MSRB
Municipal Securities Rulemaking Board

Regulatory Notice

2017-17

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Stakeholders
Municipal Securities Dealers

Notice Type
Request for Comment

Comment Deadline
September 21, 2017

Category
Fair Practice

Affected Rules
Rule G-45

Request for Comment on Draft Amendments to MSRB Form G-45 under Rule G-45, on Reporting of Information on Municipal Fund Securities

Overview

The Municipal Securities Rulemaking Board (MSRB) is requesting comment on draft amendments to MSRB Form G-45 under Rule G-45, on reporting of information on municipal fund securities. Form G-45 is applicable to brokers, dealers, and municipal securities dealers (collectively, "dealers") that act as underwriters[1] to 529 college savings plans ("529 plans") or programs established and maintained by a state, or an agency or instrumentality thereof, to implement the Stephen Beck, Jr., Achieving a Better Life Experience Act of 2014[2] ("ABLE programs").[3] The draft

[1] The term "underwriter," as used in Rule G-45 and Form G-45, is defined by Rule 15c2-12(f)(8) under the Securities Exchange Act of 1934, as amended. Rule 15c2-12(f)(8) defines an 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.

[2] The ABLE Act was enacted on December 19, 2014 as part of The Tax Increase Prevention Act of 2014 (Pub. L. No. 113-295).

[3] At this juncture, the MSRB is requesting comment on the draft amendments to Form G-45. The MSRB may or may not determine to proceed beyond requesting comment. Further, as with any potential rulemaking, the MSRB may revise the potential rulemaking that it may file

amendments to Form G-45 would require these underwriters to provide a clarification to an existing data element as well as to provide additional data relating to the investment options offered by the 529 plans and/or ABLE programs they underwrite.

Comments should be submitted no later than September 21, 2017, and may be submitted in electronic or paper form. Comments may be submitted by clicking here. Comments submitted in paper form should be sent to Ronald W. Smith, Corporate Secretary, Municipal Securities Rulemaking Board, 1300 I Street, NW, Suite 1000, Washington, DC 20005. All comments will be available for public inspection on the MSRB's website.[4]

Questions about this notice should be directed to Pamela K. Ellis, Associate General Counsel, at 202-838-1500.

Background

Beginning with the reporting period that ended June 30, 2015, underwriters to 529 plans have been required to report electronically certain information about the 529 plans they underwrite to the MSRB on Form G-45 on a semi-annual, or in the case of performance data, on an annual basis.[5] Similarly, beginning with the reporting period ending June 30, 2018, underwriters to ABLE programs will be required to report electronically certain information about the ABLE programs they underwrite to the MSRB on Form G-45.[6] Form G-45 requires that underwriters to 529 plans and/or ABLE programs report plan descriptive information, aggregate plan information, and investment option information to the MSRB.

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with the Securities and Exchange Commission (SEC) as compared with the draft amendments to Form G-45 set forth in this request for comment. The MSRB may make those revisions in response to comments from market participants or otherwise. In addition, the MSRB may determine to issue guidance to address comments received from market participants or to address the issues raised by this request for comment.

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

[5] Rule G-45 requires that underwriters report the information required by the rule no later than 60 days following the end of each semi-annual reporting period ending on June 30 or December 31.

[6] The MSRB amended Rule G-45 to delay until the reporting period ending June 30, 2018, the date on which dealers that are underwriters to ABLE programs will begin to submit data on Form G-45. *See* MSRB Notice 2016-20 (Aug. 12, 2016).

The MSRB and other regulatory authorities charged by statute with examining dealers for compliance with and enforcing MSRB rules, including the SEC and the Financial Industry Regulatory Authority, Inc. (FINRA), use, and in the case of ABLE programs, will use the data submitted under Rule G-45 to analyze 529 plans and ABLE programs, monitor their growth rate, size and investment options, and compare plans based on fees and costs and performance. Such data enhances the MSRB's understanding of 529 plans and ABLE programs as well as informs the MSRB about the potential risks associated with 529 plans and ABLE programs. Further, the data provides appropriate regulatory authorities with additional information to monitor the market for wrongful conduct.

The most substantial information required by Form G-45 relates to the investment options offered by the 529 plan or ABLE program. An underwriter, under the Investment Option information section of Form G-45, must submit: identifying information about the investment option; the total assets allocated to the investment option as well as the total contributions and distributions from the investment option; the underlying investments made by the investment option; the investment performance of the investment option; the performance of the investment option as compared to its benchmark, if any; and the fees and expenses associated with the investment option.

Draft Amendments to Form G-45

Throughout the four reporting periods during which the MSRB has analyzed data submitted on Form G-45, the MSRB has observed anomalies in the data submitted under Investment Option information. In addition, the MSRB has determined to gather industry and public input as to certain refinements to that data that could be made to more fully assist the MSRB with its analysis of the 529 plans and ABLE programs. Therefore, potentially to enhance its ability to analyze the data submitted under Investment Option information, the MSRB is requesting comment regarding a clarification to an existing data element as well as three additional data elements about Investment Option information. Those data elements concern the program management fee, benchmark return percent, performance data by asset class, and the investment option closing data. A summary of how those data elements would appear in the Appendix to the EMMA Dataport Manual and Specifications for 529 College Savings Plan Data (Form G-45) Submissions (version 1.4) is set forth in Appendix A.

(i) Program management fee

Form G-45, under the Investment Option information subsection "Program Management Fee," requires that an underwriter report the amount of the program management fee assessed by the 529 plan. The program management fee typically is a separately identifiable fee assessed by a 529 plan, but for some 529 plans, this is not the case.

Instead, the program management fee is sometimes included in total fund operating expenses assessed by the underlying mutual fund in which the investment option invests. The underlying mutual fund has a 529 plan share class, and the program management fee is assessed at the fund level for that 529 plan share class.

Because there is a variance among 529 plans in how the program management fee is assessed, it is more difficult for the MSRB to analyze the program management fee from one 529 plan to another. Although the MSRB will not begin to collect data about ABLE programs until the reporting period ending June 30, 2018, the MSRB believes that the need for this data clarification is equally applicable to ABLE programs. To potentially improve the ability for the MSRB to compare and analyze program management fees, the MSRB requests comment on a draft amendment to Form G-45 that would require an underwriter to report the amount of the program management fee separately if such fee is assessed by the underlying mutual fund in which the investment option invests rather than by the 529 plan or ABLE program itself.[7]

(ii) Benchmark return percent

Form G-45, under the Investment Option information subsection "Benchmark Total Return Percent," requires that an underwriter report the benchmark return percent for each investment option offered by the 529 plan for specified periods that include year-to-date, one-year, annualized three-year, and annualized since inception. After having reviewed Form G-45 submissions for two annual reporting periods, the MSRB has observed that when an investment option uses a custom or blended index to benchmark its performance, the resulting performance data may be not as accurate or as easy to compare across investment options as it otherwise could be. This is

[7] The MSRB previously has stated that it would not require underwriters to "calculate and artificially segment fees for purposes of completing Form G-45." *See* Amendment No. 1 to SR-MSRB-2013-04. As data about the program management fee, even if that fee is assessed by the underlying mutual fund, is available and generally disclosed in footnotes to the fee table for the mutual fund, the MSRB does not believe that submitting data about the program management fee would be unduly burdensome for the underwriter.

because Form G-45 does not require an underwriter to identify and provide the weighted value of each of the component parts of a custom or blended index.

To facilitate accuracy and comparability of performance data against the relevant benchmark, the MSRB requests comment on a draft amendment to Form G-45 that would require an underwriter to a 529 plan or an ABLE program to identify and provide annually the weighted value of each index that comprises the benchmark used in determining benchmark total return percent for an investment option. The MSRB believes the data elements would result in a more accurate report of the benchmark performance.

(iii) Performance data by asset class

Form G-45, under the Investment Option information subsection "Asset Class(es)," requires that an underwriter provide the asset class(es) in each investment option as of the most recent semi-annual period. However, there is no corresponding requirement in the Investment Option information subsection "Investment Performance." Because there is no corresponding requirement under "Investment Performance" to provide information about how the asset classes within an investment option are performing, it is more difficult for the MSRB to determine how a particular asset class is performing on an annual basis.

To address this issue, the MSRB requests comment on a draft amendment to Form G-45 that would require an underwriter to a 529 plan or ABLE program to submit data about how each asset class within an investment option is performing for the annual reporting period ending December 31.

(iv) Investment option closing date

From time to time, an investment option offered in a 529 plan may close to new investors but allow current account owners who have allocated account value in an investment option to continue to invest in that "closed" investment option. Alternatively, the 529 plan may close an investment option completely. In either case, the investment option data submitted for that investment option on Form G-45 can be contrary to analytical expectations, and the MSRB may not be able to easily determine why such variance occurred.

To help clarify why there may be a variance in the investment option data, the MSRB requests comment on a draft amendment to Form G-45 that would require an underwriter to a 529 plan or an ABLE program to provide information during each semi-annual reporting period about whether an

investment option was closed to new investors, but open to current account owners, or whether the investment option terminated during the reporting period.

Economic Analysis

1. **The need for the draft amendments to Form G-45 and how the draft amendments to Form G-45 would meet that need.**

The need for the draft amendments to Form G-45 arises from the MSRB's oversight of dealers acting as underwriters to 529 plans and ABLE programs. The MSRB believes that this information is required to ensure effective regulation of dealers that sell interests in and underwriters to 529 plans and ABLE programs. Since the data elements are not disclosed or readily available in certain instances, rulemaking is required to bring the information to the MSRB and other appropriate regulatory authorities, in the manner of other information collected on Form G-45. For example,

1. In certain instances, the program management fee is included in the total fund operating expenses assessed by the underlying mutual fund and thus is not separately disclosed. This makes comparing and analyzing program management fees across plans difficult;

2. In the case of the benchmark return percentage, Form G-45 currently does not require an underwriter to provide the component parts of a custom or blended index and subsequently the weighted value of each benchmark within the index. Consequently, the data can be inaccurate or difficult to compare to the benchmark returns of other investment options;

3. Similarly, there is no corresponding requirement to provide information about how an asset class within an investment option is performing annually. On occasions, asset classes within available investment options do change within a given reporting period, and this can be very difficult to determine retroactively with the presently available data; and

4. From time to time, an investment option may either close to new investors but allow current account owners to continue to invest, or may close to all investors completely. Therefore, investment data submitted for that investment option may not accurately portray the real annualized return.

