

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-84496; File No. SR-MSRB-2018-08)

October 29, 2018

Self-Regulatory Organizations; Municipal Securities Rulemaking Board; Notice of Filing of a Proposed Rule Change Concerning Certain Data Elements on Form G-45 under MSRB Rule G-45, on Reporting of Information on Municipal Fund Securities

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Exchange Act” or “Act”)¹ and Rule 19b-4 thereunder,² notice is hereby given that on October 15, 2018 the Municipal Securities Rulemaking Board (the “MSRB” or “Board”) filed with the Securities and Exchange Commission (the “SEC” or “Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the MSRB. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

The MSRB filed with the Commission a proposed rule change to amend Form G-45 under MSRB Rule G-45, on reporting of information on municipal fund securities,³ to clarify a data element concerning the program management fee, to add a data element concerning the investment option closing date, and to delete data elements concerning annualized three-year performance information (the “proposed rule change”). The MSRB requests that the proposed rule change become effective on June 30, 2019.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Form G-45 is an electronic form on which submissions of the information required by Rule G-45 are made to the MSRB.

The text of the proposed rule change is available on the MSRB's website at www.msrb.org/Rules-and-Interpretations/SEC-Filings/2018-Filings.aspx, at the MSRB's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the MSRB included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The MSRB has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The MSRB proposes to refine and enhance certain of the investment option data that the MSRB collects under Rule G-45 from underwriters to 529 savings plans⁴ and ABLE programs.⁵

⁴ Section 529 of the Internal Revenue Code of 1986, as amended (the "Code") established savings plans ("529 savings plans") to encourage saving for future education costs. 26 U.S.C. 529(b)(1)(A)(ii). The SEC has determined that interests offered by such 529 savings plans are municipal securities under Section 3(a)(29) of the Exchange Act. Exchange Act Release No. 70462 (Sept. 20, 2013), 78 FR 67468, 67472-73 (Nov. 12, 2013).

Section 529 also established prepaid tuition plans. 26 U.S.C. 529(b)(1)(A)(i). Under a prepaid tuition plan, an investor may purchase tuition credits or certificates on behalf of a designated beneficiary, which entitle the beneficiary to the waiver or payment of qualified higher education expenses. Such credits or certificates generally are not viewed as being municipal securities, and dealers generally do not participate in the marketing of prepaid tuition plans.

Thus, the term "529 plans" includes 529 saving plans and prepaid tuition plans.

Specifically, the MSRB proposes to amend Form G-45 to (i) clarify a data element concerning the program management fee, (ii) add a data element concerning the investment option closing date, and (iii) delete data elements concerning annualized three-year performance information. As discussed under “Statutory Basis,” the proposed rule change would provide information that would enhance the MSRB’s and other regulators’ ability to effectively and efficiently analyze 529 savings plans and ABLE programs to assess the impact of each 529 savings plan and ABLE program on the market, to evaluate trends and differences, and to gain an understanding of the aggregate risk taken by investors.

Background

Rule G-45 requires brokers, dealers and municipal securities dealers (“dealers”) acting in the capacity as underwriters to 529 savings plans or ABLE programs to submit on a semi-annual or annual basis (in the case of performance data) certain information about the plans or programs they underwrite. That information includes plan or program descriptive information, assets, asset allocation information (at the investment option level), contributions, withdrawals, fee and cost structure, performance, and other information. Beginning with the reporting period ending June 30, 2015 (in the case of 529 savings plans) and June 30, 2018 (in the case of ABLE programs), underwriters to 529 savings plans or ABLE programs have reported such information electronically to the MSRB.

⁵ ABLE programs are programs designed to implement Section 529A to the Code. 26 U.S.C. 529A. Section 529A of the Code permits a state, or an agency or instrumentality thereof, to establish and maintain a tax-advantaged savings program to help support individuals with disabilities in maintaining health, independence, and quality of life.

The collection of information under Rule G-45 is intended to protect investors, municipal entities and the public interest and prevent fraudulent and manipulative acts and practices.⁶ Specifically, collecting this information enhances the MSRB's understanding of 529 savings plans and ABLÉ programs. Such information informs the MSRB's regulatory activities and also the activities of those other financial regulators (i.e., the SEC, the Financial Industry Regulatory Authority, Inc., and banking regulators) that are charged with examining and enforcing MSRB rules.

