INVESTMENT COMPANY INSTITUTE

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August 31, 2011

Ronald W. Smith, Corporate Secretary
Municipal Securities Rulemaking Board
1900 Duke Street, Suite 600
Alexandria, Virginia 22314

Re: MSRB Proposal to Collect and Disseminate 529 Plan Data

Dear Mr. Smith:

The Investment Company Institute[1] appreciates the opportunity to respond to the request of the Municipal Securities Rulemaking Board ("MSRB") for comments on a proposal to collect and disseminate 529 college savings plan data.[2] Savings for a child's college education is an important financial goal for many U.S. households and 529 plans provide investors an affordable and tax-advantaged means to accomplish this goal. The Institute has a long history of supporting reforms to the MSRB's rules and to the 529 plan marketplace to benefit investors.

While we support the proposal's goals – namely, that investors should have ready access to information on 529 plans and the MSRB should have the data it needs to regulate the 529 plan market – we question whether the MSRB's proposal is an effective or efficient way to achieve those goals. Our position is more fully described below, along with our comments on specific aspects of the proposal. We also strongly support the MSRB revising its rules to permit the dissemination of plan disclosure documents electronically. Each of these issues is discussed in more detail below.

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[1] The Investment Company Institute is the national association of U.S. investment companies, including mutual funds, closed-end funds, exchange-traded funds (ETFs), and unit investment trusts (UITs). ICI seeks to encourage adherence to high ethical standards, promote public understanding, and otherwise advance the interests of funds, their shareholders, directors, and advisers. Members of ICI manage total assets of $13.1 trillion and serve over 90 million shareholders.

[2] *See MSRB Seeks Comment on Proposal to Collect and Disseminate 529 College Savings Plan Data,* MSRB (July 19, 2011) (the MSRB's "Notice"), which is available at: http://www.msrb.org/News-and-Events/Press-Releases/2011/MSRB-Seeks-Comment-on-Proposed-Plan-to-Collect-and-Disseminate-529-Plan-Data.aspx.

I. BACKGROUND

According to the MSRB's Notice, the MSRB's Electronic Municipal Market Access system ("EMMA") provides a centralized venue for the collection of those 529 plan disclosure documents that are submitted to EMMA by issuers of 529 plans or their agents. Unlike information relating to the municipal bond market, EMMA does not currently collect and disseminate 529 plan market or program-specific data. To expand the information on EMMA to include such 529 plan data, the MSRB seeks comment on requiring primary distributors of 529 plans to submit market data to the MSRB quarterly. As contemplated, such market data would include basic information such as total plan assets, contributions and withdrawals, the number of active accounts, and rollover distributions. This information would enable the MSRB to better understand the market for 529 plans and monitor the growth rate, composition, and the size of the various plans and the industry as a whole, thereby better informing its activities as the regulator of municipal securities dealers. The MSRB's Notice seeks comment on all aspects of the proposal.

EMMA was originally developed to provide an Internet-based system for free, real-time public access to primary market, secondary market and trade price data for municipal securities. In particular, it was designed to replace the former system of multiple nationally recognized municipal securities information repositories, or NRMSIRs, and state information depositories.[3] Pursuant to SEC rule changes, EMMA has become the centralized source for municipal securities disclosure information.[4] EMMA is a valuable source of information about municipal securities for the public. The Institute was, and continues to be a strong supporter of EMMA.[5]

By contrast, the information on municipal *fund* securities that would be submitted to EMMA is likely already available through other centralized sources, which would make EMMA a redundant repository of such information. For example, the website of the College Savings Plan Network (CSPN), contains much of the information the MSRB is seeking about these plans and their investment options. Importantly, because CSPN's membership consists of state officials from the states offering 529 plans, CSPN has access to information on all states' plans. EMMA, on the other hand, would only receive information from those plans offered by municipal securities dealers that are within the MSRB's jurisdiction. In addition to the CSPN website, reports published by CSPN and others (*e.g.*, Financial Research Corporation, Savingforcollege.com), provide meaningful industry statistics such as industry assets, the average account size, the percentage of accounts with activity, and the total

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[3] In seeking continuing disclosure documents, an investor often would need to subscribe to or contact several NRMSIRs (or SIDs) to attempt to obtain a complete set of documents.

[4] Amendments to Municipal Securities Disclosure, SEC Release 34-59062 (December 5, 2008).

[5] *See, e.g.*, Letter from Karrie McMillan, General Counsel, ICI, to Florence Harmon, Acting Secretary, SEC, dated September 22, 2008.

number of 529 plan accounts. Such information is routinely relied upon by investors, Congress, and others. Because of the availability of this information, it would not appear necessary for the MSRB to require its filing in order to have access to it or to provide investors or others access to it. And yet, those plans subject to the requirement would have to expend additional resources to compile, reconcile, submit, and maintain the information filed with the MSRB.

