

COMMENT LETTER

September 14, 2012

ICI Files Comment Letter with MSRB on Proposal to Collect 529 Plan Data from Primary Distributors on Form G-45 (pdf)

September 14, 2012 Ronald W. Smith, Corporate Secretary Municipal Securities Rulemaking Board 1900 Duke Street, Suite 600 Alexandria, Virginia 22314 Re: MSRB Notice 2012-40

Dear Mr. Smith: The Investment Company Institute appreciates the opportunity to respond to the request of the Municipal Securities Rulemaking Board (MSRB) for comments on a draft proposal to collect 529 college savings plan data through a new Form G-45.¹ The Institute understands the MSRB's interest in having access to information necessary for it to fulfill its regulatory functions, including information concerning the 529 plan market, and we support the MSRB developing a form to collect such data.² Collecting this information through a standardized form should ensure both that the MSRB receives comparable information regardless of the dealer making the filing and that such information is provided pursuant to a consistent schedule. Notwithstanding our support for this initiative, we are concerned with aspects of the proposal that are ambiguous and will pose challenges for dealers required to file Form G-45. We also have concerns regarding some of the data the MSRB proposes to collect. To address our concerns while serving the MSRB's interest in obtaining meaningful 529 data from primary distributors on a timely basis, we recommend several revisions to the proposal. 1 See Request for Comment on Draft Proposal to Collect 529 College Savings Plan Data, MSRB Notice 2012-40 (August 6, 2012) ("Notice"). 2 As noted in our previous comment letter to the MSRB, however, because not all 529 plan primary distributors are subject to the MSRB's jurisdiction, the 529 plan information available to the MSRB is limited and cannot fully reflect the entire 529 plan market. See Letter from the undersigned to Ronald W. Smith, Corporate Secretary, MSRB, dated August 31, 2011 ("ICI Letter") at p. 2. Ronald W. Smith, Corporate Secretary September 14, 2012

Page 2 of 17 Our comments are organized in three sections. In Section I (General Considerations), we address various matters, including the use of the information in Form G-45, the imposition of the reporting obligation on primary distributors, the appropriate reporting cycle and lag time for reporting, and the time needed for compliance. In addition, we recommend that the MSRB give serious consideration to re-proposing Rule G-45 and Form G-45 after revising the current proposal in response to commenters' recommendations. In Section II (Definitions), we recommend substantive revisions to some of the definitions in proposed Rule G-45, including those for "asset class," "portfolio," and "strategy," and we recommend deleting several other defined terms that become unnecessary based on our recommended changes to Form G-45. In Section III (Contents of Form G-45), we recommend significant changes designed to better align the Form G-45's requirements with current industry practices so as to provide useful information to the

MSRB without imposing undue burdens on primary distributors. To assist the MSRB's efforts, we provide a revised version of Form G-45 reflecting our recommended changes in Appendix A to this letter.

I. GENERAL CONSIDERATIONS

A. USE OF INFORMATION FILED ON FORM G-45 When the MSRB first sought comments on its proposal to require municipal securities dealers that act as primary distributors to report to the MSRB more fulsome information on 529 plans, it anticipated all such information being made publicly available via the MSRB's EMMA system.³ In our comment letter on that proposal,⁴ we expressed our concerns with using EMMA as a public repository for 529 plan information and data. We are very pleased that, in connection with its current proposal, the Notice states that "MSRB does not propose that the data to be collected [on Form G-45] be displayed on EMMA." We support the MSRB maintaining the confidentiality of the information filed on Form G-45, and we concur that this information should only be used by the MSRB and its fellow regulators for regulatory or policy purposes. We appreciate the MSRB affirming that it would make the information filed with it on Form G-45 public "only after issuing a new Request for Comment" on this topic.

B. PRIMARY DISTRIBUTORS Consistent with the comments in the ICI Letter, we support the MSRB's determination to require only those dealers acting as primary distributors to file Form G-45. As we noted in our previous letter, "[r]equiring reporting at this level will ensure that the MSRB receives aggregate information for 3 See MSRB Seeks Comment on Proposal to Collect and Disseminate 529 College Savings Plan Data, MSRB Notice 2011-33 (July 19, 2011). 4 See supra note 2. Ronald W. Smith, Corporate Secretary September 14, 2012 Page 3 of 17 the plans offered by those primary distributors that are subject to the MSRB's jurisdiction and avoid the burdens associated with each of the selling municipal dealers that has a sales agreement with the primary distributor having to make independent reports regarding their activities on behalf of the plans."⁵ Closely related to the issue of who has a duty to file Form G-45 is whether the entity charged with filing the Form has access to the information necessary to complete it. We are pleased that the MSRB's Notice expressly states that "primary distributors would only be required to submit the information [required by Form G-45] to the extent it is within their possession, custody or control." We believe this is wholly appropriate and, to avoid any misunderstanding or confusion regarding this point, we believe it should be expressly stated in Rule G-45 as well as on the Form itself and in any instructions accompanying the Form, including in the Form G-45 Manual. This issue is very important to our members because in many instances the primary distributor will not have possession, custody, or control of the required information. The primary distributor of a 529 plan is but one of many service providers to the plan. Depending upon its arrangement with the 529 plan sponsor or the program manager, a primary distributor to a plan may either be charged with selling the plan to investors, entering into sales distribution arrangements on behalf of the plan with retail distributors (i.e., municipal securities dealers) that will sell the plan to investors, or both. The role a primary distributor plays will have a significant impact on the information it possesses about the plan, including the plan's assets, contributions, and distributions. Indeed, those primary distributors that are not directly engaged in selling the plan to retail investors likely have little, if any, information regarding contributions and distributions as those transactions may flow directly from the selling dealer to the plan's recordkeeper without involving the primary distributor. Another factor that may have an impact on what information is available to the plan's primary distributor is the use of omnibus accounts by selling dealers. Under an omnibus account structure, a selling dealer maintains an account at the primary distributor or the plan's recordkeeper in the name of the selling dealer. When customers of the selling dealer make contributions to, or withdrawals from, a 529 plan, the selling dealer aggregates those transactions into one or a few summary transactions that are forwarded to the recordkeeper/primary distributor for processing - i.e., either a net contribution or a net withdrawal. In such an instance, the

