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July 16, 2013

Elizabeth M. Murphy, Secretary
U.S. Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090

Re: MSRB Rule G-45;
File No. SR-MSRB-2013-04

Dear Ms. Murphy:

The Investment Company Institute ("ICI")[1] appreciates the opportunity to provide comments to the U.S. Securities and Exchange Commission on the proposal of the Municipal Securities Rulemaking Board (MSRB) to adopt a new Rule G-45 and Form G-45 to collect 529 college savings plan data.[2] We have been engaged actively with the MSRB and its staff on the MSRB's initiative to collect industry data since it began in 2010.[3] Throughout this process, we have appreciated the MSRB's thoughtful consideration of our comments and its willingness to revise the proposal to address our concerns.[4] While we support the adoption of Rule G-45 and Form G-45 as a means for the MSRB to

[1] The Investment Company Institute is the national association of U.S. investment companies, including mutual funds, closed-end funds, exchange-traded funds (ETFs), and unit investment trusts (UITs). ICI seeks to encourage adherence to high ethical standards, promote public understanding, and otherwise advance the interests of funds, their shareholders, directors, and advisers. Members of ICI manage total assets of $15.3 trillion and serve more than 90 million shareholders.

[2] *See Notice of Filing of a Proposed Rule Change Relating to a New MSRB Rule G-45, on Reporting of Information on Municipal Fund Securities,* SEC Release No. 34-69835 (June 24, 2013) (the "Release").

[3] *See* Letters from Tamara K. Salmon, Senior Associate Counsel, ICI, to Ronald W. Smith, Corporate Secretary, MSRB, dated December 20, 2012 (commenting on MSRB proposal 2012-59) ("ICI December 2012 Letter"), September 14, 2012 (commenting on MSRB Notice 2012-40), and August 31, 2011 (commenting on *MSRB Seeks Comment on Proposal to Collect and Disseminate 529 College Savings Plan Data* (July 19, 2011)).

[4] Among other things, the MSRB has revised the proposal to: reduce the reporting frequency from quarterly to semi-annually; provide filers a 60-day lag time to report the semi-annual information; provide filers an implementation period of at least one year; and revise operative terms and definitions of terms. We are also pleased that the MSRB plans to populate Form G-45 with information initially submitted by a filer and, thereafter, on a semi-annual basis (or an annual basis with respect to performance information) the filer will only be required to update information on the form when necessary to keep it current, rather than requiring filers to submit an entirely new Form for each reporting period.

collect the information it needs to fulfill its regulatory functions, we believe additional issues need to be considered and resolved prior to their adoption. In summary, we recommend the following:

- The MSRB should clarify that not all service providers to 529 plans are "underwriters" as such term is used in Rule G-45;
- Rule G-45 and Form G-45 should make clear that an underwriter is not responsible for reporting information that it does not own, control, or possess;
- Rule G-45 and Form G-45 should make clear that an underwriter is not responsible for verifying the accuracy or completeness of information it receives from another party in the normal course of business (*i.e.,* information it possesses) and reports on Form G-45;
- The MSRB should address instances in which an underwriter does not have access to information on 529 plan accounts, including those held in an omnibus position;
- Inasmuch as the Form G-45 Manual will contain information that impacts the type of information reported on the Form and how such information is to be determined and reported, the Manual should be published for public comment pursuant to Section 19(b) of the Securities Exchange Act and Rule 19b-4 thereunder prior to its use by the MSRB;
- The compliance date for the rule should not be until one year following adoption of the final Form G-45 Manual after it is published for public comment; and
- The MSRB should clarify several issues relating to information required by Form G-45.

Additionally, the Institute continues to oppose the MSRB's plan to redesign its Electronic Municipal Market Access system ("EMMA") as a public source for 529 plan information collected via Form G-45. Each of these issues is discussed in more detail below.

I. UNDERWRITERS' REPORTING RESPONSIBILITIES

The Institute continues to support the MSRB's proposal to place the responsibility to file Form G-45 on a plan's underwriter (primary distributor), as the underwriter is in the best position to provide aggregate information for the plan. This approach also will avoid the burdens associated with requiring each municipal dealer that sells the plan to file information regarding its activities on behalf of the plan. Nevertheless, we have concerns with language in the Release regarding the scope of the term "underwriter" and the description of such a person's filing responsibilities.

