SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-71598; File No. SR-MSRB-2013-04)

February 21, 2014

Self-Regulatory Organizations; Municipal Securities Rulemaking Board; Notice of Filing of Amendment No. 1 and Order Granting Accelerated Approval of Proposed Rule Change, as Modified by Amendment No. 1 Thereto, Relating to a New MSRB Rule G-45, on Reporting of Information on Municipal Fund Securities

## I. Introduction

On June 10, 2013, the Municipal Securities Rulemaking Board ("MSRB") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b-4 thereunder,[2] a proposed rule change consisting of (1) MSRB Rule G-45 (reporting of information on municipal fund securities), (2) MSRB Form G-45, (3) amendments to MSRB Rule G-8 (books and records), and (4) MSRB Rule G-9 (preservation of records). The proposed rule change was published for comment in the Federal Register on June 28, 2013.[3]

The Commission initially received five comment letters on the proposal.[4] On August 9, 2013, the MSRB granted an extension of time, until September 26, 2013, for the Commission to act on the filing. On September 26, 2013, the Commission instituted proceedings to determine

---

1 15 U.S.C. 78s(b)(1).

2 17 CFR 240.19b-4.

3 Securities Exchange Act Release No. 69835 (June 24, 2013), 78 FR 39048 ("Notice").

4 See letters to Elizabeth M. Murphy, Secretary, Commission, from Tamara K. Salmon, Senior Associate Counsel, Investment Company Institute, dated July 16, 2013 ("ICI Letter"); David L. Cohen, Managing Director, Associate General Counsel, Securities Industry and Financial Markets Association, dated July 18, 2013 ("SIFMA Letter"); Roger Michaud, Chairman, College Savings Foundation, dated July 19, 2013 ("CSF Letter"); Michael L. Fitzgerald, Chairman, College Savings Plans Network, dated July 19, 2013 ("CSPN Letter"); and Michael B. Koffler, Partner, Sutherland Asbill & Brennan, dated July 19, 2013 ("Sutherland Letter").

whether to disapprove the proposed rule change.[5] In response to the Order Instituting Proceedings, the Commission received four additional comment letters on the proposal.[6] On December 19, 2013, the Commission extended the time period for Commission action to February 23, 2014.[7] On January 14, 2014, the MSRB submitted a response to the comment letters[8] and filed Amendment No. 1 to the proposed rule change.[9] The Commission is publishing

---

5 Securities Exchange Act Release No. 70531 (Sept. 26, 2013), 78 FR 60985 (Oct. 2, 2013) ("Order Instituting Proceedings").

6 See letters to Elizabeth M. Murphy, Secretary, Commission, from Tamara K. Salmon, Senior Associate Counsel, Investment Company Institute, dated November 8, 2013 ("ICI Letter II"); Roger Michaud, Chairman, College Savings Foundation, dated November 18, 2013 ("CSF Letter II"); Michael L. Fitzgerald, Chairman, College Savings Plans Network, dated November 18, 2013 ("CSPN Letter II"); and Michael B. Koffler, Partner, Sutherland Asbill & Brennan, dated November 18, 2013 ("Sutherland Letter II").

7 Securities Exchange Act Release No. 71144 (December 19, 2013), 78 FR 78451 (December 26, 2013).

8 See letter to Elizabeth M. Murphy, Secretary, Commission, from Lawrence P. Sandor, Deputy General Counsel, MSRB, dated January 14, 2014 ("MSRB Response Letter").

9 Amendment No. 1 has been placed in the public comment file for SR-MSRB-2013-04 at http://www.sec.gov/comments/sr-msrb-2013-04/msrb201304-11.pdf (see letter from Lawrence P. Sandor, Deputy General Counsel, MSRB, to Elizabeth M. Murphy, Secretary, Commission, dated January 14, 2014). In Amendment No. 1, the MSRB amended and restated the original proposed rule change to: (i) clarify that the information submitted by underwriters includes asset allocation information for the assets of each investment option; (ii) omit statements concerning the interpretation of the meaning of "underwriter" under the federal securities laws and rules thereunder; (iii) clarify that each entity must determine, based on the facts and circumstances, whether it is an underwriter under the federal securities laws; (iv) revise the rule text to clarify that an underwriter that submits Form G-45 would be obligated to submit information only for itself and those entities that identify themselves as underwriters of the 529 plan and aggregate their information with the submitter's information; (v) clarify that underwriters must identify the percentage of each underlying investment in an investment option but not submit information regarding the assets in each underlying investment; (vi) clarify that, for each investment option offered by a 529 plan, the underwriter will provide the MSRB with the name and allocation percentage of each underlying investment in each investment option as of the end of the most recent semi-annual period; (vii) clarify that the MSRB does not contemplate that a state sponsor of a 529 plan, as an instrumentality of the state, would be an underwriter under federal securities laws; (viii) explain that an underwriter would not be required to submit information on Form G-45 that it neither possesses nor has the legal

this notice to solicit comments on Amendment No. 1 to the proposed rule change from interested persons and is approving the proposed rule change, as modified by Amendment No. 1, on an accelerated basis.

II. Description of the Proposed Rule Change

The MSRB's Electronic Municipal Market Access ("EMMA") system currently serves as a centralized venue for the submission by underwriters of 529 plan primary offering disclosure documents ("plan disclosure documents") and continuing disclosures, such as annual financial reports submitted by issuers or their agents. The MSRB, however, does not currently receive detailed underwriting or transaction information as it does for other types of municipal securities. According to the MSRB, the proposed rule change will, for the first time, provide the MSRB with more comprehensive information regarding 529 plans underwritten by brokers, dealers, or municipal securities dealers by gathering data directly from such persons.

The MSRB proposes to adopt Rule G-45. Rule G-45 will require each underwriter of a primary offering of municipal fund securities[10] (excluding interests in local government investment pools) to report on Form G-45 information relating to such offering by no later than 60 days following the end of each semi-annual reporting period ending on June 30 and

---

right to obtain; (ix) explain that, to the extent the information submitted was prepared by the underwriter or, through delegation, one of its contractors or sub-contractors, and the information was inaccurate or incomplete, the underwriter would be responsible for the information and therefore be liable for such information under proposed Rule G-45; and (x) clarify in Rule G-45 that performance data shall be reported annually. The MSRB also clarified various aspects of how the information should be reported on Form G-45.

