

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

OMB 3235-0372

This submission is being made pursuant to the Paperwork Reduction Act of 1995 (“PRA”), 44 U.S.C. Section 3501 et seq.

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, municipal offerings 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, since 2009, municipal issuers have increasingly used direct purchases of municipal securities¹ and direct loans as alternatives to public offerings of municipal securities.

Today there are over \$4 trillion of municipal securities outstanding.² Trading volume is also substantial, with over \$3.1 trillion of long and short-term municipal securities traded in 2020 in approximately 8.5 million transactions.³ 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 disclosure documents are not provided to them on a timely basis.

¹ For example, an investor purchasing a municipal security directly from an issuer.

² Federal Reserve Board, *Financial Accounts of the United States-Flow of Funds, Balance Sheets, and Integrated Macroeconomic Accounts*, Table L.212 (Second Quarter 2021), available at <https://www.federalreserve.gov/releases/z1/20210923/z1.pdf>.

³ Municipal Securities Rulemaking Board 2020 Fact Book, available at http://www.msrb.org/Market-Topics/~/_media/D04497574A17492489ECF7F7430A7B71.ashx.

History of Exchange Act Rule 15c2-12

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”).⁴ 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, a Participating Underwriter is 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 certain 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”)⁵ to provide for a single centralized repository, the Municipal Securities Rulemaking Board’s (“MSRB”) Electronic Municipal Market Access (“EMMA”) system, 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

⁴ Municipal Securities Disclosure, Exchange Act Release No. 34961 (November 10, 1994), 59 FR 59590 (November 17, 1994).

⁵ Amendment to Municipal Securities Disclosure, Exchange Act Release No. 59062 (December 5, 2008), 73 FR 76104 (December 15, 2008).

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.

Further amendments to the Rule adopted on May 26, 2010 (“2010 Amendments”)⁶: (i) specified the time period for submission of event notices; (ii) expanded the Rule’s current categories of events; and (iii) modified an exemption in the Rule used for demand securities. The 2010 Amendments were 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 2010 Amendments 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 allow investors to better protect themselves against fraud. In addition, the 2010 Amendments 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 can be used by individual and institutional investors, underwriters of municipal securities, broker-dealers, analysts, municipal securities issuers, the MSRB, vendors of information regarding municipal securities, Commission staff, and the public generally.

Finally, the Commission adopted amendments to the Rule on August 20, 2018 in order to further enhance transparency in the municipal securities market.⁷ The amendments revise the list of event notices a broker, dealer, or municipal securities dealer acting as an underwriter in a primary offering of municipal securities with an aggregate principal amount of \$1,000,000 or more (subject to certain exemptions set forth in the Rule) must reasonably determine that an issuer or an obligated person has undertaken, in a written agreement or contract for the benefit of holders of the municipal securities, to provide to the MSRB. The amendments to the Rule became effective on October 30, 2018 with a compliance date of February 27, 2019.

Overview of Rule 15c2-12

Rule 15c2-12(b) requires a Participating Underwriter: (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 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; (4) to send, upon request, a copy of the final official statement to potential customers for a specified period of time; and (5) before purchasing or selling municipal securities in connection with an offering, to reasonably

⁶ Amendments to Municipal Securities Disclosure, Exchange Act Release No. 62184A (May 26, 2010), 75 FR 33100 (June 10, 2010).

⁷ Amendments to Municipal Securities Disclosure, Exchange Act Release No. 83885 (August 20, 2018), 83 FR 44700 (August 31, 2018).

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.

Rule 15c2-12(b)(5)(i) requires Participating Underwriters to reasonably determine, in connection with an offering, that the issuer or obligated person has undertaken in a continuing disclosure agreement to provide to the MSRB, in an electronic format prescribed by the MSRB, the following, described below:

- Under Rule 15c2-12(b)(5)(i)(A), the annual financial information for the issuer or obligated person for whom financial information or operating data is presented in the financial official statement.
- Under Rule 15c2-12(b)(5)(i)(B), if not submitted as part of the annual financial information, the audited financial statements for the issuer or obligated person covered by (b)(5)(i)(A), if and when available.
- Under Rule 15c2-12(b)(5)(i)(C), in a timely manner not in excess of ten business days of the occurrence of the event, notice of any of the following events with respect to the securities being offered in the offering: (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 Internal Revenue Service 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 issuer or obligated person; (13) the consummation of a merger, consolidation, or acquisition involving the issuer or obligated person or the sale of all or substantially all of the assets of the issuer or 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; (15) incurrence of a financial obligation of the issuer or obligated person, if material, or agreement to covenants, events of default, remedies, priority rights, or other similar terms of a financial obligation of the obligated person, any of which affect security holders, if material; and (16) default, event of acceleration, termination event, modification of terms, or other

similar events under the terms of a financial obligation of the obligated person, any of which reflect financial difficulties.

