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May 26, 2015

Mr. Brent J. Fields
Secretary
U.S. Securities and Exchange Commission
100 F Street
Washington, DC 20549

Re: MSRB Series 50 Examination;
File No. SR-MSRB-2015-04

Dear Mr. Fields:

The Investment Company Institute is writing to oppose the immediate effectiveness of the Municipal Securities Rulemaking Board's filing with the Commission of specifications for the selection of examination questions and content outline for the Municipal Advisory Representative Qualification Examination, the Series 50 Examination.¹ While the Institute supports the MSRB imposing qualification requirements on municipal advisors and their associated persons, as discussed in more detail below, we strongly oppose the MSRB testing a person's competencies through an examination unrelated to such person's business activities.

We have long been concerned with the MSRB's one-size-fits-all approach to designing the Series 50 examination and the recent publication of the MSRB's "Content Outline" has heightened our concerns.² Indeed, contrary to the MSRB's statements in the SEC Release, the proposed examination

¹ See *Self-Regulatory Organizations; Municipal Securities Rulemaking Board; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Consisting of the Specifications for the Selection of Examination Questions and Content Outline for the Municipal Advisor Representative Qualification Examination*, SEC Release No. 34-74858; File No. SR-MSRB-2015-04 (May 1, 2015) (the "SEC Release").

² The Content Outline for the Series 50 Examination is available on the MSRB's website at: <http://www.msrb.org/msrb1/pdfs/Series-50-Content-Outline.pdf>. The selection specifications are not publicly available as they have been filed with the Commission pursuant to a request for confidential treatment and, therefore, the Institute's comments in this letter are based on the Content Outline's description of the examination.

has not been drafted to measure “a candidate’s knowledge of [its] business activities”³ when the candidate is a municipal advisory representative whose business is limited to providing advice relating to 529 plans or other municipal fund securities. Until such time as the MSRB develops a relevant competency examination for such persons, we oppose the Commission granting the MSRB’s request to make the proposed rule change operative upon filing. We strongly encourage the Commission either (1) to suspend the effectiveness of the Series 50 examination and commence disapproval proceedings under Exchange Act Sections 19(b)(2)(B) and 19(b)(3)(C) or (2) allow the MSRB to withdraw its filing and proceed with an appropriately amended form of such filing, consistent with the alternative proposed by the Institute below as permitted by Exchange Act Section 19(b)(2) rather than Section 19(b)(3)(A) and Rule 19b-4(f)(6).

CONTENTS OF THE SERIES 50 EXAMINATION

The MSRB’s publication of the Series 50 Content Outline confirms that the exam is primarily designed to test competencies unrelated to municipal fund securities advice. According to the Content Outline, the examination will consist of 100 multiple-choice questions grouped into five sections. The subject matter of these five sections and the number of questions within each is as follows:

- Understanding SEC and MSRB Rules Regarding Municipal Advisors – 12 questions;
- Understanding Municipal Finance – 35 questions;
- Performing Issuer’s Credit Analysis and Due Diligence – 12 questions;
- Structuring, Pricing, and Executing Municipal Debt Products – 31 questions; and
- Understanding Requirements Related to the Issuance of Municipal Debt – 10 questions.

Importantly, of these five sections, arguably, *only the first would appear to have any application to those municipal advisor representatives whose advice relates exclusively to municipal fund securities.* As this section will consist of twelve of the one hundred examination questions, *88% of the examination contents appear to have no relevance whatsoever to advice relating to municipal fund securities.*⁴

³ SEC Release at pp. 2-3.

⁴ Further evidencing the fact that the examination has not been tailored to accommodate municipal fund securities, or even recognize their existence in more than a passing manner, are: (1) the details of the content outline, which provide more information regarding the types of questions that will be asked in each of these five sections and which mention municipal fund securities only once in the over 60 non-rule based knowledge requirement areas; (2) the list of Reference Materials included in the Content Outline, none of which relate to municipal fund securities; and (3) the Sample Questions published by the MSRB in connection with the Content Outline, none of which relate to municipal fund securities.

