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November 1, 2013

Elizabeth M. Murphy, Secretary
U.S. Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549-1090

Re: MSRB Rule G-19, Relating to Suitability;
File No. SR-MSRB-2013-07

Dear Ms. Murphy:

The Investment Company Institute¹ appreciates the opportunity to comment on the release recently published by the Securities and Exchange Commission seeking comment on several rule amendments proposed by the Municipal Securities Rulemaking Board (“MSRB”), including amendments to MSRB Rule G-19, relating to suitability.² The amendments to MSRB Rule G-19 are designed “to more closely harmonize [the rule] with FINRA’s suitability rule” and to incorporate elements of the MSRB’s current interpretive guidance on suitability into the rule.³ The Institute supports the MSRB harmonizing its rule with FINRA’s rule and incorporating into the rule related

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 \$15.2 trillion and serve more than 90 million shareholders.

² See *Self-Regulatory Organizations; Municipal Securities Rulemaking Board; Notice of a Proposed Rule Change Consisting of Proposed MSRB Rule G-47, on Time of Trade Disclosure Obligations, Proposed Revisions to MSRB Rule G-19, on Suitability of Recommendations and Transactions, Proposed MSRB Rules D-15 and G-48, on Sophisticated Municipal Market Professional, and the Proposed Deletion of Interpretive Guidance*, SEC Release No. 34-70593; File No. SR-MSRB-2013-07 (Oct. 1, 2013)(the “SEC Release”). Of the rules discussed in the SEC Release, only the amendments to Rule G-19 would be relevant to members of the Institute so our comments are limited to those amendments.

³ Release at p. 7.

suitability guidance. However, as discussed in more detail below, we recommend that, as part of this rulemaking, the MSRB incorporate *all* relevant suitability guidance into Rule G-19 – not merely the guidance for products other than 529 college savings plans (“529 plans”), as is currently proposed. We previously made this recommendation to the MSRB when it published its proposal for comment.⁴

The SEC’s Release summarizes the comments the MSRB received when it published the proposal for comment. It notes that, among other things, the ICI’s comment letter sought clarity regarding whether the revised rule was intended to apply to 529 plans.⁵ If so, we recommended that the MSRB incorporate into Rule G-19 existing interpretive guidance relating to suitability assessments for such plans. According to the SEC Release, while the MSRB has affirmed that the revised rule would, in fact, apply to 529 plans, it has declined to revise the rule to ensure that it includes all relevant MSRB guidance relating to 529 plans. The Release does not provide any rationale to explain the basis for the MSRB’s determination.

We continue to believe that including in the revised rule *all* of the MSRB’s suitability guidance relating to 529 plans would have several advantages over the approach proposed by the MSRB, including that it would:

- Eliminate the confusion that may result from MSRB registrants believing that the MSRB’s suitability rule contains all relevant information relating to their suitability obligations;
- Avoid the need for MSRB registrants to consult other MSRB rules unrelated to suitability to determine whether they, too, include suitability obligations;
- Be consistent with the manner in which the MSRB is planning to codify the suitability requirements applicable to municipal securities other than 529 plans;⁶ and
- Ensure that dealers that recommend 529 plans will not be sanctioned under multiple MSRB rules for a singular violation of their suitability requirements.

⁴ See Letter from the undersigned to Mr. Ronald W. Smith, Corporate Secretary, MSRB, dated May 5, 2013 (“ICI’s Letter”), which commented on *Request for Comment on Revisions to Suitability Rule*, MSRB Notice 2013-07 (Mar. 11, 2013) (“MSRB Notice”). Rather than repeating the contents of ICI’s Letter in their entirety, we have attached the letter and would like the Commission to consider its contents as part of our comments in response to the SEC Release.

⁵ Release at p. 45. The Release notes that this concern was also raised by SIFMA (*Ibid.*) and that comment letters filed by the College Savings Foundation (“CSF”) and the College Savings Plan Network (“CSPN”) endorsed the concerns expressed in ICI’s letter. Release at p. 40 and fn. 52.

⁶ The MSRB has proposed to incorporate into Rule G-19 its interpretations “that nominally reference suitability obligations,” which it has previously issued under other MSRB rules, including Rules G-15, G-21, and G-32, for recommendations involving municipal securities *other than* 529 plans. MSRB Notice 2013-07 (March 11, 2013) at p. 2.

