



July 18, 2013

Elizabeth M. Murphy, Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-0609

Re: File No. SR-MSRB-2013-04, Notice of Filing of a Proposed Rule Change Relating to a New MSRB Rule G-45, on Reporting of Information on Municipal Fund Securities, and Form G-45, and Amendments to Rules G-8, on Books and Records, and G-9, on Preservation of Records

Dear Secretary Murphy:

The Securities Industry and Financial Markets Association (“SIFMA”)¹ appreciates the opportunity to comment on the Securities and Exchange Commission’s (“SEC”) request for comment on the proposed rule changes filed by the Municipal Securities Rulemaking Board (“MSRB”) relating to new MSRB Rule G-45, on Reporting of Information on Municipal Fund Securities, and Form G-45, and amendments to Rules G-8, on Books and Records, and G-9, on Preservation of Records² (the “proposed rule changes” or “Proposal”).

In prior comments to the MSRB on this issue³, SIFMA has generally been supportive of the MSRB’s desire to collect more comprehensive information relating to 529 College Savings Plans (“529 plans” or “plans”) underwritten by brokers, dealers or municipal securities dealers (“dealers”) by collecting data directly from such dealers – even though the MSRB will only be able to collect market data on the portion of the 529

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).

² SEC Release No. 34-69835; File No. SR-MSRB-2013-04 (the “SEC Release”), available at <http://www.sec.gov/rules/sro/msrb/2013/34-69835.pdf>.

³ See Letter from David Cohen, SIFMA, to Ronald Smith, MSRB, dated December 21, 2012 (response to MSRB Notice 2012-59) available at <http://www.sifma.org/issues/item.aspx?id=8589941275>. See also, Letter from David Cohen, SIFMA, to Ronald Smith, MSRB, dated September 14, 2012 (response to MSRB Notice 2012-40) available at <http://www.sifma.org/issues/item.aspx?id=8589940304>. See also Letter from David Cohen, SIFMA, to Ronald Smith, MSRB, dated August 26, 2011 (response to MSRB Notice 2011-33) available at <http://www.sifma.org/issues/item.aspx?id=8589935244>.

plan market for which dealers act in the capacity of underwriter, as well as our belief that the MSRB's desire to have EMMA to become the research repository for 529 plan investors is an attempt to duplicate other alternative comprehensive data sources for investors⁴. The MSRB has been responsive to comments made by various market participants, and we believe the Proposal has been tailored to allow the MSRB to better understand and monitor this market. However, SIFMA continues to have some concerns with aspects of the proposal which are detailed below.

I. Executive Summary

SIFMA concurs with the views expressed by the Investment Company Institute (ICI) in its comment letter to the SEC on the Proposal⁵, including:

- Only those dealers acting as underwriters of 529 plans would be required to file Form G-45. Underwriters would only be required to submit the information required by Form G-45 to the extent it is within their possession, custody, or control;
- Third Party distributors of 529 plans are not subcontractors of underwriters and accordingly do not have any reporting obligations under Rule G-45.
- Not all underwriters of 529 plans that have entered into omnibus accounting arrangements with program managers have the legal right to obtain aggregation files.
- 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 proposed Rule G-45, it would issue a new Request for Comment;
- Rule G-45 now requires data to be collected beyond the scope of data collected under the CSPN Disclosure Principles;
- The yet to be issued Form-45 Manual should be published for public comment; and

⁴ As noted by the MSRB in MSRB Notice 2011-33, "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.

⁵ See letter from Tamara K. Salmon, Senior Associate Counsel, Investment Company Institute, dated July 16, 2013, to the SEC in connection with File No. SR-MSRB-2013-04.

- The effective date of Rule G-45 should be one year from the SEC’s approval of the Form G-45 Manual.

II. Reporting Entity

i. Scope of “underwriter”

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 to the extent the information is within their possession, custody, or control, and that the MSRB “does not [sic] seek information from dealers that simply sell interests in 529 plans to customers”⁷. This approach should enable the MSRB to collect plan data from one central source, rather than relying on the multitude of broker-dealers that sell 529 plans to provide their limited information on the plan, which the MSRB would then have to reconcile and aggregate. Indeed, SIFMA, like the ICI and other commenters, opposes the imposition of any 529 plan data reporting requirements being placed upon broker dealers that are not underwriters⁸ but that instead have entered into contracts with the plan’s underwriter (primary distributor) to sell plan shares to retail investors.

ii. Omnibus accounts

Similarly, with respect to omnibus accounts⁹, the SEC Release expresses the MSRB’s view that “underwriters have possession or the legal right to 529 aggregation files and, therefore, have information *regarding all activity and positions in the 529 plans*

⁶ MSRB Notice 2012-59

⁷ MSRB Notice 2012-59, Principal Comments to 2012 Notice and MSRB Responses (Response to Item 7). *See also* SEC Release at 13, (“the proposed rule change will not impose any burden on dealers that sell interests in 529 plans, as the obligation to submit information semi-annually to the MSRB will only be imposed on underwriters.”)

