



MSRB NOTICE 2012-59 (NOVEMBER 23, 2012)

SECOND REQUEST FOR COMMENT ON DRAFT RULE REQUIRING UNDERWRITERS TO SUBMIT 529 COLLEGE SAVINGS PLAN INFORMATION TO THE MSRB

INTRODUCTION

The Municipal Securities Rulemaking Board (“MSRB”) is seeking further comment on draft Rule G-45 (the “draft rule”) and related rule changes to collect information about 529 college savings plans (“529 plans”) from brokers, dealers and municipal securities dealers (“dealers”) that act in the capacity of underwriter of such plans. The MSRB has discussed the concept of 529 plan data collection in two prior notices published in 2011 (the “2011 Notice”)[1] and earlier this year (the “2012 Notice”).[2] Background regarding the purpose of the data collection and its intended use may be found in these notices.

As outlined in the 2012 Notice, draft Rule G-45 would have required underwriters to submit the following information quarterly to the MSRB: basic plan information, total plan assets, total plan contributions, percentage of plan contributions derived from automatic contributions, total plan distributions, fees and expenses of the plan, types of strategies[3] and total assets in each strategy, types of underlying portfolios[4] and total assets in each portfolio, and performance data for each strategy and underlying portfolio. Draft Form G-45 listed the specific data fields that would be collected electronically by the MSRB.

The MSRB received seven comment letters in response to the 2012 Notice.[5] The comments address a variety of topics, including the need for data collection, display of data on the MSRB’s Electronic Municipal Market Access (“EMMA”®) system,[6] confidentiality and ownership of data, use of defined terms in the draft rule, concerns regarding draft Form G-45 and the Form G-45 Manual, voluntary reporting of information, the deadline for and the frequency of reporting, the effective date of the draft rule, the format for submitting data, the nature of required filers, a request for republication of the rule proposal, the perception of incomplete data in the possession of underwriters, the costs versus benefits of the proposal, and the sharing of information with other regulators.

Based on comments in response to the 2012 Notice, the MSRB has prepared a revised draft Rule G-45, on reporting of information on municipal fund securities, and a revised draft Form G-45, which would be submitted electronically on a semi-annual basis by dealers acting as underwriters of 529 plans through EMMA. In addition, underwriters would be required to retain records of such information pursuant to amendments to MSRB Rule G-8, on books and records, and MSRB Rule G-9, on preservation of records.

The primary changes to proposed draft Rule G-45 pertain to the scope of the information to be collected, timing of reporting and the implementation schedule, and definitions in the draft rule. Specifically, the MSRB now proposes semi-annual reporting for Form G-45, except for performance data, and annual reporting for performance data. Also, under the new proposal, underwriters would have 60 days, rather than 30 days, from the end of each reporting period to submit Form G-45 to the MSRB. As for the implementation schedule, in order to give underwriters sufficient time to comply, the MSRB now proposes that the draft rule go into effect one year from the date of approval by the Securities and Exchange Commission (“SEC”).

The MSRB also has revised several definitions to address some of the commenters' concerns regarding industry practice and terminology. Where appropriate, the MSRB proposes to conform the reporting format and some of the definitions to the College Savings Plans Network's Disclosure Principles Statement No. 5 (May 3, 2011) ("Statement No. 5"). Most notably, the MSRB proposes that the reporting format for fee and expense structures and performance data be consistent with Statement No. 5. The MSRB also replaces the terms "strategy" and "portfolio" with "investment option" and "underlying investments" to track the terminology in Statement No. 5.

In order to ease the burden on underwriters, the MSRB eliminates the requirement to submit information on underlying investments and the requirement to submit the percentage of plan contributions derived from automatic contributions, based on comments that some plans do not track such information. Finally, in order to facilitate the submission of information, the MSRB will take steps to pre-populate certain data fields on Form G-45, subsequent to the initial filing by underwriters.

Comments on the rule proposal should be submitted no later than December 21, 2012, and may be submitted in electronic or paper form. [Comments may be submitted electronically by clicking here.](#) Comments submitted in paper form should be sent to Ronald W. Smith, Corporate Secretary, Municipal Securities Rulemaking Board, 1900 Duke Street, Suite 600, Alexandria, VA 22314. All comments will be available for public inspection on the MSRB's website.[7]

Questions about this notice should be directed to Lawrence P. Sandor, Deputy General Counsel, Regulatory Support, at 703-797-6600.

PRINCIPAL COMMENTS TO 2012 NOTICE AND MSRB RESPONSES

1. Support for collection of data: Certain commenters understand the regulatory need for the data collection and support the development of a form to collect the data. They are generally supportive of the MSRB's desire to collect information for regulatory purposes, and understand the MSRB's effort to collect data from primary distributors. Other commenters are supportive of a transparent 529 plan marketplace but believe there are existing authoritative sources for information, such as the CSPN website.

MSRB response: Commenters have suggested previously that existing websites provide necessary information regarding 529 plans. As the MSRB has explained, the CSPN website contains voluntarily submitted information that would not meet the regulatory needs of the MSRB. Similarly, the MSRB could not rely on information submitted voluntarily to one of the for-profit websites. A rule-based, mandatory data collection regime will ensure the reliability and timeliness of the data.

2. Regulatory use and confidentiality: A number of commenters raise concerns about the perceived proprietary nature of the data and the need for confidentiality by the MSRB. Concerns are also raised about displaying the data on the EMMA website and the potential to confuse or mislead investors.

MSRB response: In performing its regulatory responsibilities, the MSRB regularly receives data from dealers that is not made public by the MSRB, as such data is often essential to monitor and oversee activity in the municipal securities market. The information sought by the proposal is not intended for public distribution at this time, and any future proposal to release the information would be conducted in a separate rulemaking proceeding.

3. Implementation period: Commenters suggest an implementation period of at least one year from the date of SEC approval. One commenter requests that the MSRB delay reporting until the passage of an appropriate number of complete reporting periods (such as two for semi-annual

reporting or four for quarterly reporting), which could have the effect of providing up to nearly a one and a half year implementation period depending on each particular plan's reporting cycle.

MSRB response: In response to concerns raised by commenters, the MSRB proposes an effective date that is one year from the date of SEC approval, with the first reports due 60 days after the next semi-annual reporting date following the effective date. This implementation period would provide dealers with sufficient time to develop appropriate policies and procedures, and modify systems and controls to comply with the rule.

4. Reporting deadline: A number of commenters suggest that underwriters be given 60 days from the end of the reporting period to submit some or all of the required information to the MSRB. One commenter agrees with the 30 day deadline for total assets, total contributions, and total distributions but suggests that dealers be given 60 days to gather and report performance data. Another commenter suggests 60 days are needed to gather, review, format and report the information to the MSRB.

MSRB response: The MSRB believes that 30 days are sufficient to gather, format and report the required information to the MSRB. Nevertheless, it proposes an initial deadline of 60 days after each reporting period, with a long-term goal of reducing the deadline to 30 days from the end of the reporting period.

5. Reporting frequency: Commenters suggest that quarterly reporting is neither reasonable nor necessary and that semi-annual reporting is more consistent with SEC regulatory reporting for mutual funds. One commenter points out that the SEC requires mutual funds to report only portfolio holdings quarterly. Additionally, these commenters suggest that dealers be able to elect, upon first filing a Form G-45, whether information will be filed on a calendar year or fiscal year basis.

MSRB response: While the MSRB believes that much of the information sought is available quarterly, it proposes a semi-annual reporting cycle, with a long-term goal of moving to a quarterly reporting cycle. As for the selection of calendar year or fiscal year, it is important to receive, review and compare all of the information at the same time and, therefore, the MSRB is not proposing such an election for filers. The reporting cycle would be based on the calendar year.

6. Format of reporting of fee and expense and performance data: Commenters agree that filers should be able to submit information regarding fees and expenses in the tabular format provided in Statement No. 5, as proposed in the 2012 Notice, but they also suggest that dealers be able to submit the information in alternative formats, as permitted by Statement No. 5. Commenters suggest that the requirement to report performance data be deleted or that the format for reporting be consistent with Statement No. 5.

MSRB response: The MSRB believes that a standardized format for submitting data is necessary and appropriate. Just as with the MSRB's Real-time Trade Reporting System ("RTRS") through which municipal securities transaction information must be submitted in a particular format to the MSRB, it is important that 529 plan data be submitted to the MSRB in a single format, in order to be useful for analysis and comparison purposes. The MSRB appreciates that not every underwriter may collect fee and expense information in the tabular format provided by Statement No. 5, and for that reason proposes a one year implementation period. Similarly, the MSRB proposes that performance data be reported annually in the format described in Statement No. 5, and only pertaining to investment options, not underlying investments. These formatting requirements would be established by the Form G-45 Manual.

7. Required filers: Commenters seek assurance that only primary distributors would be required to submit information to the MSRB, and only to the extent the information is within their possession, custody and control.

MSRB response: The MSRB seeks information only from underwriters of 529 plans. In most instances, the MSRB expects that the primary distributor of a plan would be an underwriter that would submit information to the MSRB in compliance with the draft rule. There may be other underwriters, as defined in SEC Rule 15c2-12(f)(8), that would be obligated to submit information under the draft rule. Also, to the extent an underwriter has delegated duties to a service provider, the MSRB would expect the underwriter to have access to such information. The MSRB seeks a complete data set from each plan, whether submitted by one or more underwriters. If the information required by the draft rule is submitted by the primary distributor of a 529 plan, the MSRB would deem the submission obligation under the draft rule satisfied on behalf of all underwriters of such 529 plan. The MSRB does not, however, seek information from dealers that simply sell interests in 529 plans to customers.

8. Recommendations regarding defined terms in proposed Rule G-45: Commenters make a number of suggestions regarding the defined terms in the draft rule, including the terms asset allocation, asset class, benchmark, contributions, distributions, performance, strategy, portfolio and program manager.

MSRB response: In response to the comments, the MSRB has revised a number of the definitions in the draft rule, as provided below.

