

SECURITIES AND EXCHANGE COMMISSION
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June 24, 2013

Self-Regulatory Organizations; Municipal Securities Rulemaking Board; Notice of Filing of a Proposed Rule Change Relating to a New MSRB Rule G-45, on Reporting of Information on Municipal Fund Securities

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”)¹ and Rule 19b-4 thereunder,² notice is hereby given that, on June 10, 2013, the Municipal Securities Rulemaking Board (“MSRB”) filed with the Securities and Exchange Commission (“SEC” or “Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the MSRB. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The MSRB is filing with the Commission a proposed rule change consisting of new Rule G-45, on reporting of information on municipal fund securities, and Form G-45, and amendments to Rules G-8, on books and records, and G-9, on preservation of records (the “proposed rule change”). The MSRB will designate an implementation date for the proposed rule change that is not earlier than one year from the date of SEC approval.

The text of the proposed rule change is available on the MSRB’s website at www.msrb.org/Rules-and-Interpretations/SEC-Filings/2013-Filings.aspx, at the MSRB’s principal office, and at the Commission’s Public Reference Room.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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

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

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

1. Purpose

Summary of Proposed Rule Change. The proposed rule change will, for the first time, provide the MSRB with more comprehensive information regarding 529 College Savings Plans (“529 plans” or “plans”) underwritten by brokers, dealers or municipal securities dealers (“dealers”) by gathering data directly from such dealers. The MSRB regulates dealers that act in the capacity of underwriters of 529 plans, as well as dealers that sell interests in 529 plans and municipal advisors to such plans. Interests in 529 plans have been deemed to be municipal securities by the Commission,³ and the MSRB has categorized such interests as municipal fund securities.⁴ MSRB rules govern the

³ See letter dated February 26, 1999 from Catherine McGuire, Chief Counsel, Division of Market Regulation, SEC, to Diane G. Klinke, General Counsel of the Board, in response to letter dated June 2, 1998 from Diane G. Klinke to Catherine McGuire, published as Municipal Securities Rulemaking Board, SEC No-Action Letter, Wash. Serv. Bur. (CCH) File No. 032299033 (Feb. 26, 1999).

⁴ The term municipal fund security is defined in MSRB Rule D-12 to mean a municipal security issued by an issuer 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.

activities of dealers who transact business in municipal fund securities, and it is important that the MSRB have accurate, reliable and complete information about 529 plans underwritten by dealers in order to carry out its rulemaking responsibilities.

CURRENT MSRB REQUIREMENTS

Today, the MSRB collects certain information regarding 529 plans from underwriters and issuers. Just as it does for municipal securities that are not municipal fund securities, the MSRB's Electronic Municipal Market Access ("EMMA®")⁵ system serves as a centralized venue for the submission by underwriters of 529 plan primary offering disclosure documents ("plan disclosure documents") and continuing disclosures, such as annual financial reports submitted to EMMA by issuers or their agents. However, the MSRB does not currently receive detailed underwriting or transaction information, as it does for other types of municipal securities.

The proposed rule change will require dealers acting in the capacity of underwriters to submit to the MSRB, for the 529 plans they underwrite, on a semi-annual or, in the case of performance data, annual basis, certain information. The information includes plan descriptive information, assets, asset allocation information (at the investment option level), contributions, withdrawals, fee and cost structure, performance data, and other information. While some of the information, such as fees and costs, may be contained in plan disclosure documents submitted to EMMA, the information is not submitted in a manner that allows for analysis or comparison, since it is imbedded in static documents submitted in portable document format. The proposed rule change requires the information to be submitted electronically through new Form G-45, which is

⁵ EMMA is a registered trademark of the MSRB.

discussed in more detail below. The MSRB, and other regulatory authorities that are charged by statute with examining dealers for compliance with, and enforcing, MSRB rules, including the SEC and the Financial Industry Regulatory Authority (“FINRA”), will be able to utilize this information to analyze 529 plans, monitor their growth rate, size and investment options, and compare plans based on fees and costs and performance. By collecting this information, the MSRB will enhance its understanding of the 529 plan market, the growth of plans and their investment options, and the differences among plans. Such information may inform the MSRB of the risks and impact of each plan and investment option and provide the MSRB and other regulators with additional information to monitor the market for wrongful conduct.

