



NASAA

---

**NORTH AMERICAN SECURITIES ADMINISTRATORS ASSOCIATION, INC.**

750 First Street N.E., Suite 1140

Washington, D.C. 20002

202/737-0900

Fax: 202/783-3571

www.nasaa.org

May 22, 2006

Nancy M. Morris, Secretary  
U. S. Securities and Exchange Commission  
100 F Street, NE  
Washington, DC 20549-0609  
rule-comments@sec.gov

Re: SR-MSRB-2006-03

Dear Ms. Morris:

I am writing this letter on behalf of the North American Securities Administrators Association, Inc (“NASAA”). Formed in 1919, NASAA remains the oldest international organization dedicated to investor protection. NASAA’s membership is comprised of 67 state, provincial and territorial securities administrators in the fifty states, the District of Columbia, the U.S. Virgin Islands, Puerto Rico, Canada and Mexico, who all share the common goal of investor protection. Our members seek to achieve this goal through their work as securities regulators and by advocating for the adoption of sound laws and regulations governing financial services.

Pursuant to our mission, NASAA has an interest in ensuring sufficient protections are in place for those investing in 529 College Savings Plans (“529 Plans”), and wishes to express its support for the efforts made by the Municipal Securities Rulemaking Board (“MSRB”) to strengthen the marketing rules and disclosure requirements in connection with the offer and sale of 529 Plans. As the market for 529 Plans has expanded and grown more complex, NASAA applauds the measures taken by the MSRB to ensure not only that these plans are being marketed appropriately, but that investors are provided adequate information and disclosures to enable them to make informed investment decisions.

To this end, we appreciate this opportunity to respond to the most recently proposed interpretive guidance issued by the MSRB regarding “Customer Protection Obligations Relating to the Marketing of 529 College Savings Plans,” (the “Notice”) and more specifically the out-of-state disclosure obligation outlined therein. One of NASAA’s main concerns surrounding 529 Plans is the marketing and sale of out-of-state 529 Plans by broker-dealers. The MSRB recognizes and shares this concern, and we commend the MSRB for addressing this issue. We are thankful that the MSRB has taken the necessary steps to identify disclosure and suitability deficiencies related to possible forgone tax and other state specific benefits where an investor purchases an out-of-state 529 Plan.

While realizing the progress that has been made in this arena, we are nonetheless concerned that certain key disclosure obligations set forth in earlier drafts were omitted from this most recent Notice. More specifically, we believe removing the comparative suitability analysis requirement and alleviating a broker-dealer’s obligation to provide specific information regarding home state

529 Plan benefits will have a detrimental effect on customers. In addition, we question the effectiveness of providing the out-of-state plan disclosures at the time of the transaction. We are at a loss to determine what practical application such information has when provided at the end of the investment decision making process. We believe the out-of-state disclosures should be made well before the trade to achieve maximum effectiveness and the mechanism for this disclosure should be more specific and concrete. Our concerns and proposed modifications are outlined below.

### **Comparative Suitability Analysis**

We believe the elimination of a broker-dealer's comparative suitability analysis obligation dilutes customer protections. In the MSRB Notice 2005-28 (the "May Notice"), broker-dealers selling out-of-state plans were obligated to inquire whether or not the realization of "state-based benefits is an important factor in the customer's investment decision." (See May Notice p.6) Where a customer indicated that state-based benefits were a significant factor in his or her decision, the broker-dealer was not only obligated to disclose "material information available from established industry sources about state based benefits offered by the home state of the customer...and whether such benefits were available in the case of the investment in an out-of-state 529 plan," but was also required to undertake a comparative suitability analysis between the investor's home state 529 Plan and the out-of-state plan being marketed by the broker-dealer. (See May Notice p.6) Under the Notice, the broker-dealer has been relieved of the duty to undertake a comparative analysis and provide information or guidance specific to the investor's home state 529 Plan.

Instead, the Notice reduces the broker-dealer's obligations to simply drawing the customer's attention to the *possibility* of state-based benefits without any attendant requirement that the broker-dealer provide specific disclosures concerning these benefits. The burden is now placed entirely on the investor to seek out information regarding their home state plan and undertake the comparative suitability analysis. In light of the complex world of 529 Plans, we believe that this omission has resulted in a considerable reduction in the customer protections contemplated by previous versions of the MSRB's interpretative guidance on this issue. In the interest of customer protection, a broker-dealer's disclosure obligations should not be deemed satisfied until, at a minimum, a comparison is made between the investor's home state 529 Plan and the out-of-state 529 Plan being marketed by the broker-dealer to the investor.

### **Point-of-Sale Disclosures**

While we are encouraged by the point-of-sale disclosures outlined in the Notice, we believe that these disclosures would better serve the interests of investors if they were provided in a more timely fashion. The Notice calls for these disclosures to be made "prior to *or at the time of trade*." (emphasis added) (See, Notice p.5) These disclosures are critical components in furtherance of the MSRB's customer protection objective. However, they will have little practical effect if a broker-dealer is permitted to wait until the time of trade to provide them. These disclosures will lose their value if the broker-dealer waits until the transaction is almost complete before advising a customer that certain benefits may be available only through their home state plan, that these benefits are an appropriate factor in their decision, *and* that prior to making a decision they should consult a financial, tax or other adviser and investigate "his or her home state or *any other* 529 college savings plan to learn more about the features, benefits and

limitations.” (See Notice p.6) To take note of and act upon this advice could take a considerable amount of time and effort. If the customer is ready to complete the transaction, it is unlikely they will delay the process to undertake the lengthy comparisons suggested in this disclosure. A customer’s interests would be better served if broker-dealers were obligated to make these disclosures *prior to* the trade. This would allow the investor time to give thoughtful consideration to these factors before making a final investment decision.

### **Manner of Disclosure**

The Notice provides that a broker-dealer’s “out-of-state disclosure obligation may be met if the disclosure appears in the program disclosure document in a manner that is reasonably likely to be noted by the investor.” (See, Notice p.6) It is left open to question whether or not customers will, in fact, take note of these disclosures or whether they will fully appreciate their importance if the manner of disclosure is so vaguely defined and imposed. Here again, the investor is left to their own devices to locate this information and to understand its value in the larger context of their investment decision. NASAA would recommend that broker-dealers be required to make a disclosure *separate* from the plan document before their disclosure obligations are deemed fulfilled. We suggest a more effective approach would be an acknowledgement page that highlights these important disclosures.

As the MSRB noted in their May Notice, the 529 Plan universe has experienced tremendous growth and has become “a much more complex market involving a wider variety of investment options, a more diversified distribution system, and a constantly shifting backdrop of state tax treatment and other state-specific benefits and limitations.” (See May Notice p.1) It is for this reason that NASAA appreciates the disclosure obligations outlined in the Notice, which reflect a strengthening of investor protections when marketing out-of-state plans. Additionally, the Notice serves to clarify and remind broker-dealers that these disclosures must be made *in addition* to a broker-dealer’s general suitability obligation. We are pleased with the MSRB’s progress in the 529 Plan area and are hopeful the MSRB will seriously consider the points made in this letter and include them in the final version of the interpretive guidance on the marketing of 529 Plans.

If we may be of any further assistance, please do not hesitate to contact me, or Karen Tyler, Chair of NASAA’s Section 529 Plan Project Group at 701-328-4702.

Sincerely,

A handwritten signature in black ink, appearing to read 'Patricia D. Struck', with a long horizontal stroke extending to the right.

Patricia D. Struck

NASAA President

Wisconsin Securities Administrator