



CSPN | COLLEGE SAVINGS PLANS NETWORK

August 31, 2011

Ronald W. Smith, Corporate Secretary
Municipal Securities Rulemaking Board
1900 Duke Street, Suite 600
Alexandria, VA 22314

Re: Comments Concerning MSRB Notice 2011-33
Request for Comment on Plan to Collect Information on 529 College Savings
Plans

Dear Mr. Smith:

The College Savings Plans Network (CSPN), on behalf of its members, is pleased to have this opportunity to comment on MSRB Notice 2011-33, Request for Comment on Plan to Collect Information on 529 College Savings Plans issued July 19, 2011 (the "Notice"). CSPN appreciates the Municipal Securities Rulemaking Board's (the "MSRB") continuing guidance to assist investors seeking to purchase 529 College Savings Plans ("529 Plans" or "Plans") and its interest in centralizing the collection and dissemination of market information regarding 529 Plans. As demonstrated by the issuance of four updates to its Disclosure Principles, CSPN is very committed to assuring that investors have appropriate, consistent information to assist in their investment decisions regarding 529 Plans and would like to offer the following comments on the Notice.

Nature of 529 Plan Data

When making a decision to invest or continue to invest in a 529 Plan, the average investor considers many factors and data points regarding Plans as well as other market information. There is a significant amount of data regarding 529 Plans currently available in the marketplace, most notably, the free, comprehensive, reliable data available through CSPN.¹

Structures of 529 Plans are based on several different models. Some Plans are self-managed and therefore, not subject to the jurisdiction of the MSRB. While most plans offer age-based investment options, some do not. Age-based options follow several different models including the number of age-bands and conservative, moderate or aggressive investment styles. Many, but not all Plans offer fixed or static investment options comprised of one or more underlying

¹ <http://www.CollegeSavings.org>

investments or stand-alone investment options comprised of one underlying investment. With such diversity in modeling, data collection and analysis is burdensome and complex.

CSPN Website

CSPN's website, CollegeSavings.org, is the only source of complete, non-commercial information on 529 Plans. Because CSPN's membership includes all MSRB regulated as well as all non-MSRB regulated State sponsored 529 Plans, it has access to reliable and up-to-date data for the entire market. CSPN's website is frequently sourced by media outlets writing on the college savings industry and investors rely heavily on its thorough information. On average CollegeSavings.org receives more than 113,000 page views per month.

The website includes a 529 Plan Locator in which an individual selects any state name and is instantly linked to details about that state's 529 Plan(s). Once a Plan is selected, the landing page provides a direct link to the offering materials for that Plan and specific details including:

- Contact Information - This section includes the offering materials link and numerous links to other specific information, including performance data.
- Management Information - This section provides information about the program manager and the management contract.
- Plan Benefits - This section provides information about state tax deductions or credits, other tax treatment, and other incentives or benefits that may be offered by the Plan.
- Investment Options - This section lists the investment options offered by the Plan and, for each option, includes detailed information about fees, contribution minimums, and cost of investment. A link to Plan performance is also provided.
- Residency Requirements - This section includes a description of any residency requirements for participation in the Plan, if applicable.

In addition, CSPN's website offers a comprehensive comparison tool that allows investors to compare 529 Plans by State and/or compare 529 Plans by features.

CSPN Semi-Annual Report

Twice annually, CSPN publishes its 529 Report which includes the most pertinent industry-wide statistics. The 529 Report is available at CollegeSavings.org and includes nationwide information on 529 Plans, average account size, percent of accounts with activity, and total

number of accounts. Under CSPN's data collection policy, the only Plan level data that is publicly disclosed is total assets under management and total number of open accounts. CSPN has adopted this policy to ensure that the proprietary data of members is not intentionally or inadvertently disclosed by CSPN.

Plan Level and Portfolio Level Data

Relevant, meaningful Plan level data is currently publicly disseminated on 529 Plan websites, in offering materials, on the CSPN website and, to some extent, on commercially available websites. This data includes plan type, assets under management, total number of account owners, available investment options, fees, investment performance and tax considerations.