[10] The term "municipal fund security" is defined in MSRB Rule D-12 to mean a municipal security issued by an issuer that, but for the application of Section 2(b) of the Investment Company Act of 1940, would constitute an investment company within the meaning of Section 3 of the Investment Company Act of 1940. Interests in 529 plans are the only type of municipal fund security that will be covered by the proposed rule change.

December 31.[11] In addition, the MSRB proposes to require that performance data be submitted annually by no later than 60 days following the end of the reporting period ending on December 31.[12] The proposal also requires disclosure regarding plan descriptive information, asset allocation information, contributions, withdrawals, fee and cost structure, performance data, and other information.[13]

Under proposed Rule G-45, brokers, dealers, or municipal securities dealers that are underwriters under Rule 15c2-12(f)(8) of the Act will have the obligation to submit the requested information.[14] The MSRB notes that there may be more than one underwriter in a particular primary offering but will deem the reporting obligation fulfilled if any one of the underwriters submits the required information. Accordingly, on Form G-45, each submitter could provide the names of each underwriter that has identified itself as such and on whose behalf the information is submitted.[15]

The MSRB states that it will permit the performance, fee, and expense information to be submitted in a format consistent with the College Savings Plans Network's ("CSPN") published

---

11 The proposed rule change will require an underwriter to report such information in the manner prescribed in the Form G-45 procedures and as set forth in the Form G-45 Manual. The MSRB states that the Form G-45 Manual will be a new manual created to assist persons in the submission of the information required under proposed Rule G-45 and will contain only the technical requirements for submitting such information. As such, this manual is not part of the proposed rule change. See Amendment No. 1.

12 See Amendment No. 1.

13 For more details on the specific requirements of the proposal, see Notice supra note 3.

14 17 CFR 240.15c2-12(f)(8).

15 The MSRB has stated that the underwriter will be obligated to submit information only for itself and those entities that identify themselves as underwriters of the plan and agree to aggregate their information with the information of the submitter. See Amendment No. 1.

Disclosure Principles Statement No. 5 ("Disclosure Principles"), which commenters informed the MSRB is the industry norm for reporting such information.

Lastly, the MSRB proposes to amend its books and records rules under Rules G-8 and G-9. The amended rules will require underwriters to maintain the information required to be reported on new Form G-45 for six years.

III. Summary of Comments Received and the MSRB's Response

As noted above, the Commission has received a total of nine comment letters on the proposed rule change.[16] Four of the commenters expressed general support for the MSRB's desire to collect more comprehensive information relating to 529 plans.[17] However, all of the commenters raised concerns or sought clarification about certain specific aspects of the proposal, including: (i) the scope of the definition of "underwriter"[18]; (ii) the disclosure obligations of underwriters, including their ability to obtain, and verify the accuracy of, the requested information;[19] (iii) the need for publication of the Form G-45 Manual;[20] (iv) the MSRB's plans to publicly disseminate information filed on Form G-45;[21] (v) the regulatory basis for the proposed rule change and value of the requested information on Form G-45;[22] and (vi) the

---

16 See supra notes 4 and 6.

17 See ICI Letter, ICI Letter II, SIFMA Letter, CSPN Letter, CSPN Letter II, CSF Letter, CSF Letter II.

18 See ICI Letter, ICI Letter II, SIFMA Letter, CSPN Letter, CSPN Letter II, CSF Letter, CSF Letter II. One commenter also questioned the MSRB's interpretation of "direct-sold" versus "advisor-sold" plans in relation to the scope of the rule and its application to underwriters. See Sutherland Letter, Sutherland Letter II.

19 See ICI Letter, ICI Letter II, CSPN Letter, CSPN Letter II, CSF Letter, CSF Letter II.

20 See ICI Letter, ICI Letter II, SIFMA Letter.

21 See ICI Letter, ICI Letter II, SIFMA Letter, CSPN Letter, CSPN Letter II, CSF Letter, CSF Letter II.

22 See Sutherland Letter, Sutherland Letter II.

statutory basis for the proposed rule change.[23] Further, some commenters argued that the MSRB should analyze the costs and benefits associated with the proposed rule change.[24] Finally, some commenters requested certain modifications to the content of Form G-45.[25]

A. Definition of "Underwriter"

Several commenters objected to the MSRB's interpretation of the term "underwriter" as used in Rule G-45 and stated that the MSRB should clarify the scope of the definition.[26] These commenters cited the MSRB's statements in the Notice suggesting that 529 plans may have multiple underwriters; that Rule 15c2-12(f)(8) under the Act, which the MSRB incorporates into Rule G-45, defines "underwriter" broadly; and that other entities (in addition to primary distributors) involved in operating or maintaining a plan, such as the plan's program manager, their affiliates and/or contractors, could be deemed underwriters for purposes of the rule. One commenter[27] asserted that 529 plans typically have only one underwriter[28] and argued, along with other concurring commenters,[29] that many other entities involved in operating and maintaining a plan, such as the 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.

---

23 See ICI Letter II, Sutherland Letter II, CSPN Letter II, CSF Letter II.

24 See CSPN Letter, CSPN Letter II, CSF Letter, CSF Letter II, Sutherland Letter, Sutherland Letter II, ICI Letter II.

25 See ICI Letter, ICI Letter II, SIFMA Letter, Sutherland Letter, Sutherland Letter II.

26 See ICI Letter, ICI Letter II, SIFMA Letter, CSPN Letter, CSPN Letter II, CSF Letter, CSF Letter II.

27 See ICI Letter, ICI Letter II.

28 See ICI Letter.

29 See SIFMA Letter, CSPN Letter, and CSF Letter, which stated that they concur and/or endorse ICI's comment.

Several commenters emphasized that, to fall within the definition of "underwriter" under Rule G-45, a person or entity must be a broker, dealer, or municipal securities dealer.[30] One commenter argued that a plan's program manager, recordkeeper, investment manager, custodian, and state sponsor generally are not brokers or dealers and therefore would not qualify as underwriters.[31] Accordingly, this commenter requested that the MSRB clarify that the term "underwriter" would not include such entities if they provide services to the plan on behalf of the plan or its state sponsor.

