

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

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Form 19b-4 Information

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The self-regulatory organization must provide all required information, presented in a clear and comprehensible manner, to enable the public to provide meaningful comment on the proposal and for the Commission to determine whether the proposal is consistent with the Act and applicable rules and regulations under the Act.

Exhibit 1 - Notice of Proposed Rule Change

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The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)

Exhibit 2 - Notices, Written Comments, Transcripts, Other Communications

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Exhibit Sent As Paper Document

Copies of notices, written comments, transcripts, other communications. If such documents cannot be filed electronically in accordance with Instruction F, they shall be filed in accordance with Instruction G.

Exhibit 3 - Form, Report, or Questionnaire

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Exhibit Sent As Paper Document

Copies of any form, report, or questionnaire that the self-regulatory organization proposes to use to help implement or operate the proposed rule change, or that is referred to by the proposed rule change.

Exhibit 4 - Marked Copies

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The full text shall be marked, in any convenient manner, to indicate additions to and deletions from the immediately preceding filing. The purpose of Exhibit 4 is to permit the staff to identify immediately the changes made from the text of the rule with which it has been working.

Exhibit 5 - Proposed Rule Text

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The self-regulatory organization may choose to attach as Exhibit 5 proposed changes to rule text in place of providing it in Item I and which may otherwise be more easily readable if provided separately from Form 19b-4. Exhibit 5 shall be considered part of the proposed rule change.

Partial Amendment

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If the self-regulatory organization is amending only part of the text of a lengthy proposed rule change, it may, with the Commission's permission, file only those portions of the text of the proposed rule change in which changes are being made if the filing (i.e. partial amendment) is clearly understandable on its face. Such partial amendment shall be clearly identified and marked to show deletions and additions.

1. Text of Proposed Rule Change

(a) The Municipal Securities Rulemaking Board (the “MSRB” or “Board”) is hereby filing with the Securities and Exchange Commission (the “SEC” or “Commission”) a proposed rule change (the “proposed rule change”) consisting of (i) amendments to Rule G-21, on advertising, and Rule G-27, on supervision, and (ii) an interpretation (the “proposed interpretive notice”) on general advertising disclosures, blind advertisements and annual reports relating to municipal fund securities. The MSRB proposes that the proposed rule change be made effective on February 1, 2007, provided that the MSRB proposes that the amendments to Rules G-21(e)(i)(A)(3)(b), G-21(e)(i)(A)(3)(c), G-21(e)(i)(A)(4)(a)(iii), G-21(e)(ii)(A), G-21(e)(vii) and G-27(d)(ii), relating to disclosure of fees and expenses in product advertisements and correspondence containing performance data for municipal fund securities, be made effective on April 1, 2007. The proposed rule change is as follows:¹

Rule G-21. Advertising

(a) General Provisions.

(i) Definition of “Advertisement.” For purposes of this rule, the term “advertisement” means any material (other than listings of offerings) published or used [designed for use] in any electronic or other [the] public[, including electronic,] media, or any written or electronic promotional literature distributed or made generally available to customers or [designed for dissemination to] the public, including any notice, circular, report, market letter, form letter, telemarketing script, seminar text, press release concerning the products or services of the broker, dealer or municipal securities dealer, or reprint, or any excerpt of the foregoing or of a published article. The term does not apply to preliminary official statements or official statements, but does apply to abstracts or summaries of official statements, offering circulars and other such similar documents prepared by brokers, dealers or municipal securities dealers.

(ii) Definition of “Form Letter.” For purposes of this rule, the term “form letter” means any written letter or electronic mail message distributed to 25 or more persons within any period of 90 consecutive days.

(iii) General Standard for Advertisements. Subject to the further requirements of this rule relating to professional advertisements and product advertisements, no broker, dealer or municipal securities dealer shall publish or disseminate, or cause to be published or disseminated, any advertisement relating to municipal securities that such broker, dealer or municipal securities dealer knows or has reason to know is materially false or misleading.

¹ Underlining signifies additions; brackets signify deletions.

(b) *Professional Advertisements.*

(i) Definition of “Professional Advertisement.” The term “professional advertisement” means [No broker, dealer or municipal securities dealer shall publish or cause to be published] any advertisement concerning the facilities, services or skills with respect to municipal securities of such broker, dealer or municipal securities dealer or of another broker, dealer, or municipal securities dealer[.],

(ii) Standard for Professional Advertisements. No broker, dealer or municipal securities dealer shall publish or disseminate, or cause to be published or disseminated, any professional advertisement that is materially false or misleading.

(c) *Product Advertisements.*

(i) Definition of “Product Advertisement.” The term “product advertisement” means [No broker, dealer or municipal securities dealer shall publish or cause to be published] any advertisement concerning one or more specific municipal securities, one or more specific issues of municipal securities, the municipal securities of one or more specific issuers, or the specific features of municipal securities.

(ii) Standard for Product Advertisements. No broker, dealer or municipal securities dealer shall publish or disseminate, or cause to be published or disseminated, any product advertisement that [which] such broker, dealer, or municipal securities dealer knows or has reason to know is materially false or misleading and, to the extent applicable, that is not in compliance with section (d) or (e) hereof.

(d) *New Issue Product Advertisements.* In addition to the requirements of section (c), all product advertisements for new issue municipal securities (other than municipal fund securities) shall be subject to the following requirements:

(i)-(ii) No change.

(e) *Municipal Fund Security Product Advertisements.* In addition to the requirements of section (c), all product advertisements for municipal fund securities shall be subject to the following requirements:

(i) *Required [d]Disclosures.*

(A) Substance and Format of Disclosure. Except as described in paragraph (B) of this subsection (i), each product [Each] advertisement for municipal fund securities:

(1) basic disclosure – [(A)] must include a statement to the effect that:

(a) [(1) advises] an investor should [to] consider the investment objectives, risks, and charges and expenses associated with municipal fund securities before investing;

(b) [(2) explains that] more information about municipal fund securities is available in the issuer's official statement;

(c) [(3)] if the advertisement identifies a source from which an investor may obtain an official statement and the broker, dealer or municipal securities dealer that publishes the advertisement is the underwriter for one or more of the issues of municipal fund securities for which any such official statement may be supplied, [states that] such broker, dealer or municipal securities dealer is the underwriter for one or more issues (as appropriate) of such municipal fund securities; and

(d) [(4) states that] the official statement should be read carefully before investing.

(2) additional disclosures for identified products – [(B)] that refers by name (including marketing name) to any municipal fund security, issuer of municipal fund securities, state or other governmental entity that sponsors the issuance of municipal fund securities, or to any securities held as assets of municipal fund securities or to any issuer thereof, must include the following disclosures, as applicable:

(a) [(1)] unless the offer of such municipal fund securities is exempt from Exchange Act Rule 15c2-12 and the issuer thereof has not produced an official statement, a source from which an investor may obtain an official statement;

(b) [(2)] if the advertisement relates to municipal fund securities issued by a qualified tuition program under Internal Revenue Code Section 529, a statement to the effect that [advises] an investor should [to] consider, before investing, whether the investor's or designated beneficiary's home state offers any state tax or other benefits that are only available for investments in such state's qualified tuition program; provided, however, that this statement shall not be required for any advertisement relating to municipal fund securities of a specific state if such advertisement is sent to, or is otherwise distributed through means that are reasonably likely to result in the advertisement being received by, only residents of such state and is not otherwise published or disseminated

by the broker, dealer or municipal securities dealer, or made available by the broker, dealer or municipal securities dealer to any of its affiliates, the issuer or any of the issuer's agents with the expectation or understanding that such other parties will otherwise publish or disseminate such advertisement; and

(c) [(3)] if the advertisement is for a municipal fund security that the issuer holds out as having the characteristics of a money market fund, statements to the effect that an investment in the security 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, if the security 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 fixed share price, it is possible to lose money by investing in the security.

(3) additional disclosures concerning performance – [(C)] that includes performance data must include:

(a) [(1)] a legend disclosing that the performance data included 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. Unless the advertisement includes total return quotations current to the most recent month ended seven business days prior to the date of any use of the advertisement, the legend must also identify either a toll-free (or collect) telephone number or a website where an investor may obtain total return quotations current to the most recent month-end for which such total return, or all information required for the calculation of such total return, is available; [and]

(b) [(2)] if a sales load or any other nonrecurring fee is charged, the maximum amount of the load or fee (including the maximum sales charge imposed on purchases or the maximum deferred sales charge, to the extent applicable, current as of the date such advertisement is submitted for publication or otherwise disseminated) and, if the sales load or fee is not reflected in the performance data included in the advertisement, a statement that the performance data does not reflect the deduction of the sales load or fee and that the performance data would be lower if such load or fee were included[.]; and

(c) to the extent that such performance data relates to municipal fund securities that are not held out as having the characteristics of a money market fund and to the extent applicable, the total annual operating expense ratio of such municipal fund securities (calculated in the same manner as the total annual fund operating expenses required to be included in the registration statement for a registered investment company, subject to paragraph (e)(ii)(A) hereof), gross of any fee waivers or expense reimbursements, current as of the date of submission of such advertisement for publication.

(4) format of disclosure – [(D)] must meet the following legibility requirements:

(a) for a print advertisement:

(i) [present] the statements required by subparagraphs (1), (2) and (3) [clauses (A), (B) and (C)] of this paragraph (A) must be presented[, when in a print advertisement,] in a type size at least as large as and of a style different from, but at least as prominent as, that used in the major portion of the advertisement, provided that when performance data is presented in a type size smaller than that of the major portion of the advertisement, the statements required by subparagraph (3) [clause (C)] of this paragraph may appear in a type size no smaller than that of the performance data[.];

(ii) the statements required by subparagraph (3) of this paragraph must be presented in close proximity to the performance data; provided that such statements must be presented in the body of the advertisement and not in a footnote unless the performance data appears only in such footnote; and

(iii) the maximum sales charge or maximum deferred sales charge required to be disclosed pursuant to clause (3)(b) and the information required to be disclosed pursuant to clause (3)(c), along with the standardized performance information mandated by Securities Act Rule 482 as applicable by virtue of subsection (e)(ii) of this rule, must be presented in a prominent text box that contains only such information but which may also contain comparative performance and fee data and disclosures required under this section (e).

(b) for [If] an advertisement [is] delivered through an electronic medium;[.]

(i) the legibility requirements for the statements required by subparagraphs (1), (2) and (3) [clauses (A), (B) and (C)] of this paragraph relating to type size and style may be satisfied by presenting the statements in any manner reasonably calculated to draw investor attention to them;[.]

(ii) if such advertisement is [In] a radio or television advertisement, the statements required by subparagraphs (1), (2) and (3) [clauses (A), (B) and (C)] of this paragraph must be given emphasis equal to that used in the major portion of the advertisement; and[.]

(iii) the [The] statements required by subparagraph (3) [clause (C)] of this paragraph must be presented in close proximity to the performance data. [and, in a print advertisement, must be presented in the body of the advertisement and not in a footnote unless the performance data appears only in such footnote.]

(B) *Exceptions from Certain Disclosure Requirements.* Notwithstanding any other provision of this rule, the following advertisements relating to municipal fund securities shall not be subject to the provisions of subparagraphs (1) and (2) of paragraph (e)(i)(A):

(1) *generic advertisements* – any advertisement that does not refer by name to any specific investment option or portfolio offered by an issuer of municipal fund securities, but includes the name and address of the broker, dealer or municipal securities dealer or other person sponsoring the advertisement, and that is limited to any one or more of the following:

(a) explanatory information relating to municipal fund securities generally or the nature of the issuers thereof or of the programs through which they are issued, or to services offered in connection with the ownership of such securities; or

(b) the mention or explanation of municipal fund securities of different generic types or having various investment objectives; or

(c) offers, descriptions, and explanations of various products and services not constituting a municipal fund security, provided that such

offers, descriptions, and explanations do not relate directly to the desirability of owning or purchasing a municipal fund security; or

(d) invitation to inquire for further information; provided that if an official statement for municipal fund securities is to be sent or delivered in response to such inquiries and if the sponsor of the advertisement is the underwriter for one or more of the issues of municipal fund securities for which such official statement may be supplied, the advertisement must state that such broker, dealer or municipal securities dealer is the underwriter for one or more issues (as appropriate) of such municipal fund securities.

(2) *certain blind advertisements* – any advertisement that does not identify a broker, dealer or municipal securities dealer or any affiliate of a broker, dealer or municipal securities dealer and that is limited to any one or more of the following:

(a) the name of an issuer of municipal fund securities; or

(b) contact information for an issuer of municipal fund securities or for any agent of such issuer to obtain an official statement or other information; provided that, if any such agent of the issuer is a broker, dealer or municipal securities dealer or an affiliate of a broker, dealer or municipal securities dealer, no orders for municipal fund securities shall be accepted through such source unless initiated by the customer; or

(c) a logo or other graphic design of an issuer of municipal fund securities that does not directly or indirectly identify the broker, dealer or municipal securities dealer or any affiliate of the broker, dealer or municipal securities dealer; or

(d) a service mark, trademark or short slogan of the issuer's general objectives that does not constitute a call to invest in municipal fund securities.

(3) *certain form letters to existing customers* – any form letter distributed solely to existing customers of the broker, dealer or municipal securities dealer to whom the broker, dealer or municipal securities dealer has previously sent or caused to be sent an official statement for:

(a) any municipal fund securities of the issuer of such municipal fund securities; or

(b) any municipal fund securities of a different issuer of municipal fund securities, provided that the advertisement includes the applicable disclosures under clause (e)(i)(A)(1)(c) and subparagraph (e)(i)(A)(2) of this rule.

