



September 21, 2017

Via MSRB Request for Comment Portal

Ronald W. Smith
Corporate Secretary
Municipal Securities Rulemaking Board
1300 I Street, NW, Suite 1000
Washington, DC 20005

Re: Regulatory Notice 2017-17 – Request for Comment on Draft Amendments to MSRB Form G-45 under Rule G-45, on Reporting of Information on Municipal Fund Securities

Dear Mr. Smith:

The Securities Industry and Financial Markets Association (“SIFMA”)¹ appreciates this opportunity to respond to the Municipal Securities Rulemaking Board’s (“MSRB”) Request for Comment on Draft Amendments to MSRB Form G-45 under Rule G-45, on Reporting of Information on Municipal Fund Securities (the “Notice”).² The MSRB is proposing to amend Form G-45 to clarify an existing data element and add three additional data elements about Investment Option information in 529 college savings plans and Stephen Beck, Jr., Achieving a Better Life Experience Act of 2014 (“ABLE programs”). The proposed amendments would purportedly allow the MSRB to “make more accurate comparisons across 529 plans and ABLE programs, enhancing [its] ability to understand and monitor the market.”³

¹ SIFMA is the voice of the U.S. securities industry. We represent the broker-dealers, banks and asset managers whose nearly 1 million employees provide access to the capital markets, raising over \$2.5 trillion for businesses and municipalities in the U.S., serving clients with over \$20 trillion in assets and managing more than \$67 trillion in assets for individual and institutional clients including mutual funds and retirement plans. SIFMA, with offices in New York and Washington, D.C., is the U.S. regional member of the Global Financial Markets Association (GFMA). For more information, visit <http://www.sifma.org>.

² *Request for Comment on Draft Amendments to MSRB Form G-45 under Rule G-45, on Reporting of Information on Municipal Fund Securities*, MSRB Reg. Notice 2017-17 (Aug. 22, 2017), <http://msrb.org/~media/Files/Regulatory-Notices/RFCs/2017-17.ashx?n=1>.

³ Press Release, MSRB Seeks Comment on Refining Data Collected About 529 Plans and ABLE Programs (Aug. 22, 2017), <http://www.msrb.org/News-and-Events/Press-Releases/2017/MSRB-RFC-Refining-Data-Collected-About-529-Able-Programs.aspx>.

While we are supportive of the MSRB's transparency efforts that are effective tools for regulatory oversight or investors, we have concerns, many of which are not new and shared with the Investment Company Institute ("ICI") and other market participants, including the College Savings Foundation and College Savings Plans Network, about the proposed amendments. Chiefly, we have always maintained the position that municipal securities dealers who underwrite 529 plans should only be required to submit the information required by Form G-45 to the extent it is within their possession, custody, or control. The new data elements, namely the benchmark return percent and performance data by asset class, that the MSRB is proposing to collect are not within underwriters' possession, custody, or control. In fact, this data is held by entities outside the jurisdiction of the MSRB. Obtaining such information directly from underwriters is misplaced, would impose substantial costs on them and negatively impact the dealer-sold 529 plan and ABLÉ programs market vis-à-vis direct-sold programs, not to mention the increased costs passed on to investors. At the outset, we question whether the additional data elements would achieve their intended purpose.

I. The Draft Amendments Would Not Demonstrably Enhance the MSRB's Ability to Understand the 529 Plan and ABLÉ Program Markets

Ostensibly, the MSRB maintains that the proposed amendments will enhance its ability to understand the 529 plan and ABLÉ program market, and the additional data collected will allow it and other regulators to monitor the market for potential risks and wrongful conduct. However, we question whether this is possible when the MSRB is only looking at a fraction of the market. By statute, the MSRB only has the authority to regulate advisor-sold 529 plans and ABLÉ programs, not issuer direct-sold programs. Because of the limited scope of its authority, the MSRB is not obtaining the full picture of the market, and it is simply imposing a greater standard of disclosure, administrative burdens and costs on underwriters that even the SEC does not require of mutual funds. In addition, our members believe that, at least with respect to performance data by asset class, the MSRB would be employing imprecise methodologies to analyze subjective data; investment managers, who hold this data, use asset classes differently, for example. As a result, the MSRB would be analyzing and making judgments based on inaccurate data. For these reasons, as well as the cost of reporting additional information, we do not believe that any other information is necessary on the Form G-45 for the MSRB to fulfill its role.

II. Underwriters Do Not Have the Requested Information Within Their Custody, Possession, or Control

SIFMA has always maintained that underwriters should only be required to submit the information required by Form G-45 to the extent it is within their possession, custody, or control. To reiterate the ICI's point, the benchmark return percent and

performance data by asset class that the MSRB proposes to include on the Form G-45 is outside the scope of an underwriter's role. Such information would have to be produced by a plan's program sponsor, manager, or investment advisor – entities beyond the jurisdiction of the MSRB. To otherwise obtain and report this information through an underwriter's own analysis or from third-party consultants or vendors would be incredibly costly and complex, not to mention imposing a regulatory burden on underwriters that other regulatory agencies do not impose, and contrary to the intent by the President's Executive Order on Core Principles for Regulating the Financial System.⁴ Moreover, program sponsors generally consider this proprietary information which is potentially confusing to investors, and therefore are reluctant to have it publicly disseminated. If the MSRB were to consider making it public, SIFMA and its members feel strongly that a new Request for Comment on that point should be issued.

III. The Negative Impacts to the Market Outweigh the Purported Benefits

We believe that the MSRB materially underestimates the costs and negative impacts the draft amendments will have on the 529 plan and ABLE program markets. This is a low-margin business that is meant to assist retail investors saving for college or saving for the care of those with disabilities. The MSRB rightly recognizes the upfront costs, but does not recognize that additional costs will most certainly have a long-term, negative impact on dealer-sold plans' attractiveness to issuers and investors alike vis-à-vis direct-sold programs.

IV. Program Management Fee and Investment Option Closing Date Data Elements

We generally support the draft amendments pertaining to the program management fee and investment option closing data elements; however, we concur with the ICI on these points.

V. Recommended Revisions to Form G-45

We also concur with the ICI's recommendation that the MSRB revise Form G-45 to eliminate all data elements seeking information regarding three-year returns on 529 plans, including annualized three-year returns (both including and excluding sales charges) for each investment option. Not only is this information not required by any regulator other than the MSRB, it not particularly helpful to investors and burdensome to produce. This information should be harmonized with regulatory requirements of other regulators; underwriters should be required to submit five-year, rather than three-year, returns, or at the very least, three-year returns should be made optional.

⁴ Exec. Order No. 13772, 82 Fed. Reg. 9965 (Feb. 8, 2017).

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VI. Conclusion

We cannot support the draft amendments to include the additional data elements, particularly the benchmark return percent and the performance data by asset class, because they are not within underwriters' custody, possession, or control, and obtaining such information, some of which is proprietary, would impose substantial costs on dealers, negatively impact the dealer-sold 529 plan and ABLE program market, and not achieve the purported benefits. We do, however, support the MSRB amend the Form G-45 to harmonize the reported information with other regulatory requirements, namely the reported returns on 529 plans.

We would be pleased to discuss any of these comments in greater detail, or to provide any other assistance that would be helpful. Additionally, we would like to meet with MSRB staff to discuss our comments. If you have any questions, please do not hesitate to contact Leslie Norwood at (212) 313-1130 or Bernard Canepa at (202) 962-7300.

Sincerely,



Leslie M. Norwood
Managing Director and
Associate General Counsel



Bernard Canepa
Vice President and
Assistant General Counsel