Two commenters also specifically argued that for purposes of Rule G-45 a state sponsor should not be treated as an underwriter, as they are not brokers, dealers, or municipal securities dealers.[32] These commenters stated that language in the Notice implied that state sponsors could be deemed underwriters and thus requested confirmation that proposed Rule G-45 would not apply to municipal securities issuers exempted under Section 3(d) of the Act.

Although not directly discussing the definition of "underwriter," one commenter argued that the proposed rule and form should not apply to "direct-sold" plans because, by definition, such plans are sold without the involvement of a broker-dealer.[33] This commenter stated that the distinction between "direct-sold" and "advisor-sold" plans is not simply a "marketing distinction," as the MSRB had categorized it in the Notice, but is "critical in assessing the MSRB's jurisdiction as it delineates between those 529 [p]lans that are sold through broker-

---

30 See CSPN Letter, CSF Letter, ICI Letter.

31 See ICI Letter.

32 See CSPN Letter, CSF Letter.

33 See Sutherland Letter, Sutherland Letter II.

dealers and those that are not."[34] Accordingly, this commenter concluded that "direct-sold" plans are not subject to the MSRB's jurisdiction.

Finally, one commenter expressed opposition to the imposition of the reporting requirements of the proposed Rule G-45 on "broker dealers that are not underwriters but that instead have entered into contracts with the plan's underwriter (primary distributor) to sell plan shares to retail investors."[35]

In response to some commenters' assertions that many entities involved in operating and maintaining a 529 plan are not acting as brokers, dealers or municipal securities dealers and thus cannot be underwriters for purposes of the rule, the MSRB stated that, depending on its activities, program managers and other plan providers might be "brokers" under Section 3(a)(4)(A) of the Act.[36] In this regard, the MSRB discussed its understanding of the 529 plan administration and noted that it believed the activities of program managers may extend beyond investment management to other administrative activities.

The MSRB also disagreed that 529 plan underwriters are limited to primary distributors. The MSRB stated that Rule G-45 incorporates and should be interpreted in the same manner as the definition of "underwriter" in Rule 15c2-12(f)(8) under the Act. The MSRB stated that the determination of whether a firm is an underwriter depends on the "facts and circumstances, including the activities the firm performs to assist in the distribution of municipal securities,

---

34 See Sutherland Letter.

35 See SIFMA Letter.

36 See MSRB Response Letter. Section 3(a)(4)(A) of the Act defines a "broker" as any person engaged in the business of effecting transactions in securities for the account of others.

rather than the firm's status or common industry labels."[37] Thus, the MSRB stated that, if an entity is a dealer and an underwriter as defined by the Act, it will be required to submit information on Form G-45. The MSRB also noted that the "potential pool of brokers or dealers is not necessarily limited to existing registrants but would encompass all firms that should be registered as such."[38]

The MSRB also clarified that it does not seek to impose reporting requirements on state sponsors or selling dealers. With regard to selling dealers, the MSRB stated that the proposal is "clear that no such obligation would be imposed on so-called advisor-sold plan selling dealers that are not underwriters."[39] The MSRB also represented that it does not contemplate that a state sponsor of a 529 plan, as an instrumentality of the state, would be an underwriter pursuant to the "plain language" of Rule 15c2-12 under the Act.

With regard to one commenter's argument that the proposed rule should not apply to "direct sold" plans as distinguished from "advisor sold" plans, the MSRB stated that its "rules apply to dealers in their municipal fund securities activities, including their underwriting activities, regardless of the business model or marketing strategy involved."[40] Each entity must determine, based on the facts and circumstances surrounding its own activities, if it meets the Act's definitions of broker or dealer and underwriter. The MSRB stated that its rulemaking

---

37 See MSRB Response Letter.

38 See MSRB Response Letter.

39 See MSRB Response Letter.

40 See MSRB Response Letter.

authority is not dependent on whether a firm provides investment advice to customers in conjunction with municipal securities underwriting services.[41]

B. Underwriter Reporting Obligation

All five commenters believed the MSRB should clarify the disclosure obligations of underwriters.[42] Four of these commenters stated that the MSRB is seeking information that many primary distributors will not be able to provide.[43] All of the commenters suggested that the MSRB clarify or confirm that underwriters would not be responsible for certain information that is outside of their possession, custody, or control. For example, one commenter requested that the MSRB clarify that, when an underwriter, in its normal course of business, does not create, own, control, or possess information necessary for Form G-45, the underwriter will not be required to obtain such information.[44] Another commenter requested that the MSRB clarify that an underwriter is required to provide the requisite information only to the extent such information relates to the distribution by the underwriter of municipal fund securities and is in the underwriter's possession or maintained by another entity on the underwriter's behalf for purposes of complying with MSRB rules.[45]

---

41 The MSRB added that, based on its experience in this area, it believes that it is common for a program manager to contract with the trustee of a plan to provide administrative, marketing, and other services on behalf of the plan and that the entities hired by the trustee are essential to the undertaking, which includes soliciting municipal fund securities transactions and handling customer funds and municipal fund securities.

42 See ICI Letter, ICI Letter II, SIFMA Letter, CSPN Letter, CSPN Letter II, CSF Letter, CSF Letter II, Sutherland Letter, Sutherland Letter II.

43 See ICI Letter, CSPN Letter, CSF Letter, Sutherland Letter.

44 See ICI Letter.

45 See CSPN Letter.

Several commenters raised concerns that contractual provisions or privacy laws might not permit an underwriter to obtain the information required by the proposed rule and form.[46] In this regard, one commenter sought confirmation that, where the sharing of information between an underwriter and a recordkeeper would violate contractual provisions, the information would be deemed to be outside of the possession or control of the underwriter and not subject to the reporting obligations of Rule G-45.[47] Another commenter noted that, in the context of omnibus agreements, whether the required information is available to an underwriter is dependent on comprehensive servicing agreements between the plan, the underwriter, and the selling dealers.[48] Thus, this commenter noted that the agreements may not provide the underwriter with legal access to certain information and, as such, an underwriter should not be required to report such information on Form G-45.