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Also, as noted in the ICI's Letter, the format of the MSRB's proposed rule, which includes Supplementary Material to provide dealers supplementary information regarding their suitability obligations, would appear to accommodate including information specific to 529 plans.

For these reasons, we again strongly recommend that the MSRB include within Rule G-19 all of its suitability guidance that applies when a dealer recommends a 529 plan. In connection with this recommendation, we note that there appears to be no exigency that warrants the MSRB adopting its revised rule prior to first comprehensively incorporating into the rule all relevant suitability requirements and guidance.⁷

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We appreciate the opportunity to provide these comments and the Commission's consideration of them. If you have any questions, please contact the undersigned at (202)326-5825.

Sincerely,

/s/

Tamara K. Salmon

Senior Associate Counsel

Attachment

⁷ According to the Release, the MSRB "may decide to create a separate rule addressing [the suitability obligations for recommendations involving] 529 plans in the future." Release at pp. 45-46. We instead recommend that the MSRB revise Rule G-19 comprehensively in connection with the current proposal and not proceed in a piecemeal fashion as they propose.



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May 5, 2013

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

Re: MSRB Notice 2013-07
Relating to Revising the Suitability Rule

Dear Mr. Smith:

The Investment Company Institute¹ is pleased to support the Municipal Securities Rulemaking Board's proposal to harmonize its suitability rule, Rule G-19, with FINRA's suitability rule, Rule 2111.² We support the proposal because it is in the best interest of investors and registrants, as briefly discussed below. We recommend, however, that the MSRB revise its proposal to include within Rule G-19 *all* suitability obligations of MSRB registrants. The basis for this recommendation is also set forth below.

SUPPORT FOR HARMONIZATION

As we have previously expressed to the MSRB, as a general matter, we support consistency between the rules of the MSRB and FINRA for two reasons.³ First, with respect to investors, harmonization ensures that, regardless of whether the product recommended is a municipal security or another type of security, the customer receives the same basic protections under the two regulatory regimes. Second, harmonization benefits registrants because it facilitates compliance by those dealers

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² See *Request for Comment on Revisions to Suitability Rule*, MSRB Notice 2013-07 (Mar. 11, 2013) ("Notice").

³ See, e.g., Letter from Tamara K. Salmon, Senior Associate Counsel, to Mr. Ghassan Hitti, Assistant General Counsel, MSRB, dated June 2, 2006 (supporting the MSRB's proposal to conform registrants' supervisory responsibilities to those of FINRA registrants).

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that are dually registered with the MSRB and FINRA by enabling them to develop consistent suitability standards from product to product without regard to which regulator's rule applies to comparable conduct.⁴

RECOMMENDATION RELATING TO 529 PLAN SUITABILITY REQUIREMENTS

Notwithstanding our support for the proposed rule, we recommend that, as part of this rulemaking, the MSRB consolidate into Rule G-19 all duties of MSRB registrants relating to suitability – including those that are found in guidance issued by the MSRB. While the Notice expresses the MSRB's interest in taking this approach as part of its current proposal, it does so only with respect to products other than 529 plans:

Over the years, the MSRB has issued guidance on suitability in connection with other issues under Rule G-17 [relating to customer protection] . . . Rather than listing information in the supplementary material to Rule G-19 that may be material to an investor, the proposed revisions include a general requirement for dealers to understand information about the municipal security or strategy and the supplemental material contains an explicit cross-reference to a dealer's obligations under proposed MSRB Rule G-47 (Time of Trade Disclosure). The remaining suitability obligations described in the Rule G-17 guidance are incorporated into revised Rule G-19.

A footnote to the last sentence of this excerpt provides: "This does not include suitability obligations with respect to 529 plans. The MSRB proposes including these obligations in a separate rule for 529 plans." Given this language, it is not clear whether the current proposal was intended to apply to MSRB registrants selling 529 plan securities. We understand from talking to the MSRB staff that the revised rule *is* intended to apply to such registrants' recommendations, and the footnote is intended to alert commenters to the MSRB's plans to publish additional guidance relating to the suitability of recommendations involving 529 plan securities. The Notice seeks comment on the proposed approach.

