June 3, 2003

Ms. Margaret H. McFarland
Deputy Secretary
Securities and Exchange Commission
450 Fifth Street, NW
Washington D.C. 20549

Re: Proposed Municipal Securities Rulemaking Board ("MSRB") Rule Change ("Interpretive Notice") Relating to Marketing Of 529 College Savings Plans in the Workplace (Release No. 34-47815; File No. SR-MSRB-2003-03)

Dear Ms. McFarland:

The Securities Industry Association ("SIA")[1] appreciates the opportunity to comment on the above referenced interpretive notice concerning the application of MSRB rules in the context of 529 college savings plan transactions effectuated through employee payroll deduction or similar programs. SIA previously submitted a comment letter to MSRB[2] in response to a prior draft of the interpretive notice. Many of SIA's comments in our prior letter centered on the fact that the draft interpretive notice presupposed a single model regarding how 529 Plan business is conducted in the employer market whereas numerous other models exist. We appreciate that the instant notice has addressed some of those concerns, but in particular, it has not fully addressed

[1] The Securities Industry Association brings together the shared interests of more than 600 securities firms to accomplish common goals. SIA member-firms (including investment banks, broker-dealers, and mutual fund companies) are active in all U.S. and foreign markets and in all phases of corporate and public finance. The U.S. securities industry manages the accounts of nearly 93 million investors directly and indirectly through corporate, thrift, and pension plans. In the year 2001, the industry generated $198 billion in U.S. revenue and $358 billion in global revenues. Securities firms employ approximately 750,000 individuals in the United States. (More information about SIA is available on its home page: http://www.sia.com.)

[2] Comment letter to Ernesto A. Lanza, MSRB Senior Associate General Counsel from Stuart J. Kaswell, Senior Vice President and General Counsel (January 10, 2003). Available at www.sia.com.

our concerns with regard to a direct model with distributor, or other models with similar characteristics.

In these models, the issuer enters into a distribution agreement with a primary distributor authorizing the primary distributor to engage in promotional efforts on the Plan's behalf. However, its activities are limited to managing the overall marketing of the program and the production of marketing and promotional materials. The primary distributor does not handle any applications or orders and requests submitted by investors. Investors submit applications and orders directly to the plan's transfer agent. Accordingly, only the transfer agent maintains any investor records and these records are the Plan's investor records. Thus, the primary distributor's regulatory responsibilities should be limited primarily to compliance with applicable rules governing marketing materials, but not encompass those rules mandating customer account related procedures.

While the instant notice acknowledges that, with respect to such models, the selling broker (and presumably the primary distributor) would not have a suitability obligation under MSRB Rule G-19, it would nonetheless have recordkeeping obligations under MSRB Rule G-8 and supervisory obligations under MSRB Rule G-27. We believe that in the context of these models the MSRB should re-assess whether 529 Plan accounts are actually "accounts" of either the selling broker or the primary distributor for purposes of the account/transaction approval requirements under Rule G-27 or the recordkeeping requirements under Rule G-8. We would respectfully suggest that the primary regulatory predicate for Rules G-8 and G-27 is to assure that all essential information has been obtained to evaluate the suitability of account transactions, and to create an audit trail to enable internal supervisory personnel and regulators to satisfy themselves that all suitability obligations have been met. Where no suitability obligation exists, and there is no expectation that the investor will effectuate anything other than self directed 529 Plan transactions, there seems to be no compelling reason to impose account recordkeeping requirements on a selling broker or primary distributor, and in fact the application of such requirements would impose additional costs on 529 Plan transactions and ameliorate certain of the operating efficiencies these models were designed to engender. Furthermore, we believe that with respect to recordkeeping requirements, the instant proposal is inconsistent with the policy that the Commission has adopted for its own recordkeeping rules. Specifically, we note that a recent interpretive notice issued under the Exchange Act[3] states in relevant part:

> We remind broker-dealers, however, that paragraph (a)(17)(i)(D) of Rule 17a-3 provides that the account record requirement only applies to accounts for which

[3] SEC Release No. 34-47910; Interpretive Release: Books and Records Requirements for Brokers and Dealers Under the Securities Exchange Act of 1934; p.3 (May 22, 2003) (the "Release").

> the broker-dealer is, or has within the past 36 months been, required to make a suitability determination under the Federal securities laws or under the requirements of a self-regulatory organization of which the broker-dealer is a member. If the firm has not been, within the past 36 months, required to make a suitability determination for recommendations about securities made to the customer of an account under federal laws or the requirements of a self-regulatory organization of which it is a member, then the firm would not be required to make the records described in new paragraph 17a-3(a)(17).[4]

SIA respectfully suggests that the MSRB should follow the Commission's policy with respect to the scope of its recordkeeping requirements.

Based on the foregoing, we respectfully request that in the context of 529 plan transactions, where neither a selling broker or primary distributor has a suitability obligation, the MSRB clarify that no account record requirement would exist under MSRB Rule G-19. We also request that a similar interpretation be provided under MSRB Rule G-27 with respect to supervision, or failing that, that the MSRB, at a minimum, articulate the specific activities to which supervisory duties would attach in the absence of a suitability obligation.

We trust our comments will be helpful to the Commission in its consideration of the MSRB proposal. Please contact Michael Udoff (212-618-0509) or Liz Varley (202-326-5353) of SIA staff if you have any questions regarding this submission.

Very truly yours

Stuart J. Kaswell
Senior Vice President
and General Counsel

cc Ernesto A. Lanza, Esq.
Jill Finder, Esq.

[4] The Release further states that "as noted in the Adopting Release, application of new paragraph 17a-3(a)(17) does not limit any other Federal law or regulation or SRO rule that requires that a broker-dealer collect information regarding its customers."