

Joint Statement of NASD and the Municipal Securities Rulemaking Board

College savings plans, called “529 Plans” (because they were established under Section 529(b)(A)(ii) of the Internal Revenue Code of 1986 as “qualified tuition programs”), typically use registered mutual funds as their primary investment vehicle. However, as 529 Plans are products of state governments, they are considered municipal securities, rather than mutual funds, under the federal securities laws. Because 529 Plans are not subject to the same disclosure and structural requirements as are mutual funds under federal securities laws, states have been free to design their 529 Plans to incorporate features not seen in the mutual fund market. Nonetheless, 529 Plan sales raise the same general types of broker-dealer sales practice issues, including suitability, as those that arise in the sale of mutual funds and therefore the harmonization of Municipal Securities Rulemaking Board (“MSRB”) rules and NASD rules would further protect the investing public.

NASD is the primary private-sector regulator of America's securities industry. NASD regulates the activities of more than 5,100 broker-dealers, 100,000 branch offices and 650,000 registered securities representatives. In addition, NASD provides outsourced regulatory products and services to a number of stock markets and exchanges.

The MSRB is the self regulatory organization established by Congress to develop rules governing broker-dealers and dealer banks that underwrite, trade and sell municipal securities, including interests in 529 Plans (“municipal securities dealers”). The MSRB sets standards for municipal securities sales by all municipal securities dealers but its rules do not regulate the activities of the state governments that establish and maintain the 529 Plans. Most municipal securities dealers subject to MSRB regulation are also licensed broker-dealers regulated by NASD. NASD enforces the MSRB’s rules with respect to non-bank broker-dealers. Federal bank regulatory authorities enforce MSRB rules with respect to dealer banks but, unlike NASD, generally do not promulgate rules governing securities sales practices.

Because 529 Plan interests constitute a unique class of municipal securities having characteristics of mutual funds rather than bonds and notes, the MSRB has adopted regulatory provisions for 529 Plan sales tailored to these distinct characteristics. The MSRB and NASD are committed to consistent investor protection standards for 529 Plans and mutual funds. Harmonization of MSRB rules and interpretations applicable to sales practices for 529 Plans and NASD rules and interpretations applicable to sales practices for mutual funds has the dual benefits of protecting investors in both markets under similar standards and subjecting municipal securities dealers to similar regulations irrespective of whether the product being sold is a 529 Plan interest or shares in a mutual fund. The MSRB and NASD believe that the two organizations have been successful in implementing substantially comparable safeguards with respect to sales practices in both marketplaces.

The MSRB and NASD have therefore agreed to the following:

- The MSRB will adopt rules and interpretations concerning 529 Plans that are equivalent to NASD rules and interpretations concerning mutual fund sales practices adopted in the future, unless the MSRB finds those rules and interpretations to be prohibited by law or inappropriate as a result of fundamental differences between mutual funds and 529 Plans. If the MSRB finds an NASD mutual fund rule to be prohibited or inappropriate, the MSRB will adopt any permissible and appropriate portions of that rule and adopt, when possible, alternative rules and interpretations providing substantially equivalent investor protections. The MSRB will work with state issuers of 529 Plans to encourage and facilitate any action by them necessary to assure regulatory consistency.
- As a means of fostering uniformity and consistency of purpose, the MSRB and NASD will each provide the other with an opportunity to comment on relevant proposed regulations and interpretations concerning 529 Plans and mutual funds before they are published or filed with the Securities and Exchange Commission.
- The MSRB and NASD will cooperate and coordinate any response to a request for information or rulemaking by the Securities and Exchange Commission concerning 529 Plans.