THE INSTITUTE'S CONCERNS WITH THE PROPOSED EXAMINATION

As noted above, the Institute has long expressed concerns with the MSRB developing a singular, one-size-fits-all examination to test the competencies of *all* municipal advisor representatives without regard to whether the representative renders advice relating exclusively to municipal fund securities (*e.g.*, 529 plans), exclusively to municipal securities⁵ (*i.e.*, bonds), or to both. We first communicated our concerns to the MSRB in March 2014 when it originally sought comment on developing a proposed qualification examination for municipal advisor representatives. In summary, our letter noted that the MSRB's proposed approach would treat all business conducted by a municipal advisory representative as fungible, which is not the case, and the examination would not be tailored to test those competencies relevant to the type of advice that will be rendered by the representative, which is contrary to the manner in which other self-regulatory organizations approach qualification examinations. We also noted that, by not testing relevant competencies, the examination will not serve the best interest of municipal advisors' clients.

When the MSRB filed its proposal with the Commission to amend Rule G-3 to require municipal advisor professionals to be qualified through an examination (the "Prior Rule Amendment"), and the Commission sought comment on it,⁶ we reiterated our concerns with the MSRB utilizing a one-size-fits all examination.⁷ Our concerns were summarized by the SEC as follows:

ICI recommends that the MSRB reconsider its current approach to develop only one examination for representatives because such approach will result in use of an examination that does not sufficiently test competencies relevant to the advisory representative's business and is inconsistent with the approach taken by other self-regulatory organizations. ICI suggests that the MSRB utilize at least two examinations – one for representatives of a municipal advisor whose advisory activities are limited to municipal fund securities, and one for representatives whose advice is limited to municipal securities other than municipal fund securities.

⁵ For the ease of discussion, as used in this letter, the term "municipal securities" is intended to mean municipal securities other than municipal fund securities.

⁶ See *Notice of Filing of a Proposed Rule Change Consisting of Proposed Amendments to MSRB Rule G-1, on Separately Identifiable Department or Division of a Bank; G-2, on Standards of Professional Qualification; G-3, on Professional Qualification Requirements; and D-13, on Municipal Advisory Activities*. SEC Release No. 34-73708 (Dec. 1, 2014) (the "December 2014 SEC Release").

⁷ See Letter from the undersigned to Secretary, U.S. Securities and Exchange Commission, commenting on the December 2014 SEC Release (the "December 2014 SEC Letter").

The MSRB responded by stating that it believes that individuals who engage in municipal advisory activities regarding municipal fund securities ***should demonstrate knowledge of all the rules and regulations governing municipal advisors***. The MSRB stated that these rules and regulations generally will apply to all municipal advisors, regardless of the product that is the subject of the advice being provided. As such, the MSRB believes that all municipal advisors should have knowledge of the regulatory framework and the basic obligations of municipal advisors.⁸ [Emphasis added.]

The Institute agrees with the MSRB's assertion that all municipal advisory representatives should demonstrate familiarity with the rules and regulations that govern their activities. What we oppose, and what we have long expressed concern with, is the MSRB requiring *all* municipal advisory representatives to demonstrate competencies related to the detailed features of municipal securities and how the markets in which those securities are traded operate. As stated in our December 2014 SEC Letter:

[T]he knowledge and competencies of an advisor may vary significantly depending upon the type of advice it renders. For example, providing advice on municipal securities likely requires a representative to be knowledgeable about issues such as negotiated prices, debt limits and ratios, underwriting periods, agreements, par values, etc. – ***none of which would be relevant for a municipal advisor whose advisory business is limited to providing advice relating to a municipal fund security such as a 529 education savings plan***. Expecting a municipal advisory representative whose work relates exclusively to municipal fund securities to pass an examination that would qualify such persons to advise municipal clients on bond underwritings and the terms and conditions of bonds would be the equivalent of requiring a broker-dealer representative whose business is limited to the offer and sale of mutual funds to qualify for that position by passing an examination designed for representatives selling fixed income securities. These are not fungible business lines in the brokerage world and they should not be treated as fungible in the investment advisory business.⁹ [Emphasis in original.]

The MSRB's current proposal has confirmed our concerns with the MSRB utilizing a one-size-fits all examination for all municipal advisor representatives: ***88% of the examination will test competencies related to fixed income products and markets – not to municipal fund securities***. As a

⁸ See Notice of Filing of Amendment No. 1 and Amendment No. 2 and Order Granting Accelerated Approval of a Proposed Rule Change Consisting of Proposed Amendments to MSRB Rule G-1, on Separately Identifiable Department or Division of a Bank; G-2, on Standards of Professional Qualification; G-3, on Professional Qualification Requirements; and D-13, on Municipal Advisory Activities. SEC Release No. 34-74384 (Feb. 26, 2015) (the "February 2015 SEC Release") at pp. 13-14.

