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August 11, 2015

Brent Fields, Secretary
U.S. Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549

Re: File No. SR-MSRB-2015-05
Rule G-45 Compliance Date Extension

Dear Mr. Fields:

The Investment Company Institute¹ is writing to support extending the compliance date for Municipal Securities Rulemaking Board (“MSRB”) Rule G-45, relating to the filing of data of 529 college savings plans sold by MSRB registrants.² This limited extension, however, is insufficient to provide MSRB registrants with adequate time to comply with Rule G-45, as we have repeatedly informed MSRB. Therefore, we renew our recommendation that the compliance date for the first filings under Rule G-45 be February 2016, which is one year from the MSRB’s publication of the Form G-45 Manual. We also renew our recommendation that MSRB publish comprehensive instructions necessary for filers to make the required filings. Each of these issues is discussed in detail below.

¹ The Investment Company Institute (ICI) is a leading, global association of regulated funds, including mutual funds, exchange-traded funds (ETFs), closed-end funds, and unit investment trusts (UITs) in the United States, and similar funds offered to investors in jurisdictions worldwide. ICI seeks to encourage adherence to high ethical standards, promote public understanding, and otherwise advance the interests of funds, their shareholders, directors, and advisers. ICI’s U.S. fund members manage total assets of \$18.0 trillion and serve more than 90 million U.S. shareholders.

² See *MSRB Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Consisting of an Amendment to MSRB Rule G-45, on Reporting of Information on Municipal Fund Securities*, SEC Release No. 34-75454 (July 15, 2015) (“Release”).

THE MSRB'S ONE-YEAR COMPLIANCE PERIOD

The Institute has been actively engaged with the MSRB on this initiative since 2011, when the MSRB first sought comment on requiring primary distributors of 529 plans to submit plan data to the MSRB. Each letter that we have filed with the MSRB or the Commission, as applicable, on Rule G-45 has included a discussion of the need for the MSRB to provide registrants a sufficient compliance period within which to implement any new filing requirements.

We were pleased initially when, in a filing with the Commission, the MSRB represented that the proposed implementation period for Rule G-45 would be “not earlier than one year from the date of Commission approval.”³ In light of the fact that the MSRB deferred to the Form G-45 Manual the vast majority of the critical details needed for a filer to understand how to structure its filing process and the precise nature of the data required,⁴ the Institute and the Securities Industry and Financial Markets Association (“SIFMA”), among others, urged the MSRB to begin the one-year period upon publication of the Form G-45 Manual.

The MSRB, regrettably, instead determined to begin the one-year compliance period upon adoption of the new rule. This is regrettable because filers were denied a full one-year period within which to develop their filing systems. Indeed, until filers had access to the technical specifications contained in the G-45 Manual, they could not begin to design comparable systems. This did not occur until the Manual was published in February 2015 – four months before the close of the first filing period and a year after the Commission approved the new rule. To design any system, let alone a complicated system to comply with regulatory requirements, without system specifications would be unduly risky and irresponsible. Because of this, we are not aware of any filer that began designing their Form G-45 filing system prior to publication of the Form G-45 Manual. Nor do we believe that it is a common practice among any system programmers to begin designing systems without access to system specifications.⁵ Providing filers insufficient time to build compatible filing systems seems both unfair and counterproductive to the MSRB’s goal of obtaining reliable information.⁶

It bears noting that, while commenters recommended during the rulemaking process that the MSRB publish the G-45 Manual for comment, the MSRB responded to such concerns by saying that

³ See *Notice of Filing of a Proposed Rule Change Relating to a New MSRB Rule G-45, on Reporting of Information on Municipal Fund Securities*, SEC Release No. 34-69835 (June 24, 2013) (“2013 Release”) at p. 15.

⁴ Many of those details are still not entirely clear today.

⁵ The MSRB had an advantage here because it could design its system of choice and then draft the specifications that filers would need to interface with it. Even so, it appears to have taken the MSRB a considerable amount of time to add an additional dataport to its EMMA system to accommodate Form G-45 filings.

⁶ 2013 Release at p. 4.

such publication “would ‘unreasonably retard systems development’” of the new system. And yet, unlike the new systems that would be built by filers to accommodate Rule G-45, the system designed by the MSRB to accommodate the new filings is not an entirely new system but, rather, an expansion of the MSRB’s existing EMMA system. By the time of the rule’s adoption, the MSRB had had four years to figure out how to accommodate these new filings in EMMA. Even with such time, the MSRB has continued to tinker with certain features of its system up to the last minute.⁷ By contrast, the systems that filers are having to design to accommodate these new filings are entirely new systems. Not only are they new systems, but they are systems whose design is more complicated than the design work undertaken by the MSRB. In the Release, the MSRB acknowledges the challenge faced by filers: “The MSRB understands that the programming of [529 plan] information for a Form G-45 submission is particularly challenging for underwriters because the required data must be collected from multiple computer systems. While the programmers for underwriters may be challenged by meeting the unextended deadline for the first filings on Form G-45, after the first B2B filing, the process would be automated and is expected to become more routine.”⁸ We understand that the MSRB’s determination that the 60-day extension would adequately address filers’ concerns was made without consulting any such filers. We do not agree that a 60-day period is sufficient to address filers’ concerns.