recordkeeper/primary distributor would not have information on individual plan participants' transactions – the selling dealer would maintain those records. Thus, the primary distributor would be unable to provide information regarding contributions and distributions that would reflect the activity of individual plan participants within the omnibus account. As a result, the primary distributor's contribution/distribution information would not lend itself to meaningful comparison with that provided by primary distributors for 529 plans that do not have omnibus accounts.⁶ The MSRB should clarify in the Form G-45 Manual that, to the extent a primary distributor does not, in its normal course of business on behalf of the plan, obtain information that is required to be disclosed by Form G-45, Rule G-45 does not require the primary distributor to seek out such information in order to include it on Form G-45. It should also clarify that: (1) Form G-45 does not require the primary distributor to impose upon selling dealers a duty to provide the primary distributor information required to be reported; and (2) information in the possession, custody, or control of an affiliate of the primary distributor is not required to be reported by the primary distributor if the primary distributor does not have possession, custody, or control of the information. In addition, it is likely that, in some instances, primary distributors may report on Form G-45 information obtained from another service provider to the 529 plan (e.g., information about how plan assets are allocated among underlying investments or data about activity within an omnibus account). In such instances, it would not be appropriate for the primary distributor to be responsible for the reliability or accuracy of such information. To address this concern, the instructions to Form G-45 should either: (1) relieve the primary distributor from reporting information that was not created or compiled by the distributor from its own records but instead obtained from other entities or persons; or (2) absolve the distributor from any regulatory liability associated with such information. Otherwise, the primary distributor could unknowingly include on Form G-45 incorrect or inaccurate information that came into its possession and therefore must be reported on the Form.

C. REPORTING CYCLE The MSRB has proposed quarterly updating of the information reported on Form G-45. As stated in the ICI Letter: All regulatory filing requirements result in filers incurring increased costs to collect, produce, review, and file the required information. In some instances, frequent filing may be warranted because of the importance of the information or its fleeting relevance due to fast-changing circumstance. However, this would not be the case with the information primary distributors would be filing with EMMA. This is not ⁶ Even if the primary distributor also acts as the plan's program manager or program recordkeeper, it likely will not have in its possession, custody, or control any data on those accounts held by shareholders within the omnibus position. For more information regarding omnibus transactions and the difficulty in discerning individual shareholder transactions within an omnibus trade see "Rulemaking Must Reflect Realities of Funds' Access to Shareholder Information," ICI Viewpoints (April 30, 2012) at: http://www.ici.org/viewpoints/view_12_rulemaking. Ronald W. Smith, Corporate Secretary September 14, 2012 Page 5 of 17 pressing information of a type that warrants frequent submission. We believe that the MSRB's and the public's interest in such information would not be adversely impacted if the information is only filed every six months rather than quarterly. Importantly, semi-annual reporting would also lessen any filing burdens imposed on primary distributors. Accordingly, we strongly recommend that the MSRB not require the filing of such information more frequently than twice a year. In rejecting a semi-annual reporting cycle favored by the Institute and other commenters, the Notice states that "much of the information" regularly produced by primary distributors in conjunction with program managers "is produced daily or weekly, and delivered to issuers." The Institute continues to believe that a quarterly reporting cycle is neither reasonable nor necessary, and we strongly support a semi-annual reporting cycle.

The fact that some information relating to a state's 529 plan may be regularly produced by some primary distributors and program managers on a daily or weekly basis does not mean that all information required on Form G-45 is produced on this schedule. Indeed, we understand from members that there likely is no one report currently produced by primary distributors that would capture all the information that would be required to be reported on Form G-45. This means that primary distributors will have to gather the required information from a variety of reports, compile it, review it for completeness, and format it before submitting it to the MSRB on Form G-45. As a result, our members believe that the reporting required by Form G-45 will necessitate a new – and in some ways, more complex and onerous – process than is currently used to compile and report data to their state partners.⁷ In those instances where the information of interest to the MSRB is available to the primary distributor, imposing upon all primary distributors the aggressive reporting cycle utilized by some plans for reporting the information is likely to result in substantial costs for those plans that do not currently report this frequently. Moreover, even if some state issuers have determined the merits of such frequent reporting for their own purposes, this does not mean that the MSRB has a comparable compelling need for such frequent reporting. It would seem that the regulatory goals the MSRB has put forth as the basis for requiring the filing of Form G-458 would be amply met through a semi-annual reporting cycle. We additionally note that semi-annual reporting would be consistent with certain SEC regulatory reporting requirements for mutual funds, including Form N-SAR, the “Semi-Annual Report for 7 We understand that the information periodically reported to the states by their 529 plan administrators or service providers may not be subject to the same rigorous processes that would be required in connection with reporting information on Form G-45. 8 These reasons are: receiving data in a uniform format so it may be sorted and analyzed for regulatory purposes; ensuring compliance with MSRB rules on fair dealing and advertising; fulfilling the MSRB’s need for reliable information in furtherance of its regulatory responsibilities and transparency goals; assisting FINRA in conducting examinations of 529 plan dealers; assisting other regulators in their examination and enforcement activities; and, to the extent any such data become public (which is not proposed at this time), enabling “investors to have access to more information about these plans with which to make more informed investment decisions.” Ronald W. Smith, Corporate Secretary September 14, 2012 Page 6 of 17 Registered Investment Companies,” and Form N-CSR, the “Certified Shareholder Report of Registered Management Investment Companies.”⁹ Accordingly, we urge that Rule G-45 be revised to require filing of Form G-45 no more frequently than semi-annually. In addition, to reduce the costs and burdens that would be associated with filing Form G-45, we recommend that the MSRB permit filers to elect at the time they first file Form G-45 with the MSRB whether it will be filed on a calendar-year or fiscal-year basis.¹⁰ While the MSRB has proposed to utilize a calendar year, we note that official statements are filed based on the plan’s fiscal year. Permitting filers to report based on their fiscal year will facilitate transporting relevant information from the official statement to Form G-45 and provide some level of consistency between the data reported in these documents. Accordingly, Form G-45 should include under Section (i), Plan Descriptive Information, a place for filers to indicate whether the Form will be filed based on the calendar or fiscal year. Other filers may find calendar-year reporting better aligns with the current reporting schedule used by the plan or its service providers. Finally, the Notice indicates that basic plan information “would be reported once by primary distributors and then amended in the next quarterly report after a change in the information.” The Form G-45 Manual should clarify that any information reported on a previously filed Form G-45 is only required to be updated if there has been a material change in such information. This, too, should reduce the costs and burdens associated with filing the Form.

