



December 21, 2012

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

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

Dear Mr. Smith:

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

**I. Executive Summary**

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

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<sup>1</sup> SIFMA brings together the shared interests of hundreds of securities firms, banks and asset managers. SIFMA’s mission is to support a strong financial industry, investor opportunity, capital formation, job creation and economic growth, while building trust and confidence in the financial markets. SIFMA, with offices in New York and Washington, D.C., is the U.S. regional member of the Global Financial Markets Association (GFMA).

<sup>2</sup> See Comment Letter from David L. Cohen, Managing Director and Associate General Counsel, SIFMA, to Ronald W. Smith, MSRB, dated August 26, 2011 regarding MSRB Notice 2011-33, available at <http://www.sifma.org/issues/item.aspx?id=8589935244> . See also, Comment Letter from David L. Cohen, Managing Director and Associate General Counsel, SIFMA, to Ronald W. Smith, MSRB, dated September 14, 2012 regarding MSRB Notice 2012-40, available at <http://www.sifma.org/issues/item.aspx?id=8589940304>.

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

## II. General Considerations

SIFMA concurs with the views expressed by the Investment Company Institute (ICI) in its comment letter to the MSRB on the Proposal<sup>3</sup>, including:

- The data collected by the MSRB is to be used exclusively for internal/regulatory purposes and is to be kept confidential;
- If the MSRB were to consider making public any of the 529 plan market data collected under Draft Rule G-45, it would issue a new Request for Comment;
- Only those dealers acting as underwriters of 529 plans would be required to file Form G-45. Underwriters would only be required to submit the information required by form G-45 to the extent it is within their possession, custody, or control; and
- Third Party distributors of 529 Plans do not have any reporting obligations under Rule G-45.

Additionally,

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

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

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

As noted above, SIFMA supports the MSRB's proposal that "brokers, dealers, and municipal securities dealers ("dealers"), acting in the capacity of underwriter (commonly known as "primary distributor") of 529 plans"<sup>4</sup> be required to provide certain 529 plan data to the MSRB to the extent the information is within their possession, custody, or control, and that the MSRB "does not [sic] seek information from dealers that simply sell interests in 529 plans to customers"<sup>5</sup>. This approach should enable the MSRB to collect plan data from one central source, rather than relying on the multitude of broker-dealers that sell 529 plans to provide their limited information on the plan, which the MSRB would then have to reconcile and aggregate. Indeed, SIFMA, like the ICI and other commenters, opposes the imposition of any 529 plan data reporting requirements being placed upon broker dealers that are not underwriters<sup>6</sup> but that instead have entered into contracts with the plan's underwriter (primary distributor) to sell plan shares to retail investors. We note that the underwriting process for 529 plans is more akin to that of a mutual fund, which typically has but a single underwriter. The underwriter's role is to execute selling agreements with numerous broker dealers, sometimes hundreds, to distribute the fund's shares. This scenario should be contrasted with many traditional municipal securities offerings that, in lieu of a single underwriter, may have various parties involved in the underwriting, such as a senior manager, co-managers, other syndicate members, as well as selling group members. The roles, responsibilities, and legal obligations of each of these persons have no counterpart in the 529 plan world as 529 plans are distributed pursuant to the mutual fund model discussed above, where there is typically but one underwriter for each plan. That underwriter is under contract with the state issuer, the plan, or the plan's program manager to distribute the plan's shares. The underwriter, in turn, enters into sales agreements with retail

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<sup>4</sup> MSRB NOTICE 2012-59

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

<sup>6</sup> The Proposal defines the term "underwriter" as "a broker, dealer or municipal securities dealer that is an underwriter, as defined in Securities Exchange Act Rule 15c2-12(f)(8), of municipal fund securities that are not local government investment pools." This section of the Exchange Act Rule defines the term underwriter as "any person who has purchased from an issuer of municipal securities with a view to, or offers or sells for an issuer of municipal securities in connection with, the offering of any municipal security, or participates or has a direct or indirect participation in any such undertaking, or participates or has a participation in the direct or indirect underwriting of any such undertaking; except, that such term shall not include a person whose interest is limited to a commission, concession, or allowance from an underwriter, broker, dealer, or municipal securities dealer not in excess of the usual and customary distributors' or sellers' commission, concession, or allowance."

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

#### **IV. Filing Format**

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

#### **V. Form G-45**

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

#### **VI. Implementation Period and Frequency of Reporting**

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

**VII. Conclusion**

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

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

Sincerely yours,

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

David L. Cohen  
Managing Director  
Associate General Counsel

cc:

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