

MEMO# 26373

August 7, 2012

MSRB Seeks Comment on Its Proposal to Collect 529 Plan Data

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TO: BROKER/DEALER ADVISORY COMMITTEE No. 37-12 RE: MSRB SEEKS COMMENT ON ITS PROPOSAL TO COLLECT 529 PLAN DATA

As you may recall, last July the MSRB sought comment on a concept proposal to require municipal securities dealers that act as primary distributors of 529 plans to report more fulsome information to the MSRB's EMMA system regarding those plans. [\[1\]](#) According to an MSRB press release and notice published today, the MSRB has decided to proceed with collecting additional information on 529 college savings plan and is seeking comment on a proposed new Rule G-45, which would govern these new filing requirements. [\[2\]](#) Importantly, unlike the MSRB's previous proposal, which contemplated making the information filed with the MSRB public, currently, the "MSRB only proposes to collect and use the data for regulatory purposes and not display it on EMMA." [\[3\]](#) The MSRB's Notice is summarized below. Comments on it are due to the MSRB by September 14th.

Filing Required on Form G-45

As proposed, new Rule G-45 require specified information, which is discussed below, to be filed by the plan's primary distributor through an electronic submission to the MSRB on new Form G-45. [\[4\]](#) As explained in the Notice, the required information "would be reported once by primary distributors and then amended in the next quarterly report after a change in information." Form G-45 would be required to be filed "by no later than the last day of the month following the end of the each calendar quarter," providing filers a thirty-day lag between the end of the quarter and the submission of that quarter's information. A "Form G-45 Manual" would be available on the MSRB's website to assist filers. The information required on Form G-45 would be in addition to any information provided to the MSRB in an official statement.

Proposed Definitions

To clarify the information required to be filed via Form G-45, the MSRB proposes to adopt definitions for the following terms, which are used on the form: "asset class," "benchmark," "contributions," "designated electronic format," "distribution," "manner of distribution,"

“performance,” “portfolio,” “program manager,” “primary offering,” “strategy,” and “underwriter.”

Proposed Contents of Form G-45

Form G-45 would seek information in four different areas from the plan’s underwriter. [\[5\]](#) These areas and the information encompassed within each are as follows:

1. Plan Descriptive Information – Under this category, the form would require disclosure of:
 - A. Name of State
 - B. Name of plan;
 - C. Name of primary distributor and contact information;
 - D. Name of program manager [\[6\]](#) and contact information;
 - E. Plan website address, if any; and
 - F. Manner of distribution (e.g., direct-sold or advisory-sold) [\[7\]](#)
2. Aggregate Plan Information – This category would consist of the following:
 - A. Total assets, as of the end of each quarter – According to the Notice, this item on Form G-45 would not require primary distributors to aggregate assets in each plan of a state. Rather, the assets of each plan in a state would be reported separately, “to the extent such information is within the possession, custody, or control of the MSRB-registered primary distributor or to the extent the plan elects to submit the information voluntarily;” [\[8\]](#)
 - B. Total contributions for the most recent quarter, and the percentage of those contributions derived from automatic contributions – The Notice explains that “total contributions” would only include all deposits into the plan other than assets resulting from rollovers from one investment option to another or from one fund to another. As regards the “automatic contribution” element, this refers to contributions “made through automatic means established by account owners, such as through an ACH debit transfer from an account owner’s bank account;” [\[9\]](#)
 - C. Total distributions for the most recent quarter – As with contributions, above, the Notice clarifies that total distributions would not include rollovers; and
 - D. Fee and expense structure for fees and expenses directly or indirectly paid by account owners, as of the end of each quarter – To avoid additional expense in connection with filing this information on Form G-45, the Notice clarifies that, in response to this item, “primary distributors would submit the information in the format suggested in Exhibit A to CSPN’s Disclosure Principles Statement No. 5 (May 3, 12011) (example fees charts).” [\[10\]](#)
3. Information Regarding Each Investment Strategy – This would consist of the following eleven elements: [\[11\]](#)
 - A. Name and type of strategy; [\[12\]](#)
 - B. Inception date of strategy;
 - C. Total assets in each strategy as of the end of the most recent quarter;
 - D. Asset classes [\[13\]](#) in strategy;
 - E. Asset class allocation as of the end of the most recent quarter;
 - F. Name of each portfolio in each strategy and percentage allocation of each portfolio in the strategy;
 - G. Performance for the most recent quarter; [\[14\]](#)
 - H. Name of benchmark, if any;

- I. Benchmark [15] performance for the most recent quarter;
- J. Total contributions for the most recent quarter; and
- K. Total distributions for the most recent quarter.

