

Chapman Client Alert

February 21, 2020

Current Issues Relevant to Our Clients

To Improve Transparency, SEC Approves Addition of Submission Calculator to MSRB's EMMA System Website

On February 18, 2020, the Securities and Exchange Commission (“SEC”) issued an order (the “Order”) approving a proposed Municipal Securities Rulemaking Board (“MSRB”) rule change updating the MSRB’s Electronic Municipal Market Access (“EMMA”) system website (the “EMMA Portal”). The Order provides for the addition to the EMMA Portal of an automated calculation and display of the number of days between (a) the annual fiscal period end date for an issuer or obligated person (referred to herein as an “issuer”) and (b) the date an annual financial disclosure is submitted to the EMMA system for such annual fiscal period (the “Submission Calculator”).

Background

The SEC has long been concerned with disclosure in both the primary and secondary markets for municipal securities and has regularly encouraged issuers to provide timely and accurate information to investors and the trading markets. The Order is part of the SEC’s ongoing efforts to encourage timely and robust issuer disclosures in the secondary market, as evidenced by other recent pronouncements of the SEC and its staff or committees in 2020. For more information, see our related Client Alerts available [here](#) and [here](#).

The SEC believes that the Submission Calculator will improve disclosure to investors by increasing investor awareness and understanding of the type and timing of financial information available in the municipal securities market, which could enable investors to make more informed investment decisions, and enable investors and others to more readily locate and access the financial information available on the EMMA Portal and evaluate an issuer’s disclosure practices.

Submission Calculator

The Submission Calculator automatically calculates and statically displays the elapsed number of days between (1) the end date of an issuer’s annual fiscal period covered by an annual financial disclosure (the “Fiscal Period End Date”), as such date is entered by a submitter through the current process of publishing an annual financial disclosure on the EMMA Portal, and (2) the date of the submission of the annual financial disclosure to the EMMA system (the “Posted Date”) of an annual financial disclosure submitted to the EMMA system

for such annual fiscal period. The Fiscal Period End Date and the Posted Date are currently available on EMMA, but they are not emphasized or otherwise flagged.

The Submission Calculator will utilize the existing information required to be provided by a submitter, calculating the number of days elapsed based solely on the entry of the Fiscal Period End Date and the Posted Date for an annual financial disclosure. If an issuer’s annual financial disclosure does not include its audited financial statements when submitted, and audited financial statements for the same fiscal period are subsequently submitted, the number of days displayed on the Submission Calculator will not change. The Posted Date will be included in the calculation of days elapsed, and the number of days that have elapsed will be displayed on the EMMA Portal at the individual security details level.

Annual financial disclosure for a municipal security, including the Fiscal Period End Date, the Posted Date and the results of the Submission Calculator will be prominently displayed on the EMMA Portal. The following is an example of a security details page for a municipal security, processed with hypothetical facts and resulting calculation from an MSRB example:

Timing of Annual Financial Disclosure

Fiscal Period End Date: 06/30/2020

Posted Date: 12/23/2020

Timing of Disclosure: 176 Days

[Hyperlink to Disclosure Document PDF\(s\)](#)

[Hyperlink\(s\) to Other Website\(s\) if Provided](#)

In the Order, the SEC emphasizes that the MSRB will not evaluate the substantive content of the documents and information submitted, and the Submission Calculator will not analyze the relevant content to evaluate an issuer's compliance with the terms of an applicable continuing disclosure agreement. The Order further states that the rule change will not modify how submitters provide this information to EMMA and the change does not require submitters to input any new data.

In the Order, the SEC also acknowledges that, consistent with the EMMA system's current functionality, if a submitter enters an erroneous Fiscal Period End Date for an annual financial disclosure, the Submission Calculator will perform its calculation based on the erroneous Fiscal Period End Date entered by the submitter. Thus, issuers are advised to assure that they, or their dissemination agent, carefully enter the correct dates and information on the EMMA Portal.

Considerations for Market Participants

Issuers should be aware that with the addition of the Submission Calculator, investors and other users of EMMA will now see in a prominently disclosed location, the number of days between the issuer's Fiscal Period End Date and the Posted Date of the annual financial disclosure. In addition, the rule change will also increase the prominence of any hyperlinks provided by an issuer through its customized homepage to other websites containing relevant information, raising additional secondary market disclosure concerns for issuers using such hyperlinks. See the discussion under the subheading "**Information on Issuer Websites**" in our related Client Alert [here](#).

For More Information

If you would like further information concerning the matters discussed in this article, please contact a member of our Public Finance Group or visit us online at chapman.com.

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