



ABLE SAVINGS PLANS NETWORK

A Network of the National Association of State Treasurers

By Electronic Delivery

April 10, 2025

Ronald W. Smith, Corporate Secretary
Municipal Securities Rulemaking Board
1300 I Street, NW
Washington, DC 20005

Re: Comments Concerning MSRB Notice 2024-15
MSRB Requests Comment on Potential Modernization of Municipal Fund
Securities Disclosure Obligations

Dear Mr. Smith:

On behalf of its members, the ABLE Savings Plans Network (ASPN) is pleased to comment on MSRB Notice 2024-15, *Concept Release: MSRB Requests Comment on Potential Modernization of Municipal Fund Securities Obligations* issued by the Municipal Securities Rulemaking Board (“MSRB”) on December 11, 2024 (the “Notice”). ASPN is an affiliate of the National Association of State Treasurers (“NAST”) and its membership includes elected officials and senior staff in state government with oversight over Achieving a Better Life Experience (ABLE) Plans (“ABLE Plans”). These state members of ASPN are not brokers, dealers or municipal securities dealers (collectively, “Dealers”) under MSRB and do not have direct insight into some aspects of this request for comment. ASPN also has corporate affiliate members who may be Dealers. However, this response is not made on their behalf. In addition, the comments in this letter will be focused on the “Official Statement Dissemination Modernization” aspects of the Notice.

We appreciate the MSRB’s continuing commitment to assisting consumers seeking to invest in ABLE Plans and its interest in ensuring that State administrators of ABLE Plans receive sound, balanced support from their advisors. ASPN appreciates the opportunity to provide comment on the modernization of official statement dissemination and time of trade disclosure obligations regarding ABLE Plans and is pleased to offer responses to some of the questions posed in the Notice.

Discussion

ASPN appreciates the MSRB’s efforts to modernize the methods by which ABLE Plans communicate plan disclosure (“Plan Disclosure Documents”) and its continued outreach to stakeholders to solicit comment on this critical topic. ASPN has a significant interest in modernizing and streamlining the delivery process and its members have given careful consideration to how ABLE Plan account owners may receive Plan Disclosure Documents in the most efficient and

effective way possible, including a thorough review of how participants currently choose to receive this information.

Based on the results of this analysis, ASPN believes that a modified implementation of the Access Equals Delivery Alternative – one that requires notice of posting of Plan Disclosure Documents on EMMA and on the ABLE Plan’s public website – would best serve the needs of ABLE Plan account owners, as discussed more fully in our responses to Questions 1 through 4.

Given that a significant number of account owners access their ABLE Plan accounts online, as explained in ASPN’s response to Question 5, the Supplemental-Layered Disclosure Alternative would not be the most effective, efficient method of ensuring that official statements reach account owners. On the contrary, this “mixed delivery” structure may lead to confusion as to the method of delivery of subsequent Plan Disclosure Documents.

Finally, we note that ASPN’s support of the Access Equals Delivery Alternative does not change its long-standing position that state sponsors of ABLE Plans are not directly subject to the oversight of the MSRB.

Questions on Potential Amendments to Rule G-32

1. Should the MSRB modernize the disclosure delivery standard for municipal fund securities by implementing one of the two alternatives identified above? Is there another standard, other than the two alternatives noted above, that should be considered by the MSRB at this time?

ASPN is appreciative of the MSRB’s interest in modernizing municipal securities disclosure obligations and by the thoughtful alternatives presented in the Notice. We believe that the MSRB’s Access Equals Delivery Alternative, with the proposed modifications discussed below, would enable the MSRB “to balance the policy goal of modernizing the e-delivery standard for municipal fund securities to aid investors’ prompt access to timely information – recognizing technological innovations in electronic communications – with reducing burdens on dealers related to costs of paper delivery.”¹ According to the Notice, the “MSRB’s access equals delivery alternative for municipal fund securities could provide, as in the case of municipal debt securities, the official statement delivery obligation would be deemed satisfied given that the official statement and any amendments would be publicly available free on EMMA.”²

Under ASPN’s proposed modification to the Access Equals Delivery Alternative, the Plan Disclosure Document delivery obligation would be deemed satisfied given that the Plan Disclosure Document and any supplements would be made publicly available free on EMMA and on the ABLE Plan website. ASPN believes that this approach would best serve to achieve the MSRB’s stated policy goal because:

¹ See the Notice at page 8 under II. Regulatory and Marketplace Developments, A. MSRB’s Outreach Efforts.

