



July 19, 2013

By Electronic Delivery

Elizabeth M. Murphy, Secretary
U.S. Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090

Re: Comments Concerning MSRB Rule G-45
File No. SR-MSRB-2013-04

Dear Ms. Murphy:

The College Savings Federation (“CSF”), on behalf of its members, is pleased to have this opportunity to comment on the Municipal Securities Rulemaking Board’s (the “MSRB”) proposed Rule G-45, on reporting 529 College Savings Plan (“529 Plan”) data and Form G-45. Along with other industry participants, CSF has provided significant input to the MSRB as it has developed proposed Rule G-45 and applauds the MSRB’s continuing commitment to assist and protect consumers seeking to invest in 529 Plans, a commitment shared by CSF.

CSF is a not-for-profit organization with the mission of helping American families achieve their education savings goals by working with public policy makers, media representatives, and financial services industry executives in support of 529 Plans. CSF serves as a central repository of information about college savings programs and trends and as an expert resource for its members as well as representatives of state and federal government, institutions of higher education and other related organizations and associations. CSF’s members include state 529 Plans, investment managers, broker-dealers, other governmental organizations, law firms, accounting and consulting firms, and non-profit agencies that participate in the sponsorship or administration of 529 Plans.

Endorsement of Investment Company Institute Comment Letter

CSF is supportive of the comments relating to proposed Rule G-45 and Form G-45 submitted by the Investment Company Institute and endorses its comment letter on File No. SR-MSRB-2013-04 dated July 16, 2013.

Additional Comments

In addition to the points raised by the Investment Company Institute in the above-referenced letter, CSF wishes to present the following information:

Required Submitters and MSRB Jurisdiction

In the second paragraph on page 15 of the Form 19b-4 filed by the MSRB, File No. SR-MSRB-2013-04 (the "Rule Proposal")¹, the MSRB states in part

ICI notes that 529 plans have only one underwriter, the primary distributor, and that many other entities are involved in operating and maintaining a plan, such as the plan's program manager, record-keeper, investment manager, custodian and state sponsor. ICI suggests that none of these entities would qualify as an underwriter under the proposed rule. MSRB disagrees. Under SEC Rule 15c2-12(f)(8), an underwriter is defined broadly and may include one or more of the entities identified by ICI.

The term "underwriter" as defined in proposed Rule G-45, means "*a broker, dealer or municipal securities dealer that is an underwriter, as defined in Securities Exchange Act Rule 15c2-12(f)(8)...*" (emphasis added). Although the term "underwriter" as defined under SEC Rule 15c2-12(f)(8) is indeed "defined broadly", both SEC Rule 15c2-12 and Rule G-45 narrow that broad definition by limiting it to entities that are brokers, dealers or municipal securities dealers. By eliding that requirement from the above statement in the Rule Proposal and asserting that "one or more" of a list of entities that includes "state sponsor" may constitute an "underwriter", the MSRB creates the implication that a state sponsor may be treated as an underwriter for purposes of Rule G-45. That is of course not the case, as a state sponsor is not a "broker, dealer or municipal securities dealer."

Section 3(d) of the Securities Exchange Act of 1934, as amended (the "Exchange Act") states that:

No issuer of municipal securities or officer or employee thereof acting in the course of his official duties as such shall be deemed to be a "broker", "dealer", or "municipal securities dealer" solely by reason of buying, selling, or effecting transactions in the issuer's securities.

CSF would not wish the approval of Rule G-45 to leave on record any suggestion that a municipal securities issuer could be considered an "underwriter" for purposes of proposed Rule G-45. While that may not have been the intent of the MSRB's language on page 15 of the Rule Proposal, we request confirmation from the Commission that proposed Rule G-45 only is

¹ See also pages 36-37 of the Rule Proposal.

applicable to brokers, dealers and municipal dealers that are “underwriters”, and therefore is inapplicable to municipal securities issuers exempted under Section 3(d) of the Exchange Act.

Scope of Underwriter’s Duty under Rule G-45

In response to concerns that proposed Rule G-45 and Form G-45 may require underwriters to report information they do not possess, the MSRB states, at page 15 of the Rule Proposal:

The proposed rule change will only require underwriters to produce information that they possess or have a legal right to obtain, such as information in the possession of an underwriter’s subcontractor.

There is nothing in the text of Rule G-45 or Form G-45 that limits the underwriter’s duty in the manner suggested in the Rule Proposal. Rule G-45 requires underwriters to submit the information specified in Form G-45, and Form G-45 has no language limiting such information to information in the underwriter’s possession. At a minimum, the limitation stated by the MSRB on page 15 of the Rule Proposal should be reflected in the wording of Rule G-45 and/or Form G-45.

CSF is also concerned by the MSRB’s suggestion that information “in the possession of an underwriter’s subcontractor” is information that an underwriter must obtain and disclose under proposed Rule G-45. CSF agrees that, as to books and records an underwriter is otherwise required to maintain under Rule G-8, if the underwriter chooses to have another entity maintain such books and records on its behalf (for example, a transfer agent as permitted in the case of municipal fund securities by MSRB Rule G-8(g)(i)), the fact that such information is housed at another entity does not change its character as information that the underwriter is responsible for maintaining under Rule G-8, and accordingly information that the underwriter is responsible for providing on Form G-45. But that is a situation where the “subcontract” exists for the precise purpose of facilitating the underwriter’s compliance with Rule G-8.