With the extension of the compliance date, the MSRB is only providing filers eight months to build their new systems from scratch. We continue to believe that the MSRB, which took over a year to build its EMMA dataport for Form G-45 filings, should provide filers at least one year to design their systems to make filings. We also continue to believe that this one-year period should commence when the filers first had all information necessary to begin building their systems – that is, the effective date should be in February 2016, which is one year after the publication of the first version of the Form G-45 Manual.⁹

We are at a loss to understand the MSRB’s reluctance to give filers adequate time to build systems necessary to make Form G-45 filings. We are not aware of the MSRB, in the more than fifteen years it has been engaged in rulemaking with respect to 529 college savings plans, expressing concerns with how a lack of industry data has impeded its efforts to regulate the industry. Nor are we aware of

⁷ The two updates to the G-45 Manual in June and July 2015, discussed below, reflect late changes to the MSRB system. While these changes should be helpful to filers, they reflect the complexity of the submission process that even the MSRB is continuing to grapple with in spite of the significantly longer period of time the MSRB has had to prepare its systems as compared to the time the MSRB has given to filers to develop systems to comply with the new requirement.

⁸ Release at pp. 3-4. One challenge for underwriters that have access to data necessary to complete Form G-45, is that that data may not be in the required format and the data may need to be pulled together from a variety of internal and external sources, which themselves may not be compatible.

⁹ We concede that the changes reflected in the two revisions to the Form G-45 Manual after February 2015 are not so significant as to necessitate a later effective date, although the Institute reserves judgment on whether any future MSRB changes to the filing process or the substance or form of data to be provided would justify a later effective date.

any exigent circumstances warranting the MSRB having immediate access to industry data specifically collected by the MSRB, particularly in light of the existing commercially available data. Rather, the MSRB's principal justifications for requiring collection of data through the MSRB, rather than relying on commercial sources, was to ensure the reliability of the data and its assured continued availability into the future.¹⁰ Reliability, however, will be compromised if filers are not allowed sufficient time to build systems appropriate to make the filings accurate.¹¹

While we support the 60-day extension proposed by the MSRB, for each of the above reasons, and for the reasons previously expressed in the letters we have filed with the Commission and the MSRB relating to Rule G-45 – including the letters filed with the MSRB this year¹² – we strongly recommend that the compliance date for the first filings under Rule G-45 be set in February 2016 – one year from the MSRB's publication of the Form G-45 Manual.¹³

THE MSRB MUST PROVIDE COMPREHENSIVE INSTRUCTIONS TO FILERS

According to the Release, information will be required to be reported on Form G-45 “in the manner prescribed *in the Form G-45 procedures* and as set forth in the Form G-45 Manual.”¹⁴ According to the definition of “Form G-45 Manual” in Rule G-45, “[t]he Form G-45 Manual is comprised of the specifications for reporting of information required under this rule, the user guide for submitting Form G-45, and other information relevant to reporting under this rule.” Because of the

¹⁰ 2013 Release at p. 4.

¹¹ Moreover, if the MSRB succeeds in getting such immediate access to filers' data, the MSRB will still lack complete industry data. This is because the MSRB's jurisdiction is limited to those 529 plans sold through MSRB registrants. According to our understanding from the College Savings Plan Network (“CSPN”) and as noted in comment letters filed by CSPN and others with the MSRB, pursuant to Rule G-45, the MSRB is expected to obtain data representing only approximately half of the 529 plan market. As such, the data the MSRB receives through Form G-45 filings can never be reflective of the entire 529 plan market, and the MSRB will be required to rely on commercially available sources of data into the future to garner a more complete understanding of the marketplace as a whole. The MSRB initially appeared to contemplate permitting state plans to make voluntary submissions to EMMA for those plans where no MSRB registrant would be required to provide information. *See Request for Comment on Draft Proposal to Collect 529 College Savings Plan Data*, MSRB Notice 2012-40 (August 6, 2012). However, we understand that the MSRB's system to collect Form G-45 will not permit such voluntary filings by state plans.

¹² *See* Letters from the College Savings Foundation, CSPN, the Institute, SIFMA, and Strategic Insight to the MSRB, dated January 9, 2015 and July 10, 2015, which are enclosed.

¹³ This recommendation is consistent with recommendations made by the Institute throughout the four years it has been involved in the promulgation and adoption of Rule G-45.

¹⁴ Release at fn. 11. [Emphasis added.]

paucity of substance in Rule G-45¹⁵ and because of the importance of the Form G-45 Manual to the filing process, our focus throughout this rulemaking initiative has been on the Form G-45 Manual. We have consistently expressed concerns with the need for filers to have early access to the Form G-45 Manual and the need for the Commission to publish the Manual for comment as required by Section 19(b) of the Securities Exchange Act of 1934 and Rule 19(b)(4)(c) thereunder.¹⁶ These concerns were based on the rule's definition of the Form G-45 Manual (since its contents were defined to include more than system specifications) and the fact that, according to comments of the MSRB during this rulemaking process, certain information necessary to complete the form would be set forth in the Manual. The contents of the Form G-45 Manual published by the MSRB appear to be limited to simplistic user data entry instructions and filing specifications.