A. Scope of the Definition of "Underwriter"

The determination of which entities are considered "underwriters" for purposes of the proposed rule has great significance inasmuch as it is those entities that will be required to submit Form G-45. According to the Release, the MSRB continues to believe that 529 plans may have multiple underwriters. The Release also expresses the MSRB's view that "[u]nder SEC Rule 15c-2-12(f)(8), an underwriter is defined broadly *and may include* one or more" of the following entities: a plan's program manager, recordkeeper, investment manager, custodian, and state sponsor.[5] The Release further states that "in most cases, the record-keeper will be an underwriter or a subcontractor of an underwriter."[6]

We respectfully submit that a plan's program manager, recordkeeper, investment manager, custodian, and State sponsor, in most cases, would not and should not be underwriters for purposes of Rule G-45. Rule G-45(d)(xiv) defines "underwriter" to mean "a broker, dealer or municipal securities dealer that is an underwriter, as defined in Securities Exchange Act Rule 15c2-12(f)(8),[7] of municipal fund securities that are not local government investment pools." Thus, to be an "underwriter" for purposes of Rule G-45, a person first must be a "broker, dealer, or municipal securities dealer." It is our understanding that a plan's program manager, recordkeeper, investment manager, custodian, and State sponsor generally are neither brokers nor dealers and therefore would not qualify as underwriters under the MSRB's definition. Moreover, even if such an entity were a "broker, dealer, or municipal securities dealer" and technically fell within the definition of "underwriter," it should not be considered an "underwriter" for purposes of Rule G-45 if it is not acting in the capacity of underwriter with respect to the plan at issue. Nor should the MSRB impose Rule G-45's reporting obligations on a subcontractor of the underwriter if the subcontractor is not providing underwriting-related services.[8] As we previously have noted for the MSRB, like a mutual fund, a 529 plan typically has a single underwriter whose role, in large part, is to enter into selling agreements with broker-dealers and other financial professionals that offer and sell the plan to retail investors.

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[5] Release at pp. 20-21. [Emphasis added.]

[6] Release at p. 21.

[7] Rule 15c2-12 defines "underwriter" as "any person who has purchased from an issuer of municipal securities with a view to, or offers or sells for an issuer of municipal securities in connection with, the offering of any municipal security, or participates or has a direct or indirect participation in any such undertaking, or participates or has a direct or indirect participation in the direct or indirect underwriting of any such undertaking, or participates or has a participation in the direct or indirect underwriting of any such undertaking; except, that such term shall not include a person whose interest is limited to a commission, concession, or allowance from an underwriter, broker, dealer, or municipal securities dealer not in excess of the usual and customary distributors' or sellers' commission, concession, or allowance."

[8] Similarly, if an underwriter acts in more than one capacity with respect to a plan (*e.g.,* as both underwriter and program manager), an entity it hires to provide plan services not connected to selling plan units should not be drawn into the definition of underwriter.

We further note that each of the plan's other service providers is providing services *to the plan, on behalf of the State issuer of the plan and not on behalf of the plan's underwriter*. For example, when an investor effects a 529 plan transaction, that transaction is recorded on the books and records of the plan's recordkeeper's books and records on behalf of the plan. It is not reflected on the underwriter's books and records, nor is recordkeeping an underwriting function that the underwriter subcontracts to the recordkeeper. The same is true of services provided by the plan's other service providers – such services are provided at the direction of the plan and on behalf of the plan, not on behalf of the plan's underwriter. Accordingly, we urge the MSRB to refrain from suggesting that the term "underwriter" sweeps so broadly as to capture many of the plan's service providers who are providing services on behalf of the plan. Such a broad sweep potentially could have unintended ramification in other contexts – *e.g.,* where regulatory requirements are imposed on a persons' based on their status as an "underwriter". More specifically, the MSRB should clarify that the term "underwriter" as used in Rule G-45 and Form G-45 does not include a plan's program manager, investment manager, recordkeeper, or custodian, if such person is providing it services to the plan on behalf of the plan or its State sponsor and not as a broker, dealer, or municipal securities dealer.