D. LAG TIME FOR REPORTING The MSRB has proposed a 30-day lag time for

reporting information on Form G-45. In support of this proposal, the Notice states that, for those primary distributors that currently produce daily, weekly, and quarterly reports, “it would not be a burden to produce information quarterly, and some suggested that the MSRB simply provide them with a 30-day period from the end of the quarter to gather the information, validate it, and submit it. The MSRB believes this timeframe is reasonable.” The Institute disagrees and continues to support a 60-day lag period. The MSRB’s justification for a 30-day lag seems to rely on two faulty premises. First, the recommendation comes from distributors that currently produce information for their state partners daily, weekly, or quarterly. Not all primary distributors do this and, as noted above, we do not believe it is necessary or appropriate to impose such an aggressive reporting cycle on all such distributors. For example, a primary distributor that obtains information from another service provider may need 9 The only information mutual funds report on a quarterly basis is portfolio holdings. See SEC Form N-Q. 10 To ensure consistency in a primary distributor’s reporting, such election should be binding on the filer for all future submissions of Form G-45 unless good cause is shown to justify changing the reporting schedule (e.g., the plan administrator switches the timing of reporting between these two standards). Ronald W. Smith, Corporate Secretary September 14, 2012 Page 7 of 17 additional time to coordinate, review, format, and report the required data. Second, the MSRB’s Notice fails to mention how many of the “market participants” it met with in formulating this proposal supported a 30-day lag and how many advocated for a longer lag time. We note that, of the comment letters filed with the MSRB on its previous proposal by persons representing 529 plans, only three specifically addressed the lag time issue. These three letters, filed by the Institute, Sutherland Asbill & Brennan LLP, and the College Savings Plan Network (“CSPN”), respectively, each advocated for a lag period of at least 60 days.¹¹ We continue to believe that a 60-day lag is appropriate. As noted in the ICI Letter, 60 days would provide filers ample time to gather, review, format, and report the information to EMMA,¹² thereby accommodating filers’ operational and filing processes without adversely impacting the MSRB’s interest in the information.

E. COMPLIANCE PERIOD

The Notice seeks comment on the amount of time primary distributors need to develop the necessary reporting systems and controls. In the absence of a pressing need to file 529 plan data with EMMA in the near term, we 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 Letter, in addition to providing ample time to develop systems, controls, and reporting protocols, such a delay would accommodate integrating a variety of competing priorities pursuant to recent Federal regulations that will require market participants to make significant changes to their systems, controls, and processes (e.g., the Foreign Account Tax Compliance Act “FATCA”). Accordingly, we continue to support a one-year delay in the compliance date for Form G-45. In order to ensure that each filer has at least one year to implement and accommodate the new filing requirement, 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 (i.e., two or four depending on whether reporting is semi-annual or quarterly).¹³ 11 CSPN, the only one of these commenters representing all state plans, noted in its letter that “currently data may be compiled and provided to the State program administrator anywhere from 30 to 60 days following each quarter.” See Letter from Joan Marshall, Chair, CSPN, to Ronald W. Smith, Corporate Secretary, MSRB, dated August 31, 2011, at p. 6. 12 A 60-day lag would be consistent with regulatory filing requirements for mutual funds under the federal securities laws (see, e.g., Rule 30e-1 under the Investment Company Act of 1940 and SEC Form N-SAR). See *supra* note 9 and related text. 13 For example, assume the rule is adopted in March 2013 and a filer elects to make its semi-annual filings based on a calendar year. Under our recommendation, the first filing

would report data from July 1, 2014 until December 31, 2014, and would be filed in accordance with the lag time provided in the rule (e.g., 60 days based on our recommendation). If the compliance period were merely based on the passage of time, under our example, the first report would be required to be filed covering the period from January 1, 2014 through June 30, 2014, giving the filer less than one year to have the systems in place to start capturing the data needed for the first filing and reporting it to the MSRB. Ronald W. Smith, Corporate Secretary September 14, 2012 Page 8 of 17 F. NEED FOR REPROPOSAL To the extent the MSRB makes material changes to the proposed definitions in Rule G-45 or to the proposed Form that may significantly impact filers, we strongly recommend that the MSRB consider publishing a revised version of its proposal for comment. As noted in the discussion below, the ambiguity in many of the definitions and the proposed Form G-45 requirements creates uncertainty regarding what information primary distributors ultimately will be required to file pursuant to Rule G-45. If we have misread the MSRB's intention, or the MSRB clarifies its intent in a way that is inconsistent with primary distributors' current expectations, the proposed rule and form likely will result in a variety of compliance issues for filers. It is critical that the MSRB provide primary distributors the opportunity to raise these issues with the MSRB prior to adoption of a final rule. To avoid denying primary distributors this opportunity, we recommend that the MSRB give serious consideration to republishing for public comment any version of a proposed final rule that differs materially from the current proposal.

