



**CSPN** | COLLEGE SAVINGS  
PLANS NETWORK



CollegeSavings  
FOUNDATION

By Electronic Delivery

September 14, 2012

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

Re: Comments Concerning MSRB Notice 2012-40  
Request for Comment on Draft Proposal to Collect 529 College Savings Plan  
Data

Dear Mr. Smith:

The College Savings Plans Network (CSPN) and the College Savings Foundation (CSF) are national not-for-profit organizations which work with their members to enhance 529 plans and assist American families to plan and save for higher education. CSPN and CSF members include state officials and state-sponsored 529 plans, as well as program managers, investment managers, and many organizations providing services to 529 plans, including legal, accounting and general consulting.

As the two national associations representing the 529 industry, we appreciate the opportunity to comment on MSRB Notice 2012-40, Request for Comment on Draft Proposal to Collect 529 College Savings Plan Data issued August 6, 2012 (the "Notice" or "Notice 2012-40"). We appreciate the Municipal Securities Rulemaking Board's (the "MSRB") continuing commitment to assist investors seeking to purchase 529 College Savings Plans ("529 Plans" or "Plans") and its interest in the collection of market information regarding 529 Plans. We are dedicated to working with the MSRB in its efforts to gain a better understanding of the industry, its participants, and its customers and want to ensure that it receives appropriate, consistent information to assist in its regulatory oversight of 529 Plan dealers. In addition, as noted in our responses to both MSRB Notice 2011-33 and MSRB Notice 2012-10, we fully support a transparent 529 marketplace and broad dissemination of relevant information.

CSPN remains very supportive and committed to provide meaningful free public access to information about 529 Plans and continues to believe that its website already provides such a resource. CSPN continues to enhance the information available to the public regarding 529 Plans as evidenced by the recent addition of Plan performance information. CSPN continues to believe that an MSRB data source may not necessarily be the best resource for those planning to save for college and appreciates the MSRB's commitment to keep the data proposed to be collected confidential unless and until a new Request for Comment is issued.

Similarly, CSF understands and applauds the MSRB's goal of having a centralized system for data collection and dissemination for the 529 industry's market participants. As stated in its response to MSRB Notice 2011-33, CSF believes that, once collected, the key to effectively sharing this data is to first and foremost consider the audience who will be using it. Given that there are already established and authoritative 529 industry sites which collect data and distribute it to these audiences including those produced by CSPN and FRC, it will be useful to continue discussing whether certain existing sites could be selected by the MSRB to more efficiently meet its goals in this matter.

To provide the MSRB with the most relevant data in the time period allotted, we submitted a survey to our members on the material issues presented in the Notice. While we have received a number of responses to the survey, our members are still evaluating how the Notice impacts them and their operations. As such, we would ask that the MSRB be willing to further discuss these issues and their impact on our industry in the near future.

A common theme in initial survey responses, a summary of which is found immediately below, is that while much of the data the Notice requests is already being collected, the methodology under which that information is assembled does not always match with what the Notice requires. For example, while all plans collect data on contributions, some plans include investment changes in their contribution calculations. This is in contrast with the Notice's requirement that investment changes not be included in quarterly contribution data. The industry is working toward greater consistency in the methodology for collecting and reporting data.

### **MSRB Notice 2012-40 Survey Results**

#### **I. Rule G-45 – Defined Terms**

We respectfully request clarification of several defined terms presented in Rule G-45 as follows<sup>1</sup>:

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<sup>1</sup> Many of our views with regard to defined terms under proposed Rule G-45 are consistent with and, in some cases, identical to those views expressed by the Investment Company Institute in their comment letter to be submitted regarding the Notice.

#### **A. “Asset Class”**

It is unclear to us whether the proposed definition of “asset class” is intended to refer to (i) the types of investments held in a 529 plan, (ii) the types of mutual funds held in a 529 plan, and/or (iii) the types of securities or other assets held by an underlying mutual fund. To avoid confusion and capture useful information in a manner that is consistent across the industry, we recommend that the MSRB define this term as follows:

“Asset class” shall mean: Domestic Equity; International Equity; Fixed Income; Cash or Cash Equivalents; or Other (please specify).

Should the MSRB disagree with this recommendation, we recommend that at the very least it define this term with greater specificity to avoid confusion among filers and ensure the comparability of information reported on Form G-45.

#### **B. “Benchmark”**

As discussed below, we recommend that Form G-45 not include performance information (including benchmark information and performance). If the MSRB adopts this recommendation, the term “benchmark” will no longer be needed and should be deleted.