At present, there is no central, reliable source for this information. While information vendors and an issuer-related association collect information regarding 529 plans, even assuming it would be the same information needed by the MSRB, the information submitted to these entities is done so voluntarily by 529 plan program managers or their affiliates or contractors. Consequently, it is not possible to confirm that all 529 plans will continue to submit information to these organizations or that all information requested will be provided. Further, it is not possible to test or otherwise confirm the accuracy of the information provided to these organizations. In short, the voluntary collection of limited 529 plan information by private organizations is not a substitute for actual data submitted by regulated dealers.

Since the creation of the earliest 529 plans, the MSRB has issued interpretive guidance regarding dealer obligations in connection with transactions in interests in 529 plans. On March 31, 2006, the MSRB filed with the Commission an interpretation on

customer protection obligations relating to the marketing of interests in 529 plans (the “2006 Notice”).⁶ The 2006 Notice addressed the basic customer protection obligations of dealers, including their disclosure obligations under MSRB Rule G-17. In the 2006 Notice, the MSRB noted that various organizations, including the College Savings Plans Network (“CSPN”), an affiliate of the National Association of State Treasurers, and certain private entities had established websites devoted to 529 plans.⁷

At that time, the MSRB urged market participants to develop a more comprehensive and user-friendly system of established industry sources for the 529 plan market. An established industry source is considered by the MSRB to be one which provides a broad variety of information that professionals can and do use to obtain material information about municipal securities.⁸ The MSRB stressed the importance of disclosure of material information regarding 529 plans and commented that it had long been an advocate for the best possible disclosure practices by 529 plan market participants, though it lacked the authority to mandate specific disclosures by issuers. Over the years, the MSRB has worked with CSPN and individual states on, among other issues, disclosure principles and best practices, in order to better inform and protect investors.⁹ The disclosure principles cover a variety of topics that might be considered material to investors in making an informed investment decision, including the discussion

⁶ MSRB Notice 2006-07 (March 31, 2006).

⁷ CSPN’s website is located at www.collegesavings.org.

⁸ See MSRB Notice 2006-07, Note 10 (March 31, 2006)

⁹ CSPN published its Disclosure Principles Statement No. 5 (“Disclosure Principles No. 5”) on May 3, 2011 (www.collegesavings.org/legislativeInitiative.aspx), which assists states in improving the quality of disclosure to investors about their 529 plans. Based on comments to draft Rule G-45, the MSRB has modified certain reporting requirements to be consistent with Disclosure Principles No. 5, as more fully described below.

of investment options, possible federal and state tax benefits, program management, investment management, risk factors, fees and costs, and investment performance.

Given the complexity of 529 plans and their unique characteristics, such as individual state tax treatment, the MSRB urged market professionals to develop more comprehensive websites with features that would assist the general public in understanding the key terms and features of 529 plans.¹⁰ In the 2006 Notice, the MSRB noted that it would monitor the 529 plan market closely and consider whether further rulemaking regarding disclosures would be appropriate.

EMMA

On June 1, 2009, the MSRB implemented an electronic system for free public access to primary market disclosure documents through EMMA.¹¹ Thereafter, 529 plan underwriters have been obligated to submit plan disclosure documents to EMMA, pursuant to MSRB Rule G-32.¹² On July 1, 2009, the MSRB implemented the continuing disclosure service of EMMA.¹³ Since that date, 529 plan issuers or their agents have been submitting continuing disclosures regarding 529 plans to EMMA, such as audited financial statements, based on continuing disclosure agreements entered into pursuant to SEC Rule 15c2-12 (“Rule 15c2-12”), promulgated under the Act. Underwriters of 529

¹⁰ In this regard, CSPN, for example, developed a website that aggregates information regarding 529 plans and enables investors to compare plans by state and by feature. The MSRB views these established industry sources as helpful in providing investors and investment professionals who transact business in 529 plans with material information necessary for investors to make informed investment decisions.