II. DEFINITIONS To ensure reporting of comparable information from primary distributor to primary distributor, the MSRB has proposed to define twelve terms that are used in Form G-45. We recommend revisions to several of the proposed definitions for the reasons discussed below.

14 A. "Asset Class" "Asset class" would be defined to mean "a group of securities that have the same risk and return characteristics and, therefore, tend to react similarly in different market conditions." It is not clear what this proposed definition seeks to capture. For example, is it intended to refer to:

- The types of investments held in a 529 plan (e.g., certificates of deposit, mutual funds, etc.)?
- The types of mutual funds held in a 529 plan (e.g., fixed income fund, small cap fund, etc.)?
- The types of securities or other assets held by an underlying mutual fund (e.g., stocks, bonds, etc.)?

As proposed to be defined, it could mean any or all of these. To avoid confusion and capture useful information in a manner that is consistent across the industry, we recommend that the MSRB define this term as follows:

14 We offer no comments on the proposed definitions of: "designated electronic format;" "manner of distribution;" "primary offering;" and "underwriter." Ronald W. Smith, Corporate Secretary September 14, 2012 Page 9 of 17 (i) "Asset class" shall mean any one or more of the following categories: Domestic Equity; International Equity; Fixed Income; Cash or Cash Equivalents; or Other (please specify). Should the MSRB disagree with this recommendation, at the very least it should define this term with greater specificity to avoid confusion among filers and achieve comparability of information reported on the Form.

B. "Benchmark" As discussed below, we recommend that Form G-45 not include any information relating to performance, including benchmark information). If the MSRB adopts this recommendation, the term "benchmark" will no longer be needed and should be deleted.

C. "Contributions" and "Distribution" The Institute recommends that the MSRB delete contribution and distribution information from Form G-45. Given that primary distributors would not be in a position to provide detailed information about, for example, the sources of contributions and/or the purposes of distributions, we are skeptical that the information the MSRB proposes to collect would have any significant regulatory value. If the MSRB is interested in assessing the extent to which one 529 plan may be growing (or shrinking) relative to others (as the Notice suggests), it should be able to do so by reviewing Form G-45 data on each plan's total assets over time.

15 Information on distributions may be of especially questionable value to the MSRB, given the variety of

reasons for which assets may be withdrawn from a 529 plan account. For example, if a 529 plan reports on Form G-45 that \$X was distributed from a plan portfolio during the reporting period, as the Notice acknowledges, the MSRB (and the primary distributor reporting the information) would not know whether the money was used for qualified higher education expenses or for some other purpose. Similarly, the MSRB (and, in certain cases, the primary distributor reporting the information) would not know whether the money was rolled over into another 529 plan or plan account. Accordingly, there would be no context for the data reported, which, at best, makes it of dubious regulatory value and, at worst, could result in the MSRB drawing erroneous conclusions from it. Also, the MSRB does not need this information to determine whether a plan's assets are growing or shrinking since that conclusion would be evident from other information reported on the Form. 15 Plan-level assets would not be affected by the use of omnibus accounts and internal transfers among investment options. Ronald W. Smith, Corporate Secretary September 14, 2012 Page 10 of 17

Should the MSRB decline to delete the requirements for contribution and distribution information, we recommend revising the proposed definitions of "contributions" and "distribution" to simplify those definitions and clarify their scope. Specifically, we suggest defining "contributions" to mean "all deposits into a 529 plan." 16 Similarly, we recommend that "distribution" be defined as "the withdrawal of funds from a 529 plan." This should better ensure consistency with how these amounts are calculated for purposes of the Form G-45. 17 In addition—and as reflected in our suggested revisions to the proposed definitions—we recommend revising Form G-45 to elicit contribution and distribution information only at the plan level and not at the strategy or portfolio level. The Notice does not provide any rationale for collecting contribution/distribution information at the strategy or portfolio level. Moreover, primary distributors may not have such information. D.

"Performance" ICI questions the necessity and appropriateness of requiring primary distributors to report 529 plan performance information on Form G-45. The primary distributor typically would not be responsible for computing performance and the information necessary for such computation often is not within the primary distributor's possession, custody, or control. 18 We recommend deleting the term "performance" from Rule G-45 and eliminating all proposed requirements calling for performance information (including benchmark information and performance) from Form G-45. 19 If the MSRB disagrees with this recommendation, at a minimum it should revise the proposed definition of "performance"—which is vague and open-ended—to be consistent with existing MSRB Rule G-21, which governs how performance must be computed for 529 plan advertising purposes. 20 It 16 Our proposed definition intentionally would omit the phrase "whether by existing account owners or new account owners." Not all deposits come from an "account owner." Instead, contributions to an account could come from relatives or friends of the account owner who want to contribute to the beneficiary's 529 plan account. Also, the source of funds deposited into an account is likely not information recorded or tracked by the plan's primary distributor. Requiring the reporting of "all deposits" without regard to source would appear to provide the information of interest to the MSRB, thereby obviating the need to include this clause. 17 As mentioned above, however, the use of omnibus accounts may impact the usefulness of such data to the extent the recordkeeper/primary distributor is not able to determine the underlying contribution or distribution information for the net trade effected on behalf of the omnibus account holder. 18 The same would be true of benchmark performance. Consistent with the discussion under Section I.B. above, a primary distributor should not be held responsible for the reliability or accuracy of information, including performance or benchmark information, obtained from another entity. 19 As noted above in connection with the definition of "benchmark," eliminating the reporting of performance information renders unnecessary the definition of "benchmark" as well. 20 Rule G-21, in turn, references Rule 482 under the Securities Act of 1933, which

