

## COMMENT LETTER

August 11, 2015

# ICI Files Comment Letter with the SEC on the MSRB's 60-Day Extension of the Compliance Date for Rule G-45 (pdf)

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 Institute<sup>1</sup> 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.<sup>2</sup> 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.

<sup>1</sup> 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.

<sup>2</sup> 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”). Brent Fields, Secretary August 11, 2015 Page 2 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.”<sup>3</sup> 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,<sup>4</sup> 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.<sup>5</sup> Providing filers insufficient time to build compatible filing systems seems both unfair and counterproductive to the MSRB's goal of obtaining reliable information.<sup>6</sup> 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

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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. <sup>4</sup> Many of those details are still not entirely clear today. <sup>5</sup> 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. <sup>6</sup> 2013 Release at p. 4. Brent Fields, Secretary August 11, 2015 Page 3 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.<sup>7</sup> 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."<sup>8</sup> 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.<sup>9</sup> 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. Brent Fields, Secretary August 11, 2015 Page 4 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.] Brent Fields, Secretary August 11, 2015 Page 5 paucity of substance in Rule G-45<sup>15</sup> 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.<sup>16</sup> 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.<sup>17</sup> [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. Brent Fields, Secretary August 11, 2015 Page 6 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,"<sup>18</sup> 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."<sup>19</sup> 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.<sup>20</sup> 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.<sup>21</sup> ■ ■ ■ ■ 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 August 11, 2015 Page 7 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 July 10, 2015 Lynnette Kelly, Executive Director Municipal Securities Rulemaking Board 1900 Duke Street, Suite 600 Alexandria, VA 22314 Re: Implementation of MSRB Rule G-45 Dear Ms. Kelly: On behalf of the undersigned,<sup>1</sup> we would like to thank you and your colleagues at the Municipal Securities Rulemaking Board (MSRB) for delaying the compliance date for the first Form G-45 filings required under MSRB Rule G-45. We believe this delay will provide the staff of the MSRB and underwriters additional time to better understand and implement these new filing requirements. Collectively, we continue to support the MSRB's interest in obtaining industry data and we are committed to the success of Rule G-45. Consistent with this, we hope that the MSRB will use this additional time to work with us and our respective members to address the variety of issues that may frustrate and impede consistent compliance with the new filing requirements. We strongly encourage the staff to publish comprehensive filing instructions that resolve filers' current uncertainty with Form G-45 and the MSRB's filing requirement. We believe it is important for the MSRB to take these steps now, before filings officially commence, in order to be sure that any data the MSRB obtains through Form G-45 is reported consistently among filers, thereby increasing its reliability and usefulness for regulatory purposes. We also encourage the MSRB, as it continues to make changes to the G-45 Manual, to alert the market and interested parties to such changes. Each of these issues is discussed in detail below. 1 See the Appendix for more information about the signatories to this letter. Lynnette Kelly, Executive Director July 10, 2015 Page 2 BACKGROUND In February 2014, three years after it was originally proposed, Rule G-45's adoption was approved by the U.S. Securities and Exchange Commission (SEC).<sup>2</sup> As adopted, Rule G-45 requires underwriters of 529 plan securities to submit data to the MSRB on Form G-45 consistent with the instructions in the Form G-45 Manual. We were pleased when the MSRB assured filers that the new rule would be implemented with a one-year compliance period. Unfortunately, however, filers were never truly provided one year to implement these new requirements. This is because the Form G-45 Manual, which