The draft amendments to Form G-45 would require the clarification of an existing data element and the collection of additional data elements about the Investment Option information to remedy the above concerns. By requiring clarification of an existing data element and the submission of additional data elements, the MSRB could remove the burden on submitters of unnecessary follow-ups and/or referrals for what is in reality accurate albeit incomplete data. For a more thorough discussion of the need for the draft amendments, please refer to the sections above.

2. **Relevant baselines against which the likely economic impact of elements of the draft amendments to Form G-45 can be considered.**

To evaluate the potential impact of the draft amendments to Form G-45, a baseline or baselines must be established as a point of reference in comparison to the expected state with the draft amendments in effect. The economic impact of the draft amendments is generally viewed to be the difference between the baseline and the expected states.

The baseline for the draft amendments to Form G-45 is the existing Rule G-45 and Form G-45, which require submission of certain plan information on a semi-annual, or in the case of performance data, on an annual basis. This analysis considers costs and benefits of the draft amendments above the baseline. Since certain data elements are already required under Rule G-45 and Form G-45, submission of currently-required information on a semi-annual or annual basis is considered part of the baseline for purposes of this request for comment, and only costs associated with supplying the additional data elements are addressed in the discussion of costs and benefits.

3. **Identifying and evaluating reasonable alternative regulatory approaches.**

Presently, there are a couple of alternatives for the MSRB to obtain some of the above information without the draft amendments to Form G-45; however, neither of these alternatives is preferable as the collection of the information for investment option assessment would not be efficient and would likely be incomplete.

For example, some of the information that would be required by the draft amendments to Form G-45 is already submitted to each state treasurer on an annual basis. This is a potential alternative source of the information addressed by this request for comment. However, this information is not uniform and may be incomplete. For regulatory purposes, the MSRB needs a consistent set of uniform, reliable and relevant information about 529 plans and ABLE programs. Since each 529 plan's or ABLE program's information

may or may not be available on a given state's website, comparing across plans becomes difficult or nearly impossible. Another alternative to the draft amendments to Form G-45 is a manual review of information in plan disclosure documents submitted to the MSRB's Electronic Municipal Market Access (EMMA®)[8] website or on 529 plan or ABLE program websites. A manual review of information would be insufficient because some of the information sought by the MSRB may not be disclosed in public documents. In addition, information voluntarily submitted may differ with respect to its reliability and quality.

The MSRB previously considered requiring more frequent submissions (such as monthly or quarterly). The MSRB arrived at annual submission frequency for the performance of investment options and semi-annual submission frequency for other data elements in order to reduce the burden on submitters.

4. Assessing the benefits and costs of the draft amendments to Form G-45

The MSRB policy on economic analysis in rulemaking addresses consideration of the likely costs and benefits of the draft amendments to Form G-45 with the draft amendments fully implemented against the context of the economic baseline.

The MSRB is seeking, as part of this request for comment, additional data or studies relevant to the draft amendments, specifically the cost of calculating the weighted value of each index that comprises the benchmark in determining the benchmark total return, as well as the cost of calculating how each asset class within an investment option is performing on an annual basis. The MSRB is seeking estimates of both the upfront cost and the ongoing cost of performing the calculations. In addition, the MSRB seeks estimates of a potential increase in investment into 529 plans and ABLE programs, if any, due to the benefits of enhanced regulatory disclosure.

Benefits

There would be many on-going benefits associated with collection of the draft data elements. The amendments would better enable the MSRB to carry out its regulatory responsibilities and fulfill its mission to ensure fairness and efficiency in the markets for these 529 plans and ABLE

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

programs.[9] The MSRB would realize substantial benefits from receiving reliable, accurate reporting of the draft data elements as this would enhance the MSRB's ability to effectively and efficiently regulate. This should enhance regulatory oversight of underwriters to 529 plans and ABLE programs and dealers that sell interests in those 529 plans and ABLE programs. The additional information would also assist the MSRB in better understanding the 529 plan and ABLE program markets, including popular investment strategies and portfolios, thereby enabling the MSRB and other regulators to focus their regulatory resources on issues relating to the sale of interests in 529 plans or ABLE programs (such as suitability), and issues concerning the strategies and portfolios with the highest risk and impact on the market. Over time, this additional information would also assist FINRA, which conducts examinations of 529 plan and ABLE program dealers, and other regulators in their examination and enforcement activities.

With the public knowledge of greater regulatory oversight of underwriters to 529 plans and ABLE programs and dealers that sell interests in those plans and programs, there could be an increased interest on the part of new and existing investors in choosing these investment options if investors believe they would be better protected by regulation.

Costs

The economic analysis of the potential costs does not consider the aggregate costs associated with the draft amendments, but instead focuses on the incremental costs attributable to the amendments that exceed the baseline state. The costs associated with the baseline state are, in effect, subtracted from the costs associated with draft amended Form G-45 to isolate the costs attributable to the incremental requirements of the draft amendments.

The draft amendments to Form G-45 would impose certain burdens and costs on the underwriters of 529 plans and ABLE programs. While some of the requested data elements could be easily determined, others may lead underwriters to hire third-party consultants to calculate and validate the data. If this is the case, there may be significant up-front costs associated with hiring vendors to complete the calculations as well as periodic on-going costs associated with updating the numbers on an annual basis. In addition, in-house staff time would be required to make the semi-annual or annual submissions to the MSRB, though the additional incremental time and cost of

[9] As elaborated above, the MSRB is aware that at least some of this information is available at present on the internet through certain providers. However, the MSRB is concerned about the time and effort associated with obtaining this information in a usable format for regulatory purposes.

data submission should be *de minimis* as semi-annual submissions are already required for many other data elements under Rule G-45. The MSRB also believes underwriters may have ready access to some of the newly requested information regarding the 529 plans and ABLE programs, as similar information may be already gathered and produced regularly to their issuer clients. If so, the MSRB believes that it would not be as burdensome as it might have otherwise been for underwriters to submit the newly-required information electronically to the MSRB.

On balance, the MSRB believes that while there would be initial implementation costs of the new data calculation and validation, the aggregate benefits to market participants and regulators associated with the draft amendments to Form G-45 should gradually outweigh the costs over time. Specifically, the MSRB believes the long-term accrued benefits of the draft amendments to Rule G-45, including the anticipated use of the information by the MSRB and other regulators for the protection of investors, outweigh the burden that would be imposed on underwriters.

Effect on Competition, Efficiency and Capital Formation

The MSRB believes that the draft amendments to Form G-45 may improve the operational efficiency of the municipal fund security market by promoting consistency and transparency. At present, the MSRB is unable to quantitatively evaluate the magnitude of efficiency gains or losses, or the impact on capital formation, but believes that the benefits outweigh the costs over the long term. Additionally, in the MSRB's view, the draft amendments to Form G-45 would not result in an undue burden on competition since they would apply to all underwriters of 529 plans and ABLE programs equally.[10]

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

Conclusion

The MSRB believes that these draft amendments to Form G-45 would provide a range of benefits, including reducing regulatory blind spots and facilitating efficient and effective regulatory oversight of relevant

[10] The draft amendments would not impose any burden on non-underwriting dealers that only sell interests in either 529 plans or ABLE programs.

underwriters and dealers. However, the draft amendments to Form G-45 may impose some costs on underwriters and/or require them to revise certain business practices and spend additional resources. The MSRB is soliciting estimates of these costs in this request for comment, but believes that they would be less than the aggregate benefits that would gradually accrue over time.

Request for Comment

The MSRB seeks public comment on the following questions, as well as on the other topics raised in this request. The MSRB particularly welcomes statistical, empirical, and other data from commenters that may support their views and/or support or refute the views, assumptions, or issues raised in this request for comment.

- Would the draft amendments to Form G-45 achieve their purpose of providing more precise information to enhance the MSRB's ability to understand the 529 plan and ABLE program markets?

- Do underwriters analyze or receive analyses of the additional investment option information about benchmark return percent and performance data by asset class discussed in this request for comment?

- Do underwriters report to issuers or receive reports concerning the additional investment option information about performance data by asset class discussed in this request for comment?

- Do sponsors or trustees of 529 plans or ABLE programs, or underwriters thereof, consider any of the additional investment option information concerning the benchmark return percent and the performance data by asset class discussed in this request for comment to be proprietary?

- Is there other information that the MSRB should consider collecting about 529 plans and ABLE programs on Form G-45?

- Are there other relevant baselines or alternatives the MSRB should consider when evaluating the economic impact of the draft amendments to Form G-45?

- If the draft amendments to Form G-45 were adopted, what would be the likely effects on competition, efficiency and capital formation?

- Are there data or studies relevant to the evaluation of the benefits and costs of the draft amendments to Form G-45 that the MSRB should consider?

    a. Are there data relevant to the evaluation of the per firm cost of implementing the draft amendments to Form G-45?

    b. How likely is it that underwriters would use a third-party consultant or vendor to calculate and validate the weighted annual total return of a benchmark index, as well as the annual total return of each asset class?

    c. Is there an estimate of the cost of hiring a third-party consultant to calculate and validate the annual returns?

    d. What is the estimated potential increase in investment into 529 plans and ABLE programs due to the benefits of enhanced regulatory disclosure?

- What specific changes would underwriters need to make to their systems to implement the draft amendments to Form G-45?