Enhancements to Rule G-45

A. Clarification of Program Management Fee Data Element

Throughout the seven reporting periods during which the MSRB has analyzed data submitted on Form G-45, the MSRB has observed anomalies in the data submitted under Investment Option information. Those anomalies related to the program management fee and, as discussed below under "New Investment Option Closing Date Data Element," to investment options that closed during the reporting period. Form G-45, under the Investment Option information subsection "Program Management Fee," requires that an underwriter report the program management fee (expressed as an annual percentage of 529 savings plan or ABLÉ program assets) assessed by the 529 savings plan or ABLÉ program. The program management fee typically is a separately identifiable percentage that is shown in the fee table for the 529 savings plan or ABLÉ program, but for some 529 savings plans and ABLÉ programs, this is not

⁶ Exchange Act Release No. 71598 (Feb. 21, 2014), 79 FR 11161, 11167 (Feb. 27, 2014) (SR-MSRB-2013-04) (stating "to fulfill its statutory responsibilities to investors and municipal entities in the context of 529 plans, the Commission believes that it is appropriate for the MSRB to possess basic, reliable information regarding 529 plans, including the underlying investment options"). The MSRB believes that the collection of data about ABLÉ programs is equally important for the MSRB to fulfill its statutory responsibilities to investors and municipal entities.

the case. Instead for those 529 savings plans or ABLE programs, the program management fee is assessed by the underlying mutual fund in which the investment option invests (this is typically done through a 529 or ABLE share class of the mutual fund). Underwriters for those 529 savings plans or ABLE programs generally report the program management fee as zero on Form G-45, and then may add explanatory information in the notes section of the form about the fee. That explanatory information, however, may or may not actually disclose the program management fee in a format that is typically used for comparison – i.e., as an annual percentage of 529 savings plan or ABLE program assets. The proposed rule change would clarify that the underwriter must report the program management fee as an annual percentage of assets (e.g., x.xx%) no matter whether the program management fee is assessed by the underlying mutual fund or by the 529 savings plan or ABLE program itself. The underwriter would not be able to report the program management fee as zero and then explain in a note that it is assessed by the underlying mutual fund. Thus, the proposed rule change would allow the MSRB, as well as other regulators, to analyze data in a uniform format that would facilitate (i) comparison among 529 savings plans and ABLE programs, (ii) the evaluation of trends and differences, and (iii) the identification of potential risks to investors that may affect those 529 savings plans and ABLE programs.

B. New Investment Option Closing Date Data Element

From time to time, an investment option offered in a 529 savings plan may close to new investors, but allow current account owners who have allocated account value to an investment option to continue to invest in that “closed” investment option. Alternatively, the 529 savings

plan may close an investment option completely.⁷ In either case, the investment option data submitted for that investment option on Form G-45 can be contrary to what the MSRB would have expected for the investment option when compared to prior reporting periods, and the MSRB may not be able to easily determine why such variance occurred. To address this issue, the proposed rule change would add check-the-box items to Form G-45 that would alert the MSRB about whether an investment option has closed to new investors, but allows current account owners to contribute funds, or whether the investment option has closed to all investors.

C. Deletion of Three-Year Annualized Performance Data Requirement

The MSRB sought public comment about providing additional data concerning the investment options offered in 529 savings plans and ABLÉ programs.⁸ In response, the MSRB received the suggestion that the MSRB no longer require that an underwriter submit three-year annualized performance information for an investment option on Form G-45.

Form G-45 requires that underwriters annually report (i) total returns, including sales charges, (ii) total returns, excluding sales charges, and (iii) benchmark return percent for specified periods, including annualized or annual three-year percent. At the time the MSRB approved Form G-45, the College Savings Plans Network's (CSPN) voluntary disclosure

⁷ As noted previously, with the reporting period ending June 30, 2018, underwriters to ABLÉ programs began to submit information about the ABLÉ programs they underwrite on Form G-45. The MSRB believes that, similar to the investment options offered in 529 savings plans, investment options in ABLÉ programs may close to investors.

