

MEMO# 26354

July 30, 2012

ICI Files Comment Letter on MSRB Concept to Require Disclosure of Financial Incentives and Conflicts of Interest

[26354]

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TO: 529 PLAN MEMBERS No. 8-12

MUNICIPAL SECURITIES ADVISORY COMMITTEE No. 33-12

PENSION COMMITTEE No. 24-12 RE: ICI FILES COMMENT LETTER ON MSRB CONCEPT TO REQUIRE DISCLOSURE OF FINANCIAL INCENTIVES AND CONFLICTS OF INTEREST

As you may recall, in May, the Municipal Securities Rulemaking Board published a concept proposal relating to public disclosure on the MSRB's EMMA system of certain payments and receipts by municipal securities dealers and municipal advisors that could represent conflicts of interest. [*](#) The Institute has filed a comment letter with the MSRB on its proposal. Our comment letter, which is substantively identical to the draft we previously circulated to members, is briefly summarized below.

The letter notes that the MSRB's Notice is silent on its application to 529 plans and other municipal securities. In light of this, and the basis for the MSRB's proposal, we are uncertain as to how the MSRB intends any new disclosure requirements to apply to the offer and sale of 529 plans. The letter discusses in detail how the disclosures contemplated for traditional municipal securities would appear to have no application when applied to municipal fund securities. Accordingly, the letter recommends that, to the extent the MSRB determines additional disclosures are warranted by municipal securities dealers in connection with municipal fund offerings, the MSRB publish a separate concept release on that issue, which details any abuses in that market that the MSRB intends to address and the disclosures proposed to address them.

The letter also reiterates comments the Institute has previously made to the MSRB regarding the inappropriateness of using EMMA as the repository for 529 plan disclosures. While the letter discusses the value of EMMA as a central repository of information on municipal securities offerings, it notes that is not the case with respect to investors searching for information on 529 plans. Such investors are more likely to utilize information sources that are dedicated to 529 plan securities and that also may be more user-friendly

and interactive than EMMA. Also, because not all state plans are subject to the MSRB's jurisdiction, the letter notes that, under the best of circumstances, EMMA can never provide disclosure for all 529 plans, unlike other sites such as that of the College Savings Plan Network. Should the MSRB determine to impose disclosure requirements on the offer of 529 plans, the letter recommends that the MSRB consider publication of such information on those sources retail investors are most likely to consult to obtain information on these plans

Finally, with respect to the Concept Proposal's application to municipal advisors, the letter notes that, because there is no permanent definition of the term "municipal advisor," it is premature for the MSRB to consider imposing disclosure requirements on an undefined universe of persons. The letter recommends that the MSRB defer imposing any regulatory requirements on such persons until the SEC adopts a permanent definition of this term.

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[Attachment](#)

endnotes

*See Request for Comment on Concept Proposal to Provide for Public Disclosure of Financial Incentives Paid or Received by Dealers and Municipal Advisors Representing Potential Conflicts of Interest, MSRB Notice 2012-28 (May 31, 2012) (the "Concept Proposal"), which is available on the MSRB's website at:

<http://www.msrb.org/Rules-and-Interpretations/Regulatory-Notices/2012/2012-28.aspx?n=1>

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