the proposal to delete the “if material” qualification could burden issuers in certain circumstances.<sup>13</sup> Another commenter believed the deletion of the materiality condition would increase monitoring burdens and require disclosure of events that otherwise would not be disclosed. These commenters, however, did not specifically call into question whether the Commission’s burden estimate, or offer an alternative estimate. The Commission has reviewed its estimates in light of commenters’ views and believes that they do not reflect any new or additional burden that is not contemplated by the Commission’s estimates.

Several commenters offered their views on the impact of the proposal to amend the Rule to include “the issuance by the IRS of proposed or final determinations of taxability, Notices of Proposed Issue (IRS Form 5701-TEB) or other material notices or determinations with respect to the tax-exempt status of the securities, or other events affecting the tax exempt status of the security.” One commenter noted that the municipal market may be flooded with notices due to the generality and vagueness of the proposed tax disclosure items, but did not specifically call into question the Commission’s burden estimate or offer an alternative estimate. In addition, none of the other commenters specifically called into question the Commission’s estimate of 130 additional notices. The Commission has reviewed its estimate in light of these comments and believes that its estimate of 130 notices for this disclosure event item remains appropriate.

Several commenters offered their views on the impact of the proposal to add a new disclosure event in the case of a merger, consolidation, acquisition or sale of all or substantially all assets. One of these commenters expressed concern that the event item, unless revised, could increase the burdens for issuers to engage in continuous monitoring of obligated persons in certain circumstances. The Commission has discussed this comment above. None of these commenters, however, called into question the Commission’s estimate of 1,783 additional event notices, or offered an alternative estimate. The Commission has reviewed its estimate in light of these comments and believes that its estimate of 1,783 notices for this disclosure event remains appropriate.

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<sup>13</sup> The three circumstances where the commenter believes a materiality qualifier should be retained are: (1) with respect to LOC-backed demand securities, notices of unscheduled draws on debt service reserves that reflect financial difficulties of the obligated person because they might not be material to an investment in the securities because they are traded on the strength of a bank letter of credit; (2) with respect to demand securities, generally, require notice of each failure to remarket securities when they are put, because they might not be material to an investor due to the existence of a letter of credit or other liquidity facility; and (3) notice of defeasances of securities, because they might not be material to an investor if the remaining term of the securities is very short.

Two commenters expressed concern regarding the increased costs and burdens that some issuers would incur to report changes pertaining to trustees within the Rule’s ten business day time frame. These comments are addressed above. None of these commenters, however, called into question the Commission’s estimate of 3,720 notices, or offered an alternative estimate. The Commission has reviewed its estimate in light of these comments and believes that its estimate of 3,720 notices for this disclosure event remains appropriate.

(9) Payment or Gift

Not Applicable.

(10) Confidentiality

No assurances of confidentiality have been provided.

(11) Sensitive Questions

Not Applicable.

(12) Burden of Information Collection and

(13) Cost to Respondents

The tables below set forth the Commission’s estimates of respondent reporting burden and total annualized cost burden. Further detail with respect to these estimates is included in the Adopting Release.<sup>14</sup>

**THIRD-PARTY DISCLOSURE BURDEN AND COST**

	<b>Responses</b>	<b>Burden (hours)</b>	<b>Cost</b>
<i>Approved Previous Final Rule</i>	77,000	65,541	\$7,717,450
<i>Additional Burdens and Cost from Amended Rule</i>			
Broker-dealers (recurring)	250	300	\$0
Broker-dealers (one-time)	250	42 <sup>15</sup>	\$0
Issuers (annual filings)	22,909	17,182	\$0
Issuers (event notices)	74,605	55,954	\$0

<sup>14</sup> See *supra* note 2.

