This document is scheduled to be published in the
Federal Register on 10/27/2017 and available online at
https://federalregister.gov/d/2017-23374, and on **FDsys.gov**

8011-01
SECURITIES AND EXCHANGE COMMISSION
[Release No. 34-81921; File No. SR-MSRB-2017-08]

Self-Regulatory Organizations; Municipal Securities Rulemaking Board; Notice of Filing of a Proposed Rule Change to Amend MSRB Form G-45 to Collect Additional Data About the Transactional Fees Primarily Assessed by Programs Established to Implement the ABLE Act

October 23, 2017.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Exchange Act" or "Act")[1] and Rule 19b-4 thereunder,[2] notice is hereby given that on October 13, 2017 the Municipal Securities Rulemaking Board (the "MSRB" or "Board") filed with the Securities and Exchange Commission (the "SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the MSRB. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The MSRB filed with the Commission a proposed rule change to amend Form G-45 under MSRB Rule G-45, on reporting of information on municipal fund securities,[3] to collect additional data about the transactional fees primarily assessed by programs established to implement the Stephen Beck, Jr., Achieving a Better Life Experience Act of 2014 (the "ABLE

---

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

2 17 CFR 240.19b-4.

3 Form G-45 is an electronic form on which submissions of the information required by Rule G-45 are made to the MSRB.

Act" and an "ABLE program") (the "proposed rule change").[4] The MSRB requests that the proposed rule change become effective on June 30, 2018.[5]

The text of the proposed rule change is available on the MSRB's website at www.msrb.org/Rules-and-Interpretations/SEC-Filings/2017-Filings.aspx, at the MSRB's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the MSRB included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The MSRB has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The ABLE Act added Section 529A to the Internal Revenue Code of 1986, as amended (the "Code"), to permit a state, or an agency or instrumentality thereof, to establish and maintain a new type of tax-advantaged savings program to help support individuals with disabilities in maintaining health, independence, and quality of life.[6] Section 529A was modeled, in part, on

---

4 The ABLE Act was enacted on December 19, 2014 as part of The Tax Increase Prevention Act of 2014 (Pub. L. No. 113-295).

5 As noted under "Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change" below, the proposed rule change does not alter the date that underwriters to ABLE programs must submit data under Rule G-45 to the MSRB.

6 26 U.S.C. 529A.

Section 529 of the Code.[7] Section 529 established college savings plans ("529 college savings plans") to encourage saving for future higher education costs.[8] The SEC has determined that interests offered by such 529 college savings plans are municipal securities under Section 3(a)(29) of the Act.[9]

Given the similarities between the structure of ABLE accounts and 529 college savings plan accounts and the manner in which interests in ABLE accounts would be distributed, the MSRB requested and received interpretive guidance from the SEC staff about the status of interests in ABLE accounts under the federal securities laws.[10] SEC staff stated that "at least some interests in ABLE accounts . . . may be 'municipal securities' as defined in Section 3(a)(29) of the Exchange Act, depending on the facts and circumstances"[11] and that "[i]f a dealer

---

7 Report to accompany H.R. 647, Committee on Ways and Means, H.R. Rept. No. 113-614, part 1 at 7 (2014).

8 26 U.S.C. 529(b)(1)(A)(ii). Section 529 also established prepaid tuition plans. 26 U.S.C. 529(b)(1)(A)(i). Under a prepaid tuition plan, an investor may purchase tuition credits or certificates on behalf of a designated beneficiary, which entitle the beneficiary to the waiver or payment of qualified higher education expenses. Prepaid tuition plans generally have residency requirements. Such credits or certificates generally are not viewed as being municipal securities, and dealers generally do not participate in the marketing of prepaid tuition plans.

9 Exchange Act Release No. 70462 (Sept. 20, 2013), 78 FR 67468, 67472-73 (Nov. 12, 2013). See Letter from Catherine McGuire, Chief Counsel, Division of Market Regulation, U.S. Securities and Exchange Commission, to Diane G. Klinke, General Counsel, Municipal Securities Rulemaking Board (Feb. 26, 1999) (determining that at least some interests in higher education trusts are municipal securities under the Act).

10 Letter dated March 31, 2016 from Jessica S. Kane, Director, Office of Municipal Securities, U.S. Securities and Exchange Commission to Robert A. Fippinger, Esq., Chief Legal Officer, Municipal Securities Rulemaking Board, in response to letter dated December 31, 2015 from Robert A. Fippinger to Jessica S. Kane, both letters are available at https://www.sec.gov/info/municipal/msrb-letter-033116-interests-in-able-accounts.pdf.