Two commenters raised concerns about the MSRB's suggestion that an underwriter's disclosure obligation extends to "information in the possession of an underwriter's subcontractor."[49] These commenters believed this suggestion "will produce confusion and disparate reporting results" depending on factors unrelated to Rule G-45 regulatory compliance.[50] In particular, the commenters noted that, while some information may be in the possession of an underwriter's "subcontractor," other information may be in the possession of an unaffiliated or affiliated entity that is not a subcontractor, and privacy laws and contractual requirements may apply differently.

---

[46] See CSF Letter, CSPN Letter, SIFMA Letter, Sutherland Letter.

[47] See Sutherland Letter.

[48] See SIFMA Letter.

[49] See CSPN Letter, CSF Letter.

[50] See CSPN Letter, CSF Letter.

One commenter questioned the meaning of the MSRB's statement in the Notice that underwriters would be required to produce only information that they possess or "have a legal right to obtain."[51] The commenter stated that "unless the primary distributor has a specific, enforceable legal right, such as one existing under law (such as a right created by a statutory provision) or arising from a specific contractual provision, to obtain specified information maintained by a third party, the primary distributor does not have a legal right to obtain the information for purposes of the proposal."[52] As such, the commenter asserted that an underwriter may not be able to provide information in the possession of an underwriter's subcontractor.

Two commenters also provided comments relating specifically to omnibus accounts, stating that 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 arrangement, the underwriter should not be required to report such information.[53] These commenters also stated that, "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."[54]

---

[51] See Sutherland Letter.

[52] See Sutherland Letter.

[53] See ICI Letter, SIFMA Letter.

[54] See ICI Letter, SIFMA Letter.

Lastly, two commenters contended that, if the underwriter is able to obtain the required information from a third party, the MSRB should clarify that the underwriter is not responsible for ensuring the accuracy or completeness of the information before including it on Form G-45.[55]

In response, the MSRB reaffirmed that the proposal would require an underwriter of a 529 plan to submit only information it possesses or has a legal right to obtain. In this regard, the MSRB stated its belief that an underwriter has a legal right to obtain all information that is related to its activities in connection with the underwriting, even where it has designated an affiliate or contractor to perform such activities. The MSRB disagreed with commenters who suggested that, if a contractual provision prohibited the sharing of information, an underwriter should not be responsible for providing such information under Rule G-45 and Form G-45. Specifically, the MSRB stated that the legal right to obtain information for purposes of Rule G-45 is not affected by a "voluntary relinquishment, by contract or otherwise, of such a right."[56] Furthermore, the MSRB stated that, to the extent that information reported in Form G-45 is prepared by the underwriter or one of its contractors or subcontractors, and the information is inaccurate or incomplete, the underwriter would be responsible for the information and therefore be liable for such information under Rule G-45. However, the MSRB explained that if the underwriter did not prepare, or authorize others to prepare on its behalf, information submitted under Rule G-45, it would not be obligated to verify or confirm the accuracy and completeness of the information.

C. Publication of the Form G-45 Manual

---

55 See ICI Letter, Sutherland Letter, Sutherland Letter II.

56 See MSRB Response Letter.

Two commenters believed that the MSRB should be required to publish for comment the contents of the Form G-45 Manual ("Manual") predicting that the Manual would contain important substantive information concerning the reporting obligations under Form G-45.[57] One commenter believed 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."[58] This commenter asserted that, apart from the addition of boxes for notes regarding performance data and fee and expense data, neither Form G-45 nor Rule G-45 reflects the MSRB's statements in the Notice that information may be submitted in a manner consistent with the Disclosure Principles. As such, the commenter concluded that the details regarding how to report data consistent with these Disclosure Principles would necessarily have to be set forth in the Manual. Another commenter similarly stated that it believed that the Manual would incorporate the detailed substantive instructions of the Disclosure Principles.[59] Both commenters also suggested that the one-year implementation period should commence after the Manual has been published for comment and approved by the Commission.[60]

In response, the MSRB represented that the Manual will only provide "technical requirements to facilitate the submission of information required by proposed Rule G-45 and Form G-45."[61] For example, the Manual will most likely include both instructions on how to

---

57 See ICI Letter, ICI Letter II, SIFMA Letter.

58 See ICI Letter.

59 See SIFMA Letter. This commenter noted that, while the MSRB explained in the Notice that the information required on Form G-45 will be reported consistently with the reporting formats under the Disclosure Principles, proposed Rule G-45 and Form G-45 are silent on this point.

60 See ICI Letter, SIFMA Letter.

61 See MSRB Response Letter.

upload bulk data to the MSRB's system and instructions on data entry through the MSRB's interface. Because the content of the Manual is dependent on "system architecture" which is dependent on the scope of the proposed rule change, the MSRB stated that submission of the Form G-45 Manual as part of a proposed rule change would "unreasonably retard systems development."[62] Moreover, the MSRB indicated that the "data elements required to be submitted by 529 plan underwriters are specified in the proposed rule change and need not be the subject of an additional, separate filing."[63] Finally, the MSRB stated that the proposed implementation period of not earlier than one year from the date of Commission approval of the current proposed rule change is sufficient time for market participants to prepare to comply with Rule G-45.

D. Publication of the G-45 Data

Three commenters believed that confidential or proprietary information reported on Form G-45 should not be made available to the general public.[64] One commenter, for example, stated that the data collected 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."[65] Another commenter stated that the MSRB should be required to file a proposed rule change subject to Commission approval before the MSRB publicly disseminate certain 529 plan data reported on Form G-45.[66]

---

62 See MSRB Response Letter.

63 See MSRB Response Letter.

64 See ICI Letter, ICI Letter II, CSPN Letter, CSPN Letter II, CSF Letter, CSF Letter II.

65 See ICI Letter.

66 See SIFMA Letter.

In response, the MSRB reiterated that it would publicly disseminate the information collected on Form G-45 only after the approval of a separate proposed rule change by the Commission. The MSRB confirmed that, at this time, it does not intend to disseminate through EMMA the information collected under the proposal and that such information would be used only for regulatory purposes.

