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**Affected Rules**

[Rule G-17](#), [Rule G-32](#),  
[Rule G-47](#)

## Concept Release: MSRB Requests Comment on Potential Modernization of Municipal Fund Securities Disclosure Obligations

### Overview

The Municipal Securities Rulemaking Board (MSRB) is requesting comment regarding possible initiatives to modernize the disclosure obligations of brokers, dealers and municipal securities dealers (collectively, “dealers”) in connection with municipal fund securities. Municipal fund securities are municipal securities that would qualify as a security of an investment company under the Investment Company Act of 1940, as amended (the “Investment Company Act”), if they had not been issued by a state or local governmental entity.<sup>1</sup> Unlike traditional municipal securities, such as bonds and notes, that constitute debt securities of a municipal issuer, municipal fund securities typically represent units in pooled investment funds of a trust established by state or local governmental entities having many of the characteristics of open-end funds (commonly referred to as mutual funds) or money market funds that are subject to the Investment Company Act. Examples of municipal fund securities include: investments in certain state qualified tuition programs for higher education or K-12 education expenses under Internal Revenue Code Section 529 (“529 savings plans”);<sup>2</sup> investments in

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<sup>1</sup> The term municipal fund security is defined in MSRB Rule D-12 to mean a municipal security issued by an issuer that, but for the application of Section 2(b) of the Investment Company Act, would constitute an investment company within the meaning of Section 3 of the Investment Company Act.

<sup>2</sup> Two types of 529 savings plans exist under federal law, one permitting investments in products similar to mutual or money market funds (commonly identified as “529 savings plans”) and the other providing for the purchase of tuition credits or certificates as a form of pre-payment of tuition (“529 prepaid plans”). Shares of 529 savings plans typically constitute municipal fund securities while tuition credits in 529 prepaid plans have been viewed as not constituting a security and therefore are not municipal fund securities. As a result, only



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certain ABLÉ programs for qualified disability expenses under the Achieving a Better Life Experience Act of 2014 and Internal Revenue Code Section 529A (“ABLE programs”); and investments by local governments in certain governmentally-operated pooled investment funds (“local government investment pools” or “LGIPs”).<sup>3</sup>

To ensure that MSRB rules continue to reflect how the municipal fund securities market is evolving, the MSRB is conducting a review of MSRB Rule G-32, on disclosures in connection with primary offerings, MSRB Rule G-47, on time of trade disclosure, and related interpretive guidance under MSRB Rule G-17, on conduct of municipal securities and municipal advisory activities, with respect to dealers that act in the capacity of underwriters for municipal fund securities and those that sell interests in municipal fund securities to customers.

In this vein, the MSRB seeks feedback as part of its broader stakeholder engagement on its municipal fund securities disclosure initiative (“MFS-disclosure initiative”). The MSRB recognizes the important role that the varied perspectives of municipal market participants play in achieving better regulatory and market outcomes, particularly in regard to MSRB rulemaking. The MSRB invites all interested parties to comment on the benefits and burdens of potential changes to MSRB rules related to the MFS-disclosure initiative, including the costs and possible alternatives. The comments will assist the MSRB in determining whether to propose amendments to MSRB rules pertaining to the delivery of disclosures in connection with the primary offering of municipal fund securities and disclosure of material information to customers prior to or at the time of trade of municipal fund securities.

Comments should be submitted no later than April 11, 2025, and may be submitted by clicking [here](#) or in paper form. Comments submitted in paper form should be sent to Ronald W. Smith, Corporate Secretary, Municipal Securities Rulemaking Board, 1300 I Street NW, Suite 1000, Washington, DC

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dealer activities with respect to 529 savings plans, rather than 529 prepaid plans, generally fall under the MSRB’s statutory authority.

<sup>3</sup> The Securities and Exchange Commission (the “Commission”) has stated that, depending on the facts and circumstances, interests in 529 savings plans, LGIPs and ABLÉ programs may be municipal securities. See letter dated February 26, 1999 from Catherine McGuire, Chief Counsel, Division of Market Regulation, Commission, to Diane G. Klinke, General Counsel, MSRB, in response to letter dated June 2, 1998 from Diane G. Klinke to Catherine McGuire, 1999 WL 152891 (publicly available February 26, 1999); [letter](#) dated March 31, 2016 from Jessica S. Kane, Director, Office of Municipal Securities, Commission, to Robert A. Fippinger, Chief Legal Officer, MSRB, in response to letter dated December 31, 2015 from Robert A. Fippinger to Jessica S. Kane (together, the “Commission Municipal Fund Securities Letters”).

20005. Comments will be made available for public inspection on the MSRB's website.<sup>4</sup>

## Background

The MSRB regulates dealers who act in the capacity of underwriters of municipal fund securities (often referred to as “distributors”), as well as dealers that sell interests in municipal fund securities.<sup>5</sup> Dealers effecting transactions in municipal fund securities are subject to a series of MSRB rules requiring disclosure to customers of key information concerning a transaction involving a purchase or sale of a municipal fund security. This concept release focuses on two of these inter-related disclosure obligations. First, Rule G-32 seeks to ensure that the customer has all of the material information made available by the issuer in its official statement<sup>6</sup> in connection with the offering of the municipal fund securities they purchase from a dealer. Second, Rule G-47 provides that, if a customer purchases municipal fund securities from a dealer, the dealer must disclose to the customer, at or prior to the time of trade and therefore in time to assist the customer in making an informed investment decision, all material information known by the dealer about the transaction, as well as material information about the security that is reasonably accessible to the market.<sup>7</sup>

The official statement delivery requirements of Rule G-32 and the time of trade disclosure requirements of Rule G-47 were originally designed based

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<sup>4</sup> Comments are generally posted on the MSRB's website without change. For example, personal identifying information such as name, address, telephone number or email address will not be edited from submissions. Therefore, commenters should only submit information that they wish to make available publicly.

<sup>5</sup> MSRB rules also apply to municipal advisors that engage in municipal advisory activities on behalf of governmental sponsors or trustees of 529 savings plans, LGIPs and ABLÉ programs; however, this concept release focuses on subjects particular to dealers' disclosure obligations under MSRB rules. This concept release is not seeking comments on modification to municipal advisors' obligations under MSRB rules.

<sup>6</sup> For purposes of municipal fund securities, official statements are more commonly referred to as plan or program disclosure documents in the case of 529 savings plans and ABLÉ programs and information statements in the case of LGIPs. This concept release generally uses the term official statement for all such primary market disclosure documents under Rule 15c2-12 under the Securities Exchange Act of 1934, as amended (the “Exchange Act”).

<sup>7</sup> Dealers selling interests in municipal fund securities to customers also have transaction confirmation or alternative periodic statement disclosure requirements in connection with their customer transactions under MSRB Rule G-15. This concept release is not seeking comment on such confirmation or alternative periodic disclosure obligations at this time.

on the typical manner of offering and subsequent trading of municipal debt securities. The manner of offering and selling municipal fund securities differs from municipal debt securities in several important respects and, as a result, the MSRB believes that how these differences may have an impact on the effectiveness of both rules merits a careful retrospective review to ensure that the rules achieve their purposes in the most effective and efficient manner possible. Thus, to address developments in the marketplace and in investor behavior and preferences, as well as to better conform these requirements to specific practices and structures in the municipal fund securities market, this concept release seeks input on potentially modernizing the method of delivery of disclosure documents in connection with primary offerings of municipal fund securities under Rule G-32 and potentially establishing a new stand-alone rule addressing time of trade disclosure obligations pertaining to municipal fund securities similar to Rule G-47.