² See the Notice at page 17 under Proposed Alternative Frameworks for Potential Amendments to Rule G-32, A. MSRB’s Access Equals Delivery Alternative. Under this alternative, “[t]he dealer would be required to provide the customer a notice explaining how to access the document. Consequently, a dealer selling a municipal fund security to a customer would be required to deliver to the customer either (a) a written notice advising the customer how to obtain the official statement from EMMA and that a copy of the official statement will be provided by the dealer upon request or (b) a physical copy of official statement.” *Id.*

- In general, investors in municipal securities are familiar with their Plan's website which they visit frequently to access information and login to transact business (e.g., make contributions or withdrawals) or perform account maintenance such as changing beneficiaries or updating contact information. In addition, investors are accustomed to being directed to the ABLE Plan's website for more information.
- In general, when ABLE Plans are offered through registered broker-dealers the Plan Disclosure Documents, commonly referred to as "program descriptions," are typically posted on the ABLE Plan's website. Requiring broker-dealers to post Plan Disclosure Documents and supplements to EMMA and the ABLE Plan's website in order to satisfy the disclosure delivery standard should not impose a significant additional compliance burden on broker-dealers or issuers.³

2. Which delivery alternative best supports investors' ease of access to information and would heighten their sense of awareness of the importance of an official statement? Please explain.

As noted in our response to Question No. 1, ABLE Plan websites have increasingly become a destination where investors come to learn about and transact business with ABLE Plans. Marketing content on ABLE Plan websites also routinely includes disclosure encouraging investors to read Plan Disclosure Documents carefully before investing, and online application processes typically include links or directions on how to access Plan Disclosure Documents. By driving investors to ABLE Plan websites to access Plan Disclosure Documents, ASPN believes our proposed modification to the Access Equals Delivery Alternative would serve to reinforce ease of access to, and heightened awareness of, the importance of Plan Disclosure Documents because ABLE Plan websites are already a cornerstone of the ABLE Plan investment life cycle for many investors.

3. Would investors, dealers, or issuers experience any new burdens under either of the two alternatives identified above?

Many ABLE Plan account owners are unfamiliar with the MSRB or EMMA. It would place an undue burden on them to require that they familiarize themselves with EMMA, a website that they would likely use only sporadically, if ever. However, as discussed above, most are very familiar with their own ABLE Plan's website since a significant majority use these websites for day-to-day activities such as making contributions, withdrawals, and investment changes.

As such, we submit that the MSRB's Access Equals Delivery Alternative, with ASPN's proposed modifications, would provide the dual benefits of sharing Plan Disclosure Documents in a location with which account owners are already familiar (ABLE Plan

³ While the MSRB is not authorized to regulate municipal entities, and therefore MSRB Rule G-32 does not apply to issuers of municipal fund securities, many issuers, but not all, who offer their municipal fund securities directly to investors voluntarily choose to take into consideration MSRB advertising and disclosure rules and guidance as a best practice, including submitting official statements to EMMA. However, it is important to note that by submitting official statements or annual financial statements to EMMA on a voluntary basis municipal issuers are not consenting to MSRB jurisdiction.

website), as well as in one central clearinghouse (EMMA).

4. Are there alternative disclosure delivery standards, other than those identified above, for an official statement that would improve investors' comprehension of disclosures and access to information while reducing dealers' cost burdens related to paper-only disclosure delivery?

As discussed above, we believe that the Access Equals Delivery Alternative, with our proposed modifications, would both improve accounts owners' access to information and reduce the costs associated with paper-only delivery of Plan Disclosure Documents.

5. What percentage of municipal fund securities customers (including 529 savings plans, ABLE programs, and LGIPs) currently rely on paper-only delivery versus using the opt-in e-delivery of disclosure documents? Please respond with data, if available, grouped by direct- sold plans and advisor-sold plans.

A recent survey by NAST involving 30 ABLE Plans, representing over 120,000 accounts (89.37% of all ABLE Plan accounts), shows that only 16% of ABLE Plan account owners rely on paper delivery of Plan Disclosure Documents. Conversely, a sizable majority of account owners are increasingly comfortable with e-delivery:

- 99% of ABLE Plan account owners have valid email addresses associated with their accounts.
- 99% of account owners are registered on their plan's online platform.
- 78% of accounts opened in 2023 were opened online.
- 83% of contributions made in 2023 were made online.
- 89% of withdrawals made in 2023 were made online.
- 84% of ABLE Plan account owners have established e-delivery as their preferred method of receiving Plan Disclosure Documents.

6. Noting that some customers are currently availing themselves of the e-delivery standard (notice, access, and evidence to show delivery) for receipt of plan disclosure documents by dealers, as provided for by the 1998 Guidance, what additional, costs or burdens, if any would be alleviated for dealers?

Switching from an opt-in to a default e-delivery standard would significantly reduce paper and postage costs for plan providers, as it would expand e-delivery to customers who have not yet opted in to e-delivery. As it currently stands, customers must either sign up for e-delivery during enrollment or actively change their delivery preference at a later time. For various reasons, a customer who prefers e-delivery might not have opted into the service. Some may have opened the account by paper years ago and never signed up for online

access, some may not be aware of how to update their delivery preference, and some may not even know that e-delivery is an option. Plan Disclosure Documents are often dozens of pages long and therefore expensive to print and send. One program manager estimates that it costs an average of approximately \$10 per account owner to mail paper disclosure documents and \$0.70 per post card for other types of plan documents. Using this estimate and the data described in the answer to question 5 above, that translates to a cost of \$127,560 per year in mailing costs for Plan Disclosure Documents and almost \$9,000 for each post card type mailing. It is likely that dealers regularly waste paper and postage to send lengthy documents to customers who may not even desire paper delivery. Making paper delivery the opt-in choice would ensure that costs are only spent on those customers who still actively desire a paper delivery, rather than those who have not updated the preferences in their account but would be satisfied by e-delivery.