⁹ See December 2014 SEC Letter at p. 3. It would be equally inappropriate for the MSRB to require a representative whose business is limited to municipal securities to demonstrate competency to provide municipal advice through an examination overwhelmingly tailored to advice relating to municipal fund securities.

result, a municipal advisor representative who renders no advice whatsoever related to municipal securities will be forced to demonstrate competencies regarding such securities *and not competencies relating to the advice such person will render*.¹⁰ This makes no sense and cannot be said to be in the public interest including, in particular, the interests of 529 plan investors or municipal entities served by municipal advisors.

AN ALTERNATIVE TO THE MSRB'S PROPOSED APPROACH

The Institute continues to believe that the MSRB should develop an examination tailored to the type of advice a municipal advisor representative will render. As noted above, the MSRB has opposed this approach, stating that all representatives should demonstrate familiarity with the rules and regulations governing their business. We agree with the MSRB that all representatives should demonstrate familiarity with those rules of the MSRB that govern municipal advisors, and we do not oppose the MSRB developing an examination that tests such competencies. We recommend, therefore, that the MSRB revise its proposed examination to require all persons to pass the portion of the examination that relates to "Understanding SEC and MSRB Rules Regarding Municipal Advisors."¹¹ In addition, we recommend that all municipal advisor professionals should be required to pass the remaining four sections of the Series 50 examination, provided that professionals whose municipal advisory activities are limited solely to matters relating to municipal fund securities could, in the alternative, pass *either* (i) FINRA's Series 6 examination, which has long been utilized by the MSRB to test the competencies and product knowledge of municipal securities dealers that offer and sell municipal fund securities, *or* (ii) a new examination developed by the MSRB that is specifically tailored to municipal fund securities.

We believe that this alternative approach will ensure that the examination required of municipal advisory representatives will test knowledge of the rules and regulations governing municipal advisors and will, in fact, also be tailored to test those competencies relevant to a representative's advisory business. Until such time as the MSRB can demonstrate that its proposed examination will, in fact, "[measure] a candidate's knowledge of [its] business activities, as well as the regulatory requirements,"¹² we recommend that the Commission disapprove the MSRB's proposal.

¹⁰ Extending the comparison from the December 2014 SEC Letter and footnote 9 above, although certain principles and practices of medicine are universal among all physicians, no one could reasonably expect that a neonatologist would be required to qualify as such by passing the geriatric medicine boards simply because a portion of the geriatric boards tests universal medical principles and practices.

¹¹ As noted in the SEC Release at p. 4, the system used to administer the examination will be able to provide a breakdown of a professional's performance on each section of the examination and therefore there should be no significant administrative barrier to separately scoring the portion of the exam relating to "Understanding SEC and MSRB Rules Regarding Municipal Advisors" or any other portion.

¹² SEC Release at pp. 2-3.

THE INSTITUTE'S PROCEDURAL CONCERNS

As described in the SEC Release, the MSRB stated in its filing with the Commission that written comments were neither solicited nor received on the proposed rule change. While this may be true in a hyper-technical sense, the MSRB did in fact receive comments relating to the content of the examination, including the Institute's comments described above, in connection with the Prior Rule Amendment. At that time, without the benefit of the Content Outline being publicly available (but with, presumably, a draft thereof already in existence within the MSRB), the MSRB responded to the Institute's concerns by stating:

The Board appreciates ICI's contention that the activities of municipal advisors who provide advice to municipal entities regarding municipal fund securities are different than the municipal advisory activities of traditional municipal advisors. The MSRB also acknowledges *some of the content on the examination will not be directly related to municipal fund securities*. Nevertheless, the Board believes that individuals who engage in municipal advisory activities regarding municipal fund securities should demonstrate knowledge of the rules and regulations governing municipal advisors by taking the municipal advisor representative qualification examination.¹³ [Emphasis added.]