However, most portfolio level or investment option level data is not currently publicly available, particularly on a quarterly basis. Because requirements for disclosure of information to the public are generally determined by State law, each 529 Plan treats its portfolio level data differently. Some portfolio level data available to State administrators is not made publicly available because it is considered proprietary under State law and/or for competitive reasons, but remains subject to public information requests. Such requests happen rarely. In other cases, data available to State administrators is not publicly available and is not subject to public information requests. In these cases, for most 529 Plans, the information is considered confidential, proprietary and commercially sensitive.

Data Collection for MSRB Regulatory Purposes

As a general matter, CSPN is not opposed to the collection of data for MSRB regulatory purposes, as long as the data (i) are defined clearly and in a manner that does not conflict with State law and the data currently collected by CSPN and currently available commercial sites; (ii) does not require significant and costly systems modifications; and (iii) if identified by the submitter as confidential information under State law and/or for competitive reasons, remains confidential. Due to differences in Plan structure, CSPN requests a clear definition of what information is required for submission and also requests flexibility for Plans that do not have the systems in place to provide the exact data requested.²

² CSPN notes that self-managed Plans would not be required to submit information to the MSRB. Self-managed Plans may elect to voluntarily provide information to the MSRB on a case by case basis. Although, it should be noted that such Plans would not likely modify recordkeeping systems in order to provide such information.

In order for the MSRB's proposed data collection to be useful, the data collected must be comparable from Plan to Plan. Depending on the MSRB's method of collecting data, 529 Plans may have to rework the information that they already present in order to achieve this comparability. This can be costly for a Plan as it has the potential to create a significant workload and/or financial burden for some or all 529 Plans.

Currently, some of the data outlined in the Notice may not be available to the Plan for 30-60 days following a quarter. This schedule depends on when advisory boards, State Treasurers, and other State administrators meet to review quarterly Plan information. If data were required to be submitted to the MSRB on an accelerated schedule, many Plans could face a workload and/or financial burden in preparing and submitting the requested data.

CSPN is of the view that collecting data by investment category - (i.e. age-based and stand alone) may provide a better view of 529 Plan activity than portfolio level data. These data generally are not viewed as proprietary information by Plans. Because age-based portfolios are based on several different models, comparability among these portfolios would be difficult if information was collect at the portfolio level. Data by investment category for age-based and stand-alone investment options would provide the MSRB better information regarding the preferences of investors.

Finally, as noted above, CSPN currently collects 529 Plan data semi-annually. It would appear that quarterly data collection for regulatory purposes would not provide any additional trend or marketplace information. Therefore, to be consistent with industry-wide practice and to provide the MSRB with sufficient trend information, CSPN suggests that data be collected by the MSRB on a semi-annual basis using the same schedule as the CSPN 529 Report rather than on a quarterly basis.

Data Collection for Public Dissemination

CSPN is very supportive of meaningful free public access to information about 529 Plans and believes it is important to ensure information is distributed to the investing public in a user friendly fashion. CSPN believes that its website already provides such a resource and that, for the reasons outlined below, similar information offered through the MSRB would not necessarily enhance an investor's access to meaningful, free information.

Because the target market for the 529 Plan industry consists of moderate income investors, CSPN strives to offer Plan information in an innovative, easy to understand manner. Direct investors include inexperienced as well as experienced investors and they appreciate comprehensive comparative tools such as the tools available at CollegeSavings.org. In addition, since 529 Plans are retail products, many investors prefer and rely on one-on-one conversations with Plan representatives by phone or in person and live presentations made by State officials at PTA meetings and other local events.

An MSRB data source would most likely not include the entire 529 Plan marketplace which could lead to investor confusion and concern about the reliability of data. For example, in estimating total market size, the MSRB would not necessarily have access to total assets under management of those 529 Plans not subject to the jurisdiction of the MSRB. As a result, the MSRB website would report a different number for total assets held in 529 Plans nationwide than that already reported by CSPN. This will undoubtedly lead investors to question the reliability of the data provided by both CSPN and the MSRB.

