Virginia529 & ABLEnow
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VIA ELECTRONIC DELIVERY

September 25, 2017

Mr. Brent J. Fields, Secretary
U.S. Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549

Re: MSRB Rule A-13 Amendments; File No. SR-MSRB-2017-05

Dear Mr. Fields:

Virginia529 sponsors the Commonwealth of Virginia's 529 qualified tuition program and, as of December 2016, also administers our state's §529A ABLE program. With its three programs, Invest529, Prepaid529 and CollegeAmerica which is distributed and underwritten by American Funds Distributors, Virgnia529 is the largest 529 college savings plan in the nation representing, as of June 30, 2017, 20% of the 529 college savings plan market. We appreciate the opportunity to comment on the proposed revisions to Municipal Securities Rulemaking Board ("MSRB") Rule A-13 that would impose a new underwriting fee on underwriters of 529 plan securities ("Proposed Fee") and endorse the comments made by the American Funds Distributors in its September 25, 2017 letter.

We generally agree with the main concepts of the comment letter submitted by the Investment Company Institute ("ICI") and strongly recommend that the Commission abrogate or disapprove the Proposed Fee on the basis that it is unreasonable and imposes undue or inappropriate burden on market competition. In particular, the fee would only apply to advisor-sold plans that are distributed with involvement of an underwriter but would not apply to 529 plans sold directly to the public, even though direct-sold plans are now over 55% of the 529 plan industry. Furthermore, the fee would only apply to the underwriters of advisor-sold 529 plans but not the broker-dealers that effected sales into them. This would appear to be contrary to the MSRB's mission of "protect[ing] investors, municipal entities and the public interest by promoting a fair and efficient municipal market, regulating firms that engage in municipal securities and advisory activities, and promoting market transparency." A fee that is imposed in connection with municipal securities transactions but only affects some and not all of the entities engaged in them can only create a burden on competition that is neither equitable nor reasonable. While Virginia529 itself is not subject to the fee, due to the size of the assets invested in CollegeAmerica, the fee applicable to American Funds Distributors alone would be approximately $250,000.00.

Furthermore, the MSRB submission to the Commission states that, "To recognize the continuous nature of offerings in [529] plans, the MSRB will assess the proposed fee in a manner that will be similar to how the SEC assesses registration fees on mutual funds pursuant to Rule 24f-2 under the Investment Company Act

of 1940, as amended."[1] However, according to Form 24F-2 pursuant to this Rule, the annual registration fee is calculated based on each fund's *net sales* for the year. Notably, Rule 24f-2 does not require a mutual fund to repeatedly pay a fee on the same shares year after year. In contrast, the Proposed Fee would have the underwriter pay a fee based on total assets in the 529 plan each and every year, even if the plan ceased offering new shares and was closed to new investors. We believe that it is inappropriate for the Proposed Fee to be based on assets in the plan as this has no rational relationship to the MSRB's activities around the regulation of the offer and sale of 529 plans; rather, it would relate to the simple act of holding the assets, which as noted by the ICI, is an activity that by itself would not give rise to MSRB regulatory authority.

We further support the ICI's suggestion that should the Commission elect not to abrogate or disapprove the MSRB's fee, it should issue its Order consistent with the findings of the United States Court of Appeals in *Susquehanna International Group et al. v. SEC.* In *Susquehanna*, the court concluded that prior to granting approval of a rule change proposed by a self-regulatory organization (in *Susquehanna*, the Options Clearing Corporation), the Commission must expressly determine through its own findings and determinations that the proposed rule meets the requirements of the Securities Exchange Act of 1934. We support the ICI's recommendation that to be consistent with the Court's findings in *Susquehanna*, the Commission should provide evidence that it has affirmatively determined that the MSRB's proposal has satisfied the standards imposed by Section 15B(b)(2)(C) and that the Proposed Fee will "promote just and equitable principles of trade" and will not "permit unfair discrimination," or "impose any burden on competition not necessary or appropriate in furtherance of [the Securities Exchange Act]."[2]

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Thank you for considering these comments. Please feel free to contact me should you have any questions or wish to discuss our thoughts on the current proposal.

Sincerely,

Mary G. Morris
Chief Executive Officer
[redacted]

[1] *See* SEC File No. SR-MSRB-2017-05.
[2] *See Susquehanna International Group, LLP et al. v. SEC*, No. 16-1601(DC Cir. Aug. 8, 2017).