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Dealers, Issuers

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June 30, 2018

**Category**  
Fair Practice

**Affected Rules**  
[Rule G-45](#)

## SEC Approves Amendments to MSRB Form G-45 to Collect Additional Fee Data About ABLÉ Programs and 529 College Savings Plans

### Overview

The Municipal Securities Rulemaking Board (MSRB) received approval from the Securities and Exchange Commission (SEC) on December 8, 2017 to amend electronic Form G-45 under MSRB Rule G-45, on reporting of information on municipal fund securities, to collect additional data about the transactional fees primarily assessed by programs established to implement the Stephen Beck, Jr. Achieving a Better Life Experience Act of 2014 (the “ABLE Act” and an “ABLE program”).<sup>1</sup> The amendments will help the MSRB receive more reliable, complete and accurate information about 529 college savings plans and ABLÉ programs.

The form amendments will become effective on June 30, 2018. The MSRB will make both amended Form G-45 as well as the updated EMMA Dataport Manual and Specifications for 529 College Savings Plan Data (Form G-45) Submissions (Form G-45 Manual) available to underwriters in advance of the effective date to aid them in completing the amended form. The MSRB will announce the availability of amended Form G-45 and the updated Form G-45 Manual at a later date.

Questions about this notice may be directed to Pamela K. Ellis, Associate General Counsel, at 202-838-1500.

### Background

In 2016, the MSRB sought and obtained guidance from the SEC staff about the status of interests in ABLÉ accounts under the federal securities laws. After the MSRB received that guidance, the MSRB began its regulation of



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<sup>1</sup> See Exchange Act Release No. 82238 (Dec. 8, 2017), File No. SR-MSRB-2017-08 (Oct. 13, 2017).

dealer and underwriter activity in ABLÉ programs. Among other things, the MSRB filed for immediate effectiveness an amendment to Rule G-45 to delay, by two years from August 29, 2016 until August 29, 2018, the date that submissions are due under Rule G-45 from underwriters to ABLÉ programs.<sup>2</sup> The MSRB believed that the delay would help ensure that the MSRB would receive reliable, complete and accurate filings on Form G-45 from such underwriters. The MSRB also believed that the delay would help ensure that the MSRB would receive more meaningful data about a larger set of ABLÉ programs on Form G-45. Similarly, the MSRB submitted the Form G-45 amendments to receive more meaningful data about ABLÉ programs.

At the time the MSRB submitted the Delay filing, there were two ABLÉ programs that were operational. Since that time, the MSRB understands that at least 27 more ABLÉ programs have become operational. As each additional ABLÉ program has become operational, the MSRB has reviewed the disclosure booklet for the ABLÉ program to determine whether there is data about the ABLÉ program that would be beneficial for the MSRB to analyze under Rule G-45 that an underwriter to an ABLÉ program would not be required to submit under then-current Form G-45.

Rule G-45 requires dealers acting in the capacity as underwriters to ABLÉ programs or 529 college savings plans to submit on a semi-annual or annual basis (in the case of performance data) certain information about the ABLÉ programs or 529 college savings plans they underwrite. That information includes program or plan descriptive information, assets, asset allocation information (at the investment option level), contributions, withdrawals, fee and cost structure, performance, and other information. The MSRB and other regulatory authorities may use this data to analyze 529 college savings plans and ABLÉ programs, monitor their growth rate, size and investment options, and compare 529 college savings plans and ABLÉ programs based on fees, costs and performance. By collecting this information, the MSRB enhances its understanding of 529 college savings plans (and will be able to enhance its understanding of ABLÉ programs).

While the MSRB believed that the then-current Form G-45 would capture most of the data that would be informative to the MSRB, the MSRB noted that there are differences between the pricing structure of certain ABLÉ programs and the typical 529 college savings plan. Specifically, based on the MSRB's review, there are transactional fees assessed by ABLÉ programs that generally are not assessed by 529 college savings plans, and there is variance

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<sup>2</sup> See File No. SR-MSRB-2016-11 (Aug. 12, 2016) (the "Delay filing").

based on state residency in the level of the account maintenance fee assessed by ABLÉ programs that generally does not occur with 529 college savings plans.<sup>3</sup>

## Summary of the Amendments to Form G-45

### Additional data to be collected

Under the form amendments, an underwriter to an ABLÉ program or a 529 college savings plan must submit data on amended Form G-45 about the following additional fees and expenses, as applicable:

- account opening fee;
- investment administration fee;
- change in account owner fee;
- cancellation/withdrawal fee;
- change in investment option/transfer fee;
- rollover fee;
- returned excess aggregate contributions fee;
- rejected ACH or EFT fee;
- overnight delivery fee;
- in-network ATM fee;
- out-of-network ATM fee;
- ATM mini statement fee;
- international POS/ATM transaction fee;
- foreign transaction fee;
- overdraft fee;
- copy of check or statement fee (per request);
- copy of check images mailed with monthly statement fee;
- check fee (*i.e.*, fee for blank checks);
- returned check fee;
- checking account option fee;
- re-issue of disbursement check fee;
- stop payment fee;
- debit card fee;
- debit card replacement fee;

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<sup>3</sup> The MSRB believes that the transactional fees assessed by an ABLÉ program reflect the nature of an ABLÉ program as more of a short-term savings vehicle when compared to a 529 college savings plan. Further, the MSRB believes that the variance in the level or amount of the account maintenance fee assessed by an ABLÉ program between an in-state and an out-of-state resident account owner reflects state disability policies.

- outgoing wire fee;
- expedited debit card rush delivery fee;
- paper fee; and
- miscellaneous fee (to address any miscellaneous transactional fee that is not otherwise specified on Form G-45).

In addition, an underwriter must disclose any variance in the annual account maintenance fee due to the residency of the account owner. The form amendments apply to underwriters to ABLÉ programs as well as to underwriters to 529 college savings plans.<sup>4</sup>

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<sup>4</sup> The MSRB, however, anticipates that most of the data that will be collected under the form amendments will relate to ABLÉ programs. As noted, the MSRB believes that 529 college savings plans generally do not assess the fees and charges that are the subject of the form amendments.