

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-81432; File No. SR-MSRB-2017-04)

August 18, 2017

Self-Regulatory Organizations; Municipal Securities Rulemaking Board; Notice of Filing of Amendment No. 1 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 1, Consisting of Proposed Amendments to MSRB Rule G-21(e), on Municipal Fund Security Product Advertisements

I. Introduction

On June 22, 2017, the Municipal Securities Rulemaking Board (the “MSRB” or “Board”) filed with the Securities and Exchange Commission (the “SEC” or “Commission”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change consisting of proposed amendments to MSRB Rule G-21(e), on municipal fund security product advertisements, to address important regulatory developments and to enhance investor protection in connection with municipal fund securities (the “proposed rule change”). The proposed rule change was published for comment in the Federal Register on July 7, 2017.<sup>3</sup>

The Commission received two comment letters on the proposed rule change.<sup>4</sup> On August

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<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR § 240.19b-4.

<sup>3</sup> Securities Exchange Act Release No. 81060 (June 30, 2017) (the “Notice of Filing”), 82 FR 31644 (July 7, 2017).

<sup>4</sup> See Letter to Secretary, Commission, from Michael Koffler, Eversheds Sutherland (US) LLP (“Eversheds Sutherland”), dated July 28, 2017 (the “Eversheds Sutherland Letter”); and, Letter to Secretary, Commission, from Robin Traxler, Esq., Vice President, Regulatory Affairs & Associate General Counsel, Financial Services Institute (“FSI”), dated July 28, 2017 (the “FSI Letter”).

9, 2017, the MSRB responded to those comments<sup>5</sup> and filed Amendment No. 1 to the proposed rule change (“Amendment No. 1”).<sup>6</sup> The Commission is publishing this notice to solicit comments on Amendment No. 1 to the proposed rule change from interested parties and is approving the proposed rule change, as modified by Amendment No. 1, on an accelerated basis.

## II. Description of Proposed Rule Change

In the Notice of Filing and Amendment No. 1, the MSRB stated that the purpose of the proposed rule change is to reflect relevant regulatory developments; enhance the “out-of-state disclosure obligation” about the potential other benefits an investor may be provided by investing in a 529 college savings plan offered by the home state of the investor or of the designated beneficiary; clarify that certain advertisements that contain performance data may include a hyperlink to a website that contains more recent performance data; and include several revisions that are designed to promote understanding of and compliance with the rule.<sup>7</sup> The MSRB stated that the proposed rule change would amend Rule G-21(e) to reflect two regulatory developments – the SEC’s money market reforms and the formation of the Financial Industry Regulatory Authority, Inc. (“FINRA”).<sup>8</sup>

As further described by the MSRB in the Notice of Filing, Rule G-21(e)(i)(A)(2)(c) currently requires that a municipal fund security advertisement of an investment option that the

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<sup>5</sup> See Letter to Secretary, Commission, from Pamela K. Ellis, Associate General Counsel, MSRB, dated August 9, 2017 (the “MSRB Response Letter”), available at <https://www.sec.gov/comments/sr-msrb-2017-04/msrb201704-2205630-160509.pdf>.

<sup>6</sup> Id. In Amendment No. 1, the MSRB proposed to amend the proposed rule change to Rule G-21(e)(i)(A)(2)(c) to make a minor technical change to clarify that the proposed rule change to that provision would apply to an advertisement of a municipal fund security “that has an investment option that invests solely in a money market fund.”

<sup>7</sup> See Notice of Filing and Amendment No. 1.

<sup>8</sup> See Notice of Filing.

issuer holds out as having the characteristics of a money market fund include certain disclosures.<sup>9</sup> The MSRB stated that Board designed those disclosures to protect investors by alerting them to the potential risks of investing in that investment option, and modeled the disclosures on the disclosures required for money market fund advertisements by SEC Rule 482(b)(4)<sup>10</sup> under the Securities Act of 1933, as amended (the “1933 Act”).<sup>11</sup>

The MSRB stated that the proposed rule change, as amended by Amendment No.1, would require that a municipal fund security advertisement of an investment option that invests solely in a money market fund include enhanced disclosure about the risks associated with investing in that investment option.<sup>12</sup> The MSRB stated that the disclosures that would be required by the proposed rule change reflect the SEC’s money market reforms.<sup>13</sup> The MSRB noted that the Board tailored the proposed disclosure for each of the three categories of money market funds in which a municipal fund security investment option could invest.<sup>14</sup> According to the MSRB, those categories are: (i) money market funds that are not government money market funds or retail money market funds with floating net asset values that may impose liquidity fees and that may temporarily suspend redemptions; (ii) money market funds that are government money market funds or retail money market funds that maintain stable net asset values that may impose liquidity fees or that may temporarily suspend redemptions; and (iii) money market funds

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<sup>9</sup> See Notice of Filing.