## Official Statement Dissemination Modernization

### I. Current Delivery Requirement

Under Rule G-32, dealers who sell municipal securities (including municipal fund securities) during the primary offering disclosure period are required to deliver the official statement to the customer by no later than the settlement date of the transaction.<sup>8</sup> For municipal debt securities, the primary market disclosure period represents a limited period of time immediately after the initial issuance of the securities that ends 25 days after the closing of the underwriting of the new issue. For customers purchasing municipal debt securities thereafter, the official statement is no longer required to be delivered to customers.

In contrast, all sales of municipal fund securities are primary market transactions sold in continuous offerings.<sup>9</sup> Thus, the primary offering disclosure period under Rule G-32 only terminates when the issuer ceases issuing and selling any further municipal fund securities. As a result, the official statement delivery requirement of Rule G-32 applies on an on-going basis to all sales of municipal fund securities, regardless of how long after the

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<sup>8</sup> See [MSRB Rule G-32](#), Disclosures in Connection with Primary Offerings.

<sup>9</sup> The Commission has stated that, in general, interests in LGIPs, 529 savings plans, and ABLE programs are offered only by direct purchase from the issuer and, accordingly, are sold in a primary offering. Thus, underwriters of such municipal fund securities are subject to Exchange Act Rule 15c2-12. See Commission Municipal Fund Securities Letters.

issuer first began offering such securities.<sup>10</sup> Consistent with this on-going use of the official statement in connection with sales of municipal fund securities, an issuer of municipal fund securities typically produces an initial official statement and thereafter produces supplements and amendments that update the information available in the official statement. In many cases, this supplementation and amendment process may extend over several years. Eventually, most issuers elect to replace the initial official statement, as it may have been supplemented and amended over the years, with a new fully updated consolidated official statement, which thereafter typically is updated in the same manner as before over an extended period of time.

In 2009, Rule G-32 was amended to adopt a standard for the electronic delivery (“e-delivery”) of official statements for municipal debt securities, as an alternative to physical delivery of official statements.<sup>11</sup> Specifically, dealers selling municipal debt securities in a primary offering are permitted to rely on the availability of official statements on the MSRB’s Electronic Municipal Market Access (“EMMA”®) website,<sup>12</sup> in lieu of delivering paper copies to customers. Additionally, such dealers are required to provide customers with written notice of how to obtain official statements from EMMA, together with notice that a hard copy of the official statement would be provided by the dealer upon request.<sup>13</sup> The MSRB has stated that the notice of availability of the official statement would be presumptively fulfilled if the notice includes either the uniform resource locator (URL) for the specific EMMA web portal page from which the official statement may be viewed and downloaded or the 9-digit CUSIP number for the security and the

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<sup>10</sup> See [Sales of Municipal Fund Securities in the Primary Market](#) (January 18, 2001); Release No. 34-43066 (July 21, 2000), [65 FR 47530, 47536](#) (August 2, 2000) (File No. SR-MSRB-2000-06) (the “2001 Guidance”).

<sup>11</sup> This amendment was part of a broader set of changes to MSRB rules and systems that required underwriters to post official statements to EMMA, along with other key information relating to a new issue, more promptly. See Release No. 34-59966 (May 21, 2009), [74 FR 25790](#) (May 29, 2009) (File No. SR-MSRB-2009-02) (the “2009 Amendment”).

<sup>12</sup> EMMA is a registered trademark of the MSRB.

<sup>13</sup> The dealer is required, upon request, to send a copy of the official statement to the customer, together with certain required information if not included in the official statement, within one business day of request by first class mail or other equally prompt means. The MSRB has stated that dealers are required to honor any customer’s explicit standing request for copies of the official statement for all of their transactions with the dealer. See [MSRB Notice 2009-28](#), MSRB Establishes Electronic Official Statement Dissemination Standard Under Rule G-32 and Launches Permanent Primary Market Disclosure Service of the Electronic Municipal Market Access System (“EMMA”) (June 1, 2009); Release No. 34-59636 (March 27, 2009), [74 FR 15190](#), 15199 (April 2, 2009) (File No. SR-MSRB-2009-02) (the “EMMA Primary Market Disclosure Service Filing”).

URL for the EMMA portal search page through which a search based on such CUSIP number may be undertaken.<sup>14</sup> While the MSRB's e-delivery standard for municipal debt securities under Rule G-32 was modeled after the Commission's 2005 e-delivery standard<sup>15</sup> for the final prospectuses of certain registered securities and referred to as "access equals delivery" standard, contours of the MSRB standard differ slightly from the Commission's 2005 e-delivery standard since the MSRB standard requires the notice to include instructions on how to access the official statement instead of presuming that investors understand that (and how) they can access the electronic version of the prospectus in a registered offering.

When adopting the 2005 e-delivery standard, the Commission excluded mutual funds from relying on the Commission's 2005 e-delivery standard.<sup>16</sup> To remain consistent with the prospectus delivery paradigm for mutual funds, and because municipal fund securities, such as 529 savings plans, typically represent investments in mutual funds, the MSRB did not extend the e-delivery standard for municipal debt securities to municipal fund securities. Thus, dealers selling municipal fund securities continue to be subject to the physical delivery requirements of Rule G-32 with respect to the official statement, including any supplements and amendments. For many repeat purchasers of municipal fund securities, the rule permits the dealer to meet its delivery requirement by mailing any new supplements or

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<sup>14</sup> Such written notice may be provided in electronic form if the dealer meets the requirements of the MSRB's 1998 Guidance described below. See EMMA Primary Market Disclosure Service Filing, [74 FR at 15207](#).

<sup>15</sup> Under the Commission's adopted 2005 e-delivery standard (often referred to as "access equals delivery"), the prospectus delivery requirements are satisfied if, among other things, a company filed a timely final prospectus with the Commission. See Release No. 33-8591 (July 19, 2005), [70 FR 44722](#) (August 3, 2005) (File No. S7-38-04) (the "2005 SEC Adopting Release"). This e-delivery standard presumes investors have access to the internet and therefore are able to access the prospectus from the Commission's EDGAR system or other electronic sources. See 2005 SEC Adopting Release, [70 FR 44722](#), 44783. While the Commission's access equals delivery standard requires notice that the security was sold pursuant to a registration statement or in a transaction subject to the access equals delivery standard, it does not explicitly require notice containing a link to the prospectus.

<sup>16</sup> In excluding mutual funds from the access equals delivery standard, the Commission noted that any such change to the prospectus delivery requirement for mutual funds would more appropriately be considered in the context of a broader reconsideration of the separate framework governing communications with investors. See 2005 SEC Adopting Release, [70 FR 44722](#), 44784. In contrast, MSRB rules relating to disclosures for municipal fund securities operate within the same framework as MSRB disclosure rules for municipal debt securities.

amendments to a previously delivered official statement.<sup>17</sup> As a result, depending on the particular municipal fund securities, delivery of the full set of disclosures making up the official statement for such municipal fund securities can involve multiple deliveries of inter-related documents over the course of a customer's investments in the municipal fund securities. Investors relying on physical delivery would need to maintain a physical file of multiple disclosures delivered over many years in order to have a complete set of documents constituting the official statement.