governs mutual fund performance advertisements. Ronald W. Smith, Corporate Secretary September 14, 2012 Page 11 of 17 also should revise the frequency of reporting this information to make it annual, consistent with current regulatory requirements imposed on mutual funds. We note that SEC rules require mutual funds to provide performance information in their prospectuses and in annual reports to shareholders; there is no quarterly or even semi-annual performance reporting requirement. Finally, if the MSRB determines that performance reporting on Form G-45 is necessary, it should be reported consistently with performance information in the official statement in order to reduce costs and facilitate compliance.

E. "Portfolio" The MSRB proposes to define "portfolio" to mean "the most basic legal entity into which account owner funds are deposited, such as a registered investment company." We are concerned that the proposed definition not only is vague but also does not accord with how 529 plans typically use this term and therefore will be confusing. We presume that the MSRB is seeking to elicit meaningful information regarding the number and types of investment options offered by the plan and the investment option(s) selected by the plan's account owners.²¹ If this is correct, we recommend defining "portfolio" to mean "the investment options offered by the 529 plan into which plan assets may be allocated by the account owner." We believe this definition more precisely captures the information sought by the MSRB, which relates to how 529 plan account owners have allocated their plan assets among the investment options available to them, rather than the mutual funds (or other assets) underlying those elections. If the MSRB intends for this term to have another meaning, we recommend that it define the term with greater specificity.

F. "Program Manager" Under the MSRB's proposed definition, a "program manager" would have to provide "investment advisory and management services, administrative and accounting functions, and marketing and other services related to the day-to-day operation of the plan." We understand that not all program managers provide all of these services. Accordingly, we recommend replacing the italicized "and" in the previous sentence with "or." This change will ensure that each plan has at least one entity that would qualify as a "program manager." ²¹ Item 3.H. of the CSPN Disclosure Principles Statement No. 5 (May 3, 2011), recommends that the Offering Materials for a 529 plan "include a description of the investment options available under the Savings Plan." Ronald W. Smith, Corporate Secretary September 14, 2012 Page 12 of 17

G. "Strategy" "Strategy" would be defined to mean "a combination of more than one portfolio through which funds of account owners are allocated to achieve a particular investment outcome." This definition is ambiguous, and we are uncertain as to its meaning for purposes of reporting information on Form G-45. For example, if a 529 plan offers as an investment option a "Balanced Portfolio" that is comprised of mutual funds investing in equities and fixed income securities, this investment option would appear to qualify as a "strategy" under this definition. We do not believe, however, that this is what the MSRB intends as a "strategy." Instead, it appears that this term is intended to capture information on those assets that are invested in age-based investment options, which are specifically designed for beneficiaries of a particular age or within specified age ranges.²² Age-based investment options in 529 plans tend to be either "target date" portfolios or age-based "tracks." Generally speaking, with target date portfolios, the portfolio's composition and allocation of investments are designed based on the date the beneficiary is expected to begin taking distributions from the account to pay for qualified higher education expenses (e.g., the beneficiary's expected year of college enrollment). The composition of the target date portfolio is reallocated periodically by the plan's investment manager without any intervention by the account owner. Such reallocation occurs on a pre-defined schedule as the beneficiary reaches certain age milestones or the target-date (year) approaches. The other common type of age-based investment option is generally referred to as an investment "track." Under this option, the account owner selects an investment track (in

some cases based on the desired level of risk), and the account is placed into a portfolio based on the age of the beneficiary.²³ The selected track's portfolios each comprise a combination of pre-selected investments (typically a combination of mutual funds) that have been designed for account beneficiaries of the same age or within a specified age range.²⁴ This track approach differs from the target date approach discussed above in that, with the target date portfolio, the portfolio evolves based on the approaching target date. With the track approach, the account owner's assets move from one portfolio to another as the beneficiary ages.²⁵ Also, while a target date portfolio likely strikes a net asset 22

According to the Notice, "Information about the types of strategies and total assets in each strategy is needed to understand the types of strategies offered by each plan and the allocation of assets to each such strategy. While the MSRB has been informed that investors are electing to invest in age-based strategies over other strategies due to their ease of use . . . the MSRB has no statistics on the investments in such strategies." ²³ For example, a 529 plan may offer tracks for beneficiaries aged 0-10; 11-14; 15-17; and 18 or older. ²⁴ The portfolios offered through the track may also be offered to plan participants as stand-alone, static investment options. ²⁵ Some 529 plans automatically move the account owner's assets to the portfolio for the track that has been designed for beneficiaries in the next age range when the beneficiary reaches that age range. The pre-programmed transition from one portfolio to another based on the beneficiary's age is disclosed to investors in writing at the time the account is opened and the investment option is selected. Ronald W. Smith, Corporate Secretary September 14, 2012 Page 13 of 17

value (NAV) daily, the nature of an age-based track may preclude striking a daily NAV for the track even though the portfolios offered within the track can (and do) strike a daily NAV. While we understand and support the MSRB's interest in collecting information relating to plan assets that are invested in age-based investment options, we believe the MSRB can obtain this information in a simpler way than it has proposed. We discuss our recommendations for capturing age-based investment option information through a streamlined version of Form G-45 in Section III of this letter. Our proposed revisions would make the term "strategy" unnecessary and we therefore recommend deleting it. If the MSRB determines to retain the term "strategy," we recommend that it define the term with greater specificity to address the concerns identified above.