August 22, 2017

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Appendix A

	Data Elements	Description
Investment Option Information	Investment Performance Required for the period ending December 31	
	Total Returns Including Sales Charges	Total Returns *by asset class* of the investment option, expressed as a percentage, net of all generally applicable fees and costs, including sales charges, for the most recent calendar year. Specified period*s* include: year-to-date, one-year, annualized three-year, annualized five-year, annualized then -year, annualized since inception.
	Total Returns Excluding Sales Charges	Total Returns *by asset class* of the investment option, expressed as a percentage, net of all generally applicable fees and costs, excluding sales charges, for the most recent calendar year. Specified period*s* include: year-to-date, one-year, annualized three-year, annualized five-year, annualized then -year, annualized since inception.
Investment Option information	Benchmark Performance (if any) Required for annual reporting period ending December 31	
	Benchmark return percent	Total returns of the benchmark for each investment option for the most recent calendar year. *If the benchmark is based on a custom or blended index, list*

	Data Elements	Description
		each index that comprises the benchmark as well as the weighted value of that index to the benchmark. Specified periods include: year-to-date, one-year, annualized three-year, annualized since inception.
	Program Management Fee	Program management fee in effect as of the most recent semi-annual reporting period. Ascribe as contemplated by College Savings Plans Network Disclosure Principles Statement No. *6. If the program management fee is assessed by the 529 share class of the mutual fund underlying the investment option, separately list the amount of the program management fee.*

ALPHABETICAL LIST OF COMMENT LETTERS ON MSRB NOTICE 2017-17 (AUGUST 22, 2017)

1. American Funds Distributors, Inc.: Letter from Maria Manotok, Senior Counsel, dated September 21, 2017

2. Ascensus College Savings: Letter from Sandra Madden, General Counsel, dated September 21, 2017

3. College Savings Plans Network and College Savings Foundation: Letter from Richard J. Polimeni, Chairman, College Savings Foundation, and Young Boozer, Chairman, College Savings Plans Network, dated September 21, 2017

4. Investment Company Institute: Letter from Tamara K. Salmon, Senior Associate Counsel, dated September 21, 2017

5. Securities Industry and Financial Markets Association: Letter from Leslie M. Norwood, Managing Director and Associate General Counsel, and Bernard Canepa, Vice President and Assistant General Counsel, dated September 21, 2017

6. State of West Virginia: Letter from John D. Perdue, State Treasurer, dated September 18, 2017

American Funds Distributors, Inc.
333 South Hope Street
Los Angeles, California 90071-1406

VIA ELECTRONIC DELIVERY

September 21, 2017

Ronald W. Smith, Corporate Secretary
Municipal Securities Rulemaking Board
1300 I Street, NW, Suite 1000
Washington, DC 20005

Re: MSRB Notice 2017-17

Dear Mr. Fields:

American Funds Distributors serves as principal underwriter to the American Funds, one of the oldest and largest mutual fund families in the nation. We are also the distributor and underwriter of CollegeAmerica, a qualified tuition program (as defined in Section 529 of the Internal Revenue Code), sponsored and issued by the Commonwealth of Virginia. CollegeAmerica is the largest 529 college savings plan in the nation and as of June 30, 2017, CollegeAmerica represented approximately 21% of the 529 college savings plan market. We appreciate the opportunity to comment on the proposed revisions to MSRB Form G-45, which would require underwriters to: (1) potentially revise how they report the plan's program management fee; (2) identify and annually report the weighted value of each index that comprises the benchmark that the plan uses to benchmark the total returns for investment options within the plan; (3) submit data about how each asset class within an investment option is performing for the annual reporting period ending December 31; and (4) provide information during each semi-annual reporting period about whether an investment option was open to existing investors but closed to new investors or terminated during the reporting period ("Proposal").

We generally concur with the comments submitted by the Investment Company Institute ("ICI") dated September 21, 2017. Although we do not oppose the requirement that 529 plan underwriters report whether an investment option has closed to new investors, we are concerned that the Proposal would

require 529 plan underwriters to collect and provide to the MSRB new information, which investment advisers and mutual funds are not currently required to produce or provide to the Securities Exchange Commission ("SEC") or to any other regulator. This could result in an increase to program costs because, in completing Form G-45, 529 plans like CollegeAmerica will not be able to rely on the same investment results information used by mutual funds in other regulatory filings or public disclosures. Furthermore, we do not understand how the collection of this unique information would be helpful to the MSRB in the effective regulation of municipal fund securities dealers or enhance its ability to better understand the 529 plan market.

We are particularly concerned by the requirement to produce investment results by asset class in a fund as this is not something that Capital Research and Management Company, as investment adviser to the American Funds, systematically monitors or reports to the SEC today. Importantly, the American Funds are managed pursuant to their investment objectives, as disclosed in their prospectuses, which is how shareholders make their fund selection and investment decisions. Our investment professionals manage the funds in their totality to meet these objectives. Requiring underwriters to disclose and report fund performance broken out by asset class would not only be meaningless, but potentially misleading. Moreover, it could negatively impact how a fund is managed by placing inordinate focus on its individual components rather than the investment objective of the fund.

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Thank you for considering these comments. Please feel free to contact me should you have any questions or wish to discuss our thoughts on the current proposal.

Sincerely,

Maria Manotok
Senior Counsel
(213) 615-0200

ascensus™ | college savings

September 21, 2017

Mr. Ronald W. Smith, Corporate Secretary
Municipal Securities Rule Making Board
1300 I Street NW, Suite 1000
Washington, DC 20005

Re: MSRB Notice 2017-17

Dear Mr. Smith:

Ascensus College Savings Recordkeeping Services, LLC, Ascensus Broker Dealer Services, Inc. and Ascensus Investment Advisors, LLC, collectively ("Ascensus College Savings") is a leading service provider and partner to states and businesses in the 529 industry. Ascensus College Savings administers over $90 billion in assets in 529 qualified tuition programs comprised of 34 plans across 18 states and the District of Columbia. Assets under administration by Ascensus College Savings represent approximately one third of the 529 industry.

We are contacting you to in response to the Municipal Securities Rulemaking Board's ("the Board") request for comments on amendments to MSRB Form G-45 ("Proposals") set forth in MSRB Notice 2017-17. The Proposals would require additional information to be filed by underwriters of 529 plans, as underwriter[1] and 529 college savings plan ("529 Plan") are defined in MSRB Rule G-45, respectively.

In addition to the comments we have provided below, we are writing to provide our full endorsement of the comment letter submitted by the Investment Company Institute ("ICI").

Cost for Filing Form G-45

As a 529 Plan service provider to states and their administrators, we file Form G-45 for twenty-four 529 Plans. Ascensus College Savings spends over 250 hours annually preparing and submitting the filings. These man hours include time spent by our investment, technology and compliance personnel. In addition to the ongoing costs of completing the Form G-45 filing, Ascensus College Savings has spent approximately $67,000 in technology resources to build the infrastructure to upload the G-45 data to the EMMA dataport. The hours we spend do not include the additional time spent by our investment management partners to gather and provide needed data.

[1] Securities and Exchange Act Rule 15c2-12-(f)(8) The term underwriter means 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.

The proposed changes to Form G-45 would significantly increase the complexity and the associated resources needed to complete the Form G-45 filing. In addition, the information requested related to performance and asset classes will require a technology build that will likely cost in excess of $30,000 in technology resources or 300 plus hours of technology work. While we have been able to automate the process to a degree, much of the data is gathered and calculated manually. The on-going manual hours that Ascensus College Savings would need to spend annually in order to comply with the Proposals would likely exceed 300 hours annually not including incremental technology builds for the additional data points.

Accuracy and Access to the Request Information

We believe that due to the lack of access and availability that underwriters and their services providers, such as Ascensus College Savings, have to the data currently required on Form G-45, the data being filed contains information that is inconsistent and/or inaccurate across 529 Plans. This is particularly true of information requested for investment options that are comprised of multiple mutual funds and multiple investment managers.

The additional information that is requested in Proposals 1, 2 and 3 below, is even less likely to be obtainable or accurate, as investment managers have no regulatory obligation to produce such information or provide it to underwriters. The resulting information to be provided in Form G-45 will likely consist of estimated and inconsistent information. A significant amount of the proposed changes would not be able to be automated, and as with any manual process there is greater chance of human error associated with the resulting information. In addition, due to these issues of access and accuracy it will be virtually impossible to obtain, compile and submit such information within the 60 day requirement after each semi-annual period.

Misplaced Regulatory Liability

The additional information requested in the Proposals causes an underwriter to be responsible for the accuracy and completeness of information provided by unrelated third-parties. This subjects underwriters to an unfair regulatory and business risk. Underwriters and their service providers should not be held responsible for the accuracy of information that is outside of their control, and should not be subject to regulatory penalty for errors in data incorrectly reported by investment managers or other third parties. The imposition of additional requirements on "underwriters" to obtain information that is unavailable and outside of their control will exacerbate this problem.

Proposal #1 Program Management Fee

While we appreciate that the MSRB would like a clearer picture of the fees assumed by an individual investing in a 529 plan, we are concerned by the request for additional information regarding program management fees.

Program management fees, depending on the program structure, compensate service providers for a variety of different services, including investment management, recordkeeping and marketing. Program managers that are investment managers receive compensation in part through fees generated by the 529 Plan's investment in the mutual funds that they manage. Program management fees are not always clearly defined, particularly when the 529 Plan structure involves several service providers and/or investment managers. The allocation of fees for "program management" would be difficult to determine, particularly in a multi-fund

portfolio, and, if available, would be viewed as confidential. Detailed compensation information that is not publicly available would likely be viewed as proprietary and not shared with, or provided by the "underwriter".

Even if the requested program management fee information was able to be shared, obtaining this data from investment managers, on behalf of multiple investments on a bi-annual basis would be extremely time consuming and likely impossible within the required 60 day window at year end.

Proposal #2 Benchmark Return Percent

While we can appreciate that the MSRB would like to better understand how the underlying investments are performing against their benchmarks, we think this proposal offers no benefit to investors, and this change would require significant work hours from our compliance and technology staff.

We anticipate that our technology team could spend over 100 hours redesigning and testing the additional functionality for our G-45 filing application, and our compliance and investment teams will spend additional man hours working with our investment partners to obtain and file this information.

Since the information filed on Form G-45 is expected to be accurate, this manual process would add additional risk to our business. Manual processes are time consuming and often come with human error.

Proposal #3 Performance Data by Asset Class

This proposal is the most troublesome of the four proposed changes to Form G-45, since the data doesn't currently exist and no other rule or regulation requires its reporting or creation. Creating this information would require significant man hours from our investment partners and our investment team. As there is no clear understanding across the industry regarding which investments should be included in each asset class, there will likely be inconsistencies across mutual fund companies as to the composition of the assets classes. This could force the individuals calculating this information to guess or estimate the asset class performance.