⁸ MSRB Notice 2017-17 (Aug. 22, 2017) (the "Request for Comment"). Specifically, the MSRB sought comment on a possible clarification to the data it currently receives about the program management fee and about requiring underwriters to submit additional data relating to (i) performance data – i.e., to provide additional information about the benchmark return percent and to provide performance data by asset class and (ii) the investment option closing date. The Board determined not to proceed with the collection of additional performance data.

principles that provide recommendations to the state entities that establish and maintain 529 savings plans (the “disclosure principles”)⁹ and which commenters stated were the industry norm in other rulemakings, recommended that such disclosure be made.¹⁰ However, since that time, CSPN has updated the disclosure principles, and CSPN no longer recommends that a 529 savings plan include three-year performance information.¹¹ Further, three-year annualized performance information is not required by the SEC for mutual funds.

The MSRB has determined that Form G-45, even without the three-year performance data, would continue to provide the MSRB with sufficient performance information to assist the MSRB with its analysis of 529 savings plans and ABLE programs. Therefore, because the MSRB believes that it will have sufficient performance information, it is no longer an appropriate regulatory burden and should be eliminated to avoid unnecessary costs.

⁹ CSPN, a non-profit organization, was established as an affiliate to the National Association of State Treasurers, to make higher education more attainable and to serve as a clearinghouse for information among state-administered college savings programs.

According to CSPN, CSPN, the states that administer 529 plans (i.e., 529 savings plans and prepaid tuition plans) and their private sector partners are committed to clarifying and enhancing disclosure and offering materials for 529 plans. CSPN stated that it adopted voluntary disclosure principles to enhance the comparability of information that investors should consider when investing in 529 savings plans. See College Savings Plan Network Disclosure Principles Statement No. 6 (adopted July 1, 2017).

¹⁰ See File No. SR-MSRB-2013-04 (proposed rule change consisting of new MSRB Rule G-45, on reporting of information on municipal fund securities, and Form G-45, and amendments to Rule G-8, on books and records, and Rule G-9, on preservation of records); College Savings Plans Network Disclosure Principles Statement No. 5 (adopted May 3, 2011).

¹¹ College Savings Plans Network Disclosure Principles Statement No. 6 (adopted July 1, 2017).

2. Statutory Basis

The MSRB Section 15B(b)(2) of the Exchange Act¹² provides that:

[t]he Board shall propose and adopt rules to effect the purposes of this title with respect to transactions in municipal securities effected by brokers, dealers, and municipal securities dealers and advice provided to or on behalf of municipal entities or obligated persons by brokers, dealers, municipal securities dealers, and municipal advisors with respect to municipal financial products, the issuance of municipal securities, and solicitations of municipal entities or obligated persons undertaken by brokers, dealers, municipal securities dealers, and municipal advisors.

Section 15B(b)(2)(C) of the Exchange Act¹³ provides that the MSRB's rules shall:

be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in municipal securities and municipal financial products, to remove impediments to and perfect the mechanism of a free and open market in municipal securities and municipal financial products, and, in general, to protect investors, municipal entities, obligated persons, and the public interest.

The MSRB believes that the proposed rule change is consistent with Sections 15B(b)(2)¹⁴ and 15B(b)(2)(C)¹⁵ of the Exchange Act. The proposed rule change would help prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade, and foster cooperation and coordination with persons engaged in regulating transactions in municipal securities.

¹² 15 U.S.C. 78o-4(b)(2).

¹³ 15 U.S.C. 78o-4(b)(2)(C).

¹⁴ 15 U.S.C. 78o-4(b)(2).

¹⁵ 15 U.S.C. 78o-4(b)(2)(C).

The proposed rule change would help prevent fraudulent and manipulative acts and practices. The proposed rule change would allow the MSRB to analyze data in a uniform format that would facilitate the (i) efficient and effective comparison among 529 savings plans and ABLÉ programs, (ii) evaluation of trends and differences, and (iii) identification of potential risks to investors that may affect those 529 savings plans and ABLÉ programs. The ability to identify trends and differences, also would enable the regulators that are charged with inspecting for compliance with and enforcing the MSRB's rules, as noted above, to better determine whether the 529 savings plan or ABLÉ program disclosure documents and marketing materials, which underwriters generally draft or participate in drafting, are consistent with the data submitted to the MSRB. Further, the ability to identify potential risks to investors from the Form G-45 data analysis would inform the MSRB with its development of rulemaking and interpretive guidance priorities with respect to MSRB regulated entities. Further, the ability to identify potential risks to investors from the Form G-45 data would inform other regulators with their development of their priorities for risk-based compliance examinations for such regulated entities. These enhanced oversight abilities, in turn, would help prevent fraudulent and manipulative acts and practices.