was necessary for filers to build systems to support the new filings and understand their filing requirements, was not published until February 2015. Our concerns with the insufficient amount of time the MSRB was providing to filers to implement this new filing requirement culminated in the undersigned sending a letter in January 2015 to you and MSRB Chair Kym S. Arnone respectfully requesting the MSRB postpone the compliance date in order to provide filers ample time to implement the new filing requirements and avoid violating the new rule.<sup>3</sup> Following our letter, we met with you and your staff to discuss our concerns with the speed with which these new filing requirements were being implemented and the lack of time being provided to underwriters to comply with them. After this meeting, which was held on February 19th, the MSRB published its first G-45 Manual (Version 1.0). During the meeting, we discussed our concerns that the speed with which G-45 is being implemented is adversely affecting the compliance efforts of filers. We noted that we are not aware of a need compelling the MSRB to obtain 529 plan data as soon as possible; nor do we understand the urgency with which the MSRB is seeking to implement this rule. In the absence of such a pressing need, we strongly encouraged you and your staff to focus on the quality of the new filing system and not the speed with which it could be operational. At the meeting, we were informed that the system was ready for beta testing in anticipation of it going live on July 1st (less than five months after our meeting and publications of the first G-45 Manual). To demonstrate our commitment to the new filing process and to provide your staff meaningful input on the system, we agreed to encourage our members that are subject to Rule G-45 to beta test the system for a 60-day period beginning as soon as practicable. We agreed to provide the staff the results from this testing. Inasmuch as ICI and SIFMA represent the interests of the majority of underwriters subject to the new filing requirements, they agreed to take the lead on this testing initiative and to communicate 2 SEC Release No. 71598 (Feb. 21, 2014).<sup>3</sup> See Letter from the undersigned dated January 9, 2015. Lynnette Kelly, Executive Director July 10, 2015 Page 3 the results to the MSRB's staff. Members of ICI and SIFMA began their 60-day test period approximately a week after our February 19th meeting with the staff. Following the test period, ICI and SIFMA compiled the results of their members' testing efforts and provided them in a detailed narrative form to the MSRB staff. The concerns raised by persons testing the system were primarily substantive (i.e., the type of information that was to be reported on Form G-45 and how it was to be provided – which was not clear from merely reading Rule G-45 or Form G-45) but also included concerns relating to technical filing issues.<sup>4</sup> Subsequent to providing the MSRB staff the results of the beta testing, in May, ICI and SIFMA requested a call or meeting with the staff to discuss the results. In response, ICI and SIFMA received the following email from the staff on June 8th: We are still considering the lists of items you sent. So far, however, it is looking like many of them raise questions that the MSRB has previously answered in documents that made up the rulemaking initiative or in other public communications about the new rule. To make our call potentially more efficient and productive, I wanted to confirm which items you consider needing to be answered. Feel free to send an email or to send the file with some kind of marking or highlighting in it. Thanks. That same day, ICI and SIFMA responded to the staff's email as follows: Since obviously our members are unaware of the issues on the list that the MSRB has already resolved, can you let [ICI and SIFMA] know which issues those are so we can pull the necessary documents and discern the answers for our members? Thanks! A call between ICI, SIFMA, and the MSRB staff was arranged for June 12th. The call consisted of the staff going through the list of issues provided by ICI and SIFMA seriatim and 4 Most members had to manually input data during the beta testing as the February publication of the G-45 Manual had not provided them sufficient time to build business-to-business systems to make the filings electronically. Their first filings are also expected to be manual filings due to the lack of lead time their IT Departments have been

provided to build filing systems. Lynnette Kelly, Executive Director July 10, 2015 Page 4 informing ICI and SIFMA that the answers to the substantive issues<sup>5</sup> raised by the beta testing process could be found by consulting one or more of the following documents:<sup>6</sup>

- Looking at the PowerPoint screenshots from “MSRB Webinar: 529 Plan Data Collection” (March 12, 2015);
- MSRB Notice 2014-03 (Feb. 24, 2014) announcing the SEC’s approval of Rule G-45;
- The current Form G-45 Manual;
- The revised Form G-45 Manual, which had not yet been published but which the staff expected to publish in June;
- Amendment I that the MSRB had filed with the SEC on proposed Rule G-45; and
- The letter that Larry Sandor of the MSRB filed with the SEC as part of the rulemaking process.

