



By Electronic Delivery

April 17, 2023

Ronald W. Smith, Corporate Secretary
Municipal Securities Rulemaking Board
1300 I Street, NW
Washington, DC 20005

Re: Comments Concerning MSRB Notice 2023-02
Request for Comment Regarding a Retrospective Review of the MSRB's Time of Trade Disclosure Rule and Draft Amendments to MSRB Rule D-15, On Sophisticated Municipal Market Professionals

Dear Mr. Smith:

The Utah Educational Savings Plan dba my529 ("my529") was established by the State of Utah as a qualified tuition program under 26 U.S.C. § 529 (529 Plan(s)). my529 is the official and only 529 plan sponsored by the State of Utah. Since its founding, my529 has become the third largest direct-sold 529 Plan in the country. my529 is pleased to have the opportunity to comment on MSRB Notice 2023-02, *Request for Comment Regarding a Retrospective Review of the MSRB's Time of Trade Disclosure Rule and Draft Amendments to MSRB Rule D-15, On Sophisticated Municipal Market Professionals* issued February 16, 2023 (the "Notice").

my529 appreciates the Municipal Securities Rulemaking Board's (the "MSRB") continuing commitment to assist consumers seeking to invest in 529 Plans. my529 is uniquely situated in the industry in that it does not have an advisor-sold 529 plan, nor does it contract with any firm as an underwriter to distribute the Plan's securities. Nevertheless, my529 strives to align its practices with applicable MSRB rules and thus feels compelled to provide comments.

1. Should the MSRB consider amending Rule G-47 or creating a separate standalone rule to expressly clarify and define dealer's time of trade disclosure obligations regarding 529 savings plans? If proposing a new standalone rule, should the MSRB codify existing Rule G-17 interpretive guidance addressing out-of-state disclosure obligations, as part of that effort?

Although 529 Plans are issuing a municipal security, the municipal fund security issued by 529 Plans is fundamentally different from the bulk of municipal securities overseen by the MSRB.

Because of the fundamental differences between a contribution to a 529 Plan and the purchase of a municipal bond, my529 believes that there may be utility in codifying a standalone rule regarding time of trade disclosure obligations for 529 Savings Plans. A standalone rule for 529 Plans would have two benefits: (1) it would allow the MSRB to better see and understand the unique nature of municipal fund securities issued by 529 Plans; and (2) it would provide greater certainty, as well as a potential safe harbor to 529 Plans.



When an account owner contributes to a 529 Plan, the account owner is investing in a municipal fund security. That contribution looks and acts, however, far more like an investment in a mutual fund¹ than a purchase of a municipal bond which has a set maturity date and coupon rate. In contrast, the municipal security issued by a 529 Plan is a continuous offering.

Contributions to 529 Plans typically fit into one of the following areas, each requiring different time of trade disclosures.

1. **Initial account opening.** An account owner opening a new account should receive offering materials prior to opening the account. As a continuous offering, disclosure materials are readily available. Generally, hardcopies are made available to any account owner who has not requested electronic delivery. Clear guidance on electronic delivery or availability of the disclosure materials is needed.
2. **Automatic or one-time contributions.** Account owners may contribute automatically with scheduled contributions, or may choose to contribute sporadically when they have funds to invest. Clear guidance is needed in these circumstances. Providing disclosure documents for every transaction after the account is opened is impractical and expensive. Like mutual funds, supplemental materials should be provided when plan changes material to the investment decision are made.
3. **Third-party contributions.** Anyone is allowed to contribute to a beneficiary's 529 Plan account (e.g., gifting platform, grandparent, friend, aunt, etc.). Clarity is needed around any disclosure requirements in this circumstance. my529 believes no disclosure requirement is needed because these are gifts to an account over which the giver has no control.

If the MSRB were to propose a new standalone rule, existing Rule G-17 interpretative guidance addressing out-of-state disclosure obligations should be codified because it would provide greater certainty to 529 Plans. The current guidance has been voluntarily adopted by the College Savings Plans Network ("CSPN") in recommended disclosure principles for 529 Plans. The current version of these disclosure principles is CSPN Disclosure Principles Statement No. 7, which was adopted on October 6, 2020 (available at: <https://www.collegesavings.org/wp-content/uploads/2020/12/CSPN-Disclosure-Principles-Statement-No.-7-FINAL.pdf>).