III. THE CONTENTS OF FORM G-45

As discussed above, we recommend that Form G-45 expressly state that primary distributors only have a duty to complete those portions of the Form for which the requested information is within their possession, custody, or control. We also recommend that the Form require filers to indicate "unknown," or some similar term, for information outside of their possession, custody, or control. As also discussed above, we recommend that the Form require reporting on a semi-annual cycle (either based on a calendar year or the issuer's fiscal year at the filer's election as indicated on the Form), rather than on a quarterly cycle.²⁶ With respect to particular sections of the Form, we offer the following comments and recommendations and Appendix A to this letter provides a revised version of Form G-45 that reflects our recommended changes.

A. SECTION (ii) OF THE FORM: AGGREGATE PLAN INFORMATION

As discussed above, we recommend deleting the requirements for contribution and distribution information. Item (ii)(A) of Form G-45 would require primary distributors to report a 529 plan's "total assets." While reinvested dividends are typically included in asset calculations, to promote comparability in the information reported by filers, the MSRB should address in the Form G-45 Manual the treatment of pending dividends. We recommend that such dividends be included in the calculation of any assets reported on Form G-45.²⁷ With respect to information about the structure of the plan's fees and expenses (item (ii)(D)), we concur that filers should have the option of providing such information in the format suggested in 26 In connection with this recommendation, we recommend changing references to "quarter" or "each quarter"

in Form G- 45 to “reporting period” or “the reporting period,” as appropriate. 27 This would include any assets reported in Sections (iii) and (iv) of the Form. Ronald W. Smith, Corporate Secretary September 14, 2012 Page 14 of 17 Exhibit A to CSPN’s Disclosure Principles, as indicated in the Notice. Form G-45 needs to be flexible enough, however, to accommodate whatever format plans utilize to report fee and expense information in an official statement in order to avoid the costs and burdens associated with reformatting this information to be compliant with Exhibit A. Also, consistent with item (ii)(D), the Form G-45 Manual should clarify that the Form requires information on the plan’s fee and expense structure, and not the fees and expenses themselves.²⁸ To facilitate the reporting of this information, the Form could use a “check the box” format that would list the different types of fees and expenses that may be associated with 529 plans (along with an “other” category).²⁹

B. SECTION (iii) OF THE FORM: INFORMATION REGARDING EACH INVESTMENT STRATEGY ICI recommends that this portion of the Form be deleted. We can appreciate the MSRB’s interest in knowing how much of 529 plan assets are invested in age-based investment options versus static investments. We believe, however, that seeking to capture this information on the Form as currently structured will result in imprecise and overlapping information. For example, assume Portfolio A is used both as a static investment option and as an underlying investment in an age-based portfolio. As currently drafted, the Form might result in double reporting the 529 plan assets invested in Portfolio A – i.e., the assets in this Portfolio would be reported in both Sections (iii) and (iv) of the Form. To avoid this problem and simplify the Form, we strongly recommend that information regarding the composition of, and assets held in, particular portfolios – whether used as static or aged- based investment options or both – be captured in Section (iv) of the Form, which requires reporting on “each individual portfolio.”³⁰ Should the MSRB disagree, we recommend that Section (iii) of the MSRB’s proposed Form be revised to capture information only on age-based investment options.³¹

C. SECTION (iv): INFORMATION REGARDING EACH INDIVIDUAL PORTFOLIO As discussed above, we presume that, as proposed, the items in the Form relating to “portfolios” are intended to capture the assets invested in the various investment options offered by a 529 plan. ²⁸ The discussion of the proposed fee and expense disclosure in the Notice is ambiguous. It states that under the proposal primary distributors would deliver to the MSRB “information regarding the fee and expense structure” But it also indicates that the MSRB “will be able to use this data to analyze the fees and expenses of 529 plans and their underlying investment options and manipulate the data to compare the fees and costs of different plans,” which seems to contemplate disclosure of fee and expense amounts. ²⁹ See Item (ii)(B) in Appendix A. ³⁰ If the MSRB deletes Section (iii) of the Form as we recommend, Section (iv) of the Form would become Section (iii), as indicated in Appendix A. ³¹ Our recommended revisions if Section (iii) is retained are set forth in Appendix B to this letter. Ronald W. Smith, Corporate Secretary September 14, 2012 Page 15 of 17

Investors in these plans typically have the ability to allocate their plan contributions between aged- based investment options and/or non-age-based (static) investment options. Consistent with the previous discussion in this letter, we recommend that information on all portfolio assets – both age- based and non-age-based – be captured through this portion of the Form. Recognizing the MSRB’s interest in distinguishing 529 plan assets invested in age-based portfolios from other portfolios, we recommend that the Form require the primary distributor to indicate, in connection with each portfolio listed, whether the portfolio is offered: (1) exclusively as an age-based investment option;³² (2) exclusively as a stand-alone or static investment option; or (3) for both purposes. Under this structure, to the extent the information is within the primary distributor’s possession, custody, or control, the primary distributor would report it on Form G-45 and the MSRB would be able to determine which assets, of the total assets invested in a state’s plan, are allocated to age-based investment options and which assets are invested

in the other investment options offered by the plan. This structure also would avoid duplicative reporting of portfolio assets pursuant to Sections (iii) and (iv) of the proposed Form.³³ Consistent with this approach and several of our other comments, we recommend the following revisions to Section (iv) of the Form.