The Institute has long urged the MSRB to clarify in its rules which of its requirements apply to municipal fund securities (*e.g.*, 529 plan securities) versus those applicable only to other municipal securities.⁵ Earlier this year, we filed a comment letter with the MSRB strongly recommending that:

⁴ We note that FINRA has provided its members guidance regarding its interpretation of FINRA Rule 2211. *See, e.g.*, http://finra.complinet.com/en/display/display.html?rbid=2403&record_id=14960&element_id=9859&highlight=2111#r14960. In its notice adopting the proposed revisions to Rule G-19, we recommend that the MSRB confirm its intent to interpret its rule in a manner that is consistent with FINRA's interpretation.

⁵ *See, e.g.*, Letter from the undersigned to Ronald W. Smith, Secretary, MSRB, dated Feb. 19, 2013, commenting on MSRB Notice 2012-63.

... when proposing any new rules or rule revisions, or publishing any guidance for registrants, the MSRB *expressly* state whether such rule or guidance is intended to apply to both types of products and, to the extent the proposal is intended to apply to both products but would impact them differently, the MSRB notice expressly discuss and explain these differences. We believe this recommendation will go a long way toward addressing the current confusion that arises when trying to determine the intended scope and impact on 529 plan offerings of the MSRB's rules governing municipal securities. [Emphasis in original.]⁶

In the Notice, the MSRB partially responded to our previous recommendation by making specific reference in the Notice to suitability obligations with respect to 529 plans. We appreciate the MSRB's specific attention to 529 plans. We recommend, however, that, in lieu of adopting another suitability rule that would, presumably supplement Rule G-19 with respect to 529 plan recommendations, the MSRB incorporate provisions specific to 529 plans in Rule G-19.⁷ This approach would avoid the inefficiencies and confusion that may result from the MSRB having two distinct rules relating to the same topic – suitability – both of which would apply to 529 plan recommendations. Also, consolidating all suitability requirements in one rule is appropriate because, in large part, the requirements in proposed Rule G-19 will apply to MSRB registrants without regard to the products they are recommending.⁸ Moreover, the new structure proposed for Rule G-19, which adds “Supplementary Material” to the rule, would appear to lend itself to incorporating in the Supplementary Material requirements that may be solely applicable to recommendations involving 529 plans.

Accordingly, we strongly recommend that the MSRB revise its current proposal to add to Rule G-19 Supplementary Material that sets forth *all* additional suitability obligations imposed on registrants' recommendations of 529 plan securities. We also recommend, in the interest of internal consistency of the MSRB's rules, that the MSRB rescind all suitability requirements and guidance that have been issued under other MSRB rules relating to recommendations involving 529 plan securities.⁹ If the MSRB follows our recommended approach, we request that it publish for comment a revised

⁶ Id at pp. 3-4.

⁷ Alternatively, the MSRB could clarify that Rule G-19 is not intended to apply to 529 plan recommendations and propose a separate rule that applies only to recommendations regarding 529 plans and includes, in one rule, all suitability obligations imposed on such recommendations. This approach may be confusing and inefficient, however, because of the likely overlap between such separate rule and Rule G-19.

⁸ Moreover, this would avoid dealers recommending 529 plan securities from being sanctioned under two separate MSRB suitability rules for singular conduct, which seems most unfair.

⁹ Our recommended approach is consistent with the MSRB's proposal to rescind the guidance that it has previously issued under Rules G-15, G-21, and G-32 “that nominally reference suitability obligations.” Notice at p. 2.

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version of Rule G-19 and its Supplementary Material that includes any provisions designed to address unique issues that registrants must take into account when recommending 529 plan securities.

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The Institute commends the MSRB for its ongoing efforts to review its rules to ensure they remain current and to evaluate their consistency with those of the FINRA. We also appreciate the MSRB's movement toward implementing our recommendation to make clear in its rules, where appropriate, which obligations apply to municipal fund securities. If you have any questions concerning these comments, please do not hesitate to contact me at (202)326-5825.

Sincerely,

/s/

Tamara K. Salmon

Senior Associate Counsel

Cc: Lawrence P. Sandor, Deputy General Counsel