



July 10, 2015

Lynnette Kelly, Executive Director
Municipal Securities Rulemaking Board
1900 Duke Street, Suite 600
Alexandria, VA 22314

Re: Implementation of MSRB Rule G-45

Dear Ms. Kelly:

On behalf of the undersigned,¹ we would like to thank you and your colleagues at the Municipal Securities Rulemaking Board (MSRB) for delaying the compliance date for the first Form G-45 filings required under MSRB Rule G-45. We believe this delay will provide the staff of the MSRB and underwriters additional time to better understand and implement these new filing requirements. Collectively, we continue to support the MSRB's interest in obtaining industry data and we are committed to the success of Rule G-45. Consistent with this, we hope that the MSRB will use this additional time to work with us and our respective members to address the variety of issues that may frustrate and impede consistent compliance with the new filing requirements. We strongly encourage the staff to publish comprehensive filing instructions that resolve filers' current uncertainty with Form G-45 and the MSRB's filing requirement. We believe it is important for the MSRB to take these steps now, before filings officially commence, in order to be sure that any data the MSRB obtains through Form G-45 is reported consistently among filers, thereby increasing its reliability and usefulness for regulatory purposes. We also encourage the MSRB, as it continues to make changes to the G-45 Manual, to alert the market and interested parties to such changes. Each of these issues is discussed in detail below.

¹ See the Appendix for more information about the signatories to this letter.

BACKGROUND

In February 2014, three years after it was originally proposed, Rule G-45's adoption was approved by the U.S. Securities and Exchange Commission (SEC).² As adopted, Rule G-45 requires underwriters of 529 plan securities to submit data to the MSRB on Form G-45 consistent with the instructions in the Form G-45 Manual. We were pleased when the MSRB assured filers that the new rule would be implemented with a one-year compliance period. Unfortunately, however, filers were never truly provided one year to implement these new requirements. This is because the Form G-45 Manual, which was necessary for filers to build systems to support the new filings and understand their filing requirements, was not published until February 2015.

Our concerns with the insufficient amount of time the MSRB was providing to filers to implement this new filing requirement culminated in the undersigned sending a letter in January 2015 to you and MSRB Chair Kym S. Arnone respectfully requesting the MSRB postpone the compliance date in order to provide filers ample time to implement the new filing requirements and avoid violating the new rule.³ Following our letter, we met with you and your staff to discuss our concerns with the speed with which these new filing requirements were being implemented and the lack of time being provided to underwriters to comply with them. After this meeting, which is was held on February 19th, the MSRB published its first G-45 Manual (Version 1.0).

During the meeting, we discussed our concerns that the speed with which G-45 is being implemented is adversely affecting the compliance efforts of filers. We noted that we are not aware of a need compelling the MSRB to obtain 529 plan data as soon as possible; nor do we understand the urgency with which the MSRB is seeking to implement this rule. In the absence of such a pressing need, we strongly encouraged you and your staff to focus on the quality of the new filing system and not the speed with which it could be operational. At the meeting, we were informed that the system was ready for beta testing in anticipation of it going live on July 1st (less than five months after our meeting and publications of the first G-45 Manual). To demonstrate our commitment to the new filing process and to provide your staff meaningful input on the system, we agreed to encourage our members that are subject to Rule G-45 to beta test the system for a 60-day period beginning as soon as practicable. We agreed to provide the staff the results from this testing.

Inasmuch as ICI and SIFMA represent the interests of the majority of underwriters subject to the new filing requirements, they agreed to take the lead on this testing initiative and to communicate

² SEC Release No. 71598 (Feb. 21, 2014).

³ See Letter from the undersigned dated January 9, 2015.

the results to the MSRB's staff. Members of ICI and SIFMA began their 60-day test period approximately a week after our February 19th meeting with the staff. Following the test period, ICI and SIFMA compiled the results of their members' testing efforts and provided them in a detailed narrative form to the MSRB staff. The concerns raised by persons testing the system were primarily substantive (*i.e.*, the type of information that was to be reported on Form G-45 and how it was to be provided – which was not clear from merely reading Rule G-45 or Form G-45) but also included concerns relating to technical filing issues.⁴

Subsequent to providing the MSRB staff the results of the beta testing, in May, ICI and SIFMA requested a call or meeting with the staff to discuss the results. In response, ICI and SIFMA received the following email from the staff on June 8th:

We are still considering the lists of items you sent. So far, however, it is looking like many of them raise questions that the MSRB has previously answered in documents that made up the rulemaking initiative or in other public communications about the new rule. To make our call potentially more efficient and productive, I wanted to confirm which items you consider needing to be answered. Feel free to send an email or to send the file with some kind of marking or highlighting in it. Thanks.

