

COMMENT LETTER

January 9, 2015

ICI and Other Trade Groups Submit Letter to MSRB Recommending Delay of Compliance Date for Form G-45 Data Submission (pdf)

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,¹ 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.² 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.³ 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.⁴ 1 See Appendix II for more information about the signatories to this letter. 2 See MSRB Notice 2011-33 (July 19, 2011). 3 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”). 4 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-45.⁵ 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.”⁶ 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”).⁷ 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-45.⁸

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.”

9 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.”

10 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 sufficiently in advance of the

effective date to provide submitters with adequate notice and time to comply,"¹¹ 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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