

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-84809; File No. SR-MSRB-2018-08)

December 12, 2018

Self-Regulatory Organizations; Municipal Securities Rulemaking Board; Order Granting Approval of a Proposed Rule Change Concerning Certain Data Elements on Form G-45 under MSRB Rule G-45, on Reporting of Information on Municipal Fund Securities

I. Introduction

On October 15, 2018, the Municipal Securities Rulemaking Board (the “MSRB” or “Board”) filed with the Securities and Exchange Commission (the “SEC” or “Commission”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder,² a proposed rule change to amend Form G-45 under MSRB Rule G-45, on reporting of information on municipal fund securities,³ to clarify a data element concerning the program management fee, to add a data element concerning the investment option closing date, and to delete data elements concerning annualized three-year performance information (the “proposed rule change”). The proposed rule change was published for comment in the Federal Register on November 2, 2018.⁴ In the Notice of Filing, the MSRB requested that the proposed rule change become effective on June 30, 2019.⁵

The Commission did not receive any comment letters on the proposed rule change.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR § 240.19b-4.

³ MSRB Form G-45 is an electronic form on which submissions of the information required by Rule G-45 are made to the MSRB.

⁴ Securities Exchange Act Release No. 84496 (October 29, 2018) (the “Notice of Filing”), 83 FR 55214 (November 2, 2018).

⁵ See Notice of Filing.

II. Description of Proposed Rule Change

In the Notice of Filing, the MSRB stated that the purpose of the proposed rule change is to refine and enhance certain of the investment option data that the MSRB collects under Rule G-45 from underwriters to 529 savings plans⁶ and ABLE programs.⁷ Specifically, the MSRB stated that it proposes to amend Form G-45 to (i) clarify a data element concerning the program management fee, (ii) add a data element concerning the investment option closing date, and (iii) delete data elements concerning annualized three-year performance information.⁸ The MSRB also stated that the proposed rule change would provide information that would enhance the MSRB's and other regulators' ability to effectively and efficiently analyze 529 savings plans and ABLE programs to assess the impact of each 529 savings plan and ABLE program on the market, to evaluate trends and differences, and to gain an understanding of the aggregate risk taken by investors.⁹

The MSRB stated that throughout the seven reporting periods during which the MSRB has analyzed data submitted on Form G-45, the MSRB has observed anomalies in the data submitted under Investment Option information.¹⁰ The MSRB stated that those anomalies related

⁶ Section 529 of the Internal Revenue Code of 1986, as amended (the "Code") established savings plans ("529 savings plans") to encourage saving for future education costs. 26 U.S.C. 529(b)(1)(A)(ii).

⁷ ABLE programs are programs designed to implement Section 529A to the Code. 26 U.S.C. 529A. Section 529A of the Code permits a state, or an agency or instrumentality thereof, to establish and maintain a tax-advantaged savings program to help support individuals with disabilities in maintaining health, independence, and quality of life. See Notice of Filing.

⁸ See Notice of Filing.

⁹ Id.

¹⁰ Id.

to the program management fee and to investment options that closed during the reporting period. Form G-45 requires that an underwriter report the program management fee (expressed as an annual percentage of 529 savings plan or ABLE program assets) assessed by the 529 savings plan or ABLE program.¹¹ The MSRB noted that the program management fee typically is a separately identifiable percentage that is shown in the fee table for the 529 savings plan or ABLE program, but for some 529 savings plans and ABLE programs, this is not the case.¹² The MSRB stated that instead for those 529 savings plans or ABLE programs, the program management fee is assessed by the underlying mutual fund in which the investment option invests and this is typically done through a 529 or ABLE share class of the mutual fund.¹³ The MSRB further noted that underwriters for those 529 savings plans or ABLE programs generally report the program management fee as zero on Form G-45, and then may add explanatory information in the notes section of the form about the fee.¹⁴ The MSRB stated that such explanatory information, however, may or may not actually disclose the program management fee in a format that is typically used for comparison – *i.e.*, as an annual percentage of 529 savings plan or ABLE program assets.¹⁵ The MSRB stated that the proposed rule change would clarify that the underwriter must report the program management fee as an annual percentage of assets (*e.g.*, x.xx%) no matter whether the program management fee is assessed by the

¹¹ Id.

¹² Id.

¹³ Id.

¹⁴ Id.

¹⁵ Id.

underlying mutual fund or by the 529 savings plan or ABLÉ program itself.¹⁶ The MSRB stated that the underwriter would not be able to report the program management fee as zero and then explain in a note that it is assessed by the underlying mutual fund.¹⁷ Thus, the MSRB stated, the proposed rule change would allow the MSRB, as well as other regulators, to analyze data in a uniform format that would facilitate (i) comparison among 529 savings plans and ABLÉ programs, (ii) the evaluation of trends and differences, and (iii) the identification of potential risks to investors that may affect those 529 savings plans and ABLÉ programs.¹⁸

In the Notice of Filing, the MSRB noted that an investment option offered in a 529 savings plan may close to new investors, but allow current account owners who have allocated account value to an investment option to continue to invest in that “closed” investment option.¹⁹ Alternatively, the MSRB stated, the 529 savings plan may close an investment option completely.²⁰ In either case, the MSRB stated that the investment option data submitted for that investment option on Form G-45 can be contrary to what the MSRB would have expected for the investment option when compared to prior reporting periods, and the MSRB may not be able to easily determine why such variance occurred.²¹ The MSRB stated that, to address this issue, the proposed rule change would add “check-the-box” items to Form G-45 that would alert the MSRB about whether an investment option has closed to new investors, but allows current

¹⁶ Id.