Notably, the MSRB allowed in the 2009 Amendment that dealers wishing to fulfill their official statement delivery requirements with respect to municipal fund securities could rely on existing guidance adopted by the MSRB to address the use by dealers of electronic media to deliver and receive information under MSRB rules.<sup>18</sup> This interpretive guidance, adopted by the MSRB in 1998 (the "1998 Guidance"),<sup>19</sup> provides that, with respect to electronic communications from dealers to customers, dealers would need to satisfy the following three principles when relying on electronic media to meet their disclosure delivery obligation under Rule G-32: "notice,"<sup>20</sup>

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<sup>17</sup> Pursuant to Rule G-32(a)(iv)(A), if a customer who participates in a periodic municipal fund security plan or a non-periodic municipal fund security program has previously received the official statement in connection with the purchase of municipal fund securities, a dealer that sells additional units to a customer can satisfy the delivery obligation if it promptly sends to the customer any new, supplemented, amended or "stickered" official statement along with a written statement describing which documents constitute the complete official statement and stating that the complete official statement is available upon request. The term "stickered" represents a former practice of amending or updating an official statement by attaching a sticker to the original document, a practice which has nearly universally been replaced by the issuance of a separate supplemental document updating or correcting information contained in the official statement.

<sup>18</sup> See EMMA Primary Market Disclosure Service Filing, [74 FR 15199 n.52](#).

<sup>19</sup> See [Electronic Delivery and Receipt of Information by Brokers, Dealers and Municipal Securities Dealers](#) (November 20, 1998); Release No. 34-40848 (December 28, 1998), [64 FR 544](#) (January 5, 1999) (File No. SR-MSRB-1998-12). The 1998 Guidance adheres to the framework established by the Commission through its 1995 and 1996 interpretive releases on the use of electronic media for delivery of information by dealers as an alternative to paper-based media. See Release No. 33-7288 (May 9, 1996), [61 FR 24644](#) (May 15, 1996) (File No. S7-13-96); Release No. 33-7233 (October 6, 1995), [60 FR 53458](#) (October 13, 1995) (File No. S7-31-95) (together, the "Commission Interpretive Releases").

<sup>20</sup> Under the "notice" principle, the electronic communication should provide timely and adequate notice to customers that the information is available electronically. *Id.*

“access,”<sup>21</sup> and “evidence to show delivery.”<sup>22</sup> The MSRB also noted in the 1998 Guidance that dealers should consider the need to establish procedures to ensure that applicable delivery obligations are met, including recordkeeping procedures to evidence such satisfaction. Pursuant to the 1998 Guidance, currently dealers are able to evidence compliance with the evidence to show delivery obligation, for example, by i) obtaining the intended recipient’s informed consent to delivery through a specified electronic medium (i.e., “opt-in”) and ensuring that the recipient has appropriate notice and access; ii) obtaining evidence that the intended recipient actually received the information, such as by an e-mail return-receipt or by confirmation that the information was accessed, downloaded or printed, or iii) disseminating information through certain facsimile methods, such as where the recipient has requested the information and provided a fax number). The 1998 Guidance sets forth a stricter standard for electronic communications than the current e-delivery standard for municipal debt securities outlined under Rule G-32. The MSRB has heard, anecdotally, through stakeholder engagement that the “evidence to show delivery” principle is viewed by some market participants as unnecessarily burdensome for dealers in light of investors’ ready access to the internet and the benefits to individual investors and the marketplace of providing for free public electronic access.

## II. Regulatory and Marketplace Developments

### A. MSRB’s Outreach Efforts

Over the years, market participants have continued to express interest in the MSRB adopting an e-delivery standard for official statement delivery to align regulatory obligations with respect to municipal fund securities to that of municipal debt securities. The MSRB believes a cautious approach is necessary to balance the policy goal of modernizing the e-delivery standard for municipal fund securities to aid investors’ prompt access to timely information – recognizing technological innovations in electronic communications – with reducing burdens on dealers related to costs of paper delivery. The MSRB understands that such costs may ultimately be passed

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<sup>21</sup> Under the “access” principle, customers who are provided information through electronic delivery should have access to that information comparable to the access that would be provided if the information were delivered in paper form. *Id.*

<sup>22</sup> Under the “evidence to show delivery” principle, dealers must have reason to believe that electronically delivered information will result in the satisfaction of the delivery requirements under federal securities laws. *Id.*



on, in whole or in part, to issuers or investors through higher fees or administrative charges.

Consequently, the MSRB has engaged in a careful ongoing evaluation of the e-delivery standard for municipal fund securities as the rules for electronic disclosures and modes of delivery of other federal regulators have evolved. The MSRB sought public comment by issuing a request for comment in 2011 (the “2011 RFC”)<sup>23</sup> and a concept proposal in 2012 (“2012 Concept Proposal”)<sup>24</sup> (together, the “Prior RFCs”) on whether the MSRB’s e-delivery standard for municipal debt securities should be extended to municipal fund securities. In response to the Prior RFCs, commenters generally supported extending the e-delivery standard to municipal fund securities. More specifically, while the commenters uniformly supported the MSRB in 2011, in response to the 2012 Concept Proposal, eight commenters favored the

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<sup>23</sup> See [MSRB Notice 2011-33](#), Request for Comment on Plan to Collect Information on 529 College Savings Plans (July 19, 2011). As part of the 2011 RFC, aside from seeking comment on data collection and dissemination of market information about 529 savings plans, the MSRB sought comment on modernizing the e-delivery paradigm for 529 savings plans disclosure documents. There was uniform support from the seven commenters for the MSRB to extend its e-delivery standard for municipal debt securities to 529 savings plans and LGIPs. See Letters from Roger Michaud, Chairman, College Savings Foundation (“CSF”) (August 31, 2011); Tamara K. Salmon, Senior Associate Counsel, Investment Company Institute (“ICI”) (August 31, 2011); David L. Cohen, Managing Director, Associate General Counsel, Securities Industry and Financial Markets Association (“SIFMA”) (August 26, 2011); Michael Koffler, Sutherland Asbill & Brennan LLP (“Sutherland”) (August 31, 2011); Mary G. Morris, Chief Executive Officer, Virginia College Savings Plan (“VCSP”) (August 31, 2011); Letter from Andrew N. Owen, Executive Vice President, Wells Fargo Funds Management, LLC (“Wells Fargo”) (August 31, 2011). All letters are available at the [MSRB Website](#).

<sup>24</sup> See [MSRB Notice 2012-10](#), MSRB Requests Comment on a Concept Proposal for Electronic Dissemination of 529 College Savings Plan Disclosure Documents (March 1, 2012). In response to the 2012 Concept Proposal, commenters generally supported extending the e-delivery standard to municipal fund securities while also offering various alternatives for achieving such objective. See Letters from Charles V. Callan, Chief Regulatory Officer, Broadridge Financial Solutions, Inc. (“Broadridge”) (April 2, 2012) (“Broadridge 2012 Letter”); Roger Michaud, Chairman, CSF (April 2, 2012); Michael L. Fitzgerald, Chair, College Savings Plans Network (“CSPN”) & State Treasurer of Iowa (April 2, 2012); Brendan Daly, Legal and Compliance Counsel, Commonwealth Financial Network (March 30, 2012); Barbara Roper, Director of Investor Protection, Consumer Federation of America (“CFA”) (May 7, 2012) (“CFA 2012 Letter”); Tamara K. Salmon, Senior Associate Counsel, ICI (April 2, 2012); David L. Cohen, Managing Director and Associate General Counsel, SIFMA (April 2, 2012) (“SIFMA 2012 Letter”); Michael Koffler, Sutherland (April 2, 2012); David Oestreicher, Chief Legal Counsel, and Regina M. Watson, Senior Associate Counsel, T. Rowe Price Associates, Inc. (April 2, 2012); Lynne N. Ward, Executive Director, Utah Educational Savings Plan (April 2, 2012); Mary G. Morris, Chief Executive Officer, VCSP (April 2, 2012). All letters are available at the [MSRB Website](#).