<sup>15</sup> For purposes of submitting this request to OMB, the Commission has amortized certain one-time burdens to determine an annual burden associated with this information collection. Under this scenario, the one-time burden would be 125 hours. Amortizing one-time burdens over three years results in an annual burden of approximately 42 hours for each of the first three years: 42 hours (125 (one-time burden) / 3 years = 41.67 (rounded to 42 hours)).

	<b>Responses</b>	<b>Burden (hours)</b>	<b>Cost</b>
Issuers (failure to file notices)	1,458	729	\$0
Issuers (amendment to event notice provisions)	6,757	5,068	\$0
Issuers (current issuers that already submit continuing disclosure documents to MSRB in electronic format)	60,000 <sup>16</sup>	0	\$480,000 <sup>17</sup>
Issuers (current issuers that already submit continuing disclosure documents to MSRB in electronic format)	10,000	0	\$333,333 <sup>18</sup>
VRDO Issuers preparing a continuing disclosure agreement	2,000	0	\$400,000 <sup>19</sup>
VRDO Issuers that use the services of a designated agent submit continuing disclosure documents to MSRB	600 <sup>20</sup>	0	\$300,000
VRDO Issuers acquiring technological resources to convert continuing disclosure documents into an electronic format (recurring)	400	0	\$240,000
VRDO Issuers acquiring technological resources to convert continuing disclosure documents into an electronic format (one-time)	400	0	\$653,333 <sup>21</sup>

<sup>16</sup> 60,000 responses = 10,000 current issuers x 6 responses per year.

<sup>17</sup> \$480,000 = \$8 per notice x 60,000 responses.

<sup>18</sup> For purposes of submitting this request to OMB, the Commission has amortized certain one-time costs to determine an annual cost associated with this information collection. Under this scenario, the one-time cost would be \$1,000,000. Amortizing one-time costs over three years results in an annual cost of approximately \$333,333 for each of the first three years: \$333,333 (\$1,000,000 (one-time cost) / 3 years = \$333,333.33).

<sup>19</sup> Amortizing one-time costs over three years results in an annual cost of approximately \$400,000 for each of the first three years: \$400,000 (\$1,200,000 (one-time cost) / 3 years = \$400,000).

<sup>20</sup> 600 VRDO issuers = 2,000 VRDO issuers x 0.30 (percentage of issuers that use designated agents).

<sup>21</sup> Amortizing one-time costs over three years results in an annual cost of approximately \$653,333 for each of the first three years: \$1,960,000 (\$1,960,000 (one-time cost) / 3 years = \$653,333).

	<b>Responses</b>	<b>Burden (hours)</b>	<b>Cost</b>
Current and VRDO Issuers to revise the time frame for submitting event notices from “in a timely manner” to “in a timely manner not to exceed ten business days after the occurrence of the event” (one-time)	12,000	0	\$400,000 <sup>22</sup>
<b>TOTAL</b>	<b>268,629<sup>23</sup></b>	<b>144,816<sup>24</sup></b>	<b>\$10,524,116<sup>25</sup></b>

### RECORDKEEPING BURDEN AND COST

	<b>Responses</b>	<b>Burden (hours)</b>	<b>Cost</b>
Municipal Securities Rulemaking Board	1	9,030	\$10,000

#### (14) Estimate of Cost to the Federal Government

Cost to the federal government results from appropriate regulatory agency staff time and related overhead costs for inspection and examination for compliance with requirements of the Rule. Since the Commission inspects broker-dealers regularly, inspection for compliance with the requirements of this Rule is a part of the overall broker-dealer inspection. Thus, the Commission uses little additional resources to ensure compliance with the Rule. Commission staff estimates that approximately 100 hours of staff time per year are devoted to ensuring compliance with the requirements of the Rule at a cost of \$3,500 per year.

