



1401 H Street, NW, Washington, DC 20005-2148, USA
202-326-5800 www.ici.org

December 21, 2017

Mr. Ronald W. Smith, Corporate Secretary
Municipal Securities Rulemaking Board
1300 I Street, NW
Washington, DC 20005

Re: Input on MSRB Compliance Support

Dear Mr. Smith:

The Investment Company Institute¹ is writing in response to the Municipal Securities Rulemaking Board's (MSRB) request for comment on how to advance MSRB registrants' understanding of their regulatory obligations.² The MSRB's Notice seeks comment on whether the MSRB should provide registrants with additional compliance resources to help them understand their regulatory responsibilities. If so, the MSRB seeks input on the preferred substance and format for such resources.

The Institute's members do not believe that additional compliance resources are necessary at this time to facilitate their compliance with the MSRB's rules applicable to 529 plans.³ They do, however, believe that participants in the 529 plan industry would benefit more from increased informal engagement with the MSRB on industry issues.

¹ The Investment Company Institute is the leading association representing regulated funds globally, including mutual funds, exchange-traded funds, closed-end funds, unit investment trusts, and 529 plans 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 members manage total assets of \$21.2 trillion in the United States, serving more than 100 million US shareholders.

² See *MSRB Seeks Input on Compliance Support*, MSRB Notice 2017-22 (Nov. 16, 2017) ("MSRB Notice").

³ Our response to the MSRB Notice relates solely to our members' 529 plan business. While the MSRB Notice does not mention 529 plans, we understand that the staff is similarly interested in receiving comments on whether it should consider providing additional compliance resources related to 529 plan regulation.

continued

The vast majority of the rules regulating the 529 plan industry were adopted between 2000 and 2007.⁴ Since the adoption of these rules, our members have become familiar with them and we are unaware of any MSRB rules that warrant clarification.⁵ We also have not identified areas where additional MSRB guidance or other information would facilitate registrants' compliance with the MSRB's rules. We therefore do not believe additional compliance resources related to the MSRB's rules are necessary; nor are resources unrelated to the MSRB's rules necessary for our members. Unlike owners or issuers of municipal securities, our members in the 529 plan industry do not rely on educational or industry information the MSRB publishes on its website⁶ nor do they rely on EMMA as a source of information about 529 plans. As such, the compliance resources the MSRB may be contemplating for other MSRB registrants would likely not be of value to our members.

That said, we believe there would be great value in the MSRB engaging with the 529 plan industry on a more formal and ongoing basis. Such engagement should go a long way towards ensuring that the MSRB understands the 529 plan industry and its concerns. It also would enable the industry to provide input to the MSRB on how contemplated regulatory proposals might impact the industry, including any unintended consequences. Should the MSRB be considering whether additional rules are necessary to address a concern it has identified, these informal discussions may assist the MSRB in understanding industry practices while it develops a proposal to fulfill its regulatory objectives. In our view, the MSRB's regulation of the 529 plan industry could be significantly improved if representatives of the 529 plan industry had the ability to discuss issues with the MSRB before the MSRB decides to propose a rule.

We believe this approach to industry engagement with the MSRB will be far more effective than our current engagement. Our current engagement largely consists of filing comment letters on rules that the MSRB has already drafted and published for comment, which does not provide an opportunity to alert the MSRB to industry concerns before it drafts proposed rules. As a result, our comment letters have been our vehicle for alerting the MSRB to how its proposed rules would:

- adversely affect those 529 plans that are subject to the MSRB's jurisdiction;⁷
- put certain plans at a competitive disadvantage to other plans;

⁴ This was a time when 529 plans were in their infancy and the MSRB was adopting new rules and conforming existing rules to address this new type of security – the municipal fund security.

⁵ Nor are we aware of any concerns our members have with FINRA's activities relating to inspecting for compliance with the MSRB's rules or sanctioning registrants for compliance failures.

⁶ Our members do, however, rely on information the MSRB publishes on its website regarding a new or revised MSRB rule. Our members regularly rely on such notices to comply with their regulatory obligations.

⁷ As noted in previous comment letters we filed on MSRB proposals, while all 529 plans compete in the same marketplace, not all 529 plans are subject to the MSRB's jurisdiction and those that are have greater costs due to the MSRB's regulation.

- impose legal duties and responsibilities upon plan underwriters that are inappropriate based on the nature of the underwriter's role;
- increase the operational complexities associated with operating a 529 plan;
- deviate significantly from either the SEC's or FINRA's regulation of mutual funds; and
- adversely affect investors.

We strongly recommend that the MSRB consider scheduling meetings with representatives of the 529 plan industry at least twice a year to informally discuss industry issues. In addition to discussing regulatory initiatives the MSRB is contemplating, the meetings will provide a forum to discuss any current industry issues or trends.

To ensure that all relevant parties are included in these meetings, we recommend that, at a minimum, they include representatives of the Institute, the College Savings Plan Network, the College Savings Foundation, and SIFMA. Including representatives of these organizations has several benefits. First, this composition would ensure input from all 529 plan issuers (not merely those subject to the MSRB's jurisdiction) as well as the plans' program managers, principal underwriters, distributors, and investors. Second, the composition should ensure that any industry issues of concern are identified and collectively discussed. And third, it will ensure that all necessary parties are included in developing a response to address any concerns identified through the meetings. As a result, we believe such meetings will benefit the industry, the MSRB, and 529 plan investors.

We appreciate the MSRB soliciting the industry's views on facilitating regulatory compliance. We also appreciate its consideration of our recommendation to improve communications between the MSRB and the 529 plan industry. We look forward to working with the MSRB on this initiative.

Regards,

/S/

Tamara K. Salmon
Associate General Counsel