MSRB's proposal, two commenters<sup>25</sup> suggested a mix of alternatives in support of extending the e-delivery standard to municipal fund securities and one commenter<sup>26</sup> opposed the MSRB's proposal. At that time, the MSRB determined that a prudent approach would be to continue to evaluate the Commission's rulemaking initiatives with respect to mutual funds and assess trends in investor behavior and demographic data before approaching potential rulemaking.

## B. The Commission's E-Delivery Modernization Efforts and Legislative Developments

The Commission has continued to progress beyond its e-delivery guidance in the Commission Interpretive Releases published in the 1990s, effectively allowing investors to opt-in to e-delivery as an alternative to paper-based media, by modernizing the e-delivery of certain communications, including offering documents and other investor communications for the registered securities market.

In 2009, with respect to offering documents, the Commission amended Rule 498 under the Securities Act of 1933, as amended (the "Securities Act"), to adopt an optional layered disclosure framework by permitting mutual funds to satisfy the statutory prospectus delivery requirement, among other things, by making such prospectus available online, as long as investors receive a paper copy or, in instances where the investor has opted-in to e-delivery in accordance with the Commission Interpretive Releases, an electronic copy of the summary prospectus.<sup>27</sup>

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<sup>25</sup> While SIFMA expressed support for the electronic dissemination of 529 savings plans disclosure documents, it suggested that investors in 529 savings plans should be allowed to opt-in to receiving plan information electronically. See SIFMA 2012 Letter at 4. In supporting an alternative to MSRB's approach, CFA commented that, at a minimum, information that is posted online should also be delivered to the investor in the form of a link or other comparable method. See CFA 2012 Letter at 3.

<sup>26</sup> Broadridge opposed the e-delivery standard for 529 savings plans but supported providing hard copies of documents if the investor affirmatively consented to e-delivery. See Broadridge 2012 Letter at 2.

<sup>27</sup> Pursuant to Securities Act Rule 498, mutual funds relying on the optional layered disclosure framework are required to: (1) make the statutory prospectus and other relevant information available on the internet, free of charge; and (2) send or give investors a summary prospectus. The summary prospectus must also be filed with the Commission before its first use. See [17 CFR 230.498](#); see also Release No. 33-8998 (January 13, 2009), [74 FR 4546](#) (January 26, 2009) (File No. S7-28-07).

Relatedly, the Commission has modernized the delivery model for other types of mutual fund investor communications. For example, in 2007, the Commission amended Rule 14a-16 under the Exchange Act to allow mutual funds to rely on e-delivery of proxy materials to shareholders by posting them on an internet website instead of mailing them, as long as notice is provided of their availability along with an option to request a paper copy.<sup>28</sup> More recently, in 2022, the Commission adopted amendments to Rule 30e-3 under the Investment Company Act related to transmission requirements of shareholder reports which required mutual funds to provide reports to investors, directly, either in paper or electronically if the investor opts-in to e-delivery.<sup>29</sup> In building on the similar “layered” disclosure approach previously adopted by the Commission that most funds use to provide prospectus information tailored to investor’s information needs, the Commission also amended Rule 30e-1 under the Investment Company Act to require certain funds, including mutual funds, to transmit streamlined reports to shareholders that highlight key information that is particularly important for retail investors.<sup>30</sup> In addition, while not specific to mutual funds, these 2022 amendments expanded the mode of delivery of shareholder reports for certain other funds by satisfying delivery by making streamlined shareholder reports available online and sending a notice of their availability to investors.<sup>31</sup>

Congress has also expressed interest in establishing e-delivery as the default manner for the delivery of information to investors in the securities market. Most recently, on March 8, 2024, the Expanding Access to Capital Act of 2023 was passed by the U.S. House of Representatives and referred by the U.S.

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<sup>28</sup> See Release No. 34-56135 (July 26, 2007), [72 FR 42222](#) (August 1, 2007) (File No. S7-03-07). The 2007 amendment required mutual fund proxy materials to be accompanied by the prospectus or shareholder report. In 2010, consistent with permitting mutual funds to use a layered disclosure framework to satisfy their prospectus delivery obligation, the Commission revised the proxy delivery requirements to permit mutual funds to accompany the notice of proxy materials with a summary prospectus instead of the statutory prospectus. See Release No. 34-61560 (February 22, 2010), [75 FR 9074-9075](#) (February 26, 2010) (File No. S7-22-09).

<sup>29</sup> See Release No. 33-11125 (October 26, 2022), [87 FR 72758](#) (November 25, 2022) (File No. S7-09-20).

<sup>30</sup> *Id.* [87 FR 72758, 72759](#). In providing these streamlined reports to shareholders, the Commission required these reports to be tailored by fund share class and made available online or by request. The Commission allowed the funds to have the flexibility to make electronic versions of their shareholder reports more user-friendly and interactive. [87 FR 72758, 72764](#).

<sup>31</sup> The Commission allowed certain funds except open-end registered investment companies to use a notice and access approach to transmitting shareholder reports. *Id.* [87 FR 72758](#).

Senate to the Committee on Banking, Housing, and Urban Affairs (the “Bill”).<sup>32</sup> The Bill would require the Commission and self-regulatory organizations, including the MSRB, to, among other things, allow a covered entity to satisfy electronically, without requesting investor consent, its obligation to deliver regulatory documents required under the securities laws, including the rules of the Commission and self-regulatory organizations.<sup>33</sup>

### C. Industry Input and Research on Investor Preference

The MSRB has reviewed studies of internet usage among Americans and investor preferences regarding the receipt of disclosure information to enhance its understanding of investor behavior in assessing ways to modernize disclosure dissemination for investors purchasing municipal fund securities. A recent study at Pew Research Center (“Pew”) revealed a growth in the access and usage rates of electronic media among Americans, with approximately 90 percent of Americans going online every day.<sup>34</sup> More specifically, a 2023 survey found that most U.S. adults say they use the internet (95 percent), have a smartphone (90 percent) or subscribe to high-speed internet at home (80 percent).<sup>35</sup> The study highlighted, among other things, internet broadband subscription across various demographics, including race/ethnicity, income and education, as set forth below.<sup>36</sup>

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<sup>32</sup> See Expanding Access to Capital Act of 1934, H.R. 2799, 118<sup>th</sup> Cong. (2024) available at: <https://www.congress.gov/bill/118th-congress/house-bill/2799>.