B. Disclosure Obligations of Underwriters

The MSRB apparently believes that a 529 plan's underwriter has unfettered access to all records and information held by the plan's other service providers, but this is not necessarily the case. As mentioned above, depending upon its arrangement with the 529 plan sponsor or the program manager, a plan's underwriter may either be charged with selling the plan to investors, entering into 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 an underwriter plays will have a significant impact on the information it possesses about the plan, including the plan's assets, contributions, and distributions. Indeed, those underwriters that are not directly engaged in selling the plan to retail investors may have little, if any, information regarding contributions and distributions because those transactions may flow directly from the selling dealer to the plan's recordkeeper or directly to the plan's recordkeeper without involving the primary distributor.[9]

As a result, an underwriter without access to all the information necessary to complete Form G-45 might submit a Form G-45 that contains only the limited information available to the underwriter. Alternatively, the underwriter might ask the plan's State sponsor, program manager, recordkeeper, or other service providers to voluntarily provide it information to enable the underwriter to file a complete, or relatively complete, Form G-45, but there is no certainty regarding whether such service providers would agree to do so.[10] When adopting Form G-45, the MSRB should consider instances in

[9] ICI December 2012 Letter at p. 3.

[10] We support Rule G-45 requiring the plan's underwriter to report information it owns or controls even if the underwriter has delegated responsibility for collecting or maintaining the information to another entity. Where the Form G-45 is

which the underwriter is unable to obtain all the information necessary to complete the form, particularly when the persons that own or control such information are not willing to voluntarily provide it and are not subject to the MSRB's jurisdiction.

If the underwriter is able to obtain such information from another service provider to the plan, we do not oppose Rule G-45 requiring the underwriter to include such information on Form G-45, even if the entity providing the information is outside of the MSRB's jurisdiction (*e.g.,* the program manager or State partner). In such circumstances, however, the MSRB should make clear that the underwriter is not required to verify, confirm, or vouch for the accuracy of the information before including it on Form G-45.[11] The MSRB also should make clear that when an underwriter, in its normal course of business, does not create, own, control or possess information necessary to populate Form G-45, the underwriter is not required to obtain such information for purposes of completing the form.[12]

C. Omnibus Accounts

The issue of an underwriter's access to information arises, for example, in connection with omnibus accounts. As described in the Release:

> In an omnibus accounting arrangement, the selling dealer places purchases and sale orders in an aggregated fashion on behalf of the dealer and maintains records of individual account holder purchases and sales through subaccounts. Through this arrangement, orders are placed in an omnibus manner and do not identify the underlying account owners or beneficiaries.[13]

The Release goes on to express the MSRB's belief that "underwriters have possession or the legal right to 529 aggregation files and, therefore, have information *regarding all activity and positions in*

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completed by an underwriter with limited access to plan information, however, the MSRB should not expect that the underwriter can supplement its information with information outside of the underwriter's ownership, control, or legal authority.

[11] We understand that, in instances where another entity voluntarily provides such information to the underwriter in the normal course of business, the underwriter likely does not assume liability for verifying the accuracy or completeness of such information.

[12] The Release states that "[t]he proposed rule change will only require underwriters to produce information that they possess or have a legal right to obtain, such as information in the possession of an underwriter's subcontractor." Release at p. 21. This language suggests that the MSRB may have an expectation that an underwriter that, in the normal course of business, does not receive certain information required by Form G-45, should seek out such information, which should not be required.

[13] Release at p. 22.

the 529 plans they underwrite."[14] But, in practice, the mere fact that there is an omnibus relationship between a selling dealer and a plan's underwriter does not necessarily mean the underwriter has full transparency into all account information, including account owners, beneficiaries, contributions, and withdrawals, underlying the omnibus account. While *some* underwriters may have access to such information, this is not true of all underwriters and should not be presumed for purposes of Rule G-45.