The proposed rule change also would promote just and equitable principles of trade. For the same reasons that the proposed rule change would help prevent fraudulent and manipulative acts and practices, the proposed rule change also would promote just and equitable principles of trade.

In addition, the proposed rule change would foster cooperation and coordination with persons engaged in regulating municipal securities transactions. For the same reasons that the proposed rule change would help prevent fraudulent and manipulative acts and practices, the

proposed rule change also would foster cooperation and coordination with persons engaged in regulating municipal securities transactions. In addition, as discussed under “Deletion of Three-Year Annual Performance Data Requirement,” the proposed rule change would make the collection of performance data under Form G-45 more consistent with what is required by other financial regulators and with current industry norms, and thereby also would foster regulatory coordination with persons engaged in regulating municipal securities transactions.

Moreover, the MSRB believes that the proposed rule change is consistent with the MSRB’s statutory obligation to protect investors and municipal entities. To fulfill this responsibility, it is necessary for the MSRB to have a complete and reliable data set about 529 savings plans and ABLE programs, including the investment options offered in those 529 savings plans and ABLE programs. The proposed rule change would provide the MSRB with additional meaningful data about the investment options offered in those plans or programs – specifically, the proposed rule change would clarify an existing data element relating to the program management fee and would add a data element in the form of a check the box to alert the MSRB about the closing of an investment option during the reporting period. This clarification and additional data element would facilitate the MSRB’s ability to efficiently and effectively analyze the market for 529 savings plans and ABLE programs as well as to evaluate trends and differences among 529 savings plans and the ABLE programs. The MSRB believes that understanding the investment options and the costs associated with 529 savings plans and ABLE programs as well as the other data collected under Rule G-45 are basic requirements for regulation and necessary to assist the MSRB with its evaluation as to whether its regulatory scheme for dealers that sell interests in or underwrite ABLE programs and/or 529 savings plans is sufficient, or whether additional rulemaking is necessary to protect investors. Further, as

previously noted, the information that would be collected by the proposed rule change would help the MSRB and other regulators that examine dealers prioritize their efforts with respect to those dealers that sell interests in or underwrite ABLÉ programs and 529 savings plans. Those other regulators may use this information to determine the nature or timing of risk-based dealer examinations. In addition, under the proposed rule change, the MSRB would no longer collect three-year performance data about the investment options and their related benchmarks, if any. As discussed under “Deletion of Three-Year Annual Performance Data Requirement,” the proposed rule change thereby would make the collection of performance data under Form G-45 more consistent with what is required by other financial regulators and with current industry norms. Thus, the MSRB believes that the information to be collected by the proposed rule change would better enable the MSRB to protect investors in these programs and plans and the municipal entities that offer 529 savings plans and ABLÉ programs.

B. Self-Regulatory Organization’s Statement on Burden on Competition

Section 15B(b)(2)(C) of the Exchange Act¹⁶ requires that MSRB rules be designed to not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. In accordance with the Board’s policy on the use of economic analysis, the Board has reviewed the proposed rule change.¹⁷ To fulfill its responsibility to protect investors, the MSRB must have current and reliable information about the fees and expenses assessed under such programs or plans and the market for 529 savings plans and ABLÉ programs as a whole. The proposed rule change is necessary for the MSRB to gather relevant data required to ensure the

¹⁶ Id.

¹⁷ Policy on the Use of Economic Analysis in MSRB Rulemaking, available at <http://msrb.org/Rules-and-Interpretations/Economic-Analysis-Policy.aspx>. For those rule changes which the MSRB seeks immediate effectiveness, the MSRB usually focuses exclusively its examination on the burden of competition on regulated entities.

MSRB's regulatory scheme is sufficient and/or to determine whether additional rulemaking is necessary to protect investors.