CSPN also believes it is important to ensure that information provided to investors and potential investors is not presented out of context. Isolated data points can mislead investors. For this reason, CSPN is generally opposed to providing data points to the public which reflect total inflows or outflows by Plan and/or by portfolio. For example, comparisons of outflows might lead investors to believe that a particular 529 Plan is not a prudent investment simply because it has significant outflows. However, there are many reasons for outflows from a 529 Plan or individual investment portfolio. For example, rollovers are categorized as outflows from a portfolio but could be the result of several different actions. A transaction identified as a rollover could be a rollover to another investment option within the same 529 Plan. For some Plans, a transaction identified as a rollover could be a pre-scheduled, automatic liquidation of funds from one age-band to the next age-band. A rollover may also reflect an investor's decision to move money from an out-of-state Plan into a home-state Plan to take advantage of a State income tax deduction. Without a substantive context in which to analyze this data, an investor could be misled by certain portfolio level data.

Outflows may also include distributions. However, qualified and non-qualified distributions cannot be accurately tracked by Plans. A withdrawal that may appear to be a nonqualified withdrawal could represent funds that the account owner intends to reinvest in another 529 Plan, even another Plan offered by the same State. The Internal Revenue Service requires the account owner to classify qualified and non-qualified distributions on his or her federal tax

returns. Under federal law, 529 Plans have no clear authority or obligation to differentiate between a qualified and a non-qualified withdrawal.

Finally, CSPN notes that most Plans currently submit data through audited financial statements filed on EMMA. Because these financial statements include many of the data points suggested in the Notice, CSPN recommends use of the data in such statements.

Data Collection for the 529 Plan Industry

As industry participants, CSPN members do not view an additional source of public information as assisting them in the administration and management of 529 Plans. The combination of the Plan data available on the CSPN website, CSPN reports, including the semi-annual 529 Report and other resources supplies CSPN members with the comparative tools they require to operate their Plans effectively.

Specific MSRB Questions

1. Whether dealers who act as primary distributors of 529 plans have the ability to gather and report to the MSRB plan level contribution and withdrawal data on a quarterly basis?

Dealers who act as primary distributors of 529 Plans have the ability to gather and report to the MSRB plan level contribution and withdrawal data on a quarterly basis. As noted above, currently data may be compiled and provided to State program administrators anywhere from 30 to 60 days following each quarter.

2. Whether certain data would be difficult to produce to the MSRB on a quarterly basis or would result in an undue burden on dealers?

CSPN believes that it would not be difficult for 529 Plans to produce the five categories of data identified in the Notice. As noted above, additional data, including qualified and non-qualified withdrawals, is not easily tracked and is not universally available. Also as noted above, because each 529 Plan currently tracks Plan data in a different manner, depending on the final determination by the MSRB regarding types of data to be collected, many Plans may be

required to restructure their recordkeeping systems. Such restructurings may result in significant workload and operating expense increases for 529 Plans.

3. Whether dealers or issuers consider certain data proprietary, which should not be produced to the MSRB or displayed on EMMA?

As noted above, CSPN has been advised by its members that there is certain data that is proprietary to all 529 Plan administrators and program managers. This data includes all account level data and certain program management data. In addition, as discussed above, other data is proprietary depending on State laws regarding public information. This data includes total assets invested in each portfolio, total contributions to each Plan's portfolios and total withdrawals from each Plan's portfolios.

4. Whether there are other categories of data not described above that might be worthwhile to display on EMMA for the benefit of market participants or useful to the MSRB in its rulemaking process?

CSPN believes that it may be useful for the MSRB to receive for regulatory and marketing analysis purposes, information regarding the amount of assets by 529 Plan contributed via automatic contributions. It may also be helpful to receive data on average account size by 529 Plan. CSPN, however, does not believe that this information would be helpful for, nor should it be made available to, investors.

5. In what ways can the presentation of 529 plan documents and information on EMMA be improved to better serve investors and the general public?

CSPN respectfully submits that while EMMA is a very useful tool for municipal securities industry users, the average 529 Plan investor or prospective investor is not inclined to utilize EMMA as a research tool for their college savings needs. Because the 529 Plan marketplace is a retail market, simple to use, stylized comparative tools are available and have been shown to be the most effective.