Rule 15c2-12(c) requires that 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.

Rule 15c2-12(f) provides the definition of the term “financial obligation.” The term financial obligation means a (i) debt obligation; (ii) derivative instrument entered into connection with, or pledged as security or a source of payment for, an existing or planned debt obligation; or (iii) guarantee of (i) or (ii). The term financial obligation shall not include municipal securities as to which a final official statement has been provided to the MSRB consistent with the Rule.

2) Purpose and Use of the Information Collection

Under Rule 15c2-12, the Participating 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; and (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. In addition, a broker-dealer is required to obtain the information the issuer of the municipal security has undertaken to provide prior to recommending a transaction in the municipal security.

As previously noted, the Rule is designed to prevent fraud by enhancing the timely access of underwriters, public investors, and other interested persons to important information about municipal securities, and to further promote the more efficient, effective, and wider availability of municipal securities information by providing for a single centralized repository, EMMA, for the electronic collection and availability of information about outstanding municipal securities in the secondary market.

The Rule facilitates timely access to important information about municipal securities that Participating Underwriters can use to carry out their obligations under the securities laws, thereby reducing the likelihood of antifraud violations. This information could be used by individual and institutional investors, underwriters of municipal securities, broker-dealers, analysts, municipal securities issuers, the MSRB, vendors of information regarding municipal securities, the Commission and its staff, and the public generally. The Rule enables market participants and the public to be better informed about material events that occur with respect to

municipal securities and their issuers and assist investors in making decisions about whether to buy, hold or sell municipal securities.

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, mutual funds, and municipal advisors, the Commission has increasingly encouraged, and in some cases required, the use of the Internet and websites by public reporting companies, mutual funds, and municipal advisors to provide disclosures and communicate with investors.

In 2008, the Commission adopted amendments to Rule 15c2-12 to provide for a single centralized repository, EMMA, 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. The Commission continues to believe that the use of EMMA by investors and other market participants has increased efficiency in the collection and availability of continuing disclosure documents.

4) Duplication

The information collection requested from Participating Underwriters 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 based on inaccurate information. The Commission is sensitive to concerns that the Rule not impose unnecessary indirect 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), 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, however, should 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.

6) Consequences of Not Conducting Collection

The purpose of Rule 15c2-12 is to prevent fraud by enhancing the timely access of underwriters, public investors, and other interested persons to important information about municipal securities. The Commission believes Rule 15c2-12 and the adopted amendments are reasonably designed to prevent fraudulent, deceptive, or manipulative acts or practices in the municipal securities market. Not conducting or narrowing the collection of information set forth in Rule 15c2-12 may jeopardize the protection that Rule 15c2-12 provides. The Commission understands that the Rule imposes a burden on broker-dealers; however, the Commission seeks to accomplish its 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)

There are no special circumstances. This collection is consistent with the guidelines in 5 CFR 1320.5(d)(2).

8) Consultations Outside the Agency

The required Federal Register notice with a 60-day comment period soliciting comments on this collection of information was published. No public comments were received. Commission staff consulted with MSRB staff concerning the burdens and costs to the MSRB of complying with Rule 15c2-12. After the 60-day notice was published for public comment the MSRB did provide the Commission with an updated figure to use to show the cost estimate for the MSRB to operate the continuing disclosure service for the organization's Electronic Municipal Market Access ("EMMA") system.

9) Payment or Gift

Not applicable.

10) Confidentiality

No assurances of confidentiality have been provided.

11) Sensitive Questions

No questions of a sensitive nature are asked. The information collection does not collect any Personally Identifiable Information.

12) Burden of Information Collection and

13) Cost to Respondents

The table below sets forth the Commission’s estimates of respondent reporting burden and total annualized cost burden, including one-time burdens and costs in separate columns.