In addition, many 529 Plans offer portfolios that consist of multiple mutual funds and/or ETFs. The construction of accurate performance information at the portfolio level would be impossible as it would be based on a variety of sources at the underlying investment level. Information provided by investment managers may be inconsistent, and created from estimates of asset allocations. As a result, calculations would be imprecise at best, and very likely inaccurate.

Since we lack the resources to calculate this information in house, we'd be forced to hire additional personnel or a consultant(s). Reporting this information could cause additional technology builds requiring in excess of 100 man hours.

Since the information filed on Form G-45 is expected to be accurate, similar to the concern raised by Proposal #2, this manual process would add additional risk to our business. Manual processes are time consuming and often come with human error.

Proposal #4 Investment Option Closing Date

This proposed change to Form G-45 is the least concerning to us. We have the investment option closing dates and can provide this information if applicable. We would like further information on how to provide this information. We hope this information could be provided in a notes section so the process of providing this information to the MSRB would not require a significant technology build.

Thank you for your consideration of our comments. As a service provider we would welcome the opportunity to discuss with you your objectives in obtaining information relevant to the administration of 529 Plans. We'd be happy to discuss our process with you and provide you more detail on the efforts needed to comply with the G-45 reporting requirements. Please contact me at 617-631-1627 with any questions or for more information.

Sincerely,

Sandra Madden
General Counsel
Ascensus College Savings

September 21, 2017

Ronald W. Smith, Corporate Secretary
Municipal Securities Rulemaking Board
1300 I Street, NW, Suite 1000
Washington, DC 20005

Re: MSRB Notice 2017-17

Dear Mr. Smith:

The College Savings Foundation (CSF) and the College Savings Plans Network (CSPN) are national not-for-profit organizations which work with their members to enhance 529 college savings plans (529 Plans or Plans) and assist American families to plan and save for higher education. CSF and CSPN members include state 529 Plans, program managers, 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 opportunity to comment on the Municipal Securities Rulemaking Board's (MSRB) proposed amendments to MSRB Form G-45. CSF and CSPN have steadfastly been committed to a transparent 529 marketplace and the broad dissemination of relevant information to those interested in 529 Plans. We know that the MSRB shares this vision and is committed to ensuring the same level of transparency both for MSRB regulatory oversight requirements and for the entire municipal securities market. To that end, we do not oppose the added requirement to report whether an investment option offered by a 529 Plan closes to new investors. That information is readily available and published by each 529 Plan as closure occurs.

However, we have serious concerns over the other components of the proposed changes to Form G-45 as set forth in MSRB Notice 2017-17 (Notice) and as such, we endorse the comments and recommendations made in the Investment Company Institute's September 21, 2017 letter regarding the proposed Form G-45 amendments.

In addition, we would like to offer the following industry insights and expertise to the questions posed in the Notice as follows:

1. **Would the draft amendments to Form G-45 achieve their purpose of providing more precise information to enhance the MSRB's ability to understand the 529 plan and ABLE program markets?**

We do not believe that the proposed information would serve the purpose of enhancing the MSRB's ability to understand the 529 Plan market. The responsibility of the investment selection and oversight of the investment options that are offered by 529 Plans is ultimately the responsibility of the state administrator. Underwriters do not have the ability to replace an underlying investment. Therefore, it is unclear how the MSRB believes the additional information would be helpful to its oversight of underwriters, or in understanding the 529 Plan market.

The information already being collected by the Securities and Exchange Commission regarding mutual funds is broadly available. Since mutual funds make up the vast majority of the underlying investments offered by 529 Plans, the requested information regarding underlying investments in 529 Plans appears redundant. In addition, most of the proposed amendments to Form G-45 require information that will be costly to prepare, is currently unavailable, and would be difficult to obtain.

2. **Do underwriters analyze or receive analyses of the additional investment option information about benchmark return percent and performance data by asset class discussed in this request for comment?**

Generally, no. This type of information is not typically tracked. In order to collect such data, underwriters will be required to substantially revise systems and/or negotiate new agreements with service providers who have access to such information.

3. **Do underwriters report to issuers or receive reports concerning the additional investment option information about performance data by asset class discussed in this request for comment?**

Underwriters do not report to issuers or receive reports concerning the additional investment option information about performance data by asset class discussed in the Notice. The information would not provide additional insight to a state administrator in assessing performance. In addition, professional investment consultants specializing in supporting 529 Plan

administrators generally do not analyze this information as they review the effectiveness of investment options offered by their clients.

4. **Do sponsors or trustees of 529 plans or ABLE programs, or underwriters thereof, consider any of the additional investment option information concerning the benchmark return percent and the performance data by asset class discussed in this request for comment to be proprietary?**

Each state administrator (sponsors and trustees) determines individually whether certain performance information is proprietary. The decision is made on a case by case basis. However, we believe that, in many cases, service providers may find this information to be proprietary.

5. **Is there other information that the MSRB should consider collecting about 529 plans and ABLE programs on Form G-45?**

CSPN and CSF would welcome the opportunity to discuss the regulatory concerns of the MSRB in order to better provide insight and meaningful information to address those concerns. While we are not aware of any additional information that would be helpful to the MSRB, CSPN and CSF are jointly committed to ensuring that investors have access to clear and understandable information regarding 529 Plans and that the MSRB have access to information it may need to achieve its regulatory mandate. To that end, we respectfully request the MSRB staff reach out to both organizations in advance of proposed rulemaking in order to create an open dialogue. This will provide the MSRB with insight from leading industry experts and provide regulated entities sufficient time to reallocate resources to prepare for any such rulemaking.

6. **Are there other relevant baselines or alternatives the MSRB should consider when evaluating the economic impact of the draft amendments to Form G-45?**

In evaluating potential rulemaking, we suggest that the MSRB consider the actual cost to the 529 Plan underwriter and, thereby, the resulting cost to the state administrator and, more importantly, investors. The addition of significant reporting obligations by underwriters may result in increased costs which will, in turn, limit a 529 Plan's ability to pass on the benefits of operating efficiencies, including fee reductions, to its participants.

7. If the draft amendments to Form G-45 were adopted, what would be the likely effects on competition, efficiency and capital formation?

We believe the likely effects on competition, efficiency and capital formation will be quite negative. The additional cost to collect and maintain data with limited use places an unnecessary burden on the 529 Plan and will lead to increased inefficiencies.

8. Are there data or studies relevant to the evaluation of the benefits and costs of the draft amendments to Form G-45 that the MSRB should consider?

a. Are there data relevant to the evaluation of the per firm cost of implementing the draft amendments to Form G-45?
b. How likely is it that underwriters would use a third-party consultant or vendor to calculate and validate the weighted annual total return of a benchmark index, as well as the annual total return of each asset class?
c. Is there an estimate of the cost of hiring a third-party consultant to calculate and validate the annual returns?
d. What is the estimated potential increase in investment into 529 plans and ABLE programs due to the benefits of enhanced regulatory disclosure?

We are not aware of data or studies specific to the 529 Plan marketplace that are relevant to the evaluation of the benefits and costs of the draft amendments to Form G-45. However, it is expected that many underwriters may need to hire third party vendors to complete a technology build that is expected to be excessive in relation to the benefit to the MSRB of the information requested.

Based upon the diverse nature of 529 Plans, it is difficult to generalize as to the cost to comply with these proposed amendments. The cost will fluctuate based on the internal resources available to the underwriter, the number of investment options and type of investment options offered by a particular 529 Plan. The cost to comply with the proposed amendments will also depend upon the cooperation and goodwill of service providers that are not required to provide this information. In addition, the proposed amendments may have the unfortunate impact of making multi-fund target date type products more difficult to administer and less likely to be recommended by underwriters to state administrators as possibly investment options for a 529 Plan.

We believe that the additional information requested by the MSRB will have no impact on investors' consideration or review of or investment in 529 Plans.

9. What specific changes would underwriters need to make to their systems to implement the draft amendments to Form G-45?

We are hopeful that the MSRB will reach out to Form G-45 filers to conduct additional research into the systems costs involved in preparing the data requested by the proposed amendments to Form G-45.

* *

We again appreciate the opportunity to comment on this matter and ask that you please do not hesitate to call us with any questions or for more information. You may reach CSF by calling Kathy Hamor at (703) 224-8083 and CSPN by calling Chris Hunter at (859) 721-2181.

Sincerely,

Chairman
College Savings Foundation

Chairman
College Savings Plans Network

INVESTMENT COMPANY INSTITUTE

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September 21, 2017

Ronald W. Smith, Corporate Secretary
Municipal Securities Rulemaking Board
1300 I Street, NW, Suite 1000
Washington, DC 20005

Re: MSRB Notice 2017-17

Dear Mr. Smith:

The Investment Company Institute[1] is writing in response to the Municipal Securities Rulemaking Board's request for comment on amendments to MSRB Form G-45.[2] The MSRB is considering revising how a 529 plan underwriter reports the plan's program management fee on Form G-45. It is also considering revising the form to require underwriters to: (1) identify and annually report the weighted value of each index that comprises the benchmark that the plan uses to benchmark the total returns for investment options within the plan; (2) submit data about how each asset class within an investment option is performing for the annual reporting period ending December 31; and (3) provide information during each semi-annual reporting period about whether an investment option was open to existing investors but closed to new investors or terminated during the reporting period.

The Institute does not oppose requiring underwriters to report whether an investment option has closed to new investors. We do, however, have serious concerns with the remainder of the proposal, which will be costly and burdensome to implement. Moreover,

[1] The Investment Company Institute (ICI) is the leading association representing regulated funds globally, including mutual funds, exchange-traded funds (ETFs), closed-end funds, and unit investment trusts (UITs) in the United States, and similar funds offered to investors in jurisdictions worldwide. ICI seeks to encourage adherence to high ethical standards, promote public understanding, and otherwise advance the interests of funds, their shareholders, directors, and advisers. ICI's members manage total assets of $20.4 trillion in the United States, serving more than 95 million US shareholders.