<sup>33</sup> See Division E of the Bill titled Improving Disclosures for Investors. On February 29, 2024, Senator Thom Tillis, R-North Carolina, and Senator John Hickenlooper, D-Colorado, introduced a related bill, referred to the Senate Committee on Banking, Housing, and Urban Affairs, incorporating the provisions of Division E of the Bill. See Improving Disclosure for Investors Act of 2024, S. 3815, 118<sup>th</sup> Cong. (2024) available at: <https://www.congress.gov/bill/118th-congress/senate-bill/3815?s=1&r=1&q=%7B%22search%22%3A%22improving+disclosures+for+investors+act+of+2024%22%7D>

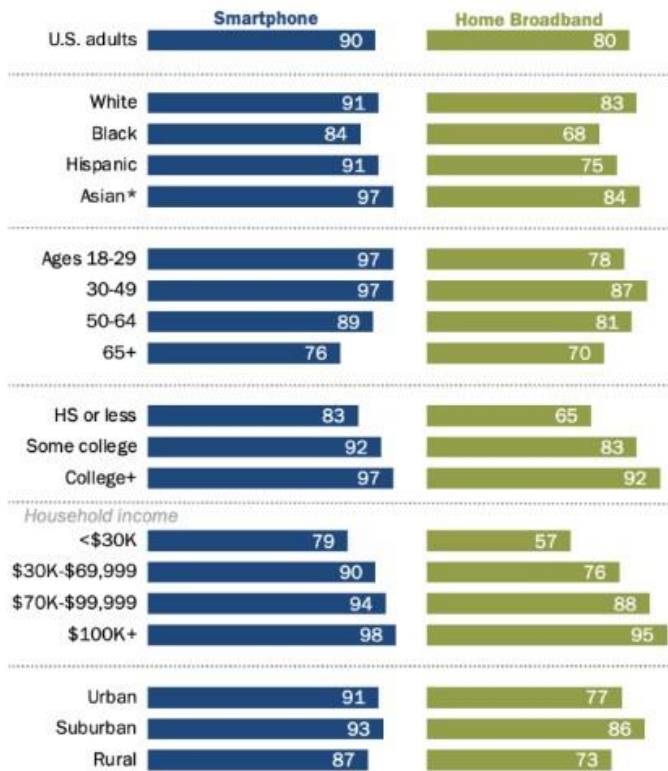
<sup>34</sup> Americans’ Use of Mobile Technology and Home Broadband, Pew Research Center, Washington, D.C. (January 31, 2024) [https://www.pewresearch.org/internet/2024/01/31/americans-use-of-mobile-technology-and-home-broadband/ \(the “Pew Study”\)](https://www.pewresearch.org/internet/2024/01/31/americans-use-of-mobile-technology-and-home-broadband/(the%20Pew%20Study)).

<sup>35</sup> *Id.*

<sup>36</sup> Rates of smartphone ownership, broadband subscription vary across groups, including by household income and education (illustration) from *id.* at 5.

### Rates of smartphone ownership, broadband subscription vary across groups, including by household income and education

% of U.S. adults who say they own or subscribe to the following



\* Estimates for Asian adults are representative of English speakers only.

Note: White, Black and Asian adults include those who report being only one race and are not Hispanic. Hispanic adults are of any race. Those who did not give an answer or who gave other responses are not shown.

Source: Survey of U.S. adults conducted May 19-Sept. 5, 2023.

"Americans' Use of Mobile Technology and Home Broadband"

PEW RESEARCH CENTER

In addition, a 2022 survey commissioned by SIFMA (the "SIFMA e-Delivery YouGov Survey")<sup>37</sup> showed growing support among investors with brokerage accounts for documents to be delivered electronically rather than mailed in hard copy format. The SIFMA e-Delivery YouGov Survey found that comfort with e-delivery as the default form of delivery is high, regardless of age,

<sup>37</sup> See <https://www.sifma.org/wp-content/uploads/2022/07/SIFMA-Survey-Results-for-SEC-July-2022.pdf>. The SIFMA e-Delivery YouGov Survey sought to gauge the interest of individual investors in e-delivery as a delivery method for receiving investor communications. The surveyed population included 1,300 individual investors who held at least \$5,000 across retirement accounts, college savings investments, stocks, bonds, mutual funds, or a brokerage account, excluding property and cryptocurrency investments.

education level, income level, and amount of assets held.<sup>38</sup> Specifically:

- 85 percent would be comfortable with default e-delivery for investor documents provided they can still opt-in to paper delivery;<sup>39</sup> and specifically for reports, prospectuses, and other proxy materials, 54 percent would prefer e-delivery over physical mail.<sup>40</sup>
- 79 percent have already chosen e-delivery for at least one type of investor document, with comfort for e-delivery rated high amongst older individual investors as well, including 75 percent aged 55 and older receive investor communication via e-delivery.<sup>41</sup>
- Only eight percent want paper copies of all investor documents sent through the mail.<sup>42</sup>

Additionally, the SIFMA e-Delivery YouGov Survey highlighted that 75 percent of individual investors would be comfortable with e-delivery as the default method for all investor communications (including prospectus)<sup>43</sup> and 71 percent noted that benefits of e-delivery becoming the default for investor communications outweigh any concerns.<sup>44</sup>

A 2021 survey of nearly 30,000 adults conducted by the FINRA Investor Education Foundation (the “FINRA Survey”)<sup>45</sup> reported that 48 percent of

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<sup>38</sup> *Id.* at 2.

<sup>39</sup> *Id.* at 1, 4. While 22 percent indicated being initially uncomfortable with e-delivery becoming the default, the rate dropped to 15 percent when the option was given to opt-in to paper delivery. *Id.* at 2.

<sup>40</sup> *Id.* at 3.

<sup>41</sup> *Id.* at 2, 3.

<sup>42</sup> *Id.* at 3.

<sup>43</sup> *Id.* at 4.

<sup>44</sup> *Id.* at 6. For example, 79 percent of individual investors noted e-delivery as an easy-way of reducing their carbon footprint. *Id.*

<sup>45</sup> See FINRA Investor Education Foundation, *Investors in the United States: The Changing Landscape -- A Report of the FINRA Foundation National Financial Capability Study*, 27 (December 2022) available at <https://finrafoundation.org/sites/finrafoundation/files/NFCS-Investor-Report-Changing-Landscape.pdf>. Of those surveyed, approximately 35 percent had investments in stocks, bonds, mutual funds, exchange-traded funds (ETFs), or other securities outside of retirement accounts. *Id.* at 3. Of those investors, 38 percent held less than \$50,000 in non-retirement investments, with the remaining investors evenly split

respondents indicated a preference for receiving disclosures electronically, an increase from 33 percent in 2015.<sup>46</sup> Preference for physical delivery by mail dropped from 49 percent in 2015 to 30 percent in 2021.<sup>47</sup>

A study conducted by the Empower Institute (the “Empower Survey”)<sup>48</sup> spanning 2017 to 2018 surveying retirement plan participants assessed the preferred method of receiving communication about the retirement plan. The Empower Survey found that 58 percent of respondents indicated that an electronic means of delivering retirement plan communications was their most preferred method, with the most preferred method of receiving such communications being by personal or work email for 36 percent of respondents, by website visit for 16 percent, and by social media, text message or live online messaging for 2 percent each.<sup>49</sup> In contrast, 28 percent expressed their most preferred method of receiving communications as through physical mail.<sup>50</sup>

The results of a 2023 online survey conducted by Morning Consult on behalf of the American Bankers Association (the “ABA Survey”)<sup>51</sup> concerning how Americans manage finances and access their bank accounts found increased reliance on electronic banking over in-person physical banking, with

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between those having more or less than \$250,000 in non-retirement investments. In addition, approximately 43 percent of those investors were 55 years or older. *Id.* at 4.

<sup>46</sup> *Id.* at 17. Electronic delivery by email was preferred by 38 percent and access on the internet was preferred by 10 percent.

<sup>47</sup> *Id.*

<sup>48</sup> See Empower Institute, Boosting the effectiveness of retirement plan communications (January 2019) available at <https://www.nadaretirement.com/resources/pdf/Effective-Communication.pdf>. This research encompassed three surveys: (i) a 2017 online survey of 2,000 Americans who are 21+ years old and participating in their employers’ defined contribution plans; (ii) a 2018 qualitative online focus group of 30 workers participating in their workplace retirement plans and representing millennials, gen Xers and baby boomers, asking for feedback on terms; and (iii) a 2018 quantitative online survey of 1,000 Americans who are 21+ years old and participating in their employers’ defined contribution plans. *Id.* at 4.

