



By Electronic Delivery

December 21, 2012

Ronald W. Smith, Corporate Secretary  
Municipal Securities Rulemaking Board  
1900 Duke Street, Suite 600  
Alexandria, VA 22314

Re: Comments Concerning MSRB Notice 2012-59  
Second Request for Comment on Draft Rule Requiring Underwriters to Submit  
529 College Savings Plan Information to the MSRB

Dear Mr. Smith:

The College Savings Plans Network (CSPN), on behalf of its members, is pleased to have this opportunity to comment on MSRB Notice 2012-59, *Second Request for Comment on Draft Rule Requiring Underwriters to Submit 529 College Savings Plan Information to the MSRB* issued November 23, 2012 (the "Notice" or "Notice 2012-59"). We appreciate the Municipal Securities Rulemaking Board's (the "MSRB") continuing commitment to assist consumers seeking to invest in 529 College Savings Plans ("529 Plans" or "Plans") and its interest in the collection of market information regarding 529 Plans. We are dedicated to working with the MSRB in its efforts to gain a better understanding of the industry, its participants, and its customers and want to ensure that it receives appropriate, consistent information to assist in its regulatory oversight of 529 plan dealers. In addition, as noted in our responses to both MSRB Notice 2011-33, MSRB Notice 2012-10 and MSRB Notice 2012-40, we fully support a transparent 529 marketplace and broad dissemination of relevant information.

CSPN appreciates the MSRB's efforts to limit the initial set of data to be collected as well as its efforts to work within reasonable time frames in order to provide 529 plan underwriters sufficient time to collect, organize, and deliver the requested data. We believe that most of the issues identified in our comment letter on Notice 2012-40<sup>1</sup> have been resolved. However, we offer a few additional observations and concerns for the MSRB's consideration.<sup>2</sup>

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<sup>1</sup> See joint letter of the College Savings Plans Network and the College Savings Foundation to Ronald W. Smith, Corporate Secretary, MSRB, dated September 14, 2012 commenting on MSRB Notice 2012-40 (the "Joint Letter").

<sup>2</sup> In addition, as noted in the Joint Letter, CSPN appreciates the MSRB's commitment to keep the data proposed to be collected confidential unless and until a new Request for Comment is issued.

## **College Savings Plans Network Disclosure Principles Statement No. 5**

CSPN agrees with the MSRB's approach of tying key disclosures to the format presented in our College Savings Plans Network Disclosure Principles Statement No. 5 ("Disclosure Principles"). The Disclosure Principles are the result of an extensive review and analysis of the type and format of data available under the operating structure of each separate 529 plan. Accordingly, CSPN firmly believes that the Disclosure Principles provide state-of-the-art guidance for each 529 plan in preparing Offering Materials (as defined in the Disclosure Principles) for dissemination to the public.

In order to achieve uniformity among 529 plan disclosure, the Disclosure Principles have been structured to provide consistency with regard to core plan metrics – namely fees and expenses and performance information. In each case, the Disclosure Principles offer sample tabular formats. However, recognizing the variance in the operational structure of each plan, the Disclosure Principles state:

The description of fees and costs should include a fee and cost table. Suggested fee and cost tables are attached as Exhibit A. *If a Savings Plan includes fees and costs in categories that differ from the categories included in Exhibit A, then a different tabular presentation that is at least as specific as the tables attached as Exhibit A should be used.* State Issuers are encouraged to add an introductory paragraph to such tables, explaining principles followed and assumptions made by the State Issuer in preparing the tables. State Issuers are also encouraged to add explanatory footnotes to the fee and cost tables in order to make such tables clear and understandable. [emphasis added]<sup>3</sup>

The Disclosure Principles also state that:

The description of the performance of investment options should include a performance table. A suggested performance table for Direct-Sold Savings Plans is attached as Exhibit B. A suggested performance table for Advisor-Sold Savings Plans is attached as Exhibit C. *If a Savings Plan includes performance in categories that differ from the categories included in Exhibit B or Exhibit C, as applicable, then a different tabular presentation that is at least as specific as the suggested tables attached hereto should be used.* In order to make the table clear and understandable, State Issuers are encouraged to add explanatory text or footnotes to each performance table, explaining principles followed and assumptions made by the State Issuer in preparing the table. Finally, State Issuers are encouraged to add additional information that, in their judgment, enhances a

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<sup>3</sup> College Savings Plans Network Disclosure Principles Statement No. 5 Section 3(F), paragraph 2.

user's understanding of the Direct-Sold or Advisor-Sold Savings Plan's performance, as applicable. [emphasis added]<sup>4</sup>

In each case, the language was carefully written to ensure that all 529 plans, regardless of marketing and distribution methods and operational structure, could provide a standardized presentation of fees and expenses and performance. To that end, CSPN believes it important to build that same flexibility into proposed Form G-45. CSPN suggests that specific language from the Disclosure Principles be added to Rule G-45, Form G-45 and/or the G-45 Manual to allow for flexibility in presenting a "different tabular presentation that is at least as specific" as the sample tables included in the Disclosure Principles. If this flexibility is not provided, CSPN believes that an undue burden will be placed on several 529 plans that generally report this information in an alternative manner.<sup>5</sup>