<sup>10</sup> 17 CFR 230.482(b)(4).

<sup>11</sup> See Notice of Filing.

<sup>12</sup> See Notice of Filing and Amendment No. 1.

<sup>13</sup> See Notice of Filing.

<sup>14</sup> Id.

that are government money market funds that maintain stable net asset values and that have elected not to impose liquidity fees or to temporarily suspend redemptions.<sup>15</sup> The MSRB stated that the proposed rule change to Rule G-21(e)(i)(A)(2)(c) is substantially similar to the SEC's amendments to SEC Rule 482(b)(4) under the 1933 Act, as modified to reflect the differences in the characteristics between municipal fund securities and money market funds. Specifically, the MSRB noted that an interest in a 529 college savings plan is an interest in an account (a "unit") and that the account, in turn, may invest in mutual funds such as a money market fund.<sup>16</sup> The MSRB stated that, as a result, the proposed rule change, unlike SEC Rule 482(b)(4)'s disclosure for mutual funds, refers to an investment in an investment option and an investor only indirectly investing in a money market fund through an underlying mutual fund offered by an investment option.<sup>17</sup> As discussed by the MSRB in the Notice of Filing, the proposed rule change does not refer to direct investments in a mutual fund.<sup>18</sup>

The MSRB stated that the current disclosure required by Rule G-21(e)(i)(A)(2)(c) alerts a 529 college savings plan investor that an investment option that that invests solely in a money market fund (i) is not insured or guaranteed by the Federal Deposit Insurance Corporation or any other government agency (unless such guarantee is provided by or on behalf of such issuer) and (ii) if the money market fund is held out as maintaining a stable net asset value, that although the issuer seeks to preserve the value of the investment at \$1.00 per share or such other applicable

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<sup>15</sup> Id.

<sup>16</sup> Id.

<sup>17</sup> Id.

<sup>18</sup> Id.

fixed share price, it is possible to lose money by investing in the investment option.<sup>19</sup> In addition to the current disclosure, the MSRB stated that the proposed rule change would require enhanced disclosure to alert the investor that, as applicable, the underlying mutual fund may impose a liquidity fee or suspend redemptions and that the investor should not expect the underlying fund sponsor to provide financial support to the underlying mutual fund.<sup>20</sup>

The proposed rule change also would update Rule G-21(e)(ii)(F) and Rule G-21(e)(vi) to substitute FINRA for references to the National Association of Securities Dealers, Inc. (“NASD”).<sup>21</sup>

The proposed rule change would, according to the MSRB, enhance the out-of-state disclosure required by Rule G-21(e)(i)(A)(2)(b).<sup>22</sup> Under Rule G-21(e)(i)(A)(2)(b), certain advertisements for a 529 college savings plan must provide disclosure that an investor should consider, before investing, whether the investor’s or the designated beneficiary’s home state offers any state tax or other benefits that are only available for investment in such state’s 529 college savings plan. The MSRB stated that proposed rule change would—to assist an investor’s understanding of what those other state benefits may include—require disclosure that those other state benefits may include financial aid, scholarship funds, and protection from creditors.<sup>23</sup>

The MSRB stated that the proposed rule change would provide two clarifications to the legend that must be provided in an advertisement of performance data by a municipal fund

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<sup>19</sup> See Notice of Filing and Amendment No. 1.

<sup>20</sup> See Notice of Filing.

<sup>21</sup> Id.

<sup>22</sup> Id.

<sup>23</sup> Id.

security.<sup>24</sup> Current Rule G-21(e)(i)(A)(3)(a) requires that a municipal fund security's advertisement of performance data include a legend that discloses that the performance data set forth in the advertisement represents past performance; that past performance does not guarantee future results; that the investment return and the value of the investment will fluctuate so that an investor's shares, when redeemed, may be worth more or less than their original cost; and that current performance may be lower or higher than the performance data included in the advertisement. The proposed rule change would, according to the MSRB, clarify that an investment option that invests in a government money market fund or a retail money market fund may omit the disclosure required by the legend about principal value fluctuation.<sup>25</sup> The MSRB stated that its believes that clarification is consistent with SEC Rule 482(b)(3) under the 1933 Act that permits government money market funds and retail money market funds to omit that disclosure.<sup>26</sup> In addition, the MSRB stated that the proposed rule change would clarify that the advertisement may provide a hyperlink to the website where the investor may obtain total return quotations current to most recent month end for which such total return information is available.<sup>27</sup> The MSRB noted that the Board believes that the use of the hyperlink to a website will assist investors in obtaining more current performance data.<sup>28</sup> The MSRB further stated that the use of a hyperlink to provide certain data is consistent with the rules of other financial

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<sup>24</sup> Id.