The MSRB’s response is of great concern to us. In our view, persons subject to a regulatory requirement should be able to ascertain the entirety of what is expected of them by reading the applicable rule (Rule G-45), the required filing form (Form G-45), or the instructions to the form (the Form G-45 Manual). Instead, however, in order to understand the filing requirements imposed by Rule G-45, the MSRB seems to expect filers to consult a variety of documents – including an MSRB PowerPoint presentation and a letter filed by the staff with the SEC staff during the rulemaking process. We are aware of no other regulatory requirement that requires consulting a variety of extraneous information – including letters written during the pendency of a rulemaking – in order to understand fully a regulatory requirement. We are at a loss to understand why all information that is necessary to understand the new filing requirements cannot be found in one document that is readily accessible by filers. While the information provided by the MSRB to the ICI and SIFMA was, in turn, provided by them to their members, we are not aware of the MSRB publishing it for all Form G-45 filers. Along these same lines, as noted above, during the conversation ICI and SIFMA had with the MSRB staff in June, the staff mentioned that they were working on a revised version of the Form G-45 Manual. At some point in June, this revised manual was posted to the MSRB’s website. With respect to the technical filing issues that were raised with the staff, the staff was amenable to addressing some of those. For others, ICI and SIFMA were told that the staff viewed the issue either as a recommendation the staff would take under consideration or they were issues that were the responsibility of the filer. <sup>6</sup> Though expressly asked during the call, the staff did not provide the answer to each issue raised during the beta testing process. Instead, ICI and SIFMA were only directed to documents where they could discern the answers for their members. Lynnette Kelly, Executive Director July 10, 2015 Page 5 website. This is the version currently available to filers. To our knowledge, however, the MSRB published no notice or press release notifying underwriters that a revised version of the Manual had been published. Indeed, only those filers that downloaded the G-45 Manual after the revised version was added to the MSRB’s website would even be aware that it had been revised – and only then if they noticed it was Version 1.1 dated June 2015. While the signatories to this letter very much appreciate the 60-day delay in the compliance period, we strongly encourage the MSRB to use this time to work constructively with the underwriters subject to this new rule in order to ensure that it is implemented as consistently, effectively, and efficiently as possible. At a minimum, this work should include consolidating all the information necessary for underwriters to understand their filing obligations into one easily accessible and easy-to-understand format and notifying filers where such information may be found. Also, as the staff makes revisions to the Form G-45 Manual, it should alert underwriters that the Manual has been revised to avoid them becoming aware of such revisions only by periodically visiting the MSRB’s website and observing the version of the Manual posted there. The undersigned are committed to making sure that the implementation of Rule G-45 will result in the MSRB obtaining meaningful data from underwriters within its jurisdiction. We strongly recommend that the MSRB not lose sight of the importance of creating sound filing protocols that will result in the MSRB collecting reliable data. We are concerned that, if the MSRB fails to do so, and

filers are left to their own devices to resolve their current uncertainties, the integrity and reliability of the data the MSRB obtains through Form G-45 will be questionable and subject to challenge.<sup>7</sup> This would be an unfortunate result that is wholly preventable. <sup>7</sup> As previously discussed in comment letters on proposed Rule G-45 filed by signatories to this letter, the data the MSRB obtains via Form G-45 will never be reflective of the entirety of the 529 plan market inasmuch as the MSRB's jurisdiction over this market is limited to requiring data only of those persons that are required by law to be registered with the MSRB, which does not include all persons offering 529 plans to investors. It would be unfortunate if the limited data the MSRB is able to obtain through Rule G-45 is unreliable due to defects in the filing process. Lynnette Kelly, Executive Director July 10, 2015 Page 6 Accordingly, we continue to encourage the MSRB to work with industry participants to address filers' concerns. We believe such work will inure to the benefit of both the MSRB and persons subject to Rule G-45. We welcome another opportunity to meet with the staff to discuss our continuing concerns in order to expedite resolution of these issues. To arrange such a meeting, please do not hesitate to contact Andrea Feirstein, of AKF Consulting Group. You can reach Ms. Feirstein by phone (646-218-9864) or email (andrea@akfconsulting.com). Regards, College Savings Foundation College Savings Plan Network Investment Company Institute Securities Industry and Financial Markets Association Strategic Insight Cc: Robert Fippinger, General Counsel, MSRB Jessica Kane, Director, SEC Office of Municipal Securities APPENDIX Below, in alphabetical order, is a description of the signatories to this letter: College Savings Foundation (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 college savings plans. CSF serves as a central repository of information about college savings programs and trends and 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. College Savings Plans Network (CSPN) Established to make higher education more financially attainable, CSPN is a national non-profit association and the leading objective source of information about 529 Plans. An affiliate of the National Association of State Treasurers, CSPN works with its members to enhance 529 Plans and assist American families in planning and saving for higher education. CSPN members include state officials and state-sponsored 529 Plans, as well as program managers, investment managers, and many organizations providing services to 529 Plans, including legal, accounting, and general consulting services. Investment Company Institute (ICI) ICI is the world's leading 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 \$17.7 trillion and serve more than 90 million U.S. shareholders. Securities Industry and Financial Markets Association (SIFMA) SIFMA brings together the shared interests of hundreds of securities firms, banks, and asset managers. SIFMA's mission is to support a strong financial industry, investor opportunity, capital formation, job creation, and economic growth, while building trust and confidence in the financial markets. SIFMA, with offices in New York and Washington, D.C., is the U.S. regional member of the Global Financial Markets Association (GFMA). For more information, visit <http://www.sifma.org>. Strategic Insights For more than 25 years, Strategic Insight has been at the forefront of thorough, unbiased mutual fund