9. Recommendations regarding Form G-45: Commenters make a number of suggestions and seek clarification regarding various provisions in draft Form G-45, including the provisions regarding the manner of distribution, total assets, total contributions and distributions, fee and expense structure and investment strategy.

MSRB response: The MSRB has clarified various provisions in draft Form G-45 based on comments to the 2012 Notice, as provided below.

SUMMARY OF DRAFT AMENDMENTS TO MSRB BOOKS AND RECORDS RULES

Draft Rule G-8(g)(iii) would require underwriters to maintain the information described above and detailed in draft Rule G-45 below.

Draft Rule G-9(a)(xiv) would require underwriters to preserve the records maintained pursuant to draft Rule G-8(g)(iii) for a period of not less than six years.

November 23, 2012

* * * * *

TEXT OF DRAFT RULE AND AMENDMENTS^[8]

Rule G-45: Reporting of Information on Municipal Fund Securities

(a) *Form G-45 Reporting Requirements.* Each underwriter of a primary offering of municipal fund securities that are not interests in local government investment pools shall report to the ~~Board~~ MSRB the information relating to such offering required by Form G-45 by no later than 60 days ~~the last day of the month~~ following the end of each semi-annual reporting period ending on June 30 and December 31 ~~calendar quarter~~ and in the manner prescribed in the Form G-45 procedures below and as set forth in the Form G-45 Manual.

(b) *Form G-45 Reporting Procedures.*

(i) All submissions of information required under this rule shall be made by means of Form G-45 submitted in a designated electronic format to the **Board MSRB** in such manner, and including such items of information, as specified herein, in Form G-45 and in the Form G-45 Manual.

(ii) Form G-45 shall be submitted by the underwriter or by any submission agent designated by the underwriter pursuant to the procedures set forth in the Form G-45 Manual. The failure of a submission agent designated by the underwriter to comply with any requirement of this rule shall be considered a failure by such underwriter to so comply.

(c) *Form G-45 Manual.* The Form G-45 Manual is comprised of the specifications for reporting of information required under this rule, the user guide for submitting Form G-45, ~~testing procedures~~, and other information relevant to reporting under this rule. The Form G-45 Manual is located at www.msrb.org and may be updated from time to time with additional guidance or revisions to existing documents.

(d) *Definitions.*

(i) The term “asset class” shall mean **domestic equities, international equities, fixed income products, commodities, insurance products, bank products, cash or cash equivalents or other product types** a group of securities that have the same risk and return characteristics and, therefore, tend to react similarly in different market conditions.

(ii) The term “benchmark” shall mean an established index or **a blended index that combines the benchmarks for each of the underlying mutual funds or other investments held by an investment option during the relevant time period weighted according to the allocations of those underlying mutual funds or other investments and adjusted to reflect any changes in the allocations and the benchmarks during the relevant time period** unmanaged portfolio comprised of established indexes.

(iii) The term “contributions” shall mean all deposits into the plan **or investment option but shall not include reallocations**, ~~strategy or portfolio, whether by existing account owners or new account owners, but shall not include withdrawal of funds from one strategy or portfolio and deposit of the same funds into another strategy or portfolio, such as where an account owner selects a different investment option or funds are moved from one age band to another as beneficiaries approach college age.~~

(iv) The term “designated electronic format” shall mean the format specified in the Form G-45 Manual.

(v) The term “distributions” shall mean the withdrawal of funds from a plan **or investment option**, ~~strategy or portfolio, but shall not include **reallocations** withdrawal of funds from one strategy or portfolio and deposit of the same funds into another strategy or portfolio, such as where an account owner selects a different investment option or funds are moved from one age band to another as beneficiaries approach college age.~~

(vi) The term “manner of distribution” shall mean the manner by which municipal fund securities are sold to the public, such as through a broker, dealer or municipal securities dealer that has a selling agreement with a primary distributor (commonly known as “advisor sold”) or through a website or toll-free telephone number (commonly known as “direct sold”).

(vi) The term “investment option” shall mean an option, as described in a plan disclosure document or supplement thereto, available to account owners in a plan to which funds may be allocated.

(vii) The term “marketing channel” shall mean the manner by which municipal fund securities that are not local government investment pools are sold to the public, such as through a broker, dealer or municipal securities dealer that has a selling agreement with an underwriter (commonly known as “advisor-sold”) or through a website or toll-free telephone number (commonly known as “direct-sold”).

(viii) ~~(vii)~~ The term “performance” shall mean total returns of the investment option, net of fees, expressed as a percentage, net of all generally applicable fees and costs.

(ix) The term “plan” shall mean a college savings plan or program established by a state, or agency or instrumentality of a state, to operate as a Qualified Tuition Program in accordance with Section 529 of the Internal Revenue Code.

~~(viii) The term “portfolio” shall mean the most basic legal entity into which account owner funds are deposited, such as a registered investment company.~~

(x) ~~(ix)~~ The term “program manager” shall mean an entity that enters into a contract directly with the trustee of the plan to provide, directly or indirectly through service providers, investment advisory and management services, administration and accounting functions, and/or marketing and other services related to the day-to-day operation of the plan.

(xi) ~~(x)~~ The term “primary offering” shall mean an offering defined in Securities Exchange Act Rule 15c2-12(f)(7).

(xii) The term “reallocation” shall mean the withdrawal of funds from one investment option and deposit of the same funds into another investment option, such as where an account owner selects a different investment option or funds are moved from one age-band to another as beneficiaries approach college age.

~~(xi) The term “strategy” shall mean a combination of more than one portfolio through which funds of account owners are allocated to achieve a particular investment outcome.~~

(xiii) The term “underlying investment” shall mean a registered investment company, unit investment trust, or other investment product that is a component of an investment option.

(xiv) ~~(xii)~~ The term “underwriter” shall mean a broker, dealer or municipal securities dealer that is an underwriter, as defined in Securities Exchange Act Rule 15c2-12(f)(8), including but not limited to a broker, dealer or municipal securities dealer that acts as a primary distributor of municipal fund securities that are not local government investment pools.

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Rule G-8: Books and Records to be Made by Brokers, Dealers and Municipal Securities Dealers

(a) – (f) No change.

(g) *Transactions in Municipal Fund Securities.*

(i) - (ii) No change.

(iii) *Underwriters of Municipal Fund Securities That Are Not Local Government Investment Pools*. An underwriter (as defined in Rule G-45 ~~(d)(xiv)~~ ~~(e)(xii)~~) shall maintain the information required to be reported on Form G-45.

* * * * *

Rule G-9: Preservation of Records

(a) *Records to be Preserved for Six Years*. Every broker, dealer and municipal securities dealer shall preserve the following records for a period of not less than six years:

(i) - (xiii) No change.

(xiv) the records required to be maintained pursuant to Rule G-8(g)(iii).

(b) – (g) No change.

* * * * *

Form G-45

Each underwriter of a primary offering of municipal fund securities that are not interests in local government investment pools shall report to the Board the following information relating to such offering:

(i) Plan Descriptive Information:

(A) Name of State;

(B) Name of Plan;

(C) Name of underwriter ~~Primary Distributor~~ and contact information, including primary contact name, address, phone number, and email address;

(D) Name of Program Manager and contact information, including address and phone number;

(E) Plan website address, if any; and

(F) Marketing channel ~~Manner of distribution~~.

(ii) Aggregate plan information:

(A) Total assets, as of the end of each semi-annual reporting period ~~quarter~~;

(B) Total contributions for the most recent semi-annual reporting period ~~quarter~~, and ~~the percentage of these contributions derived from automatic contributions~~;

(C) Total distributions for the most recent semi-annual reporting period ~~quarter~~; and

(D) Fee and expense structure for fees and expenses directly or indirectly paid by account owners, as of the end of each semi-annual reporting period ~~quarter~~.

(iii) Information regarding each investment option ~~strategy~~:

(A) Name and type of investment option ~~strategy~~;

(B) Inception date of investment option ~~strategy~~;

- (C) Total assets in each investment option strategy as of the end of the most recent semi-annual reporting period quarter;
- (D) Asset classes in investment option strategy;
- (E) Actual asset Asset class allocation of investment option as of the end of the most recent semi-annual reporting period quarter;
- (F) Name of each underlying investment in each investment option and percentage allocation of each underlying investment in each investment option as of the end of the most recent semi-annual reporting period portfolio in each strategy and percentage allocation of each portfolio in each strategy;
- (G) Performance data for the most recent calendar year quarter;
- (H) Name of benchmark, if any;
- (I) Benchmark performance data for the most recent calendar year quarter;
- (J) Total contributions for the most recent semi-annual reporting period quarter; and
- (K) Total distributions for the most recent semi-annual reporting period quarter.

~~(iv) Information regarding each individual portfolio:~~

- ~~(A) Name and type of portfolio;~~
- ~~(B) Inception date of portfolio;~~
- ~~(C) Total assets in each portfolio as of the end of the most recent quarter;~~
- ~~(D) Asset classes in portfolio;~~
- ~~(E) Asset class allocation as of the end of the most recent quarter;~~
- ~~(F) Performance for the most recent quarter;~~
- ~~(G) Name of benchmark, if any;~~
- ~~(H) Benchmark performance for the most recent quarter;~~
- ~~(I) Total contributions for the most recent quarter; and~~
- ~~(J) Total distributions for the most recent quarter.~~

[1] MSRB Notice 2011-33 (July 19, 2011).

[2] MSRB Notice 2012-40 (August 6, 2012).

[3] An example of a strategy would be an age-based conservative strategy that invests in a variety of equity and fixed income mutual funds, adjusting the ratio to more “conservative” fixed income funds as the beneficiary approaches college age.

[4] An example of a portfolio would be an underlying mutual fund or exchange traded fund.