(ii) *Performance [d]Data*. Each product advertisement that includes performance data relating to municipal fund securities must present performance data in the format, and calculated pursuant to the methods, prescribed in paragraph (d) of Securities Act Rule 482 (or, in the case of a municipal fund security that the issuer holds out as having the characteristics of a money market fund, paragraph (e) of Securities Act Rule 482) and, to the extent applicable, subparagraph (e)(i)(A)(4) of this rule, provided that:

(A) *source of data* – to the extent that information necessary to calculate performance data or to determine loads, fees and expenses for purposes of clause (e)(i)(A)(3)(b) or (c) is not available from an applicable balance sheet included in a registration statement, or from a prospectus, the broker, dealer or municipal securities dealer shall use information derived from the issuer's official statement, otherwise made available by the issuer or its agents, or (when unavailable from the official statement, the issuer or the issuer's agents) derived from such other sources which the broker, dealer or municipal securities dealer reasonably believes are reliable;

(B) *period of calculation* – if the issuer first began issuing the municipal fund securities fewer than one, five, or ten years prior to the date of the submission of the advertisement for publication, such shorter period shall be substituted for any otherwise prescribed longer period in connection with the calculation of average annual total return or any similar returns;

(C) *currentness of calculation* – performance data shall be calculated as of the most recent practicable date considering the type of municipal fund securities and the media through which data will be conveyed, except that any advertisement containing total return quotations will be considered to have complied with this paragraph provided that:

(1) (a) the total return quotations are current to the most recent calendar quarter ended prior to the submission of the advertisement for publication for which such performance data, or all information required for the calculation of such performance data, is available to the broker, dealer or municipal securities dealer as described in paragraph [clause] (A) of this subsection (e)(ii) [paragraph]; and

(b) total return quotations (current to the most recent month ended seven business days prior to the date of any use of the advertisement for which such total return, or all information required for the calculation of such total return, is available to the broker, dealer or municipal securities dealer as described in paragraph [clause] (A) of this subsection (e)(ii) [paragraph]) are provided at the toll-free (or collect) telephone number or website identified pursuant to clause (i)(A)(3)(a) [paragraph (i)(C)(1)] of this section (e) and the month to which such information is current is identified; or

(2) the total return quotations are current to the most recent month ended seven business days prior to the date of any use of the advertisement for which such total return, or all information required for the calculation of such total return, is available to the broker, dealer or municipal securities dealer and the month to which such information is current is identified.

(D) 12b-1-type plans – where such calculation is required to include expenses accrued under a plan adopted under Investment Company Act Rule 12b-1, the broker, dealer or municipal securities dealer shall include all such expenses as well as any expenses having the same characteristics as expenses under such a plan where such a plan is not required to be adopted under said Rule 12b-1 as a result of Section 2(b) of the Investment Company Act of 1940;

(E) tax-adjusted calculations – in calculating tax-equivalent yields or after-tax returns, the broker, dealer or municipal securities dealer shall assume that any unreinvested distributions are used in the manner intended with respect to such municipal fund securities in order to qualify for any federal tax-exemption or other federally tax-advantaged treatment with respect to such distributions, provided that: (1) the advertisement must also provide a general description of how federal law intends that such distributions be used and disclose that such yield or return would be lower if distributions are not used in this manner; and (2) if the then-effective federal income tax treatment upon which such yield or return was based is subject to lapse or other adverse change without extension or change of federal law, the advertisement must disclose this fact and that such yield or return would be lower if the then-effective federal income tax treatment is not extended or otherwise changed.]

(F) applicability with respect to underlying assets – notwithstanding any of the foregoing, this subsection (e)(ii) [paragraph] shall apply solely to the calculation of performance relating to municipal fund securities and does not apply to, or limit the applicability of any rule of the Commission, NASD or any other regulatory body relating to, the calculation of performance for any security held as an underlying asset of the municipal fund securities.

(iii) *Nature of [i]Issuer and [s]Security.* An advertisement for a specific municipal fund security must provide sufficient information to identify such specific security in a manner that is not false or misleading. An advertisement that identifies a specific municipal fund security must include the name of the issuer (or the issuer's marketing name for its issuance of municipal fund securities, together with the state of the issuer), presented in a manner no less prominent than any other entity identified in the advertisement, and must not imply that a different entity is the issuer of the municipal fund security. An advertisement must not raise an inference that, because municipal fund securities are issued under a government-sponsored plan, investors are guaranteed against investment losses if no such guarantee exists. If an advertisement concerns a specific class or category of an issuer's municipal fund securities (*e.g.*, A shares versus B shares; direct sale shares versus advisor shares; in-state shares versus national shares; etc.), this must clearly be disclosed in a manner no less prominent than the information provided with respect to such class or category.

(iv) *Capacity of [d]Dealer and [o]Other [p]Parties.* An advertisement that relates to or describes services provided with respect to municipal fund securities must clearly indicate the entity providing those services. If any person or entity other than the broker, dealer or municipal securities dealer is named in the advertisement, the advertisement must reflect any relationship between the broker, dealer or municipal securities dealer and such other person or entity. An advertisement soliciting purchases of municipal fund securities that would be effected by a broker, dealer or municipal securities dealer or any other entity other than the broker, dealer or municipal securities dealer that publishes the advertisement must identify which entity would effect the transaction, provided that the advertisement may identify one or more such entities in general descriptive terms but must specifically name any such other entity if it is the issuer, an affiliate of the issuer, or an affiliate of the broker, dealer or municipal securities dealer that publishes the advertisement. This subsection (iv) shall not apply to any advertisement described in subparagraph (e)(i)(B)(2) of this rule.

(v) *Tax [c]Consequences and [o]Other [f]Features.* Any discussion of tax implications or other benefits or features of investments in municipal fund securities included in an advertisement must not be false or misleading. In the case of an advertisement that includes generalized statements regarding tax or other benefits offered in connection with such municipal fund securities or otherwise offered under state or federal law, the advertisement also must include a generalized statement [state] that the availability of such tax or other benefits may be conditioned on meeting certain requirements. If the advertisement describes the nature of specific benefits, such advertisement must also briefly list [name] the substantive factors that may materially limit the availability of such benefits (such as residency, purpose for or timing of distributions, or other factors, as applicable). Such statements of conditions or limitations must be presented in close proximity to, and in a manner no less prominent than, the description of such benefits.

(vi) *Underlying [r]Registered [s]Securities*. If an advertisement for a municipal fund security provides specific details of a security held as an underlying asset of the municipal fund security, the details included in the advertisement relating to such underlying security must be presented in a manner that would be in compliance with any Commission or NASD advertising rules that would be applicable if the advertisement related solely to such underlying security; provided that details of the underlying security must be accompanied by any further statements relating to such details as are necessary to ensure that the inclusion of such details does not cause the advertisement to be false or misleading with respect to the municipal fund securities advertised. This subsection [paragraph] does not limit the applicability of any rule of the Commission, NASD or any other regulatory body relating to advertisements of securities other than municipal fund securities, including advertisements that contain information about such other securities together with information about municipal securities.

(vii) Correspondence Presenting Performance Data. Notwithstanding any other provision of this rule, all correspondence with the public that includes performance data relating to municipal fund securities must comply with the provisions of subparagraph (e)(i)(A)(3) (presented in the manner provided in subparagraph (e)(i)(A)(4)) and subsection (e)(ii) as if such correspondence were a product advertisement under this rule.

(f) No change.

* * * * *

Rule G-27. Supervision

(a)-(c) No change.

(d) *Review of Correspondence*

(i) No change.

(ii) *Review of correspondence*. Each dealer shall develop written procedures that are appropriate to its business, size, structure, and customers for the review of incoming and outgoing written (i.e., non-electronic) and electronic correspondence with the public relating to its municipal securities activities, including review for compliance with Rule G-21(e)(vii) to the extent applicable to such dealer's business. Procedures shall include the review of incoming, written correspondence directed to municipal securities representatives and related to the dealer's municipal securities activities to properly identify and handle customer complaints and to ensure that customer funds and securities are handled in accordance with the dealer's procedures. Where such procedures for the review of correspondence do not require review of all correspondence prior to use or distribution, they must include provisions for the education and training of associated persons as to the dealer's procedures governing correspondence;

documentation of such education and training; and surveillance and follow-up to ensure that such procedures are implemented and adhered to.

(iii) No change.

(e) No change.

* * * * *

Interpretation on General Advertising Disclosures, Blind Advertisements and Annual Reports Relating to Municipal Fund Securities under Rule G-21

Rule G-21, on advertising, establishes specific requirements for advertisements by brokers, dealers and municipal securities dealers (“dealers”) of municipal fund securities, including but not limited to advertisements for 529 college savings plans (“529 plans”). This notice sets forth interpretive guidance under Rule G-21 with respect to time-limited broadcast advertisements, blind advertisements, and annual reports or other similar information required to be distributed under state mandates.

General Disclosures in Time-Limited Broadcast Advertisements

Rule G-21(e)(i)(A) requires certain basic disclosures to be provided in product advertisements for municipal fund securities. These disclosures are not legends requiring the inclusion of specific language. Rather, these disclosure requirements may be complied with if the substance of such information is effectively conveyed, regardless of the specific language used in the advertisement. In general, the context in which the information is provided is an important factor in determining whether the information is effectively conveyed.

These required disclosures may present challenges in the context of broadcast advertisements, such as traditional television or radio commercials with 30-second run-times or public service announcements with shorter run-times. In the context of time-limited broadcast advertisements, dealers should provide such disclosures in a manner that appropriately balances the intended message with the required disclosures. Given the unique nature of broadcast advertisements, where the oral presentation of more information can often result in a decreased likelihood that the central message of such information will be understood and retained, somewhat abbreviated forms of the required disclosures may be appropriate for such time-limited broadcast advertisements, particularly if the disclosures are made with close attention paid to ensuring that they are presented with equal prominence to the remainder of the message.

Thus, for example, in a time-limited broadcast advertisement for a non-money market 529 plan, the following language, spoken in a manner consistent with the remaining oral presentation of information, generally would satisfy the disclosure requirements of Rule G-

21(e)(i)(A): “To learn about [529 plan name], its investment objectives, risks and costs, read the official statement available from [source]. Check with your home state to learn if it offers tax or other benefits for investing in its own 529 plan.” Further, in a time-limited television advertisement, the source for the official statement, together with a contact telephone number or web address, generally could be displayed on screen while other portions of the disclosures are spoken. This example is intended to be illustrative and is not intended to be exclusive or to necessarily establish a baseline for disclosure.

Blind Advertisements

Under Rule G-21(e)(i)(B)(2), certain product advertisements for municipal fund securities that promote an issuer and its public purpose without promoting specific municipal fund securities or identifying a dealer or its affiliates may omit the general disclosures otherwise required under Rule G-21(e)(i)(A). Among other things, such a blind advertisement may include contact information for the issuer or an agent of the issuer to obtain an official statement or other information, provided that if such issuer’s agent is a dealer or dealer affiliate, no orders may be accepted through such source unless initiated by the customer. Although the contact information may direct a potential customer to a dealer or its affiliate acting as agent of the issuer, the face of the advertisement may not identify such dealer or affiliate.

For example, a blind advertisement may say “call 1-800-xxx-xxxx for more information” or “go to www.[state-name]-529plan.com for more information” but may not say “call [dealer name] at 1-800-xxx-xxxx for more information” or “go to www.[dealer-name]-529plan.com for more information.” This provision does not preclude the person who answers a phone inquiry, or the website to which the URL links, from identifying the dealer or its affiliate, so long as such dealer or affiliate is clearly disclosed to be acting on behalf of the issuer identified in the advertisement.

If a potential customer initiates an order through the source identified in the advertisement, a distinct barrier between the providing of information and the seeking of orders must be maintained to qualify as a blind advertisement. For example, solely for purposes of Rule G-21(e)(i)(B)(2), a dealer may establish that the customer initiated the order by requiring, in the case of a telephone inquiry, that the customer be transferred from the initial dealer contact person to a different person before the customer provides any information used in connection with an order or, in the case of a web-based inquiry, that the customer navigate from the initial webpage referred to in the advertisement to another page on the same or different web site before entering any information used in connection with an order.¹ Of course, the dealer must be mindful of its obligation under Rule G-17, on fair practice, to provide to the customer, at or prior to the time of trade, all material facts about the transaction known by the dealer as well as material facts about the security that are reasonably accessible to the market, regardless of whether the transaction was recommended or whether an order may be characterized as

unsolicited.² In addition, if the transaction is recommended, the dealer must fulfill its obligations with respect to suitability under Rule G-19, on suitability of recommendations and transactions.³

Required Annual Reports Excluded from Definition of Advertisement

In some cases, a dealer may be required, by state law or the rules and regulations adopted by the state or an instrumentality thereof governing a particular 529 plan or other municipal fund security program, to prepare or distribute an annual financial report or other similar information regarding such plan or program. So long as a dealer provides any such required report or information with respect to a 529 plan or other municipal fund securities program solely in the manner required by such state law or rules and regulations, such report or information will not be treated as an advertisement for purposes of Rule G-21.⁴ However, the dealer would remain subject to Rule G-17, which requires that the dealer deal fairly with all persons, prohibits the dealer from engaging in any deceptive, dishonest or unfair practice and requires the dealer to provide to its customer, at or prior to the time of trade, all material facts about a transaction known by the dealer or that are reasonably accessible to the market. In addition, if such information is used in any manner beyond what is narrowly required by such law, rules or regulation, such use of the information would become subject to Rule G-21 as an advertisement.⁵

¹ These methods are not intended to be the exclusive means by which a dealer could establish that the customer initiated the order.

² See Rule G-17 Interpretation – Interpretive Notice Regarding Rule G-17, on Disclosure of Material Facts, March 20, 2002, reprinted in MSRB Rule Book.

³ See Rule G-17 Interpretation – Interpretation on Customer Protection Obligations Relating to the Marketing of 529 College Savings Plans, August 7, 2006, reprinted in MSRB Rule Book.

⁴ If such information is distributed through the official statement, then it would not be considered an advertisement by virtue of the exclusion of official statements from the definition of “advertisement” in Rule G-21(a)(i).