4. Information Regarding Each Individual Portfolio – The final category would consist of the following ten items:

- A. Name and type of portfolio; [16]
- B. Inception date of the portfolio;
- C. Total assets in each portfolio as of the end of the most recent quarter; [17]
- D. Asset classes in the portfolio;
- E. Asset class allocation as of the end of the most recent quarter;
- F. Performance for the most recent quarter;
- G. Name of benchmark, if any;
- H. Benchmark performance for the most recent quarter;
- I. Total contributions for the most recent quarter; and
- J. Total distributions for the most recent quarter.

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endnotes

[1] See Institute [Memorandum](#) No. 25360, dated July 28, 2011, summarizing the MSRB's notice, MSRB Seeks Comment on Proposal to Collect and Disseminate 529 College Savings Plan Data (July 19, 2011). The Institute filed a comment letter recommending that, before proceeding with such proposal, the MSRB conduct research to determine whether its proposed filing requirements are necessary in light of the panoply of information that is publicly available currently on such plans. See Institute Memorandum No. 25447, dated August 31, 2011, summarizing the Institute's comment letter.

[2] See Request for Comment on Draft Proposal to Collect 529 College Savings Plan Data, MSRB Notice 2012-40 (August 6, 2012) (the "Notice"), available at: <http://www.msrb.org/Rules-and-Interpretations/Regulatory-Notices/2012/2012-40.aspx>.

[3] According to the Notice, the MSRB would make such information publicly available "only after issuing a new Request for Comment on amendments to the EMMA facility to make the information publicly available." Notice at p. 2.

[4] In addition to proposing new Rule G-45, the Notice proposes amendments to Rules G-8 and G-9 to require records be maintained demonstrating compliance with Rule G-45 for six years.

[5] "Underwriter" would be defined to mean "a broker, dealer or municipal securities dealer that is an underwriter as defined in Securities Exchange Act Rule 15c-2-12(f)(8), including but not limited to a broker, dealer or municipal securities dealer that acts as a primary distributor of municipal fund securities that are not local government investment pools."

[6] "Program manager" would be defined to mean "an entity that enters into a contract directly with the trustee of the plan to provide, directly or indirectly through service providers, investment advisory and management services, administration and accounting

functions, and marketing of services related to the day-to-day operations of the plan.” Notice at p. 6.

[7] The term “manner of distribution” would be defined as “the manner by which municipal fund securities are sold to the public, such as through a broker, dealer, or municipal securities dealer that has a selling agreement with a primary distributor (commonly known as ‘advisor-sold’) or through a website or toll-free telephone number (commonly known as ‘direct-sold’).” Notice at p. 5.

[8] Notice at p. 4.

[9] Notice at p. 4. See, also, proposed definition of the term “contributions” on p. 5 of the Notice.

[10] Notice at p. 4. With respect to this item, the Notice further states, “While the [fee and expense] information is typically available in each plan disclosure document and on various websites, the MSRB will be able to make more meaningful use of the information if it is required to be reported by primary distributors electronically, so that the MSRB and other regulators can perform comparisons and analysis on the data.”

[11] According to the Notice, this information will better inform the MSRB regarding investors’ electing to invest in age-based strategies over other strategies due to their ease of use and enable the MSRB to “understand and compare differences between age-based strategies in the context of the manner in which the strategies are marketed.” Notice at pp. 4-5.

[12] According to the proposed definition of “strategy,” it would mean “a combination of more than one portfolio through which funds of account owners are allocated to achieve a particular investment income.” Notice at p. 6.

[13] “Asset class” would be defined as “a group of securities that have the same risk and return characteristics and, therefore, tend to react similarly in different market conditions.” Notice at p. 5.

[14] Performance information would be filed at both the strategy and underlying portfolio levels on a quarterly basis. As defined, “performance” would mean “total return, net of fees, expressed as a percentage.” Notice at p. 6.

[15] “Benchmark” would be defined to mean “an established index or unmanaged portfolio comprised of established indexes.” Notice at p. 5.

[16] As proposed, “portfolio,” would mean “the most basic legal entity into which account owner funds are deposited, such as a registered investment company.” Notice at p. 6.

[17] According to the Notice, this item “would include total assets in each underlying portfolio in the plan, as of the last date of the calendar quarter, but would not include portfolio assets held outside the plan by, for example, mutual fund investors.” Notice at p. 5. The Notice goes on to state, “For example, if one underlying portfolio was a small cap growth fund in which investors can invest either through a 529 plan or directly as a mutual fund investment, the primary distributor would report the 529 plan assets in the small cap growth fund but not other assets in the fund owned by mutual fund investors.”

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