1. Item (iv)(A): Name and type of portfolio – We recommend revising this item to clarify that “type of portfolio” means (1) age-based, (2) static, or (3) both.³⁴ In connection with this change, the MSRB should add to Rule G-45 a definition of “age-based investment option.” We recommend defining this term as follows: The term “age-based investment option” shall mean an investment option that is specifically designed for beneficiaries of a specified age and that has an investment objective of providing varying degrees of long-term appreciation and capital preservation through a mix of equity and fixed income exposures over time based on the beneficiary’s age at the time the account is opened. An age-based option may be either a target date fund, whose portfolio is automatically reallocated by the plan’s investment manager based on the beneficiary’s expected year of higher- education enrollment, or an investment track whose investments have been designed based on the age of the beneficiary. ³⁵ For example, assume a 529 plan offers, among other investment options, a Conservative Portfolio, comprised in part of fixed income mutual funds, as well as an age-based investment option that invests a portion of its assets in the Conservative Portfolio. As Form G-45 is currently constructed, the MSRB would be unable to determine, of the total assets invested in the Conservative Portfolio, which came from its use as a static investment option and which came from its use as an age- based investment option. Under our proposed recommendation, if known to the primary distributor, the primary distributor would separately report the assets invested in the Conservative Portfolio (1) as a stand-alone/static investment option and (2) through an age-based investment option. As proposed by the MSRB, the assets invested in the Conservative Portfolio through the age-based investment option would be double counted – i.e., as assets of a “Portfolio” and as assets comprising a “Strategy.” ³⁶ The Form could use a “check the box” approach for reporting this information. Ronald W. Smith, Corporate Secretary September 14, 2012 Page 16 of 17
2. Item (iv)(B): Inception date of portfolio – We recommend eliminating this item because we are unsure of its meaning. For example, does it refer to the inception date of the 529 plan, the particular investment option, or the portfolio investments within the investment option? Regardless of the answer, we question the relevance of this information for regulatory purposes.
3. Item (iv)(C): Total assets in each portfolio as of the end of the most recent quarter – We recommend revising this item to read “Total assets in each portfolio listed in Item (iv)(A) as of the end of the reporting period.” If the type of portfolio is both age-based and static, then the primary distributor should report separately the portion of the assets in the portfolio resulting from the age-based option and the portion resulting from the static investment option, if that information is within the primary distributor’s possession, custody, or control.³⁵
4. Item (iv)(D): Asset classes in portfolio – We recommend eliminating this item as it would be duplicative of information disclosed pursuant to Item (iv)(E).
5. Item (iv)(E): Asset class allocation as of the end of the most recent calendar quarter – We recommend revising this item to require that the information be reported in ranges (e.g., 0-25%; 26-50%; 76-100%), as of the end of the reporting period. This would relieve primary distributors from having to amend this portion of the Form when there is a de minimis change to the allocation (e.g., from 23.5% to 24%). The use of ranges also should facilitate the MSRB’s analysis of the data by making it easier to group the information reported on the Form into pre-assigned categories.
6. Item (iv)(F): Performance for the most recent quarter – For the reasons discussed in the Definition section of this letter, we recommend that Form G-45 not require the reporting of performance information. If this item is retained, we recommend that, consistent with SEC performance reporting requirements, such information be reported no more frequently than

annually and (1) calculated in accordance with MSRB Rule G-21; and (2) reported consistently with performance information in the official statement.³⁶ 35 We understand that, in some instances where 529 plan assets are invested in a portfolio that is used for both an aged- based investment option and a static investment option, primary distributors may know the percentage – but not the dollar amount – of the total assets in the portfolio coming from each of the types of investment options. Computing the dollar amount of those assets may necessitate the primary distributor multiplying the total portfolio’s assets by the known percentages. The Form G-45 Manual should include instructions requiring such calculation when necessary to obtain a dollar value of the assets in a portfolio. 36 Also, the MSRB should be aware that primary distributors will be unable to provide performance information for any portfolio that does not strike an NAV. Ronald W. Smith, Corporate Secretary September 14, 2012 Page 17 of 17

7. Item (iv)(G): Name of benchmark, if any – As discussed in the Definition section of this letter, we recommend deleting this item. 8. Item (iv)(H): Benchmark performance for the most recent quarter – As discussed in the Definition section of this letter, we recommend deleting this item. 9. Item (iv)(I): Total contributions for the most recent quarter – As discussed above, we recommend deleting this item or, at the very least, only requiring contribution information at the plan level (in Section (ii) of the Form). 10. Item (iv) (J): Total distributions for the most recent quarter – As discussed above, we recommend deleting this item or, at the very least, only requiring distribution information at the plan level (in Section (ii) of the Form). ■ ■ ■ ■

The Institute appreciates the opportunity to share these comments with the MSRB. We commend the MSRB for its efforts to work with those members of the industry that will be charged with completing and filing Form G-45. Through such efforts, the MSRB can avoid imposing undue burdens on primary distributors while also ensuring that the form will capture meaningful information about the 529 plan marketplace. If you have any questions concerning our comments or require additional information regarding any of our recommendations, please do not hesitate to contact the undersigned by phone (202-326-5825) or email (tamara@ici.org). Sincerely, /s/ Tamara K. Salmon Senior Associate Counsel