¹¹ MSRB Notice 2009-22 (May 22, 2009).

¹² Since May 2011, for 529 plans not underwritten by dealers, states have been permitted to voluntarily submit plan disclosure documents for public dissemination through EMMA.

¹³ MSRB Notice 2008-47 (December 8, 2008).

plans generally are obligated to determine that continuing disclosure agreements have been entered into in connection with the plans.¹⁴

The proposed rule change will assist the MSRB and other regulators that, pursuant to Section 15B of the Act, perform examinations and other oversight activities of dealers and municipal advisors, by providing them with important information regarding 529 plans underwritten by dealers. For example, the information will enable the MSRB or other regulators to, on a comprehensive basis, compare the asset allocation, fees and costs, and performance of similar investment options across plans and identify trends or changes. Such information also may be used to determine the nature or timing of risk-based dealer examinations.

The information will be submitted to EMMA and retained in a database for regulatory use and will not, at this time, be disseminated publicly, though the MSRB's goal is to disseminate through EMMA the information that would be of benefit to investors. For example, the MSRB may display fee and expense or performance information on EMMA. Prior to such a public dissemination, the MSRB will file a proposed change to the EMMA or other facility with the SEC, and provide market participants with an opportunity to comment publicly on the proposal.

PROPOSED RULE G-45

The proposed rule change will require each underwriter of a primary offering of municipal fund securities that are not interests in local government investment pools to report to the MSRB the information relating to such offering required by Form G-45 by no later than 60 days following the end of each semi-annual reporting period ending on

¹⁴ See Interpretation Relating to Sales of Municipal Fund Securities in the Primary Market (January 18, 2001).

June 30 and December 31 each year and in the manner prescribed in the Form G-45 procedures and as set forth in the Form G-45 Manual.¹⁵ Interests in 529 plans are the only type of municipal fund security that will be covered by the proposed rule change. Such interests are sold through a continuous primary offering. Under the proposed rule, brokers, dealers or municipal securities dealers that are underwriters under Rule 15c2-12(f)(8)¹⁶ will be required to submit the required information to the MSRB. The MSRB recognizes that, just as with municipal bonds, there may be more than one underwriter of a particular primary offering. In the case of 529 plans, program managers, their affiliates, including primary distributors, and/or their contractors, may fall within the statutory definition of underwriter. Consequently, the MSRB would deem the obligation to submit the required information fulfilled if any one of the underwriters submitted the required information. In this regard, on proposed Form G-45, each submitter would indicate the identity of each underwriter on whose behalf the information is submitted.

Originally, the MSRB proposed that the information be submitted within 30 days of the end of the reporting period.¹⁷ Commenters raised concerns about the deadline and, in response, the MSRB revised the proposal and extended the deadline to 60 days from the end of the reporting period to address the burdens on dealers in gathering and validating the information.¹⁸ Similarly, in the August Notice the MSRB initially proposed that underwriters report the required information quarterly. In response to

¹⁵ The Form G-45 Manual will be a new item created to assist persons in the submission of the information required under Rule G-45 and is not part of the proposed rule change.

¹⁶ 17 CFR 240.15c2-12(f)(8).

¹⁷ MSRB Notice 2012-40 (August 6, 2012) (the “August Notice”).