#### **C. “Contributions”**

The MSRB proposes to define contributions in a way that would exclude from this term “withdrawal of funds from one strategy or portfolio and deposit of the same funds into another strategy or portfolio, such as where an account owner selects a different investment option or funds are moved from one age-band to another as beneficiaries approach college age.” We recommend eliminating this exclusion for two reasons.

First, a primary distributor often will not know which portions of a 529 plan’s total contributions represent either rollovers or a reallocation of assets in different investment options. The primary distributor’s role in the 529 plan is either to sell plans to investors, to execute sales agreements with retail broker-dealers selling 529 plans, or both. While the plan’s investment manager or recordkeeper may be aware of the amount of plan assets involved in these rollovers or reallocations because they may be involved in processing those transactions, it is not likely that the primary distributor would possess this information. The records for individual plan participants, and the allocation of their accounts among investment alternatives, would be maintained by the plan’s recordkeeper – which is not necessarily the primary distributor. Without knowing the amount of assets that represent rollovers or reallocations, a primary distributor would be unable to compute “contributions” as required by Form G-45. Further, because the Form only requires primary distributors to report information within their possession, custody, or control, it is likely that many Form G-45 filings would contain no information on contributions, which is obviously not what the MSRB intends.

In addition to eliminating the exclusion for rollovers or reallocations from the proposed definition of “contributions,” we recommend deleting the phrase “whether by existing account owners or new account owners.” Not all deposits come from an “account owner.” Instead, contributions to an account could come from relatives or friends of the account owner who want to contribute to the beneficiary’s 529 plan account. Also, the source of funds deposited into an account is likely not information recorded or tracked by the 529 Plan. Requiring the reporting of “all deposits” without regard to source would appear to provide the information of interest to the MSRB, thereby obviating the need to include this clause.

Based on all of our comments, we recommend that the term “contributions” be defined to mean “all deposits into a 529 plan account.” If the MSRB disagrees with this approach, we suggest that the term “contributions” be defined to allow an underwriter to submit contribution data in either format (i.e. – excluding withdrawals from one investment option to another *or* including all deposits).

#### **D. “Distribution”**

Like the definition of “contributions,” the MSRB has proposed to carve out from the definition of “distribution” those assets that are moved among investments or strategies. We oppose this carve out for the same reason we oppose it in connection with contributions. Accordingly, we recommend that the term “distribution” be defined to mean “the withdrawal of funds from a 529 plan account.”

#### **E. “Manner of Distribution”**

To prevent confusion, a term other than “Manner of Distribution” could perhaps be used to describe how 529s are sold to the public. The Notice correctly defines the term “Distribution” as the process of withdrawing money from an account. Using “Distribution” as part of a term that describes 529 marketing may lead to confusion.

#### **F. “Performance”**

We suggest that the definition of performance be expanded to define performance as that information described in CSPN’s Disclosure Principles Statement No. 5, adopted May 3, 2011, (“Disclosure Principles”). The industry uses the narrative and tables included in the Disclosure Principles as the guide for presenting performance information. Performance information is also presented in this format on the CSPN website. Revising the definition of “performance” to reflect the Disclosure Principles will also decrease the administrative burden for those underwriters required to submit data.

We also recommend that the MSRB revise the frequency of reporting this information. We note that SEC rules require mutual funds to provide performance information in their prospectuses and in annual reports to shareholders. There is no quarterly or even semi-annual performance reporting requirement and, therefore, it is unclear why the MSRB would require

more frequent reporting of 529 plan performance. We believe that, if the MSRB retains the requirement for performance reporting on Form G-45, any such requirement should apply on an annual basis to be consistent with SEC rules.

### **G. “Portfolio”**

The MSRB proposes to define “portfolio” to mean “the most basic legal entity into which account owner funds are deposited, such as a registered investment company.” We believe that the proposed definition may not be reflective of the manner in which 529 Plans typically use this term and therefore may be confusing. Based on the inclusion of the term “registered investment company”, we presume that the MSRB is seeking to collect data regarding the investments that underlie a 529 Plan investment (i.e. – an investment option may consist of three mutual funds from one or more registered investment companies).

If this is correct, we suggest that the term “portfolio” be replaced with the term “underlying investment”<sup>2</sup> in order to be consistent with industry guidance included in the Disclosure Principles. CSPN also believes that the term “underlying investment” is more commonly used in the industry and more descriptive. If the MSRB intends for “portfolio” to have another meaning, we recommend a definition with greater specificity.