The information that is available to an underwriter is governed by agreements between the plan, the underwriter, and the selling dealers. If this agreement does not provide the underwriter legal access to the information underlying an omnibus account, the underwriter lacks access to such information. In addition, while the Release notes that the DTCC/NSCC have created aggregation files,[15] the creation of such files does not mean that all underwriters have legal access to the information in those files. Accordingly, consistent with the discussion above regarding the reporting obligations of underwriters, Rule G-45 and Form G-45 should recognize that, to the extent an underwriter does not, in the normal course of business, have access to information on the accounts underlying an omnibus accounting arrangements, the underwriter should not be required to report such information.

II. THE FORM G-45 MANUAL

According to the Release, information will be required to be reported on Form G-45 "in the manner prescribed in the Form G-45 procedures and as set forth in the Form G-45 Manual."[16] A footnote to this statement provides that "[t]he Form G-45 Manual will be a new item created to assist persons in the submission of the information required under Rule G-45 *and is not part of the proposed rule change.*"[17] We remain concerned that the Manual, which contains important substantive information concerning the obligations of underwriters, has not been published for comment.[18] Indeed, we believe the Release confirms that this is a valid concern, as discussed below.

The Release notes that some of the information required on Form G-45 will be reported consistently with its reporting under the Disclosure Principles adopted by the College Savings Plan Network (CSPN).[19] The Institute has advocated in favor of consistency between the information that

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[14] *Ibid.* [Emphasis added.]

[15] *Ibid.*

[16] Release at pp. 6-7.

[17] Release at fn. 15. [Emphasis added.]

[18] *See* ICI December 2012 Letter at fn. 5.

[19] The current version of the Disclosure Principles is Statement No. 5. As noted in the Release, the Disclosure Principles were developed by CSPN to better inform and protect investors by providing State sponsors of 529 plans a uniform format

will be required on Form G-45 and that called for by the Disclosure Principles.[20] We are pleased, therefore, that, as noted in the Release, "the MSRB modified its proposal to permit the performance and fee and expense information to be submitted in a format consistent with Disclosure Principles No. 5" and that the MSRB has recognized that "conforming the reporting format for fees and performance to the Disclosure Principles No. 5 . . . [will] . . . reduce the reporting burden significantly."[21]

The Release further described the MSRB's adoption of commenters' recommendations regarding the Disclosure Principles as follows:

> **USE OF CSPN DISCLOSURE PRINCIPLES**
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> Commenters generally support the MSRB's proposed use of the reporting format in [CSPN] Disclosure Principles No. 5 for reporting 529 plan fees and performance. . . . several commenters suggest that, for clarification and flexibility, the MSRB adopt certain relevant provisions in Disclosure Principles No. 5, allow for 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 examples provided in Disclosure Principles No. 5. *The MSRB has adopted these recommendations* ***in the proposed rule change*** *and 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 examples provided in Disclosure Principles No. 5. The specifications for reporting will be contained in the G-45 Manual, which will be published on www.msrb.org sufficiently in advance of the effective date to provide submitters with adequate notice and time to comply.*[22]

While we welcome the MSRB's comments and its decision to allow for consistency between the Disclosure Principles and the information required by Form G-45, we are quite concerned that, apart from the addition of boxes for notes regarding performance data and fee and expense data, ***neither***

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to use for their disclosure documents. The Disclosure Principles are intended to ensure that the plan's disclosure documents contain information that may be material to investors in making an informed investment decision. Such information includes a discussion of the plan's investment options, possible federal and state tax benefits, program management, investment management, risk factors, fees and costs, and investment performance. *See* Release at fn. 9.

[20] *See, e.g.,* ICI December 2012 Letter at pp. 4-7.

[21] Release at pp. 11 and 13.

[22] Release at pp. 18-19.

Form G-45 nor Rule G-45 reflects the MSRB's adoption of these recommendations.[23] Nor does the Form or Rule contain *any* mention of the Disclosure Principles. Instead, it appears that all details regarding the reporting of fee and expense and performance information (and any other relevant information from the Disclosure Principles) will be set forth in the G-45 Manual.

