

Mr. Brent J. Fields, Secretary

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The fifth report mentioning such plans, which also is the only significant discussion of 529 plans in the MSRB's annual reports, was in 2012. This report devoted one-half of a page of the twenty-page report to discussing the MSRB "Improving Access to Information about 529 College Savings Plans" and highlighting its "new interactive map accessible from EMMA's homepage." This is the same 50-state map discussed previously in this letter.⁶⁶

VII. THE MSRB'S NEW UNDERWRITING FEE IS INCONSISTENT WITH SECTION 15B(B)(2)(C)

For all the reasons discussed above, we recommend that the Commission either abrogate the MSRB's rulemaking or suspend it and institute disapproval proceedings. We believe that the above discussion evidences that the fee is neither reasonable nor equitable. It also evidences that the fee is unfairly discriminatory and will impose an undue or inappropriate burden on competition. As such, it does not appear to meet the standards in Section 15B(b)(C)(2) that is imposed on the MSRB's rulemaking authority. As discussed above, because there has not yet been a thorough review of the adverse impact this fee will have on investors, municipal entities, and municipal securities dealers and its consistency with the Exchange Act, we strongly recommend that the Commission either abrogate the revisions to the rule or summarily temporarily suspend them and institute disapproval proceedings. Such action would better ensure that there is a thorough economic analysis conducted of the fee to determine that the fee is consistent with the MSRB's rulemaking authority and will, in fact, will "promote just and equitable principles of trade" and not "permit unfair discrimination," or "impose any burden on competition not necessary or appropriate in furtherance of [the Securities Exchange Act]."

Sincerely,

/S/

Tamara K. Salmon
Associate General Counsel

⁶⁶ See *Safeguarding the Municipal Securities Market*, MSRB Annual Report (2012) at p. 2012. The discussion of 529 plans in the annual report also notes that "The MSRB has proposed collecting additional information and performance data on 529 college savings plans with the goal of enhancing its oversight of the size, growth, characteristics and risks of specific 529 plans and the market as a whole." This reference is to the MSRB's adoption of Rule G-45 and Form G-45, which the MSRB proposes to use to assess the new underwriting fee. However, because the MSRB can only regulate advisor-sold plans, it will never be able to be a source of information on "the market as a whole."