That same day, ICI and SIFMA responded to the staff's email as follows:

Since obviously our members are unaware of the issues on the list that the MSRB has already resolved, can you let [ICI and SIFMA] know which issues those are so we can pull the necessary documents and discern the answers for our members? Thanks!

A call between ICI, SIFMA, and the MSRB staff was arranged for June 12th. The call consisted of the staff going through the list of issues provided by ICI and SIFMA seriatim and

⁴ Most members had to manually input data during the beta testing as the February publication of the G-45 Manual had not provided them sufficient time to build business-to-business systems to make the filings electronically. Their first filings are also expected to be manual filings due to the lack of lead time their IT Departments have been provided to build filing systems.

informing ICI and SIFMA that the answers to the substantive issues⁵ raised by the beta testing process could be found by consulting one or more of the following documents:⁶

- Looking at the PowerPoint screenshots from “MSRB Webinar: 529 Plan Data Collection” (March 12, 2015);
- MSRB Notice 2014-03 (Feb. 24, 2014) announcing the SEC’s approval of Rule G-45;
- The current Form G-45 Manual;
- The *revised* Form G-45 Manual, which had not yet been published but which the staff expected to publish in June;
- Amendment I that the MSRB had filed with the SEC on proposed Rule G-45; and
- The letter that Larry Sandor of the MSRB filed with the SEC as part of the rulemaking process.

The MSRB’s response is of great concern to us. In our view, persons subject to a regulatory requirement should be able to ascertain the entirety of what is expected of them by reading the applicable rule (Rule G-45), the required filing form (Form G-45), or the instructions to the form (the Form G-45 Manual). Instead, however, in order to understand the filing requirements imposed by Rule G-45, the MSRB seems to expect filers to consult a variety of documents – including an MSRB PowerPoint presentation and a letter filed by the staff with the SEC staff during the rulemaking process. We are aware of no other regulatory requirement that requires consulting a variety of extraneous information – including letters written during the pendency of a rulemaking – in order to understand fully a regulatory requirement. We are at a loss to understand why *all information that is necessary to understand the new filing requirements cannot be found in one document that is readily accessible by filers*. While the information provided by the MSRB to the ICI and SIFMA was, in turn, provided by them to their members, we are not aware of the MSRB publishing it for all Form G-45 filers.

Along these same lines, as noted above, during the conversation ICI and SIFMA had with the MSRB staff in June, the staff mentioned that they were working on a revised version of the Form G-45 Manual. At some point in June, this revised manual was posted to the MSRB’s

⁵ With respect to the technical filing issues that were raised with the staff, the staff was amenable to addressing some of those. For others, ICI and SIFMA were told that the staff viewed the issue either as a recommendation the staff would take under consideration or they were issues that were the responsibility of the filer.

⁶ Though expressly asked during the call, the staff did not provide the answer to each issue raised during the beta testing process. Instead, ICI and SIFMA were only directed to documents where they could discern the answers for their members.

website. This is the version currently available to filers. To our knowledge, however, the MSRB published no notice or press release notifying underwriters that a revised version of the Manual had been published. Indeed, only those filers that downloaded the G-45 Manual after the revised version was added to the MSRB's website would even be aware that it had been revised – and only then if they noticed it was Version 1.1 dated June 2015.

While the signatories to this letter very much appreciate the 60-day delay in the compliance period, we strongly encourage the MSRB to use this time to work constructively with the underwriters subject to this new rule in order to ensure that it is implemented as consistently, effectively, and efficiently as possible. At a minimum, this work should include consolidating *all* the information necessary for underwriters to understand their filing obligations into one easily accessible and easy-to-understand format and notifying filers where such information may be found. Also, as the staff makes revisions to the Form G-45 Manual, it should alert underwriters that the Manual has been revised to avoid them becoming aware of such revisions only by periodically visiting the MSRB's website and observing the version of the Manual posted there.

The undersigned are committed to making sure that the implementation of Rule G-45 will result in the MSRB obtaining meaningful data from underwriters within its jurisdiction. We strongly recommend that the MSRB not lose sight of the importance of creating sound filing protocols that will result in the MSRB collecting reliable data. We are concerned that, if the MSRB fails to do so, and filers are left to their own devices to resolve their current uncertainties, the integrity and reliability of the data the MSRB obtains through Form G-45 will be questionable and subject to challenge.⁷ This would be an unfortunate result that is wholly preventable.

