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Category

Uniform Practice

Affected Rules

[Rule G-8](#); [Rule G-9](#)

MSRB to Collect Additional Data About 529 College Savings Plans

Overview

The Municipal Securities Rulemaking Board (MSRB) received approval from the Securities and Exchange Commission (SEC) on February 21, 2014 to adopt new MSRB Rule G-45, on reporting of information on municipal fund securities, and electronic Form G-45, as well as associated amendments to MSRB Rules G-8, on books and records, and G-9, on preservation of records.¹

The rule change authorizes the MSRB to collect more comprehensive information regarding 529 plans underwritten by brokers, dealers or municipal securities dealers (dealers) by gathering data directly from such dealers. MSRB rules govern the activities of dealers and municipal advisors who transact business in municipal fund securities, and the rule change will enable the MSRB to have more accurate, reliable and complete information about 529 plans underwritten by dealers in order to effectively carry out its regulatory responsibilities.

The rule change will assist the MSRB and other regulators that perform examinations and other oversight activities of dealers and municipal advisors, by providing them with important information regarding 529 plans underwritten by dealers. The information also may be used to determine the nature or timing of risk-based examinations.

Rule G-45 requires dealers, when acting in the capacity of an underwriter for a 529 plan, to submit information on a semi-annual or, in the case of performance data, annual basis, to the MSRB. The required information includes plan descriptive information, assets, asset allocation information for the assets of each investment option, contributions, withdrawals, fee and cost structure, performance data, and other information related to the 529 plan. Rule G-45 requires the information to be submitted electronically through new Form G-45, discussed below.

¹ See Exchange Act Release No. 71598 (Feb. 21, 2014), File No. SR-MSRB-2013-04.

The required information must be submitted to the MSRB's Electronic Municipal Market Access (EMMA®) system and will be retained in a database for regulatory use. The information will not, at this time, be disseminated publicly, though the MSRB's goal is to disseminate through EMMA at a later date the information that will be of benefit to investors. Prior to any public dissemination, the MSRB will file a proposal with the SEC to do so, which will provide market participants with an opportunity to comment publicly on the proposal.

The effective date for the rule change is February 24, 2015. Accordingly, implementation of the rule will occur with the first submission of Form G-45 due by August 30, 2015, which is 60 days after the end of the reporting period of January 1 - June 30, 2015. Thereafter, reporting must be made by no later than 60 days following the end of each semi-annual reporting period ending on June 30 and December 31 of each year. Performance data, however, will be submitted annually by no later than 60 days following the end of the reporting period ending on December 31. Both Form G-45 and the Form G-45 Manual will be made available to underwriters in advance of the submission deadline to aid them in completing the new form. The MSRB will announce the availability of Form G-45 and the Form G-45 Manual at a later date.

Questions about this notice may be directed to Lawrence Sandor, Deputy General Counsel, at 703-797-6600.

Summary of New Rule and Amendments

New Rule G-45

Rule G-45 requires each underwriter of a primary offering of municipal fund securities (except interests in local government investment pools) to report to the MSRB the information relating to such offering required by Form G-45. Reporting must be accomplished in the manner prescribed in the Form G-45 procedures and as set forth in the Form G-45 Manual. The Form G-45 Manual will be provided by the MSRB to assist persons in the submission of the required information and will be available on the MSRB's website at a later date, as announced by the MSRB.

Interests in 529 plans are the only type of municipal fund security covered by the new reporting requirement. Brokers, dealers or municipal securities dealers that are underwriters must 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 of a 529 plan. Consequently, the MSRB will deem the reporting obligation to be fulfilled if any one of multiple underwriters submits the required information. In this regard, on Form G-45, each submitter must indicate the identity of each underwriter that has identified itself as such and on whose behalf the information is submitted. The submitting underwriter will be obligated to submit information only for itself and those entities that identify themselves as underwriters of the plan and agree to have their information reported by the submitter.

Amended Rules G-8 and G-9

The amendments to Rules G-8 and G-9 require underwriters obligated to submit information to the MSRB under Rule G-45 to maintain that information for at least six years.

New Form G-45

The information required by Form G-45 must be submitted electronically by underwriters, either through automated upload or through a web portal, at the discretion of the underwriter. 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 information falling into three main categories, discussed below: plan descriptive information, aggregate plan information and investment option information.

Plan Descriptive Information

Underwriters must report to the MSRB 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 after the underwriter's first submission and will likely change infrequently.

Aggregate Plan Information

Underwriters must report to the MSRB 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, underwriters must provide the MSRB with:

- the name and type of investment option (such as 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 and allocation percentage 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.

