



Invested in America

August 26, 2011

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

Re: **MSRB Notice 2011-33 (July 19, 2011): Request for Comment on Plan to Collect Information on 529 College Savings Plans**

Dear Mr. Smith:

The Securities Industry and Financial Markets Association (“SIFMA”)¹ appreciates the opportunity to comment on the Municipal Securities Rulemaking Board’s (“MSRB”) Request for Comment on Plan to Collect Information on 529 College Savings Plans (the “Proposal”).

I. Executive Summary

As we have in the past, SIFMA fully supports the MSRB’s initiatives to promote greater disclosure and increased transparency. The MSRB’s Electronic Municipal Market Access System, or EMMA, has been extremely beneficial to investors and other market participants to have market data and primary and secondary market disclosures freely available in a single location. While SIFMA has general concerns that no other investment products (tax-advantaged or otherwise - such as mutual funds, exchange traded funds, equities, or variable insurance products) are required to provide the proposed type of product information to any regulator, SIFMA supports the MSRB’s efforts to collect and disseminate certain market data about 529 College Savings Plans (“529 plans”) from primary distributors and specifically believes that the MSRB should

¹ SIFMA brings together the shared interests of hundreds of securities firms, banks and asset managers. SIFMA’s mission is to support a strong financial industry, investor opportunity, capital formation, job creation and economic growth, while building trust and confidence in the financial markets. SIFMA, with offices in New York and Washington, D.C., is the U.S. regional member of the Global Financial Markets Association (GFMA).

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consider a rule change to permit the dissemination of plan disclosure documents electronically, as it does for other municipal securities.

II. Cost-Benefit Analysis

While SIFMA generally supports the policy goals of the MSRB's proposal to collect and disseminate certain 529 plan market data, SIFMA would like the MSRB to conduct a cost-benefit analysis to examine, not only this Proposal, but the cumulative impact of recent rule changes on broker-dealers, specifically with regard to the potential increase in costs of additional reporting requirements which may outweigh the benefits from such disclosure. SIFMA strongly believes that broker-dealers should not be required to fund MSRB efforts to assist "in better understanding the market for 529 plans, in order to inform [their] activities"² – especially when other alternative data sources exist.³

III. Incomplete, Partial, and Stale Market Data May Be Misleading for Investors

As noted by the MSRB, its "rules apply solely in connection with 529 plans marketed through dealers regulated by the MSRB. . . . EMMA permits states to voluntarily submit plan disclosure documents for 529 plans that are not marketed by dealers for public dissemination through EMMA." SIFMA is concerned that in the MSRB promoting EMMA as "a centralized system for the collection and dissemination of market information regarding 529 plans"⁴, the MSRB will only be able to provide market data on the portion of the 529 market for which brokers, dealers, and municipal securities dealers, act in the capacity of underwriter (commonly known as "primary distributor") of 529 plans. Such data would not include market statistics on 529 plans for which the primary distributor is beyond regulation of the MSRB and accordingly may be misleading to investors.

Additionally SIFMA has concerns about EMMA becoming the research repository for 529 plan investors. There are already many reliable resources and tools

² MSRB NOTICE 2011-33 (JULY 19, 2011)

³ As noted by the MSRB in Notice 2011-33, stating "various organizations, including the College Savings Plans Network ("CSPN"), an affiliate of the National Association of State Treasurers, and certain private entities had established websites about 529 plans. . . . CSPN, for example, has developed a website that aggregates information regarding 529 plans and enables investors to compare plans by state and by feature. CSPN has also published periodic reports on the 529 plan market, such as the 2010 year-end report published in April 2011." See www.collegesavings.org which also has links to each state's 529 plan.

⁴ MSRB NOTICE 2011-33

readily available to investors regarding 529 plans.⁵ By driving investors to EMMA, the MRSB could create a belief that the information is completely up to date and accurate. Further there may be data integrity issues and mismatches with current prospectus. Nor should a review of this type data on EMMA be a basis for a purchase or sale.