⁵ This guidance is consistent with similar guidance provided by NASD with respect to its advertising rule, Rule 2210, as applied to certain performance information and hypothetical illustrations required by state laws to be provided by dealers in connection with retirement investments and variable annuity contracts. See letter dated November 29, 2004, to Therese Squillacote, Chief Compliance Officer, ING Financial Advisers, LLC, from Philip A. Shaikun, Assistant General Counsel, NASD; letter dated September 30, 2002, to Sally Krawczyk, Esq., Sutherland, Asbill & Brennan, LLP, from Mr. Shaikun; and letter dated February 5, 1999, to W. Thomas Conner, Vice President,

Regulatory Affairs, National Association of Variable Annuities, from Robert J. Smith, Office of General Counsel, NASD Regulation, Inc.

* * * * *

(b) Not applicable.

(c) Not applicable.

2. Procedures of the Self-Regulatory Organization

The proposed rule change was adopted by the MSRB at its October 11-13, 2006 meeting. Questions concerning this filing may be directed to Ernesto A. Lanza, Senior Associate General Counsel, at (703) 797-6600.

3. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(a) In 2005, the MSRB adopted new section (e) of Rule G-21 that established specific standards for advertisements by brokers, dealers and municipal securities dealers ("dealers") of municipal fund securities, including interests in 529 college savings plans ("529 plans").² This section of the rule was modeled in part on Rule 482 adopted by the SEC under the Securities Act of 1933, as amended (the "Securities Act"), and also codified previous MSRB interpretive guidance on advertisements of municipal fund securities. On May 12, 2006, the MSRB published interpretive guidance on certain elements of amended Rule G-21 as they apply to advertisements of 529 plans.³

² Municipal fund securities are defined in Rule D-12. 529 college savings plans are established by states under Section 529(b)(A)(ii) of the Internal Revenue Code as "qualified tuition programs" through which individuals make investments for the purpose of accumulating savings for qualifying higher education costs of beneficiaries. Section 529 of the Internal Revenue Code also permits the establishment of so-called prepaid tuition plans by states and higher education institutions. All references to 529 plans are intended to encompass only 529 college savings plans established under Section 529(b)(A)(ii).

³ See Rule G-21 Interpretive Letter – 529 College Savings Plan Advertisements, *MSRB Interpretation of May 12, 2006*, published in MSRB Notice 2006-13 (May 15, 2006) (the "May 2006 Interpretation"). When approved, the proposed rule change will supersede this May 2006 Interpretation.

The proposed rule change further harmonizes the MSRB's advertising rule with the rules of the SEC and NASD relating to mutual fund advertising. The proposed rule change also provides certain clarifications of and exceptions to existing standards that the MSRB believes more closely tailor the provisions of the rule to the specific characteristics of the municipal fund securities market without reducing the investor protections afforded by the rule. Although most of the amendments effected by the proposed rule change relate specifically to advertisements of municipal fund securities, certain provisions would apply to advertisements of all types of municipal securities, including bonds and notes.

Provisions of General Applicability

Definition of Advertisement. The proposed rule change modifies the existing definition of "advertisement" as set forth in Rule G-21(a)(i)⁴ to more closely conform it to the terms "advertisement" and "sales literature" under NASD Rule 2210(a)(1) and (2). The revised definition is intended to be as inclusive as the combined definitions of "advertisement" and "sales literature" under NASD and SEC rules, except as otherwise specifically provided in Rule G-21(a)(i). Thus, the reference in the revised definition of "advertisement" to any electronic or other public media should be read as broadly as in the definition of "advertisement" under NASD Rule 2210(a)(1), even though the definition set forth in Rule G-21(a)(i) does not include the list of media that currently or in the future may appear in the NASD definition.

Definition of Form Letter. The proposed rule change adds a new definition of "form letter" in Rule G-21(a)(ii) that is consistent with Rule 24b-1 under the Investment Company Act of 1940, as amended (the "Investment Company Act"), but clarifies that a form letter includes both written letters (including post cards and similar mailings) and electronic mail messages.

Definitions of and Content Standards for Professional and Product Advertisements. The proposed rule change provides explicit definitions for "professional advertisement" and "product advertisement" and sets forth the applicable content standards for these types of advertisements. The amendment to the definition of "professional advertisement" under Rule G-21(b)(i) does not effect a change in how such term has been viewed historically under the rule. The amendment to the definition of "product advertisement" under Rule G-21(c)(i), however, clarifies that it applies to advertisements of specific municipal securities or advertisements that discuss specific features of municipal securities, rather than to advertisements that may merely

⁴ The proposed rule change re-designates several existing provisions and incorporates new headings for many provisions to assist in compliance with the rule. References herein to rule provisions refer to such provisions as re-designated in the proposed rule change.

mention general categories of municipal securities.⁵ The content standard for professional advertisements under Rule G-21(b)(ii) is unchanged, as is the baseline standard for product advertisements under Rule G-21(c)(ii).⁶

General Content Standard for Advertisements. Rule G-21(a)(iii) establishes a general content standard for advertisements that are neither professional advertisements nor product advertisements.⁷ This standard is the same as the existing baseline content standard for product advertisements. The MSRB emphasizes that *all* advertisements, regardless of category, are subject to the MSRB's basic fair dealing rule, Rule G-17, which requires each dealer, in the conduct of its municipal securities activities, to deal fairly with all persons, and prohibits the dealer from engaging in any deceptive, dishonest or unfair practice. The proposed rule change does not alter these fair dealing principles, which continue to apply to all advertisements.

Generic and Blind Advertisements for Municipal Fund Securities

Generic Advertisements. The proposed rule change incorporates in Rule G-21(e)(i)(B)(1), with minor modifications, the provisions of Securities Act Rule 135a of the SEC relating to generic mutual fund advertising. Just as a generic mutual fund advertisement that meets the requirements of Rule 135a generally need not comply with Securities Act Rule 482 (including the general disclosure provisions under that rule), so too a generic advertisement of municipal fund securities that meets the requirements of Rule G-21(e)(i)(B)(1) would not need to include the general disclosures required under Rule G-21(e)(i)(A).

Blind Advertisements. The proposed rule change provides for more limited disclosures for certain blind advertisements under Rule G-21(e)(i)(B)(2). Under this provision, advertisements that promote an issuer and its public purpose without promoting specific municipal fund securities or identifying a dealer or its affiliates would be permitted to limit basic

⁵ The definition of "product advertisement" in the proposed rule change codifies interpretive guidance provided in the May 2006 Interpretation.

⁶ However, the additional specific content standards under section (e) of Rule G-21 for municipal fund securities product advertisements are modified by the proposed rule change, as described below.

⁷ The May 2006 Interpretation effectively recognized that the professional and product advertisement content standards under existing Rule G-21 may not apply to certain advertisements that do not fit neatly into either category.

disclosures in the same manner as generic advertisements.⁸ A blind advertisement may contain contact information for the issuer or its agent to obtain an official statement or other information, provided that if the dealer or its affiliate acts as such agent, no orders may be accepted through such contact unless such order is initiated by the customer. The proposed interpretive notice emphasizes that a blind advertisement may not identify the dealer or its affiliate and provides guidance to dealers acting as the issuer's agent in responding to customer inquiries and accepting customer orders made through the contact information included in a blind advertisement. The guidance provided with regard to whether an order may have been initiated by the customer applies solely to this provision of Rule G-21 and is not intended to be determinative as to whether the dealer has recommended the transaction to the customer for purposes of Rule G-19, on suitability of recommendations and transactions, since, depending on the facts and circumstances, the customer may have initiated the order based on a recommendation from the dealer.

In addition, advertisements qualifying as blind advertisements under Rule G-21(e)(i)(B)(2) are excepted from the requirement in Rule G-21(e)(iv) to include the dealer's capacity since the dealer is not identified in the advertisements.

Performance Data for Municipal Fund Securities

Disclosure of Fees and Expenses in Advertisements and Correspondence. The proposed rule change includes provisions substantially similar to recently approved NASD Rule 2210(d)(3) relating to mutual fund advertisements, sales literature and correspondence containing performance data, which becomes effective on April 1, 2007.⁹ Rule G-21(e)(i)(A)(3)(b) and (c) will require that advertisements containing performance data for municipal fund securities disclose the relevant maximum sales charge or deferred sales charge and total annual operating expense ratio.¹⁰ Print advertisements will be required under Rule G-21(e)(i)(A)(4)(a)(iii) to include text box disclosure of this information, which may be combined with comparative performance and fee data and disclosures provided for under section (e) of the rule. New Rule G-21(e)(vii) will provide that any correspondence with the public that includes

⁸ This provision effectively codifies, with minor modifications, interpretive guidance provided in the May 2006 Interpretation.

⁹ See Exchange Act Release 54103 (July 5, 2006), 71 FR 39379 (July 12, 2006). See also NASD Notice to Members 06-48 (September 2006).

¹⁰ Additional language included in Rule G-21(e)(i)(A)(3)(c) and (e)(ii)(A) recognizes that municipal fund securities are not subject to the registration requirements of the Securities Act and is designed to ensure that information on fees and expenses is determined in a manner consistent with the registered mutual fund market, to the extent possible.

performance data for municipal fund securities must comply with the performance data requirements of Rule G-21(e) as if such correspondence were a product advertisement under that section of the rule. The proposed rule change adds language in Rule G-27(d)(ii), on supervision, with respect to supervisory procedures relating to the review of correspondence for compliance with this new requirement.¹¹ The MSRB has proposed that these provisions of the proposed rule change also be made effective on April 1, 2007.

Disclosures Relating to Tax-Adjusted Performance Data. The proposed rule change amends Rule G-21(e)(ii)(E) to delete subparagraph (2). The deleted provision currently requires that, in connection with the calculation of any tax-equivalent yield or after-tax return that appears in an advertisement for municipal fund securities, if the then-effective federal income tax treatment upon which such yield or return was based is subject to lapse or other adverse change without extension or change of federal law, the advertisement must disclose this fact and that such yield or return would be lower if the then-effective federal income tax treatment is not extended or otherwise changed. This deletion reflects the repeal of the sunset provision for many of the federal tax benefits enjoyed by 529 plans, as described below.

General Disclosure Requirements for Municipal Fund Securities

Substance of Disclosure. The proposed rule change makes several modifications to rule language in Rule G-21(e)(i)(A)(1) and (2) relating to disclosures designed to communicate basic information concerning investments in municipal fund securities. The modified provisions and the proposed interpretive notice clarify that these disclosures are not legends requiring the inclusion of specific language but instead require that such information be effectively conveyed. Thus, these disclosure requirements may be complied with if the substance of such information is effectively conveyed, regardless of the specific language used in the advertisement.¹² In general, the context in which the information is provided is an important factor in determining whether the information is effectively conveyed.

The MSRB understands that these advertising disclosures have presented considerable challenges in the context of broadcast advertisements, such as traditional television or radio commercials with 30-second run-times or public service announcements that may have

¹¹ The language added to Rule G-27(D)(ii) makes clear that a dealer's supervisory provisions must provide for review of correspondence for compliance with the performance data requirements, but only to the extent that such requirements are applicable given the nature of the dealer's municipal securities activities. Thus, dealers that do not market municipal fund securities generally would not be required to provide for review of correspondence for compliance with Rule G-21(e)(vii).

¹² Compare Rule G-21(e)(i)(A)(3)(a), where a legend is explicitly required.

considerably shorter run-times.¹³ The proposed interpretive notice provides guidance on the use of abbreviated forms of the required disclosures in time-limited broadcast advertisements.

Home State Tax Benefits. Rule G-21(e)(i)(A)(2)(b) requires 529 plan product advertisements to include disclosure to the effect that investors should consider, before investing, whether their home states offer state tax or other benefits only available for investments in the home state 529 plan. The proposed rule change permits dealers to omit such disclosures in advertisements (such as form letters, post cards, e-mails and other written or electronic mailings) concerning a state's 529 plan that are sent to, or are otherwise distributed through means that are reasonably likely to result in the advertisements being received by, only residents of such state. The MSRB views such omission as most suitable with respect to advertisements that are delivered directly to intended recipients, and not well suited with respect to broadcast advertisements where the dealer would bear the burden of establishing that such broadcast is reasonably likely to result in the message being received only by in-state residents.

Communications with Existing Customers. The proposed rule change adds new Rule G-21(e)(i)(B)(3), which permits dealers to distribute form letters that omit some or all of the disclosures required under Rule G-21(e)(i)(A)(1) and (2) to existing customers who have previously invested in municipal fund securities. Form letters sent solely to existing customers about the same or related municipal fund securities that such customers already own may omit all of the standard disclosures under such subparagraphs (1) and (2) since that information will have previously been provided to such customers. If the form letters relate to municipal fund securities other than, or unrelated to, the one the customer already invests in, then the disclosures under subparagraph (2) are required. Furthermore, if the form letter identifies a source for obtaining an official statement and the dealer underwrites the municipal fund securities advertised in the form letter, the dealer is required to disclose that it is the underwriter.

Tax-Related Disclosures for Municipal Fund Securities

Rule G-21(e)(v) requires a product advertisement for municipal fund securities that discusses tax benefits to disclose that such benefits may be conditioned on meeting certain requirements. If the nature of specific benefits is described, the factors that may materially limit their availability must be named. The proposed rule change modifies this subsection to clarify that generalized statements regarding tax benefits require only a generalized statement that certain conditions may apply and that, where specific benefits are described, only those substantive factors that may materially affect the ability to realize such benefits must be listed,

¹³ These disclosures can be lengthier for many 529 plan advertisements than for mutual fund advertisements as a result of the home state tax benefit disclosures generally required under Rule G-21(e)(i)(A)(2)(b) as described below, which are not required in connection with mutual fund advertisements.

rather than explained in full. For example, a statement that 529 plans are federally tax-advantaged, or that investors may qualify for federal tax benefits by investing in a 529 plan, without identifying the specific benefits, would be viewed as generalized statements. In such cases, a statement that certain conditions may apply, or that refers customers to the official statement for more information, would be sufficient. Furthermore, the inclusion of the required home state tax disclosure under Rule G-21(e)(i)(A)(2)(b) does not, by itself, require the disclosure of conditions for receiving such state tax benefits.