[5] Letters were submitted by the College Savings Plans Network (“CSPN”) and College Savings Foundation (“CSF”) jointly, College Savings Plans of Maryland (“CSPM”), Financial Research Corporation (“FRC”), Investment Company Institute (“ICI”), Securities Industry and Financial Markets Association (“SIFMA”), Sutherland Asbill & Brennan LLP (“Sutherland”), and the Utah Educational Savings Plan (“UESP”). [Copies of comment letters are available here.](#)

[6] EMMA is a registered trademark of the MSRB.

[7] Comments are posted on the MSRB website without change. Personal identifying information such as name, address, telephone number, or email address, will not be edited from submissions. Therefore, commenters should submit only information that they wish to make available publicly.

[8] Marked to show changes from [MSRB Notice 2012-40 \(August 6, 2012\)](#). Underlining indicates new language; strikethrough denotes deletions.

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Alphabetical List of Comment Letters on MSRB Notice 2012-59 (November 23, 2012)

1. Coalition of Mutual Fund Investors: Letter from Niels Holch, Executive Director, dated December 21, 2012
2. College Savings Foundation: Letter from Roger Michaud, Chairman, dated December 21, 2012
3. College Savings Plans Network: Letter from Hon. Michael L. Fitzgerald, Treasurer of Iowa and Chairman, College Savings Plans Network, dated December 21, 2012
4. College Savings Plans of Maryland: Letter from Joan Marshall, Executive Director, dated December 20, 2012
5. Financial Research Corporation: Letter from Paul Curley, Director of College Savings Research, dated December 17, 2012
6. Investment Company Institute: Letter from Tamara K. Salmon, Senior Associate Counsel, dated December 20, 2012
7. Securities Industry and Financial Markets Association: Letter from David L. Cohen, Managing Director and Associate General Counsel, dated December 21, 2012
8. Utah Educational Savings Plan: Letter from Lynne N. Ward, Executive Director, dated December 19, 2012



December 21, 2012

Ronald W. Smith
Corporate Secretary
Municipal Securities Rulemaking Board
1900 Duke Street, Suite 600
Alexandria, Virginia 22314

VIA ELECTRONIC FILING

Subject: MSRB Notice 2012-59 (November 23, 2012); Second Request for
Comment on Draft Rule Requiring Underwriters to Submit 529 College
Savings Plan Information to the MSRB

Dear Mr. Smith:

The Coalition of Mutual Fund Investors (“CMFI”)¹ is pleased to submit comments to the Municipal Securities Rulemaking Board (“MSRB”), in response to its second request for comment on a draft rule to increase the amount of information available to the MSRB regarding Section 529 college savings plans.

CMFI submitted comments to the MSRB on August 31, 2011, in response to MSRB Notice 2011-33 (July 19, 2011).² In this comment letter, CMFI discussed a new recordkeeping practice—called omnibus accounting or subaccounting—that is being promoted by large broker-dealers in several states to increase the fees that they can charge investors and other parties for services rendered to advisor-sold Section 529 plans.³

¹ The Coalition of Mutual Fund Investors (“CMFI”) is an Internet-based shareholder advocacy organization established to represent the interests of individual mutual fund investors on public policy issues. CMFI is headquartered in Washington, D.C. and its website address is www.investorscoalition.com.

² Letter from Niels Holch, Executive Director, CMFI, to Ronald W. Smith, Corporate Secretary, MSRB, August 31, 2011, available at <http://www.msrb.org/Rules-and-Interpretations/Regulatory-Notices/2011/~media/Files/RFC/2011/2011-33/CMFI.ashx>.

³ In an omnibus accounting structure, broker-dealers become responsible for mutual fund recordkeeping for their customers with 529 accounts. Purchase and redemption requests involving mutual fund shares from all customer accounts within a brokerage firm are consolidated together into one “omnibus” transaction, during each trading day and for each mutual fund. A mutual fund treats the brokerage firm as its shareholder of record and, in most instances, is not provided with any information about the underlying investors and their transactions involving the fund’s shares. Mutual funds and their investment advisers typically pay Rule 12b-1 fees, recordkeeping fees, and revenue-sharing fees to broker-dealers for these distribution and administrative services. These payments are in addition to sales load charges.

Attached to this 2011 comment letter was a CMFI White Paper analyzing the fee practices used to finance omnibus accounting.⁴ This analysis concluded that omnibus accounting is imposing *annual* costs on individual investors of as much as \$2.2 billion in account maintenance charges, more than \$4.18 billion in shareholder servicing payments, and more than \$2.09 billion in revenue-sharing payments.⁵

In January 2012, CMFI issued a new study on the costs and expenses of investing in Section 529 college savings plans.⁶ Using public information, CMFI's study compared the fees and costs of investing in a state 529 plan directly (i.e., a direct-sold plan), with the fees and costs of investing in the same state's 529 plan through a financial intermediary, such as a broker-dealer or a financial advisor (i.e., an advisor-sold plan). This CMFI study concluded that the fees and costs of investing in state advisor-sold plans are, on average, *more than twice as expensive* as the fees and costs of investing in state direct-sold plans.⁷

This comment letter can be accessed through the Studies page of the CMFI website or by clicking on the following link:
<http://www.investorscoalition.com/sites/default/files/Comparison%20of%20Investor%20Fees%20and%20Costs%20in%20Section%20529%20College%20Savings%20Plans%201-30-2012.pdf>.

The issue of omnibus accounts was raised by the Investment Company Institute ("ICI") in its September 2012 comment letter to the MSRB.⁸ In this letter, the ICI expressed concern about the use of omnibus accounts by selling dealers and the ability of an underwriter and/or primary distributor to obtain information from these third parties using the omnibus account structure.

⁴ Coalition of Mutual Fund Investors, CMFI White Paper: The Costs of Providing Shareholder Services to Hidden Mutual Fund Accounts, August 18, 2010, available at <http://www.investorscoalition.com/sites/default/files/CMFIWhitePaperAug18.pdf>.

⁵ *Id.* at 7-11.

⁶ Coalition of Mutual Fund Investors, Comparison of Investor Fees and Costs in Section 529 College Savings Plans, January 30, 2012, available at <http://www.investorscoalition.com/sites/default/files/Comparison%20of%20Investor%20Fees%20and%20Costs%20in%20Section%20529%20College%20Savings%20Plans%201-30-2012.pdf>.

⁷ *Id.* at 17-18. Specifically, CMFI found that advisor-sold plans charged an average of 1.18% in annual asset-based fees, compared to an average of 0.55% in annual asset-based fees charged by direct-sold plans. This results in average annual fees that are 2.15 times more expensive for advisor-sold plans than for direct-sold plans. These fee differences do not take into consideration any initial sales charges or annual account maintenance fees that are typically imposed in many advisor-sold plans. Over a period of 10 years, the cost of a \$10,000 investment in advisor-sold plans averaged \$1,944, compared to an average cost of \$712 in direct-sold plans. This results in an average 10-year cost for advisor-sold plans that is 2.73 times more expensive than the average 10-year cost for direct-sold plans.

⁸ Letter from Tamara K. Salmon, Senior Associate Counsel, Investment Company Institute, to Ronald W. Smith, Corporate Secretary, Municipal Securities Rulemaking Board, at 3-4, September 14, 2012, available at <http://www.msrb.org/RFC/2012-40/ICI.pdf>.

CMFI wants to make it clear to the MSRB that this information could be made available if there was full transparency within omnibus accounts. SEC Rule 22c-2 requires intermediaries to provide investment companies with investor-level identity and transaction information when requested.⁹ And, as CMFI has pointed out in numerous comment letters to the Securities and Exchange Commission (“SEC”), the National Securities Clearing Corporation’s (“NSCC”) Networking service permits investment companies and their financial intermediaries to share account-level information on a same-day basis in a very cost-efficient manner.¹⁰

CMFI believes that regulators should not permit any type of non-transparent recordkeeping practice to evolve within state 529 plans, as current Internal Revenue Service (“IRS”) rules require state plans to maintain records that provide separate accounting for each account owner and designated beneficiary.¹¹ These rules also require state programs to file a Form 1099-G with the IRS for each account owner and beneficiary who receives a taxable distribution.¹² A state program must include account-level information in any Form 1099-G filed, including: (1) the name, address, and taxpayer identification number of the distributee; and (2) the amount of earnings distributed to the distributee in the calendar year.¹³

By definition, the use of omnibus accounting in mutual funds permits broker-dealers to become the primary recordkeepers for their customers. In Section 529 accounts, this will cause a significant diffusion of recordkeeping responsibilities, replacing a framework that relies on a small number of recordkeepers—directly overseen by state 529 agencies—in favor of a new system with potentially numerous broker-dealers assuming primary recordkeeping responsibilities for these Section 529 accounts.

If allowed to occur, a very transparent system for tracking the transactions and earnings of individual Section 529 accounts will be converted into a non-transparent system, with multiple recordkeepers and an unnecessary layer of intermediaries in between individual accounts and those charged with overseeing account-level activities.

CMFI urges the MSRB to evaluate the growing use of omnibus accounts by large broker-dealers in Section 529 college savings plans, as it develops its rules in this area.

⁹ 17 C.F.R. § 270.22c-2(c)(5).

¹⁰ See, e.g., Letter from Niels Holch, Executive Director, Coalition of Mutual Fund Investors, to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, September 10, 2009, available at <http://www.investorscoalition.com/sites/default/files/CMFICommentLettertoElizabethMurphy.pdf>.

¹¹ Prop. Treas. Reg. § 1.529-2(f). See also Section 29 Programs, Notice 2001-81, Internal Revenue Bulletin No. 2001-52, at 618, December 26, 2001 (“Prop. Treas. Reg. § 1.529-2(f) requires a § 529 program to maintain records with respect to the designated beneficiary of each account showing the total investment in the account and any earnings attributable thereto.”) (hereinafter “Notice 2001-18”).

¹² Prop. Treas. Reg. § 1-529-4.

¹³ Prop. Treas. Reg. § 1-529-4(b)(3). See also Notice 2001-18 at 618 (“Prop. Treas. Reg. § 1.529-4 requires a State tuition program to report on Form 1099-G, Certain Government Payments, the earnings portion of any distributions made during the year, together with other information such as the name, address and TIN of the distributee.”).