[2] *See Request for Comment on Draft Amendments to MSRB Form G-45 under Rule G-45, on Reporting of Information on Municipal Fund Securities,* MSRB Notice No. 2017-17 (August 22, 2017) (the "MSRB Notice").

the additional information the MSRB seeks would not appear to be within the scope of an underwriter's responsibilities; nor would it appear to facilitate the MSRB's regulation of municipal securities dealers that offer and sell 529 plans. In addition to commenting on the MSRB's proposed revisions, the Institute recommends that the MSRB eliminate 3-year performance information from Form G-45. Each of these issues is discussed in detail below following a review of, and comments on the MSRB's economic analysis of the proposal.

I. THE MSRB'S DISCUSSION OF THE PROPOSED REVISIONS

A. MSRB Form G-45

Since mid-2015, the MSRB has required underwriters to 529 plans to file Form G-45. Form G-45 requires the disclosure of a variety of information concerning the plan including, but not limited to, investment options, fees, performance, contributions, redemptions, and assets under management. According to the MSRB Notice, the SEC and FINRA "use the data submitted under Rule G-45 to analyze 529 plans . . ., monitor their growth rate, size and investment options, and compare plans based on fees and costs and performance." This data also "enhances the MSRB's understanding of 529 plans . . . as well as informs the MSRB about the potential risks associated with 529 plans and . . . [it] provides appropriate regulatory authorities with additional information to monitor the market for wrongful conduct."[3]

B. The Benefits of the Proposal According to the MSRB's Economic Analysis

According to the MSRB's Economic Analysis of its proposal, the MSRB believes that revising Form G-45 is necessary "to ensure effective regulation of dealers that sell interests in and underwriters to 529 plans."[4] Such revisions would enable the MSRB to "remove the burdens on submitters of unnecessary follow-ups and/or referrals for what is in reality accurate albeit incomplete data."[5] The benefits of the revisions would be "many" and "on-going." These include that information on the form would: (1) "better enable the MSRB to carry out its regulatory responsibilities and fulfill its mission to ensure fairness and efficiency in the markets" for 529 plans; (2) "enhance regulatory oversight of underwriters to 529 plans . . . and dealers that sell interests in them;" (3) "assist the MSRB in better understanding the 529 plan . . . market, including popular investment strategies and portfolios, thereby enabling the MSRB and other regulators to focus their regulatory

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[3] MSRB Notice at p. 3.

[4] MSRB Notice at p. 6. Because Form G-45 must be filed twice a year, there have been 4 reporting periods since the MSRB adopted Rule G-45. It is on the basis of these four filings that the MSRB had determined it is necessary to revise the form.

[5] MSRB Notice at p. 7.

resource on issues relating to the sale of interests in 529 plans . . (such as suitability[6]), and issues concerning the strategies and portfolios with the highest risks and impact on the market." Finally:

> With the public knowledge of greater regulatory oversight of underwriters to 529 plans. . and dealers that sell interests in those plans . . ., there could be an increased interest on the part of new and existing investors in choosing these investment options if investors believe they would be better protected by regulation.[7]

C. The Costs of the Proposal According to the MSRB's Economic Analysis

With respect to the costs associated with the revisions, the MSRB Notice acknowledges that they "would impose certain burdens and costs" on 529 plan underwriters, some of which "may lead underwriters to hire third-party consultants to calculate and validate the data," which could result in "significant up-front costs associated with hiring vendors to complete the calculations as well as periodic on-going costs associated with updating the numbers on an annual basis. In addition, in-house staff time would be required to make the semi-annual or annual submission to the MSRB, though the incremental time and cost of data should be *de minimis*." In considering these costs against the proposal's benefits, "the MSRB believes the long-term accrued benefits of the [revisions], including the anticipated use of the information by the MSRB and other regulators for the protection of investors outweigh the burdens that would be imposed on underwriters."[8] Also, while the proposed revisions "would provide a range of benefits, including reducing regulatory blind spots and facilitating efficient and effective regulatory oversight of relevant underwriters and dealers," they "may impose some costs on underwriters and/or require them to revise certain business practices and spend additional resources."[9]

D. The Institute's Comments on the MSRB's Economic Analysis

1. The Proposal Would Not Benefit Investors or Regulation of the Industry

The MSRB's interest in revising the information reported on Form G-45 must be read in the context of its authority under the Securities Exchange Act of 1934 and its mission to protect

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[6] With respect to "suitability," we note that suitability only comes into play when a municipal securities dealer makes a recommendation to a customer regarding investing in a particular 529 plan or investment. The revised data the MSRB seeks through Form G-45 could not be used to assess the suitability of a dealer's recommendation to a customer. Nor would it be relevant to any other issues relating to suitability.

[7] MSRB Notice at pp. 8-9.

[8] MSRB Notice at p. 10.

[9] MSRB Notice at pp. 10-11.

investors by promoting a fair and efficient market. As noted in a letter the Institute filed last month with the Securities and Exchange Commission in response to an MSRB proposal to impose a fee on 529 plan underwriters, "[g]enerally speaking, the MSRB's authority over the 529 plan industry is limited to drafting rules to govern the offer and sale of 529 plans by municipal securities dealers."[10] These rules, in large part, impose professional qualifications and fair dealing requirements on municipal securities dealers. Considering the MSRB's proposal in light of the MSB's mission and its rulemaking authority, it seems that, even if the revisions to Form G-45 would, in fact, produce the benefits described above, *none of them relate to the MSRB's mission or its regulation of the conduct of municipal securities dealers selling 529 plans*.[11] The fact that data submitted on Form G-45 indicates that some plans may grow faster than others; some investment options may be more popular than others; some plans may have different fees or costs than others; some plans may have better performance than others; some plans may have riskier investment options than others; and some may have more popular "strategies" or "portfolios" than others would not appear to provide the MSRB a basis for regulating the municipal securities dealers selling such plans. As such, we do not believe the benefits the MSRB expects to flow from revising Form G-45 can be justified under the MSRB's regulatory authority or its expected use of the data. This is particularly true when one considers the "significant" costs of the proposal.

As noted above, the MSRB is interested in revising Form G-45 "to enhance its ability to analyze the data" submitted on the form to better understand the 529 plan marketplace. However, under the best of circumstances, the MSRB will never be able to rely on the data from Form G-45 to inform it about the 529 plan marketplace. This is because only a portion of the 529 plan marketplace – advisor-sold plans – are required to file the form, so it only represents that segment of the market. Moreover, assets in advisor-sold plans account for less than half of 529 plan assets.[12] If the MSRB ever published information on the 529 plan marketplace based on the data it analyzed from Form G-45, such analysis

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[10] *See* Letter from the undersigned to Mr. Brent J. Fields, Secretary, U.S. Securities Exchange Commission, dated August 25, 2017 (the "Institute's August 2017 comment letter"). The Institute's letter was in response to the SEC's request for comments on the MSRB's proposal to revise MSRB Rule A-13 to impose an annual fee on underwriters of 529 plans. The Institute's letter opposed such fee as inconsistent with the MSRB's rulemaking authority under Section 15B(b)(2)(C) of the Exchange Act.

[11] With respect to 529 plans, the MSRB's authority is limited to regulating the offer or sale of 529 plans by municipal securities dealers. If a municipal securities dealer is not involved in the offer or sale of a 529 plan, the MSRB has no jurisdiction over such plan or its sale. Accordingly, the MSRB lacks the authority to regulate so-called "direct-sold" plans. The MSRB Brochure, *529 Plans: Investor's Guide to 529 College Savings Plans* explains how a direct-sold plan differs from an advisor-sold plan. As used in this letter, the term "direct-sold plans" refers to those plans that are not required to file Form G-45.

[12] *See What's New with 529 Plans,* Morningstar (May 25, 2017) at Exhibit 5. As noted in the text accompanying this exhibit, "Advisor-sold plans extended their streak of losing market share to direct-sold plans in 2016. Six years ago, advisor-sold plans accounted for about 51% of the industry's assets, but that figure has steadily declined and now stands at 45%."

would be incomplete and not representative of the entirety of the marketplace. And, we expect persons interested in an analysis of the 529 plan marketplace would be interested in the totality of the market, not merely a segment of it. Therefore, they likely would be interested in comparing the two market segments, direct-sold plans and advisor sold plans.[13] With its limited authority over the 529 plan marketplace, the MSRB would face considerable challenges in trying to become a source of information on the entire 529 plan marketplace.

In other words, the Institute does not believe that the additional data the MSRB seeks from advisor-sold plans through the proposal would advance the MSRB's mission of protecting investors or promoting a fair or efficient marketplace. Nor would data relating to *a plan's* growth, fees, costs, performance, risks, strategies, or portfolios appear to assist the MSRB in drafting rules regulating the conduct of municipal securities dealers.[14] Moreover, because such data only relates to advisor-sold plans, it also would not enable the MSRB to understand better the totality of the 529 plan marketplace or become a source of meaningful information about such marketplace.

2. The Proposal Would Not Appear Necessary for FINRA or the SEC

In support of the revisions, the MSRB also cites the fact that the proposed changes would enable the SEC and FINRA to use the data to analyze, monitor, and compare plans. There is no indication in the MSRB Notice that either the SEC or FINRA have requested that the MSRB revise Form G-45 as proposed. Furthermore, we note that the SEC efficiently and effectively regulates the entirety of the U.S. investment company (*i.e.,* mutual fund) industry,[15] which has assets well in excess of those held by 529 plans,[16] without requiring mutual funds to disclose or provide to the SEC the same type of information the MSRB is proposing to require of 529 plan underwriters.[17] This is significant because investment companies and 529 plans share many of the same characteristics, which would appear to

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[13] Such analysis is already available in the marketplace. *See, e.g., id.*

[14] We are uncertain as to how the MSRB could use the new data to "monitor the market for wrongful conduct."

[15] Unlike the MSRB, which regulates only the municipal dealers selling 529 plans, the SEC regulates, among other participants in the mutual fund industry, mutual funds, fund advisers, fund underwriters, and broker-dealers selling fund shares.

[16] According to the MSRB, 529 plans hold $266 billion in assets under management. *See* Form 19b-4 filed by the MSRB with the Commission on July 19, 2017, SEC File No. SR-MSRB-2017-05 (the "MSRB Submission") at p. 12. Mutual funds hold over $20 trillion in assets under management.