industry research and business intelligence. It believes in the mutual fund industry. Its core mission has always been to strengthen the industry and help its clients succeed in the global marketplace by providing them with the research, data, and analytical support they need to identify product and distribution opportunities and make smart business decisions. As sincere industry advocates, Strategic Insights provides products and services to a wide range of clients, including executives from more than 200 investment management and insurance companies, distributors, investment banks, hedge funds, consultants, and law firms. Strategic Insight sets the standard for trusted business intelligence and mutual fund analysis. It offers the most comprehensive, accurate mutual fund information available to help its clients direct their efforts wisely and grow their businesses. Strategic Insight's parent company, Asset International, delivers critical, cutting-edge data, research, and marketing programs to mutual fund companies, banks, asset managers, and insurance companies worldwide.

January 9, 2015 Kym S. Arnone, Chair Lynnette Kelly, Executive Director Municipal Securities Rulemaking Board 1900 Duke Street, Suite 600 Alexandria, VA 22314 Re: Compliance Date for MSRB Rule G-45 Dear Ms. Arnone and Ms. Kelly: On behalf of the undersigned,<sup>1</sup> we are writing to respectfully request that the Municipal Securities Rulemaking Board ("MSRB") give serious consideration to postponing the compliance date for recently adopted Rule G-45, which requires primary underwriters of 529 plans to file data with the MSRB. As discussed in detail below, this delay is necessary to provide filers ample time to implement these new filing requirements and avoid violating the new rule. Industry concerns with the compliance date associated with Rule G-45 are not new. Like Rule G-45 and Form G-45, expression of these concerns goes back approximately three and one-half years to July 2011 when the MSRB first sought public comment on requiring primary distributors of 529 plans to submit plan data to the MSRB.<sup>2</sup> Following its original concept proposal, the MSRB developed Rule G-45 and Form G-45 and sought comment on them on at least three different occasions.<sup>3</sup> Importantly for purposes of this letter, in every single round of comments on this proposal, commenters consistently attempted to impress upon the MSRB the need to provide a sufficient compliance period for filers.<sup>4</sup>

<sup>1</sup> See Appendix II for more information about the signatories to this letter. <sup>2</sup> See MSRB Notice 2011-33 (July 19, 2011). <sup>3</sup> See MSRB Notice 2011-33 (July 19, 2011); MSRB Notice 2012-40 (August 6, 2012); MSRB Notice 2012-59 (November 23, 2012); and 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) ("SEC Release"). <sup>4</sup> See Appendix I to this letter for excerpts of the comment letters filed that expressed concerns with the rule's compliance date.