Letter to Ronald W. Smith

December 21, 2012

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Thank you for your consideration of these views.

Sincerely,

A handwritten signature in black ink that reads "Niels Holch". The signature is written in a cursive style with a large, stylized "N" and "H".

Niels Holch
Executive Director
Coalition of Mutual Fund Investors



December 21, 2012

By Electronic Delivery

Ronald W. Smith, Corporate Secretary
Municipal Securities Rulemaking Board
1900 Duke Street, Suite 600
Alexandria, Virginia 22314

Re: College Savings Foundation's Comments on MSRB Notice 2012-59:
*Second Request for Comment on Draft Rule Requiring Underwriters to Submit
529 College Savings Plan Information to the MSRB*

Dear Mr. Smith:

The College Savings Foundation ("CSF") is a not-for-profit organization with the mission of helping American families achieve their education savings goals by working with public policy makers, media representatives, and financial services industry executives in support of 529 college savings plans ("529 Plans" or "Plans"). CSF serves as a central repository of information about college savings programs and trends and as an expert resource for its members as well as representatives of state and federal government, institutions of higher education and other related organizations and associations. CSF's members include state 529 Plans, investment managers, broker-dealers, other governmental organizations, law firms, accounting and consulting firms, and non-profit agencies that participate in the sponsorship or administration of 529 Plans.

We appreciate the cooperative spirit and conversational manner in which the Municipal Securities Rulemaking Board (the "MSRB") has approached this issue with industry participants and the responsiveness it has shown to some of their concerns. The MSRB's revision of reporting frequency and reporting deadlines, definitional changes, and a lengthier implementation period have addressed a large percentage of the concerns expressed and are very much welcomed by our members. We remain committed to a transparent 529 marketplace and a broad dissemination of relevant information to those interested in 529 Plans. We also take this opportunity to reiterate our strong desire both to work with the MSRB in its efforts to gain a better understanding of the industry and also to continue this dialogue in order to produce an

efficient, fair, and effective data collection process. To that end, we offer the following comments on Notice 2012-59.

I. Inclusion of certain elements of CSPN Disclosure Principles Statement No. 5

CSPF welcomes the adoption of the College Savings Plan Network's ("CSPN") Disclosure Principles Statement No. 5 (the "Disclosure Principles") for certain definitions and the reporting format of fee and expense structures and performance data. If properly incorporated, the Disclosure Principles will make the transition to the reporting process envisioned in Notice 2012-59 less cumbersome and more efficient. As such, we ask that the relevant provisions of the Disclosure Principles be fully incorporated into G-45, Form G-45, and/or the Form's instructions, including Disclosure Principle ¶3(F) and (G). Doing so will permit G-45 to take full advantage of the Disclosure Principles' detailed and flexible method of reporting fee, expense, and performance data for both Advisor-Sold and Direct Sold programs. We would ask the MSRB to continue the discussion on this point by distributing a draft copy of Form G-45 and its instructions for comment prior to their adoption.

In addition, in reporting fees under Form G-45(ii)(D), it should be made clear that a Plan is reporting fees as of the most recent offering document since most Plans issue offering documents once per year and G-45, as currently written, calls for semi-annual reporting.

II. Reporting of Total Assets in Each Investment Option

Under Form G-45(iii)(A), a Plan is to report total assets in each investment option at the end of each semi-annual period. The MSRB has stated that, for the moment, none of the information submitted will be reported publicly but has indicated that, at some point, certain information will be published. CSF again raises its concerns about publicly providing data at the investment option level as it could be misleading to some investors who might draw erroneous conclusions about investment options based primarily or solely on assumptions about an option's popularity. For example, at certain periods, more conservative investment options experience negative flows because accounts are being used to pay college costs; all a potential investor might see would be the negative flows and assume the option was unattractive without understanding why net contributions were negative.

III. Implementation

Comments from members were also received concerning the implementation of G-45 and enforcement of its requirements. These include concerns that the implementation deadline of one year is still too aggressive, with 18 months to two years being suggested as a more reasonable time frame. This concern may have been expressed due to reports that the MSRB may levy fines against those who are not in compliance with G-45's requirements. In addition, there was concern expressed about the uncertainty of when MSRB would shorten G-45's reporting periods from semi-annual to quarterly and reporting deadlines from 60 days to 30.

The 529 industry continues to refine its data collection and reporting efforts and is committed to transparency and data integrity. These efforts will impact the quality of any reporting to the MSRB and should be considered in the timing of any reporting requirements.

Thank you again for providing an opportunity to comment on Notice 2012-59. We hope our comments and our actions as an industry convey our commitment to ensuring that the marketplace is equipped with meaningful, accurate information regarding 529 Plans. Please do not hesitate to contact us with any questions or for more information. You may reach CSF by calling Kathy Hamor at (703) 351-5091.

Sincerely,



Roger Michaud
Chairman,
College Savings Foundation



By Electronic Delivery

December 21, 2012

Ronald W. Smith, Corporate Secretary
Municipal Securities Rulemaking Board
1900 Duke Street, Suite 600
Alexandria, VA 22314

Re: Comments Concerning MSRB Notice 2012-59
Second Request for Comment on Draft Rule Requiring Underwriters to Submit
529 College Savings Plan Information to the MSRB

Dear Mr. Smith:

The College Savings Plans Network (CSPN), on behalf of its members, is pleased to have this opportunity to comment on MSRB Notice 2012-59, *Second Request for Comment on Draft Rule Requiring Underwriters to Submit 529 College Savings Plan Information to the MSRB* issued November 23, 2012 (the "Notice" or "Notice 2012-59"). We appreciate the Municipal Securities Rulemaking Board's (the "MSRB") continuing commitment to assist consumers seeking to invest in 529 College Savings Plans ("529 Plans" or "Plans") and its interest in the collection of market information regarding 529 Plans. We are dedicated to working with the MSRB in its efforts to gain a better understanding of the industry, its participants, and its customers and want to ensure that it receives appropriate, consistent information to assist in its regulatory oversight of 529 plan dealers. In addition, as noted in our responses to both MSRB Notice 2011-33, MSRB Notice 2012-10 and MSRB Notice 2012-40, we fully support a transparent 529 marketplace and broad dissemination of relevant information.

CSPN appreciates the MSRB's efforts to limit the initial set of data to be collected as well as its efforts to work within reasonable time frames in order to provide 529 plan underwriters sufficient time to collect, organize, and deliver the requested data. We believe that most of the issues identified in our comment letter on Notice 2012-40¹ have been resolved. However, we offer a few additional observations and concerns for the MSRB's consideration.²

¹ See joint letter of the College Savings Plans Network and the College Savings Foundation to Ronald W. Smith, Corporate Secretary, MSRB, dated September 14, 2012 commenting on MSRB Notice 2012-40 (the "Joint Letter").

² In addition, as noted in the Joint Letter, CSPN appreciates the MSRB's commitment to keep the data proposed to be collected confidential unless and until a new Request for Comment is issued.

College Savings Plans Network Disclosure Principles Statement No. 5

CSPN agrees with the MSRB's approach of tying key disclosures to the format presented in our College Savings Plans Network Disclosure Principles Statement No. 5 ("Disclosure Principles"). The Disclosure Principles are the result of an extensive review and analysis of the type and format of data available under the operating structure of each separate 529 plan. Accordingly, CSPN firmly believes that the Disclosure Principles provide state-of-the-art guidance for each 529 plan in preparing Offering Materials (as defined in the Disclosure Principles) for dissemination to the public.

In order to achieve uniformity among 529 plan disclosure, the Disclosure Principles have been structured to provide consistency with regard to core plan metrics – namely fees and expenses and performance information. In each case, the Disclosure Principles offer sample tabular formats. However, recognizing the variance in the operational structure of each plan, the Disclosure Principles state:

The description of fees and costs should include a fee and cost table. Suggested fee and cost tables are attached as Exhibit A. *If a Savings Plan includes fees and costs in categories that differ from the categories included in Exhibit A, then a different tabular presentation that is at least as specific as the tables attached as Exhibit A should be used.* State Issuers are encouraged to add an introductory paragraph to such tables, explaining principles followed and assumptions made by the State Issuer in preparing the tables. State Issuers are also encouraged to add explanatory footnotes to the fee and cost tables in order to make such tables clear and understandable. [emphasis added]³

The Disclosure Principles also state that:

The description of the performance of investment options should include a performance table. A suggested performance table for Direct-Sold Savings Plans is attached as Exhibit B. A suggested performance table for Advisor-Sold Savings Plans is attached as Exhibit C. *If a Savings Plan includes performance in categories that differ from the categories included in Exhibit B or Exhibit C, as applicable, then a different tabular presentation that is at least as specific as the suggested tables attached hereto should be used.* In order to make the table clear and understandable, State Issuers are encouraged to add explanatory text or footnotes to each performance table, explaining principles followed and assumptions made by the State Issuer in preparing the table. Finally, State Issuers are encouraged to add additional information that, in their judgment, enhances a

³ College Savings Plans Network Disclosure Principles Statement No. 5 Section 3(F), paragraph 2.

user's understanding of the Direct-Sold or Advisor-Sold Savings Plan's performance, as applicable. [emphasis added]⁴

In each case, the language was carefully written to ensure that all 529 plans, regardless of marketing and distribution methods and operational structure, could provide a standardized presentation of fees and expenses and performance. To that end, CSPN believes it important to build that same flexibility into proposed Form G-45. CSPN suggests that specific language from the Disclosure Principles be added to Rule G-45, Form G-45 and/or the G-45 Manual to allow for flexibility in presenting a "different tabular presentation that is at least as specific" as the sample tables included in the Disclosure Principles. If this flexibility is not provided, CSPN believes that an undue burden will be placed on several 529 plans that generally report this information in an alternative manner.⁵

In addition, CSPN is of the view that specific instructions should be included in Form G-45 and/or the G-45 Manual allowing for each underwriter to include specific explanatory text and/or footnotes as is permitted by the Disclosure Principles. This will enable each underwriter to properly categorize its data, thereby facilitating the MSRB's interest in receiving disclosure that is clear, uniform and formatted consistently with the Disclosure Principles and the plans' Offering Materials.⁶

Rule G-45 Definitions: Marketing Channel

CSPN notes that direct sold 529 plans are distributed and marketed in a variety of ways, online, by telephone, to walk-in customers, etc. Therefore, for clarification purposes, CSPN recommends revision to the definition of "marketing channel" to allow for a broader method by which to encompass all direct sold plans in the definition as follows:

(vii) The term "marketing channel" shall mean the manner by which municipal fund securities that are not local government investment pools are sold to the public, such as through a broker, dealer or municipal securities dealer that has a selling agreement with an underwriter (commonly known as "advisor-sold") or through a website, toll-free telephone number or other direct means (commonly known as "direct-sold").⁷

⁴ Disclosure Principles Section 3(G), Paragraph 2.