[17] Nor does FINRA, which regulates broker-dealers selling mutual funds, including the suitability of recommendations made by a broker-dealer, require such broker-dealers to disclose the type of information that the MSRB seeks from 529 plan underwriters.

warrant consistent or similar regulatory oversight as the MSRB recognized when it adopted Rule D-12 in 2000.[18]

3. Imposing New Duties on Plan Underwriters is Misplaced

The duties the MSRB proposes to impose on a plan's underwriter seem misplaced. As noted in the Institute's August 2017 comment letter, the role of a 529 plan underwriter:

> typically involves executing sales agreements with retail broker-dealers and other financial intermediaries that agree to promote the plan to their clients. Under these agreements, the underwriter provides support services (including marketing materials) to the municipal securities dealers distributing the plan and oversees their activities relating to it.[19]

In other words, the enhanced performance information and calculations the MSRB proposes to require of 529 plan underwriters likely is not information they can create in their role as underwriter. Instead, producing such information likely would fall to a plan's sponsor, manager, or investment adviser. The MSRB, however, lacks authority to require such entities to produce this information because its jurisdiction is limited to regulating municipal securities dealers. Notwithstanding this, the current proposal appears to attempt to leverage the MSRB's jurisdiction over municipal securities dealers to impose requirements on persons outside of its jurisdiction.[20] We believe this is inappropriate. A 529 plan underwriter should not have a duty to report information that it does not create, possess, or maintain in its normal course of business; nor should the MSRB impose upon a plan underwriter obligations that are wholly outside of it legal obligations to the plan in its role as the plan's underwriter.

4. The Unique Requirements Will Increase Plan Costs

As noted above, the MSRB's proposal will create a disparity between the regulatory requirements the SEC imposes on mutual funds and those that MSRB Form G-45 will impose directly on plan underwriters and indirectly on 529 plans. This is because the MSRB is proposing to require 529 plans to produce and plan underwriters to provide to the MSRB information that they are not required to produce or provide to the SEC, or to any other regulator. Significantly, most, if not all, 529 plans include mutual funds as an

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[18] MSRB Rule D-12 defines a municipal fund security as a security that "but for the application of Section 2(b) of the Investment Company Act of 1940, would constitute an investment company within the meaning of Section 3 of the Investment Company Act of 1940."

[19] Letter at p. 8.

[20] This is because the plan's underwriter would be dependent upon such persons to create the information the MSRB proposes to add to Form G-45.

investment option. Because mutual funds are not required to produce the information the MSRB is seeking, this is not information that the funds will be able to provide to those 529 plans that include funds as an investment option. This means that the plan, directly or indirectly, will have to incur the costs of complying with the MSRB's interest in receiving additional information about the plan.[21] As a result, assuming that plans are willing to incur the expense to accommodate the MSRB, this disparate requirement is likely to increase the plans' costs because, in completing Form G-45, the 529 plan and its underwriter will not be able to use or leverage the performance and benchmarking information relating to the mutual funds in a plan's investment options.[22] *Any* increase in costs is of concern to plans because, as noted in the Institute's August 2017 comment letter:

> 529 plans are particularly sensitive to *any* increase in their cost of doing business. This is due in large part to the plans' low margins and the fact that an increase in any fee is likely to adversely impact the 529 plan marketplace. These low profit margins are the result of several factors including, among others, the large marketing costs associated with these plans (which the plan's underwriter typically pays), the low minimum contributions to 529 plan accounts, and the lack of automation in this space. [23]

The above expressed concerns with the fee sensitivities of 529 plans apply equally to this proposed regulatory requirement, which would increase a 529 plan's costs. And, as recognized in the MSRB Notice, the MSRB's proposal "would impose certain burdens and costs" on "529 plan underwriters," some of which may be "significant."

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[21] As noted above, however, the enhanced information the MSRB is interested in receiving would not appear necessary to fulfill its mission of protecting investors through a fair and efficient marketplace.

[22] Importantly, because only advisor-sold plans must file Form G-45, the costs associated with the proposal will only impact such plans, not the direct-sold plans with which they compete.

[23] While many financial services firms were eager to enter this market in its infancy when it seemed full of potential, for some time now and with more experience in this space, financial services firms have been reviewing the economics, growth expectations, and costs of the 529 plan business more carefully. As early as 2002, Florida decided to administer its plan in-house after it was unable to attract a service provider to handle the plan. This situation is not likely to improve. Earlier this year, Sallie Mae published its 10th annual report examining how Americans pay for college. This report found, in part, that:

> [U]se of 529 college savings plans seems to have plateaued. In the first year of this study, 529 plans, instituted in 1996, were still relatively new. That year 6 percent of families reported using funds from a 529 plan to pay for college. The usage rate increased over time as more families signed up for these plans. ***The growth, however, has stagnated. The peak usage rate, 17 percent, was in 2012-2013.*** Parents of this year's freshmen have had the opportunity to enroll in a 529 plan since their child was born, yet only 13 percent of families reported using funds from a 529 plan to pay for college this year. [Emphasis added.]

See 2017 How America Pays for College, Sallie Mae's 10th national study of college students and parents, Sallie Mae (2017).

While the MSRB believes that the 529 plan underwriters will bear these costs, ultimately the *plan* and its investors will bear them.

Indeed, to the extent obtaining the information and designing the systems necessary to report the information also imposes costs on the plan's underwriter, the underwriter is likely to treat such costs as a cost of doing business that is passed back to the plan and its investors.[24] As noted in the Institute's August 2017 comment letter,

> [T]he underwriter to a 529 plan enters into an agreement with the issuer and, pursuant to this agreement, the underwriter agrees to provide underwriting services to the plan in return for compensation . . .. In negotiating the fees that will be paid under these agreements, *the underwriter's ongoing costs are a material consideration.* It is indisputable that an underwriter's costs will increase as a result of this new annual underwriting fee. It is also indisputable that this new fee will be a factor for the underwriter to consider when calculating its costs of doing business and determining the compensation it must receive from the issuer to cover its expenses.

Although this comment related to the MSRB's new underwriting fee, it holds true for any new MSRB regulatory requirement that will increase the underwriter's costs. Moreover, as with the underwriting fee, the costs associated with the MSRB's proposal only will impact advisor-sold plans – not direct-sold plans. This would be another instance in which an MSRB rule puts advisor-sold plans at yet another competitive disadvantage to direct-sold plans.[25] In sum, we are concerned with the impact these "significant" costs will have on advisor-sold plans, the competitive burdens they will impose on such plans vis-à-vis direct-sold plans, and the increased costs they will impose on the 529 plan investors who ultimately pay them.

5. The Proposal Will Not Incentivize Investors to Purchase Plans

We do not agree with the MSRB's conclusion that the proposed revisions to Form G-45 will result in "increased interest on the part of new and existing investors" in those advisor-sold plans that are required to file the form. We are aware of no evidence, and the MSRB Notice provides none, to support its conclusion regarding a nexus between 529 plan investors (and potential investors) and the MSRB's regulation of municipal securities dealers. If investors indeed considered the

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[24] As noted in the MSRB Notice producing this data could result "in significant up-front costs associated with hiring vendors to complete the calculations as well as periodic on-going costs associated with updating the numbers on an annual basis." Underwriters will not have the data necessary to "complete the calculations." Such data will reside with the plan.

[25] The Institute's August 2017 comment letter discussed in detail how, as the regulatory costs borne by advisor-sold plans increase, it puts such plans at a competitive disadvantage to direct-sold plans.

MSRB's regulation of municipal securities dealers when deciding whether to invest in a 529 plan, then, logically, they would avoid investing in a direct-sold plan because such plans are not subject to *any* regulation by the SEC or MSRB.[26] This, however, is not the case and, in fact, investors invest *more assets* in direct-sold plans than advisor-sold plans.[27]

6. The Costs Associated with the Proposal Exceed Any Benefits

For all the reasons discussed above, we do not believe the additional information the MSRB would receive from revising Form G-45 will further its mission of protecting investors and promoting a fair and efficient marketplace. Nor would it appear to enable the MSRB to promulgate rules regulating municipal securities dealers based on a plan's growth; popularity of investment options, strategies, or investment options; fees or costs; performance; or the riskiness of the plan's investment options. We also do not believe that it is appropriate for the MSRB to use its regulatory authority over 529 plan underwriters to impose regulatory obligations on a plan; nor should the MSRB impose duties on the plan's underwriter that are wholly inconsistent with the underwriter's role in the 529 plan marketplace. Moreover, considering the costs associated with the proposal and its anti-competitive impact on advisor-sold plans, we believe that any benefits associated with it will be outweighed by such costs, which the MSRB has indicated may be "significant."

II. THE INSTITUTE'S COMMENTS ON EACH OF THE PROPOSED REVISIONS

A. Revisions Related to the Program Management Fee

The MSRB requests comment on revising how an underwriter discloses the program management fee on Form G-45. According to the MSRB Notice, "because there is a variance among 529 plans in how the program management fee is assessed, it is more difficult for the MSRB to analyze the program management fee from one 529 plan to another."[28] To address this, the MSRB proposes to "require an underwriter to report the amount of the program management fee separately if such fee is assessed by the underlying mutual fund

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[26] Direct-sold plans would, however, be subject to the SEC's anti-fraud authority.

[27] *See* fn. 12, above. In explaining the trend of advisor-sold plan assets declining, the article notes that "[s]everal factors explain this shift, including lower fees charged by direct-sold plans." Indeed, the fact that direct-sold plans are not subject to the regulatory costs associated with advisor-sold plans, which costs increase an advisor-sold plan's expenses and is a drag on its investment returns, may make direct-sold plans a more attractive plan option for investors.

[28] MSRB Notice at p. 4.

in which the investment option invests rather than by the 529 plan."[29] In discussing this proposal with our members, we understand that, when the MSRB first implemented the filing of Form G-45, those members that contacted the MSRB staff regarding how the staff wanted them to report the program management fee were told *not* to report it separately. They programmed their systems accordingly. While our members can change how they report the program management fee to report it separately, to do so they must incur increased expenses to redesign their current reporting systems. In addition, however, members are concerned that reporting this fee separately may result in the MSRB double counting any program manager fee that is included in the reported underlying fund expenses. Because the MSRB does not and cannot regulate the offer and sale of 529 plans based on program management fees or how they are reported on Form G-45, because the costs to make this change would exceed any benefit to the MSRB, the plan, or the plan's investors, and because of our concerns with double counting, we do not support it.