Required Annual Reports Excluded from Definition of Advertisement

The proposed interpretive notice provides guidance to the effect that, in circumstances where a dealer may be required by state law or rules and regulations to prepare or distribute an annual financial report or other similar information regarding a municipal fund securities program, such report or information will not be treated as an advertisement so long as the dealer provides such report or information solely in the manner required by such state law or rules and regulations.

Effective Dates

The MSRB proposes that the proposed rule change be made effective on February 1, 2007, provided that the MSRB proposes that the amendments to Rules G-21(e)(i)(A)(3)(b), G-21(e)(i)(A)(3)(c), G-21(e)(i)(A)(4)(a)(iii), G-21(e)(ii)(A), G-21(e)(vii) and G-27(d)(ii), on disclosure of fees and expenses in product advertisements and correspondence containing performance data for municipal fund securities, be made effective on April 1, 2007 to coincide with the effective date of NASD Rule 2210(d)(3).

(b) The MSRB has adopted the proposed rule change pursuant to Section 15B(b)(2)(C) of the Securities Exchange Act of 1934, as amended (the “Exchange Act”), which provides that MSRB’s rules shall:

be designed to prevent fraudulent and manipulative acts 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, to remove impediments to and perfect the mechanism of a free and open market in municipal securities, and, in general, to protect investors and the public interest.

The MSRB believes that the proposed rule change is consistent with the Exchange Act because it will further investor protection by raising the standards for advertisements of municipal fund securities and by making information provided in such advertisements comparable for different municipal fund securities investments and between municipal fund securities and registered mutual funds.

4. Self-Regulatory Organization's Statement on Burden on Competition

The MSRB 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 Exchange Act since it would apply equally to all dealers.

5. Self-Regulatory Organization's Statement on Comments Received on the Proposed Rule Change by Members, Participants, or Others

On August 11, 2006, the MSRB published for comment draft amendments to Rules G-21 and G-27 relating to advertisements of 529 plans (the "Notice").¹⁴ The draft amendments, as published in the Notice, would: (1) modify the definition of "advertisement" to more closely align it with the definitions used by the SEC and NASD in connection with advertising and sales materials; (2) adopt a definition of "form letter" consistent with the definition used by the SEC under the Investment Company Act; (3) establish an explicit baseline standard for advertisements and more clearly define "professional advertisement" and "product advertisement"; (4) adopt provisions for generic advertisements of municipal fund securities that are substantially the same as under Securities Act Rule 135a of the SEC relating to generic mutual fund advertisements; (5) adopt provisions requiring advertisements and correspondence containing performance data to also include disclosure of fees and expenses that are substantially the same as under recently approved amendments to NASD Rule 2210(d)(3); (6) clarify and simplify the general disclosure requirements with respect to certain broadcast advertisements, promotional materials and form letters relating to municipal fund securities; and (7) clarify and simplify the nature of disclosures required in advertisements of municipal fund securities in connection with tax matters and tax-adjusted performance data.

The MSRB received comments from three commentators.¹⁵ After reviewing the comments, the MSRB has determined to file this proposed rule change. The proposed rule change is substantially similar to the draft amendments, with certain modifications discussed below. The principle comments and the MSRB's responses are also discussed below.

¹⁴ See MSRB Notice 2006-26 (August 11, 2006).

¹⁵ Letters from: Jacqueline T. Williams, Chair, College Savings Plan Network ("CSPN"), to Ernesto A. Lanza, MSRB, dated September 22, 2006; Dorothy M. Donohue, Associate Counsel, Investment Company Institute ("ICI"), to Mr. Lanza, dated September 22, 2006; and Michael Udoff, Vice President, Associate General Counsel and Secretary, and Elizabeth Varley, Vice President and Director, Retirement Policy, Securities Industry Association ("SIA"), to Mr. Lanza, dated September 22, 2006.

Additional Disclosures Relating to Home State Tax Benefits

Rule G-21 currently requires 529 plan advertisements to state that investors should consider whether their home states offer state tax or other benefits only available for investments in the home state 529 plan. For advertisements (such as form letters, post cards, e-mails and other written or electronic mailings) concerning a state's 529 plan that are sent solely to residents of that state, the draft amendment modified this provision to permit dealers to omit such disclosure since it is not relevant to such recipients.

CSPN requested that language in this provision referencing advertisements published or disseminated by "the issuer or any of the issuer's agents" be deleted since the MSRB has no authority to regulate issuers. The MSRB notes that this provision was not intended to regulate the actions of issuers, but rather to limit the ability of a dealer to use this exception if its advertisement is further disseminated by other parties, including the issuer or its agents. However, to avoid ambiguity, the MSRB has modified Rule G-21(e)(i)(A)(2)(b) to replace this language with language that instead refers to advertisements made available by dealers to the issuer or any of the issuer's agents with the expectation or understanding that such other parties will otherwise publish or disseminate such advertisements.

Generic Advertisements

The draft amendments incorporated the SEC's generic mutual fund advertising rule, which allows dealers to omit many required disclosures from mutual fund advertisements that contain only general information about mutual funds and that may name a fund family but not specific mutual funds. CSPN, ICI and SIA requested that language in the draft amendments stating that a generic advertisement may not refer by name "to any specific municipal fund security" be deleted, arguing that it creates ambiguities as to whether a reference in an advertisement to a 529 plan's general program name (which they view as being functionally equivalent to the fund family name in the mutual fund market) would disqualify such advertisement from being considered a generic advertisement.¹⁶

The provisions of Rule G-21(e)(i)(B)(1) were intended to treat 529 plan advertisements in a manner that parallels mutual fund advertisements and the MSRB believes that the deletion requested by the commentators would be appropriate and consistent with the intended operation of this provision. Thus, as this provision has been modified in the proposed rule change, an advertisement that mentions the 529 plan's general program name could be considered a generic advertisement if all other relevant conditions have been met. However, mention of specific

¹⁶ CSPN observed that this ambiguity arises from the fact that some no-action letters issued by the SEC with respect to 529 plans refer to various interests relating to such 529 plans, other than the individual shares purchased by customers, as municipal securities.

investment options or portfolios would disqualify the advertisement from being treated as a generic advertisement.

Blind Advertisements

The draft amendments provided that a blind advertisement that promotes an issuer and its public purpose without promoting specific municipal fund securities or identifying a dealer or its affiliates also would qualify as a generic advertisement. Among other things, a blind advertisement may include contact information for the issuer or an agent of the issuer to obtain an official statement or other information, provided that if such issuer's agent is a dealer or dealer affiliate, no orders for 529 plans may be accepted through such source. The provision for blind advertisements was designed to address the unique characteristics of the 529 plan market, where regulated dealers and issuers not subject to MSRB regulation often undertake public-private partnerships in marketing 529 plans, raising issues that do not arise in the registered mutual fund market.

CSPN and ICI requested clarification that the use in an advertisement of a phone number or web site that includes the name of a dealer acting as the issuer's agent would not preclude such advertisement from being treated as a blind advertisement. The intent of this provision is that a blind advertisement cannot, on its face, identify a dealer or its affiliates. Therefore, although contact information may be included in the advertisement that directs a potential customer to a dealer or its affiliate acting as agent of the issuer, the face of the advertisement may not identify such dealer or affiliate. The proposed interpretive notice provides guidance on information that may be included in a blind advertisement.

CSPN and ICI also requested modifications to the language providing that, if the source for more information identified in the advertisement is the dealer or a dealer affiliate, no orders may be accepted through that source. The commentators were concerned that a reference to a website for more information would preclude such website from allowing investments in the 529 plan. CSPN stated that "[e]very web site on which an individual can purchase interests in a Section 529 Plan requires the investor to acknowledge reading or receiving the Official Statement before investing. It is not clear what would be gained by requiring the potential investor to get information from one web site and then make the purchase on another web site." ICI suggested alternative language to the effect that "no initial orders for municipal fund securities shall be accepted through such source, unless before placing such an order an investor is required to acknowledge that he or she received the official statement for such securities."

The MSRB understands the concern expressed in connection with web-based sources but believe that ICI's suggested language is not the appropriate approach to addressing this issue, particularly since Rule G-17, on fair practice, already requires dealers to provide all material

facts about the transaction known by the dealer, as well as material facts about the security that are reasonably accessible to the market, to the customer on or prior to the time of trade.¹⁷ Given that the provision for blind advertisements seeks to ensure that such advertisements are informational in nature and not primarily designed to promote sales by the dealer, the MSRB believes that a distinct barrier between providing information and seeking orders should be maintained. However, the MSRB does not believe that such barrier should create an arbitrary disincentive for those potential customers who themselves seek to initiate an order.

Thus, the proposed rule change modifies the language of Rule G-21(e)(i)(B)(2)(b) to allow the acceptance of orders if initiated by the customer. The proposed interpretive notice provides guidance on ensuring that only customer-initiated orders are accepted through a source identified in a blind advertisement.

Tax-Adjusted Performance Data

Rule G-21 currently provides that, in calculating tax-equivalent yield or after-tax return for a 529 plan advertisement, the advertisement must effectively disclose that such yield or return would be lower if the sunset provision for many of the federal tax benefits enjoyed by 529 plans, previously scheduled to occur on January 1, 2011, were not repealed. In view of the recent enactment of the Pension Protection Act of 2006 (Public Law 109-280), which repealed this sunset provision, the Notice sought comment on whether this provision should be deleted. CSPN, ICI and SIA agreed that this provision should be deleted. Thus, the proposed rule change deletes this provision in Rule G-21(e)(ii)(E).

Required Annual Reports Excluded from Definition of Advertisement

CSPN stated that the broad definition of advertisement in Rule G-21 could be construed to include annual financial reports undertaken by many dealers acting as 529 plan program managers. CSPN stated that such annual reports are not solicitations of new business and suggested that audited annual reports produced for or in conjunction with issuers be explicitly exempted from treatment as an advertisement.

The MSRB notes that NASD has issued several interpretive letters in which NASD addresses the applicability of its advertising rule, Rule 2210, to certain performance information and hypothetical illustrations required by state laws to be provided by dealers in connection with

¹⁷ See Rule G-17 Interpretation – Interpretive Notice Regarding Rule G-17, on Disclosure of Material Facts, March 20, 2002, *reprinted in MSRB Rule Book*.

retirement investments and variable annuity contracts.¹⁸ In each case, NASD concluded that the provision by dealers of the information required by state law would not be treated as an advertisement or sales literature for purposes of Rule 2210 so long as the information was provided solely in the manner required by law. NASD further stated that any additional use of such information beyond what is required by law would be subject to the NASD advertising rule. In addition, NASD stated in one of the interpretive letters that the use of such information by the dealer remained subject to all other NASD rules and the federal securities laws, including the anti-fraud provisions.

The MSRB believes that the approach NASD has taken with respect to mutual funds is appropriate as well with respect to 529 plans and other municipal fund securities programs and has provided guidance to this effect in the proposed interpretive notice.

6. Extension of Time Period for Commission Action

The MSRB declines to consent to an extension of the time period specified in Section 19(b)(2) of the Exchange Act.

7. Basis for Summary Effectiveness Pursuant to Section 19(b)(3) or for Accelerated Effectiveness Pursuant to Section 19(b)(2)

Not applicable.

8. Proposed Rule Change Based on Rules of Another Self-Regulatory Organization or of the Commission

The proposed rule change is based in part on Securities Act Rule 135a, Investment Company Act Rule 24b-1 and NASD Rule 2210. The similarities and differences between the proposed rule change and such other rules are described in Items 3(a) and 5 above.

¹⁸ See letter dated November 29, 2004, to Therese Squillacote, Chief Compliance Officer, ING Financial Advisers, LLC, from Philip A. Shaikun, Assistant General Counsel, NASD; letter dated September 30, 2002, to Sally Krawczyk, Esq., Sutherland, Asbill & Brennan, LLP, from Mr. Shaikun; and letter dated February 5, 1999, to W. Thomas Conner, Vice President, Regulatory Affairs, National Association of Variable Annuities, from Robert J. Smith, Office of General Counsel, NASD Regulation, Inc.

9. Exhibits

1. Federal Register Notice.
2. Notice and comment letters.

EXHIBIT 1

SECURITIES AND EXCHANGE COMMISSION

(RELEASE NO. 34- ; File No. SR-MSRB-2006-09)

SELF-REGULATORY ORGANIZATIONS

Proposed Rule Change by the Municipal Securities Rulemaking Board Relating to Rule G-21, on Advertising, and Rule G-27, on Supervision

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1) (the “Exchange Act”), notice is hereby given that on November 21, 2006, the Municipal Securities Rulemaking Board (the “MSRB”) filed with the Securities and Exchange Commission (the “SEC” or “Commission”) the proposed rule change as described in Items, I, II, and III below, which Items have been prepared by the MSRB. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

The MSRB has filed with the SEC a proposed rule change consisting of (i) amendments to Rule G-21, on advertising, and Rule G-27, on supervision, and (ii) an interpretation (the “proposed interpretive notice”) on general advertising disclosures, blind advertisements and annual reports relating to municipal fund securities. The MSRB proposes that the proposed rule change be made effective on February 1, 2006, provided that the MSRB proposes that the amendments to Rules G-21(e)(i)(A)(3)(b), G-21(e)(i)(A)(3)(c), G-21(e)(i)(A)(4)(a)(iii), G-21(e)(ii)(A), G-21(e)(vii) and G-27(d)(ii),

relating to disclosure of fees and expenses in product advertisements and correspondence containing performance data for municipal fund securities, be made effective on April 1, 2007. The text of the proposed rule change is available on the MSRB's Web site (<http://www.msrb.org>), at the MSRB's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the MSRB included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The MSRB has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

In 2005, the MSRB adopted new section (e) of Rule G-21 that established specific standards for advertisements by brokers, dealers and municipal securities dealers ("dealers") of municipal fund securities, including interests in 529 college savings plans ("529 plans").¹ This section of the rule was modeled in part on Rule 482 adopted by the

¹ Municipal fund securities are defined in Rule D-12. 529 college savings plans are
(continued . . .)