Ms. Kym Arnone, Chair, MSRB Ms. Lynnette Kelly, Executive Director, MSRB January 9, 2015 Page 2 of 10 We have consistently supported the MSRB's need to obtain relevant 529 plan industry data for MSRB internal regulatory purposes and we were pleased when the MSRB ultimately assured filers that the new rule would be implemented with a one-year compliance period. While filers believed in good faith that this one-year period would begin when they had a complete understanding of what information would be required by Form G-45 and the format for providing such information, this has not proven to be the case. Instead, as of January 1, 2015, filers must begin compiling the data necessary for making their first filing later this year, even though the information that is necessary for that filing is currently unknown. This is because the MSRB has yet to publish the Form G-45 Manual, which is crucial to knowing the substance and format of the data that will be required by Form G-45.<sup>5</sup> The importance of the Form G-45 Manual to these new filing requirements should not be underestimated. As noted in the SEC Release, the new rule will require filers to submit information to the MSRB "as set forth in the Form G-45 Manual."<sup>6</sup> While one might assume that the contents of the Form G-45 Manual will be limited to the technical specifications applicable to submitting Form G-45 electronically to the MSRB this is not expected to be the case. Instead, the Manual's

contents are expected to include substantive information beyond the technical electronic filing specifications. For example, based on public assurances by the MSRB during the rule promulgation process, the Manual is expected to conform the type and format of information required by Form G-45 to that in the Disclosure Principles adopted by the College Savings Plans Network ("CSPN").<sup>7</sup> Commenters have long recommended and supported consistency between the substantive provisions of CSPN's Disclosure Principles and the requirements of Form G-45 to facilitate efficiencies in obtaining, compiling, analyzing, processing, testing, and reporting the data that, in addition to being relevant to the Disclosure Principles, will be provided to the MSRB on Form G-45.<sup>8</sup> 5 Following the rule's adoption, staff of the MSRB expressed interest in working with the industry on developing the Manual to ensure "they get it right." To our knowledge, this has only occurred with regard to technical data delivery. While the MSRB has put together an industry operations group to assist them in addressing technical data delivery issues, to our knowledge, the MSRB has not reached out to industry leaders to assist the MSRB staff in "getting it right." 6 SEC Release at pp. 7-8. 7 The CSPN Disclosure Principles, originally adopted in 2004, provide a template for the contents of the disclosure documents provided to investors in connection with a 529 plan offering. Each CSPN member 529 plan considers compliance with the Disclosure Principles essential in ensuring uniformity of disclosure across the industry. 8 Commenters who submitted comment letters during this promulgation process have consistently expressed the importance of the MSRB conforming the information required by Form G-45 to that in the CSPN Disclosure Principles. See, e.g., letters filed by College Savings Foundation, CSPN, Investment Company Institute, and SIFMA file in response to MSRB Notice 2012-59 cited in Appendix I. Because neither Rule G-45 nor Form G-45 provide a level of detail sufficient to determine whether, in fact, there will be such conformity, filers are anxiously awaiting the publication of the Form G-45 Manual to better understand and implement the new filing requirements. Ms. Kym Arnone, Chair, MSRB Ms. Lynnette Kelly, Executive Director, MSRB January 9, 2015 Page 3 of 10 We were pleased when, according to the SEC Release, "the MSRB modified its proposal to permit the performance and fee and expense information to be submitted in a format consistent with the Disclosure Principles No. 6 (sic)." Also, "the MSRB . . . will permit submitters to add explanatory text and footnotes to the reporting tables on fees and performance, as well as different tabular presentations that are at least as specific as those permitted in Disclosure Principles No. 5."<sup>9</sup> While filers took comfort in these assurances, it bears emphasizing that there is no mention in either Rule G- 45 or Form G-45 of the Disclosure Principles. Instead, filers only have the MSRB's assurances that, when published, the Form G-45 Manual will provide such conformity. Moreover, the SEC has stated its expectations that, "should the Manual contain any substantive requirements, it would need to be submitted as part of a proposed rule change pursuant to Section 19(b)(1) of the [Securities Exchange] Act and Rule 19b-4 thereunder."<sup>10</sup> In the absence of the Manual's publication, filers are unable to determine whether the Manual will contain substantive requirements that necessitate it being adopted through a formal rulemaking and whether the information that filers currently obtain and process for purposes of the Disclosure Principles will be sufficient to complete Form G-45. While the MSRB has publicly stated that the Form G-45 Manual "will be published on [www.msrb.org](http://www.msrb.org) sufficiently in advance of the effective date to provide submitters with adequate notice and time to comply,"<sup>11</sup> as noted above, to date, the Manual has yet to be published. Moreover, since its press release issued over 10 months ago announcing the rule's compliance date, the MSRB has not provided registrants, nor publicly published, any information regarding submission of the new Form G-45. Nor has the MSRB consulted knowledgeable industry leaders about the contents of the Manual to ensure that its provisions conform to the CSPN Disclosure Principles and will not be unduly burdensome for filers. This is most troubling when one considers that the