<sup>49</sup> *Id.* at 9. When respondents were permitted to choose as many methods of preferred delivery as they would like, personal email ranked as a preferred method of receiving retirement plan communication at 51 percent followed by website visit at 44 percent. *Id.*

<sup>50</sup> *Id.*

<sup>51</sup> See American Bankers Association, 2023 Preferred Banking Methods (October 25, 2023) at <https://www.aba.com/news-research/analysis-guides/2023-preferred-banking-methods>.

specifically 48 percent of respondents preferring to use a mobile banking app and general online banking was preferred by 23 percent of respondents.<sup>52</sup> The ABA Survey results include a breakdown of respondents' responses by generation, which also indicated heavier reliance on electronic banking over in-person physical banking, including preference for online banking or mobile app banking over in-person banking, by those aged 60 and above.<sup>53</sup>

Given the increased reliance on the internet and growing investor preference for delivering investor communication through e-delivery and conducting financial activities electronically, it is timely for the MSRB to publish this concept release. The MSRB believes that the proposed regulatory frameworks described in this concept release would support prompt, assured and persistent access by investors to material disclosure information provided by issuers with respect to their municipal fund securities.

### III. Proposed Alternative Frameworks for Potential Amendments to Rule G-32

The MSRB is exploring alternative options to improve investor access and reduce burdens on dealers in complying with their current obligations of delivery of disclosure documents for municipal fund securities.

Some of the options include, but are not limited to:

- extending the MSRB's current e-delivery standard applicable to municipal debt securities to municipal fund securities, which would permit dealers to notify their customers of the availability of plan disclosure documents on EMMA and how to access them, rather than delivering a copy to their customers via physical or electronic delivery ("MSRB's access equal delivery");
- relieving some of the cost burdens for dealers related to physical delivery of plan disclosure documents by permitting alternative

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<sup>52</sup> The results for respondents preferring conventional in-person banking were fairly low, showing nine percent of respondents preferring bank branches, eight percent of respondents preferring ATMs, five percent of respondents preferring telephone communication, and two percent of respondents preferring the mail. *Id.*

<sup>53</sup> Generations represented in the survey results were: Gen Z (1997-2012), Millennials (1981-1996); Gen X (1965-1980); and Baby Boomers (1946-1964). *See* ABA Survey. The highest percentage by the mode of banking per generational class included the following: Mobile banking was reported as the preferred banking method by 57 percent of Gen Z respondents, 60 percent of Millennial respondents, 52 percent of Gen X respondents, and Online Banking for 39 percent of Baby Boomers.



means of delivery for supplemented or amended, such as by providing notice of a posting to EMMA or electronic delivery of such plan disclosure documents (“supplemental-layered disclosure”).

Both alternatives would continue to require dealers to furnish a paper copy of the official statement to the customer upon request.

## **A. MSRB’s Access Equals Delivery Alternative**

The MSRB’s access equals delivery alternative for municipal fund securities could provide, as in the case of municipal debt securities, the official statement delivery obligation would be deemed satisfied<sup>54</sup> given that the official statement and any amendments would be publicly available for free on EMMA. The dealer would be required to provide the customer a notice explaining how to access the document. Consequently, a dealer selling a municipal fund security to a customer would be required to deliver to the customer either (a) a written notice advising the customer how to obtain the official statement from EMMA and that a copy of the official statement will be provided by the dealer upon request or (b) a physical copy of official statement.

## **B. Supplemental-Layered Disclosure Alternative**

The supplemental-layered disclosure alternative could maintain the requirement for physical delivery with respect to an initial sale to a customer of a municipal fund security, with a default to electronic access through EMMA for any supplements and amendments in connection with subsequent sales to the customer of such municipal fund security, unless the customer requests physical delivery. Similar to the MSRB’s access equals delivery alternative, electronic access for supplements and amendments to an official statement would be driven by the elements covered in the first alternative. The dealer would follow the approach of providing written notice to the customer of how to access the supplements and amendments to the official statement from EMMA. The notice would also indicate that a copy of the supplement or amended official statement will be provided by the dealer upon request.

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<sup>54</sup> Dealers acting as underwriters could rely on this provision only if they have in fact made the required electronic submissions to EMMA of the applicable official statement or amendment.

The MSRB seeks comments on this aspect of its overarching MFS-disclosure initiative via responses to the questions below. In particular, the MSRB is interested in receiving any quantitative or qualitative analysis relevant to customer behavior and use of disclosure information. We encourage market participants to share any information on the benefits, risks and costs of modernizing the current e-delivery standard for 529 savings plans, ABLE program and LGIP investors.

#### **IV. Questions on Potential Amendments to Rule G-32**

The MSRB seeks comment on all aspects of this concept release with respect to potential amendments to Rule G-32, or any other matters related to this concept release. Commenters may wish to consider the following questions as they pertain to potential amendments to Rule G-32 in their response:

1. Should the MSRB modernize the disclosure delivery standard for municipal fund securities by implementing one of the two alternatives identified above? Is there another standard, other than the two alternatives noted above, that should be considered by the MSRB at this time?
2. Which delivery alternative best supports investors' ease of access to information and would heighten their sense of awareness of the importance of an official statement? Please explain.
3. Would investors, dealers, or issuers experience any new burdens under either of the two alternatives identified above?
4. Are there alternative disclosure delivery standards, other than those identified above, for an official statement that would improve investors' comprehension of disclosures and access to information while reducing dealers' cost burdens related to paper-only disclosure delivery?
5. What percentage of municipal fund securities customers (including 529 savings plans, ABLE programs, and LGIPs) currently rely on paper-only delivery versus using the opt-in e-delivery of disclosure documents? Please respond with data, if available, grouped by direct-sold plans and advisor-sold plans.
6. Noting that some customers are currently availing themselves of the e-delivery standard (notice, access, and evidence to show delivery) for receipt of plan disclosure documents by dealers, as provided for

by the 1998 Guidance, what additional, costs or burdens, if any would be alleviated for dealers?

7. While the findings from the Pew Study and SIFMA e-Delivery YouGov Survey<sup>55</sup> indicate an increased reliance on the internet and growing investor preference for delivering investor communication through e-delivery, are there any additional data and statistics specifically with respect to retail investor's preference for e-delivery of investor communication for municipal fund securities, as a whole or for particular types of municipal fund securities (i.e., 529 savings plans, ABLE programs), that would provide further insight for assessing the advisability of either alternative approach to e-delivery?
8. Investors in LGIPs are governmental entities rather than traditional retail investors. Is there information comparable to the retail usage information described above, or differences in the nature of the investors or the LGIP product, that would be helpful in understanding the fitness of electronic disclosure for such investors?
9. The MSRB notes that it cannot require issuers of municipal fund securities to prepare summary disclosures, similar to the summary prospectus permitted by the Commission for mutual funds. Still, the MSRB is interested in learning whether investors in municipal fund securities would benefit from a similar approach where, if an issuer chooses to prepare one, a summary official statement provided electronically would satisfy the requirements with respect to the delivery of the final official statement, if certain conditions are met. Given that most 529 savings plans and ABLE programs consist primarily of underlying mutual fund options, the MSRB is interested in whether satisfying delivery obligations through a summary disclosure document is feasible for municipal fund securities.