SEC under the Securities Act of 1933, as amended (the “Securities Act”), and also codified previous MSRB interpretive guidance on advertisements of municipal fund securities. On May 12, 2006, the MSRB published interpretive guidance on certain elements of amended Rule G-21 as they apply to advertisements of 529 plans.²

The proposed rule change further harmonizes the MSRB’s advertising rule with the rules of the SEC and NASD relating to mutual fund advertising. The proposed rule change also provides certain clarifications of and exceptions to existing standards that the MSRB believes more closely tailor the provisions of the rule to the specific characteristics of the municipal fund securities market without reducing the investor protections afforded by the rule. Although most of the amendments effected by the proposed rule change relate specifically to advertisements of municipal fund securities, certain provisions would apply to advertisements of all types of municipal securities, including bonds and notes.

(. . . continued)

established by states under Section 529(b)(A)(ii) of the Internal Revenue Code as “qualified tuition programs” through which individuals make investments for the purpose of accumulating savings for qualifying higher education costs of beneficiaries. Section 529 of the Internal Revenue Code also permits the establishment of so-called prepaid tuition plans by states and higher education institutions. All references to 529 plans are intended to encompass only 529 college savings plans established under Section 529(b)(A)(ii).

² See Rule G-21 Interpretive Letter – 529 College Savings Plan Advertisements, *MSRB Interpretation of May 12, 2006*, published in MSRB Notice 2006-13 (May 15, 2006) (the “May 2006 Interpretation”). When approved, the proposed rule change will supersede this May 2006 Interpretation.

Provisions of General Applicability

Definition of Advertisement. The proposed rule change modifies the existing definition of “advertisement” as set forth in Rule G-21(a)(i)³ to more closely conform it to the terms “advertisement” and “sales literature” under NASD Rule 2210(a)(1) and (2). The revised definition is intended to be as inclusive as the combined definitions of “advertisement” and “sales literature” under NASD and SEC rules, except as otherwise specifically provided in Rule G-21(a)(i). Thus, the reference in the revised definition of “advertisement” to any electronic or other public media should be read as broadly as in the definition of “advertisement” under NASD Rule 2210(a)(1), even though the definition set forth in Rule G-21(a)(i) does not include the list of media that currently or in the future may appear in the NASD definition.

Definition of Form Letter. The proposed rule change adds a new definition of “form letter” in Rule G-21(a)(ii) that is consistent with Rule 24b-1 under the Investment Company Act of 1940, as amended (the “Investment Company Act”), but clarifies that a form letter includes both written letters (including post cards and similar mailings) and electronic mail messages.

³ The proposed rule change re-designates several existing provisions and incorporates new headings for many provisions to assist in compliance with the rule. References herein to rule provisions refer to such provisions as re-designated in the proposed rule change.

Definitions of and Content Standards for Professional and Product

Advertisements. The proposed rule change provides explicit definitions for “professional advertisement” and “product advertisement” and sets forth the applicable content standards for these types of advertisements. The amendment to the definition of “professional advertisement” under Rule G-21(b)(i) does not effect a change in how such term has been viewed historically under the rule. The amendment to the definition of “product advertisement” under Rule G-21(c)(i), however, clarifies that it applies to advertisements of specific municipal securities or advertisements that discuss specific features of municipal securities, rather than to advertisements that may merely mention general categories of municipal securities.⁴ The content standard for professional advertisements under Rule G-21(b)(ii) is unchanged, as is the baseline standard for product advertisements under Rule G-21(c)(ii).⁵

General Content Standard for Advertisements. Rule G-21(a)(iii) establishes a general content standard for advertisements that are neither professional advertisements

⁴ The definition of “product advertisement” in the proposed rule change codifies interpretive guidance provided in the May 2006 Interpretation.

⁵ However, the additional specific content standards under section (e) of Rule G-21 for municipal fund securities product advertisements are modified by the proposed rule change, as described below.

nor product advertisements.⁶ This standard is the same as the existing baseline content standard for product advertisements. The MSRB emphasizes that *all* advertisements, regardless of category, are subject to the MSRB's basic fair dealing rule, Rule G-17, which requires each dealer, in the conduct of its municipal securities activities, to deal fairly with all persons, and prohibits the dealer from engaging in any deceptive, dishonest or unfair practice. The proposed rule change does not alter these fair dealing principles, which continue to apply to all advertisements.

Generic and Blind Advertisements for Municipal Fund Securities

Generic Advertisements. The proposed rule change incorporates in Rule G-21(e)(i)(B)(1), with minor modifications, the provisions of Securities Act Rule 135a of the SEC relating to generic mutual fund advertising. Just as a generic mutual fund advertisement that meets the requirements of Rule 135a generally need not comply with Securities Act Rule 482 (including the general disclosure provisions under that rule), so too a generic advertisement of municipal fund securities that meets the requirements of Rule G-21(e)(i)(B)(1) would not need to include the general disclosures required under Rule G-21(e)(i)(A).

Blind Advertisements. The proposed rule change provides for more limited disclosures for certain blind advertisements under Rule G-21(e)(i)(B)(2). Under this

provision, advertisements that promote an issuer and its public purpose without promoting specific municipal fund securities or identifying a dealer or its affiliates would be permitted to limit basic disclosures in the same manner as generic advertisements.⁷

A blind advertisement may contain contact information for the issuer or its agent to obtain an official statement or other information, provided that if the dealer or its affiliate acts as such agent, no orders may be accepted through such contact unless such order is initiated by the customer. The proposed interpretive notice emphasizes that a blind advertisement may not identify the dealer or its affiliate and provides guidance to dealers acting as the issuer's agent in responding to customer inquiries and accepting customer orders made through the contact information included in a blind advertisement. The guidance provided with regard to whether an order may have been initiated by the customer applies solely to this provision of Rule G-21 and is not intended to be determinative as to whether the dealer has recommended the transaction to the customer for purposes of Rule G-19, on suitability of recommendations and transactions, since, depending on the facts and circumstances, the customer may have initiated the order based on a recommendation from the dealer.

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⁶ The May 2006 Interpretation effectively recognized that the professional and product advertisement content standards under existing Rule G-21 may not apply to certain advertisements that do not fit neatly into either category.

⁷ This provision effectively codifies, with minor modifications, interpretive guidance provided in the May 2006 Interpretation.

In addition, advertisements qualifying as blind advertisements under Rule G-21(e)(i)(B)(2) are excepted from the requirement in Rule G-21(e)(iv) to include the dealer's capacity since the dealer is not identified in the advertisements.

Performance Data for Municipal Fund Securities

Disclosure of Fees and Expenses in Advertisements and Correspondence.

The proposed rule change includes provisions substantially similar to recently approved NASD Rule 2210(d)(3) relating to mutual fund advertisements, sales literature and correspondence containing performance data, which becomes effective on April 1, 2007.⁸ Rule G-21(e)(i)(A)(3)(b) and (c) will require that advertisements containing performance data for municipal fund securities disclose the relevant maximum sales charge or deferred sales charge and total annual operating expense ratio.⁹ Print advertisements will be required under Rule G-21(e)(i)(A)(4)(a)(iii) to include text box disclosure of this information, which may be combined with comparative performance and fee data and disclosures provided for under section (e) of the rule. New Rule G-21(e)(vii) will provide that any correspondence with the public that includes performance data for

⁸ See Exchange Act Release 54103 (July 5, 2006), 71 FR 39379 (July 12, 2006). See also NASD Notice to Members 06-48 (September 2006).

⁹ Additional language included in Rule G-21(e)(i)(A)(3)(c) and (e)(ii)(A) recognizes that municipal fund securities are not subject to the registration requirements of the Securities Act and is designed to ensure that information on fees and expenses is determined in a manner consistent with the registered mutual fund market, to the extent possible.

municipal fund securities must comply with the performance data requirements of Rule G-21(e) as if such correspondence were a product advertisement under that section of the rule. The proposed rule change adds language in Rule G-27(d)(ii), on supervision, with respect to supervisory procedures relating to the review of correspondence for compliance with this new requirement.¹⁰ The MSRB has proposed that these provisions of the proposed rule change also be made effective on April 1, 2007.

Disclosures Relating to Tax-Adjusted Performance Data. The proposed rule change amends Rule G-21(e)(ii)(E) to delete subparagraph (2). The deleted provision currently requires that, in connection with the calculation of any tax-equivalent yield or after-tax return that appears in an advertisement for municipal fund securities, if the then-effective federal income tax treatment upon which such yield or return was based is subject to lapse or other adverse change without extension or change of federal law, the advertisement must disclose this fact and that such yield or return would be lower if the then-effective federal income tax treatment is not extended or otherwise changed. This deletion reflects the repeal of the sunset provision for many of the federal tax benefits enjoyed by 529 plans, as described below.

¹⁰ The language added to Rule G-27(D)(ii) makes clear that a dealer's supervisory provisions must provide for review of correspondence for compliance with the performance data requirements, but only to the extent that such requirements are applicable given the nature of the dealer's municipal securities activities. Thus, dealers that do not market municipal fund securities generally would not be required to provide for review of correspondence for compliance with Rule G-
(continued . . .)

General Disclosure Requirements for Municipal Fund Securities

Substance of Disclosure. The proposed rule change makes several modifications to rule language in Rule G-21(e)(i)(A)(1) and (2) relating to disclosures designed to communicate basic information concerning investments in municipal fund securities. The modified provisions and the proposed interpretive notice clarify that these disclosures are not legends requiring the inclusion of specific language but instead require that such information be effectively conveyed. Thus, these disclosure requirements may be complied with if the substance of such information is effectively conveyed, regardless of the specific language used in the advertisement.¹¹ In general, the context in which the information is provided is an important factor in determining whether the information is effectively conveyed.

The MSRB understands that these advertising disclosures have presented considerable challenges in the context of broadcast advertisements, such as traditional television or radio commercials with 30-second run-times or public service announcements that may have considerably shorter run-times.¹² The proposed

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21(e)(vii).

¹¹ Compare Rule G-21(e)(i)(A)(3)(a), where a legend is explicitly required.

¹² These disclosures can be lengthier for many 529 plan advertisements than for mutual fund advertisements as a result of the home state tax benefit disclosures generally required under Rule G-21(e)(i)(A)(2)(b) as described below, which are not required in connection with mutual fund advertisements.

interpretive notice provides guidance on the use of abbreviated forms of the required disclosures in time-limited broadcast advertisements.

Home State Tax Benefits. Rule G-21(e)(i)(A)(2)(b) requires 529 plan product advertisements to include disclosure to the effect that investors should consider, before investing, whether their home states offer state tax or other benefits only available for investments in the home state 529 plan. The proposed rule change permits dealers to omit such disclosures in advertisements (such as form letters, post cards, e-mails and other written or electronic mailings) concerning a state's 529 plan that are sent to, or are otherwise distributed through means that are reasonably likely to result in the advertisements being received by, only residents of such state. The MSRB views such omission as most suitable with respect to advertisements that are delivered directly to intended recipients, and not well suited with respect to broadcast advertisements where the dealer would bear the burden of establishing that such broadcast is reasonably likely to result in the message being received only by in-state residents.

Communications with Existing Customers. The proposed rule change adds new Rule G-21(e)(i)(B)(3), which permits dealers to distribute form letters that omit some or all of the disclosures required under Rule G-21(e)(i)(A)(1) and (2) to existing customers who have previously invested in municipal fund securities. Form letters sent solely to existing customers about the same or related municipal fund securities that such customers already own may omit all of the standard disclosures under such subparagraphs (1) and (2) since that information will have previously been provided to

such customers. If the form letters relate to municipal fund securities other than, or unrelated to, the one the customer already invests in, then the disclosures under subparagraph (2) are required. Furthermore, if the form letter identifies a source for obtaining an official statement and the dealer underwrites the municipal fund securities advertised in the form letter, the dealer is required to disclose that it is the underwriter.

Tax-Related Disclosures for Municipal Fund Securities

Rule G-21(e)(v) requires a product advertisement for municipal fund securities that discusses tax benefits to disclose that such benefits may be conditioned on meeting certain requirements. If the nature of specific benefits is described, the factors that may materially limit their availability must be named. The proposed rule change modifies this subsection to clarify that generalized statements regarding tax benefits require only a generalized statement that certain conditions may apply and that, where specific benefits are described, only those substantive factors that may materially affect the ability to realize such benefits must be listed, rather than explained in full. For example, a statement that 529 plans are federally tax-advantaged, or that investors may qualify for federal tax benefits by investing in a 529 plan, without identifying the specific benefits, would be viewed as generalized statements. In such cases, a statement that certain conditions may apply, or that refers customers to the official statement for more information, would be sufficient. Furthermore, the inclusion of the required home state tax disclosure under Rule G-21(e)(i)(A)(2)(b) does not, by itself, require the disclosure of conditions for receiving such state tax benefits.

Required Annual Reports Excluded from Definition of Advertisement

The proposed interpretive notice provides guidance to the effect that, in circumstances where a dealer may be required by state law or rules and regulations to prepare or distribute an annual financial report or other similar information regarding a municipal fund securities program, such report or information will not be treated as an advertisement so long as the dealer provides such report or information solely in the manner required by such state law or rules and regulations.