IV. Reporting Entity

As noted above, SIFMA supports the MSRB's proposal that "brokers, dealers, and municipal securities dealers ("dealers"), acting in the capacity of underwriter (commonly known as "primary distributor") of 529 plans"⁶ be required to provide certain 529 plan data to the MSRB. This support is limited to 529 plan underwriters and primary distributors – who contract directly with the state issuer. SIFMA would oppose the imposition of any 529 plan data reporting requirements being placed upon broker dealers serving as third party distributors of 529 plans (whether at the omnibus level⁷ or not) – entities that have entered into selling agreements to further distribute 529 plans, but are not an underwriter or primary distributor. Our responses below are based on the assumption that the reporting requirements apply only to 529 plan underwriters.

V. Collection of 529 Plan Data

Much, if not all of the data points that the MSRB believes would be useful to the MSRB and investors (total aggregate assets held in 529 plans; total assets held in each 529 plan; types of underlying investment portfolios available in each 529 plan and total assets invested in each such portfolio; total quarterly contributions in dollars to each 529 plan and to each underlying investment portfolio; and total quarterly withdrawals in dollars from each 529 plan and from each underlying investment portfolio), for many 529 Plans, is publicly available from the states and could be collected by the MSRB in that fashion without imposing these reporting requirements on broker-dealers. SIFMA does, however, see the benefit in centralizing certain data in EMMA – such data provided, as proposed by the MSRB, to the MSRB by the "brokers, dealers, and municipal securities dealers ("dealers"), acting in the capacity of underwriter (commonly

⁵ See Note 3 above.

⁶ MSRB NOTICE 2011-33

⁷ See <http://www.dtcc.com/products/wealthmgmt/funds/networking.php> for a discussion of Network Level Account Controls.

known as “primary distributor”) of 529 plans”⁸. Accordingly SIFMA supports required reporting by a 529 plan’s primary distributor.

VI. Submission Details

SIFMA believes that certain data the MSRB has proposed collecting would be useful to investors; other information the MSRB has proposed collecting would not be useful to investors; and certain data may be useful to the MSRB but should not be made public. SIFMA supports the periodic reporting by a 529 plan’s primary distributor of: total aggregate assets held in 529 plans, total assets held in each 529 plan, types of underlying investment portfolios available in each 529 plan, and total contributions to each plan.

The MSRB has also proposed reporting requirements of withdrawals from each 529 plan and from each underlying investment portfolio. SIFMA believes that this information would be of little value to the MSRB or investors and accordingly dealers should not be required to report such information to the MSRB, as the data would not reveal the reason for the investors’ withdrawal. SIFMA also notes that we expect a shift to an omnibus account structure within the advisor-sold 529 plan channel. As a result, investor-level data such as the number of active accounts and the number of rollover distributions will not be available.

VII. Dissemination of 529 Plan Data

As noted above, SIFMA fully supports the MSRB’s initiatives to promote greater disclosure and increased transparency. SIFMA also supports the MSRB’s desire to provide certain market data to investors from an additional established industry source. However, SIFMA believes that certain market data collected by the MSRB should not be provided to the public – specifically market data of contributions to or assets of individual 529 plan’s underlying investment funds/portfolios as such market data is viewed by its members as proprietary in nature.

VIII. Use of EMMA for Electronic Dissemination of Plan Documents

SIFMA has long supported the MSRB’s efforts to create and expand EMMA – as it has improved market efficiency and facilitated free comprehensive disclosure of municipal securities market data for investors. MSRB should consider a rule change to permit the dissemination of plan disclosure documents electronically, as it does for other municipal securities.

⁸ MSRB NOTICE 2011-33

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IX. Implementation Period

Any regulatory scheme takes time to implement properly. Therefore, SIFMA requests that when any 529 plan market data reporting requirements are finalized, the MSRB provides for a reasonable implementation period to develop, test, and implement supervisory policies and procedures, as well as systems and controls, which would be no less than one year, before the Proposal becomes effective. We also suggest limiting data collection to semi-annually.

X. Conclusion

SIFMA sincerely appreciates this opportunity to comment upon the Proposal. SIFMA fully supports the MSRB's initiatives to promote greater disclosure and increased transparency. SIFMA further supports the MSRB's efforts to collect and disseminate certain market data about 529 College Savings Plans and specifically believes that the MSRB should consider a rule change to permit the dissemination of plan disclosure documents electronically, as it does for other municipal securities.

Please do not hesitate to contact me with any questions at (212) 313-1265.

Sincerely yours,



David L. Cohen
Managing Director
Associate General Counsel

cc:

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