

MAY 29, 2009

EMMA: CONTINUING DISCLOSURE UPDATE

As **Z-News** readers are aware, Ziegler strongly supports and advocates timely, effective and transparent continuing disclosure as an essential component of a senior living provider's capital strategy. An earlier **Z-News** this year (**Z-News** 01.09.09) alerted readers to the Securities and Exchange Commission's ("SEC's") rulemaking changes instituting the "EMMA" electronic disclosure system, and this **Z-News** edition is designed to assist providers in laying the groundwork for effective compliance.

Effective July 1, 2009, the SEC designated the Municipal Securities Rulemaking Board's ("MSRB") new Electronic Municipal Market Access ("EMMA") system as the free, single, centralized repository for bond-related secondary-market disclosure documents mandated by SEC Rule 15c2-12 (the "Rule"), replacing the four Nationally Recognized Municipal Securities Information Repositories ("NRMSIRs") previously serving this purpose under the Rule. (The EMMA approach is analogous to the "EDGAR" system for publicly traded companies). The day-to-day practical effect for most providers will be negligible, as most will simply cease to submit continuing disclosure documents to the central post office for the NRMSIRs — DisclosureUSA — and instead will post directly to the new EMMA website: www.emma.msrb.org.

EMMA will become the sole central repository. Moreover, a senior living provider will be permitted to designate agents to submit documents and information on its behalf (and will be able to revoke the designation of any such agents) through the MSRB's online account management utility known as MSRB Gateway. Furthermore, on the effective date, continuing disclosure documents must be submitted in electronic PDF format — which, as of January 1, 2010, also must be word-searchable or native PDFs. Note that for senior living providers operating in Michigan, Texas, or Ohio (states with a State Information Depository or "SID"), the obligation to provide information to the SID will continue and will remain in force past July 1, 2009 if the provider's continuing disclosure agreement references such depository.

The MSRB received SEC approval to establish a month-long pilot phase for the continuing disclosure service on EMMA that will begin on June 1, 2009. During this phase, issuers and other so-called "conduit borrowers" will be able to make submissions to EMMA of continuing disclosure documents on a voluntary basis. To help providers learn the new system, a voluntary trial period is being set up starting on June 1, 2009. Senior Living providers can sign up and test the system before it is mandatory. Teaching Webinars are being conducted by the MSRB as follows:

Mon, Jun 1, 2009 2:00 PM - 3:00 PM EDT

<https://www2.gotomeeting.com/register/178360155>

Wed, Jun 3, 2009 2:30 PM - 3:30 PM EDT

<https://www2.gotomeeting.com/register/593715434>

Mon, Jun 8, 2009 2:00 PM - 3:00 PM EDT

<https://www2.gotomeeting.com/register/583038162>

Ziegler Research¹ applauds the SEC and MSRB in creating this new single, centralized disclosure website. We think it will improve transparency and operation of the municipal securities markets and foster the SEC's goals of deterring fraud and manipulation. With the onset of EMMA, a provider's information will be much easier to obtain, whether by investors or anyone else with access to the internet. This will fundamentally improve availability of information, but may have some other side effects: since residents and competitors will have very easy access to the information submitted, senior living providers should review — with their investment banker, counsel or other trusted advisor — the scope and detail of the routine information usually submitted.

It is noteworthy that in implementing the EMMA system, the SEC did not (1) ensure that the existing NRMSIRs must either retain the historical continuing disclosure documents already filed, and/or (2) formulate a process by which these documents can be transferred to the EMMA. In this regard, then, it is likely that after July 1, 2009, ZieglerResearch.com will perform an even more critical function as the historical information repository for health care and senior living bond issues underwritten by Ziegler and other investment banking firms.

A year ago, Ziegler Research prepared a special report (**Z-News** 02-01-08) setting forth "best practices" guidance for continuing disclosure. This guidance, Ziegler Research's Dozen Continuing Disclosure Best Practices, will be updated to account for the change in repository, with continuing focus on these twelve essential concepts:

1. Report to EMMA, SID and post on the provider's own website;
2. Appoint an Investor Relations Officer;
3. Disseminate routine data quarterly;
4. File documents directly with EMMA, without delegation to a Dissemination Agent;
5. Improve the content and quality of Continuing Disclosure Reports by:
 - a. Setting up standardized, sequentially page-numbered, routine disclosure packages;
 - b. Sending and storing reported data electronically;
 - c. Reporting the same information to other parties immediately after posting to EMMA and SID; and
 - d. Reporting more than what is required in your bond documents;
6. Understand the concepts of "material" and "nonpublic" information, and avoid selective disclosure;
7. Make "forward looking statements" only with appropriate disclaimers;
8. Report covenant violations and consultant hiring mandates;
9. Share relevant third-party-prepared reports;
10. Evaluate whether or not to disclose pending actions or decisions;
11. Encourage individual investor ad hoc calls and requests for information; and
12. Conduct investor-oriented conference calls.

Effective and transparent continuing disclosure offers protection from inadvertently violating securities rules regarding selective disclosure of material nonpublic information. Also, should a provider stumble in its financial performance, resulting in a technical breach of bond covenants, it may find investors more willing to work through resolving a technical default if frequent and accurate continuing disclosure information has been provided. Finally, following continuing disclosure "best practices" offers the greatest likelihood of securing a willing and interested group of investors for a provider's next capital markets event.

¹Ziegler Research ("Research") is a department within Ziegler independent of Investment Banking or Sales & Trading. The individuals within this department are primarily investor/client focused credit analysts. Part of Research's mission is to publish bond-related corporate-focused research for capital markets participants, as well as senior living borrowers. This area is distinct and separate from the strategy- and industry-focused research area within Senior Living Finance, led by Kathryn Brod.

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 Ziegler Research**