E. Regulatory Value of Required Information and Regulatory Basis for the Proposal

Two commenters suggested that the proposed rule change fails to satisfy the requirements of Section 15B(b)(2)(C) of the Act.[67] In particular, one commenter questioned how the information to be collected would help the MSRB, FINRA and the Commission protect investors and the public interest.[68] The other commenter added that the information collected on Form G-45 would not assist the MSRB in preventing fraud, promoting just and equitable principles of trade, fostering industry cooperation, or removing market impediments in the 529 plan market.

The commenter further asserted that the requested information would be substantially incomplete because the information obtained would not include data on "direct-sold" 529 plans, which the commenter stated represents more than half of the assets in the 529 plan industry. The commenter also noted that certain information is already publicly available and includes both "broker-sold" and "direct-sold" plans.

Finally, the commenter argued that the MSRB's jurisdiction does not extend to regulating the 529 plan market because the MSRB's regulatory authority is limited to regulating broker-dealers that distribute and sell municipal securities.[69] The commenter also suggested that the

---

67 See Sutherland Letter II, ICI Letter II.

68 See Sutherland Letter, Sutherland Letter II.

69 This commenter also objected to the MSRB's request for information on Form G-45 related to plan fees and expenses. The commenter suggested that because the MSRB

MSRB does not have the legal authority or jurisdiction to mandate disclosure of underlying investments because they are not municipal securities.

Two commenters also stated that disclosure of information pertaining to the underlying investments is beyond what is required by the Disclosure Principles.[70] Moreover, one commenter recommended that, if the MSRB determines in the future that there would be regulatory value in having this information, the MSRB should revise Form G-45 at that time.[71]

In response to the commenter's questions regarding the regulatory authority for the proposal, the MSRB pointed to Section 15B(b)(2) of the Act, which "authorizes the MSRB to adopt rules to effect the purpose of the Exchange Act concerning transactions in municipal securities effected by dealers."[72] The MSRB represented that interests in 529 plans are considered to be municipal securities and that the MSRB has categorized such interests as municipal fund securities. The MSRB also stated that its rules "govern the activities of dealers that effect any transaction in, or induce or attempt to induce the purchase or sale of, any municipal fund security" and such dealers engaging in these activities are subject to the MSRB's rulemaking authority.[73]

Moreover, the MSRB argued that the proposal is consistent with the Act because the requested information will enhance its understanding of 529 plans and "assist the Board in evaluating whether its regulatory scheme for 529 plans is sufficient, or whether additional

---

does not have jurisdiction over the regulation of 529 plans, it should not require primary distributors to submit data concerning securities product fees that are unrelated to the primary distributor.

[70] See ICI Letter, SIFMA Letter.

[71] See ICI Letter.

[72] See MSRB Response Letter.

[73] See MSRB Response Letter.

rulemaking is necessary to protect investors."[74] The MSRB stated that the information will allow regulators to compare asset allocation, performance, and fee information across plans and against plan disclosures and marketing material. This information will help regulators protect investors and prevent fraudulent and misleading statements in plan disclosure documents and advertising. The information will inform its rulemaking regarding disclosures and advertising and will help "identify industry trends and anomalies" and assist regulators prioritize their efforts with respect to 529 plans, including the nature and timing of risk-based dealer examinations.[75]

The MSRB also observed that the information required under the proposal is easily obtainable by underwriters because it is often disclosed in 529 plan offering documents.[76] The MSRB also noted that Form G-45 only requires the name of the investment product (typically a mutual fund) and the allocation percentage of each product in the investment option.

Finally, the MSRB recognized that while some of the requested information is available publicly, there is no legal requirement to reliably produce the information and it is not currently available in an electronic format that lends itself to analysis.

F. Contents of Form G-45

Some commenters provided suggestions for modifications to the specific information requested by Form G-45 or sought clarification on how to report certain information on the form, as discussed below.[77] In response, the MSRB stated generally that it believed that proposed

---

74 See MSRB Response Letter.

75 See MSRB Response Letter.

76 The MSRB provided that, for example, the Texas direct-sold 529 plan's offering document contains information about underlying investments.

77 See ICI Letter, Sutherland Letter, Sutherland Letter II, SIFMA Letter.

Form G-45 was clear and specific. However, in response, the MSRB also provided some additional detail and clarification, as described below.

i. Investment Option Information

One commenter requested that the MSRB clarify how to report in Form G-45 an investment option that is used for multiple purposes.[78] This commenter also recommended that the MSRB clarify how underwriters should report fee, expense, and performance information for a mutual fund that issues multiple classes of shares with fees and expenses that vary from class to class. Another commenter questioned how underwriters are supposed to report asset class and asset class percentages and suggested that the two items related to asset class be eliminated.[79] This commenter asserted that investment options do not have or invest in asset classes, thus the use of the phrase "asset classes in investment option" is unclear.[80]

One commenter also recommended that the investment option information be reported in ranges rather than precise amounts, where appropriate (e.g., asset class allocation percentages), because the use of ranges would relieve underwriters of having to revise previously reported information whenever there is a de minimus change.[81] This commenter further suggested that, if the MSRB elects not to use ranges, it should consider revising the rule such that an update is not required to previously reported information unless there has been more than a de minimus change.

In response, the MSRB affirmed that Form G-45 requires disclosure at the investment option level only and each investment option would report its underlying investments

---

78 See ICI Letter.

79 See Sutherland Letter.

80 See Sutherland Letter.

81 See ICI Letter.

separately.[82] The MSRB asserted that 529 plans routinely track investments at both the underlying investment and investment option level and therefore should have little difficulty in reporting this information. The MSRB explained that, for example, if an investment option invests in five mutual funds, the submitter would disclose those five funds and the allocation percentage of each in the investment option. The MSRB also clarified that an underwriter must identify the assets held by each investment option separately, even if another investment option invested in the same funds.