### **H. “Program Manager”**

Under the MSRB’s proposed definition, a “program manager” would have to provide “investment advisory and management services, administrative and accounting functions, *and* marketing and other services related to the day-to-day operation of the plan.” We understand that not all program managers provide all of these services. Accordingly, we recommend replacing the italicized “and” in the first sentence of this paragraph with “or.” This change will ensure that each plan has at least one entity that would qualify as a “program manager.”

### **I. “Strategy”**

“Strategy” would be defined to mean “a combination of more than one portfolio through which funds of account owners are allocated to achieve a particular investment outcome.” As with other proposed definitions, we are uncertain as to its intended meaning. We believe that the MSRB intends to capture the actual investment options offered by a Plan (i.e. – age-based options and fixed investment options, and stand-alone investment options, each of which may be comprised of one or more underlying investments). We, therefore, recommend that the MSRB replace the term “strategy” with the term “investment option” in order to be consistent with industry guidance included in the Disclosure Principles. CSPN also believes that the term “investment option”<sup>3</sup> is more commonly used in the industry and more descriptive. If the MSRB

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<sup>2</sup> For purposes of this letter, we will continue to refer to the term “portfolio” as “underlying investment”.

<sup>3</sup> For purposes of this letter, we will continue to refer to the term “strategy” as “investment option”.

intends for “strategy” to have another meaning, we recommend a definition with greater specificity.

## **II. Form G-45 Survey Results**

### **A. Section (i)(A-F) Plan Descriptive Information**

As perhaps would be expected, none of the respondents to our survey reported any concerns with the collection and submission of the basic Plan descriptive information listed in the Notice.

### **B. Section (ii) Aggregate Plan Information**

#### Comments on Particular Subsections:

#### **a. Subsection (ii)(B) Total Contributions for the most recent quarter, and the percentage of those contributions derived from automatic contributions:**

Some respondents stated that while they do gather information on data points like contributions, they arrive at their contributions totals in a manner different from the one described in Notice 2012-40. As currently written, Form G-45 requires the total number of contributions in a quarter. The draft of Rule G-45 defines both “Contributions” and “Distributions” as not including account activity caused as a result of investment direction changes. However, some Plans include their customers’ investment changes in their contribution/distribution tallies.

In addition, some Plans regard contribution information as proprietary stating that the data, if made public, could provide a competitive advantage to other market participants. Still others do not collect this information on a quarterly basis.

Others expressed concern about obtaining and providing information on automatic contributions. As currently written, Form G-45 appears to require that all automatic contributions be reported for a given quarter. However, some Plans do not track this activity or only track ACH transfers from particular financial institutions and do not have the ability to tabulate the number of direct deposits from other sources.

#### **b. Subsection (ii)(C) Total distributions for the most recent quarter:**

As stated immediately above, Plans have different ways of calculating distribution levels which, in some cases, includes counting investment direction changes. In addition, like contribution levels, some respondents view this information as proprietary.

**c. Subsection (ii)(D) Fee and Expense structure for fees and expenses directly and indirectly paid by account owners as of the end of each quarter:**

Several respondents noted that reporting fees quarterly would require some changes to their existing reporting structure. In addition, some stated that providing quarterly fee and expense information on underlying fees could prove difficult as it is outside their normal processes.

In addition, we note that the MSRB has indicated that “[t]o avoid additional expense, primary distributors would submit information in the format suggested in Exhibit A to CSPN’s Disclosure Principles Statement No. 5 (May 3, 2011)”. We appreciate the MSRB’s desire to minimize the burden of reporting for each 529 Plan. However, because of unusual fee structures of some Plans, the Disclosure Principles specifically states:

Suggested fee and cost tables are attached as Exhibit A. If a Savings Plan includes fees and costs in categories that differ from the categories included in Exhibit A, then a different tabular presentation that is at least as specific as the tables attached as Exhibit A should be used.

Several Plans rely on the guidance in the Disclosure Principles to present an alternative fee table. We propose that the MSRB adopt a similar approach with regard to presentation of fees under Rule G-45 to ensure that all Plans are able to comply with the Rule.

**C. Section (iii) Information Regarding Each Investment Strategy (investment option):**

General Comments: Several respondents noted that they would have difficulty reporting available data regarding investment options 30 days after quarter end and suggested a number of different time frames ranging from 45 to 90 days as more realistic. Others reserved estimating a response time until they could obtain further clarification on the type of information requested in this section. Also, several noted that the term “Strategy” needed clarification with some asking whether it was solely referring to age-based strategies (*See Section I.I above*). In addition, there continued to be concern that, when combined, all of this information may provide a competitive advantage to other market participants if it is made publicly available. Comment was also received questioning the materiality of this information to the regulatory process asserting that it was the sponsoring state’s responsibility to ensure that the investment options are appropriate.