THIRD-PARTY DISCLOSURE BURDEN AND COST ESTIMATES

	Responses	Annual Burden (hours)	Annual Cost
Broker-dealers	12,460	115,255	\$0
Issuers (annual filings)	61,964	433,748	\$0
Issuers (event notices)	54,121	216,484	\$1,760,000
Issuers (failure to file notices)	3,597	7,194	\$0
Issuers that use the services of a designated agent to submit continuing disclosure documents	18,200	0	\$15,470,000
<u>Total Estimates</u>	150,342	772,681	\$17,230,000

MSRB RECORDKEEPING BURDEN AND COST ESTIMATES

	Responses	Annual Burden (hours)	Annual Cost
Municipal Securities Rulemaking Board	1	25,000	\$1,055,000

14) Costs to 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 \$6,900 per year.

15) Changes in Burden of Information Collection

Burden for Broker-Dealers

Estimate of Burden

The Commission calculates the PRA burdens on broker-dealers under Rule 15c2-12 on a per issuance of municipal securities basis. The Commission believes this is appropriate because a broker-dealer's obligations under Rule 15c2-12 are triggered by acting as a Participating Underwriter in an offering. This method is consistent with the Commission's estimates of the PRA burden on issuers for the Rule, which are also calculated on a per event basis. The Commission is basing its estimate on the average number of primary market submissions to the MSRB over the past three years – 12,460.⁸

The Commission estimates that approximately 250 broker-dealers could serve as a Participating Underwriter in a municipal securities offering. Further, the Commission estimates that broker-dealers will incur a 15 minute burden per issuance of municipal securities to reasonably determine that the issuer or obligated person has undertaken, in a written agreement or contract, for the benefit of holders of municipal securities, to provide continuing disclosure documents to the MSRB, resulting in an annual burden on all broker-dealers of approximately 3,115 hours (approximately 12.5 hours per broker-dealer per year).⁹ However, the Commission understands that most continuing disclosure agreements are provided to the broker-dealer by the issuer or obligated person and that most of these agreements are standard form agreements¹⁰ of limited length. Further, the Commission believes that the determination required to be made – that the issuer or obligated person has undertaken to provide continuing disclosure documents to the MSRB – is a narrow one that does not require a substantial time commitment from the broker-dealer. For these reasons, the Commission believes the estimate of a 15 minute burden per issuance is appropriate.

The Commission believes that broker-dealers will incur 9 hours of burden per issuance of municipal securities to determine whether issuers or obligated persons have failed to comply, in all material respects, with any previous undertakings in a written contract or agreement specified in paragraph (b)(5)(i) of the Rule, resulting in an annual burden on broker-dealers of

⁸ According to the MSRB Fact Book for each respective year, in 2020 there were 13,914 primary market submissions to the MSRB, in 2019 there were 12,814 primary market submissions to the MSRB, and in 2018 there were 10,653 primary market submissions to the MSRB. $13,914 + 12,814 + 10,653 = 37,381$. $37,381/3 = 12,460.33$. See MSRB 2020 Fact Book (Mar. 9, 2021), available at <https://www.msrb.org/Market-Topics/~media/D04497574A17492489ECF7F7430A7B71.ashx>.

⁹ $12,460$ (estimated annual issuances) \times $.25$ (hourly burden 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) = $3,115$ hours. $3,115$ hours/ 250 (estimated number of broker-dealers) = 12.46 hours.

¹⁰ Although not required by the Commission, a staff letter suggested that a standard form should be used. See Letter from Catherine McGuire, Chief Counsel, Division of Market Regulation, U.S. Securities and Exchange Commission, to John S. Overdorff, Chair, Securities Law and Disclosure Committee, Nat' Ass'n of Bond Lawyers (Sept. 19, 1995), available at <https://www.sec.gov/info/municipal/nabl-2-interpretive-letter-1995-09-19.pdf> ("NABL 2") (stating that such documents "should list all events in the same language as is contained in the rule, without any qualifying words or phrases").

112,140 hours (approximately 449 hours per broker-dealer per year).¹¹ The Commission arrived at the 9 hour per issuance burden estimate after considering (1) the comments addressing the burden estimates for broker-dealers under Rule 15c2-12 received as part of the rulemaking process in adopting the 2018 amendments to the Rule; (2) the MSRB's statistics concerning the number of event notices filed on an annual basis; and (3) the potential volume of documentation to be reviewed under this obligation.¹² Based on the Commission's experience, the Commission believes that the estimate of an average burden of 9 hours per issuance is appropriate.