Based on the comments in the Release, it seems clear that the Manual's contents will not be limited to technical specifications or design or system considerations relating to the mechanics of the electronic filing process.[24] We therefore reiterate our strong view that, because the Manual will govern the substance and the format of the information to be reported on Form G-45, it should be published for public comment. In this regard, we note that Section 19(b) of the Securities Exchange Act of 1934, which governs the adoption of any rule of a self-regulatory organization, and Rule 19b-4 thereunder, appear to support our position. In particular, Rule 19b-4(c) provides:

> (c) A stated *policy, practice, or interpretation* of the self-regulatory organization shall be deemed to be a proposed rule change unless (1) it is reasonably and fairly implied by an existing rule of the self-regulatory organization or (2) it is concerned solely with the administration of the self-regulatory organization and is not a stated policy, practice or interpretation with respect to the meaning, administration, or enforcement of an existing rule of the self-regulatory organization. [Emphasis added.]

Based on the Release, we do not believe that the contents of the G-45 Manual are (1) reasonably and fairly implied by an existing rule or (2) concerned solely with the administration of the MSRB. The discussion in the Release makes clear that the G-45 Manual will, in fact, contain substantive and material information relevant to the information required to be reported on Form G-45. As such, we believe it constitutes "a stated policy, practice, or interpretation" of the MSRB that must be treated as a proposed rule change. We believe case law under Section 19(b) affirms this view.[25] Absent such treatment, we are concerned that, in the future, the MSRB, of its own discretion and without public input or comment, could change the requirements as set forth in the Manual even if the

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[23] Moreover, the statement quoted directly above that the MSRB "has adopted these recommendations in the proposed rule change" seems at odds with the statement in fn. 15 of the Release that the Manual "is not part of the proposed rule change."

[24] For example, we presume that the Form G-45 Manual will incorporate the very specific instructions of the Disclosure Principles, none of which are set forth in Rule G-45 or Form G-45. An example is the Disclosure Principles' discussion of Estimated Underlying Fund Expenses. This is but one of numerous examples of the level of substantive detail that should be included in the Form G-45 Manual.

[25] *See General Bond & Share Co. v. Securities and Exchange Commission,* 39 F.3d 1451 (10th Cir. 1994). According to this case, when a self-regulatory organization "sets a new standard of conduct for its members . . . [it] is required by statute to submit such a change to the SEC prior to enforcing it." We submit that the requirements concerning the reporting of information on Form G-45 that will be set forth in the Form G-45 Manual constitute a new standard of conduct for MSRB registrants for purposes of Section 19(b) and Rule 19b-4, including their procedural protections.

change adversely impacts filers' obligations or burdens. In such instance, persons impacted by a change to the Manual would be deprived of the procedural protections afforded by Section 19(b).

For these reasons, and consistent with our prior comments, the Institute strongly recommends that the MSRB be required to publish for comment the contents of the G-45 Manual prior to its adoption or use by the MSRB or filers.

III. COMMENTS ON THE CONTENTS OF FORM G-45

In addition to the policy issues discussed above relating to Form G-45, there are a few remaining technical issues regarding the Form that we recommend be addressed in the adopting release. These are set forth below.

A. Investment Option Information

According to the section of the Form relating to "Investment Option Information," there will be a drop down box from which a filer is to choose the "Investment Option Type" and report "Total Assets" and "Total Distributions." We are uncertain, however, how to report on an investment option that is used for multiples purposes (*e.g.,* a fund may be the vehicle for an age group under an "Age Based" option and available as a "Static" investment option). The MSRB should clarify in the text version of the Form how these assets are to be reported. For example, are they to be aggregated for an investment option that is used in multiple portfolios? Also, if aggregate reporting is required, how would the underwriter report those assets invested in only a stand-alone portfolio when the stand-alone portfolio is also used as part of other portfolios?

We also note that Form G-45 does not appear to contemplate that an investment option might be a mutual fund that issues multiple classes of shares with fees and expenses that vary from class to class. We recommend that the MSRB clarify how underwriters should report fee and expense and performance information for such a fund (*e.g.,* should they report the information for a single class and, if so, how should they determine which one?).