Likewise, with regard to commenters' concerns regarding asset class information, the MSRB represented that data on asset class and asset class percentages are readily available and already presented in certain plan documents. The MSRB also stated that, with regard to investment options that are a mutual fund with multiple share classes, Form G-45 includes fields for fees and charges related to each share class.

The MSRB also disagreed with the request that information be reported in ranges rather than precise amounts, stating that "precision is needed regarding asset allocations."[83] The MSRB also noted that this information is readily available to underwriters. Further, the MSRB disagreed with the request that, alternatively, it should require the submission of updates only where there is more than a de minimus change, stating that defining "de minimus" could pose problems because even a small change in the information reported could be material.

ii. Performance Information

[82] The MSRB further confirmed that a fund that is both an underlying investment and a stand-alone investment option would not be aggregated. Rather, data would be reported for each investment option.

[83] See MSRB Response Letter.

One commenter raised several issues with respect to performance information and provided the following specific recommendations: (i) resolve a discrepancy between the definition of "performance" in Rule G-45(d)(viii) (which provides for "total returns of the investment option expressed as a percentage net of all generally applicable fees and costs") and the requirement in Form G-45 (which requires that performance be reported both "including sale charges" and "excluding sales charges"); (ii) clarify whether a plan that is directly distributed and that has no "sales charges" is expected to report the same information under "Investment Performance (Including Sales Charges)" and "Investment Performance (Excluding Sales Charges)" or just the later; (iii) clarify that fees that are not specific to any particular investment option are not required to be included in the performance calculation; (iv) resolve a discrepancy between a statement in the Notice that Form G-45 requires "performance for the most recent calendar year" and the Form G-45 requirement for disclosure of each investment option's 1, 3, 5 and 10 year performance, as well as the option's performance since inception; and (v) include a comment box under each of the two sections of Form G-45 relating to Investment Performance to avoid confusion as to whether the comments relate to performance excluding or including a sales charge.[84] Furthermore, this commenter recommended that the MSRB clarify that a 529 plan is only required to report benchmark information if the 529 plan, in fact, uses a benchmark.

In response, the MSRB stated that Form G-45 provides fields for reporting performance including and excluding sales charges. In addition, the MSRB indicated that Rule G-45 defines performance to mean total returns of the investment option expressed as a percentage, net of all generally applicable fees and costs. The MSRB disagreed with the commenter's assertion that there was a discrepancy between the definition of "performance" in Rule G-45 and the Form G-

[84] See ICI Letter.

45's reporting requirement of performance data, stating that "Form G-45 is consistent with the CSPN's Disclosure Principles Statement No. 5, which suggests that performance data should be disclosed net of all generally applicable fees and costs and that, for advisor sold plans, total returns should be calculated both including and excluding sales charges."[85] Moreover, the MSRB stated that fees that are not specific to any particular investment option would not be applicable. Regarding Form G-45's requirement to report performance for the most recent calendar year, the MSRB stated that performance data must only be updated annually and submitters must disclose each investment option's 1, 3, 5 and 10 year performance as well as the option's performance since inception, as of the annual update. The MSRB also stated that it believed including two investment performance comment boxes is unnecessary because a single comment box for all comments would not likely result in confusion by the submitters. Finally, regarding benchmark performance, the MSRB confirmed that an underwriter of a 529 plan that does not use a benchmark will not be required to report benchmark performance. In such case, the MSRB represented that the Form G-45 Manual will instruct a filer to leave the section of the form blank.

iii. Marketing Channel

One commenter questioned the value of requesting information on the "marketing channel," which the MSRB described to be commonly known as either "advisor-sold" or "direct sold."[86] As discussed above, this commenter argued that the requirements of the rule should not apply to "direct-sold" plans, since they do not involve a broker-dealer offering the securities. As such, the commenter asserted that only broker-dealers could be required to provide the

---

85 See MSRB Response Letter.

86 See Sutherland Letter.

information about "advisor-sold" plans, unless non-broker-dealers also made voluntary filings. Such voluntary filings, the commenter urged, would only cause investor confusion.

In response, the MSRB stated that it believed one or more entities that provide services to "direct-sold" plans may be underwriters and nothing in the Act limits the MSRB's rulemaking authority to "advisor-sold" plans, as discussed above.

iv. Program Managers

One commenter suggested that all information requests related to program managers should be deleted from Form G-45 because the MSRB lacks jurisdiction "to seek information about an entity hired by 529 [p]lan trustees to provide services to the plan when neither the issuer nor the entity are regulated by the MSRB."[87] The commenter further questioned the relevance of such information to the MSRB's role as a securities regulator of broker-dealers distributing municipal securities.

In addition to what is described above with regard to program managers being subject to the rule, the MSRB stated that program managers "contract with state sponsors to, in many cases, deliver a variety of services necessary to distribute and sell municipal fund securities."[88] Further, program managers "often provide, directly or through contractors or subcontractors, administrative services, marketing and advertising services, and investor support."[89] Moreover, the MSRB stated that information about program managers is frequently found in offering documents and available to the public.