11 Id.

is acting as an 'underwriter' (as defined in Rule 15c2-12(f)(8)) in connection with that primary offering, the dealer may be subject to the requirements of Rule 15c2-12."[12]

After the MSRB received the SEC staff guidance, the MSRB provided interpretative guidance relating to interests in ABLE programs under MSRB Rule D-12, on the definition of "municipal fund security."[13] That guidance was followed by the August 2016 guidance published by the Board to address particular issues, including Rule G-45, applicable to the sale of interests in ABLE programs by brokers, dealers and municipal securities dealers (collectively, "dealers").[14]

Specifically, in August 2016, the MSRB filed for immediate effectiveness an amendment to Rule G-45 to delay, by two years from August 29, 2016 until August 29, 2018, the date that submissions are due under Rule G-45 from underwriters to ABLE programs (the "August filing").[15] The MSRB believed that the delay would help ensure that the MSRB would receive reliable, complete and accurate filings on Form G-45 from such underwriters. The MSRB also believed that the delay would help ensure that the MSRB would receive more meaningful data about a larger set of ABLE programs on Form G-45.[16] Similarly, to receive more meaningful

---

12 Id.

13 MSRB Notice 2016-14 (Apr. 12, 2016).

14 Id.

15 See SR-MSRB-2016-11 (Aug. 12, 2016).

16 Further, as part of that August filing, the MSRB provided guidance in supplementary material under (i) Rule G-42, that such rule applies to municipal advisors that engage in municipal advisory activities for sponsors or trustees of ABLE programs and (ii) Rule G-44, that such rule equally applies to municipal advisors that engage in municipal advisory activities for sponsors or trustees of 529 college savings plans, ABLE programs, and other municipal fund securities. That guidance provided clarity about the applicability of such rules to municipal advisors that engage in municipal advisory activities for sponsors or trustees of municipal fund securities. The MSRB provided that guidance in response to

data about ABLE programs, the MSRB submits the proposed rule change. However, this proposed rule change does not alter the date that underwriters to ABLE programs must begin to submit data to the MSRB under Rule G-45.

(ii) The collection of additional relevant fee and expense data

At the time the MSRB submitted the August filing, there were two ABLE programs that were operational. Since that time, the MSRB understands that 27 more ABLE programs have become operational. As each additional ABLE program has become operational, the MSRB has reviewed the disclosure booklet for the program to determine whether there is data about the programs that would be beneficial for the MSRB to analyze under Rule G-45 that an underwriter to an ABLE program would not be required to submit under current Form G-45. But for the program type, the review process of ABLE program fees was identical to the review process that the MSRB used in determining the data elements relating to the fees and expenses associated with an investment in a 529 college savings plan when the MSRB first developed Form G-45.

While the MSRB believes that current Form G-45 would capture most of the data that would be informative to the MSRB, the MSRB noted that there are differences between the pricing structure of certain ABLE programs and the typical 529 college savings plan. Specifically, based on the MSRB's review, there are transactional fees assessed by ABLE programs that generally are not assessed by 529 college savings plans, and there is variance based on state residency in the level of the account maintenance fee assessed by ABLE programs that generally does not occur with 529 college savings plans.[17]

---

requests from industry groups in other Board rulemaking proposals. Id.; see also MSRB Notice 2016-20 (Aug. 12, 2016).

[17] The MSRB believes that the transactional fees assessed by an ABLE program reflect the nature of an ABLE program as more of a short-term, rather than as a longer-term, savings

Rule G-45 requires dealers acting in the capacity as underwriters to ABLE programs or 529 college savings plans to submit on a semi-annual or annual basis (in the case of performance data) certain information about the programs or plans they underwrite. That information includes program or plan descriptive information, assets, asset allocation information (at the investment option level), contributions, withdrawals, fee and cost structure, performance, and other information. The MSRB and other regulatory authorities use this data to analyze 529 college savings plans (and will be able to use this data to analyze ABLE programs), monitor their growth rate, size and investment options, and compare 529 college savings plans based on fees, costs, and performance. By collecting this information, the MSRB enhances its understanding of 529 college savings plans (and will be able to enhance its understanding of ABLE programs). The Commission has agreed with the MSRB that the collection of information under Rule G-45 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 about such programs or plans.[18] The Commission has stated that "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."[19]

---

vehicle when compared to a 529 college savings plan. Further, the MSRB believes that the variance in the level or amount of the account maintenance fee assessed by an ABLE program between an in-state and an out-of-state resident account owner reflects state disability policies.

[18] Exchange Act Release No. 71598 (Feb. 21, 2014), 79 FR 11161, 11167 (Feb. 27, 2014) (SR-MSRB-2013-04).

[19] Id.