In addition, CSPN is of the view that specific instructions should be included in Form G-45 and/or the G-45 Manual allowing for each underwriter to include specific explanatory text and/or footnotes as is permitted by the Disclosure Principles. This will enable each underwriter to properly categorize its data, thereby facilitating the MSRB's interest in receiving disclosure that is clear, uniform and formatted consistently with the Disclosure Principles and the plans' Offering Materials.<sup>6</sup>

#### **Rule G-45 Definitions: Marketing Channel**

CSPN notes that direct sold 529 plans are distributed and marketed in a variety of ways, online, by telephone, to walk-in customers, etc. Therefore, for clarification purposes, CSPN recommends revision to the definition of "marketing channel" to allow for a broader method by which to encompass all direct sold plans in the definition as follows:

(vii) The term "marketing channel" shall mean the manner by which municipal fund securities that are not local government investment pools are sold to the public, such as through a broker, dealer or municipal securities dealer that has a selling agreement with an underwriter (commonly known as "advisor-sold") or through a website, toll-free telephone number or other direct means (commonly known as "direct-sold").<sup>7</sup>

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<sup>4</sup> Disclosure Principles Section 3(G), Paragraph 2.

<sup>5</sup> In many cases, 529 plan administrators and program managers have determined that the tabular presentation suggested by the Disclosure Principles requires explanation by footnote and/or additional or different columns in order to provide true comparative information.

<sup>6</sup> See also comments under *Form G-45 I. Aggregate plan information: Fees and Expenses* below.

<sup>7</sup> Underlined language represents proposed changes to the definition.

### **Rule G-45 Definitions: Reallocation**

CSPN appreciates the definitional clarifications made to proposed Rule G-45. For clarity, we propose a modification to the definition of “reallocation” as follows:

(xii) The term “reallocation” shall mean the withdrawal of funds from one investment option in a plan and deposit of the same funds into one or more investment options in the same plan, such as where an account owner selects a different investment option or funds are moved from one age-band to another as beneficiaries approach college age.<sup>8</sup>

### **Rule G-45 Definitions: Underlying Investments**

CSPN appreciates the improvements made to the definition of “underlying investments” (originally proposed to be defined as “portfolio”), but believes some additional clarification is needed. The MSRB proposes to define “underlying investments” to mean “a registered investment company, unit investment trust, or other investment product that is a component of an investment option.” However, 529 plans are structured so that the underlying investments are not “components of” the investment option, but separate, stand-alone investments that typically have a separate legal existence. For instance, the mutual funds into which an investment option invests are not part of the 529 plan trust. Without clarification, we believe the definition implies that the underlying investments are part of the 529 plan trust and its investment options. Accordingly, CSPN suggests the following revised definition of underlying investment:

(xiii) the term “underlying investment” shall mean a registered investment company, unit investment trust, or other investment product in which an investment option invests.<sup>9</sup>

## **Form G-45**

### **I. General**

CSPN notes the MSRB’s response to Comment 7 presented in the Notice. We believe that, for clarity, it is important for proposed Rule G-45 to specify that underwriters (as defined in proposed Rule G-45) are only obligated to provide information that is in their possession, custody or control. As currently written, Rule G-45 implies, if not provides, that an underwriter would be obligated to obtain information that is not its own, that of an affiliate, a subcontractor, program manager or state administrator. Specifically, underwriters do not always have access to data provided by a selling dealer to the 529 plan’s record-keeper. In those cases, the underwriter

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<sup>8</sup> Underlined language represents proposed changes to the definition.

<sup>9</sup> Underlined language represents proposed changes to the definition.

may have no legal right to such information. Without clarification, Rule G-45 would place an undue burden on the underwriter to obtain information from parties with which it has no contractual or other relationships.

## **II. Aggregate plan information: Fees and Expenses**

Most 529 plans update Offering Materials on an annual basis as well as for material disclosure and plan changes. This reflects the fact that most 529 plans do not update and/or change fees and expenses generally more often than annually. Therefore, we believe that it would be more appropriate for Section (ii) (D) of Form G-45 to read as follows:

Fee and expense structure for fees and expenses directly or indirectly paid by account owners in effect as of the end of each semi-annual reporting period.<sup>10</sup>

In this regard, it would also be helpful for Rule G-45, the Form G-45 or the G-45 Manual to clarify that a 529 plan underwriter may footnote the fee and expense table presented to indicate the effective date of such fees and expenses.

## **III. Information regarding each investment option: Performance Data**

CSPN notes that the MSRB is proposing to collect performance data for the most recent calendar year as well as benchmark performance data for the most recent calendar year. If the MSRB is proposing to collect only annual data, CSPN suggests the Form G-45 and/or the G-45 Manual specify that such information would not be required from underwriters as part of their mid-calendar year data submission.

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Thank you again for providing an opportunity to comment on the Notice. We believe these additional changes to the proposed rule and form will ensure that underwriters satisfy the MSRB's data collection needs without incurring an undue reporting burden. Please do not


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<sup>10</sup> Underlined language represents proposed changes to the language of Section (ii)(D) of proposed Rule G-45.

Ronald W. Smith, Corporate Secretary  
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hesitate to contact us with any questions or for more information. You may reach CSPN by calling Chris Hunter at (859) 244-8177.

Sincerely,

A handwritten signature in cursive script that reads "Michael L. Fitzgerald". The signature is written in black ink and is positioned below the word "Sincerely,".

Hon. Michael L. Fitzgerald  
Treasurer of Iowa and  
Chairman, College Savings Plans Network