February 24, 2014

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Text of New Rule and Amendments²

Rule G-45: Reporting of Information on Municipal Fund Securities

(a) Form G-45 Reporting Requirements. Each underwriter of a primary offering of municipal fund securities that are not interests in local government investment pools shall report to the Board 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 June 30 and December 31 and in the manner prescribed in the Form G-45 procedures below and as set forth in the Form G-45 Manual; provided, however, that performance data shall be reported annually by no later than 60 days following the end of the reporting period ending on December 31. Each submitter shall indicate on Form G-45 the identity of each underwriter that has identified itself as such and on whose behalf the information is submitted.

² Underlining indicates new language; strikethrough indicates deletions.

(b) Form G-45 Reporting Procedures.

(i) All submissions of information required under this rule shall be made by means of Form G-45 submitted in a designated electronic format to the Board in such manner, and including such items of information, as specified herein, in Form G-45 and in the Form G-45 Manual.

(ii) Form G-45 shall be submitted by the underwriter or by any submission agent designated by the underwriter pursuant to the procedures set forth in the Form G-45 Manual. The failure of a submission agent designated by the underwriter to comply with any requirement of this rule shall be considered a failure by such underwriter to so comply.

(c) Form G-45 Manual. The Form G-45 Manual is comprised of the specifications for reporting of information required under this rule, the user guide for submitting Form G-45, and other information relevant to reporting under this rule. The Form G-45 Manual is located at www.msrb.org and may be updated from time to time with additional guidance or revisions to existing documents.

(d) Definitions.

(i) The term “asset class” shall mean domestic equities, international equities, fixed income products, commodities, insurance products, bank products, cash or cash equivalents or other product types.

(ii) The term “benchmark” shall mean an established index or a blended index that combines the benchmarks for each of the underlying mutual funds or other investments held by an investment option during the relevant time period weighted according to the allocations of those underlying mutual funds or other investments and adjusted to reflect any changes in the allocations and the benchmarks during the relevant time period.

(iii) The term “contributions” shall mean all deposits into the plan or investment option but shall not include reallocations.

(iv) The term “designated electronic format” shall mean the format specified in the Form G-45 Manual.

(v) The term “distributions” shall mean the withdrawal of funds from a plan or investment option, but shall not include reallocations.

(vi) The term “investment option” shall mean 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.

(vii) The term “marketing channel” shall mean the manner by which municipal fund securities that are not local government investment pools are sold to the public, such as through a broker, dealer or municipal securities dealer that has a selling agreement with an underwriter (commonly known as

“advisor-sold”) or through a website, or toll-free telephone number or other direct means (commonly known as “direct-sold”).

(viii) The term “performance” shall mean total returns of the investment option expressed as a percentage, net of all generally applicable fees and costs.

(ix) The term “plan” shall mean a college savings plan or program established by a state, or agency or instrumentality of a state, to operate as a Qualified Tuition Program in accordance with Section 529 of the Internal Revenue Code.

(x) The term “program manager” shall mean an entity that enters into a contract directly with the trustee of the plan to provide, directly or indirectly through service providers, investment advisory and management services, administration and accounting functions, and/or marketing and other services related to the day-to-day operation of the plan.

(xi) The term “primary offering” shall mean an offering defined in Securities Exchange Act Rule 15c2-12(f)(7).

(xii) The term “reallocation” shall mean the withdrawal of funds from one investment option in a plan and deposit of the same funds into one or more investment options in the same plan, 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.

(xiii) The term “underlying investment” shall mean a registered investment company, unit investment trust, or other investment product in which an investment option invests.

(xiv) The term “underwriter” shall mean 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.

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Rule G-8: Books and Records to be Made by Brokers, Dealers and Municipal Securities Dealers

(a) – (f) No change.

(g) *Transactions in Municipal Fund Securities.*

(i) - (ii) No change.

(iii) *Underwriters of Municipal Fund Securities That Are Not Local Government Investment Pools.* An underwriter (as defined in Rule G-45(d)(xiv)) shall maintain the information required to be reported on Form G-45.

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Rule G-9: Preservation of Records

(a) *Records to be Preserved for Six Years.* Every broker, dealer and municipal securities dealer shall preserve the following records for a period of not less than six years:

(i) - (xi) No change.

(xii) the records required to be maintained pursuant to rule G-8(a)(xxv); ~~and~~

(xiii) the records required to be maintained pursuant to rule G-8(a)(xxvi); and

(xiv) the records required to be maintained pursuant to Rule G-8(g)(iii).

(b) – (g) No change.