compliance clock began ticking on January 1, 2015. The undersigned persons are writing both to express concerns with the manner in which the MSRB is implementing this new filing requirement and to respectfully request that the MSRB take whatever action is necessary to delay the compliance date associated with the first filing of Form G-45. 9 SEC Release at pp. 18-19. As expressed by SIFMA in commenting on the SEC Release, "The MSRB has stated that the specifications for reporting will be contained in the G-45 Manual yet it has not been published for public comment. Because this manual will govern the substance and format of information to be reported on Form G-45, it should be published for public comment. For example, we anticipate that the Form G-45 Manual will incorporate the detailed substantive instructions of the Disclosure Principles, none of which are set forth in Rule G-45 or Form G-45." 10 SEC Release at p 30. 11 SEC Release at pp. 18-19. Ms. Kym Arnone, Chair, MSRB Ms. Lynnette Kelly, Executive Director, MSRB January 9, 2015 Page 4 of 10 As discussed above, in the three and one-half years that the MSRB has been working to require the submission of data relating to 529 plans, industry participants have consistently expressed concerns with an aggressive compliance date and attempted to impress upon the MSRB the need to provide filers sufficient time to take the steps necessary to comply with the filing requirement. Today, we find ourselves in the position of having a compliance clock ticking without having sufficient information to understand fully the new filing requirements. Without such information, filers are unable to undertake the work necessary to design, test, and implement the policies, procedures, processes, and systems necessary to accommodate this new filing regime. For the above reasons, we strongly recommend that: (i) The MSRB delay the compliance date for Rule G-45; (ii) The new compliance date be no less than one year from the date that the Form G-45 Manual is published and interpretive issues presented by its contents have been finally resolved; (iii) The first year of compliance be a pilot program only to allow for clarification of the procedures, processes, and systems necessary for compliance; and (iv) The MSRB form an industry working group to assist in the review and preparation of the Form G-45 Manual so that the interpretive and compliance process under Rule G- 45 is properly established. Building into the one-year period the resolution of any interpretive issues is important because industry participants have not been provided with any drafts of the Manual and, based upon the issues raised by the industry in connection with the MSRB drafting of Form G-45, it is likely that, due to the detailed substantive information that will be set forth in the G-45 Manual, its contents, too, can be expected to raise concerns with filers. In addition, however, the operational and reporting systems necessary to comply with Rule G-45 should be structured to a uniform definition and format prior to the start of a reporting period to avoid the burdens and significant expense associated with having to restructure and redesign such systems. The above recommendations should help avoid such missteps. Ms. Kym Arnone, Chair, MSRB Ms. Lynnette Kelly, Executive Director, MSRB January 9, 2015 Page 5 of 10 Representatives of the undersigned organizations, which represent the interests of filers, would welcome the opportunity to meet with you to discuss our serious concerns with Rule G-45's looming compliance date. To arrange such a meeting, please do not hesitate to contact Andrea Feirstein, of AKF Consulting Group. You can reach Ms. Feirstein by phone (646 218-9864) or email (andrea@akfconsulting.com). Regards, College Savings Foundation College Savings Plans Network Investment Company Institute Securities Industry and Financial Markets Association Strategic Insight Cc: Michael L. Post, Deputy General Counsel, Municipal Securities Rulemaking Board Lawrence Sandor, Deputy General Counsel, Municipal Securities Rulemaking Board Stephen Luparello, Director, Division of Trading and Markets, U.S. Securities and Exchange Commission APPENDIX I Below are excerpts of comments from comment letters submitted to the MSRB since July 2011 that attempt to impress upon the MSRB the importance of providing a sufficient compliance period for implementing Rule G-45 and the first filing of Form G-45. From the comments