B. Revisions Related to the Benchmark Return Percent

The MSRB is seeking comment on requiring a 529 plan underwriter to "identify and provide annually the weighted value of each index that comprises the benchmark used in determining benchmark total return percent for an investment option."[30] According to the MSRB Notice, the MSRB is proposing this change because:

> [The MSRB] has observed that when an investment option uses a custom or blended index to benchmark its performance, the resulting performance data may be not as accurate or easy to compare among investment options as it otherwise could be. This is because Form G-45 does not require an underwriter to identify and provide the weighted value of each of the component parts of a custom or blended index.[31]

In the MSRB's view, this change would "facilitate accuracy and comparability of performance data against the relevant benchmark" and "result in a more accurate report of the benchmark performance."[32] As recognized by the MSRB Notice, however, the on-going costs associated with such calculations and reporting may be "significant."

As a preliminary matter, our members do not clearly understand what "weighted value" the MSRB is referring to.[33] For example, assume that an investment option is a target date fund

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[29] *Id.* For purposes of Form G-45, "investment option" means "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."

[30] MSRB Notice at p. 5.

[31] MSRB Notice at pp. 4-5.

[32] MSRB Notice at p. 5. We are uncertain as to what "report" is referenced in this excerpt because we have not seen the MSRB publish any reports relating to 529 plans or derived from data reported on Form G-45.

[33] Our members also note that the MSRB's proposal is predicated on all investment options having benchmarks that could be weighted, which is not the case.

with a portfolio comprised of 25% of bond funds and 75% of equities. Is the MSRB expecting the underwriter to calculate the portion of a blended benchmark that is applicable to 25% of the target date fund's bond assets as well as that applicable to the 75% of the investment options equity assets and report such information? Is the MSRB looking for a statement of the weights given to the component benchmarks? For example, disclosure that Blended Benchmark X is comprised of Index 1 (X%), Index 2 (X%), and Index 3 (X%), or something more complex?[34] Or, instead, is the MSRB expecting a more complicated weighting of the respective benchmarks applicable to asset classes within the portfolio? Regardless of the approach the MSRB is contemplating, this proposal is of concern because 529 plans are accustomed to reporting performance and benchmarking data on their investment options in a manner that is consistent with the SEC's requirements applicable to mutual funds. And, the MSRB's proposed weighting is not consistent with the SEC's requirements. As a result, a 529 plan will be unable to leverage the work that their advisers or managers perform to comply with the SEC's requirements. Producing and reporting the unique information the MSRB seeks will increase plan costs without providing any concomitant benefit to the plan or its investors. We do not understand why the MSRB believes this weighting, which the SEC does not require to regulate mutual funds, is necessary for the MSRB's regulatory efforts and its analysis of the investment options offered by 529 plans. We do not support the MSRB requiring 529 plans to incur the costs and burdens associated with creating, vetting, and filing this more detailed performance information.

C. Revisions Related to Performance Data by Asset Class

The MSRB requests comment on requiring a 529 plan underwriter "to submit data about how each asset class within an investment option is performing for the annual reporting period ending December 31."[35] According to the MSRB Notice, while Form G-45 requires underwriters to disclose asset classes in each investment option, the "Investment Performance" portion of the form does not require underwriters to disclose information about how asset classes within an investment option are performing. As a result, "it is more difficult for the MSRB to determine how a particular asset class is performing on an annual basis."[36] To address this, the MSRB seeks disclosure regarding the performance of asset classes within an investment option.

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[34] In other words, we wonder whether the MSRB is expecting disclosure that the Blended Benchmark X is comprised of 50% of the S&P Index, which had the following returns . . . and 25% of the MSCI EAFE index, which had returns of . . ., or some other information.

[35] MSRB Notice at p. 5. "Asset class" is defined for purposes of Form G-45 to mean "domestic equities, international equities, fixed income products, commodities, insurance products, bank products, cash or cash equivalents, or other product types."

[36] *Id.*

According to our members, it would be an incredibly complex and expensive undertaking to determine the performance of each asset class within each investment option. For example, assume than an investment option of a plan is a mutual fund comprised of both global and domestic equities as well as cash and cash equivalents. It appears that the MSRB is proposing to require a 529 plan to disclose how each of the equity components, cash, and cash equivalents *within* this investment option are performing. As with the benchmark returns discussed above, this is not anything the SEC requires a mutual fund to do. Instead, consistent with their regulatory requirements under the Federal securities law, mutual funds only report performance at the fund level. In addition, however, assuming such calculation is possible, it would necessitate having to program multiple systems at considerable costs. Also, due to the complexities that would be involved in reporting performance on each asset class, the resulting information would not result in an apples-to-apples comparison among asset classes. This is because of the various factors, inputs, and securities that would be required to determine performance and attributions for the various asset classes within an investment option, not to mention different methodologies used for different attribution systems, which would differ from asset class to asset class and from plan-to-plan. Also, to calculate returns at an asset-class level most likely would result in plans having the use multiple performance and attribution systems to derive this data, along with the possibility of coding and mapping to these systems, which could prove extremely costly to automate. And yet, notwithstanding these burdens and costs, the output would not result in meaningful data that would enable the MSRB to assess how one asset class is performing vis-a-vis another asset class both within a 529 plan's investment options and among the various 529 plans' investment options.

Because the SEC does not find it necessary for funds to calculate performance except at the fund level, we question why the MSRB needs more detailed performance information to regulate municipal securities dealers selling 529 plans. We oppose such a costly requirement.

D. Revisions Relating to the Investment Option Closing Date

The MSRB is proposing to require underwriters to disclose on Form G-45 whether an investment option either is closed to new investors or has been terminated. According to the MSRB Notice, when a fund closes to new investors or terminates, "the investment option data submitted for that investment option on Form G-45 can be contrary to analytical expectations, and the MSRB may not be able to easily determine why such variance occurred."[37] Also, in the MSRB's view, the investment data submitted for a closed investment option "may not accurately portray the real analyzed return."[38] In order "to

[37] *Id.*

[38] MSRB Notice at p. 6. As discussed below, we do not believe closing a fund would, in fact, impact a plan's annualized returns (*i.e.,* its performance).

help clarify why there may be a variance in the investment option data," the MSRB is proposing this new disclosure on Form G-45.[39]

To the extent that the MSRB revises Form G-45 to elicit this information in an easy-to-disclose format (*e.g.,* as a "check-the-box" question), it is information that our members could easily report. Programming the necessary system changes to capture this new data point on an ongoing basis will, however, increase the underwriters' costs and these costs should not be discounted by the MSRB. Notwithstanding underwriters' ability to re-program their systems to capture this new information, we do not understand what "analytical expectations" are impacted by an investment option being closed to new investors. Nor do we understand the MSRB's contention that closing an investment option would impact the portrayal of that investment option's "real annualized returns" because closing an investment option would not impact the investment option's performance. We presume that the biggest impact to a 529 plan of closing an investment option to new investors or terminating it is the fact that, but for investment growth, the assets in that option would not increase. And, again, if this is the case, we do not understand why such information would be meaningful to the MSRB as it fulfills its mission to protect investors through a fair and efficient 529 plan marketplace.

III. RECOMMENDED REVISION TO FORM G-45

The MSRB Notice also seeks comment on whether there is other information that the MSRB should consider collecting about 529 plans on Form G-45, in addition to the items of information the MSRB proposes to collect. As a corollary to such request, the MSRB also should consider whether there is any information that the MSRB currently collects about 529 plans that it should cease collecting.

We believe that the MSRB should seriously consider eliminating all data elements seeking information regarding three-year returns on 529 plans, including annualized three-year returns (both including and excluding sales charges) for each investment option. In addition, benchmark performance information submitted to the MSRB should consist of annualized five-year, rather than three-year, returns. We note that neither MSRB Rule G-21(e)(ii), with respect to municipal fund securities product advertisements that include performance data, nor SEC Rule 482(d) with respect to investment company advertisements that include performance data, requires inclusion of three-year returns. In addition, in its Disclosure Principles Statement No. 6, which was adopted on July 1, 2017, the College Savings Plan Network has deleted the column for annualized three-year returns from its example performance charts to harmonize the most recent set of disclosure principles with the MSRB's and SEC's regulatory standards. The MSRB similarly should harmonize its Form G-45 reporting requirements. At a minimum, the MSRB should make reporting of such three-year information optional so that underwriters filing Form G-45 are

[39] MSRB Notice at p. 5.

not forced to manufacture information for the form that is not otherwise required by the SEC or the MSRB.

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In summary, the Institute would not oppose the MSRB including on Form G-45 a box for underwriters to check if they have closed an investment option to new investors or terminated an investment option. The MSRB should, however, be cognizant of the costs imposed on underwriters from this change to the form. We oppose the MSRB revising how underwriters report program management fees on Form G-45, and we oppose adding new items to the form that will leverage the MSRB's jurisdiction over 529 plan underwriters to require 529 plans to create and report performance and benchmarking information that is far more detailed than what the SEC requires of mutual funds. As discussed above, we are troubled by the fact that the MSRB seeks to leverage its authority over plan underwriters to impose requirements on plans. We are also troubled by the MSRB seeking to impose additional "significant" costs on advisor-sold 529 plans to obtain this information when such data would not appear to assist the MSRB in fulfilling its mission to protect investors or enable it to better understand the 529 plan marketplace. While we oppose the revisions the MSRB has proposed to the form, we recommend that the MSRB revise the form to eliminate any items on it relating to three-year returns.

As the MSRB considers these comments or future revisions to its rules regulating those municipal securities dealers that sell 529 plans, we welcome the MSRB's interest in engaging with industry representatives – outside of the formal rulemaking process – to discuss industry concerns and cost sensitivities and understand how regulatory proposals may impact 529 plans and their operations.