Accordingly, under the Commission's estimates, the total annual burden for all broker-dealers acting as Participating Underwriters in Offerings will be 115,255 hours (approximately 461 hours per broker-dealer per year),¹³ or an average of 9.25 hours per issuance of municipal securities.¹⁴ The Commission understands that burdens will vary across broker-dealers and across specific issuances depending on numerous factors, such as the frequency of issuances by the issuer, size and complexity of the issuer, and the familiarity of the broker-dealer with the issuer. The burden for some broker-dealers will exceed our estimate, and the burden for others will be less. However, the Commission believes, on balance, that 115,255 hours (on average approximately 461 hours per broker-dealer per year), is a reasonable estimate for the time needed for broker-dealers acting as Participating Underwriters in Offerings to comply with their obligations under Rule 15c2-12.

Burden for Issuers

Estimates of Burden

Based on information provided by the MSRB to Commission staff, the Commission believes that approximately 28,000 issuers are affected by continuing disclosure requirements under Rule 15c2-12. The Commission estimates that issuers prepare and submit annually: (1)

¹¹ 12,460 (estimated annual issuances) x 9 (average burden estimate per issuance for broker-dealers to determine whether issuers or obligated persons have failed to comply, in all material respects, with any previous undertakings in a written contract or agreement specified in paragraph (b)(5)(i) of the Rule) = 112,140 hours. 112,140 hours/250 (estimated number of broker-dealers) = 448.56 hours.

¹² See MSRB 2020 Fact Book, *supra* note 2.

¹³ 112,140 hours (estimate of broker-dealer burden to determine whether issuers or obligated persons have failed to comply, in all material respects, with any previous undertakings in a written contract or agreement specified in paragraph (b)(5)(i) of the Rule) + 3,115 hours (annual estimate for broker-dealers 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) = 115,255 hours. 115,255 hours/250 (estimated number of broker-dealers) = 461.02 hours.

¹⁴ 0.25 hours (estimate of burden per issuance for broker-dealer to reasonably determine that the issuer or obligated person has undertaken, in a written agreement or contract, for the benefit of holders of municipal securities, to provide continuing disclosure documents to the MSRB) + 9 hours (estimate of burden per issuance, prior to the amendments, for broker-dealers to determine whether issuers or obligated persons have failed to comply, in all material respects, with any previous undertakings in a written contract or agreement specified in paragraph (b)(5)(i) of the Rule) = 9.25 hours per issuance.

54,121 event notices¹⁵, with each notice taking approximately four hours to prepare and submit¹⁶; (2) 61,964 annual filings¹⁷, with each filing taking approximately seven hours to prepare and submit; and (3) 3,597 failure to file notices¹⁸, with each notice taking approximately two hours to prepare and submit. Accordingly, under the estimate prior to these amendments, issuers would incur a total annual burden of 657,426 hours.¹⁹

Burden for the MSRB

Based on estimates provided by the MSRB, the Commission estimates that the MSRB incurs an annual burden of approximately 25,000 hours to collect, index, store, retrieve, and make available the pertinent continuing disclosure documents under the Rule. Accordingly, the Commission estimates that the total burden on the MSRB to collect, store, retrieve, and make available the disclosure documents covered the Rule would be 25,000 hours each year.

Burden for Broker-Dealers in the Secondary Market

The Commission continues to believe that neither the 2018 amendments nor Rule 15c2-12 prior to adoption of the amendments contains “collection of information requirements” within the meaning of the PRA on broker-dealers effecting transactions in the secondary market. Rule 15c2-12(c) requires only that a broker-dealer acting in the secondary market have “procedures in place that provide reasonable assurance that it will receive prompt notice of any event disclosed pursuant to paragraph (b)(5)(i)(C), paragraph (b)(5)(i)(D), and paragraph (d)(2)(ii)(B)” of the Rule. To the extent that broker-dealers effecting transactions in the secondary market review and disclose material to customers, those associated burdens stem from antifraud provisions in the securities laws and MSRB rules that are not subject to this PRA analysis.

Costs for the MSRB

After initial consultation of the Commission staff with MSRB staff, the Commission estimated that the MSRB expends \$670,000 annually in hardware and software costs for the continuing disclosure program within the MSRB’s EMMA system.