Additionally, to ease filers' burdens and avoid having to make updates when previously-reported information has not materially changed, we recommend that the information reported under Investment Option Information" be reported in ranges rather than precise amounts where appropriate (*e.g.,* asset class allocation percentages). As noted in our previous comment letters to the MSRB, the use of ranges would relieve underwriters of having to revise previously reported information whenever there is a *de minimis* change to such information. The use of ranges may also facilitate the MSRB's analysis of data by making it easier to group the information reported on the Form into pre-assigned ranges. If the MSRB elects not to use ranges as we recommend, it should consider revising the updating requirements such that an update is not required to previously reported information unless there has been more than a *de minimis* change to such information (*e.g.,* if it has changes by a specified percentage).

B. Performance Information

With respect to performance information, we are pleased that the MSRB has clarified that the performance information reported on Form G-45 is intended to be consistent with that calculated and reported pursuant to the Disclosure Principles. Notwithstanding this clarification, there are several issues relating to performance that we recommend be addressed in the rule or in the G-45 Manual. These issues are as follows:

1. According to the definition of "performance" in Rule G-45(d)(viii), the term means "total returns of the investment option expressed as a percentage *net* of all generally applicable fees and costs." [Emphasis added.] Form G-45, however, requires that performance be reported *both* "including sales charges" and "excluding sales charges." We recommend that the MSRB resolve this discrepancy;
2. It is not clear from the rule or Form G-45 how a plan that is directly distributed and that has no "sales charges," is to report its performance on Form G-45. We recommend that the MSRB clarify whether such a plan is expected to report the same information under "Investment Performance (Including Sales Charges)" and "Investment Performance (Excluding Sales Charges)" or just under the latter;
3. We recommend that the MSRB clarify that fees that are not specific to any particular investment option (*e.g.,* annual account fees) are not required to be included in the performance calculation;
4. According to the Release, Form G-45 requires "performance for the most recent calendar year."[26] And yet, Form G-45 requires disclosure of each investment option's 1, 3, 5, and 10 year performance as well as the option's performance since inception. We recommend that the MSRB resolve this discrepancy; and
5. To avoid confusion in the comments provided in the comment box in Form G-45 under the performance section, we recommend that the MSRB include a comment box under each of the two sections of the form relating to Investment Performance – *i.e.,* there should be one comment box under "Investment Performance (Including Sales Charges)" and one under "Investment Performance (Excluding Sales Charges)."

In addition, related to the disclosure of performance information is benchmark information. We recommend that the MSRB clarify that a plan is only required to report benchmark information if the plan, in fact, uses a benchmark. To accommodate those plans that do not utilize a benchmark, Form G-45 should either have a "not applicable" box that the filer can check or the Form G-45 Manual should instruct a filer to leave the "Benchmark Performance" section of the Form blank.

[26] Release at pp. 10-11.

C. Underlying Investments

According to the Release, "Based on comments to the initial proposal and in recognition of the additional burdens associated with supplying the individual portfolio data that is subsumed within an investment option, in the November Notice, the MSRB eliminated [information regarding underlying portfolio investments in which each investment option invests] from the proposed rule change."[27] Notwithstanding this statement, proposed Form G-45 continues to require information on a plan's "underlying investments," including each investment's "name" and "allocation percentage." We submit that this "Underlying Investment Information" is, in fact, the "portfolio data subsumed within an investment option" so we are surprised that it remains on Form G-45. We note that this information is not required to be disclosed pursuant to the CSPN Disclosure Principles, which are designed to provide investors all material information concerning a plan. We therefore question the regulatory value of this information to the MSRB – particularly in light of the information the MSRB will receive pursuant to the "Investment Option Information" portion of the Form. We also note that, as previously raised with the MSRB, supplying this information will result in additional burdens on filers.[28]

To address these concerns and make the contents of Form G-45 consistent with the MSRB's discussion of this issue in the Release, we recommend deleting the "Underlying Investments" section from Form G-45. If the MSRB determines at some future date that it believes there would be regulatory value in having this information, we recommend the MSRB revise the Form at that time. In the meantime, however, we continue to believe that, because this is *not* information required by the Disclosure Principles, it will result in imposing additional and unnecessary burdens on filers. If, notwithstanding these concerns, the MSRB elects to retain this item on the Form, we recommend that the MSRB explain what information must be reported pursuant to it and how this information differs from the "individual portfolio data that is subsumed within an investment option."