submitted to the MSRB in response to MSRB Notice 2011-33 (July 2011): □ “Any regulatory scheme takes time to implement properly. Therefore, SIFMA requests that when any 529 plan market data reporting requirements are finalized, the MSRB provides a reasonable implementation period to develop, test, and implement supervisory policies and procedures, as well as systems and controls, which will be no less than one year before the Proposal becomes effective.” Letter from David L. Cohen, Managing Director, Associate General Counsel, Securities Industry and Financial Markets Association (“SIFMA”), to Mr. Ronald W. Smith, Corporate Secretary, MSRB, dated August 26, 2011. □ “Depending upon the MSRB’s method of collecting data, 529 plans may have to rework the information that they already present in order to achieve comparability [from plan to plan]. This can be costly for a Plan as it has the potential to create a significant workload and/or financial burden for some or all 529 Plans. . . . If data were required to be submitted to the MSRB on an accelerated schedule, many Plans could face a workload and/or financial burden in preparing and submitting the requested data.” Letter from Joan Marshall, Chair, College Savings Plans Network (“CSPN”) to Ronald W. Smith, Corporate Secretary, MSRB, dated August 31, 2011. □ “We recommend that the compliance date for any rule adopted by the MSRB be delayed for at least one year from the rule’s adoption.” Letter from Tamara K. Salmon, Senior Associate Counsel, Investment Company Institute (“ICI”), to Ronald W. Smith, Corporate Secretary, MSRB, dated August 31, 2011. From the comments submitted to the MSRB in response to MSRB Notice 2012-40 (August 2012): □ “We also believe that the implementation period for the proposed reporting regime is an important consideration. The industry participants will require a reasonable period of time to develop and test reporting systems and controls. We believe that such an undertaking could take at least one year. . . . [A] clear understanding of the terminology used in Rule G-45, including Form G-45, is necessary to understanding the date the MSRB is requesting. We feel that the format in which the MSRB solicits that data is an important factor for the 529 plan industry participants in determining the appropriateness of the disclosure of such data points.” Letter from Joan Marshall, Executive Director, College Savings Plans of Maryland, to Ronald W. Smith, Corporate Secretary, MSRB, dated September 14, 2012. □ [W]e continue to recommend that the MSRB provide at least a one-year period after adoption before primary distributors would have to file Form G-45. As discussed [in the ICI’s August 31, 2011 letter, this period would provide filers] ample time to develop systems, controls, and reporting protocols. . . . In order to ensure that each filer has at least one year to implement and accommodate the new filing requirements, we recommend that the compliance date be based on the end of the reporting period, with the first report filed with the MSRB after the passage of an appropriate number of complete reporting periods following the rule’s adoption . . .” Letter from Tamara K. Salmon, Senior Associate Counsel, ICI, to Ronald W. Smith, Corporate Secretary, MSRB, dated September 14, 2012. □ “Any regulatory scheme takes time to implement properly. Therefore, SIFMA requests that when any 529 plan market data reporting requirements are finalized, the MSRB provides a reasonable implementation period to develop, test, and implement supervisory policies and procedures, as well as systems and controls, which will be no less than one year before the Proposal becomes effective.” Letter from David L. Cohen, Managing Director, Associate General Counsel, SIFMA, to Mr. Ronald W. Smith, Corporate Secretary, MSRB, dated September 14, 2012. From the comments submitted to the MSRB in response to MSRB Notice 2012-59 (November 2012): □ “Based on FRC’s experience in collecting [529 plan industry] data, FRC suggests . . . extending an implementation period from one year to two years given that primary distributors will need to make extensive enhancements to their accounting systems such as changing to a calendar year reporting cycle and collecting new data fields. Also, organizations will need to make on-going maintenance which require time for quality assurance across all of their systems. Lastly, firms will need time to audit their

