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Better Disclosure: Distinguishing 529 Plans from Traditional Municipal Bond Offerings

By Tamara Salmon

The fund industry strongly supports effective public disclosure to ensure that retail and institutional investors can get the information they need to make sound investments. For disclosure to be effective, however, it has to align with marketplace realities.

That's why we recently urged the Municipal Securities Rulemaking Board (MSRB), which regulates the sale of securities issued by state and local governments, to approach proposed enhancements to public disclosure in a way that recognizes the distinctions between traditional municipal securities (bonds) and municipal *fund* securities. The latter refers to securities that are essentially mutual fund offerings under federal law. However, because these securities are issued by state and local government entities, they are regulated by the MSRB, instead of the Securities and Exchange Commission as mutual funds. The only municipal fund securities sold to retail investors are states' 529 plans.

Last May, the MSRB issued a concept release on a proposal that would increase the amount of information disclosed regarding payments by municipal securities dealers and municipal advisors. The payments in question are those that could represent conflicts of interest. The new disclosure requirements in the MSRB's proposal would apply without regard to whether the dealer is selling a traditional bond or a 529 plan.

The problem is that the proposal does not recognize that the structure, features, and operations of 529 plans are fundamentally different from traditional municipal bond offerings. As we discuss in greater detail in our comment letter to the MSRB, here are a few distinctions:

- 529 plans are not involved in helping states access capital markets.
- 529 plans are not subject to issuer default, nor do they depend on external or third-party sources of revenue to pay investors.
- 529 plans have the same basic fundamentals and structure from state to state, plan to plan, and year to year.

Another difficulty with the proposal is that it contemplates distributing these disclosures through the MSRB's Electronic Municipal Market Access (EMMA) website. We do not believe that retail investors looking for information on 529 plans would look to EMMA to provide that information. Instead, they are more likely to turn to user-friendly and more mature sites such as those of the College Savings Plan Network, the plans themselves, broker-dealers offering these plans, and other sites such as SavingforCollege.com. Many of these sites are interactive and enable investors to compare a variety of plans—something EMMA is not set up to do.

In light of the significant differences between 529 plans and traditional municipal bonds, the MSRB should instead examine whether more disclosure would be desirable in the specific context of an offering of 529 plan securities. If so, the MSRB can address the issue in a separate concept release.

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