We recognize that there may, in fact, be information of interest to the MSRB that is not currently available and we understand the MSRB's interest in having access to such information. To accommodate this interest while, at the same time, addressing our concerns with EMMA becoming redundant of existing sources of 529 plan information, we recommend that, before proceeding with its proposal, the MSRB determine the following to appropriately narrow the scope of the information it seeks:[6]

- The information of interest to the MSRB that is not currently publicly available;
- The utility or value to the MSRB of collecting such information, including the fact that EMMA would not include information on plans outside the MSRB's jurisdiction;
- The intended use of or audience for such information; and
- The costs to the industry associated with any new filing requirements.

Such information would enable the MSRB to tailor its request to: obtain only the information that is both necessary and currently unavailable; ensure the value and utility of any information it obtains; and make sure that the costs to the industry associated with the filing are appropriately balanced with the benefits to the MSRB from receiving such information.

II. The Institute's Views on Submissions to EMMA

Should the MSRB proceed with its proposal notwithstanding the above discussion, we encourage it consider the following comments that attempt to balance the MSRB's interest in receiving more robust information with our members' interest in keeping the costs associated with this new requirement to a minimum and maintaining the confidentiality of proprietary information.

A. Reporting Dealers

According to the MSRB's proposal, the new disclosure requirement would be imposed on those brokers, dealers, and municipal securities dealers, "acting in the capacity of underwriter (commonly known as 'primary distributor') of 529 plans." The Institute supports limiting reporting to a 529 plan's

[6] We recommend the MSRB seek public comment on these issues prior to imposing a new filing requirement on registrants.

primary distributor.[7] Requiring reporting at this level will ensure that the MSRB receives aggregate information for the plans offered by those primary distributors that are subject to the MSRB's jurisdiction and avoid the burdens associated with each of the selling municipal dealers that has a sales agreement with the primary distributor having to make independent reports regarding their activities on behalf of the plans. Accordingly, any reporting required by the MSRB should be imposed only on a plan's primary distributor.

B. Content of Submissions

The MSRB proposes to require the filing of information about the various 529 plan options (*e.g.*, types of underlying investment portfolios that are available) as well as information about the plans' assets, contributions, and withdrawals. With the exception of withdrawal information, to the extent any of the following information is not currently available to the MSRB from other sources, the Institute supports requiring the reporting of:

- Narrative descriptive information from a plan's official statements or offering documents on the plan and its types of underlying investment portfolios;
- Total aggregate assets held in the plan and each of their portfolios; and
- Total contributions to each plan and its underlying investment portfolios.

The MSRB also proposes to require reporting of withdrawals from the plans or their portfolios. We question whether such information would be of value to the MSRB or investors. Aggregate withdrawal information would not reveal the basis for the withdrawal – *i.e.*, whether assets were withdrawn to cover qualified higher educational expenses, for non-qualified purposes, or rolled-over to another plan or portfolio – which is necessary to put the data in context.[8] For example, if investors are in an age-based plan or a plan that periodically reallocates the investors' 529 plan assets, this would result in a periodic significant withdrawal from one plan or portfolio and a contribution to another. The more meaningful information would be total assets and contributions and we support the MSRB collecting this information.

Along these same lines, the MSRB has sought input on other data that may be helpful for it to collect. There are two additional pieces of data the MSRB might want to collect as well as other information it may want to include on EMMA as a resource for investors. The first additional piece of data is either the percentage of contributions that are derived from automatic contributions or the

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[7] As noted above, however, not all 529 plans' primary distributors are subject to the MSRB's jurisdiction and therefore this new filing requirement would not result in EMMA or the MSRB having complete information on all 529 plans offered to investors.

[8] Should the MSRB consider requiring primary distributors to provide this information, it should be aware that, because plans are not required to monitor qualified versus non-qualified distributions, plans do not have this information.

average dollar amount of automatic contributions to a plan. This would appear to be information that would be of value to the MSRB as it would better enable it to determine the portion of industry assets derived from investors opting to fund their accounts through regular, automatic investments rather than through discrete sporadic investments.

The second piece of information that would likely be of interest to investors who utilize EMMA to compare 529 plans is fee and expense information, which primary distributors could provide to the MSRB without undue burden. To reduce any costs associated with filing this information with EMMA, it should be provided in a form that is consistent with the fee and expense disclosure in CSPN's Disclosure Principles.[9]

The additional information that the MSRB should consider including on EMMA is information about the differences between direct-sold and advisor-sold 529 plans. The manner in which these two different types of plans are distributed impacts the relationship between the investor and the issuer and may also impact features of the plans, such as fees and expenses. Accordingly, if the MSRB intends for EMMA to be a source for retail investors seeking information about 529 plans, in the interest of better educating both investors and potential investors regarding these plans, we encourage EMMA to include this information along with basic information about 529 plans.

C. Public Dissemination of Information

Our support for the filing of asset and contribution information is conditioned on limiting public access to this information if it relates to assets of or contributions to individual plans or their portfolios. According to our members, information relating to an individual plan's assets or contributions is not information they currently report publicly, even though aggregate industry information is available from various sources (*e.g.*, CSPN and Financial Research Corporation). Moreover, it is information they view as proprietary and are unwilling to have publicly disseminated. This information would not appear to be necessary for investors – at best it may be meaningless and at worst it may be misleading.[10] Accordingly, while we support the MSRB obtaining information to better inform its regulatory activities, we strongly oppose any information relating to plan or portfolio assets that is reported to the MSRB being publicly reported. We would not, however, object to the MSRB disseminating aggregate industry information so long as the public could not determine each plan's or portfolio's assets from such aggregate information.