<sup>25</sup> Id.

<sup>26</sup> Id.

<sup>27</sup> Id.

<sup>28</sup> Id.

regulators.<sup>29</sup> Current Rule G-21(e)(i)(A)(3)(a) requires that the legend in a municipal fund security’s advertisement of performance data that is not current to the most recent month ended seven business days before the date of any use of the advertisement, also must disclose where the investor may obtain more current performance data. Current Rule G-21(e)(i)(A)(3)(a) also requires that the legend must include a toll-free number or a website where the investor may obtain that information.

The MSRB stated the proposed rule change would make certain revisions to the provisions of Rule G-21(e) to assist the reader’s understanding of the disclosure and to assist with a dealer’s compliance with the rule.<sup>30</sup> The proposed rule change would amend Rule G-21(e) to use terms more commonly used with municipal fund securities and that are used with the MSRB’s other rules applicable to municipal fund securities (e.g., the term “investment option”), such as MSRB Rule G-45, on reporting of information on municipal fund securities.<sup>31</sup> The proposed rule change also would amend Rule G-21(e)(i)(A)(2)(c) and Rule G-21(e)(i)(A)(3)(c) to clarify that a municipal fund security offers investment options and that those investment options, in turn, may invest in mutual funds.<sup>32</sup> Proposed paragraph .01 of the Supplementary Material would clarify that the term “investment option” shall have the same meaning as defined in Rule G-45(d)(vi).<sup>33</sup> Proposed paragraph .02 of the Supplementary Material would clarify that under Rule G-21(e)(i)(A)(2)(c), a dealer may omit the last sentence of the required disclosure if

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<sup>29</sup> Id.

<sup>30</sup> Id.

<sup>31</sup> Id.

<sup>32</sup> Id.

<sup>33</sup> Id.

that disclosure is not applicable to the underlying fund according to SEC Rule 482(b)(4) under the 1933 Act.<sup>34</sup> The proposed rule change also would amend Rule G-21(e)(i)(A)(3)(a) to clarify that an investor receives units in the municipal fund security.<sup>35</sup>

### III. Summary of Comments Received and MSRB's Responses to Comments

As noted previously, the Commission received two comment letters on the proposed rule change, as well as the MSRB Response Letter and Amendment No. 1. FSI supported the proposed rule change,<sup>36</sup> and Eversheds Sutherland suggested a minor technical revision.<sup>37</sup> The MSRB stated that it believes the proposed rule change is consistent with its statutory mandate and has responded to the comments, as discussed below.<sup>38</sup>

Eversheds Sutherland suggested that the MSRB make a minor technical change to clarify that the proposed rule change to Rule G-21(e)(i)(A)(2)(c) would apply to an advertisement of a municipal fund security “that has an investment option that invests solely in a money market fund.”<sup>39</sup> Eversheds Sutherland stated that the suggested revision was necessary for purposes of accuracy and internal consistency.<sup>40</sup>

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<sup>34</sup> 17 CFR 230.482(b)(4).

<sup>35</sup> See Notice of Filing.

<sup>36</sup> See FSI Letter.

<sup>37</sup> See Eversheds Sutherland Letter.

<sup>38</sup> See MSRB Response Letter and Amendment No. 1.

<sup>39</sup> See Eversheds Sutherland Letter.

<sup>40</sup> Id.



The MSRB stated that it agreed with Eversheds Sutherland.<sup>41</sup> In response to the comment from Eversheds Sutherland, the MSRB proposed, in Amendment No. 1, to amend the proposed rule change to clarify that the amendments to Rule G-21(e)(i)(A)(2)(c) would apply to an advertisement of a municipal fund security “that has an investment option that invests solely in a money market fund.”<sup>42</sup>

#### IV. Discussion and Commission Findings

The Commission has carefully considered the proposed rule change, the comment letters received, the MSRB Response Letter, and Amendment No. 1. The Commission finds that the proposed rule change, as modified by Amendment No. 1, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the MSRB.

In particular, the proposed rule change, as modified by Amendment No. 1, is consistent with Sections 15B(b)(2) and 15B(b)(2)(C) of the Act.<sup>43</sup> Section 15B(b)(2) of the Act requires the MSRB to adopt rules to effect the purposes of that title with respect to transactions in municipal securities effected by brokers, dealers, and municipal securities dealers and advice provided to or on behalf of municipal entities or obligated persons by brokers, dealers, municipal securities dealers, and municipal advisors with respect to municipal financial products, the issuance of municipal securities, and solicitations of municipal entities or obligated persons undertaken by brokers, dealers, municipal securities dealers, and municipal advisors.<sup>44</sup> Section 15B(b)(2)(C) of the Act requires that the MSRB’s rules be designed to prevent fraudulent and manipulative acts

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<sup>41</sup> See MSRB Response Letter and Amendment No. 1.