#### (15) Changes in Burden

For broker-dealers, the Commission estimated that 20% increase in the number of issuers with offerings would increase the annual burden for all broker dealers by 20%. Thus, the annual burden for broker dealers would increase by 50 hours to 300 total hours. In addition, the Commission estimates that a broker-dealer will incur a one-time paperwork burden to have its internal compliance attorney prepare and issue a notice advising its employees about the final revisions to the Rule, which would take approximately 30 minutes to prepare. This one-time burden would total 125 hours, which is approximately 42 hours on an annualized basis.

<sup>22</sup> Amortizing one-time costs over three years results in an annual cost of approximately \$400,000 for each of the first three years: \$400,000 (\$1,200,000 (one-time cost) / 3 years = \$400,000).

<sup>23</sup> Response per year is calculated as 21.928898 per year (268,629 total responses / 12,250 respondents).

<sup>24</sup> Response per hour is calculated as 0.53909295 per hour (268,629 responses divided / 144,816 hours).

<sup>25</sup> Cost per response is calculated as \$39.1771402 (\$10,524,116 cost / 268/629 responses).

For issuers, the Commission recently received data from MSRB reflecting the number of submissions to EMMA system's continuing disclosure service for the eight-month period from July 1, 2009 through February 28, 2010. This data includes the number of annual filings, event notices, and failure to file notices that were submitted during this period. To provide estimates that are based on the MSRB's actual experience with respect to submissions, the Commission has elected to use the data obtained for the period to revise the estimates in the proposing release. The Commission has annualized the numbers, since the period is less than 1 year.

The Commission estimates that the number of issuers with paperwork burden as a result of the amendments will increase by 20%, from 10,000 issuers estimated in the proposing release, to 12,000 issuers. The additional issuers will increase the aggregate number of annual filings, event notices, and failure to file notices each year.

For annual filings, the Commission estimates that 12,000 issuers will submit approximately 22,909 annual filings. This revised estimate is higher than the estimate in the proposing release by 4,909. For event notices, the Commission estimates that 12,000 issuers will prepare and submit approximately 74,605 event notices. This revised estimate is higher than the estimate in the proposing release by 2,605. For failure to file notices, the Commission estimates that 12,000 issuers will prepare and submit 1,458 failure to file notices. This revised estimate is lower than the estimate in the proposing release by 942. As part of the amendment to paragraph (b)(5)(i)(C), the Commission estimates that 12,000 issuers will prepare an additional 6,757 event notices.

For MSRB, the Commission estimates that the total burden of collecting, indexing, storing, retrieving and disseminating information requested by the public will increase by approximately 29%, or 2,030 hours. The commission estimates that MSRB will have costs no more than approximately \$10,000.

The Commission estimates that 10,000 issuers who currently submit documents to MSRB electronically would have to file 6 notices per year, at \$8 per notice, for a total of \$480,000. These 10,000 issuers would also have a one-time cost to revise a continuing disclosure agreement to reflect the amendment at \$1,000,000. The Commission has annualized this amount to \$333,333.

The Commission estimates that VRDO issuers preparing a continuing disclosure agreement would have a one-time cost of \$1,200,000. The Commission has annualized this amount to \$400,000. The Commission estimates that VRDO issuers that use the services of a designated agent to submit continuing disclosure documents would be \$300,000. The Commission estimates that VRDO issuers who acquire technological resources to convert continuing disclosure documents into an electronic format would have an annual cost of \$240,000 and a one-time cost of \$1,960,000. The Commission has annualized the one-time cost to \$653,333. Finally, the Commission estimates that current issuers and VRDO issuers who need to revise the time frame for submitting event notices would have a one-time cost of \$1,200,000. The Commission has annualized this amount to \$400,000.



(16) Information Collection Planned for Statistical Purposes

Not applicable.

(17) Display of OMB Approval Date

The Commission is not seeking approval to not display the expiration date for OMB approval.

(18) Exceptions to Certification for Paperwork Reduction Act Submissions

This collection complies with the requirements in 5 CFR 1320.9.

**B. Collections of Information Using Statistical Methods**

No statistical methods are employed in connection with the collections of information.