⁵ In many cases, 529 plan administrators and program managers have determined that the tabular presentation suggested by the Disclosure Principles requires explanation by footnote and/or additional or different columns in order to provide true comparative information.

⁶ See also comments under *Form G-45 I. Aggregate plan information: Fees and Expenses* below.

⁷ Underlined language represents proposed changes to the definition.

Rule G-45 Definitions: Reallocation

CSPN appreciates the definitional clarifications made to proposed Rule G-45. For clarity, we propose a modification to the definition of “reallocation” as follows:

(xii) The term “reallocation” shall mean the withdrawal of funds from one investment option in a plan and deposit of the same funds into one or more investment options in the same plan, such as where an account owner selects a different investment option or funds are moved from one age-band to another as beneficiaries approach college age.⁸

Rule G-45 Definitions: Underlying Investments

CSPN appreciates the improvements made to the definition of “underlying investments” (originally proposed to be defined as “portfolio”), but believes some additional clarification is needed. The MSRB proposes to define “underlying investments” to mean “a registered investment company, unit investment trust, or other investment product that is a component of an investment option.” However, 529 plans are structured so that the underlying investments are not “components of” the investment option, but separate, stand-alone investments that typically have a separate legal existence. For instance, the mutual funds into which an investment option invests are not part of the 529 plan trust. Without clarification, we believe the definition implies that the underlying investments are part of the 529 plan trust and its investment options. Accordingly, CSPN suggests the following revised definition of underlying investment:

(xiii) the term “underlying investment” shall mean a registered investment company, unit investment trust, or other investment product in which an investment option invests.⁹

Form G-45

I. General

CSPN notes the MSRB’s response to Comment 7 presented in the Notice. We believe that, for clarity, it is important for proposed Rule G-45 to specify that underwriters (as defined in proposed Rule G-45) are only obligated to provide information that is in their possession, custody or control. As currently written, Rule G-45 implies, if not provides, that an underwriter would be obligated to obtain information that is not its own, that of an affiliate, a subcontractor, program manager or state administrator. Specifically, underwriters do not always have access to data provided by a selling dealer to the 529 plan’s record-keeper. In those cases, the underwriter

⁸ Underlined language represents proposed changes to the definition.

⁹ Underlined language represents proposed changes to the definition.

may have no legal right to such information. Without clarification, Rule G-45 would place an undue burden on the underwriter to obtain information from parties with which it has no contractual or other relationships.

II. Aggregate plan information: Fees and Expenses

Most 529 plans update Offering Materials on an annual basis as well as for material disclosure and plan changes. This reflects the fact that most 529 plans do not update and/or change fees and expenses generally more often than annually. Therefore, we believe that it would be more appropriate for Section (ii) (D) of Form G-45 to read as follows:

Fee and expense structure for fees and expenses directly or indirectly paid by account owners in effect as of the end of each semi-annual reporting period.¹⁰

In this regard, it would also be helpful for Rule G-45, the Form G-45 or the G-45 Manual to clarify that a 529 plan underwriter may footnote the fee and expense table presented to indicate the effective date of such fees and expenses.

III. Information regarding each investment option: Performance Data

CSPN notes that the MSRB is proposing to collect performance data for the most recent calendar year as well as benchmark performance data for the most recent calendar year. If the MSRB is proposing to collect only annual data, CSPN suggests the Form G-45 and/or the G-45 Manual specify that such information would not be required from underwriters as part of their mid-calendar year data submission.

* * * * *

Thank you again for providing an opportunity to comment on the Notice. We believe these additional changes to the proposed rule and form will ensure that underwriters satisfy the MSRB's data collection needs without incurring an undue reporting burden. Please do not

¹⁰ Underlined language represents proposed changes to the language of Section (ii)(D) of proposed Rule G-45.

Ronald W. Smith, Corporate Secretary
December 21, 2012
Page 6

hesitate to contact us with any questions or for more information. You may reach CSPN by calling Chris Hunter at (859) 244-8177.

Sincerely,

A handwritten signature in cursive script that reads "Michael L. Fitzgerald". The signature is written in black ink and is positioned below the word "Sincerely,".

Hon. Michael L. Fitzgerald
Treasurer of Iowa and
Chairman, College Savings Plans Network



COLLEGE SAVINGS
PLANS OF MARYLAND

Maryland Prepaid College Trust

December 20, 2012

Ronald W. Smith, Corporate Secretary
Municipal Securities Rulemaking Board
1900 Duke Street, Suite 600
Alexandria, VA 22314

Re: Comments Concerning MSRB Notice 2012-59
Request for Comment on Draft Proposal to Collect 529 College Savings
Plan Data

Dear Mr. Smith:

The College Savings Plans of Maryland (“CSPM”) appreciates the opportunity to respond to the request of the Municipal Securities Rulemaking Board (“MSRB”) for comments on a draft proposal to collect 529 college savings plan data through a new Form G-45 (the “Request for Comment”). In general, CSPM is pleased with the revisions the MSRB incorporated into this most recent Request for Comment and draft Rule G-45 in response to the comment letters it received in response to MSRB Notice 2012-40.

We believe that the frequency and timing of reporting the 529 college savings plan data and the implementation period are appropriate given the time, effort and oversight necessary to collect and prepare accurate and meaningful data for filing with the MSRB. With respect to the statement in the Request for Comment that the MSRB has the long-term goal of reducing the deadline to 30 days from the end of the reporting period, we would like to note again that while 30 days is reasonable with respect to information such as total assets, total contributions and total distributions, a 60-day time frame is more suitable for reporting performance data. To the extent the MSRB pursues a reduction in the filing deadline, we would appreciate the opportunity to submit further comment as to the appropriateness of such change to Rule G-45.

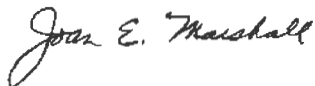
We also believe that MSRB’s adoptions of the terminology and definitions generally used in the 529 plan industry is beneficial and will result in a clearer understanding of the reporting obligations under proposed Rule G-45.

CSPM would, however, like to reiterate that its support of the MSRB’s proposed data collection continues to be premised on CSPM’s understanding from this Request for Comment and the MSRB’s prior notices on 529 plan data collection that the data will be used by the MSRB for regulatory purposes only and will not be displayed on EMMA or otherwise made publicly available. As we have stated previously, to the extent that the MSRB expands the use of the 529 plan data to include public dissemination, CSPM has serious reservations as to the potential harm this could cause to investors who, without

complete disclosure about the 529 plans to which the data relates, could misinterpret such information. As we have stated previously, we have been advised by T. Rowe Price Investment Services, Inc., the underwriter and primary distributor of the Maryland College Investment Plan ("MCIP"), and T. Rowe Price Associates, Inc., the Program Manager of the MCIP (together with T. Rowe Price Investment Services, Inc., "T. Rowe Price"), that certain information may be considered proprietary. Therefore, to the extent the MSRB foresees a desire to provide investors with access to the solicited data points, CSPM may need to withdraw its general support of the MSRB's data collection effort and/or provide additional comments. Further, we feel it is of the utmost importance for the industry to be given ample opportunity to respond and further comment on any such anticipated expansion.

We would like to thank you for providing us with the opportunity to respond to the Request for Comment. Should you require further information or have any questions, please do not hesitate to contact me. We feel that it is imperative that the 529 plan market participants and the MSRB work closely together to develop a workable reporting system that will provide meaningful disclosure for the MSRB's regulatory purposes.

Sincerely,

A handwritten signature in cursive script that reads "Joan E. Marshall".

Joan Marshall
Executive Director

December 17, 2012

Ronald W. Smith, Corporate Secretary
Municipal Securities Rulemaking Board
1900 Duke Street, Suite 600
Alexandria, VA 22314

Re: Comments Concerning MSRB 2012-59 (November 23, 2012)
MSRB Second Request for Comment on Draft Rule Requiring Underwriters to
Submit 529 College Savings Plan Information to the MSRB

Dear Mr. Smith:

Financial Research Corporation (“FRC”) commends the MSRB’s goal to evaluate the increase in amount of information about 529 savings plans available to the MSRB for regulatory purposes only and not for display on EMMA. We appreciate the opportunity to comment.

For more than ten years, Financial Research Corporation has provided the college savings industry with insight, data, and analysis on 529 savings plans, 529 prepaid plans and other college savings related vehicles. FRC’s “529 College Savings Quarterly Data Update”, “529 College Savings Quarterly Qualitative Update” and “529 College Savings Quarterly Fee Analysis” provide in-depth analysis, commentary, and data on college savings (529 college savings plan and 529 prepaid plan) product, marketing and distribution trends. Each issue features a review of top 529 college savings plans in this space, including data on assets, net flows, performance, expenses, and portfolio characteristics. FRC’s recent research studies on college savings plans include “529 Plans: Financial Advisor Support, Selection and Distribution Preferences” (2012), “529 Industry Analysis” (2012), “529 Advisor Perspectives” (2011), “529 Plans and Distribution Analysis” (2011), “Evaluating the College Savings Market Opportunity” (2009), “529 Strategies for Success” (2004), and “529 Plans: An Investment in Your Company’s Future” (2002). The studies contain proprietary industry surveys of advisors, investors and product providers and incorporate FRC’s primary research distilled from interviews with industry executives and state agency public documents.