- 7. While the findings from the Pew Study and SIFMA e-Delivery YouGov Survey indicate an increased reliance on the internet and growing investor preference for delivering investor communication through e-delivery, are there any additional data and statistics specifically with respect to retail investor's preference for e-delivery of investor communication for municipal fund securities, as a whole or for particular types of municipal fund securities (i.e., 529 savings plans, ABLE programs), that would provide further insight for assessing the advisability of either alternative approach to e-delivery?**

As we discussed in our response to Question 5, a significant majority of account owners prefer e-delivery. 99% have registered for online access to their accounts and 84% receive Plan Disclosure Documents via e-delivery.

- 8. Investors in LGIPs are governmental entities rather than traditional retail investors. Is there information comparable to the retail usage information described above, or differences in the nature of the investors or the LGIP product, that would be helpful in understanding the fitness of electronic disclosure for such investors?**

ASPN does not have information relevant to investments by governmental entities in LGIPs.

- 9. The MSRB notes that it cannot require issuers of municipal fund securities to prepare summary disclosures, similar to the summary prospectus permitted by the Commission for mutual funds. Still, the MSRB is interested in learning whether investors in municipal fund securities would benefit from a similar approach where, if an issuer chooses to prepare one, a summary official statement provided electronically would satisfy the requirements with respect to the delivery of the final official statement, if certain conditions are met. Given that most 529 savings plans and ABLE programs consist primarily of underlying mutual fund options, the MSRB is interested in whether satisfying delivery obligations through a summary disclosure document is feasible for municipal fund securities.**

We do not believe that issuing a summary disclosure for municipal fund securities in addition to the regular disclosure obligation would be beneficial for investors. First, we do not feel

that it is possible to create a shortened summary disclosure that mirrors the concise style of a shortened summary prospectus for a mutual fund. While mutual fund summary prospectuses generally cover the objective, fees, strategies, and risks of a single fund or a family of funds with similar attributes, most ABLE and 529 plans invest in a dozen or more different mutual funds with varied investment objectives, which would all need to be covered by the summary disclosure along with a summary of material aspects of the overall program. It would therefore be difficult to create a shortened document which also effectively covers the salient details of a program and every investment option available to customers in a concise, accurate and transparent manner. Further, the maintenance of a summary document in addition to the regular Plan Disclosure Document would place an increased burden on issuers of the plans, dealers, and distributors. Unlike mutual fund prospectuses which are generally updated once annually, Plan Disclosure Documents are updated sporadically with supplements and rewrites, sometimes multiple times in the same year. The addition of a second Plan Disclosure Document would effectively double the work necessary to keep both documents up to date and aligned with each other and require the fulfillment of an additional delivery obligation. This would also increase the risk of inconsistency between the documents. Therefore, we do not believe it would be beneficial to investors for issuers to prepare a summary disclosure for municipal fund securities.

Time of Trade Disclosure Obligation with Respect to Municipal Fund Securities

Discussion

ASPN does not believe that a stand-alone time of trade rule for municipal fund securities is necessary. ASPN agrees with its sister organization, the College Savings Plans Network (“CSPN”), that the guidance provided by the MSRB in 2006’s *Customer Protection Obligations Relating to the Marketing of 529 College Savings Plans* (“Guidance”) is extremely clear. We are unaware of member difficulties in applying the Guidance which is memorialized in the ASPN Disclosure Principles Statement No. 1, which was adopted in December 2021 (available at <https://nast.org/wp-content/uploads/able-disclosure-principles-final-nast-ec-approved-12.09.2021.pdf>).

Conclusion

ASPN appreciates the opportunity to provide comments on the MSRB’s proposed modernization of disclosure delivery standards for municipal fund securities. We strongly support the implementation of the Access Equals Delivery Alternative with our proposed modifications. We think this approach aligns with current investor behaviors, enhances accessibility, and reduces unnecessary costs and burdens on issuers and dealers. Although ASPN’s support of the Access Equals Delivery Alternative does not change its long-standing position that state sponsors of ABLE Plans are not directly subject to the oversight of the MSRB, we commend the MSRB for its efforts to modernize disclosure obligations and look forward to continued engagement on this important issue.

We hope you understand and accept our position that a stand-alone time of trade rule for municipal fund securities is unnecessary. We thank you again for providing an opportunity to comment on the Notice. Please do not hesitate to contact us with any questions or for more information. You may reach ASPN by contacting Chris Hunter at (202) 630-0064 or chris@statetreasurers.org.

Ronald W. Smith, Corporate Secretary
April 10, 2025
Page 7

Sincerely,

Bette Ann Mobley

Chair, ABLE Saving Plans Network (ASPN)
Director, Maryland ABLE