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<sup>55</sup> See *supra* notes 34 and 37; see also discussion of the results of the Pew Study, Americans' Use of Mobile Technology and Home Broadband, and accompanying infographic at page 12-14.

## Time of Trade Disclosure Obligation with Respect to Municipal Fund Securities

### I. Current Disclosure Requirement

As part of the MSRB's consideration of a broad MFS-disclosure initiative, the MSRB is contemplating changes to Rule G-47. Rule G-47, on time of trade disclosure, sets forth dealers' disclosure obligations that were originally imposed by the MSRB through interpretive guidance issued under Rule G-17, on fair dealing. Rule G-47(a) sets forth the basic obligation for a dealer to disclose to customers, at or prior to the time of trade, all material information known about the transaction and material information about the security that is reasonably accessible to the market. Information is reasonably accessible to the market for purposes of Rule G-47 if the information is made available publicly through established industry sources. Rule G-47 defines established industry sources as including EMMA, rating agency reports, and other sources of information relating to municipal securities transactions generally used by dealers that effect transactions in the type of municipal securities at issue.

Supplementary Material .01(a) provides that the disclosure obligation includes a duty to give a customer a complete description of the security, including a description of the features that likely would be considered significant by a reasonable investor, and facts that are material to assessing the potential risks of the investment. The rule further provides that the public availability of material information through EMMA, or other established industry sources, does not relieve dealers of their obligation to make the required time of trade disclosures to a customer, and that a dealer may not satisfy its disclosure obligation by directing a customer to an established industry source or through disclosure in general advertising materials.

Currently, these obligations apply to any dealer transaction in municipal fund securities (including 529 savings plans, ABLE programs, and LGIPs) regardless of whether the transaction is unsolicited or recommended by the dealer.

In 2014, the MSRB codified the extensive interpretive guidance developed under Rule G-17, discussing time of trade disclosure obligations in general, and specific scenarios related to municipal debt securities codified in

Supplementary Material .03, into new Rule G-47.<sup>56</sup> In adopting Rule G-47, the MSRB noted that consolidation would ease the burden on dealers and other market participants who endeavored to understand, comply with and enforce these obligations<sup>57</sup> and that codification was an effort to consolidate the current obligations into streamlined rule language.<sup>58</sup> However, at that time, the MSRB elected not to codify into Rule G-47 certain out-of-state disclosure obligations in connection with the sale of out-of-state 529 savings plans (the “out-of-state disclosure obligations”) most recently described in interpretive guidance published in 2006.<sup>59</sup> Instead, the MSRB noted that it might create a separate rule regarding the time of trade disclosure

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<sup>56</sup> See Release No. 34-71665 (March 7, 2014), [79 FR 14321](#) (March 13, 2014) (File No. SR-MSRB-2013-07). The MSRB previously stated that all statements in the remaining MSRB interpretative guidance that refer to Rule G-17 in connection with the time-of-trade disclosure obligation should be read instead to refer to Rule G-47. See Release No. 34-70593 (October 1, 2013), [78 FR 62867](#), [62868](#) (October 22, 2013) (File No. SR-MSRB-2013-07) (proposing Rule G-47). Relatedly, the MSRB has also noted that, until the MSRB adopts a rule specific to 529 savings plans, Rule G-47 and the related interpretive guidance continue to apply to 529 savings plans. See [MSRB Notice 2014-07](#), SEC Approves MSRB Rule G-47 on Time-of-Trade Disclosure Obligations, MSRB Rules D-15 and G-48 on Sophisticated Municipal Market Professionals, and Revisions to MSRB Rule G-19 on Suitability of Recommendations and Transactions (March 12, 2014).

<sup>57</sup> 79 FR 14321.

<sup>58</sup> *Id.*

<sup>59</sup> See [Interpretation on Customer Protection Obligations Relating to the Marketing of 529 College Savings Plans](#) (August 7, 2006); Release No. 34-53715 (April 25, 2006), [71 FR 25867](#) (May 2, 2006) (File No. SR-MSRB-2006-03) (“2006 Guidance”). With respect to the out-of-state disclosure obligations, the 2006 Guidance provides that, in the case of sales of out-of-state 529 savings plan interests to a customer, the MSRB views Rule G-17 as requiring dealers to make, at or prior to the time of trade, the following disclosures:

(i) depending upon the laws of the home state of the customer or designated beneficiary, favorable state tax treatment or other benefits offered by such home state for investing in 529 college savings plans may be available only if the customer invests in the home state’s 529 college savings plan;

(ii) any state-based benefit offered with respect to a particular 529 college savings plan should be one of many appropriately weighted factors to be considered in making an investment decision; and

(iii) the customer should consult with his or her financial, tax or other adviser to learn more about how state-based benefits (including any limitations) would apply to the customer’s specific circumstances and also may wish to contact his or her home state or any other 529 college savings plan to learn more about the features, benefits and limitations of that state’s 529 college savings plan.

obligations for 529 savings plans or a rule consolidating dealers' obligations related to 529 savings plans.

## II. Recent MSRB Request for Comment

In 2023, as part of a retrospective rule review of Rule G-47, the MSRB published a request for comment, which included several questions seeking feedback on whether the MSRB should propose a stand-alone time of trade disclosure rule for 529 savings plans.<sup>60</sup> The MSRB received seven comment letters, four of which addressed 529 savings plans.<sup>61</sup> By and large, commenters expressed support for a stand-alone rule that would apply to 529 savings plans and ABLÉ programs.<sup>62</sup> Commenters also noted that 529 savings plans and ABLÉ programs are more similar in form and function to mutual funds than traditional municipal debt obligations. Given that, they suggested that the time-of-trade disclosures should incorporate unique concepts that apply to these continuously offered securities.<sup>63</sup>

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<sup>60</sup> See [MSRB Notice 2023-02](#), Request for Comment Regarding a Retrospective Review of the MSRB's Time of Trade Disclosure Rule and Draft Amendments to MSRB Rule D-15, On Sophisticated Municipal Market Professionals (February 16, 2023) (the "2023 RFC") at 19.

<sup>61</sup> See Letter from Leslie M. Norwood, Managing Director and Associate General Counsel, SIFMA (April 17, 2023) ("SIFMA 2023 Letter"); Letter from Rachel Biar, Chairman, CSPN (April 17, 2023) ("CSPN 2023 Letter"); Letter from Andrea Feirstein, Managing Director, and Mark Chapleau, Senior Consultant, AKF Consulting (April 20, 2023) ("AKF 2023 Letter"); and, Letter from Richard K. Ellis, Executive Director, Utah Educational Savings Plan dba my529 (April 17 2023) ("my529 2023 Letter"). All letters are available at the [MSRB Website](#).

<sup>62</sup> See AKF 2023 Letter at 2; my529 2023 Letter at 1; SIFMA 2023 Letter at 4. However, the CSPN 2023 Letter and AKF 2023 Letter questioned the need for a stand-alone rule since the out-of-state disclosures addressed in the 2006 Guidance have been memorialized in the CSPN's Voluntary Disclosure Principles. See CSPN 2023 Letter at 2 and AKF 2023 Letter at 2. See also CSPN Disclosure Principles Statement No. 7 ("CSPN's Voluntary Disclosure Principles"), adopted October 6, 2020 available at: <https://www.collegesavings.org/the-cspn-disclosure-principles>. The MSRB notes as a point of clarification that it does not intend to supplant CSPN's Voluntary Disclosure Principles that recommend acceptable disclosure practices for issuers or state sponsors and are a resource for market participants for designing their disclosure documents. The MSRB's sole focus is on dealers' obligation to provide material information to customers prior to or at the time of trade with respect to municipal fund securities.