In MSRB Notice 2012-59, the Municipal Securities Rulemaking Board (“MSRB”) requested public comment on a second draft proposal requiring brokers, dealers, and municipal securities dealers (“dealers”) that act in the capacity of underwriter (commonly known as “primary distributor”) of such plans to provide 529 college savings plan data (“529 Plans”) and to retain such records pursuant to amendments to MSRB Rule G-8, on books and records, and MSRB Rule G-9, on preservation of records.



In observation of the request for comment, FRC provides the following suggestions:

- FRC requests quarterly data from 529 savings plan product providers with a requested response date of approximately 30 days from month-end and publishes quarterly reports within 45 days for assets, total accounts and net flows, and 60 days for descriptive information. Based on FRC's experience in collecting the data, FRC suggests lengthening the required response time requirement from 60 days to 120 days and extending an implementation period from one year to two years given that primary distributors will need to make extensive enhancements in their accounting systems such as changing to a calendar year reporting cycle and collecting new data fields. Also, organizations will need to make on-going maintenance which requires time for quality assurance across all of their systems. Lastly, firms will need time to audit their reports to ensure the sought after reliability as the reporting will be used for regulatory purposes and carry monetary punishments through enforcement per a call on August 9, 2012 with Larry Sandor, Deputy General Counsel of the MSRB.
- FRC provides its 529 College Savings Quarterly Updates in pdf and excel format to the MSRB per request by Larry Sandor, and will continue to do so until notified so as to allow the information to be easily analyzed at no additional cost to the industry. Due to the proposed duplicative data collection effort by the MSRB, the additional oversight gained from MSRB's data collection is not material and would only raise the expenses of 529 plans and college affordability burden of families. Therefore FRC recommends not requiring the data collection at least at the investment option level to reduce the reporting costs. Fee and expense data should also not be required as it is already reported to the MSRB via the disclosure documents in EMMA. Therefore the burden to extract the information from EMMA, sort it, and analyze the data already provided should be carried by the MSRB as opposed to reported again.
- The data collection should only include those 529 plans primarily sold through the "advisor-sold" channel as referred to in MSRB Notice 2012-59 as this is the only channel that the MSRB has authority to directly regulate. If this is not the case, the MSRB should release a new Request for Comment before moving forward.

Thank you for providing the opportunity to respond to the Request for Comment, and please do not hesitate to contact me by phone (617-399-5621) or email (paul.curley@frcnet.com) if you have any questions concerning our comments or require additional information.

Sincerely,

Paul Curley, CFA
Director of College Savings Research
Financial Research Corporation, a Division of Strategic Insight

December 20, 2012

Ronald W. Smith, Corporate Secretary
Municipal Securities Rulemaking Board
1900 Duke Street, Suite 600
Alexandria, VA 22314

Re: MSRB Notice 2012-59;
Proposed Rule and Form G-45

Dear Mr. Smith:

The Investment Company Institute ("ICI") appreciates the opportunity to provide comments to the Municipal Securities Rulemaking Board on the most recent version of the MSRB's proposal to adopt a new Rule G-45.¹ We commend the MSRB for giving thoughtful consideration to the comments it received on the original version of the proposed rule and form and for its willingness to revise them to address commenters' concerns. We also commend the MSRB for seeking public comment on the revised proposal before finalizing it.

The Institute is pleased that the current proposal addresses many of the concerns we raised in our comment letters.² Among other things, these revisions include: reducing the reporting frequency from quarterly to semi-annually;³ providing filers a 60-day lag time to report the semi-annual information; providing filers an implementation period of at least one year; revising operative terms and definitions of terms; and affirming that the information submitted to the MSRB on Form G-45 will remain confidential. In addition, we support the MSRB's plans to enable filers to update, via the

¹ See *Second Request for Comment on Draft Rule Requiring Underwriters to Submit 529 College Savings Plan Information to the MSRB* (MSRB Notice 2012-59), dated November 23, 2012 (the "2012 Notice").

² See letters from Tamara K. Salmon, Senior Associate Counsel, ICI, to Ronald W. Smith, Corporate Secretary, MSRB, dated September 14, 2012 (commenting on MSRB Notice 2012-40 ("ICI Letter")) and August 31, 2011 (commenting on *MSRB Seeks Comment on Proposal to Collect and Disseminate 529 College Savings Plan Data* (July 19, 2011)).

³ In proposing the semi-annual reporting cycle, the Notice states that the MSRB has "a long-term goal of moving to a quarterly reporting cycle." The Institute continues to oppose a more frequent reporting cycle for all the reasons set forth in our previous letter. See ICI Letter at pp. 4-6. We similarly oppose the MSRB's reconsidering at some point in the future public dissemination of the information reported on Form G-45.

MSRB's EMMA system, only that information on Form G-45 that requires updating, rather than requiring filers to submit an entirely new Form for each reporting period.

While most of our major concerns have been addressed, we recommend a few additional changes to the proposal to clarify the requirements of proposed Rule G-45 and Form G-45 and facilitate compliance. In particular, among other things, we recommend that the MSRB:

- Clarify issues relating to underwriters' reporting responsibilities;
- Expressly incorporate relevant provisions from the Disclosure Principles of the College Savings Plan Network into Rule G-45 or the Form G-45 Manual; and
- Make minor revisions to Form G-45 to address issues relating to the plan's descriptive information, aggregate plan information, and investment options.

Each of these recommendations is discussed in more detail below.

UNDERWRITERS' REPORTING RESPONSIBILITIES

The Institute continues to support placing the responsibility to file Form G-45 on a plan's underwriter (primary distributor) as this will ensure that the MSRB receives aggregate information for the plan and avoid the burdens associated with each municipal dealer that sells the plan having to file information on their activities on behalf of the plan. That said, we are concerned with language in the 2012 Notice regarding the scope of the underwriter's responsibilities. The 2012 Notice states that "to the extent an underwriter has delegated duties to a service provider, the MSRB would expect the underwriter to have access to such information. The MSRB seeks a complete data set from each plan, whether submitted by one or more underwriters." The Institute concurs that it is appropriate to require a plan's underwriter to report information it owns or controls even if the underwriter has delegated responsibility for collecting or maintaining the information to another entity. We strongly oppose, however, imposition of an explicit or implicit duty upon an underwriter to obtain information to populate Form G-45 that, in the normal course of business, the underwriter would not create, own, or control. Not only do underwriters have no legal right to this information but such a requirement would have the effect of expanding the MSRB's regulatory reach to persons outside of its lawful jurisdiction.

In addition, we do not oppose requiring the underwriter to include on Form G-45 information that has been provided to it by an entity not within the MSRB's jurisdiction (e.g., the program manager or state partner) and that it, therefore, possesses. We do not, however, support the MSRB requiring underwriters to verify, confirm, or vouch for the accuracy of such information before including it on Form G-45 to the extent such duty is outside the underwriter's legal and contractual obligations to the provider of such information. Both of these issues were discussed in our comment letter on the previous proposal:

... in many instances, the primary distributor will *not* have possession, custody, or control of the required information. The primary distributor of a 529 plan is but one of many service providers to the plan. Depending upon its arrangement with the 529 plan sponsor or the program manager, a primary distributor to a plan may either be charged with selling the plan to investors, entering into sales distribution arrangements on behalf of the plan with retail distributors (i.e., municipal securities dealers) that will sell the plan to investors, or both. The role a primary distributor plays will have a significant impact on the information it possesses about the plan, including the plan's assets, contributions, and distributions. Indeed, those primary distributors that are not directly engaged in selling the plan to retail investors likely have little, if any, information regarding contributions and distributions as those transactions may flow directly from the selling dealer to the plan's recordkeeper without involving the primary distributor.⁴

Contrary to the implication in the 2012 Notice, not all information the MSRB proposes to require on Form G-45 is held by one or more underwriters of the plan. Like a mutual fund, a 529 plan typically has a single underwriter. As noted above, the underwriter's role, in large part, is to enter into selling agreements with dealers and other financial professionals that act as intermediaries between the plan and investors. Many other entities are involved in operating and maintaining the plan – including, among others, the plan's program manager, recordkeeper, investment manager, custodian, and state partner – but none of these would qualify as an "underwriter" for the purposes of Rule G-45. Nor would the plan's underwriter necessarily have access to any of the plan records or information these other entities create or maintain – which may include information required by Form G-45. As a result, it is entirely possible that the plan's underwriter might lack access to some of the information required by the Form. In instances where another entity voluntarily provides such information to the underwriter in the normal course of business, the underwriter likely does not assume liability for verifying the accuracy or completeness of such information.

Accordingly, we reiterate the recommendation from our previous letter that the MSRB clarify in Rule G-45, Form G-45, or the Form G-45 Manual that, to the extent the plan's underwriter (i.e., its primary distributor) does not obtain, in its normal course of business on behalf of the plan, information that is required to be disclosed by Form G-45, Rule G-45, or the Form G-45 Manual, information that is required to be disclosed by Form G-45, Rule G-45, or the Form G-45 Manual should also clarify that: (1) Form G-45 does not require the underwriter to impose upon selling dealers – that are not

⁴ ICI Letter at p. 3.

⁵ We note that the contents of the Manual have not been published for public comment. Given that much of the detail regarding the contents of Form G-45 and underwriters' responsibilities may be set forth in the Manual, rather than in Rule G-45 or Form G-45, we recommend that the MSRB publish such Manual for public comment prior to finalizing its contents. If the MSRB elects not to do so, we strongly advise it to exercise great care in drafting the Manual's provisions so as to avoid imposing upon any underwriter any substantive duty on which the public has not had the opportunity to comment.

underwriters to the plan – a duty to provide the plan's underwriter information required to be reported; and (2) the underwriter is not required to report information in the possession, custody, or control of an another service provider to the plan, including those that are affiliates of the underwriter, if the underwriter does not, in its normal course of business, have possession, custody, or control of the information.