Comments on Particular Subsections:

a. **Subsection (iii)(E) Asset class allocation as of the end of the most recent quarter:**

One respondent asked who would determine the type of asset class – the Primary Distributor or the MSRB.

b. **Subsection (iii)(F) Name of each portfolio in each strategy and percentage allocation of each portfolio in each strategy:**

A respondent questioned whether the MSRB was seeking actual asset class allocation and underlying investment allocation or targeted allocations. Some commented that targeted allocations are more easily reportable while actual allocations are not currently calculated quarterly or easily reportable in that time frame.

c. **Subsection (iii)(H) Name of benchmark, if any:**

A respondent noted that these are customized to each investment option and are not easily reportable and another stated that the information may be proprietary.

d. **Subsection (iii)(I) Benchmark performance for the most recent quarter:**

The same comments made on Subsection (iii)(H) immediately above were also made for this information.

e. **Subsection (iii)(J) Total contributions for the most recent quarter and Subsection (iii)(K) Total distributions for the most recent quarter:**

As was pointed out above, some Plans do not calculate their contributions and distributions in the manner proscribed under the current draft of Rule G-45 or collect it on a quarterly basis. In addition, some Plans' systems are currently designed to aggregate this information not to break it down so that it could be reported as envisioned. Other respondents stated that, currently, their systems do not track contributions and distributions at the investment option level.

A respondent also stated that they do not believe that knowing actual contributions and distributions of an investment option is of significance to a 529 investor. They noted that there are many reasons why a customer selects an investment option and it should not be based on contribution and distribution figures. Sales and redemption figures are not reported by Fund families for mutual funds and there is no clear reason why the 529 industry should be subject to such a requirement.



**D. Subsection (iv) Information regarding each individual portfolio (underlying investment):**

General Comments: Some commenters remarked that this information is not in their possession, custody, or control. As is common in the industry, the program manager and primary distributor are not the same entity as the issuer of the underlying investment. Therefore, to require reporting at the underlying investment level would require most reporting entities to provide another entity's data. In particular, we cannot say that every issuer of an underlying investment in a 529 Plan would agree to or approve an affiliated or unaffiliated third party disseminating its information to the MSRB and/or the public. In some cases, the issuer of an underlying investment may not be required itself to disclose any of the requested information to a regulator and/or the public.

As with the other subsections, there continues to be concern that, when combined, all of this information may provide a competitive advantage to other market participants if it is made publicly available. In addition, a respondent stated that while the information requested in Subsections (iv)(D-J) could be obtained from its system, it was currently not in a reportable format thus necessitating that a new report be created, tested, and implemented in order to deliver the data requested.

Comment was also received questioning the materiality of this information to the regulatory process and its usefulness given that the performance figures will be provided at investment option level. For any data on individual underlying investments that is readily available, Plans report that they would need anywhere from one to six months to develop and produce the required reports. As some primary distributors do not normally collect the data requested in the format and/or frequency required by proposed Rule G-45, the consensus appears to be that extensive development work would be required to create the necessary reports. Opinions widely vary over how long these new reports would take to develop, test, and implement with estimated time frames ranging from two months to two years.

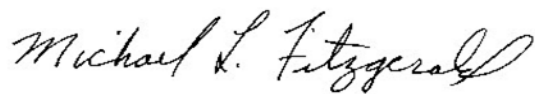
Comments on Particular Subsections:

a. **Subsection (iv)(I) Total contributions for the most recent quarter & Subsection (iv)(J) Total distributions for the most recent quarter:**

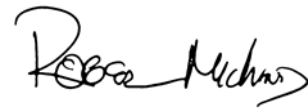
One respondent remarked that quarterly contributions and distributions at the individual underlying investment level would be more complicated to calculate for the age-based underlying investments as they consist of a variety of underlying funds. In addition, it is the practice of some to measure contributions and distributions at the Plan or underlying investment level, not the investment option level. Finally as stated repeatedly above, it is also the practice by some to include investment direction changes in the calculation of contributions and distributions which differs from proposed Rule G-45's methodology.

Thank you again for providing an opportunity to comment on the Notice. We hope our comments and our actions as an industry convey our commitment to ensuring that the marketplace is equipped with meaningful, accurate information regarding 529 Plans. Please do not hesitate to contact us with any questions or for more information. You may reach CSPN by calling Chris Hunter at (859) 244-8177 and CSF by calling Kathy Hamor at (703) 351-5091.

Sincerely,



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



Roger Michaud  
Chairman,  
College Savings Foundation