To help ensure that the MSRB continues to receive comprehensive information regarding ABLE programs and 529 college savings plans, the proposed rule change would amend Form G-45 to collect additional information relating to fees and expenses. This data would enhance the MSRB's understanding of the markets for ABLE programs and 529 college savings plans, including the differences among such programs or plans. Further, as discussed under "Statutory Basis" below, the additional fee and expense information would assist the MSRB in fulfilling its investor protection mission. The information about fees and expenses would continue to be submitted in a format that is consistent with the disclosure principles of the College Savings Plan Network ("CSPN"), an affiliate of the National Association of State Treasurers,[20] which commenters on previous MSRB rulemaking proposals relating to Form G-45 have stated is the industry norm.[21]

Under the proposed rule change, an underwriter to an ABLE program or a 529 college savings plan would be required to submit data on Form G-45 about the following additional fees and expenses, as applicable:

- account opening fee;
- investment administration fee;

---

[20] CSPN published its voluntary Disclosure Principles Statement No. 6 ("Disclosure Principles No. 6") on July 1, 2017 available at http://www.collegesavings.org/wp-content/uploads/2015/06/CSPN-Disclosure-Principles-Statement-No.-6.pdf. Disclosure Principles No. 6 recommends acceptable disclosure practices for state entities that establish and maintain 529 college savings plans. CSPN states that Disclosure Principles No. 6 also may be of use to qualified ABLE programs. See Disclosure Principles No. 6.

To assist underwriters, the MSRB included subheadings in how certain investment options fees and expenses are displayed on Form G-45 to more closely correspond with the subheadings used in Disclosure Principles No. 6. The subheadings, however, do not change any of the data elements required to be submitted on Form G-45.

[21] See SR-MSRB-2013-04 (Jun. 10, 2013).

- change in account owner fee;
- cancellation/withdrawal fee;
- change in investment option/transfer fee;
- rollover fee;
- returned excess aggregate contributions fee;
- rejected ACH or EFT fee;
- overnight delivery fee;
- in-network ATM fee;
- out-of-network ATM fee;
- ATM mini statement fee;
- international POS/ATM transaction fee;
- foreign transaction fee;
- overdraft fee;
- copy of check or statement fee (per request);
- copy of check images mailed with monthly statement fee;
- check fee (i.e., fee for blank checks);
- returned check fee;
- checking account option fee;
- re-issue of disbursement check fee;
- stop payment fee;
- debit card fee;
- debit card replacement fee;

- outgoing wire fee;
- expedited debit card rush delivery fee;
- paper fee; and
- miscellaneous fee (to address any miscellaneous transactional fee that is not otherwise specified on Form G-45).

In addition, under the proposed rule change, the MSRB would collect data about any variance in the annual account maintenance fee due to the residency of the account owner. The proposed rule would apply to underwriters to ABLE programs as well as to underwriters to 529 college savings plans.[22]

2. Statutory Basis

The MSRB believes that the proposed rule change is consistent with Section 15B(b)(2)(C) of the Act,[23] which provides that the 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.

The Act requires that the MSRB protect investors. To fulfill this responsibility, it is necessary for the MSRB to have a complete and reliable data set about ABLE programs and 529 college savings plans. That data includes data about the fees and expenses associated with an

---

[22] The MSRB, however, anticipates that most of the data that would be collected by the proposed rule change would relate to ABLE programs. As noted, the MSRB believes that 529 college savings plans generally do not assess the fees and charges that are the subject of this proposed rule change.

[23] 15 U.S.C. 78o-4(b)(2)(C).

investment in an ABLE program or a 529 college savings plan. The proposed rule change would provide the MSRB with more meaningful data about the transactional fees primarily assessed by ABLE programs and about variances in the account maintenance fee due to the residency of the account owner. The additional information about fees and expenses associated with ABLE programs and 529 college savings plans would facilitate the MSRB's ability to analyze the market for ABLE programs and 529 college savings plans as well as to evaluate trends and differences among the ABLE programs and 529 college savings plans. The MSRB believes that understanding the costs associated with ABLE programs and 529 college savings plans as well as the other data collected under Rule G-45 are basic requirements for regulation and necessary to assist the MSRB with its evaluation as to whether its regulatory scheme for dealers that sell interests in or underwrite ABLE programs and/or 529 college savings plans is sufficient, or whether additional rulemaking is necessary to protect investors. Further, the information that would be collected by the proposed rule change would help the MSRB and other regulators that examine dealers prioritize their efforts with respect to those dealers that sell interests in or underwrite ABLE programs and 529 college savings plans. Those other regulators may use this information to determine the nature or timing of risk-based dealer examinations. In short, the MSRB believes that the information to be collected by the proposed rule change would better enable the MSRB to protect investors in these programs and plans and the public interest.