Instead of the Form G-45 Manual including the technical and substantive information filers need to complete filings, such information instead can only be found by consulting a series of other documents:

- Statements made in letters filed with the MSRB during the rule's promulgation;
- Amendments filed by the MSRB with the Commission during the rule's promulgation;
- A notice filed by the MSRB in February 2014;
- Screenshots from slides presented during a March 2015 MSRB webinar: "MSRB Webinar: 529 Plan Data Collection;" and
- The MSRB's *Revised* Form G-45 Manual.¹⁷ [Emphasis added.]

¹⁵ The rule consists of five sections, none of which provide any substantive details regarding what information must be filed. Indeed, according Subsection (a) of the rule, "All submissions . . . shall be made by means of Form G-45 . . . in such manner, and including such information, as specified here, in Form G-45, and in the Form G-45 Manual." While Subsection (d) of the rule defines terms used in Form G-45, these definitions would not provide sufficient information to make a Form G-45 filing, as implicitly admitted by the MSRB to the Institute and SIFMA by referring us to extraneous documents to obtain such information as discussed below.

¹⁶ Prior to the MSRB filing its proposal with the Commission, the Institute recommended that the MSRB publish the Form G-45 Manual for comment, but the MSRB did not do so. *See* Letter from the Institute to the MSRB dated December 20, 2012 at fn. 5. Once the MSRB filed its proposal with the Commission, the Institute reiterated its view that the Form G-45 Manual should be part of the formal rulemaking process (including publication for comment), given that it would contain information that impacts the type of information reported on Form G-45 and how such information would be determined and reported. *See* Letter from the Institute to the Commission dated July 16, 2013 at pp. 2, 6-9; Letter from the Institute to the Commission dated November 8, 2013 at p. 3.

¹⁷ Since the Manual's original publication in February, the MSRB has updated its contents on two occasions. Because the first update (in June 2015) occurred without any notice to filers, we have encouraged the MSRB to alert filers to any future updates because such persons are unlikely to consult the MSRB's webpage on a recurrent basis to stay current on the filing protocols.

In other words, in the absence of meaningful guidance on the substance of data submission requirements being included in the document that purports to be the comprehensive instruction manual for submissions of Form G-45 (that is, the Form G-45 Manual), underwriters required to submit Form G-45 must consult a variety of sources extraneous to the rule, Form G-45, and the Form G-45 Manual, including slides from an MSRB webinar and letters filed with the Commission during the rule promulgation process. Filers reading Rule G-45, Form G-45, or the Form G-45 Manual may be wholly unaware of the need to consult such documents in order to understand the filing requirements or to obtain answers to basic filing questions.

This approach to implementing regulatory requirements would not appear to serve the interest of filers nor would it appear to be calculated to “ensure that the MSRB receives reliable, complete and accurate filings on Form G-45 and [mitigates] the burdens imposed on underwriters that are making their first submission under Rule G-45,”¹⁸ which is the MSRB’s stated purpose in providing the 60-day extension to the rule’s compliance date. Nor does this approach appear to be consistent with the MSRB’s efforts to “promote regulatory efficiency by ensuring that new and existing municipal securities regulations function as efficiently as possible.”¹⁹ It also does not appear to be consistent with the manner in which filing requirements imposed by the Commission and other self-regulatory organizations implement such requirements.²⁰ Accordingly, we strongly recommend that the MSRB publish a Form G-45 Manual envisioned by Rule G-45. At a minimum, such Manual should include, in addition to the “specifications for reporting information required under the rule,” the user guide for submitting Form G-45, and comprehensive information necessary to report the information required by Rule G-45.²¹

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The Institute appreciates the opportunity to provide these comments to the Commission on the MSRB’s proposed extension. We encourage the Commission to work with the MSRB to ensure that the filers’ implementation of Rule G-45 is not unduly burdened or adversely impacted by the MSRB’s failure to provide comprehensive substantive Form G-45 instructions to filers and its failure to provide them sufficient time within which to make the system changes necessary to complete and file Form G-45.

¹⁸ Release at p. 4.

¹⁹ See MSRB website at <http://www.msrb.org/Market-Topics/Regulatory-Efficiency.aspx>.

²⁰ See, e.g., the detailed instructions to the Forms N-MFP, N-SAR, N-CSR, and ADV filed with the SEC and Forms BD, and U-4 filed with FINRA.

²¹ See definition of “User Manual” in Rule G-45.

Brent Fields, Secretary

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If you have any questions concerning our comments or would like additional information concerning any of them, please do not hesitate to contact the undersigned by phone at (202) 326-5825.

Regards,

Tamara K. Salmon
Associate General Counsel

Enclosures