¹⁸ MSRB Notice 2012-59 (November 23, 2012) (the “November Notice”).

comments to the August Notice, the MSRB in the November Notice changed the reporting period from quarterly to semi-annually to address the burdens of more frequent filings. Moreover, underwriters only will be required to submit performance data annually instead of quarterly or semi-annually. This change was also in response to concerns raised about the burden of quarterly submissions. In the November Notice, the MSRB also revised the proposal to eliminate the requirement to submit information on the percentage of plan contributions derived from automatic contributions, such as through ACH (Automated Clearing House) debit transfers from an account owner's bank account. The MSRB believes that the burden on dealers to submit this information outweighs its regulatory benefit. Finally, in the August Notice the MSRB initially proposed to collect information regarding the underlying portfolio investments in which each investment option invests. Based on comments to the initial proposal and in recognition of the additional burdens associated with supplying the individual portfolio data that is subsumed within an investment option, in the November Notice, the MSRB eliminated this requirement from the proposed rule change.

RULES G-8 AND G-9

The proposed rule change includes amendments to the MSRB's books and records rules to require underwriters obligated to submit information to the MSRB under proposed Rule G-45 to maintain the information required to be reported on Form G-45 for six years.

PROPOSED FORM G-45

The information required by Form G-45 will be submitted electronically by underwriters, either through automated upload or through a web portal, at the discretion

of the underwriter. In order to minimize the burden on underwriters, once the information is initially submitted, future submissions will be pre-populated with certain basic information on the electronic form. Form G-45 requires the submission of the following information:

- Plan descriptive information: the underwriter will provide the MSRB with the name of the state, name of the plan, name of the underwriter and contact information, name of other underwriters on whose behalf the underwriter is submitting information, name of the program manager and contact information, plan website address and type of marketing channel (whether sold with or without the advice of a broker-dealer). This information will be pre-populated and will likely change infrequently.
- Aggregate plan information: the underwriter will provide the MSRB with total plan assets, as of the end of each semi-annual reporting period, total contributions for the most recent semi-annual reporting period, and total distributions for the most recent semi-annual reporting period.
- Investment option information: For each investment option offered by the plan, the underwriter will provide the MSRB with the name and type of investment option (such as an age-based, conservative), the inception date of the investment option, total assets in the investment option as of the end of the most recent semi-annual period, the asset classes in the investment option, the actual asset class allocation of the investment option as of the end of the most recent semi-annual period, the name of each underlying investment in each investment option as of the end of the most recent semi-annual period, the investment option's performance for the most recent calendar year (as well as any benchmark and its performance for the most recent calendar

year), total contributions to and distributions from the investment option for the most recent semi-annual reporting period and the fee and expense structure in effect as of the end of the most recent semi-annual reporting period. In order to ease the burden on underwriters submitting the information, the MSRB modified the proposal to permit the performance and fee and expense information to be submitted in a format consistent with Disclosure Principles No. 5, which commenters inform the MSRB is the industry norm for reporting such information.

2. Statutory Basis

The MSRB believes that the proposed rule change is consistent with Section 15B(b)(2)(C) of the Act,¹⁹ which provides that the MSRB's rules shall

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

The statute requires the MSRB to protect both investors and municipal entities. In fulfilling its responsibility, the MSRB must understand the market and possess basic, reliable information regarding individual 529 plans and their investment options. The proposed rule change will provide the MSRB with such information. The information will allow the MSRB to assess the impact of each plan on the market, evaluate trends and differences, and gain an understanding of the aggregate risk taken by investors by the

¹⁹ 15 U.S.C. 78o-4(b)(2)(C).

allocation of assets in each investment option. Having this information will better position the MSRB to protect investors and the public interest.

Additionally, the MSRB has a statutory obligation to prevent fraudulent and manipulative acts and practices and to promote just and equitable principles of trade. Typically, underwriters of 529 plans draft or participate in drafting the plan disclosure documents, as well as marketing material for 529 plans. The MSRB or other regulators may use the information submitted on Form G-45 to, among other things, determine if the disclosure documents or marketing material prepared or reviewed by underwriters are consistent with the data submitted to the MSRB.

Finally, while commenters have suggested that underlying investments in 529 plans are typically registered investment companies regulated by the SEC and therefore oversight by the MSRB would be duplicative, the investment options are unique to 529 plans and are not regulated as registered investment companies by the SEC. It is therefore important that the MSRB collect information about 529 plan investment options.