¹⁵ According to the MSRB Fact Book for each respective year: $(51,182 \text{ (event notices filed in 2018)} + 51,660 \text{ (event notices filed in 2019)} + 59,521 \text{ (event notices filed in 2020)})/3 = 54,121$. The Commission notes that the increase in the number of filings in 2020 is likely due to the impact caused by the COVID-19 pandemic.

¹⁶ This four-hour estimate applies to the average time needed to monitor, prepare, and file all sixteen types of event notices included within the Rule.

¹⁷ According to the MSRB Fact Book for each respective year: $(60,025 \text{ (Financial and Audit Financial Disclosure filings in 2018)} + 63,215 \text{ (Financial and Audit Financial Disclosure filings in 2019)} + 62,652 \text{ (Financial and Audit Financial Disclosure filings in 2020)})/3 = 61,964$.

¹⁸ According to the MSRB Fact Book for each respective year: $(3,604 \text{ (notices filed in 2018)} + 3,639 \text{ (notices filed in 2019)} + 3,548 \text{ (notices filed in 2020)})/3 = 3,597$.

¹⁹ $54,121 \text{ (annual number of event notices)} \times 4 \text{ (average estimate of hours needed to prepare and submit each notice)} + 61,964 \text{ (annual number of annual filings)} \times 7 \text{ (average estimate of hours needed to prepare and submit each notice)} + 3,597 \text{ (annual number of failure to file notices)} \times 2 \text{ (average estimate of hours needed to prepare and submit each notice)} = 657,426 \text{ hours}$.

MSRB staff subsequently updated the estimated annual cost attributed to EMMA's continuing disclosure program. MSRB staff estimates that \$670,000 annually is expended on hardware and software costs along with an additional approximate \$385,000 spent on external third-party costs. Thus, the MSRB expends approximately \$1,055,000 annually to support EMMA's continuing disclosure program.²⁰

Thus, the total costs to the MSRB are approximately \$1,055,000 annually.

Costs to Issuers

The Commission believes that up to 65% of issuers may use designated agents. The Commission estimates the number of issuers affected by continuing disclosure agreements consistent with the Rule is 28,000. Accordingly, the Commission estimates an average total annual cost incurred by issuers using the services of a designated agent for the Rule of \$15,470,000.²¹

However, the Commission acknowledges that some issuers may retain outside counsel to assist in the evaluation and preparation of some of the more complex event notices. The Commission believes a reasonable estimate is that issuers may retain outside counsel on 1,100 event notices, while preparing the other event notices solely internally. The Commission further believes that, for those 1,100 complex event notices in which issuers and obligated persons seek assistance from outside counsel, one-half of the burden of preparation of the event notices (including time for monitoring and evaluation) will be carried by issuers internally (four hours), and the other-half of the burden will be carried by outside professionals retained by the issuer (four hours). Thus, the Commission estimates that issuers will incur an approximate annual total cost of \$1,760,000²² to employ outside counsel to assist in the examination, preparation, and filing of certain event notices.

Under the amendments to Rule 15c2-12 as adopted, the total cost to issuers would be \$17,230,000 annually.²³

16) Information Collection Planned for Statistical Purposes

The information collection is not used for statistical purposes.

17) Approval to Omit OMB Expiration Date

²⁰ \$670,000 (hardware and software costs) + \$385,000 (third-party costs) = \$1,055,000.

²¹ 28,000 (number of issuers) x .65 (percentage of issuers that may use designated agents) x \$850 (estimated average annual cost for issuer's use of designated agent under the amendments to the Rule) = \$15,470,000.

²² 1,100 (number of event notices requiring outside counsel) x 4 (estimated time for outside attorney to assist in the preparation of such event notice) x \$400 (hourly wage for an outside attorney) = \$1,760,000. The Commission recognizes that the costs of retaining outside professionals may vary depending on the nature of the professional services, but for purposes of this PRA analysis we estimate that costs of outside counsel would be an average of \$400 per hour.

²³ \$1,760,000 (annual cost to employ outside counsel to assist in preparation of certain event notices) + \$15,470,000 (annual cost to employ designated agents to submit event notices) = \$17,230,000.

The Commission is not seeking approval to omit the expiration date.

18) Exceptions to Certification for Paperwork Reduction Act Submissions

This collection complies with the requirements in 5 CFR 1320.9.

B. Collections of Information Employing Statistical Methods

This collection does not involve statistical methods.