The need for the proposed rule change to Form G-45 arises from the MSRB's oversight of dealers acting as underwriters to 529 savings plans and ABLÉ programs. The MSRB believes that this information is required to ensure effective regulation of dealers that sell interests in and underwriters to 529 savings plans and ABLÉ programs. Since certain data elements are not disclosed or readily available in some instances, rulemaking is required to bring the information to light. Specifically,

1. In certain instances, the program management fee is included in the total fund operating expenses assessed by the underlying mutual fund and thus is not separately disclosed. This makes comparing and analyzing program management fees across plans difficult; and
2. From time to time, an investment option may either close to new investors but allow current account owners to continue to invest or may close to new investors or all investors completely. Therefore, investment data submitted for that investment option may not accurately portray the real annualized return.

The proposed rule change to Form G-45 would clarify the requirement of an existing data element, the program management fee, and the collection of an additional data element (check-the-boxes) about the investment option closing date information to remedy the above concerns. The MSRB can therefore remove the burden on submitters of unnecessary follow-ups for what is, in reality, accurate albeit incomplete data. In addition, the proposed rule change would delete the requirements to report three-year annualized performance data for each investment option and any related benchmark.

The MSRB has evaluated alternatives to the proposed rule change with regard to obtaining some of the above information without the proposed rule change to Form G-45. However, none of these alternatives is preferable to the proposed requirements. For example, the program management fee, as an annual percentage of assets, is already submitted by the underlying mutual funds in disclosure documents to the SEC. However, to obtain the total program management fee for an entire municipal security fund through a review of disclosure documents, the MSRB would have to manually sift through the disclosures for all underlying funds and calculate the total program management fee based on a weighted-average of assets under management for each fund. For regulatory purposes, the MSRB needs to efficiently obtain a consistent set of uniform, reliable and relevant information about 529 savings plans and ABLE programs in order to compare across plans. Another alternative to the proposed rule change to Form G-45 is a manual review of information in plan disclosure documents submitted to the MSRB's Electronic Municipal Market Access (EMMA[®])¹⁸ website or on 529 savings plan or ABLE program websites. A manual review of information would be insufficient and inefficient.

The benefits from collecting program management fee and investment option closing date data should exceed the costs. These benefits include enhanced regulatory oversight of underwriters to 529 savings plans and ABLE programs and improved understanding of the 529 savings plan and ABLE program marketplace. More importantly, since the remaining data elements are readily available to submitters, the costs associated with the current recommendation would be relatively minor.¹⁹

¹⁸ EMMA is a registered trademark of the MSRB.

¹⁹ Commenters confirmed that there is limited burden associated with providing investment option closing date information to the MSRB. As to the program management fee, commenters generally agree that it is not burdensome to report.

Specifically, the program management fee expressed as an annual percentage of assets for each share class is already disclosed to the SEC, as the SEC-registered underlying mutual fund in which an investment option invests is required to disclose the percentage of the program management fee in the disclosure documents that it submits to the SEC. The costs of the submission process would be minor. Likewise, the costs of submitting the investment option closing date would be negligible as the issuer supplements the disclosure documents for the 529 savings plan with that information.²⁰ Consequently, the benefits should exceed the costs after the proposed rule change would be implemented by the industry.

In addition to voicing their opinions on the MSRB's proposed clarification of and new data element requirements, commenters also requested that the MSRB consider eliminating the current requirement to report three-year annualized performance information under Rule G-45, as the industry standard no longer includes the three-year returns information as a part of the performance disclosure.²¹ The MSRB concurs that omitting the three-year annualized performance data would not materially change the MSRB's regulatory capability in this area, and submitters should benefit from a reduced burden when they no longer need to report this information. The MSRB believes the cost savings from no longer requiring the three-year annualized performance data should outweigh the benefit provided by the data.

In the aggregate, the MSRB believes that the proposed rule change would provide a range of benefits, including reducing regulatory inefficiencies to facilitate an efficient and effective regulatory oversight of relevant underwriters and dealers. Although the proposed rule change

²⁰ As noted previously, the MSRB believes that issuers of ABLE programs also would supplement their disclosure documents with an investment option's closing date.

²¹ In addition to the three-year performance data, the MSRB currently requires the performance data for year-to-date, one-year, five-years, ten-years and since inception.

may impose some costs on underwriters and/or require them to revise certain business practices and spend additional resources. The MSRB believes that the total costs would be less than the aggregate benefits that would accrue over time to the market.