Sincerely,

/S/
Tamara K. Salmon
Senior Associate Counsel

sifma
Invested in America

September 21, 2017

Via MSRB Request for Comment Portal

Ronald W. Smith
Corporate Secretary
Municipal Securities Rulemaking Board
1300 I Street, NW, Suite 1000
Washington, DC 20005

Re: Regulatory Notice 2017-17 – Request for Comment on Draft Amendments to MSRB Form G-45 under Rule G-45, on Reporting of Information on Municipal Fund Securities

Dear Mr. Smith:

The Securities Industry and Financial Markets Association ("SIFMA")[1] appreciates this opportunity to respond to the Municipal Securities Rulemaking Board's ("MSRB") Request for Comment on Draft Amendments to MSRB Form G-45 under Rule G-45, on Reporting of Information on Municipal Fund Securities (the "Notice").[2] The MSRB is proposing to amend Form G-45 to clarify an existing data element and add three additional data elements about Investment Option information in 529 college savings plans and Stephen Beck, Jr., Achieving a Better Life Experience Act of 2014 ("ABLE programs"). The proposed amendments would purportedly allow the MSRB to "make more accurate comparisons across 529 plans and ABLE programs, enhancing [its] ability to understand and monitor the market."[3]

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[1] SIFMA is the voice of the U.S. securities industry. We represent the broker-dealers, banks and asset managers whose nearly 1 million employees provide access to the capital markets, raising over $2.5 trillion for businesses and municipalities in the U.S., serving clients with over $20 trillion in assets and managing more than $67 trillion in assets for individual and institutional clients including mutual funds and retirement plans. SIFMA, with offices in New York and Washington, D.C., is the U.S. regional member of the Global Financial Markets Association (GFMA). For more information, visit http://www.sifma.org.

[2] *Request for Comment on Draft Amendments to MSRB Form G-45 under Rule G-45, on Reporting of Information on Municipal Fund Securities,* MSRB Reg. Notice 2017-17 (Aug. 22, 2017), http://msrb.org/~/media/Files/Regulatory-Notices/RFCs/2017-17.ashx?n=1.

[3] Press Release, MSRB Seeks Comment on Refining Data Collected About 529 Plans and ABLE Programs (Aug. 22, 2017), http://www.msrb.org/News-and-Events/Press-Releases/2017/MSRB-RFC-Refining-Data-Collected-About-529-Able-Programs.aspx.

While we are supportive of the MSRB's transparency efforts that are effective tools for regulatory oversight or investors, we have concerns, many of which are not new and shared with the Investment Company Institute ("ICI") and other market participants, including the College Savings Foundation and College Savings Plans Network, about the proposed amendments. Chiefly, we have always maintained the position that municipal securities dealers who underwrite 529 plans should only be required to submit the information required by Form G-45 to the extent it is within their possession, custody, or control. The new data elements, namely the benchmark return percent and performance data by asset class, that the MSRB is proposing to collect are not within underwriters' possession, custody, or control. In fact, this data is held by entities outside the jurisdiction of the MSRB. Obtaining such information directly from underwriters is misplaced, would impose substantial costs on them and negatively impact the dealer-sold 529 plan and ABLE programs market vis-à-vis direct-sold programs, not to mention the increased costs passed on to investors. At the outset, we question whether the additional data elements would achieve their intended purpose.

I. The Draft Amendments Would Not Demonstrably Enhance the MSRB's Ability to Understand the 529 Plan and ABLE Program Markets

Ostensibly, the MSRB maintains that the proposed amendments will enhance its ability to understand the 529 plan and ABLE program market, and the additional data collected will allow it and other regulators to monitor the market for potential risks and wrongful conduct. However, we question whether this is possible when the MSRB is only looking at a fraction of the market. By statute, the MSRB only has the authority to regulate advisor-sold 529 plans and ABLE programs, not issuer direct-sold programs. Because of the limited scope of its authority, the MSRB is not obtaining the full picture of the market, and it is simply imposing a greater standard of disclosure, administrative burdens and costs on underwriters that even the SEC does not require of mutual funds. In addition, our members believe that, at least with respect to performance data by asset class, the MSRB would be employing imprecise methodologies to analyze subjective data; investment managers, who hold this data, use asset classes differently, for example. As a result, the MSRB would be analyzing and making judgments based on inaccurate data. For these reasons, as well as the cost of reporting additional information, we do not believe that any other information is necessary on the Form G-45 for the MSRB to fulfill its role.

II. Underwriters Do Not Have the Requested Information Within Their Custody, Possession, or Control

SIFMA has always maintained that underwriters should only be required to submit the information required by Form G-45 to the extent it is within their possession, custody, or control. To reiterate the ICI's point, the benchmark return percent and

performance data by asset class that the MSRB proposes to include on the Form G-45 is outside the scope of an underwriter's role. Such information would have to be produced by a plan's program sponsor, manager, or investment advisor – entities beyond the jurisdiction of the MSRB. To otherwise obtain and report this information through an underwriter's own analysis or from third-party consultants or vendors would be incredibly costly and complex, not to mention imposing a regulatory burden on underwriters that other regulatory agencies do not impose, and contrary to the intent by the President's Executive Order on Core Principles for Regulating the Financial System.[4] Moreover, program sponsors generally consider this proprietary information which is potentially confusing to investors, and therefore are reluctant to have it publicly disseminated. If the MSRB were to consider making it public, SIFMA and its members feel strongly that a new Request for Comment on that point should be issued.

III. The Negative Impacts to the Market Outweigh the Purported Benefits

We believe that the MSRB materially underestimates the costs and negative impacts the draft amendments will have on the 529 plan and ABLE program markets. This is a low-margin business that is meant to assist retail investors saving for college or saving for the care of those with disabilities. The MSRB rightly recognizes the upfront costs, but does not recognize that additional costs will most certainly have a long-term, negative impact on dealer-sold plans' attractiveness to issuers and investors alike vis-à-vis direct-sold programs.

IV. Program Management Fee and Investment Option Closing Date Data Elements

We generally support the draft amendments pertaining to the program management fee and investment option closing data elements; however, we concur with the ICI on these points.

V. Recommended Revisions to Form G-45

We also concur with the ICI's recommendation that the MSRB revise Form G-45 to eliminate all data elements seeking information regarding three-year returns on 529 plans, including annualized three-year returns (both including and excluding sales charges) for each investment option. Not only is this information not required by any regulator other than the MSRB, it not particularly helpful to investors and burdensome to produce. This information should be harmonized with regulatory requirements of other regulators; underwriters should be required to submit five-year, rather than three-year, returns, or at the very least, three-year returns should be made optional.

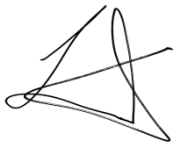
[4] Exec. Order No. 13772, 82 Fed. Reg. 9965 (Feb. 8, 2017).

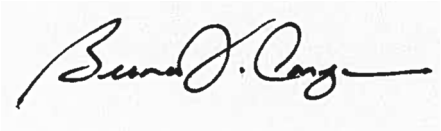
VI. Conclusion

We cannot support the draft amendments to include the additional data elements, particularly the benchmark return percent and the performance data by asset class, because they are not within underwriters' custody, possession, or control, and obtaining such information, some of which is proprietary, would impose substantial costs on dealers, negatively impact the dealer-sold 529 plan and ABLE program market, and not achieve the purported benefits. We do, however, support the MSRB amend the Form G-45 to harmonize the reported information with other regulatory requirements, namely the reported returns on 529 plans.

We would be pleased to discuss any of these comments in greater detail, or to provide any other assistance that would be helpful. Additionally, we would like to meet with MSRB staff to discuss our comments. If you have any questions, please do not hesitate to contact Leslie Norwood at (212) 313-1130 or Bernard Canepa at (202) 962-7300.

Sincerely,





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JOSH STOWERS
ASSISTANT STATE TREASURER

September 18, 2017

Ronald W. Smith, Corporate Secretary
Municipal Securities Rulemaking Board
1300 I Street, NW, Suite 1000
Washington, DC 20005

Re: Comments -- MSRB Notice 2017-17

Dear Mr. Smith:

As Chairman of the West Virginia College Prepaid Tuition and Savings Program Board of Trustees that offers SMART529, a 26 U.S.C.A. §529 program administered by the Hartford Life Insurance Company, I write to express my concerns about your proposed amendments to MSRB Form G-45 pertaining to 529 programs. Over the many years since its inception, SMART529 has grown to have assets of approximately $2.5 billion, which includes West Virginia resident accounts of approximately $500 million. The need for higher education for West Virginia students is exceedingly high given the dire poverty here. Working to encourage SMART529 accounts for those students has been one of my main focuses as State Treasurer for over 20 years.

Increasing the burden on our program will just increase the costs to the very persons that struggle to invest in the future of their children. It is difficult to imagine any underwriter that will magnanimously volunteer to provide the additional information the MSRB seeks without a concurrent increase in the fees it assesses to the 529 programs.

For the MSRB to justify seeking additional information, at an additional cost to every 529 program, the information being sought needs to translate into something that directly benefits current and future account holders. To the contrary, none of the materials I have read demonstrate any real benefit to the account holders or the beneficiaries.

In addition to the increased cost burden, my next objection is having information created for each plan that may well run contrary to the information the Securities and Exchange Commission requires for the underlying mutual funds. Having multiple sets of data for a single investment option will necessitate vast amounts of work to correlate the data, as well as to describe the differences in the data and associated reports, as well as in the literature disseminated.

My last comment concerns benchmarking. The MSRB seeks to require we annually provide the "weighted value of each index" comprising a benchmark. As I am not entirely sure how that calculation is to be made, it appears this will encourage each underwriter/program to make that calculation inconsistently, causing even further differences in the data, reporting and literature.

In connection with the increased reporting, at a minimum, a more detailed explanation will be needed to give the calculations meaning and consistency. The MSRB claims that the information being added will "potentially enhance" the MSRB's "ability to analyze the data submitted under Investment Option information." Only potentially enhancing does not appear to be a sufficient reason to add substantial program costs and burdens on the underwriters. Seldom have I seen a regulator reduce its requirements even when it determines the information is not as useful as originally contemplated.

Thank you so much for the opportunity to comment on your proposed draft amendments to MSRB Form G-45 and the reporting. If you have any questions, do not hesitate to let me or my staff know.

Sincerely,

John D. Perdue
West Virginia State Treasurer

JDP/wh