Effective Dates

The MSRB proposes that the proposed rule change be made effective on February 1, 2007, provided that the MSRB proposes that the amendments to Rules G-21(e)(i)(A)(3)(b), G-21(e)(i)(A)(3)(c), G-21(e)(i)(A)(4)(a)(iii), G-21(e)(ii)(A), G-21(e)(vii) and G-27(d)(ii), on disclosure of fees and expenses in product advertisements and correspondence containing performance data for municipal fund securities, be made effective on April 1, 2007 to coincide with the effective date of NASD Rule 2210(d)(3).

2. Statutory Basis

The MSRB believes that the proposed rule change is consistent with Section 15B(b)(2)(C) of the Exchange Act, which provides that the MSRB's rules shall:

be designed to prevent fraudulent and manipulative acts 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, to remove impediments to and perfect the mechanism of a free and open market in municipal securities, and, in general, to protect investors and the public interest.

The MSRB believes that the proposed rule change is consistent with the Exchange Act because it will further investor protection by raising the standards for advertisements of municipal fund securities and by making information provided in such advertisements comparable for different municipal fund securities investments and between municipal fund securities and registered mutual funds.

B. Self-Regulatory Organization's Statement on Burden on Competition

The MSRB 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 Exchange Act since it would apply equally to all dealers.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

On August 11, 2006, the MSRB published for comment draft amendments to Rules G-21 and G-27 relating to advertisements of 529 plans (the "Notice").¹³ The draft amendments, as published in the Notice, would: (1) modify the definition of "advertisement" to more closely align it with the definitions used by the SEC and NASD in connection with advertising and sales materials; (2) adopt a definition of "form letter" consistent with the definition used by the SEC under the Investment Company Act; (3) establish an explicit baseline standard for advertisements and more clearly define

¹³ See MSRB Notice 2006-26 (August 11, 2006).

“professional advertisement” and “product advertisement”; (4) adopt provisions for generic advertisements of municipal fund securities that are substantially the same as under Securities Act Rule 135a of the SEC relating to generic mutual fund advertisements; (5) adopt provisions requiring advertisements and correspondence containing performance data to also include disclosure of fees and expenses that are substantially the same as under recently approved amendments to NASD Rule 2210(d)(3); (6) clarify and simplify the general disclosure requirements with respect to certain broadcast advertisements, promotional materials and form letters relating to municipal fund securities; and (7) clarify and simplify the nature of disclosures required in advertisements of municipal fund securities in connection with tax matters and tax-adjusted performance data.

The MSRB received comments from three commentators.¹⁴ After reviewing the comments, the MSRB has determined to file this proposed rule change. The proposed rule change is substantially similar to the draft amendments, with certain modifications discussed below. The principle comments and the MSRB’s responses are also discussed below.

¹⁴ Letters from: Jacqueline T. Williams, Chair, College Savings Plan Network (“CSPN”), to Ernesto A. Lanza, MSRB, dated September 22, 2006; Dorothy M. Donohue, Associate Counsel, Investment Company Institute (“ICI”), to Mr. Lanza, dated September 22, 2006; and Michael Udoff, Vice President, Associate General Counsel and Secretary, and Elizabeth Varley, Vice President and

(continued . . .)

Additional Disclosures Relating to Home State Tax Benefits

Rule G-21 currently requires 529 plan advertisements to state that investors should consider whether their home states offer state tax or other benefits only available for investments in the home state 529 plan. For advertisements (such as form letters, post cards, e-mails and other written or electronic mailings) concerning a state's 529 plan that are sent solely to residents of that state, the draft amendment modified this provision to permit dealers to omit such disclosure since it is not relevant to such recipients.

CSPN requested that language in this provision referencing advertisements published or disseminated by "the issuer or any of the issuer's agents" be deleted since the MSRB has no authority to regulate issuers. The MSRB notes that this provision was not intended to regulate the actions of issuers, but rather to limit the ability of a dealer to use this exception if its advertisement is further disseminated by other parties, including the issuer or its agents. However, to avoid ambiguity, the MSRB has modified Rule G-21(e)(i)(A)(2)(b) to replace this language with language that instead refers to advertisements made available by dealers to the issuer or any of the issuer's agents with the expectation or understanding that such other parties will otherwise publish or disseminate such advertisements.

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Director, Retirement Policy, Securities Industry Association ("SIA"), to Mr. Lanza, dated September 22, 2006.

Generic Advertisements

The draft amendments incorporated the SEC's generic mutual fund advertising rule, which allows dealers to omit many required disclosures from mutual fund advertisements that contain only general information about mutual funds and that may name a fund family but not specific mutual funds. CSPN, ICI and SIA requested that language in the draft amendments stating that a generic advertisement may not refer by name "to any specific municipal fund security" be deleted, arguing that it creates ambiguities as to whether a reference in an advertisement to a 529 plan's general program name (which they view as being functionally equivalent to the fund family name in the mutual fund market) would disqualify such advertisement from being considered a generic advertisement.¹⁵

The provisions of Rule G-21(e)(i)(B)(1) were intended to treat 529 plan advertisements in a manner that parallels mutual fund advertisements and the MSRB believes that the deletion requested by the commentators would be appropriate and consistent with the intended operation of this provision. Thus, as this provision has been modified in the proposed rule change, an advertisement that mentions the 529 plan's general program name could be considered a generic advertisement if all other relevant

¹⁵ CSPN observed that this ambiguity arises from the fact that some no-action letters issued by the SEC with respect to 529 plans refer to various interests relating to such 529 plans, other than the individual shares purchased by customers, as municipal securities.

conditions have been met. However, mention of specific investment options or portfolios would disqualify the advertisement from being treated as a generic advertisement.

Blind Advertisements

The draft amendments provided that a blind advertisement that promotes an issuer and its public purpose without promoting specific municipal fund securities or identifying a dealer or its affiliates also would qualify as a generic advertisement.

Among other things, a blind advertisement may include contact information for the issuer or an agent of the issuer to obtain an official statement or other information, provided that if such issuer's agent is a dealer or dealer affiliate, no orders for 529 plans may be accepted through such source. The provision for blind advertisements was designed to address the unique characteristics of the 529 plan market, where regulated dealers and issuers not subject to MSRB regulation often undertake public-private partnerships in marketing 529 plans, raising issues that do not arise in the registered mutual fund market.

CSPN and ICI requested clarification that the use in an advertisement of a phone number or web site that includes the name of a dealer acting as the issuer's agent would not preclude such advertisement from being treated as a blind advertisement. The intent of this provision is that a blind advertisement cannot, on its face, identify a dealer or its affiliates. Therefore, although contact information may be included in the advertisement that directs a potential customer to a dealer or its affiliate acting as agent of the issuer, the face of the advertisement may not identify such dealer or affiliate. The proposed

interpretive notice provides guidance on information that may be included in a blind advertisement.

CSPN and ICI also requested modifications to the language providing that, if the source for more information identified in the advertisement is the dealer or a dealer affiliate, no orders may be accepted through that source. The commentators were concerned that a reference to a website for more information would preclude such website from allowing investments in the 529 plan. CSPN stated that “[e]very web site on which an individual can purchase interests in a Section 529 Plan requires the investor to acknowledge reading or receiving the Official Statement before investing. It is not clear what would be gained by requiring the potential investor to get information from one web site and then make the purchase on another web site.” ICI suggested alternative language to the effect that “no initial orders for municipal fund securities shall be accepted through such source, unless before placing such an order an investor is required to acknowledge that he or she received the official statement for such securities.”

The MSRB understands the concern expressed in connection with web-based sources but believe that ICI’s suggested language is not the appropriate approach to addressing this issue, particularly since Rule G-17, on fair practice, already requires dealers to provide all material facts about the transaction known by the dealer, as well as material facts about the security that are reasonably accessible to the market, to the

customer on or prior to the time of trade.¹⁶ Given that the provision for blind advertisements seeks to ensure that such advertisements are informational in nature and not primarily designed to promote sales by the dealer, the MSRB believes that a distinct barrier between providing information and seeking orders should be maintained. However, the MSRB does not believe that such barrier should create an arbitrary disincentive for those potential customers who themselves seek to initiate an order.

Thus, the proposed rule change modifies the language of Rule G-21(e)(i)(B)(2)(b) to allow the acceptance of orders if initiated by the customer. The proposed interpretive notice provides guidance on ensuring that only customer-initiated orders are accepted through a source identified in a blind advertisement.

Tax-Adjusted Performance Data

Rule G-21 currently provides that, in calculating tax-equivalent yield or after-tax return for a 529 plan advertisement, the advertisement must effectively disclose that such yield or return would be lower if the sunset provision for many of the federal tax benefits enjoyed by 529 plans, previously scheduled to occur on January 1, 2011, were not repealed. In view of the recent enactment of the Pension Protection Act of 2006 (Public Law 109-280), which repealed this sunset provision, the Notice sought comment on whether this provision should be deleted. CSPN, ICI and SIA agreed that this provision

¹⁶ See Rule G-17 Interpretation – Interpretive Notice Regarding Rule G-17, on Disclosure of Material Facts, March 20, 2002, *reprinted in* MSRB Rule Book.

should be deleted. Thus, the proposed rule change deletes this provision in Rule G-21(e)(ii)(E).

Required Annual Reports Excluded from Definition of Advertisement

CSPN stated that the broad definition of advertisement in Rule G-21 could be construed to include annual financial reports undertaken by many dealers acting as 529 plan program managers. CSPN stated that such annual reports are not solicitations of new business and suggested that audited annual reports produced for or in conjunction with issuers be explicitly exempted from treatment as an advertisement.

The MSRB notes that NASD has issued several interpretive letters in which NASD addresses the applicability of its advertising rule, Rule 2210, to certain performance information and hypothetical illustrations required by state laws to be provided by dealers in connection with retirement investments and variable annuity contracts.¹⁷ In each case, NASD concluded that the provision by dealers of the information required by state law would not be treated as an advertisement or sales literature for purposes of Rule 2210 so long as the information was provided solely in the manner required by law. NASD further stated that any additional use of such information

¹⁷ See letter dated November 29, 2004, to Therese Squillacote, Chief Compliance Officer, ING Financial Advisers, LLC, from Philip A. Shaikun, Assistant General Counsel, NASD; letter dated September 30, 2002, to Sally Krawczyk, Esq., Sutherland, Asbill & Brennan, LLP, from Mr. Shaikun; and letter dated February 5, 1999, to W. Thomas Conner, Vice President, Regulatory Affairs, National Association of Variable Annuities, from Robert J. Smith, Office of General
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beyond what is required by law would be subject to the NASD advertising rule. In addition, NASD stated in one of the interpretive letters that the use of such information by the dealer remained subject to all other NASD rules and the federal securities laws, including the anti-fraud provisions.

The MSRB believes that the approach NASD has taken with respect to mutual funds is appropriate as well with respect to 529 plans and other municipal fund securities programs and has provided guidance to this effect in the proposed interpretive notice.

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Counsel, NASD Regulation, Inc.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The MSRB proposes that the proposed rule change be made effective on February 1, 2007, provided that the MSRB proposes that the amendments to Rules G-21(e)(i)(A)(3)(b), G-21(e)(i)(A)(3)(c), G-21(e)(i)(A)(4)(a)(iii), G-21(e)(ii)(A), G-21(e)(vii) and G-27(d)(ii), relating to disclosure of fees and expenses in product advertisements and correspondence containing performance data for municipal fund securities, be made effective on April 1, 2007.

Within 35 days of the publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the SEC will:

(A) by order approve the proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Exchange Act. Comments may be submitted by any of the following methods:

Electronic Comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>) or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-MSRB-2006-09 on the subject line.

Paper Comments:

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-MSRB-2006-09. 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 Web site (<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 inspection and copying in the Commission's Public Reference Room, 100 F Street, N.E., Washington, DC 20549. Copies of such 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-2006-09 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁸

Nancy M. Morris
Secretary

¹⁸ 17 CFR 200.30-3(a)(12).

EXHIBIT 2



**MSRB Notice 2006-26
(August 11, 2006)**

**Request for Comments on Draft Amendments Relating to
Rule G-21, on Advertising**

In 2005, the Municipal Securities Rulemaking Board (“MSRB”) adopted new section (e) of Rule G-21, on advertising, that put into place standards for advertisements by brokers, dealers and municipal securities dealers (“dealers”) of municipal fund securities, including interests in 529 college savings plans (“529 plans”).¹ This section of the rule was modeled in part on Rule 482 adopted by the Securities and Exchange Commission (“SEC”) under the Securities Act of 1933, as amended (the “Securities Act”), and also codified previous MSRB interpretive guidance on advertisements of municipal fund securities. On May 12, 2006, the MSRB published interpretive guidance on certain elements of amended Rule G-21 as they apply to advertisements of 529 plans (the “May 2006 Interpretation”).²

Today, the MSRB seeks comment on a series of draft amendments to Rule G-21 that would further harmonize the MSRB’s advertising rule with the rules of the SEC and NASD. The draft amendments also would provide certain clarifications of and exceptions to existing standards that the MSRB believes would more closely tailor the provisions of the rule to the specific characteristics of the municipal fund securities market without reducing the investor protections afforded by the rule. Specifically, the draft amendments would:

- modify the definition of “advertisement” to more closely align it with the definitions used by the SEC and NASD in connection with advertising and sales materials;
- adopt a definition of “form letter” consistent with the definition used by the SEC under the Investment Company Act of 1940, as amended (the “Investment Company Act”);

¹ 529 college savings plans are established by states under Section 529(b)(A)(ii) of the Internal Revenue Code as “qualified tuition programs” through which individuals make investments for the purpose of accumulating savings for qualifying higher education costs of beneficiaries. Section 529 of the Internal Revenue Code also permits the establishment of so-called prepaid tuition plans by states and higher education institutions. All references to 529 plans are intended to encompass only 529 college savings plans established under Section 529(b)(A)(ii).