¹⁷ Id.

¹⁸ Id.

¹⁹ Id.

²⁰ Id.

²¹ Id.

account owners to contribute funds, or whether the investment option has closed to all investors.²²

The MSRB sought public comment about providing additional data concerning the investment options offered in 529 savings plans and ABLÉ programs.²³ In response, the MSRB received the suggestion that the MSRB no longer require that an underwriter submit three-year annualized performance information for an investment option on Form G-45.²⁴

Form G-45 requires that underwriters annually report (i) total returns, including sales charges, (ii) total returns, excluding sales charges, and (iii) benchmark return percent for specified periods, including annualized or annual three-year percent. The MSRB noted that at the time the MSRB approved Form G-45, the College Savings Plans Network's ("CSPN") voluntary disclosure principles that provide recommendations to the state entities that establish and maintain 529 savings plans (the "disclosure principles") and which commenters stated were the industry norm in other rulemakings, recommended that such disclosure be made.²⁵ However, the MSRB noted, since that time, CSPN has updated the disclosure principles, and CSPN no longer recommends that a 529 savings plan include three-year performance information.²⁶ Further, the MSRB noted that three-year annualized performance information is not required by the SEC for mutual funds.²⁷

²² Id.

²³ Id.

²⁴ Id.

²⁵ Id.

²⁶ Id.

²⁷ Id.

The MSRB has determined that Form G-45, even without the three-year performance data, would continue to provide the MSRB with sufficient performance information to assist the MSRB with its analysis of 529 savings plans and ABLÉ programs.²⁸ Therefore, the MSRB stated that because it believes that it will have sufficient performance information, it is no longer an appropriate regulatory burden and should be eliminated to avoid unnecessary costs.²⁹

III. Discussion and Commission Findings

The Commission has carefully considered the proposed rule change. The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the MSRB.

In particular, the proposed rule change is consistent with Section 15B(b)(2)(C) of the Act.³⁰ Section 15B(b)(2)(C) of the Act states 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.³¹ The Commission believes the proposed rule change is consistent with Section 15B(b)(2)(C) and necessary and appropriate to help the MSRB receive complete and reliable information about 529 savings plans

²⁸ Id.

²⁹ Id.

³⁰ 15 U.S.C. 78o-4(b)(2)(C).

³¹ 15 U.S.C. 78o-4(b)(2)(C).

and ABLÉ programs. The MSRB can use the data elements collected on Form G-45 to monitor these municipal fund securities and detect potential investor harm. The Commission believes that, for that data set to be complete and reliable, such data should include accurate data about the fees and expenses associated with an investment in a 529 savings plan or an ABLÉ program, including the program management fee, as provided in the proposed rule change. The Commission also believes that such data should include accurate information about the investment options available to existing and potential investors, as provided in the proposed rule change. The Commission believes the proposed rule change would help the MSRB to gather relevant data required to ensure the MSRB's regulatory scheme is sufficient and/or to determine whether additional rulemaking is necessary to protect investors and the public interest. Further, the Commission believes that the deletion in the proposed rule change of the requirement that 529 savings plans and ABLÉ programs provide three-year annualized performance information would better align Rule G-45 reporting requirements with industry reporting standards, and therefore would 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.

The Commission believes that the proposed rule change would improve the MSRB's ability to analyze the market for 529 savings plans and ABLÉ programs as well as improve the MSRB's ability to evaluate trends and differences among 529 savings plans and ABLÉ programs. Further, the Commission believes that the MSRB, as well as other financial regulators charged with enforcing the MSRB's rules, can use the information submitted on MSRB Form G-45 to enhance their understanding of, and ability to monitor, 529 savings plans and ABLÉ programs.

In approving the proposed rule change, the Commission also has considered the impact of the proposed rule change on efficiency, competition, and capital formation.³² The Commission does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The clarification regarding the collection of the program management fee information should reduce instances of the MSRB needing to have underwriters resubmit corrected information that is currently required to be submitted under Rule G-45. The Commission believes the deletion of the Rule G-45 requirement to report three-year annualized performance data for each investment option and any related benchmarks will better align Rule G-45 reporting requirements with industry reporting standards and will likely reduce Rule G-45 reporting burdens. Additionally, with regard to the proposed requirement to report investment option closing date information, the Commission understands that this information is readily available to underwriters and the cost of submission of such information would be minor. The Commission believes that the additional information required to be submitted by the proposed rule change would be submitted on an equal and non-discriminatory basis, and the requirement would apply equally to all dealers that serve as underwriters to 529 savings plans and/or ABLÉ programs. Furthermore, the Commission believes that the potential burdens created by the proposed rule change are likely to be outweighed by the benefits.

For the reasons noted above, the Commission believes that the proposed rule change is consistent with the Act.

³² 15 U.S.C. 78c(f).

IV. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,³³ that the proposed rule change (SR-MSRB-2018-08) be, and hereby is, approved.

For the Commission, pursuant to delegated authority.³⁴

Eduardo A. Aleman
Deputy Secretary

³³ 15 U.S.C. 78s(b)(2).

³⁴ 17 CFR 200.30-3(a)(12).