6. While plan disclosure documents generally contain fee disclosures, should this information be presented on EMMA in a way that investors can compare the fees of different 529 plans?

Comparing fees, without context, could be misleading to investors. CSPN supports a comprehensive comparative tool, like the comparative tools currently available on the CSPN website, so that an investor can easily navigate through all of the key metrics in evaluating a possible investment. A comparison of fees alone, where, for example, fees or a range of fees are presented by 529 Plan without the additional detail, such as that included in the fee tables and other disclosures and comparisons presented in current 529 Plan disclosure materials and on the CSPN website, would greatly mislead investors and possibly place an undue emphasis on fees to the exclusion of other important investment metrics.

7. Finally, whether the MSRB should consider a rule change to permit the dissemination of plan disclosure documents electronically, as it does for other municipal securities, so that dealers could advise customers that the plan disclosure document is available for free electronically (on EMMA, for example) and that a printed version would be provided to the customer upon request?

CSPN is very supportive of an MSRB rule change to permit the dissemination of Plan disclosure documents electronically, so that Plans and/or dealers could advise customers that the Plan disclosure document is available for free electronically and that a printed version would be provided to the customer upon request.

As CSPN noted in its comment letter on MSRB Notice 2006-19 - Access Equals Delivery³, CSPN is generally in favor of access equals delivery for the 529 Plan marketplace. CSPN would generally support permitting official statement delivery requirements to be satisfied via posting on the Plan's website and any applicable centralized electronic access portal such as the CSPN website or EMMA. Offering materials are already available in an electronic format and a growing number of investors enroll and view their account information online. Dissemination of Plan disclosure documents in electronic form can benefit investors in several ways. Electronic versions of documents are searchable, always include the most current information and are printable when needed. Electronic delivery could significantly reduce the printing and mailing costs for 529 Plans, which might otherwise ultimately be passed on to investors.

Because CSPN's website currently provides centralized access to the full text of the offering materials made available by 529 Plans on their respective websites, CSPN believes that its

³ See CSPN Letter to Mr. Ernesto Lanza, Senior Associate General Counsel, Municipal Securities Rulemaking Board dated September 22, 2006 regarding MSRB Notice 2006-19 - Access Equals Delivery.

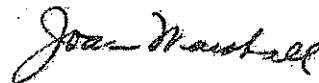
website should satisfy any access equals delivery standard developed for 529 Plans.⁴ Utilizing the CSPN website as the centralized access point for electronic disclosure would assist in limiting investor confusion. This would also support the MSRB's interest in assuring that current and prospective account owners can readily obtain 529 Plan disclosures from a centralized website so as to facilitate the comparison of 529 Plans.

CSPN believes that since 529 Plan industry practice is to deliver offering materials to 529 Plan investors prior to or at the time of the sale with no distinction between a "preliminary" official statement delivered prior to or at the time of sale and a "final" official statement delivered subsequent to sale, it would need to be clear that the "final" official statement includes Offering Materials whether delivered prior to, at the time of, or subsequent to the sale.

It may also be necessary to modify the access equals delivery standard to accommodate the continuous offering nature of 529 Plans and the fact that, while 529 Plan offering materials are generally updated at least annually (and often more frequently), this does not take place on a predetermined schedule. As a general rule, updates to offering materials are distributed to current Plan participants, included in subsequently distributed enrollment kits and posted online. Presumably, both of the following would be required in order for an access equals delivery standard to be relied upon in connection with a particular sale (i) a statement in offering materials that revised or new offering materials will be made available on the 529 Plan website, and on any applicable centralized website; and (ii) posting a notice on the 529 Plan website, and on any applicable centralized website, that revised or new offering materials are available.

Thank you for this opportunity to comment on the Notice. CSPN would be pleased to provide additional information or to have the opportunity to discuss its comments at your convenience.

Very truly yours,



Joan Marshall
Chair
College Savings Plans Network

⁴ This would also provide a centralized access point for the offering materials of self-managed Plans that are not required to submit such documents to the MSRB.