reports to ensure the sought after reliability as the reporting will be used for regulatory purposes and carry monetary punishments through enforcement per a call on August 9, 2012 with Larry Sandor, Deputy General Counsel of the MSRB.” Letter from Paul Curley, CFA, Director of College Savings Research, Financial Research Corporation (“FRC”), a Division of Strategic Insight, to Ronald W. Smith, Corporate Secretary, MSRB, dated December 17, 2012. □ “Comments from members [of the College Savings Foundation (“CSF”)] were also received concerning the implementation of G-45 and enforcement of its requirements. These include concerns that the implementation deadline of one year is still too aggressive, with 18 months to two years suggested as a more reasonable time frame. . . the 529 plan industry continues to refine its data collection and reporting efforts and is committed to transparency and data integrity. These efforts will impact the quality of any reporting to the MSRB and should be considered in the timing of any reporting requirements.” Letter from Roger Michaud, Chairman, CSF, to Ronald W. Smith, Corporate Secretary, MSRB, dated December 21, 2012. □ “Any regulatory scheme takes time to implement properly. Therefore, SIFMA supports the one year time frame, post SEC approval, before the Proposal becomes effective to allow for a sufficient implementation period to develop, test, and implement supervisory policies and procedures, as well as systems and controls. Letter from David L. Cohen, Managing Director, Associate General Counsel, SIFMA, to Mr. Ronald W. Smith, Corporate Secretary, MSRB, dated December 21, 2012. □ “The Institute is pleased that the [MSRB’s] current proposal addresses many of the concerns we raised in our comment letters. Among other things, these revisions include: . . . providing filers an implementation period of at least one year . . .” Letter from Tamara K. Salmon, Senior Associate Counsel, ICI, to Ronald W. Smith, Corporate Secretary, MSRB, dated September 14, 2012. ■ ■ ■ ■

**APPENDIX II Below, in alphabetical order, is a description of the signatories to this letter:** College Savings Foundation (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 college savings plans. CSF serves as a central repository of information about college savings programs and trends and 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. College Savings Plans Network (CSPN) Established to make higher education more financially attainable, CSPN is a national non-profit association and the leading objective source of information about 529 Plans. An affiliate of the National Association of State Treasurers, CSPN works with its members to enhance 529 Plans and assist American families in planning and saving for higher education. CSPN members include state officials and state-sponsored 529 Plans, as well as program managers, investment managers, and many organizations providing services to 529 Plans, including legal, accounting, and general consulting services. Investment Company Institute (ICI) ICI is the world’s leading 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 \$17.7 trillion and serve more than 90 million U.S. shareholders. Securities Industry and Financial Markets Association (SIFMA) SIFMA brings together the shared interests of hundreds of securities firms, banks, and asset managers. SIFMA's mission is to support a strong financial industry, investor opportunity, capital formation, job creation, and economic growth, while

building trust and confidence in the financial markets. SIFMA, with offices in New York and Washington, D.C., is the U.S. regional member of the Global Financial Markets Association (GFMA). For more information, visit <http://www.sifma.org>. Strategic Insight For more than 25 years, Strategic Insight has been at the forefront of thorough, unbiased mutual fund industry research and business intelligence. It believes in the mutual fund industry. Its core mission has always been to strengthen the industry and help its clients succeed in the global marketplace by providing them with the research, data, and analytical support they need to identify product and distribution opportunities and make smart business decisions. As sincere industry advocates, Strategic Insight provides products and services to a wide range of clients, including executives from more than 200 investment management and insurance companies, distributors, investment banks, hedge funds, consultants, and law firms. Strategic Insight sets the standard for trusted business intelligence and mutual fund analysis. It offers the most comprehensive, accurate mutual fund information available to help its clients direct their efforts wisely and grow their businesses. Strategic Insight's parent company, Asset International, delivers critical, cutting-edge data, research, and marketing programs to mutual fund companies, banks, asset managers, and insurance companies worldwide.

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