<sup>42</sup> Id.

<sup>43</sup> 15 U.S.C. 78o-4(b)(2); 78o-4(b)(2)(C) and 78o-4(b)(2)(G).

<sup>44</sup> See 15U.S.C. 78o-4(b)(2).

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, in general, to protect investors, municipal entities, obligated persons, and the public interest.<sup>45</sup>

The Commission believes that the proposed rule change, as modified by Amendment No. 1, is consistent with the provisions of Sections 15B(b)(2)<sup>46</sup> and 15B(b)(2)(C)<sup>47</sup> of the Act because it would update and modernize the MSRB's municipal fund security product advertising rule applicable to dealers and would enhance certain disclosures required by the rule to reflect relevant regulatory developments. The Commission believes that those enhanced disclosures would protect investors by alerting investors about certain risks of investing in investment options that in turn invest in money market funds. Further, the Commission believes that the proposed rule change would protect investors by providing the investor with (i) enhanced out-of-state disclosure concerning the potential other benefits that may be offered by investing in the 529 college saving plan offered by the investor's or the designated beneficiary's home state and (ii) the ability to obtain more current performance information through the use of a hyperlink to a website. In addition, the Commission believes that by providing investors with enhanced disclosure, each investor will have more information to evaluate the municipal fund security advertisement, which in turn, would help prevent fraudulent acts and practices as well as

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<sup>45</sup> See 15U.S.C. 78o-4(b)(2)(C).

<sup>46</sup> See 15 U.S.C. 78o-4(b)(2).

<sup>47</sup> See 15 U.S.C. 78o-4(b)(2)(C).

promote just and equitable principles of trade. The Commission also believes that the enhanced disclosures would facilitate transactions in municipal fund securities by eliminating certain discordance between the disclosure required by Rule G-21(e) relating to investment options that invest in money market funds and the disclosure required by the advertising rules applicable to money market funds registered with the Commission. By so doing, the Commission believes that it would facilitate efficient and uniform examination and enforcement by the regulators that enforce the MSRB's rules.

In approving the proposed rule change, the Commission also has considered the impact of the proposed rule change, as modified by Amendment No. 1, on efficiency, competition, and capital formation.<sup>48</sup> The Commission does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The Commission believes the proposed rule change would apply equally to all municipal fund securities dealers and may reduce inefficiencies and confusion for dealers by harmonizing MSRB rule requirements with comparable SEC requirements on advertising. The Commission believes that investors should benefit from better information in the form of more consistent and accurate advertising through updated requirements for certain municipal fund security advertisements, as investors generally value ease of comparison of different financial products.

As noted above, the Commission received two comment letters on the filing. The Commission believes that the MSRB, through its responses and through Amendment No. 1, has addressed commenters' concerns.

For the reasons noted above, the Commission believes that the proposed rule change, as modified by Amendment No. 1, is consistent with the Act.

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<sup>48</sup> 15 U.S.C. 78c(f).

V. Solicitation of Comments on Amendment No. 1

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether Amendment No. 1 to the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic comments:

- Use of the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-MSRB-2017-04 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-2017-04. 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; the Commission does not edit

personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-MSRB-2017-04 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

VI. Accelerated Approval of Proposed Rule Change, as Modified by Amendment No. 1

The Commission finds good cause for approving the proposed rule change, as amended by Amendment No. 1, prior to the 30th day after the date of publication of notice of Amendment No. 1 in the Federal Register. As noted by the MSRB, Amendment No. 1 does not raise any significant issues with respect to the proposed rule change and only provides a minor technical change that clarifies that the proposed rule change to Rule G-21(e)(i)(A)(2)(c) would apply to an advertisement of a municipal fund security “that has an investment option that invests solely in a money market fund.”

For the foregoing reasons, the Commission finds good cause for approving the proposed rule change, as modified by Amendment No. 1, on an accelerated basis, pursuant to Section 19(b)(2) of the Act.

VIII. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,<sup>49</sup> that the proposed rule change, as modified by Amendment No.1 (SR-MSRB-2017-04) be, and hereby is, approved on an accelerated basis.

For the Commission, pursuant to delegated authority.<sup>50</sup>

Robert W. Errett  
Deputy Secretary

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<sup>49</sup> 15 U.S.C. 78s(b)(2).

<sup>50</sup> 17 CFR 200.30-3(a)(12).