In addition, and as discussed in our previous letter, we again strongly recommend that, in instances where the underwriter possesses information that it did not create or compile (*i.e.*, information voluntarily provided to it by another service provider to the 529 plan), Rule G-45, Form G-45, or the Form G-45 Manual should either expressly: (1) relieve the underwriter from reporting such information; or (2) absolve the underwriter from any regulatory liability associated with including such information on Form G-45.

CONSISTENCY WITH THE CSPN DISCLOSURE PRINCIPLES

Incorporation of the Disclosure Principles in Rule G-45

The 2012 Notice indicates that the MSRB seeks, for the sake of consistency and uniformity, to have underwriters calculate and report their performance and fee and expense information on Form G-45 as recommended in the CSPN's Disclosure Principles, Statement No. 5. While the Institute does not oppose this approach, we strongly recommend that either the Rule, the Form, or the Form G-45 Manual expressly incorporate the substance of the relevant provisions or instructions from the Disclosure Principles. This is important because the Disclosure Principles and related Exhibits provide a good deal of helpful guidance on how information should be calculated or reflected for purposes of disclosing it in the Official Statement. Performance information for age-based investment options, which is discussed below, provides a good example. Without an express reference to the Disclosure Principles in Rule G-45, Form G-45, or the Rule G-45 Manual there likely will be confusion regarding how certain information is to be calculated and reported.

In addition, we note that the Disclosure Principles are written broadly to accommodate the variety of features that different types of 529 plans offer. While we appreciate the MSRB's interest in receiving uniform data from 529 plans, the MSRB should retain the flexibility afforded to plans by the Disclosure Principles. For example, as discussed in more detail below, the Exhibits to the Disclosure Principles present a variety of formats for reporting fee and performance information depending upon the structure and features of the plan. The MSRB should ensure that Rule G-45, Form G-45, and the Form G-45 Manual accommodate the variety of disclosure options the Disclosure Principles provide to plans.

Reporting of Performance Information

Exhibits B and C to the Disclosure Principles are one example of where the Disclosure Principles provide additional detail and flexibility by enabling plans to tailor their performance information based on whether the plan is "direct-sold" [Exhibit B] or "advisor-sold" [Exhibit C]. While both Exhibits B and C require disclosure of the plan's investment options' annualized returns for one, three, five, and ten year periods, as well as since inception, Exhibit C additionally requires that these returns be reported both including and excluding sales charges.

The provisions in the Disclosure Principles relating to performance also provide additional detail regarding age-based investment options:

Age-based investment options include structures in which (i) amounts invested on behalf of a beneficiary remain in a single investment option for the life of the investment (with the underlying investments and allocation percentages changing as the beneficiary ages) or (ii) amounts invested on behalf of a beneficiary are transferred through a progression of different portfolios at periodic intervals as the beneficiary ages. *It is anticipated that performance charts relating to investment options described in clause (ii) will show the historic performance of each portfolio in the progression for the applicable period.* [Emphasis added].⁶

By contrast to the above distinctions made in the Disclosure Principles, Rule G-45 merely defines "performance" in very general terms and Form G-45 (iii)(G) requires disclosure of such "performance." There is nothing in the current version of the Rule or Form that provides a level of detail to underwriters comparable to the Disclosure Principles. To address this omission, while preserving the MSRB's interest in having underwriters uniformly report information, we recommend that Rule G-45, Form G-45, or the Form G-45 Manual expressly include or reference the instructions from Exhibits B and C to the Disclosure Principles.⁷

⁶ See "Instructions to Program," Exhibits B and C, CSPN Disclosure Principles. Related to the issue of an investment option's performance is the performance data for the investment option's benchmark. While the Disclosure Principles are silent with respect to the use of benchmarks, we understand that, for age-based investment options, some plans aggregate single asset benchmarks based on the plan's glide path in order to calculate a composite benchmark for the investment option. We recommend that Rule G-45, Form G-45, and the Rule G-45 Manual accommodate this approach to benchmarking.

⁷ We note that, to the extent the underwriter either does not calculate performance or possess the information to calculate or report performance as required by Form G-45, it would not be required to include such information on Forms G-45.

Reporting of Fee and Expense Information

Similar issues arise under the proposal with respect to the reporting of fee and expense information. Exhibit A to the Disclosure Principles includes four different formats for disclosing 529 plan fee and expense information in the Official Statement. The choice of which format to use depends upon whether the plan is advisor-sold (Fee Structure Charts A, B and C) or direct-sold (Fee Structure Chart D) and, for advisor-sold plans, whether the investment option includes an up-front sales charge (Fee Structure Chart A) or deferred sales charges (Fee Structure Charts B and C).⁸ As with the reporting of performance information, the Disclosure Principles provide additional instructions regarding the reporting of fee and expense information. Section 3.C. of the Disclosure Principles instructs as follows:

... If a Savings Plan includes fees and costs in categories that differ from the categories included in Exhibit A, then a different tabular presentation that is at least as specific as the tables attached as Exhibit A should be used. State Issuers are encouraged to add an introductory paragraph to such tables, explaining principles followed and assumptions made by the State Issuer in preparing the tables. State Issuers are also encouraged to add explanatory footnotes to the fee and cost tables in order to make such tables clear and understandable.

Exhibit A itself includes instructions that provide additional detail regarding the disclosure of fee information (including, where appropriate, the duration of a fee) in footnotes accompanying the charts.

By contrast, the MSRB's proposal does not contain such instructions or detail, raising concerns about (1) the degree of consistency between the information required on Form G-45 and the information currently disclosed pursuant to the Disclosure Principles and (2) whether Rule G-45 will afford underwriters the same ability as the Disclosure Principles to tailor the information they provide based on the specific features of a 529 plan. To ensure accuracy of the information disclosed and consistency in the manner in which it is disclosed between the Disclosure Principles and Form G-45, we recommend that either Rule G-45, Form G-45, or the Form G-45 Manual expressly incorporate the instructions and flexibility of the Disclosure Principles.⁹ In addition, consistent with the guidance provided by the Disclosure Principles, to the extent the plan does not separately compute and disclose

⁸ The charts in Exhibit A of the Disclosure Principles for "Fee Structure B" and "Fee Structure C" differ depending upon the duration of the deferred sales charge.

⁹ At a minimum, the MSRB should clarify that, in calculating performance, the underwriter may exclude sales charges, account maintenance fees, and other fees or charges that are not imposed by the plan on all account holders owning the investment option for which the disclosure is being made.

one or more of the fees listed in the charts in Exhibit A (e.g., a program manager fee), Rule G-45 should not require the plan to artificially create such fee(s) solely for purposes of Form G-45.¹⁰

COMMENTS ON THE CONTENTS OF FORM G-45

Instructions to the Form

As discussed above, we recommend that the instructions to Form G-45 clarify that underwriters are only required to include on Form G-45 any information that they own or control, regardless of where or with whom such information resides or is maintained. In those cases where the underwriter serves as a conduit for reporting information owned, created, or controlled by another service provider to the plan, the instructions should expressly provide that the underwriter is not responsible for ensuring or verifying the accuracy of such information. The instructions should also expressly affirm that an underwriter may omit any information that is not within its ownership, control, or possession in the normal course of business. Finally, the instructions should expressly reference or incorporate the instructions or relevant guidance set forth in CSPN's Disclosure Principles.

Section(i), Plan Descriptive Information

The Institute again recommends that the information regarding a plan's "marketing channel," be captured through a check-the-box format to both facilitate reporting this information and ensure consistency in its reporting from plan to plan.

Section (ii), Aggregate Plan Information

As previously discussed, the Institute strongly recommends that the MSRB incorporate in Rule G-45, Form G-45, or the Form G-45 Manual the instructions from the CSPN Disclosure Principles to ensure consistency between the information the MSRB is seeking and the Disclosure Principles. This is particularly important with respect to reporting performance and fee and expense information. As regards fee and expense information, the Institute also recommends that Form G-45 capture such information in Section (iii) rather than in Section (ii). This approach both provides greater consistency

¹⁰ The charts in Exhibit A to the Disclosure Principles include the following fees associated with each of the plan's investment options: Estimated Fund Underlying Expenses; Program Manager Fee; State Fee; Misc. Fees; Annual Distribution Fee; Total Annual Asset-Based Fees; Sales Charges; and Annual Account Maintenance Fees. As noted above, instructions to Exhibit A recommend that certain information disclosed in the chart be accompanied by explanatory footnotes. Because it is unclear how Form G-45 will address the supplemental information the Disclosure Principles recommends be placed in footnotes, we recommend that Rule G-45, Form G-45, or the Form G-45 Manual expressly incorporate the relevant instructions from the Disclosure Principles.

between Form G-45 and the CSPN Disclosure Principles and enables the underwriter to align the fees and expenses with the particular investment option to which they apply.

Section (iii), Information Regarding Each Investment Option

The Institute supports consolidating the reporting of information regarding a plan's investment options into one section of the Form.¹¹ We again recommend, however, that the Form require information about asset allocations (Items E and F) be reported in ranges rather than precise amounts. As noted in our previous letter, the use of ranges would relieve underwriters of having to revise previously reported information whenever there is a *de minimis* change to such information. The use of ranges should also facilitate the MSRB's analysis of data by making it easier to group the information reported on the Form into pre-assigned ranges.

The Institute appreciates the opportunity to share these comments with the MSRB. We very much appreciate the willingness of the MSRB and its staff to give thoughtful consideration to the comments made by those members of the industry that will be charged with completing and filing Form G-45. We believe that the recommendations set forth above will both facilitate compliance with the requirements of Rule G-45 and accommodate the MSRB's interest in receiving meaningful data in a consistent format from underwriters on an ongoing basis. If you have any questions concerning our comments or require additional information regarding any of our recommendations, please do not hesitate to contact the undersigned by phone (202-326-5825) or email (tamarara@icli.org).

