



September 14, 2012

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

**Re: MSRB Notice 2012-40 (August 6, 2012): Request for Comment on Draft Proposal to Collect 529 College Savings Plan Data –Draft Rule G-45 and Form G-45**

Dear Mr. Smith:

The Securities Industry and Financial Markets Association (“SIFMA”)<sup>1</sup> appreciates the opportunity to comment on the Municipal Securities Rulemaking Board’s (“MSRB”) Request for Comment on Draft Proposal to Collect 529 College Savings Plan Data, including Draft Rule G-45 and accompanying Form G-45 (the “Proposal”).

## **I. Executive Summary**

While SIFMA continues to have general concerns that no other investment products (tax-advantaged or otherwise) are required to provide the proposed type of product information to any regulator, SIFMA understands the MSRB’s efforts to collect certain market data about 529 College Savings Plans (“529 plans”) from primary distributors.<sup>2</sup> However, SIFMA does have concerns with aspects of the proposal, which SIFMA believes requires further clarification from the MSRB.

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<sup>1</sup> 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).

<sup>2</sup> See Comment Letter from David L. Cohen, Managing Director and Associate General Counsel, SIFMA, to Ronald W. Smith, MSRB, dated August 26, 2011 regarding MSRB Notice 2011-33, available at <http://www.sifma.org/issues/item.aspx?id=8589935244>.

## II. General Considerations

SIFMA concurs with the views expressed by the Investment Company Institute (ICI) in its comment letter to the MSRB on the Proposal<sup>3</sup>, including:

- The data collected by the MSRB is to be used exclusively for internal/regulatory purposes and is to be kept confidential;
- If the MSRB were to consider making public any of the 529 plan market data collected under Draft Rule G-45, it would issue a new Request for Comment;
- Only those dealers acting as primary distributors of 529 plans would be required to file Form G-45. Primary distributors would only be required to submit the information [required by form G-45] to the extent it is within their possession, custody, or control.
- Data should be reported to the MSRB on a semi-annual reporting schedule following a 60-day lag period. Filers should be allowed to select whether Form G-45 will be filed on a calendar-year or fiscal-year basis.
- Filers should have the option of providing information in the format suggested in Exhibit A to CSPN's Disclosure Principles. This format should not be the exclusive means by which primary distributors provide fee information. Form G-45 needs to be flexible enough to accommodate whatever format plans utilize to report fee and expense information in an official statement in order to avoid the costs and burdens associated with reformatting this information to be compliant with Exhibit A.
- An implementation period of no less than one year should be adopted.

With respect to the time periods suggested above (semi-annual reporting following a 60-day lag period), certain of the information that the MSRB is requesting is not currently calculated or reported by all primary distributors in the manner proposed by the MSRB. We believe the fact that some primary distributors produce some of the information on a daily, weekly, monthly, or quarterly basis for a variety of reasons, does not justify imposing quarterly regulatory reporting to the MSRB following a 30-day lag period. We urge the MSRB to be mindful of the cumulative

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<sup>3</sup> See Comment Letter from, Tamara K. Salmon, Senior Associate Counsel, Investment Company Institute to Ronald W. Smith, MSRB, dated September 14, 2014 regarding MSRB Notice 2012-40.

costs involved to comply with any new reporting requirements and absent a compelling need for more frequent reporting, adopt a reporting schedule that is more in line with certain SEC regulatory reporting for mutual funds.

### **III. Definition of Certain Terms**

SIFMA's members believe that there is ambiguity in certain of the terms defined by the MSRB in the Proposal – creating uncertainty regarding what information primary dealers will ultimately be required to file pursuant to G-45, and accordingly requests that the MSRB consider publishing for comment any version of the proposed final rule that differs materially from the current proposal.

SIFMA believes that the following terms are ambiguous, and SIFMA's members support the revisions to several of the proposal definitions as detailed by ICI, including: "asset class"; "contributions" and "distribution"; "portfolio"; "program manager". Additionally, our members support not furnishing performance information (benchmark information on performance) as calculating this information is typically not calculated by primary distributors and therefore not within a primary distributor's possession custody or control. We also support the ICI's approach regarding "strategy". We believe these proposed revisions will clarify to primary distributors the data that would ultimately be required to be filed with the MSRB.

### **IV. Form G-45**

SIFMA supports the revisions to Form G-45 that have been suggested by ICI.

### **V. Implementation Period and Frequency of Reporting**

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 reiterate that the data be submitted semi-annually. SIFMA urges the MSRB to be mindful of the cumulative costs involved to comply with any new reporting requirements and absent a compelling need for more frequent reporting, adopt a reporting schedule that is more in line with certain SEC regulatory reporting for mutual funds.

### **VI. Conclusion**

SIFMA sincerely appreciates this opportunity to comment upon the Proposal. We believe the revisions suggested above will assist the MSRB to capture meaningful information about the 529 College Savings Plan market without imposing undue burdens on primary distributors.

Mr. Ronald W. Smith  
Municipal Securities Rulemaking Board  
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Please do not hesitate to contact me with any questions at (212) 313-1265.

Sincerely yours,

A handwritten signature in blue ink that reads "D. L. Cohen". The signature is fluid and cursive, with the first letters of each name being capitalized and prominent.

David L. Cohen  
Managing Director  
Associate General Counsel

cc:

***Municipal Securities Rulemaking Board***

Lynnette Kelly, Executive Director

Ernesto Lanza, Deputy Executive Director and General Counsel

Lawrence P. Sandor, Deputy General Counsel, Regulatory Support