



December 21, 2012

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

VIA ELECTRONIC FILING

Subject: MSRB Notice 2012-59 (November 23, 2012); Second Request for
Comment on Draft Rule Requiring Underwriters to Submit 529 College
Savings Plan Information to the MSRB

Dear Mr. Smith:

The Coalition of Mutual Fund Investors (“CMFI”)¹ is pleased to submit comments to the Municipal Securities Rulemaking Board (“MSRB”), in response to its second request for comment on a draft rule to increase the amount of information available to the MSRB regarding Section 529 college savings plans.

CMFI submitted comments to the MSRB on August 31, 2011, in response to MSRB Notice 2011-33 (July 19, 2011).² In this comment letter, CMFI discussed a new recordkeeping practice—called omnibus accounting or subaccounting—that is being promoted by large broker-dealers in several states to increase the fees that they can charge investors and other parties for services rendered to advisor-sold Section 529 plans.³

¹ The Coalition of Mutual Fund Investors (“CMFI”) is an Internet-based shareholder advocacy organization established to represent the interests of individual mutual fund investors on public policy issues. CMFI is headquartered in Washington, D.C. and its website address is www.investorscoalition.com.

² Letter from Niels Holch, Executive Director, CMFI, to Ronald W. Smith, Corporate Secretary, MSRB, August 31, 2011, available at <http://www.msrb.org/Rules-and-Interpretations/Regulatory-Notices/2011/~media/Files/RFC/2011/2011-33/CMFI.ashx>.

³ In an omnibus accounting structure, broker-dealers become responsible for mutual fund recordkeeping for their customers with 529 accounts. Purchase and redemption requests involving mutual fund shares from all customer accounts within a brokerage firm are consolidated together into one “omnibus” transaction, during each trading day and for each mutual fund. A mutual fund treats the brokerage firm as its shareholder of record and, in most instances, is not provided with any information about the underlying investors and their transactions involving the fund’s shares. Mutual funds and their investment advisers typically pay Rule 12b-1 fees, recordkeeping fees, and revenue-sharing fees to broker-dealers for these distribution and administrative services. These payments are in addition to sales load charges.

Attached to this 2011 comment letter was a CMFI White Paper analyzing the fee practices used to finance omnibus accounting.⁴ This analysis concluded that omnibus accounting is imposing *annual* costs on individual investors of as much as \$2.2 billion in account maintenance charges, more than \$4.18 billion in shareholder servicing payments, and more than \$2.09 billion in revenue-sharing payments.⁵

In January 2012, CMFI issued a new study on the costs and expenses of investing in Section 529 college savings plans.⁶ Using public information, CMFI's study compared the fees and costs of investing in a state 529 plan directly (i.e., a direct-sold plan), with the fees and costs of investing in the same state's 529 plan through a financial intermediary, such as a broker-dealer or a financial advisor (i.e., an advisor-sold plan). This CMFI study concluded that the fees and costs of investing in state advisor-sold plans are, on average, *more than twice as expensive* as the fees and costs of investing in state direct-sold plans.⁷

This comment letter can be accessed through the Studies page of the CMFI website or by clicking on the following link:
<http://www.investorscoalition.com/sites/default/files/Comparison%20of%20Investor%20Fees%20and%20Costs%20in%20Section%20529%20College%20Savings%20Plans%201-30-2012.pdf>.

The issue of omnibus accounts was raised by the Investment Company Institute ("ICI") in its September 2012 comment letter to the MSRB.⁸ In this letter, the ICI expressed concern about the use of omnibus accounts by selling dealers and the ability of an underwriter and/or primary distributor to obtain information from these third parties using the omnibus account structure.

⁴ Coalition of Mutual Fund Investors, CMFI White Paper: The Costs of Providing Shareholder Services to Hidden Mutual Fund Accounts, August 18, 2010, available at <http://www.investorscoalition.com/sites/default/files/CMFIWhitePaperAug18.pdf>.

⁵ *Id.* at 7-11.

⁶ Coalition of Mutual Fund Investors, Comparison of Investor Fees and Costs in Section 529 College Savings Plans, January 30, 2012, available at <http://www.investorscoalition.com/sites/default/files/Comparison%20of%20Investor%20Fees%20and%20Costs%20in%20Section%20529%20College%20Savings%20Plans%201-30-2012.pdf>.