Effect on Competition, Efficiency and Capital Formation

The MSRB believes that the proposed rule change would facilitate regulatory oversight of the municipal fund security market and promote capital formation by informing rulemaking, preventing fraud, and protecting investors. At present, the MSRB is unable to quantitatively evaluate the magnitude of efficiency gains or losses, or the impact on capital formation, but believes that the benefits outweigh the costs over the long term, as the costs of compliance are expected to be minor. Additionally, in the MSRB's view, the proposed rule change does not result in an undue burden on competition since it would apply to all underwriters of 529 savings plans and ABLÉ programs equally.²²

Competition, however, may be adversely affected if, to compensate for costs and regulatory burden, underwriters would raise the fees charged to issuers, resulting in issuers refraining from using dealers to engage directly with potential investors, or passing on some portion of the higher fee amount to investors.

The MSRB believes that the proposed rule change would not impose an unnecessary or inappropriate regulatory burden on small regulated entities, as the burden on underwriters should be proportional to their business activities in relation to 529 savings plans and ABLÉ programs.

²² The proposed rule change would not impose any burden on non-underwriting dealers that only sell interests in either 529 savings plans or ABLÉ programs.

C. Self-Regulatory Organization’s Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

The MSRB sought public comment about providing additional data concerning the investment options offered in 529 savings plans and ABLÉ programs.²³ In response to the Request for Comment, the MSRB received six comment letters.²⁴ Commenters generally opposed providing additional data to the MSRB. However, commenters suggested that they could more easily provide data relating to two of the items about which the MSRB sought comment (a clarification concerning the program management fee and data concerning the investment option closing date) than the other two items with which the MSRB sought comment but with which the Board determined not to proceed. Further, one commenter suggested that the MSRB amend Form G-45 to delete the requirement that an underwriter submit investment option annualized three-year performance information²⁵ and another commenter specifically supported that suggestion.²⁶

²³ See note 8, supra.

²⁴ The MSRB received letters from the State of West Virginia: Letter from John D. Perdue, West Virginia State Treasurer, dated September 18, 2017 (“West Virginia”); American Funds Distributors, Inc.: Letter from Maria Manotok, Senior Counsel, dated September 21, 2017 (“American Funds”); Ascensus College Savings: Letter from Sandra Madden, General Counsel, dated September 21, 2017 (“Ascensus”); College Savings Plans Network and College Savings Foundation: Letter from Richard J. Polimeni, Chairman, College Savings Foundation, and Young Boozer, Chairman, College Savings Plans Network, dated September 21, 2017 (“CSPN and CSF”); Investment Company Institute: Letter from Tamara K. Salmon, Senior Associate Counsel, dated September 21, 2017 (“ICI”); Securities Industry and Financial Markets Association: Letter from Leslie M. Norwood, Managing Director and Associate General Counsel, and Bernard Canepa, Vice President and Assistant General Counsel, dated September 21, 2017 (“SIFMA”).

²⁵ See ICI letter.

²⁶ See SIFMA letter.

Additional Investment Option Data

i. Program Management Fee

Although commenters generally opposed any amendment to Form G-45, one commenter, SIFMA, stated that it generally supports the proposed rule change relating to the program management fee, however, SIFMA gave this support while also sharing the concerns about this item expressed by the ICI. Other commenters stated that the program management fee could be proprietary,²⁷ costly to report separately due to programming costs,²⁸ and that reporting the percentage of the fee separately could lead to the MSRB “double counting” the amount of the program management fee.²⁹

The MSRB continues to believe that it is important to receive information about the program management fee in a uniform manner. With its adoption of Rule G-45 and Form G-45, the MSRB recognized the importance of receiving consistent and reliable information about 529 savings plans for the MSRB to fulfill its mission to protect investors. This information allows the MSRB, as well as other regulators, to analyze the data in a format that can be sorted to foster a better understanding of the 529 savings plan industry. Without that information, the analytical process is not as efficient as it otherwise could be.

Moreover, the SEC-registered underlying mutual fund in which an investment option invests is required to disclose the percentage of the program management fee in the disclosure documents that it submits to the SEC. The MSRB has obtained this information through such a

²⁷ See Ascensus letter.

²⁸ See ICI letter.

²⁹ Id.

review. The MSRB submits that the percentage of the program management fee is not proprietary, as it is disclosed to the SEC in public documents. For that same reason, the MSRB believes that underwriters would incur minimal costs, if any, if they were to report the percentage of the program management fee separately.