⁷ As previously discussed in comment letters on proposed Rule G-45 filed by signatories to this letter, the data the MSRB obtains via Form G-45 will never be reflective of the entirety of the 529 plan market inasmuch as the MSRB's jurisdiction over this market is limited to requiring data only of those persons that are required by law to be registered with the MSRB, which does not include all persons offering 529 plans to investors. It would be unfortunate if the limited data the MSRB is able to obtain through Rule G-45 is unreliable due to defects in the filing process.

Lynnette Kelly, Executive Director

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Accordingly, we continue to encourage the MSRB to work with industry participants to address filers' concerns. We believe such work will inure to the benefit of both the MSRB and persons subject to Rule G-45. We welcome another opportunity to meet with the staff to discuss our continuing concerns in order to expedite resolution of these issues. To arrange such a meeting, please do not hesitate to contact Andrea Feirstein, of AKF Consulting Group. You can reach Ms. Feirstein by phone (646-218-9864) or email (andrea@akfconsulting.com).

Regards,

College Savings Foundation

College Savings Plan Network

Investment Company Institute

Securities Industry and Financial Markets Association

Strategic Insight

Cc: Robert Fippinger, General Counsel, MSRB
Jessica Kane, Director, SEC Office of Municipal Securities

APPENDIX

Below, in alphabetical order, is a description of the signatories to this letter:



CollegeSavings
FOUNDATION

College Savings Foundation (CSF)

CSF is a not-for-profit organization with the mission of helping American families achieve their education savings goals by working with public policy makers, media representatives, and financial services industry executives in support of 529 college savings plans. CSF serves as a central repository of information about college savings programs and trends and an expert resource for its members as well as representatives of state and federal government, institutions of higher education and other related organizations and associations. CSF's members include state 529 Plans, investment managers, broker-dealers, other governmental organizations, law firms, accounting and consulting firms, and non-profit agencies that participate in the sponsorship or administration of 529 Plans.



College Savings Plans Network (CSPN)

Established to make higher education more financially attainable, CSPN is a national non-profit association and the leading objective source of information about 529 Plans. An affiliate of the National Association of State Treasurers, CSPN works with its members to enhance 529 Plans and assist American families in planning and saving for higher education. CSPN members include state officials and state-sponsored 529 Plans, as well as program managers, investment managers, and many organizations providing services to 529 Plans, including legal, accounting, and general consulting services.



Investment Company Institute (ICI)

ICI is the world's leading association of regulated funds, including mutual funds, exchange-traded funds (ETFs), closed-end funds, and unit investment trusts (UITs) in the United States, and similar funds offered to investors in jurisdictions worldwide. ICI seeks to encourage adherence to high ethical standards, promote public understanding, and otherwise advance the interests of funds, their shareholders, directors, and advisers. ICI's U.S. fund members manage total assets of \$17.7 trillion and serve more than 90 million U.S. shareholders.



Securities Industry and Financial Markets Association (SIFMA)

SIFMA brings together the shared interests of hundreds of securities firms, banks, and asset managers. SIFMA's mission is to support a strong financial industry, investor opportunity, capital formation, job creation, and economic growth, while building trust and confidence in the financial markets. SIFMA, with offices in New York and Washington, D.C., is the U.S. regional member of the Global Financial Markets Association (GFMA). For more information, visit <http://www.sifma.org>.



Strategic Insights

For more than 25 years, Strategic Insight has been at the forefront of thorough, unbiased mutual fund industry research and business intelligence. It believes in the mutual fund industry. Its core mission has always been to strengthen the industry and help its clients succeed in the global marketplace by providing them with the research, data, and analytical support they need to identify product and distribution opportunities and make smart business decisions. As sincere industry advocates, Strategic Insights provides products and services to a wide range of clients, including executives from more than 200 investment management and insurance companies, distributors, investment banks, hedge funds, consultants, and law firms. Strategic Insight sets the standard for trusted business intelligence and mutual fund analysis. It offers the most comprehensive, accurate mutual fund information available to help its clients direct their efforts wisely and grow their businesses. Strategic Insight's parent company, Asset International, delivers critical, cutting-edge data, research, and marketing programs to mutual fund companies, banks, asset managers, and insurance companies worldwide.