While we agree that municipal fund advisors should be tested on "knowledge of all the rules and regulations governing municipal advisors"¹⁴ (as described in the February 2015 SEC Release), the response provided by the MSRB in connection with Prior Rule Amendment was wholly inadequate. We now know that 88% of the examination will test competencies solely relevant to fixed income products and markets – and not to municipal fund securities. Accordingly, it is now clear that the MSRB's statement that "some" of the examination content will not relate directly to municipal fund securities was not truly responsive to the Institute's significant concern and did not accurately reflect the nature of the examination. The Institute urges the Commission and the MSRB to address these concerns in light of the recent information published regarding the nature and contents of the examination; the Commission should not permit the evasion of such concerns merely as a result of closely related matters being, as a matter of form, processed through the statutory rulemaking process under two separate file numbers.

In addition, the Institute questions whether Exchange Act Rule 19b-4(f)(6) is the appropriate basis for the filing and effectiveness of the Content Outline and selection specifications of a new

¹³ See December 2014 SEC Release at p. 21.

¹⁴ It is one thing to tell a municipal advisor providing advice on municipal securities that *some* content on the examination will not be directly related to municipal securities – *i.e.*, the 1/60th of the non-rule based content that will be devoted to municipal fund securities and perhaps a small number of other knowledge areas closely related to municipal securities. It is quite another thing to tell a municipal advisor providing advice on municipal fund securities that 59/60th of the qualification examination will assess the advisor's competency on non-rule based content that is wholly unrelated to municipal fund securities.

professional qualification examination, notwithstanding the Commission staff guidance provided to the MSRB in that regard.¹⁵ In particular, a rule may be filed for immediate effectiveness under that provision only if, among other things, it “[d]oes not significantly affect the protection of investors or the public interest.” On the other hand, the MSRB is empowered under Exchange Act Section 15B(b)(2)(A) to require that professionals meet such professional qualification standards and pass such examinations as the “Board finds necessary or appropriate in the public interest or for the protection of investors and municipal entities or obligated persons.”

While it may be arguable that relatively minor modifications to existing professional qualification examinations to reflect changing products or practices could appropriately be made effective under this first standard, it seems particularly inappropriate that the entire substance of a first-of-its-kind qualification examination be made automatically effective as a so-called “non-controversial” rule change¹⁶ on the basis that it does not significantly affect the protection of investors or the public interest. The Institute firmly believes that the original effectiveness of qualification examinations to test for relevant knowledge of professionals unquestionably and significantly affects the protection of investors and the public interest, and the Institute recommends that the Commission reconsider its staff guidance to the MSRB and, presumably, other self-regulatory organizations as set forth in the July 2000 SEC Staff Letter. At a minimum, with respect to the Series 50 examination, the Commission should suspend its effectiveness and commence disapproval proceedings under Exchange Act Sections 19(b)(2)(B) and 19(b)(3)(C), or allow the MSRB to withdraw its filing and proceed with an appropriately amended form of such filing, consistent with the alternative proposed by the Institute above, under Exchange Act Section 19(b)(2) rather than Section 19(b)(3)(A) and Rule 19b-4(f)(6).

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¹⁵ See Letter from Belinda Blaine, Associate Director, U.S. Securities and Exchange Commission, to Diane G. Klinke, General Counsel, Municipal Securities Rulemaking Board, dated July 24, 2000, included as Exhibit 3b to SR-MSRB-2015-04 (April 22, 2015), available at <http://www.msrb.org/~media/Files/SEC-Filings/2015/MSRB-2015-04.ashx> (the “July 2000 SEC Staff Letter”). While the selection specifications are not publicly available and therefore the public cannot provide comments directly on such specifications, public comment on the Content Outline could prove useful in the Commission’s assessment whether to approve or disapprove the selection specifications.

¹⁶ The July 2000 SEC Staff Letter provides that “any new examinations should be filed [by the MSRB] as non-controversial rule changes for immediate effectiveness pursuant to Section 19(b)(3)(A) of the Exchange Act and Rule 19b-4(f)(6) thereunder.” See July 2000 SEC Staff Letter at p. 1.

Mr. Brent J. Fields, Secretary

May 26, 2015

Page 8 of 8

We appreciate the opportunity to provide these comments and your consideration of them. If you have any questions, please contact the undersigned at [REDACTED].

Sincerely,

/s/

Tamara K. Salmon
Associate General Counsel

Cc: Lynnette Kelly, Executive Director
Michael L. Post, Deputy General Counsel