G. Costs and Benefits of the Proposal

---

87 See Sutherland Letter.

88 See MSRB Response Letter.

89 See MSRB Response Letter.

Four commenters addressed the costs and benefits of collecting the required information.[90] One commenter stated that, while the MSRB concluded in the Notice that the benefits of its proposal will outweigh the costs, the MSRB failed to quantify either the benefits or the costs.[91] Two commenters suggested that the MSRB should conduct an analysis of the costs and benefits associated with the proposal to be consistent with the MSRB's recently announced Policy on the Use of Economic Analysis in MSRB Rulemaking ("Policy") and to enhance the MSRB's ability to tailor its rules to ensure that its costs and burdens are balanced with its expected benefits.[92] Finally, two commenters suggested that the Commission consider adding a waiver and/or sunset provision designed to mitigate the cost burden of an underwriter's disclosure duty.[93] The two commenters also stated that the addition of "a waiver application process will allow the affected underwriter to request relief from providing data that is not reasonably practicable to obtain."[94] Similarly, these commenters believed a sunset provision could also "ease the administrative burden to underwriters required to submit information on Form G-45."[95] In addition, these commenters suggested that the MSRB reexamine its need to collect each data point after a specified period of time and revise Rule G-45 accordingly in the event the MSRB determines that certain data points are no longer relevant.[96]

---

90 See CSPN Letter, CSF Letter, Sutherland Letter, Sutherland Letter II, ICI Letter II.

91 See Sutherland Letter.

92 See Sutherland Letter II, ICI Letter II.

93 See CSPN Letter, CSF Letter.

93 See CSPN Letter, CSF Letter.

94 See CSPN Letter, CSF Letter.

95 See CSPN Letter, CSF Letter.

96 The CSPN Letter and CSF Letter suggested three years.

In response, the MSRB stated that a waiver or sunset provision is unnecessary because most of the information requested is readily available to underwriters. In addition, the MSRB stated that neither commenter provided data or other specific support for their view that the costs would be sufficiently high to justify a waiver or sunset provision. The MSRB also stated that it made significant changes to the proposal based on industry and public input in order to ease the burden on submitters.

In response to suggestions that the MSRB should conduct an economic analysis of the proposed rule change, the MSRB explained that, although the Policy is not applicable to the proposed rule change because the proposal began prior to the Policy's adoption, the MSRB considered the burdens and benefits of the proposed rule change throughout the rulemaking process consistent with the Policy. Among other things, the MSRB stated that the proposal will enable the MSRB to fulfill its oversight responsibilities over dealers acting as underwriters of 529 plans by providing the MSRB with a consistent set of reliable information about 529 plans. As for costs, the MSRB stated that the main cost of the proposal would likely be the cost to underwriters of conforming to the proposal's reporting requirements. However, the MSRB stated that it expects compliance costs to diminish once underwriters become familiar with the new disclosure format.

The MSRB also stated that it identified both baseline conditions and reasonable alternatives to the proposed rule change. In particular, the MSRB explained that the information currently produced by underwriters on EMMA represents a relevant baseline for market participants in which the requirements of proposed Rule G-45 can be compared. In this regard, the MSRB stated that the benefits of a "uniform and complete set of reliable information exceeds the benefits derived under the baseline situation in which documents supplied to EMMA or other

information supplied to information vendors that is not uniform, is not complete, and may not be reliable."[97]

Additionally, the MSRB identified reasonable alternatives to the proposed rule change, including maintaining the current disclosure regime through EMMA or other websites, but determined that the type of information collected is inadequate because it is not uniform or complete. Further, the MSRB considered public comments that addressed the potential economic consequences of the proposed rule and modified the proposal to minimize the reporting burden on underwriters. For example, the MSRB stated that it reduced the potential cost to underwriters by, among other things, extending the reporting deadline from thirty days to sixty days after the end of the reporting period, eliminating the reporting of percentage of plan contributions derived from automatic contributions, and conforming the reporting format for fees and performance to the Disclosure Principles. Finally, the MSRB represented that only a limited number of dealers would be obligated to submit information to the MSRB.[98]

## IV. Discussion and Commission Findings

The Commission has carefully considered the proposed rule change, as modified by Amendment No. 1, as well as the comment letters received and the MSRB's response. The Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the MSRB.[99] In particular, the proposed rule change is consistent with Section 15B(b)(2)(C) of the Act, which provides that the

---

97 See MSRB Response Letter.

98 The MSRB states that "[t]here are over 1600 MSRB registered dealers but only approximately one hundred 529 plans and even fewer underwriters, as certain firms act as underwriters for multiple plans." See MSRB Response Letter.

99 In approving the proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

MSRB's rules shall be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in municipal securities and municipal financial products, to remove impediments to and perfect the mechanism of a free and open market in municipal securities and municipal financial products, and, in general, to protect investors, municipal entities, obligated persons, and the public interest.[100]

The Commission believes that the proposed rule change is consistent with Section 15B(b)(2)(C) of the Act. The Commission agrees with the MSRB that the proposal is intended to protect investors, municipal entities and the public interest and prevent fraudulent and manipulative acts and practices by allowing the MSRB to collect comprehensive, reliable, and consistent electronic data on the 529 plans. In order to fulfill its statutory responsibilities to investors and municipal entities in the context of 529 plans, the Commission believes that it is appropriate for the MSRB to possess basic, reliable information regarding 529 plans, including the underlying investment options. Further, the Commission believes that information collected under the proposed rule change would help the MSRB assess the impact of each 529 plan on the market, evaluate trends and differences among plans, and gain an understanding of the aggregate risk taken by investors by the allocation of assets in each investment option. Such information may also be used to determine the nature and timing of risk-based dealer examinations and thus better position the MSRB to protect investors and the public interest.

In addition, the Commission believes the proposed rule change is reasonably designed to prevent fraudulent and manipulative acts and practices and to protect investors. The proposed

[100] 15 U.S.C. 78o-4(b)(2)(C).

rule change could help the MSRB to use the information submitted on Form G-45 to, among other things, determine if the 529 plan disclosure documents or marketing material prepared or reviewed by underwriters are consistent with the data submitted to the MSRB. The Commission also notes that the MSRB believes that collecting information about activity in 529 plans is necessary to assist the MSRB in evaluating whether its current regulatory scheme for 529 plans is sufficient or whether additional rulemaking is necessary to protect investors and the public interest.