Sincerely,

/s/

Tamara K. Salmon

Senior Associate Counsel

¹¹ As discussed above, we also recommend that the fee and expense information required by Section (ii) of the Form be moved to Section (iii).



December 21, 2012

Ronald W. Smith
Corporate Secretary
Municipal Securities Rulemaking Board
1900 Duke Street
Alexandria, VA 22314

Re: MSRB Notice 2012-59 (November 23, 2012): Second Request for Comment on Draft Rule to Requiring Underwriters to Submit 529 College Savings Plan Information to the MSRB

Dear Mr. Smith:

The Securities Industry and Financial Markets Association (“SIFMA”)¹ appreciates the opportunity to comment on the Municipal Securities Rulemaking Board’s (“MSRB”) Request for Comment on Second Request for Comment on Draft Rule Requiring Underwriters to Submit 529 College Savings Plan Data to the MSRB (the “Proposal”).

I. Executive Summary

SIFMA commends the MSRB for continuing to refine its proposal and seek input from market participants to ensure the Proposal’s costs do not outweigh the benefits as the MSRB seeks to collect comprehensive 529 plan data from dealers to assist the MSRB in fulfilling its regulatory function and understand this market. The Proposal does address many of the concerns raised by SIFMA in its prior comment letters which are incorporated by reference.² Among other

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 See Comment Letter from David L. Cohen, Managing Director and Associate General Counsel, SIFMA, to Ronald W. Smith, MSRB, dated August 26, 2011 regarding MSRB Notice 2011-33, available at <http://www.sifma.org/issues/item.aspx?id=8589935244> . See also, Comment Letter from David L. Cohen, Managing Director and Associate General Counsel, SIFMA, to Ronald W. Smith, MSRB, dated September 14, 2012 regarding MSRB Notice 2012-40, available at <http://www.sifma.org/issues/item.aspx?id=8589940304>.

things, these revisions include: reducing the reporting frequency from quarterly to semiannually; providing filers a 60-day lag time to report the semi-annual information; providing filers an implementation period of at least one year following approval by the U.S. Securities and Exchange Commission (SEC); and revising certain terms and definitions. However, SIFMA continues to have concerns with aspects of the proposal, which SIFMA believes requires further clarification from the MSRB.

II. General Considerations

SIFMA concurs with the views expressed by the Investment Company Institute (ICI) in its comment letter to the MSRB on the Proposal³, including:

- 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 Draft Rule G-45, it would issue a new Request for Comment;
- 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; and
- Third Party distributors of 529 Plans do not have any reporting obligations under Rule G-45.

Additionally,

- Filers should have the *option* of providing information in the format suggested in Exhibit A to CSPN's Disclosure Principles. This *format* should not be the exclusive means by which primary distributors provide fee information. Form G-45 needs to be flexible enough to accommodate whatever format plans utilize to report fee and expense information in an official statement in order to avoid the costs and burdens associated with reformatting this information to be compliant with Exhibit A. Even the CSPN Disclosure Principles do not recommend a "one size fits all" approach. This flexibility is warranted as the MSRB will only be reviewing the data internally.

³ See Comment Letter from, Tamara K. Salmon, Senior Associate Counsel, Investment Company Institute to Ronald W. Smith, MSRB, dated December 20, 2012 regarding MSRB Notice 2012-59.

III. Reporting Entity: Distinguishing Underwriters from Primary Distributors from Third Party Distributors

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"⁴ 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"⁵. 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 underwriters⁶ but that instead have entered into contracts with the plan's underwriter (primary distributor) to sell plan shares to retail investors. We note that the underwriting process for 529 plans is more akin to that of a mutual fund, which typically has but a single underwriter. The underwriter's role is to execute selling agreements with numerous broker dealers, sometimes hundreds, to distribute the fund's shares. This scenario should be contrasted with many traditional municipal securities offerings that, in lieu of a single underwriter, may have various parties involved in the underwriting, such as a senior manager, co-managers, other syndicate members, as well as selling group members. The roles, responsibilities, and legal obligations of each of these persons have no counterpart in the 529 plan world as 529 plans are distributed pursuant to the mutual fund model discussed above, where there is typically but one underwriter for each plan. That underwriter is under contract with the state issuer, the plan, or the plan's program manager to distribute the plan's shares. The underwriter, in turn, enters into sales agreements with retail

⁴ MSRB NOTICE 2012-59

⁵ MSRB Notice 2012-59, Principal Comments to 2012 Notice and MSRB Responses (Response to Item 7).

⁶ 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."

distributors of the fund (*i.e.*, municipal securities dealers) and it is these retail distributors that offer the plan for sale to the retail public.

IV. Filing Format

SIFMA continues to believe that filers should have the option of providing information in the format *suggested* in Exhibit A to CSPN's Disclosure Principles – which suggests a *variety* of disclosure options for plans to follow. This format should not be the exclusive means by which primary distributors provide fee information. Form G-45 needs to be flexible enough to accommodate whatever format plans utilize to report fee and expense information in an official statement in order to avoid the costs and burdens associated with reformatting this information to be compliant with Exhibit A. This flexibility is warranted as the MSRB will only be reviewing the data internally. Alternatively, if the final rule will require fees to be reported in the CSPN format, programs that do not have an explicit program management fee but rather build that fee into the overall expense ratio of the investment option should not be required to artificially determine one solely for purposes of reporting on Form G-45.

V. Form G-45

SIFMA generally supports the revisions to Form G-45. With respect to Item (ii)(D) “fee and expense structure for fees directly or indirectly paid...” it seems more intuitive/practical to have this requirement under Item (iii) for each Investment Option rather than under Item (ii) for Aggregate Plan Information. This approach provides greater consistency between Form G-45 and the CSPN Disclosure Principles and enables the underwriter to align the fees and expenses with the particular investment option to which they apply.

VI. Implementation Period and Frequency of Reporting

Any regulatory scheme takes time to implement properly. Therefore, SIFMA supports the one year time frame, post SEC approval, before the Proposal becomes effective to allow for a sufficient implementation period to develop, test, and implement supervisory policies and procedures, as well as systems and controls. SIFMA also supports the proposed semi-annual reporting schedule following a 60-day lag period.

VII. Conclusion

SIFMA sincerely appreciates this opportunity to comment upon the Proposal. We believe the revisions suggested above will assist the MSRB to capture meaningful information about the 529 College Savings Plan market without imposing undue burdens on underwriters of such municipal fund securities.

Please do not hesitate to contact me with any questions at (212) 313-1265.

Sincerely yours,

A handwritten signature in blue ink that reads "David L. Cohen". The signature is fluid and cursive, with the first name "David" being the most prominent.

David L. Cohen
Managing Director
Associate General Counsel

cc:

Municipal Securities Rulemaking Board
Lynnette Kelly, Executive Director
Gary L. Goldsholle, General Counsel
Lawrence P. Sandor, Deputy General Counsel, Regulatory Support

Dear Mr. Smith:

Re: Comments Concerning MSRB Notice 2012-59, Second Request for Comment on Draft Rule Requiring Underwriters to Submit 529 College Savings Plan Information to the MSRB

Ronald W. Smith, Corporate Secretary
Municipal Securities Rulemaking Board
1900 Duke Street, Suite 600
Alexandria, VA 22314

The Utah Educational Savings Plan (UESP), Utah's official 529 college savings plan, appreciates this opportunity to comment on the MSRB's 529 plan data collection proposal provided in the amended draft Rule G-45 published in MSRB Notice 2012-59, issued November 23, 2012. UESP and others submitted comments in September 2012 about draft Rule G-45 in MSRB Notice 2012-40, issued August 6, 2012. UESP is grateful that the MSRB responded by amending the draft rule, including revising definitions, eliminating the requirement to submit information on underlying investments, and making other changes to the scope of the information to be collected and the timing of reporting.

As noted in our previous comment, UESP generally supports the MSRB's efforts to gather information from 529 plans in order to perform meaningful analysis of individual plans and the 529 plan market as a whole. UESP also understands the MSRB's desire to collect more complete information to protect investors by regulating the entities that underwrite and distribute 529 plans. Because Utah does not engage a municipal securities dealer to serve as a primary distributor for its 529 college savings plan, UESP would not be required to submit information to the MSRB under Rule G-45 as currently proposed, but could elect to voluntarily do so.

The extent of UESP's voluntary participation in 529 plan data collection efforts may depend on how the information will be used or displayed by the MSRB. UESP and other commenters to the initial version of the draft rule in Notice 2012-40 raised concerns about the need for confidentiality of certain information by the MSRB. This concern is founded upon both the proprietary nature of the data itself and our view that displaying certain data on the EMMA website could confuse or mislead 529 plan participants, who should make investment decisions on what is suitable to their individual situations, not what is popular with others.

December 19, 2012

Utah Educational
Savings Plan®



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In Notice 2012-59, the MSRB provided an official response to commenters' concerns about regulatory use and confidentiality: "The information sought by the proposal is not intended for public distribution at this time, and any future proposal to release the information would be conducted in a separate rulemaking proceeding." This statement is similar to commentary provided in the MSRB's two prior 529 data collection notices. Once again, the MSRB's intention is clear, but the text of the new draft rule does not restrict the MSRB's use of data collected under Rule G-45.

Without assurances in the rule that submitted data will be held in confidence and not be released to other parties, UESP has reservations about voluntarily providing proprietary information to the MSRB. UESP respectfully requests that the MSRB further address this confidentiality issue before the proposed draft Rule G-45 is finalized.

UESP is willing to provide additional information or to discuss these comments at your convenience. UESP is also willing to talk with the MSRB staff about voluntarily reporting information for plans that are not directly regulated by the MSRB.

As UESP's Executive Director, I submit this informational response to the Notice. Thank you for allowing me to offer comments on the Notice from UESP's perspective for your consideration.

Sincerely,

Lynne N. Ward, CPA
Executive Director
Utah Educational Savings Plan