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MSRB Seeks Comment on Adopting "Access Equal Delivery" Standard for Official Statements; Conference Call August 10th

©2006 Investment Company Institute. All rights reserved. Information may be abridged and therefore incomplete. Communications from the Institute do not constitute, and should not be considered a substitute for, legal advice. [20243] August 2, 2006 TO: 529 PLAN ADVISORY COMMITTEE No. 13-06 529 PLAN MEMBERS No. 12-06 RE: MSRB SEEKS COMMENT ON ADOPTING "ACCESS EQUAL DELIVERY" STANDARD FOR OFFICIAL STATEMENTS; CONFERENCE CALL AUGUST 10TH The Municipal Securities Rulemaking Board has published a notice seeking comment on permitting the electronic delivery of official statements for municipal securities.* As envisioned, such delivery would be patterned after the SEC's "access equals delivery" standard, which permits broker-dealers to make prospectuses electronically available to investors rather than having to deliver printed copies. Under the SEC's model, printed copies must be provided upon request. Comments on the MSRB's Notice, which is discussed in more detail below, are due by Friday, September 15th. The Institute is planning to file a comment letter supporting the MSRB adopting an access equals delivery model for 529 plan securities. We will hold a conference call to discuss our support and comment letter on the Notice on Thursday, August 10 from 2-3 pm (Eastern). The dial-in information for the call is 888-220-3083 and the pass code is 54495. Please contact Jennifer Odom at jodom@ici.org or 202-326-5833 to let us know if you plan to participate on the call. Persons unable to participate in the call should provide their comments to Ari Burstein at aburstein@ici.org or 202-371-5408. THE SEC'S "ACCESS EQUALS DELIVERY" STANDARD Generally speaking, pursuant to SEC Rule 172 under the Securities Act of 1933, broker-dealers are not required to deliver a final prospectus to a customer purchasing an equity security if the registration statement for the offering is effective and the final prospectus has been filed with the SEC through its EDGAR system. This "access equals delivery" standard is premised, among other things, on * See MSRB Seeks Comments on Application of "Access Equals Delivery" Standard to Official Statement Dissemination for New Issue Municipal Securities, MSRB Notice 2006-19 (July 27, 2006) (the "Notice"). The Notice is available on the MSRB's website at: <http://www.msrb.org/msrb1/whatsnew/2006-19.asp>. 2 the prospectus being publicly available through EDGAR. Providing electronic access to prospectuses is intended to facilitate investors timely access to information, while significantly decreasing the burden and expense of delivering printed prospectuses. The SEC's rules do not permit mutual funds to rely upon the access equals delivery standard because they are subject to a different disclosure regime than are other registered securities and the SEC is considering electronic

delivery of mutual fund prospectuses in the context of a broader review of mutual fund disclosure practices. ACCOMMODATING THE SEC'S STANDARD IN THE MSRB'S RULES The MSRB believes that the adoption of a modified version of the SEC's access equals delivery standard would greatly enhance the timeliness and efficiency of official statement deliveries. As contemplated, MSRB Rule G-32 would be revised to replace the requirement that an official statement be physically delivered to the investor with a requirement that an investor receive notice that the official statement is available electronically. Rule G-36 would be revised to require underwriters of municipal securities offerings to submit official statements to the MSRB electronically. Adopting this standard for municipal securities would require both that electronic versions of official statements become the industry standard and such versions be easily and freely available to investors. According to the Notice, currently only about half of all official statements are filed with the MSRB electronically. Moreover, because the MSRB does not currently have a system comparable to EDGAR, the MSRB would have to determine how to provide investors electronic access to official statements. The two delivery mechanisms discussed in the Notice are providing investors access through either a centralized Internet website or through a central directory. A central directory would inform investors where a particular official statement is maintained. In the view of the MSRB, however, it would provide fewer assurances that electronic access to the official statements will be maintained in a uniform manner for the required duration and likely would require third-party monitoring of the decentralized sources. The MSRB seeks comment on how access to official statements should be provided to investors. It also seeks comments on whether the MSRB should undertake a centralizing function or there are other market participants or vendors who could undertake such duties subject to appropriate supervision. APPLICATION OF THE STANDARD TO OFFICIAL STATEMENTS FOR 529 PLAN SECURITIES The Notice specifically seeks comment on whether the access equals delivery standard should be available on all new issues or whether certain classes of new issues should remain subject to the MSRB's physical delivery requirements. In particular, the MSRB seeks comment on whether the standard should be available in connection with the sale of municipal fund securities, including interests in 529 college savings plans. It notes that the SEC's justification for carving mutual funds out of the SEC's standard is not applicable to municipal fund securities because the disclosure requirements for such securities are the same as for municipal securities. Tamara K. Salmon Senior Associate Counsel