

2018-31

Publication Date
December 13, 2018

Stakeholders
Municipal Securities
Dealers

Notice Type
Approval Notice

Effective Date
June 30, 2019

Category
Fair Practice

Affected Rules
[G-45](#)

SEC Approves Amendments to MSRB Form G-45 to Modify and Clarify Certain Data Elements Submitted about 529 Savings Plans and ABLE Programs

Overview

The Municipal Securities Rulemaking Board (MSRB) received approval from the Securities and Exchange Commission (SEC) on December 12, 2018 to amend electronic Form G-45 under MSRB Rule G-45, on reporting of information on municipal fund securities, to modify and clarify certain of the investment option data that the MSRB collects under Rule G-45 from underwriters to 529 savings plans and programs designed to implement the Stephen Beck, Jr. Achieving a Better Life Experience Act of 2014 (the “ABLE Act” and an “ABLE program”).¹ Further, the form amendments delete any requirement to submit annualized three-year performance data to the MSRB. The form amendments will 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.

The form amendments will become effective on June 30, 2019. The MSRB will make both amended Form G-45 as well as the updated EMMA Dataport Manual and Specifications for 529 Savings Plans/ABLE Programs Data (Form G-45 Submission) (the “Form G-45 Manual”) available to underwriters in advance of the effective date to aid them in completing the amended form. The MSRB will announce the availability of amended Form G-45 and the updated Form G-45 Manual at a later date.

Questions about this notice may be directed to Pamela K. Ellis, Associate General Counsel, at 202-838-1500.



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¹ See Exchange Act Release No. 84809 (Dec. 12, 2018) (File No. SR-MSRB-2018-08).

Background

Form G-45

Rule G-45 requires brokers, dealers and municipal securities dealers (“dealers”) acting in the capacity as underwriters to 529 savings plans or ABLÉ programs to submit on a semi-annual or annual basis (in the case of performance data) certain information about the plans or programs they underwrite on Form G-45. That information includes plan or program descriptive information, assets, asset allocation information (at the investment option level), contributions, withdrawals, fee and cost structure, performance and other information. Beginning with the reporting period ending June 30, 2015 (in the case of 529 savings plans) and June 30, 2018 (in the case of ABLÉ programs), underwriters to 529 savings plans or ABLÉ programs have reported such information electronically to the MSRB.

The collection of information under Rule G-45 is intended to protect investors, municipal entities and the public interest and to prevent fraudulent and manipulative acts and practices. That information informs the MSRB’s regulatory activities and the activities of those other financial regulators (*i.e.*, the SEC, the Financial Industry Regulatory Authority, Inc., and banking regulators) that are charged with examining and enforcing MSRB rules.

The most substantial information required by Form G-45 relates to the investment options offered by the 529 savings plan or ABLÉ program. An underwriter must submit, under the Investment Option information section of Form G-45: identifying information about the investment option; the total assets allocated to the investment option as well as the total contributions and distributions from the investment option; the underlying investments made by the investment option; the performance of the investment option; the performance of the investment option as compared to its benchmark, if any; and the fees and expenses associated with the investment option.

Request for Comment

To inform its development of the amendments to Form G-45, the MSRB sought public comment about providing additional data concerning the investment options offered in 529 savings plans and ABLÉ programs.² In

² MSRB Notice 2017-17 (Aug. 22, 2017) (the “Request for Comment”). Specifically, the MSRB sought comment on a possible clarification to the data it currently receives about the

response, the MSRB received six comment letters. After carefully considering the comments received, the MSRB revised the draft amendments to Form G-45 and submitted a proposed rule change to the SEC. The SEC published the proposed rule change for comment in the Federal Register³ and received no comment letters in response.

Summary of the Amendments to Form G-45

To modify and clarify certain of the data submitted under Investment Option information, the amendments to Form G-45 (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.

A. Clarification of Program Management Fee Data Element

The MSRB has observed anomalies in the data submitted to the MSRB on Form G-45 related to the program management fee and to the investment options that closed during the reporting period (discussed below). 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. 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. 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 (this is typically done through a 529 or ABLE share class of the mutual fund). 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. That 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. The form amendments clarify that the underwriter must report the program

program management fee and about requiring underwriters to submit additional data relating to (i) performance data – *i.e.*, to provide additional information about the benchmark return percent and to provide performance data by asset class and (ii) the investment option closing date. The MSRB determined not to proceed with the collection of additional performance data.

³ Exchange Act Release No. 84496 (Oct. 29, 2018), 83 FR 55214 (Nov. 2, 2018) (File No. SR-MSRB-2018-08).

management fee as an annual percentage of assets (*e.g.*, x.xx%) no matter whether the program management fee is assessed by the underlying mutual fund or by the 529 savings plan or ABLE program itself. The underwriter no longer will 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.

B. New Investment Option Closing Date Data Element

From time to time, 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. Alternatively, the 529 savings plan may close an investment option completely.⁴ In either case, 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. To address this issue, the form amendments add check-the-box items to Form G-45 to alert the MSRB about whether an investment option has closed to new investors but allows current account owners to contribute funds or whether the investment option has closed to all investors.

C. Deletion of Three-Year Annualized Performance Data Requirement

As noted previously, the MSRB sought public comment about providing additional data concerning the investment options offered in 529 savings plans and ABLE programs.⁵ 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.

Form G-45 currently requires that underwriters annually report (i) total returns including sales charges, (ii) total returns excluding sales charges and

⁴ As noted previously, with the reporting period ending June 30, 2018, underwriters to ABLE programs began to submit information about the ABLE programs they underwrite on Form G-45. The MSRB believes that, similar to the investment options offered in 529 savings plans, investment options in ABLE programs may close to investors.

⁵ In the Request for Comment, the MSRB sought comment on a possible clarification to the data it currently receives about the program management fee and about requiring underwriters to submit additional data relating to (i) performance data – *i.e.*, to provide additional information about the benchmark return percent and to provide performance data by asset class and (ii) the investment option closing date. The MSRB determined not to proceed with the collection of additional performance data.

(iii) benchmark return percent for specified periods, including annualized three-year percent. At the time the MSRB approved Form G-45 for filing with the SEC, 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")⁶ and which commenters stated were the industry norm in other rulemakings,⁷ recommended that such disclosure be made. However, since that time, CSPN has updated the disclosure principles, and CSPN no longer recommends that a 529 savings plan include three-year performance data.⁸ Further, three-year annualized performance data is not required by the SEC for mutual funds.

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

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⁶ CSPN, a non-profit organization, was established as an affiliate to the National Association of State Treasurers to make higher education more attainable and to serve as a clearinghouse for information among state-administered college savings programs.

According to CSPN, CSPN, the states that administer 529 plans (*i.e.*, 529 savings plans and prepaid tuition plans) and their private sector partners are committed to clarifying and enhancing disclosure and offering materials for 529 plans. CSPN stated that it adopted voluntary disclosure principles to enhance the comparability of information that investors should consider when investing in 529 savings plans. *See* College Savings Plan Network Disclosure Principles Statement No. 6 (adopted July 1, 2017).

⁷ *See* File No. SR-MSRB-2013-04 (proposed rule change consisting of new MSRB Rule G-45, on reporting of information on municipal fund securities, and Form G-45, and amendments to Rule G-8, on books and records, and Rule G-9, on preservation of records); College Savings Plans Network Disclosure Principles Statement No. 5 (adopted May 3, 2011).

⁸ College Savings Plans Network Disclosure Principles Statement No. 6 (adopted July 1, 2017).