The Commission believes that the MSRB, in its response letter, has adequately addressed issues raised by commenters. Namely, with regard to questions regarding the MSRB's jurisdiction,[101] the Commission agrees that Section 15B(b)(2) of the Act authorizes the MSRB to adopt rules to effect the purpose of the Act concerning transactions in municipal securities effected by dealers.[102] As the MSRB noted in its response letter, the Commission has previously stated that interests in 529 plans are considered to be municipal securities.[103]

With respect to comments regarding the scope of the definition of "underwriter,"[104] the Commission believes that the MSRB, in its response letter and Amendment No. 1, reduced potential confusion as to whom the obligations of the rule apply. The Commission also believes that the MSRB alleviated concerns that the terms used in the proposed rule may be interpreted by the MSRB in a manner potentially inconsistent with statutory and Commission rule definitions of

---

101 See supra Section 3.E.

102 15 U.S.C. 78o-4(b)(2).

103 See Securities Exchange Act Release No. 70462 (September 20, 2013), 78 FR 67468, 67472-73 (November 12, 2013) (stating: "Interests offered by college savings plans ("529 Savings Plans") that comply with Section 529 of the Internal Revenue Code [footnote omitted] are another type of municipal security").

104 See supra Section 3.A.

"underwriters" and "broker-dealers." As noted above, the MSRB represented that Rule G-45 incorporates the Commission's definition of underwriter and the determination of whether a firm is an underwriter turns on the facts and circumstances, including the activities the firm performs to assist in the distribution of municipal securities, rather than the firm's status or common industry labels. The Commission agrees with the MSRB that whether a firm is an underwriter will require an individual analysis of the particular facts.

The Commission also notes that the MSRB, in its response letter, provided further clarity with regard to the reporting obligations of underwriters. Thus, the Commission believes that the MSRB's response will allow respondents to be able to ascertain the scope of their obligations under the proposed rule, including the extent to which they are responsible for providing, and verifying the accuracy of, information not in their possession. Specifically, the MSRB confirmed that the proposal will require an underwriter of a 529 plan to submit only information it possesses or has a legal right to obtain, noting that an underwriter has the legal right to obtain all information that is related to its activities in connection with the underwriting. The MSRB also noted that voluntary relinquishment of the legal right to obtain information for purposes of Rule G-45, such as by contractual provision, would not relieve an underwriter of its responsibility for providing such information.

With respect to comments that the Manual should be published for comment,[105] the MSRB has represented that the Manual will only provide technical requirements to facilitate the submission of information, not substantive information concerning the reporting obligations under Form G-45. Based on the MSRB's representation that the Manual will contain purely technical specifications, such as instructions for data entry, the Commission does not believe that

---

105 See supra Section 3.C.

the Manual must submitted as part of the proposed rule change. The Commission notes, however, that should the Manual contain any substantive requirements, it would need to be submitted as part of a proposed rule change pursuant to Section 19(b)(1) of the Act[106] and Rule 19b-4 thereunder.[107]

Finally, the Commission believes that the MSRB has adequately clarified the reporting obligations on Form G-45. In this regard, the MSRB has responded to commenters' specific inquiries regarding how to report certain information on Form G-45 in both the MSRB's response letter and Amendment No 1.[108] Accordingly, the Commission believes that these clarifications should result in more complete and correctly reported data that should allow the MSRB to fulfill its stated regulatory goals of obtaining accurate, reliable, and complete data in order to further assess and carry out its rulemaking responsibilities in this area.

For these reasons, the Commission believes that the proposed rule change, as modified by Amendment No. 1, is consistent with the Act.

## V. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether Amendment No. 1 to the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments:

- Use the Commission's Internet comment form (http://www.sec.gov/rules/sro.shtml); or

---

106 15 U.S.C. 78s(b)(1).

107 17 CFR 240.19b-4.

108 See supra Section 3.F.

- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-MSRB-2013-04 on the subject line.

Paper Comments:

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-MSRB-2013-04. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet website (http://www.sec.gov/rules/sro.shtml). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the MSRB. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-MSRB-2013-04 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

## VI. Accelerated Approval of Proposed Rule Change, as Modified by Amendment No. 1

The Commission finds good cause for approving the proposed rule change, as amended by Amendment No. 1, prior to the 30th day after the date of publication of notice in the Federal Register. As discussed above, Amendment No. 1 amends and restates the original proposed rule change to: (i) clarify that the information submitted by underwriters includes asset allocation information for the assets of each investment option; (ii) omit statements concerning the interpretation of the meaning of "underwriter" under the federal securities laws; (iii) clarify that each entity must determine, based on the facts and circumstances, whether it is an underwriter under the federal securities laws; (iv) revise the rule text to clarify that an underwriter that submits Form G-45 would be obligated to submit information only for itself and those entities that identify themselves as underwriters of 529 plans and that aggregate their information with the submitter's information; (v) clarify that underwriters identify the percentage of each underlying investment in an investment option but not submit information regarding the assets in each underlying investment; (vi) clarify that, for each investment option offered by a 529 plan, the underwriter will provide the MSRB with the name and allocation percentage of each underlying investment in each investment option as of the end of the most recent semi-annual period; (vii) clarify that the MSRB does not contemplate that a state sponsor of a 529 plan, as an instrumentality of the state, would be an underwriter under federal securities laws; (viii) explain that an underwriter would not be required to submit information on Form G-45 it neither possesses nor has the legal right to obtain; (ix) explain that, to the extent the information submitted on Form G-45 was prepared by the underwriter or, through delegation, one of its contractors or sub-contractors, and the information was inaccurate or incomplete, the underwriter would be responsible for the information and therefore be liable for such information under proposed Rule G-45; and (x) revise the rule text to clarify in Rule G-45 that performance data

shall be reported annually. These proposed revisions respond to a number of concerns expressed in the comment letters discussed above. The Commission believes that these revisions provide greater clarity on several aspects of the proposal, such as to whom the obligations of the proposed rule apply and the scope of the information that is required to be submitted by underwriters of 529 plans. Accordingly, the Commission finds good cause for approving the proposed rule change, as modified by Amendment No 1, on an accelerated basis, pursuant to Section 19(b)(2) of the Act.

## VII. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,[109] that the proposed rule change (SR-MSRB-2013-04), as modified by Amendment No. 1, be, and hereby is, approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[110]

Kevin M. O'Neill
Deputy Secretary

---

109 15 U.S.C. 78s(b)(2).

110 17 CFR 200.30-3(a)(12).