IV. Compliance Date

The Institute continues to support a one-year compliance period. The one-year period should commence, however, only **after the Form G-45 Manual has been published for public comment and adopted in accordance with the requirements of SEC Rule 19b-4(c)** under the Securities Exchange Act. While we support the one-year period, we take exception with the MSRB's comments in the Release that "the dealer community has been on notice for many months of these proposed changes *and should begin preliminary preparations for extracting the necessary data*."[29] While it is true that some MSRB registrants have been aware of the proposal, the MSRB should not presume that, upon

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[27] Release at p. 9.

[28] For example, in some cases, underlying investments might include individual securities, each of which would need to be listed separately along with the percentage of the portfolio allocated to that investment,

[29] Release at p. 16. [Emphasis added.]

announcement of a regulatory proposal, registrants take steps to implement something that may, or may not, be adopted or may be adopted in a significantly different version than was originally proposed.[30] We understand that, because of the costs associated with complying with new regulatory requirements, registrants typically delay working toward implementation until they have certainty regarding such requirements. Accordingly, in connection with this or any future rulemakings, the MSRB should presume that, until there is a high degree of certainty about the final requirements, registrants are likely not going to devote resources to revising their systems or compliance policies and procedures.

V. PUBLICATION OF THE G-45 DATA

Finally, the Release reiterates the MSRB's goal to disseminate through EMMA, in the future, 529 plan information "that would be of benefit to investors."[31] Consistent with comments made in each of our previous comment letters to the MSRB on its proposal, the Institute continues to oppose the MSRB's plans to publicly disseminate, at some future date, information filed on Form G-45. As we noted in a February 2013 comment letter to the MSRB,

> As the MSRB continues to consider the comments it received on revised Rule G-45 and Form G-45, we would like to take this opportunity to reiterate our support for the MSRB to maintain the confidentiality of information it obtains through Rule G-45. We also would like to reemphasize our opposition to the MSRB reconsidering, at some point in the future, public dissemination of individual filer's information. We believe this emphasis is necessary in light of a January 2013 press article in which senior staff of the MSRB was quoted as stating that:
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> > . . . one of the goals of [this new Rule G-45] database would be to allow retail investors to compare [529 plans]. [The MSRB needs] to make sure the data [it] receives from the plan operators provides [the MSRB] with information based on common definitions, so investors can make valid comparisons. *The database, once it's created, would make information immediately available to the retail public."* [Emphasis added.][32]

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[30] As discussed above, in the case of the current proposal, until registrants have access to details that will be set forth in the Rule G-45 Manual, they will not have sufficient information to program and implement the changes to their systems and policies and procedures that are necessary to complete and file Form G-45.

[31] Release at p. 7.

[32] *See* Letter from the undersigned to Ronald W. Smith, Secretary, MSRB, dated February, 19, 2013 (commenting on MSRB Notice 2012-63). The quote in the above excerpt from this letter was from *"Regulator eyes better 529 plan info, muni quotes,"* Market Watch, The Wall Street Journal, Jan. 9, 2013. This letter also expressed our concern with the MSRB's announced plans to design EMMA to compete with more mature and comprehensive sources of 529 plan data (*e.g.,* the websites of the College Savings Plan Network or Savingforcollege.com) and to use Form G-45 data to do so.

We continue to believe that the data the MSRB collects pursuant to Rule G-45 should be used to inform the MSRB's regulatory initiatives and priorities and not to compete with other more mature, robust, and comprehensive public sources of information on 529 plans. As we indicated previously, under the best of circumstances EMMA will never have complete information on all states' 529 plans since not all plans are subject to the MSRB's jurisdiction. Moreover, to the extent the information reported on Form G-45 is proprietary and reported to facilitate the MSRB's regulatory efforts, it should not be subject to public dissemination.

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The Institute appreciates the opportunity to share these comments on the MSRB's proposal. As discussed above, we have very much appreciated the willingness of the MSRB and its staff to give thoughtful consideration to the comments offered on this proposal since its inception. We appreciate the Commission's consideration of the issues discussed above. 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

Cc: Ernesto A. Lanza, Deputy Executive Director, MSRB
Lawrence P. Sandor, Senior Associate General Counsel