⁸ The Proposal defines the term “underwriter” as “a broker, dealer or municipal securities dealer that is an underwriter, as defined in Securities Exchange Act Rule 15c2-12(f)(8), of municipal fund securities that are not local government investment pools.” This section of the Exchange Act Rule defines the term underwriter as “any person who has purchased from an issuer of municipal securities with a view to, or offers or sells for an issuer of municipal securities in connection with, the offering of any municipal security, or participates or has a direct or indirect participation in any such undertaking, or participates or has a participation in the direct or indirect underwriting of any such undertaking; except, that such term shall not include a person whose interest is limited to a commission, concession, or allowance from an underwriter, broker, dealer, or municipal securities dealer not in excess of the usual and customary distributors’ or sellers’ commission, concession, or allowance.”

⁹ *See* <http://www.dtcc.com/products/wealthgmt/funds/networking.php> for a discussion of Network Level Account Controls.

*they underwrite.*¹⁰ But, in practice, the mere fact that there is an omnibus relationship between a selling dealer and a plan's underwriter does not necessarily mean the underwriter has full transparency into all account information, including account owners, beneficiaries, contributions, and withdrawals, underlying the omnibus account. While *some* underwriters *may* have access to such information, this is not true of all underwriters and should not be presumed for purposes of Rule G-45.

The information that is available to an underwriter is governed by comprehensive servicing agreements between the plan, the underwriter, and the selling dealers. If this servicing agreement does not provide the underwriter legal access to the information underlying an omnibus account, the underwriter lacks access to such information. In addition, while the Release notes that the DTCC/NSCC have created aggregation files,¹¹ the creation of such files does not mean that *all* underwriters have legal access to the information in those files. Accordingly, consistent with the discussion above regarding the reporting obligations of underwriters, Rule G-45 and Form G-45 should recognize that, to the extent an underwriter does not, in the normal course of business, have access to information on the accounts underlying omnibus accounting arrangements, an underwriter is not required to report such information, and a failure to do so would not be considered a violation of G-45.

III. MSRB Representations Not Contained within Rule G-45 should be Confirmed in SEC Approval Order

In its submission to the SEC, the MSRB made a number of representations that are not contained in either proposed Rule G-45 or proposed Form G-45. These representation are important to SIFMA's members and without them, SIFMA would not be supportive of the Proposal. Accordingly, we believe that the SEC's approval order should incorporate these concepts:

i. Publication of Collected Data

In its filing with the SEC, the MSRB states:

The information will be submitted to EMMA and retained in a database for regulatory use and will not, at this time, be disseminated publicly, though the MSRB's goal is to disseminate through EMMA the information that would be of benefit to investors. For example, the MSRB may display fee and expense or performance information on EMMA. Prior to such a public dissemination, the MSRB will file a proposed change to

¹⁰ SEC Release at 16 [Emphasis added.]

¹¹ *Ibid.*

the EMMA or other facility with the SEC, and provide market participants with an opportunity to comment publicly on the proposal.¹²

We believe that the SEC approval order should include a limitation on the MSRB's use of the data solely for regulatory purposes and require an additional public comment period, and rule filing subject to SEC approval, if the MSRB desires to disseminate certain 529 Plan data to the public.

ii. Use of CSPN Disclosure Principles

Secondly, in response to comments received, including those of SIFMA, the MSRB has noted that the information required on Form G-45 will be reported consistently with the reporting formats under the Disclosure Principles adopted by the College Savings Plan Network ("CSPN") – the industry norm for reporting such information. While we welcome the MSRB's comments and decision to allow for consistency between the Disclosure Principles and the information required by Form G-45, both proposed Rule G-45 and proposed Form G-45 are *silent* on this issue. Accordingly, we request that the SEC's approval order prescribe that data submitted to the MSRB in a format suggested in CSPN's Disclosure Principles is satisfactory.

IV. Form G-45 – Underlying Investments

We also note that a new data category regarding underlying investments has been added by the MSRB to Form G-45 – without any discussion – in its Proposal. This information is beyond the scope of the CSPN Disclosure Principles and is inconsistent with the MSRB's comments¹³ that it had eliminated from its initial proposal the collection of information regarding the underlying portfolio investments. Supplying this information, as previously raised to the MSRB¹⁴, will result in additional burdens on underwriters. Accordingly, SIFMA requests the removal of this section from Form G-45.

V. Form G-45 Manual Reporting Specifications

The MSRB has stated that the specifications for reporting will be contained in the G-45 Manual yet it has not been published for public comment. Because this manual will govern the substance and format of information to be reported on Form G-45, it should be published for public comment. For example, we anticipate that the Form G-45 Manual will incorporate the detailed substantive instructions of the Disclosure Principles, none of which are which are set forth in Rule G-45 or Form G-45.

¹² SEC Release at 7.

¹³ SEC Release at 9.

¹⁴ See *supra* Note 4.

VI. Implementation Period

In its prior comments, SIFMA has been supportive of a one year implementation period from the date of finalization of the reporting requirements contained in proposed Rule G-45. However, since the MSRB has yet to publish the Form G-45 Manual with reporting specifications, we want to clarify our view that a one year implementation period from the date the Form G-45 Manual is approved by the SEC is warranted to develop, test, supervisory policies and procedures, as well as systems, and controls.

VII. Conclusion

SIFMA sincerely appreciates this opportunity to comment upon the proposal. Subject to the proposed refinements suggested above, SIFMA supports the proposed rule changes.

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:

Municipal Securities Rulemaking Board
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