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[9] The current version of the Disclosure Principles, which are periodically updated as warranted to remain current and relevant to investors, is available at: http://www.collegesavings.org/includes/pdfs/CSPN%20Disclosure%20Principles%20Statement%20No%20%205.pdf.

[10] For example, a potential investor who sees a significant diminution in a plan's assets might be disinclined to invest in the plan even though such diminution may be wholly unrelated to the quality of the plan. Similarly, a massive inflow of assets to a plan might influence an investor to invest in the plan even though such flow may be unrelated to the quality of the plan.

D. Frequency of Reporting

The MSRB Notice seeks comment on the frequency with which 529 plan data should be submitted to EMMA and, in particular, whether quarterly reporting would result in an undue burden on dealers. We believe that semi-annual reporting would be sufficient to serve the MSRB's purposes and would minimize the costs and burdens on reporting dealers. All regulatory filing requirements result in filers incurring increased costs to collect, produce, review, and file the required information. In some instances, frequent filing may be warranted because of the importance of the information or its fleeting relevance due to fast-changing circumstance. However, this would not be the case with the information primary distributors would be filing with EMMA. This is not pressing information of a type that warrants frequent submission. We believe that the MSRB's and the public's interest in such information would not be adversely impacted if the information is only filed every six months rather than quarterly. Importantly, semi-annual reporting would also lessen any filing burdens imposed on primary distributors. Accordingly, we strongly recommend that the MSRB not require the filing of such information more frequently than twice a year.

In addition, to provide filers ample time to gather, review, and report the information to EMMA, we recommend that the MSRB provide filers 60 days after the end of the semi-annual reporting period to submit the information to EMMA. This lag would accommodate filer's operational and filing processes without adversely impacting either the MSRB or the public.

E. Compliance Period

We also recommend that the compliance date for any rule adopted by the MSRB be delayed for at least one year from the rule's adoption. This delay is to accommodate a variety of competing priorities pursuant to recent Federal regulations that have recently been imposed on persons involved in the industry that necessitate dedicating significant resources to implementing such initiatives. Two of the more pressing initiatives currently are the Securities and Exchange Commission's pay-to-play rule and the cost-basis reporting mandated by the Internal Revenue Service and the Treasury Department. These initiatives are requiring the dedication of significant resources to redesign and develop systems and processes in order to be fully compliant with these new regulatory requirements. In the absence of a pressing need file 529 plan information with EMMA in the near term, which appears not to be the case, we recommend that the MSRB avoid further straining industry resources that are being deployed to accommodate more immediate regulatory requirements.

III. The Institute's Views on Electronic Delivery of Disclosure Documents

We are pleased that, in connection with this proposal, the MSRB is seeking comment on whether the MSRB should revise its rules to permit the electronic dissemination of plan disclosure documents, consistent with the manner in which other municipal securities disseminate their disclosure documents. The Institute has long-supported electronic dissemination of 529 plan disclosure

documents and we strongly support the MSRB pursuing such reforms to its rules. In 2006, when the MSRB proposed an "access equals delivery" model for the delivery of municipal securities' official statements, the Institute filed a comment letter supporting this model.[11] Our letter also encouraged the MSRB to support this model for delivery of 529 plan disclosure documents. At the time, the SEC had not yet embraced this concept for mutual fund securities so the MSRB did not pursue it for municipal fund securities. In the intervening years however, there has been more widespread acceptance by Federal regulators of electronic delivery of documents to investors.[12]

We continue to strongly support the MSRB pursuing an "access equals delivery" model for municipal fund securities' disclosure documents. Under this model, investors would be advised where they can electronically obtain a 529 plan's disclosure documents. Brokers, dealers, and municipal securities dealers would only be required to provide a printed copy of the disclosure documents to those investors who either do not have electronic access or would prefer to receive a hard copy.

The Institute appreciates the opportunity to share these comments with the MSRB. We commend the MSRB for continuing to enhance its knowledge of 529 plans and respond to public interest for information regarding these plans. If you have any questions concerning our comments or require additional information regarding any of our recommendations, please do not hesitate to contact the undersigned by phone (202-326-5825) or email (tamara@ici.org).

Sincerely,

/s/
Tamara K. Salmon
Senior Associate Counsel

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[11] *See* Letter from Elizabeth Krentzman, General Counsel, ICI, to Mr. Ernesto A. Lanza, Senior Associate General Counsel, MSRB, dated September 14, 2006 on MSRB Notice 2006-19.

[12] For a discussion of the advantages to investors of electronic delivery in the retirement plan context, *see "Delivering ERISA Disclosure for Defined Contribution Plans: Why the Time Has Come to Prefer Electronic Delivery,"* Peter P. Swire and Kenesa Ahmed (June 2011), which is available at: http://www.ici.org/pdf/ppr_11_disclosure_dc.pdf.