APPENDIX A RECOMMENDED FORM G-45 Date of Filing: _____
Reporting Cycle: ___ Fiscal Year ___ Calendar Year Report for [Quarterly/Semi Annual] Period
Ending: / / A primary distributor shall indicate “unknown” for any of the following items requiring information that is not within the primary distributor’s possession, custody, or control. (i) PLAN DESCRIPTIVE INFORMATION (A) Name of State (B) Name of Plan (C) Name of Primary Distributor and contact information, including primary contract name, address, phone number, and email address (D) Name of Program Manager and contact information, including address and phone number (E) Plan website address (F) Manner of distribution [check all that apply]: ___ Direct sold; ___ Advisor-sold; ___ Other [explain]: (ii) AGGREGATE PLAN INFORMATION (A) Total plan assets as of the end of the reporting period: \$ _____ (B) Fees Associated with the Plan [check all that apply]: ___ Investor Expenses: ___ Initial sales charge ___ Annual account maintenance fee ___ Other [please explain]: ___ Asset based fees: ___ Underlying mutual funds ___ Program manager ___ State sponsor ___ Miscellaneous [please explain]: (iii) PORTFOLIO INFORMATION Separately list each investment option offered by the primary distributor on behalf of the plan (A) Name of portfolio (B) Use of portfolio: ___ Age-based investment option ___ Static (non-age-based) investment option (C) Total portfolio assets as of the last day of the reporting period: \$ _____ (D) Portfolio assets attributable to age-based investment option(s): \$ _____ (E) Portfolio assets attributable to static investment option(s): \$ _____ (F) Asset classes in portfolio: ___ Domestic Equity ___ International Equity ___ Fixed Income ___ Cash (including Cash Equivalents) ___ Other [please describe]: _____ (G) Asset class allocation as of the last day of the reporting period: Domestic Equity: ___ 0% ; >0 - 25%; ___ >25-50%; ___ >50-75%;

___ >75-<100%; ___ 100% Int'l Equity: ___ 0% ; >0 - 25%; ___ >25-50%; ___ >50-75%; ___ >75-<100%;
 ___ 100% Fixed Income: ___ 0% ; >0 - 25%; ___ >25-50%; ___ >50-75%; ___ >75-<100%;
 ___ 100% Cash: ___ 0% ; >0 - 25%; ___ >25-50%; ___ >50-75%; ___ >75-<100%; ___ 100%
 Other: ___ 0% ; >0 - 25%; ___ >25-50%; ___ >50-75%; ___ >75-<100%; ___ 100%

APPENDIX B:

REVISIONS TO SECTION (III) OF FORM G-45 If the MSRB does not follow ICI's recommendation to delete Section (iii) of Form G-45, we recommend that, in lieu of capturing "strategy" information in this section, it instead capture information on age-based investment options³⁷ and the items in Section (iii) be revised as follows: 1. Item (iii)(A): Name and type of strategy - We recommend rewording this item to state "Name and type of age-based investment option." The MSRB should clarify that "type" would mean, for example, target date portfolio or age-based track. 2. Item (iii)(B): Inception date of strategy - We recommend eliminating this element because we are unsure of its meaning and question its relevance for regulatory purposes. 3. Item (iii)(C): Total assets in each strategy as of the end of the most recent quarter We recommend that this item read: "Total assets in each age-based investment option as of the end of the reporting period." 4. Item (iii)(D): Asset classes in strategy - We recommend eliminating this item as it would be duplicative of information disclosed pursuant to item (iii)(E). 5. Item (iii)(E): Asset class allocation as of the end of the most recent quarter - We recommend revising this item to require that the information be reported in ranges (e.g., 0- 25%; 26-50%; 51-75%; 76-100%). This would relieve primary distributors from having to amend this portion of the Form when there is a de minimis change to the allocation (e.g., from 23.5% to 24%). The use of ranges should also facilitate the MSRB's analysis of the data by making it easier to group the information reported on the Form into pre-assigned categories. 6. Item (iii)(F): Name of each portfolio in each strategy and percentage allocation of each portfolio in each strategy - We are uncertain as to (1) what information this item is seeking and (2) what its relevance would be for regulatory purposes. If, as discussed above, the MSRB's references to "portfolio" are intended to capture the plan's investment options, this item does not make sense. In effect, it would require disclosure of each investment option in each age-based investment option and the percentage allocation of each investment option in each age-based investment option. Through items A and C of this section of the Form, the MSRB will receive information on the variety of age-based strategies a 529 plan offers and the assets invested in each such age-based option. If at some point in the future, after it has experience with Form G-45 filings, the MSRB determines that it needs additional information, it should propose to revise the Form accordingly. In the meantime, we recommend that this item be deleted. If the MSRB decides to retain this item, it should (1) clarify the information required ³⁷ See proposed definition of "age-based investment option" in footnote 32 of our comment letter. In this event, Section (iv) should be revised to address only static investment options. to be reported and (2) permit the "percentage allocation" to be reported within pre-defined ranges along the lines we recommend for item (iii)(E), above, 7. Item (iii)(G): Performance for the most recent quarter - For the reasons discussed previously, the Institute recommends that Form G-45 not require the reporting of performance information. If the MSRB retains this requirement, consistent with SEC performance reporting requirements, such information should be required to be reported no more frequently than annually and it should be (1) calculated in accordance with MSRB Rule G-21; and (2) reported consistently with any performance information in the official statement to reduce costs and facilitate compliance. Also, the MSRB should be aware that primary distributors will be unable to provide performance information for those age-based investment tracks that do not strike an NAV. 8. Item (iii)(H): Name of benchmark, if any - As discussed in the Definition section of this letter, we recommend deleting this item. 9. Item (iii)(I): Benchmark performance for the most recent quarter - As discussed in the Definition

section of this letter, we recommend deleting this item. 10. Item (iii)(J): Total contributions for the most recent quarter – As discussed in the Definition section of this letter, we recommend deleting this item or, at the very least, only requiring contribution information at the plan level (Section (ii) of the Form). 11. Item (iii)(K): Total distributions for the most recent quarter – As discussed in the Definition section of this letter, we recommend deleting this item or, at the very least, only requiring distribution information at the plan level (Section (ii) of the Form).

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