² See Rule G-21 Interpretive Letter – 529 College Savings Plan Advertisements, *MSRB Interpretation of May 12, 2006*, published in MSRB Notice 2006-13 (May 15, 2006).

- establish an explicit baseline standard for advertisements and more clearly define “professional advertisement” and “product advertisement”;
- adopt provisions for generic advertisements of municipal fund securities that are substantially the same as under Securities Act Rule 135a of the SEC relating to generic mutual fund advertisements;
- adopt provisions requiring advertisements and correspondence containing performance data to also include disclosure of fees and expenses that are substantially the same as under recently approved amendments to NASD Rule 2210(d)(3);
- clarify and simplify the general disclosure requirements with respect to certain broadcast advertisements, promotional materials and form letters relating to municipal fund securities; and
- clarify the nature of disclosures required in advertisements of municipal fund securities in connection with tax matters.

The MSRB seeks comments on all aspects of the draft amendments, which are set forth at the end of this notice. The MSRB notes that, although most of the draft amendments described in this notice relate to advertisements of municipal fund securities, certain provisions would apply to advertisements of all types of municipal securities, including bonds and notes. Thus, the MSRB seeks comment from all sectors of the municipal securities industry.

GENERAL PROVISIONS

Definitions

Advertisement

The draft amendments would modify the existing definition of “advertisement” as set forth in Rule G-21(a)(i) to more closely conform it to the terms “advertisement” and “sales literature” under NASD Rule 2210(a)(1) and (2).³

³ The draft amendments maintain a single definition of “advertisement” rather than the separate definitions for “advertisement” and “sales literature” used in NASD and SEC rules since the distinctions that exist between these two categories under NASD and SEC rules are not relevant under MSRB rules. The draft definition under Rule G-21(a)(i) is intended to be as inclusive as the combined definitions of “advertisement” and “sales literature” under NASD and SEC rules, subject to the specific exclusions contained in the draft definition and to the specific definitions provided for terms contained in that draft definition (*e.g.*, the draft definition of “form letter”). Thus, the reference in the draft definition of “advertisement” to “any electronic or other public media” should be read as broadly as in the definition of “advertisement” under NASD Rule 2210(a)(1), even though the draft definition does not include the list of media that currently or in the future
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Form Letter

The term “form letter” is defined in Rule G-21(a)(ii) in a manner consistent with Investment Company Act Rule 24b-1 but clarifies that a form letter includes both written letters (including post cards and similar mailings) and electronic mail messages.

Professional & Product Advertisements

In addition, the draft amendments provide explicit definitions of “professional advertisement” and “product advertisement” and set forth the applicable content standards for these types of advertisements. The amendment to the definition of “professional advertisement” under Rule G-21(b)(i) does not effect a change in how such term has been viewed historically under the rule. The amendment to the definition of “product advertisement” under Rule G-21(c)(i), however, clarifies that it applies to advertisements of specific municipal securities or that discuss specific features of municipal securities, rather than to advertisements that may merely mention general categories of municipal securities.⁴ The content standard for professional advertisements under Rule G-21(b)(ii) is unchanged, as is the baseline standard for product advertisements under Rule G-21(c)(ii).⁵

General Content Standard for Advertisements

As the May 2006 Interpretation suggests, the professional and product advertisement content standards under existing Rule G-21 may not apply to certain advertisements that do not fit neatly into either category. The draft amendments address this situation by establishing under Rule G-21(a)(iii) a general content standard for advertisements that are neither professional advertisements nor product advertisements. This standard is the same as the existing baseline content standard for product advertisements.

The MSRB wishes to reiterate that *all* advertisements, regardless of category, are subject to the MSRB’s basic fair dealing rule, Rule G-17, which requires each dealer, in the conduct of its municipal securities activities, to deal fairly with all persons, and prohibits the dealer from engaging in any deceptive, dishonest or unfair practice. The draft amendments do not alter these fair dealing principles, which continue to apply to all advertisements.

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may appear in the NASD definition. The MSRB views such list in the NASD rule as illustrative and not as limiting the breadth of the reference to “any electronic or other public media.”

⁴ The definition of “product advertisement” in the draft amendments codifies interpretive guidance provided in the May 2006 Interpretation.

⁵ However, the additional specific content standards under section (e) of Rule G-21 for municipal fund securities product advertisements would be modified by the draft amendments, as described below.

GENERIC ADVERTISEMENTS FOR MUNICIPAL FUND SECURITIES

The draft amendments incorporate in Rule G-21(e)(i)(B)(1), with minor modifications, the provisions of Securities Act Rule 135a of the SEC relating to generic mutual fund advertising. Just as a generic mutual fund advertisement that meets the requirements of Rule 135a generally need not comply with Securities Act Rule 482 (including the general disclosure provisions under that rule), so too a generic advertisement of municipal fund securities that meets the requirements of draft Rule G-21(e)(i)(B)(1) would not need to include the general disclosures required under Rule G-21(e)(i)(A)(1) or (2).

In addition, advertisements that promote an issuer and its public purpose without promoting specific municipal fund securities or identifying a dealer or its affiliates would qualify under the draft amendments as generic advertisements of municipal fund securities. This provision would effectively codify in Rule G-21(e)(i)(B)(2), with minor modifications, interpretive guidance provided in the May 2006 Interpretation.⁶

PERFORMANCE DATA FOR MUNICIPAL FUND SECURITIES

The draft amendments incorporate into Rule G-21 certain amendments to NASD's advertising rule recently approved by the SEC.⁷ Amended NASD Rule 2210(d)(3) will require advertisements, sales literature and all correspondence relating to non-money market mutual funds that provide performance data to disclose the mutual fund's fees and expenses, generally consisting of the maximum sales charge and total annual fund operating expense ratio.⁸ The NASD rule amendment also will require that such information be set forth prominently. In the case of a print advertisement, this will entail presentation in a prominent text box, which may also include certain additional relevant information as required under Securities Act Rule 482.

Draft Rule G-21(e)(i)(A)(3)(b) and (c) will similarly require that advertisements containing performance data for municipal fund securities disclose the relevant maximum sales charge or deferred sales charge and total annual operating expense ratio.⁹ In addition, Rule G-21(e)(i)(A)(4) will provide that print advertisements must provide for text box disclosure of this

⁶ Such advertisements also would be excepted from the requirement in draft Rule G-21(e)(iv) to include the dealer's capacity since the dealer is not identified in the advertisements.

⁷ The NASD amendment will become effective six months following the calendar quarter ended after publication by NASD of a Notice to Members announcing SEC approval.

⁸ See Exchange Act Release 54103 (July 5, 2006), 71 FR 39379 (July 12, 2006).

⁹ Additional language included in Rule G-21(e)(i)(A)(3)(c) and (e)(ii)(A) recognizes that municipal fund securities are not subject to the registration requirements of the Securities Act. This language is designed to ensure that information on fees and expenses is determined in a manner consistent with the registered mutual fund market, to the extent possible.

information, which may be combined with comparative performance and fee data and disclosures provided for under section (e) of the rule.

The NASD amendments also apply the new disclosure requirements to any correspondence that includes performance data, even if such correspondence does not qualify as an advertisement.¹⁰ Accordingly, the draft amendments to Rule G-21 would include new subsection (e)(vii) providing that any correspondence with the public that includes performance data for municipal fund securities must comply with the performance data requirements of Rule G-21(e) as if such correspondence were a product advertisement under that section of the rule.¹¹

Further, current Rule G-21(e)(ii)(E)(2) provides that, in connection with the calculation of any tax-equivalent yield or after-tax return that appears in an advertisement for municipal fund securities, if the then-effective federal income tax treatment upon which such yield or return was based is subject to lapse or other adverse change without extension or change of federal law, the advertisement must disclose this fact and that such yield or return would be lower if the then-effective federal income tax treatment is not extended or otherwise changed. In view of the recent enactment by Congress and expected signing by the President of the Pension Protection Act of 2006, which repeals the sunset provision of the Economic Growth and Tax Relief Reconciliation Act of 2001 as it applies to 529 plans and therefore eliminates the potential reversion of federal tax treatment for investments in 529 plans previously scheduled to occur on January 1, 2011,¹² the MSRB seeks comment on whether this provision of Rule G-21 should be deleted, or whether there are other circumstances in which this provision might be relevant.

GENERAL DISCLOSURE REQUIREMENTS

Substance of Disclosure

Rule G-21 currently provides for certain basic disclosures to be included in many municipal fund securities advertisements.¹³ These disclosures are designed to communicate to the public basic information concerning investments in municipal fund securities and are deemed complied with if the substance of such information is effectively conveyed, regardless of the specific language used in the advertisement. The draft amendments provide several language

¹⁰ Thus, the requirement applies to individualized letters to customers that are not form letters.

¹¹ The draft amendments include language in section (d)(ii) of Rule G-27, on supervision, with respect to supervisory procedures for the review of correspondence for compliance with this requirement.

¹² See Section 1304(a) of the Pension Protection Act of 2006.

¹³ These disclosures currently are set forth in Rule G-21(e)(i)(A) and (B). The draft amendments would incorporate new headings for many provisions to assist in compliance with the rule and also would result in the redesignation of some existing provisions. Thus, these disclosure provisions would be redesignated as draft Rule G-21(e)(i)(A)(1) and (2).

changes to Rule G-21(e)(i)(A)(1) and (2) to clarify that these disclosures are not legends requiring that specific language be included in advertisements, but instead require that such information be effectively conveyed.¹⁴ In general, the context in which the information is provided is an important factor in determining whether the information is effectively conveyed.

The MSRB understands that these advertising disclosures have presented considerable challenges in the context of broadcast advertisements, such as traditional television or radio commercials with 30-second run-times or public service announcements that may have considerably shorter run-times.¹⁵ The clarification that such disclosures do not constitute a legend, as described above, should help dealers to produce such time-limited broadcast advertisements in a manner that appropriately balances the intended message with the required disclosures. Further, given the unique nature of broadcast advertisements, where the oral presentation of more information can often result in a decreased likelihood that the central message of such information will be understood and retained, the MSRB believes that somewhat abbreviated forms of the required disclosures may be appropriate for such time-limited broadcast advertisements, particularly if the disclosures are made with close attention paid to ensuring that they are presented with equal prominence to the remainder of the message.

Thus, for example, in a time-limited broadcast advertisement for a non-money market 529 plan, the following language, spoken in a manner consistent with the remaining oral presentation of information, generally would satisfy the disclosure requirements of draft Rule G-21(e)(i)(A)(1) and (2): “To learn about [529 plan name], its investment objectives, risks and costs, read the official statement available from [source]. Check with your home state to learn if it offers tax or other benefits for investing in its own 529 plan.” Further, in a time-limited television advertisement, the source for the official statement, together with a contact telephone number or web address, generally could be displayed on screen while other portions of the disclosures are spoken. This example is intended to be illustrative and is not intended to be exclusive or to necessarily establish a baseline for disclosure.

Home State Tax Benefits

The rule currently requires 529 plan product advertisements to state that investors should consider, before investing, whether their home states offer state tax or other benefits only available for investments in the home state 529 plan. For advertisements (such as form letters, post cards, e-mails and other written or electronic mailings) concerning a state’s 529 plan that are sent to, or are otherwise distributed through means that are reasonably likely to result in the advertisements being received by, only residents of such state, draft Rule G-21(e)(i)(A)(2)(b) would modify this provision to permit dealers to omit such disclosure since it is not relevant to such recipients. The MSRB views such omission as most suitable with respect to advertisements that are delivered directly to intended recipients, and not well suited with respect to broadcast

¹⁴ Compare draft Rule G-21(e)(i)(A)(3)(a), where a legend is explicitly required.

¹⁵ These disclosures can be lengthier for many 529 plan advertisements than for mutual fund advertisements as a result of the home state tax benefit disclosures described below, which are not required in connection with mutual fund advertisements.

advertisements where the dealer would bear the burden of establishing that such broadcast is reasonably likely to result in the message being received only by in-state residents.

Communications with Existing Customers

Draft Rule G-21(e)(i)(B)(3) would permit dealers to distribute form letters that omit some or all of the disclosures required under Rule G-21(e)(i)(A)(1) and (2) to existing customers who have previously invested in municipal fund securities. Form letters sent solely to existing customers about the same or related municipal fund securities that such customers already own could omit all of the standard disclosures under such subparagraphs (1) and (2) since that information will have previously been provided to such customers. If the form letters relate to municipal fund securities other than, or unrelated to, the one the customer already invests in, then the disclosures under subparagraph (2) would be required. Furthermore, if the form letter identifies a source for obtaining an official statement and the dealer underwrites the municipal fund securities advertised in the form letter, the dealer would be required to disclose that it is the underwriter.

TAX-RELATED DISCLOSURES

Rule G-21(e)(v) requires a product advertisement for municipal fund securities that discusses tax benefits to disclose that such benefits may be conditioned on meeting certain requirements. If the nature of specific benefits is described, the factors that may materially limit their availability must be named. The draft amendments modify this subsection to clarify that generalized statements regarding tax benefits require only a generalized statement that certain conditions may apply and that, where specific benefits are described, only those substantive factors that may materially affect the ability to realize such benefits must be listed, rather than explained in full. For example, a statement that 529 plans are federally tax-advantaged, or that investors may qualify for federal tax benefits by investing in a 529 plan, without identifying the specific benefits, would be viewed as generalized statements. In such cases, a statement that certain conditions may apply, or that refers customers to the official statement for more information, would be sufficient. Furthermore, the inclusion of the required home state tax disclosure under Rule G-21(e)(i)(A)(2)(b) does not, by itself, require the disclosure of conditions for receiving such state tax benefits.

* * * * *

The MSRB welcomes comments from all interested parties on all aspects of the draft amendments. **Comments should be submitted by no later than September 22, 2006 and may be directed to Jill C. Finder, Assistant General Counsel, or Ernesto A. Lanza, Senior Associate General Counsel.** Written comments will be available for public inspection at the MSRB's offices in Alexandria, Virginia.