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

The MSRB does not believe that the proposed rule change would impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act, since it would provide information necessary for the MSRB to carry out its regulatory responsibilities under the Act and would apply equally to all dealers that serve as underwriters of 529 plans. Moreover, the MSRB believes that such underwriters collect and retain the information required by the proposed rule change and utilize it for a variety of purposes, including reporting to issuers and other market participants. The

information that the proposed rule change requires underwriters to submit to EMMA will be required to be submitted on an equal and non-discriminatory basis. As described above, the MSRB will realize substantial benefits in obtaining reliable, accurate information about 529 plans, promoting greater regulatory oversight and investor protection. In addition, the proposed rule change will not impose any burden on dealers that sell interests in 529 plans, as the obligation to submit information semi-annually to the MSRB will only be imposed on underwriters. On balance, the MSRB believes that the benefits of the proposed rule change greatly exceed any potential increased burden it imposes on dealers.

In the November Notice requesting comment on the proposed rule change, the MSRB explained that, in order to ease the burden on dealers, the proposed rule change “eliminate[d] the requirement to submit information on underlying investments and the requirement to submit the percentage of plan contributions derived from automatic contributions, based on comments that some plans do not track such information.” The November Notice also provided that “in order to facilitate the submission of information, the MSRB will take steps to pre-populate certain data fields on Form G-45, subsequent to the initial filing by underwriters.” As explained earlier, the MSRB made other substantive changes to the proposal to ease the burden on dealers, such as changing the reporting period from quarterly to semi-annually (except for performance, which would be reported annually), extending the reporting deadline from 30 days after the end of the reporting period to 60 days after the end of the reporting period, and conforming the reporting format for fees and performance to the Disclosure Principles No. 5. The MSRB believes these changes, taken together, reduce the reporting burden significantly.

Among the suggested alternatives to the proposed rule change are (a) a manual review of information in plan disclosure documents submitted to EMMA or on plan websites; or (b) a review of data supplied by information vendors voluntarily. Neither of these alternatives will satisfy the regulatory needs of the MSRB. A manual review of information would be insufficient because some of the information sought by the MSRB is not disclosed in public documents. For example, plans may not publish information on their assets, contributions, distributions, performance or benchmark performance at the investment option level. Moreover, monitoring EMMA and other websites for the publication of new information would be time consuming and inefficient. While information supplied by dealers to information vendors may be of interest, it is unreliable from a regulatory standpoint. Additionally, the MSRB would be relying on such information vendors for important regulatory information. On balance, the MSRB believes that semi-annual reporting of limited information, which is readily available to underwriters, will not pose an unreasonable burden on dealers.

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

On November 23, 2012, the MSRB issued a request for comment on a draft rule requiring underwriters to submit 529 plan data to the MSRB.²⁰ The November Notice outlined the requirements of draft MSRB Rule G-45 and Form G-45, including the requirement that underwriters submit information required by Form G-45 semi-annually, except for performance information which would be submitted annually, a 60 day deadline to report the information after the end of the reporting period, and an

²⁰ See footnote 18.

implementation period of at least one year following approval of the rule change by the Commission.²¹

PUBLICATION OF COLLECTED INFORMATION

In response to the November Notice, the MSRB received eight letters that comment on the proposed rule change.²² A number of commenters raise concerns about the possibility of public dissemination of the data collected on the EMMA website.²³ The concerns are that investors may be confused if information is displayed out of context and that some of the information may be proprietary.²⁴ The MSRB stated in the November Notice that the information would be collected for regulatory purposes and that no information collected under proposed Rule G-45 would be displayed on EMMA without a subsequent rule filing. The MSRB intends to collect and analyze the information before making any determinations regarding the dissemination of any of the data through EMMA. UESP further notes that, although the MSRB indicated that the information would be used for regulatory purposes, the draft rule contains no such assurance. This commenter requests that the MSRB further address the issue before the draft rule is

²¹ The November Notice described revisions to a draft rule that was first proposed in the August Notice.