As far as the double counting of the program management fee, the MSRB currently has the analytical tools necessary to ensure that the percentage of the program management fee is not double counted. Underwriters could simply continue to alert the MSRB in the notes section of Form G-45, that the program management fee is assessed by the underlying mutual fund in which the investment option invests. The MSRB then would take the note into consideration when it analyzes the underlying fund expenses for an investment option.

ii. Investment Option Closing Date

Four commenters submitted comments about providing information about an investment option closing date. In general, commenters stated that they did not oppose the proposal, and that the information would be easily reportable, but that reporting such information may increase costs to the 529 savings plan, and they were not certain why the information would be meaningful to the MSRB.³⁰ Commenters explained that the increased costs could result because

³⁰ See American Funds letter (“[a]lthough we do not oppose the requirement that 529 plan underwriters report whether an investment option has closed to new investors, we are concerned that the Proposal would require 529 plan underwriters to collect and provide to the MSRB new information”); Ascensus letter (“[w]e have the investment option closing dates and can provide this information if applicable”); ICI letter (“[t]o the extent the MSRB revises Form G-45 to elicit this information in an easy-to-disclose format (*e.g.*, as a “check-the-box” question), it is information that our members could easily report”); and SIFMA letter (“[w]e 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”).

the 529 savings plan would not be able to use the data it submits to other regulators on Form G-45.³¹

The MSRB believes that having information about the investment option closing date would enhance the ability of the MSRB to analyze investment option data in a timely and efficient manner. As commenters acknowledged, underwriters have this information (a 529 savings plan must supplement its program disclosure booklet with this information in a timely manner to comply with its obligations under the federal securities laws). As noted under “Self-Regulatory Organization’s Statement on Burden on Competition,” the MSRB believes that providing an investment option closing date should not materially increase costs for underwriters.

iii. Three-year annualized performance information

As noted under “Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change,” Form G-45 requires that underwriters annually report (i) total returns, including sales charges, (ii) total returns, excluding sales charges, and (iii) benchmark return percent for specified periods, including annualized or annual three-year percent. At the time the MSRB approved Form G-45, the disclosure principles which commenters stated were the industry norm in other rulemakings, recommended that such disclosure be made.³² However, since that time, CSPN has updated the disclosure principles, and CSPN no longer recommends that a 529 savings plan include three-year performance information.³³ Commenters suggested that the MSRB harmonize Form G-45 with the disclosure

³¹ See, e.g., American Funds letter and ICI letter.

³² See note 10.

³³ See note 11.

principles,³⁴ and that continuing to provide this information to the MSRB would not be helpful to investors and would be burdensome to produce.³⁵ In addition, three-year performance information is not required by the SEC for mutual funds.

The MBRB agrees with commenters' suggestion, and the proposed rule change would delete this requirement. Form G-45, even without the three-year performance data, would continue to provide the MSRB with sufficient performance information to assist the MSRB with its analysis of the 529 savings plan and ABLE program industries. Further, the suggestion would result in cost savings for those industries.

iv. Economic Analysis

Commenters confirmed that there is limited burden associated with providing investment option closing date information to the MSRB. As to the program management fee, commenters generally agree that it would be less burdensome to report than the benchmark performance and investment return data elements. While the MSRB agrees with ICI and other commenters³⁶ that expenses may be incurred by underwriters to redesign the current reporting system to report the program management fee separately, the MSRB believes the incurred expenses would likely be one-time only and should not be too burdensome for the industry. In addition, the percentage of the program management fee itself is already disclosed to the SEC, as the underlying mutual fund in which an investment option invests is required to disclose the percentage of the program management fee in the disclosure documents that it submits to the SEC.

³⁴ See ICI letter and SIFMA letter.

³⁵ See SIFMA letter.

³⁶ See the Letters from Ascensus College Savings and American Funds.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the Federal Register or within such longer period of up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve or disapprove such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-MSRB-2018-08 on the subject line.

Paper comments:

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549.

All submissions should refer to File Number SR-MSRB-2018-08. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of

the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549 on official business days between the hours of 10:00 am and 3:00 pm. Copies of the filing also will be available for inspection and copying at the principal office of the MSRB. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-MSRB-2018-08 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, pursuant to delegated authority.³⁷

Eduardo A. Aleman
Assistant Secretary

³⁷ 17 CFR 200.30-3(a)(12).