⁷ *Id.* at 17-18. Specifically, CMFI found that advisor-sold plans charged an average of 1.18% in annual asset-based fees, compared to an average of 0.55% in annual asset-based fees charged by direct-sold plans. This results in average annual fees that are 2.15 times more expensive for advisor-sold plans than for direct-sold plans. These fee differences do not take into consideration any initial sales charges or annual account maintenance fees that are typically imposed in many advisor-sold plans. Over a period of 10 years, the cost of a \$10,000 investment in advisor-sold plans averaged \$1,944, compared to an average cost of \$712 in direct-sold plans. This results in an average 10-year cost for advisor-sold plans that is 2.73 times more expensive than the average 10-year cost for direct-sold plans.

⁸ Letter from Tamara K. Salmon, Senior Associate Counsel, Investment Company Institute, to Ronald W. Smith, Corporate Secretary, Municipal Securities Rulemaking Board, at 3-4, September 14, 2012, available at <http://www.msrb.org/RFC/2012-40/ICI.pdf>.

CMFI wants to make it clear to the MSRB that this information could be made available if there was full transparency within omnibus accounts. SEC Rule 22c-2 requires intermediaries to provide investment companies with investor-level identity and transaction information when requested.⁹ And, as CMFI has pointed out in numerous comment letters to the Securities and Exchange Commission (“SEC”), the National Securities Clearing Corporation’s (“NSCC”) Networking service permits investment companies and their financial intermediaries to share account-level information on a same-day basis in a very cost-efficient manner.¹⁰

CMFI believes that regulators should not permit any type of non-transparent recordkeeping practice to evolve within state 529 plans, as current Internal Revenue Service (“IRS”) rules require state plans to maintain records that provide separate accounting for each account owner and designated beneficiary.¹¹ These rules also require state programs to file a Form 1099-G with the IRS for each account owner and beneficiary who receives a taxable distribution.¹² A state program must include account-level information in any Form 1099-G filed, including: (1) the name, address, and taxpayer identification number of the distributee; and (2) the amount of earnings distributed to the distributee in the calendar year.¹³

By definition, the use of omnibus accounting in mutual funds permits broker-dealers to become the primary recordkeepers for their customers. In Section 529 accounts, this will cause a significant diffusion of recordkeeping responsibilities, replacing a framework that relies on a small number of recordkeepers—directly overseen by state 529 agencies—in favor of a new system with potentially numerous broker-dealers assuming primary recordkeeping responsibilities for these Section 529 accounts.

If allowed to occur, a very transparent system for tracking the transactions and earnings of individual Section 529 accounts will be converted into a non-transparent system, with multiple recordkeepers and an unnecessary layer of intermediaries in between individual accounts and those charged with overseeing account-level activities.

CMFI urges the MSRB to evaluate the growing use of omnibus accounts by large broker-dealers in Section 529 college savings plans, as it develops its rules in this area.

⁹ 17 C.F.R. § 270.22c-2(c)(5).

¹⁰ See, e.g., Letter from Niels Holch, Executive Director, Coalition of Mutual Fund Investors, to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, September 10, 2009, available at <http://www.investorscoalition.com/sites/default/files/CMFICommentLettertoElizabethMurphy.pdf>.

¹¹ Prop. Treas. Reg. § 1.529-2(f). See also Section 29 Programs, Notice 2001-81, Internal Revenue Bulletin No. 2001-52, at 618, December 26, 2001 (“Prop. Treas. Reg. § 1.529-2(f) requires a § 529 program to maintain records with respect to the designated beneficiary of each account showing the total investment in the account and any earnings attributable thereto.”) (hereinafter “Notice 2001-18”).

¹² Prop. Treas. Reg. § 1-529-4.

¹³ Prop. Treas. Reg. § 1-529-4(b)(3). See also Notice 2001-18 at 618 (“Prop. Treas. Reg. § 1.529-4 requires a State tuition program to report on Form 1099-G, Certain Government Payments, the earnings portion of any distributions made during the year, together with other information such as the name, address and TIN of the distributee.”).

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Thank you for your consideration of these views.

Sincerely,

A handwritten signature in black ink that reads "Niels Holch". The signature is written in a cursive style with a large, stylized "N" and "H".

Niels Holch
Executive Director
Coalition of Mutual Fund Investors