²² Comment letters were received from the College Savings Foundation (“CSF”), College Savings Plans Network (“CSPN”), College Savings Plans of Maryland (“CSPM”), Financial Research Corporation (“FRC”), Investment Company Institute (“ICI”), Securities Industry and Financial Markets Association (“SIFMA”), Utah Educational Savings Plan (“UESP”) and Coalition of Mutual Fund Investors (“CMFI”) (this letter raises concerns with fees associated with omnibus accounting of 529 plans and does not directly address the proposed rule change).

²³ See comments from CSF, CSPN, CSPM, SIFMA and UESP.

²⁴ See, e.g., comment from CSPM.

finalized. As noted above, the MSRB does not intend to disseminate through EMMA the information to be collected under the proposed rule change, though it does have a goal of disseminating more information on 529 plans, where it would benefit investors. The MSRB is mindful of the concerns raised by commenters that information out of context might be confusing or misleading to investors. Consequently, it will study the data collected and consider these concerns before filing a proposal to disseminate any of the information collected.

IMPLEMENTATION PERIOD AND REPORTING DEADLINE

In terms of the implementation period and lag time for reporting information, two commenters suggest that the one year implementation period is too short and that 18 to 24 months is needed.²⁵ For example, FRC suggests that two years is more appropriate, given the need for dealer system changes and to ensure data integrity. It draws its perspective from its role as an information vendor that analyzes information submitted voluntarily by 529 plan intermediaries. While the MSRB is sensitive to the burdens and systems implications of the proposed rule change, its experience in developing similar systems in the past suggests that a one year implementation period is more appropriate. The dealer community has been on notice for many months of these proposed changes, and should begin preliminary preparations for extracting the necessary data. In the November Notice, the MSRB proposed a one year implementation period based on comments to the August Notice from ICI, SIFMA and CSPM suggesting that one year would be an appropriate time frame to allow underwriters to modify their systems to comply with a mandatory reporting regime. It is important that the MSRB begin

²⁵ See comments from CSF and FRC.

collecting the information as soon as possible, as there is no authoritative, reliable source for this information, as discussed above, and the MSRB agrees with such commenters that one year should be sufficient to prepare for the submissions.

FRC also suggests that, based on its experience as an information vendor, the 60 day reporting deadline should be extended to 120 days. Interestingly, FRC collects 529 plan information quarterly and requests that its survey participants submit information within 30 days from the end of the quarter. Based on input from underwriters and other commenters, the MSRB believes that a 60 day deadline is appropriate. For example, SIFMA and ICI support a 60 day reporting deadline, as does CSPM for performance data, although it believes 30 days is sufficient for assets, contributions and distributions, according to comment letters submitted in response to the August Notice. Moreover, the Commission requires registered investment companies to file portfolio holding information within 60 days of the end of the reporting period on Form N-Q. Consequently, the MSRB believes the 60 day deadline is appropriate.

DUPLICATION OF EFFORT

FRC recommends that the MSRB not collect information at all, or at least not at the investment option level, because data is sent to the MSRB by the commenter and some of the information is contained in plan disclosure documents submitted by underwriters to EMMA. While the MSRB appreciates the cooperation of this commenter in producing its reports voluntarily to the MSRB, the reports are no substitute for data mandated by rule, which can be validated through regulatory examination. Further, the receipt of information in a disclosure document is not equivalent to its receipt in electronic data fields. Finally, FRC suggests that the proposed rule change would raise

the expenses of 529 plans and burden investors unnecessarily. It comments that the requirement for underwriters to submit data will entail additional costs, which may be passed onto the 529 plans, and indirectly, investors. The MSRB believes that the additional burden on underwriters of submitting readily available information semi-annually will be modest, compared with the benefit of obtaining reliable, accurate information to assist with its regulatory activities.