2. Explain how the current business practices (i.e., check and paper application process or omnibus platform) support or hinder dealers in meeting their time of trade compliance obligations during the various points of the lifecycle of trades related to 529 savings plans (such as at account opening, contribution, withdrawal, and rollover, etc.).

¹ In fact, my529 has observed that some account owners may get confused that they do not own the underlying mutual funds when they make a contribution to their account (i.e., invest in a municipal fund security). Accordingly, my529 has taken steps to better communicate to its account owners and prospective account owners about the fundamental nature of the municipal fund security that they are purchasing when they contribute to their accounts.



my529's current business practice is to provide its program disclosure document (i.e., the my529 Program Description) to all new account owners prior to opening an account. Whether opening an account online or using a paper form, my529 makes the my529 Program Description available in hard copy or electronic format (depending on the stated preference of the individual account owner) as part of the account signup process. New account owners must specifically agree and certify to the following:

"I have received, read, understand, and agree to all the terms and conditions in the Program Description and this Account Agreement and will retain a copy of the Account Agreement for my records."

The my529 Program Description is also available on my529's web site and is posted publicly as a voluntary disclosure on EMMA.

When the my529 Program Description is updated via supplement, copies of the supplement are sent to all account owners either in hard copy or electronic format. The Supplements are also posted to my529's website and are posted to EMMA as a matter of best practices.

my529's advertisements (except for those that meet an exception to MSRB Rule G-21(e)(i)(B)) also contain disclosure urging the reader to "[c]arefully read the Program Description in its entirety for more information and consider all investment objectives, risk, charges and expenses before investing." This disclosure would be present on all advertising that presents a "call to action" on the part of the viewer—whether the viewer is an existing account owner or merely a prospective one.

Time of trade disclosures are generally not a hindrance to current account-opening business practices. However, a requirement to provide disclosure materials for every contribution after the initial account opening would be expensive and impracticable. As an example, my529 processed more than 3.1 million contributions in 2022.

3. What supervisory systems are in place and what are the tools used by dealers to support their supervisory review of time of trade disclosures that are made orally or are in writing during the various points of the lifecycle of a trade related to 529 savings plans, as noted above?

my529 is not a municipal dealer and does not work with any dealers on distribution. As a result, my529 does not have direct knowledge of municipal dealers' current business practices. my529 is, however, mindful of the burden and cost imposed on dealers who are required to provide time of trade disclosures either orally or in writing. As noted previously, the municipal fund securities sold by 529 Plans are fundamentally different than a municipal bond. my529 believes that dealers, and self-operated plans like my529, may satisfy their time of trade disclosure obligations by electronic notice and reference to program disclosure documents that are publicly available, whether that be on the website of a 529 Plan or on EMMA.



4. Are there any known business practices unique to the sale of 529 savings plans that the MSRB should be mindful of that could warrant an exception/exemption to time of trade disclosure obligations for dealers?

It is common for my529 account owners to set up automatic contributions that happen on a monthly or other regularly-scheduled basis. This complicates time of trade disclosures because the investment decision is not made when each contribution is made—rather the investment decision is made when the account owner sets the automatic, recurring contribution schedule.

The account owner’s motivation in setting such a schedule is so that he or she does not have to make further investing decisions, unless he or she wants to cancel or modify that automatic, recurring contribution. To require a 529 Plan to provide ongoing, mandatory time of trade disclosures under such circumstances is expensive and impracticable. For example, the printing and mailing costs for my529’s most recent Program Description was approximately \$2.30 per account. Program Descriptions were mailed to more than 34,000 account owners. This does not include personnel expenses for drafting, editing and review by compliance and disclosure employees or consultants. For the 15 percent of account owners that request printed documents, the cost would exceed \$1.0 million annually, or an increase to my529’s annual budget of seven percent. Such disclosures, if mandated, would only needlessly increase cost and damage the goodwill that exists between a 529 Plan and its account owners because the account owners would receive such disclosures long after the investing decision had already been made.

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Thank you again for providing an opportunity to comment on the Notice. We hope these observations are helpful as the MSRB considers possible rulemaking. Please do not hesitate to contact us with any questions or for more information. You may reach my529 by calling Greg Dyer at (801) 366-8441.

Sincerely,

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