<sup>63</sup> AKF 2023 Letter at 2; my529 2023 Letter at 1; SIFMA 2023 Letter at 4. Municipal fund securities do not trade in the secondary market but instead are purchased from the issuer from time to time in a continuous offering of the securities.

### III. Proposed Framework for Potential Stand-Alone Time of Trade Rule

To ensure investors are getting material information that is appropriately tailored to the purchase and sale of municipal fund securities, and which is critical to ensuring that investors can make well-informed investment decisions, the MSRB believes a stand-alone time of trade rule for municipal fund securities would be advantageous to investors and would ensure that dealers sufficiently understand their regulatory obligations. The MSRB envisions a framework that would be closely aligned with the current Rule G-47, in that it would set forth a baseline time of trade obligation, contain supplementary material that addresses the manner and scope of disclosures, and include a non-exhaustive list of specific examples to describe information that may be material in specific scenarios concerning municipal fund securities. This list would include examples of material information with respect to municipal fund securities in general or with respect to specific types of municipal fund securities such as 529 savings plans, ABLE programs, or LGIPs, as applicable. Additionally, the MSRB believes that the prescribed out-of-state disclosure obligations originating from interpretive guidance issued under Rule G-17 should reside with other dealer obligations with respect to municipal fund securities time of trade disclosures and would be codified as part of a new stand-alone rule.

The MSRB seeks comments on this aspect of its overarching MFS-disclosure initiative and has posed a series of questions below. Specifically, the MSRB solicits input from market participants on the proposed framework of a new, stand-alone time of trade rule for municipal fund securities, including the scope of material disclosures, the manner for providing such disclosures, and any market practices that may impede time of trade disclosures at the point of sale.

### IV. Questions on Potential Stand-Alone Time of Trade Rule

The MSRB seeks comment on all aspects of this concept release with respect to a potential stand-alone time of trade rule, or any other matters related to this concept release. Commenters may wish to consider the following questions as they pertain to a potential stand-alone time of trade rule in their response:

1. As noted above, the types of material information required to be disclosed to customers under Rule G-47 are in part defined in terms

of information available from established industry sources. In the case of each type of municipal fund securities, what sources, other than those already listed in the rule, could reasonably be viewed as an established industry source generally used by dealers effecting transactions in the type of municipal fund securities at issue? For example, should the MSRB consider the CSPN website as an established industry source for 529 savings plans?

2. Rule G-47's time of trade disclosure requirement applies to all purchase and sale transactions with a customer, which includes all points of sale throughout the continuous offering of municipal fund securities (i.e., purchase of interest in the trust account ("contribution of funds"), redemption of interest in the trust account ("withdrawal of funds") and rollover of funds from one account to another account, such as exist for 529 savings plans and ABLÉ program rollovers). Should the MSRB alter or exempt the time of trade disclosure requirement in the case of automatic recurring contributions subsequent to the initial contribution? Is there utility to investors in requiring such information in these circumstances where the investor is not making active investment decisions? Should the requirement be altered to limit subsequent time of trade disclosures based on certain triggering point of sale scenarios, such as an investor changing investment option(s) or altering the amount or timing of automatic contributions? What other scenarios represent relevant points of sale in which time of trade obligations should be triggered? What other scenarios that could be deemed a point of sale should be exempted from the time of trade disclosure? What potential negative adverse consequences could result from any such exemptions?
3. In response to the 2023 RFC, the my529 Letter noted that clarity is needed around any disclosure requirement given anyone is allowed to contribute to a beneficiary's 529 plan account (e.g., gifting platform, grandparent, friend, aunt, etc.).<sup>64</sup> The MSRB is interested in understanding how third-party contributions work in municipal fund securities. For example, how are contributions made through a gifting platform such as a gift card or a direct gift contribution into a 529 savings plan or ABLÉ account? Is it clear to market participants when the time of trade disclosure obligation would be triggered, and to whom such disclosure is required to be made, in these third-party scenarios? Are there any operational or other aspects of third-party

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<sup>64</sup> See my529 2023 Letter at 2.



contributions that create burdens in applying the disclosure obligation for such third-party contributions?

4. At the time of rollover or transfer, is the account holder typically provided with verbal or written disclosures prior to initiating a rollover or a transfer request or at certain points throughout the process? Please identify those points and the nature of the disclosures. Typically, does the transferring firm or the firm receiving the incoming transfer or rollover provide the customer with the account's net asset value (NAV) and the price(s) of the underlying assets? Given that most assets underlying municipal fund securities are mutual funds for which the NAV and prices are calculated at the end of the day of a transaction, does the price calculation for the account's assets impact the timing of certain disclosures?
5. If disclosures related to a rollover or transfer are written, are those disclosures contained within a stand-alone document, or rollover related documents such as new account forms, beneficiary change forms, incoming rollover documents, or distribution/transfer forms? Do those forms contain disclosures beyond the out-of-state disclosure obligations?
6. Are there any unique disclosure challenges triggered by the transfer or rollover of a 529 savings plan account that the MSRB should be aware of that are not covered above?
7. As noted above, Supplementary Material .01(a) provides that the disclosure obligation includes a duty to give a customer a complete description of the security, including a description of the features that likely would be considered significant by a reasonable investor, and facts that are material to assessing the potential risks of the investment. In the context of the various types of municipal fund securities, what aspects of the security and its features, and of the facts material to assessing relevant potential risks, are reasonably considered to be included within this mandate?
8. The MSRB seeks comment on whether to provide a non-exhaustive list of specific examples to describe information that may be material to a customer in the case of municipal fund securities, similar to the list of examples included in Supplementary Material .03 of Rule G-47 with respect to municipal debt securities. Based on prior guidance provided by the MSRB, the MSRB seeks comment on whether to include some or all of the following scenarios as potentially required time of trade disclosure information, if material, to customers

investing in 529 savings plans or ABLÉ programs, as applicable: investment costs (i.e., including fees and other expenses), the out-of-state disclosures,<sup>65</sup> a change in investment objectives triggered by a change of beneficiary, state tax benefit considerations, and tax consequences (i.e., gift tax and estate tax), treatment of qualified versus non-qualified withdrawal of funds, treatment of recontributions, disclosures related to incurring of an associated sales charge with respect to rollover to another account if the rollover of funds is not captured at NAV, maximum account balance, or K-12 related disclosures. Should this list of examples be modified, narrowed, or expanded? Please explain.

9. What would be an appropriate non-exhaustive list of specific examples to describe information that may be material to local governmental entities investing in LGIPs?
10. The MSRB envisions addressing processes and procedures that dealers would be required to implement to ensure that material information regarding municipal securities is disseminated to registered representatives who are engaged in sales to and purchases from a customer and principal review for time of trade disclosures, as currently is required under Supplementary Material .04 of Rule G-47. Either in adapting such language or in more broadly addressing supervisory and recordkeeping requirements, please describe how the MSRB can provide clarity to dealers meeting their supervisory and recordkeeping obligations related to a new time of trade rule without creating any undue burdens on the market. Please describe any specific market practices that impact real-time or post-principal review for time of trade disclosures.
11. Are there other elements under the 2006 Guidance on customer protection obligations relating to marketing of 529 savings plans that market participants think should be codified in proposing a new rule?

Questions about this notice should be directed to Bri Joiner, Senior Director, Market Regulation, or Abha Mohla, Director, Market Regulation, at 202-838-1500.

December 11, 2024

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<sup>65</sup> See 2006 Guidance.