SCOPE OF MSRB RULEMAKING AUTHORITY

FRC suggests that the MSRB only has authority over “advisor-sold” plans and should only collect information regarding these plans. The distinction between “advisor-sold” plans and “direct-sold” plans is a marketing distinction that has no bearing on the jurisdiction of the MSRB. The MSRB’s jurisdiction extends to dealers or municipal advisors with respect to all their municipal fund securities and municipal advisory activities. Consequently, underwriters of “direct-sold” and “advisor-sold” plans must submit information required by the proposed rule change to the MSRB.

USE OF CSPN DISCLOSURE PRINCIPLES

Commenters²⁶ generally support the MSRB’s proposed use of the reporting format in Disclosure Principles No. 5 for reporting 529 plan fees and performance. CSF suggests that the use of Disclosure Principles No. 5 will make the transition to the reporting process less cumbersome and more efficient. Nevertheless, several commenters suggest that, for clarification and flexibility, the MSRB adopt certain relevant provisions in Disclosure Principles No. 5, allow for explanatory text and footnotes to the reporting tables on fees and performance, and permit different tabular presentations that are at least

²⁶ See comments from CSF, CSPN, ICI and SIFMA.

as specific as those examples provided in Disclosure Principles No. 5.²⁷ The MSRB has adopted these recommendations in the proposed rule change and will permit submitters to add explanatory text and footnotes to the reporting tables on fees and performance, as well as different tabular presentations that are at least as specific as those examples provided in Disclosure Principles No. 5. The specifications for reporting will be contained in the G-45 Manual, which will be published on www.msrb.org, sufficiently in advance of the effective date to provide submitters with adequate notice and time to comply.

CSF also requests that plans be able to report fees as of the most recent offering document, since most plans issue offering documents once per year and proposed Rule G-45 would require semi-annual reporting. As CSF correctly notes, the proposed rule change requires semi-annual reporting of the fee and cost table. If the fees and costs have not changed since the most recent offering document, underwriters can simply insert the information from that offering document. If the fees and costs have changed, however, underwriters would be required to update the table to reflect those changes. In order to make it as easy as possible to submit information, the MSRB intends to pre-populate the electronic Form G-45 with certain information submitted previously by underwriters. For example, basic plan descriptive information will be pre-populated. Additionally, the fee and cost tables will be pre-populated. If there are no changes to the fee and cost table from the prior filing, underwriters need not make changes to the table.

ICI also requests that the MSRB make clear that, to the extent a plan does not separately compute and disclose one or more fees listed in the fee and cost tables, it

²⁷ See comments from CSF, CSPN, ICI and SIFMA.

should not require underwriters to artificially create such fees solely for purposes of Form G-45. The proposed rule change would not require underwriters to calculate and artificially segment fees for purposes of completing Form G-45. Rather, underwriters would simply report fees and costs as they are calculated and reported to account holders.

REQUIRED SUBMITTERS

Several commenters state that only the underwriter or primary distributor should be required to file proposed Form G-45.²⁸ The MSRB acknowledges the efficiencies in having a complete set of Form G-45 data submitted by a single party, and believes that where such a submission provides a complete set of data on a 529 Plan, no additional submissions should be required. However, the MSRB also is concerned that limiting the filing requirement solely to the primary distributor may leave gaps in the information reported. In principle, the MSRB supports filing by a single party, but only to the extent such party aggregates the data from all persons acting as underwriters. Under the proposed rule change, each underwriter has a separate obligation to submit information required on Form G-45; provided, however, that the obligation will be deemed satisfied if produced by another underwriter, such as the primary distributor, on its behalf.

ICI notes that 529 plans have only one underwriter, the primary distributor, and that many other entities are involved in operating and maintaining a plan, such as the plan's program manager, record-keeper, investment manager, custodian and state sponsor. ICI suggests that none of these entities would qualify as an underwriter under the proposed rule. MSRB disagrees. Under SEC Rule 15c2-12(f)(8),²⁹ an underwriter is

²⁸ See comments from CSPN, ICI and SIFMA.