Further, the MSRB has a statutory obligation to prevent fraudulent and manipulative acts and practices and to promote just and equitable principles of trade. In general, underwriters to ABLE programs and 529 college savings plans draft or participate in the drafting of the program or plan disclosure booklets, as well as the marketing materials for the ABLE program or 529 college savings plans. The MSRB or other regulators may use the information submitted on

Form G-45 to, among other things, determine if the disclosure documents or marketing materials prepared or reviewed by underwriters are consistent with the data submitted to the MSRB for regulatory purposes.

B. Self-Regulatory Organization's Statement on Burden on Competition

Section 15B(b)(2)(C) of the Act requires that MSRB rules not be designed to impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.[24] In accordance with the Board's policy on the use of economic analysis in rulemaking, the Board has reviewed the proposed rule change.[25] To fulfill its responsibility to protect investors, as ABLE programs and 529 college savings plans have significant retail investor components, the MSRB must become well informed about the fees and expenses assessed under such programs or plans and about the market for ABLE programs and 529 college savings plans as a whole. The proposed rule change is necessary for the MSRB to gather relevant data required to ensure the MSRB's regulatory scheme is sufficient and/or to determine whether additional rulemaking is necessary to protect investors and the public interest.

The proposed rule change would require an underwriter to submit additional information about the fees and expenses associated with the applicable ABLE program or 529 college savings plan. The proposed rule change would enable the MSRB to carry out its regulatory responsibilities under the Act and fulfill its mission to ensure efficiency in the market for these programs. The MSRB would realize substantial benefits in obtaining reliable and consistent information about the fees and expenses of ABLE programs and 529 college savings plans, promoting greater regulatory oversight and investor protection.

---

[24] Id.

[25] Policy on the Use of Economic Analysis in MSRB Rulemaking is available at http://msrb.org/Rules-and-Interpretations/Economic-Analysis-Policy.aspx.

Although there are costs associated with compliance with the proposed rule change, these costs should be minimal. The data that the MSRB wishes to collect are readily available and should be known to the underwriters of these plans. Additionally, underwriters are already required to submit certain information to the MSRB on Form G-45 on a semi-annual basis.[26]

Among the possible alternatives to the proposed rule change are (a) a manual review of information in program or plan disclosure documents submitted to EMMA or on program or plan websites; or (b) a review of data supplied by information vendors voluntarily. However, neither of these alternatives would satisfy the regulatory needs of the MSRB. A manual review of information would be insufficient because some of the information sought by the MSRB is not disclosed in public documents in a uniform and consistent manner. Moreover, a manual review of information would be time consuming and inefficient, especially given that underwriters are already required to submit certain information to the MSRB on a semi-annual basis. In addition, while a review of information voluntarily submitted to informational vendors may be of interest, it is unreliable from a regulatory standpoint. Information supplied by dealers that are underwriters to ABLE programs and/or 529 college savings plans to information vendors may differ with respect to its reliability and quality. Essentially, the MSRB would be relying on such information vendors for important regulatory activities. For regulatory purposes, the MSRB seeks a consistent set of uniform, reliable and relevant information about ABLE programs and 529 college savings plans.

On balance, the MSRB believes that semi-annual reporting of limited information, which is readily available to dealers that are underwriters to ABLE programs and/or 529 college

---

[26] The proposed rule change would not impose any burden on non-underwriting dealers that only sell interests in either ABLE programs or 529 college savings plans, as the obligation to submit information semi-annually to the MSRB will only be imposed on underwriters.

savings plans, would not pose an unreasonable burden on such underwriters, and the likely benefits of the proposed amendments justify the likely associated costs in both the near and long term.

The MSRB does not believe that the proposed rule change would impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The additional information would be submitted on an equal and non-discriminatory basis, and the requirement would apply equally to all dealers that serve as underwriters to ABLE programs and/or 529 college savings plans.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Written comments were neither solicited nor received on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the Federal Register or within such longer period of up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve or disapprove such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether 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
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-MSRB-2017-08 on the subject line.

Paper comments:

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

All submissions should refer to File Number SR-MSRB-2017-08. 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 am and 3:00 pm. 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. Persons submitting comments are

cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-MSRB-2017-08 and should be submitted on or before [INSERT DATE 21 DAYS FROM PUBLICATION IN THE FEDERAL REGISTER].

For the Commission, pursuant to delegated authority.[27]

Eduardo A. Aleman,
Assistant Secretary.

[27] 17 CFR 200.30-3(a)(12).

[FR Doc. 2017-23374 Filed: 10/26/2017 8:45 am; Publication Date: 10/27/2017]