With one exception², all 529 Plans, on the other hand, involve a state sponsor that typically requires and bids out a bundle of services, including, in addition to distribution of municipal fund securities (i.e. “underwriting”), record-keeping for the 529 Plan (i.e., for the state sponsor, not for the underwriter), investment management, and plan administration. It is common for different affiliated entities within a mutual fund complex to provide some or all of the services, sometimes in combination with some unaffiliated entities. Contracting patterns vary: in some instances, a single entity, the “program manager”, may enter into a contract with a state sponsor to provide all the services, directly or through affiliates or subcontractors; in other

² The Private College 529 Plan is sponsored by an eligible educational institution pursuant to Section 529(b) of the Internal Revenue Code.

instances, all entities involved in servicing the 529 Plan may be party to a single contract or separate contracts with the state sponsor relating to their respective services. Such affiliated entities or subcontractors or additional contractors are not retained to discharge the underwriter's regulatory duties, but to service the common client, the Plan sponsor.

CSF is concerned that, in the context of 529 Plans, the MSRB's suggestion that the underwriter's disclosure obligation under Rule G-45 extends to "information in the possession of an underwriter's subcontractor" will produce confusion and disparate reporting results, as, depending on factors entirely unrelated to Rule G-45 regulatory compliance, particular information specified in Form G-45 may be in the possession of an underwriter's "subcontractor", in the possession of an unaffiliated entity that is not a subcontractor, or in the possession of an affiliated entity that is not a subcontractor. Privacy laws and contractual requirements may or may not permit one affiliate or contractor to share information with the underwriter. CSF does not object to Rule G-45 to the extent it requires an underwriter to make available to the MSRB information that the underwriter, an entity subject to the MSRB's regulatory jurisdiction, acquires in the ordinary course of providing underwriting services. However, CSF is concerned by the suggestion that, in the context of 529 plans, contractual happenstance may result in a requirement that the underwriter provide to the MSRB Plan-related data that has nothing to do with the underwriting function, is not gathered by the underwriter in the ordinary course of its underwriting role and is not disclosed by the state sponsor in the offering materials that the underwriter uses in connection with the distribution of the municipal fund securities.

Accordingly, CSF requests that Rule G-45 be clarified to indicate that an underwriter is required to provide the information specified on Form G-45 only to the extent such information relates to the distribution by the underwriter of municipal fund securities and is in the underwriter's possession or maintained by another entity on the underwriter's behalf for the purpose of complying with MSRB rules applicable to the underwriter.

Confidential or Proprietary Information

CSF notes that proposed Rule G-45 and Form G-45 do not provide an exemption for disclosure of commercially sensitive or proprietary information (collectively, "Confidential Information"). In addition, Form G-45 does not provide the submitter an opportunity to identify data provided as Confidential Information. In its discussions with and comment letters to the MSRB, CSF has expressed concern over the collection of this type of information.

CSF does not object to providing Confidential Information to the MSRB for its internal purposes. However, CSF does not believe that such information should be made available to the general public. Without the designation of certain data as Confidential Information, in the event that a request is made to the MSRB under the Freedom of Information Act for the release of data

that an underwriter and/or Plan believes is Confidential Information, the underwriter and/or Plan would have no opportunity to present arguments in support of an exemption under the Freedom of Information Act. Therefore, CSF believes it is essential that Rule G-45 provide a mechanism whereby each submitter can indicate whether information submitted falls within these categories.

Cost/Benefit of Data Collected

CSF firmly supports the MSRB's need to collect relevant data regarding the 529 Plan market. However, we are mindful of the potential costs to the underwriter of collecting the data. Because of the potential excessive cost to produce, CSF suggests that the Commission consider the addition of a waiver and/or sunset provision designed to ease the cost burden to the affected underwriter.

As discussed above under the heading *Scope of an Underwriter's Duty under Rule G-45*, on page 15 of the Rule Proposal, the MSRB states

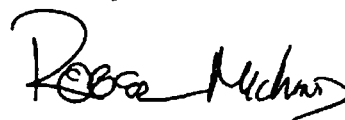
The proposed rule changes will only require underwriters to produce information that they possess or have a legal right to obtain, such as information in the possession of an underwriter's subcontractor.

If Rule G-45 does not address this limitation, a waiver application process will allow an affected underwriter to request relief from providing data that is not reasonably practicable to obtain.

Similarly, a sunset provision could also ease the administrative burden to underwriters required to submit information on Form G-45. After a specified period of time³, CSF suggests that the MSRB revisit its need to collect each data point. Following such review, in the event the MSRB determines that certain data is no longer relevant, the sunset provision would require the MSRB to revise Rule G-45 accordingly.

CSF appreciates the opportunity to comment on the proposed rule changes. Please do not hesitate to contact us with any questions or for more information. You may reach CSF by calling Kathy Hamor at (703) 351-5091.

Sincerely,



Roger Michaud
Chairman,
College Savings Foundation

³ CSF suggests three years.