²⁹ 17 CFR 240.15c2-12(f)(8).

defined broadly and may include one or more of the entities identified by ICI.

Nevertheless, if a program manager, for example, is an underwriter pursuant to SEC rules, its obligation to submit information would be deemed satisfied if the primary distributor or another underwriter submitted all of the information required by proposed Rule G-45 on its behalf.

CSPN also notes that underwriters may not have the legal right to information transmitted by selling dealers to a plan's record-keeper because they are not, in some instances, acting as the plan's record-keeper and therefore do not have access to or control such information. In essence, CSPN contends that these underwriters serve a very limited function and do not receive information from selling dealers about transactions in 529 plan accounts. The proposed rule change will only require underwriters to produce information that they possess or have a legal right to obtain, such as information in the possession of an underwriter's subcontractor. ICI acknowledges that it would be appropriate to require production of such information: "[ICI] concurs that it is appropriate to require a plan's underwriter to report information it owns or controls even if the underwriter has delegated responsibility for collecting or maintaining the information to another entity." The MSRB believes that, in most cases, the record-keeper will be an underwriter or a subcontractor of an underwriter. Although selling dealers will have no obligation to submit information to the MSRB under the proposed rule change, those selling dealers that enter into omnibus accounting arrangements with program managers or others will transmit information to underwriters or their subcontractors that must be included in the information submitted to the MSRB. Depository Trust & Clearing Corporation ("DTCC") and its affiliate, National Securities Clearing

Corporation (“NSCC”) worked with an industry group to modify the 529 plan aggregation file produced by NSCC to include 529 plan daily activity and position changes, so that a nightly file may be transferred to the program manager or others showing all activity and positions in 529 plan accounts for which the selling dealer performs accounting services. In an omnibus accounting arrangement, the selling dealer places purchase and sale orders in an aggregated fashion on behalf of the dealer and maintains records of individual account holder purchases and sales through subaccounts. Through this arrangement, orders are placed in an omnibus manner and do not identify the underlying account owners or beneficiaries. Nevertheless, the MSRB believes that underwriters have possession or the legal right to the 529 aggregation files and, therefore, have information regarding all activity and positions in the 529 plans they underwrite. The MSRB further understands that DTCC/NSCC created the 529 aggregation files at the request of the program managers and state sponsors because they must have information regarding each customer subaccount in order to monitor the contributions and withdrawals so that no beneficiary accumulates more funds in an account than is permitted by the Internal Revenue Service under the Internal Revenue Code. Consequently, the MSRB understands that underwriters have information as to customer activity and positions, notwithstanding the omnibus accounting arrangements entered into by certain selling dealers.

DEFINITIONS AND FORMAT

Finally, commenters³⁰ suggest slight definitional and formatting changes that have been incorporated into the proposed rule change. For example, pursuant to the

³⁰ See comments from CSPN, ICI and SIFMA.

suggestion of CSPN, the MSRB has changed the definition of “marketing channel,” “reallocation,” and “underlying investment.” The MSRB will also permit submitters to identify the “marketing channel” of each plan by a drop down menu on the electronic Form G-45, which will be further detailed in the G-45 Manual. Also, pursuant to a suggestion by ICI and SIFMA, the MSRB has moved Form G-45(ii)(D) on the fee and expense structure to (iii)(L). As for the ICI recommendation that information regarding asset allocation be reported in ranges rather than precise amounts, the MSRB believes that precision is needed to provide accurate information regarding the asset allocations and to distinguish one plan’s investment options from another.

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

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

- (A) by order approve or disapprove such proposed rule change, or
- (B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

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

Electronic Comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-MSRB-2013-04 on the subject line.

Paper Comments:

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-MSRB-2013-04. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the MSRB. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should

submit only information that you wish to make available publicly. All submissions should refer to File Number SR-MSRB-2013-04 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.³¹

Kevin M. O'Neill
Deputy Secretary

³¹ 17 CFR 200.30-3(a)(12).