August 11, 2006

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TEXT OF DRAFT AMENDMENTS¹⁶

Rule G-21. Advertising

(a) General Provisions.

(i) Definition of “Advertisement.” For purposes of this rule, the term “advertisement” means any material (other than listings of offerings) published or used ~~designed for use~~ in any electronic or other ~~the~~ public, ~~including electronic~~, media, or any written or electronic promotional literature distributed or made generally available to customers or designed for dissemination to the public, including any notice, circular, report, market letter, form letter, telemarketing script, seminar text, press release concerning the products or services of the broker, dealer or municipal securities dealer, or reprint, or any excerpt of the foregoing or of a published article. The term does not apply to preliminary official statements or official statements, but does apply to abstracts or summaries of official statements, offering circulars and other such similar documents prepared by brokers, dealers or municipal securities dealers.

(ii) Definition of “Form Letter.” For purposes of this rule, the term “form letter” means any written letter or electronic mail message distributed to 25 or more persons within any period of 90 consecutive days.

(iii) General Standard for Advertisements. Except as otherwise provided in this rule, no broker, dealer or municipal securities dealer shall publish or disseminate, or cause to be published or disseminated, any advertisement relating to municipal securities that such broker, dealer or municipal securities dealer knows or has reason to know is materially false or misleading.

(b) *Professional Advertisements.*

(i) Definition of “Professional Advertisement.” The term “professional advertisement” means ~~No broker, dealer or municipal securities dealer shall publish or cause to be published~~ any advertisement concerning the facilities, services or skills with respect to municipal securities of such broker, dealer or municipal securities dealer or of another broker, dealer, or municipal securities dealer.

(ii) Standard for Professional Advertisements. No broker, dealer or municipal securities dealer shall publish or disseminate, or cause to be published or disseminated, any professional advertisement that is materially false or misleading.

(c) *Product Advertisements.*

(i) Definition of “Product Advertisement.” The term “product advertisement” means ~~No broker, dealer or municipal securities dealer shall publish or cause to be published~~ any

¹⁶ Underlining signifies additions; strikethrough signifies deletions.

advertisement concerning **one or more specific** municipal securities, **one or more specific issues of municipal securities, the municipal securities of one or more specific issuers, or the specific features of municipal securities.**

(ii) Standard for Product Advertisements. No broker, dealer or municipal securities dealer shall publish or disseminate, or cause to be published or disseminated, any product advertisement that which such broker, dealer, or municipal securities dealer knows or has reason to know is materially false or misleading **and, to the extent applicable, that is not in compliance with section (d) or (e) hereof.**

(d) *New Issue **Product** Advertisements.* In addition to the requirements of section (c), all **product** advertisements for new issue municipal securities (other than municipal fund securities) shall be subject to the following requirements:

(i) *Accuracy at Time of Sale.* A syndicate or syndicate member which publishes or causes to be published any advertisement regarding the offering by the syndicate of a new issue of municipal securities, or any part thereof, may show the initial reoffering prices or yields for the securities, even if the price or yield for a maturity or maturities may have changed, provided that the advertisement contains the date of sale of the securities by the issuer to the syndicate. In the event that the prices or yields shown in a new issue advertisement are other than the initial reoffering prices or yields, such an advertisement must show the prices or yields of the securities as of the time the advertisement is submitted for publication. For purposes of this rule, the date of sale shall be deemed to be, in the case of competitive sales, the date on which bids are required to be submitted to an issuer and, in the case of negotiated sales, the date on which a contract to purchase securities from an issuer is executed.

(ii) *Accuracy at Time of Publication.* Each advertisement relating to a new issue of municipal securities shall also indicate, if applicable, that the securities shown as available from the syndicate may no longer be available from the syndicate at the time of publication or may be available from the syndicate at a price or yield different from that shown in the advertisement.

(e) *Municipal Fund Security **Product** Advertisements.* In addition to the requirements of section (c), all **product** advertisements for municipal fund securities shall be subject to the following requirements:

(i) *Required **d**Disclosures.*

(A) Substance and Format of Disclosure. Except as described in paragraph (B) of this subsection (i), each product Each advertisement for municipal fund securities:

(1) basic disclosure – ~~(A)~~ must include a statement **to the effect** that:

(a) (1) advises an investor **should to** consider the investment objectives, risks, and charges and expenses associated with municipal fund securities before investing;

~~(b) (2) explains that~~ more information about municipal fund securities is available in the issuer's official statement;

~~(c) (3)~~ if the advertisement identifies a source from which an investor may obtain an official statement and the broker, dealer or municipal securities dealer that publishes the advertisement is the underwriter for one or more of the issues of municipal fund securities for which any such official statement may be supplied, ~~states that~~ such broker, dealer or municipal securities dealer is the underwriter for one or more issues (as appropriate) of such municipal fund securities; and

~~(d) (4) states that~~ the official statement should be read carefully before investing.

(2) additional disclosures for identified products – (B) that refers by name (including marketing name) to any municipal fund security, issuer of municipal fund securities, state or other governmental entity that sponsors the issuance of municipal fund securities, or to any securities held as assets of municipal fund securities or to any issuer thereof, must include the following disclosures, as applicable:

~~(a) (1)~~ unless the offer of such municipal fund securities is exempt from Exchange Act Rule 15c2-12 and the issuer thereof has not produced an official statement, a source from which an investor may obtain an official statement;

~~(b) (2)~~ if the advertisement relates to municipal fund securities issued by a qualified tuition program under Internal Revenue Code Section 529, a statement **to the effect** that ~~advises~~ an investor ~~should to~~ consider, before investing, whether the investor's or designated beneficiary's home state offers any state tax or other benefits that are only available for investments in such state's qualified tuition program; **provided, however, that this statement shall not be required for any advertisement relating to municipal fund securities of a specific state if such advertisement is sent to, or is otherwise distributed through means that are reasonably likely to result in the advertisement being received by, only residents of such state and is not otherwise published or disseminated by the broker, dealer or municipal securities dealer, any of its affiliates, the issuer or any of the issuer's agents;** and

~~(c) (3)~~ if the advertisement is for a municipal fund security that the issuer holds out as having the characteristics of a money market fund, statements to the effect that an investment in the security 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, if the security 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 fixed share price, it is possible to lose money by investing in the security.

(3) additional disclosures concerning performance – ~~(C)~~ that includes performance data must include:

(a) ~~(1)~~ a legend disclosing that the performance data included 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. Unless the advertisement includes total return quotations current to the most recent month ended seven business days prior to the date of any use of the advertisement, the legend must also identify either a toll-free (or collect) telephone number or a website where an investor may obtain total return quotations current to the most recent month-end for which such total return, or all information required for the calculation of such total return, is available; **and**

(b) ~~(2)~~ if a sales load or any other nonrecurring fee is charged, the maximum amount of the load or fee **(including the maximum sales charge imposed on purchases or the maximum deferred sales charge, to the extent applicable, current as of the date such advertisement is submitted for publication or otherwise disseminated)** and, if the sales load or fee is not reflected in the performance data included in the advertisement, a statement that the performance data does not reflect the deduction of the sales load or fee and that the performance data would be lower if such load or fee were included; **and**

(c) to the extent that such performance data relates to municipal fund securities that are not held out as having the characteristics of a money market fund and to the extent applicable, the total annual operating expense ratio of such municipal fund securities (calculated in the same manner as the total annual fund operating expenses required to be included in the registration statement for a registered investment company, subject to paragraph (e)(ii)(A) hereof), gross of any fee waivers or expense reimbursements, current as of the date of submission of such advertisement for publication.

(4) format of disclosure – ~~(D)~~ must present the statements required by **subparagraphs (1), (2) and (3) clauses (A), (B) and (C)** of this paragraph **(A)**, when in a print advertisement, in a type size at least as large as and of a style

different from, but at least as prominent as, that used in the major portion of the advertisement, provided that when performance data is presented in a type size smaller than that of the major portion of the advertisement, the statements required by **subparagraph (3) clause (C)** of this paragraph may appear in a type size no smaller than that of the performance data. If an advertisement is delivered through an electronic medium, the legibility requirements for the statements required by **subparagraphs (1), (2) and (3) clauses (A), (B) and (C)** of this paragraph relating to type size and style may be satisfied by presenting the statements in any manner reasonably calculated to draw investor attention to them. In a radio or television advertisement, the statements required by **subparagraphs (1), (2) and (3) clauses (A), (B) and (C)** of this paragraph must be given emphasis equal to that used in the major portion of the advertisement. The statements required by **subparagraph (3) clause (C)** of this paragraph must be presented in close proximity to the performance data; **provided that and**, in a print advertisement, **such statements** must be presented in the body of the advertisement and not in a footnote unless the performance data appears only in such footnote; **and further provided that the maximum sales charge or maximum deferred sales charge required to be disclosed pursuant to clause (3)(b) and the information required to be disclosed pursuant to clause (3)(c), along with the standardized performance information mandated by Securities Act Rule 482 as applicable by virtue of subsection (e)(ii) of this rule, must be presented in a prominent text box that contains only such information but which may also contain comparative performance and fee data and disclosures required under this section (e).**

(B) Exceptions from Certain Disclosure Requirements. Notwithstanding any other provision of this rule, the following advertisements relating to municipal fund securities shall not be subject to the provisions of subparagraphs (1) and (2) of paragraph (e)(i)(A):

(1) generic advertisements – any advertisement that does not refer by name to any specific municipal fund security or to any specific investment option or portfolio of an issuer of municipal fund securities, but includes the name and address of the broker, dealer or municipal securities dealer or other person sponsoring the advertisement, and that is limited to any one or more of the following:

(a) explanatory information relating to municipal fund securities generally or the nature of the issuers thereof or of the programs through which they are issued, or to services offered in connection with the ownership of such securities; or

(b) the mention or explanation of municipal fund securities of different generic types or having various investment objectives; or

(c) offers, descriptions, and explanations of various products and services not constituting a municipal fund security, provided that such offers, descriptions, and explanations do not relate directly to the desirability of owning or purchasing a municipal fund security; or

(d) invitation to inquire for further information; provided that if an official statement for municipal fund securities is to be sent or delivered in response to such inquiries and if the sponsor of the advertisement is the underwriter for one or more of the issues of municipal fund securities for which such official statement may be supplied, the advertisement must state that such broker, dealer or municipal securities dealer is the underwriter for one or more issues (as appropriate) of such municipal fund securities.

(2) *certain blind advertisements* – any advertisement that does not identify a broker, dealer or municipal securities dealer or any affiliate of a broker, dealer or municipal securities dealer and that is limited to any one or more of the following:

(a) the name of an issuer of municipal fund securities; or

(b) contact information for an issuer of municipal fund securities or for any agent of such issuer to obtain an official statement or other information; provided that, if any such agent of the issuer is a broker, dealer or municipal securities dealer or an affiliate of a broker, dealer or municipal securities dealer, no orders for municipal fund securities shall be accepted through such source; or

(c) a logo or other graphic design of an issuer of municipal fund securities that does not directly or indirectly identify the broker, dealer or municipal securities dealer or any affiliate of the broker, dealer or municipal securities dealer; or

(d) a service mark, trademark or short slogan of the issuer's general objectives that does not constitute a call to invest in municipal fund securities.

(3) *certain form letters to existing customers* – any form letter distributed solely to existing customers of the broker, dealer or municipal securities dealer to whom the broker, dealer or municipal securities dealer has previously sent or caused to be sent an official statement for:

(a) any municipal fund securities of the issuer of such municipal fund securities; or

(b) any municipal fund securities of a different issuer of municipal fund securities, provided that the advertisement includes the applicable disclosures under clause (e)(i)(A)(1)(c) and subparagraph (e)(i)(A)(2) of this rule.

(ii) *Performance ~~d~~Data*. Each **product** advertisement that includes performance data relating to municipal fund securities must present performance data in the format, and calculated pursuant to the methods, prescribed in paragraph (d) of Securities Act Rule 482 (or, in the case of a municipal fund security that the issuer holds out as having the characteristics of a money market fund, paragraph (e) of Securities Act Rule 482) **and, to the extent applicable, subparagraph (e)(i)(A)(4) of this rule**, provided that:

(A) **source of data** – to the extent that information necessary to calculate performance data **or to determine loads, fees and expenses for purposes of clause (e)(i)(A)(3)(b) or (c)** is not available from an applicable balance sheet included in a registration statement, or from a prospectus, the broker, dealer or municipal securities dealer shall use information derived from the issuer's official statement, otherwise made available by the issuer or its agents, or (when unavailable from the official statement, the issuer or the issuer's agents) derived from such other sources which the broker, dealer or municipal securities dealer reasonably believes are reliable;

(B) **period of calculation** – if the issuer first began issuing the municipal fund securities fewer than one, five, or ten years prior to the date of the submission of the advertisement for publication, such shorter period shall be substituted for any otherwise prescribed longer period in connection with the calculation of average annual total return or any similar returns;

(C) **currentness of calculation** – performance data shall be calculated as of the most recent practicable date considering the type of municipal fund securities and the media through which data will be conveyed, except that any advertisement containing total return quotations will be considered to have complied with this paragraph provided that:

(1) (a) the total return quotations are current to the most recent calendar quarter ended prior to the submission of the advertisement for publication for which such performance data, or all information required for the calculation of such performance data, is available to the broker, dealer or municipal securities dealer as described in **paragraph clause (A) of this subsection (e)(ii) paragraph**; and

(b) total return quotations (current to the most recent month ended seven business days prior to the date of any use of the advertisement for which such total return, or all information required for the calculation of such total return, is available to the broker, dealer or municipal securities dealer as described in **paragraph clause (A) of this subsection (e)(ii) paragraph**) are provided at the toll-free (or collect) telephone number or

website identified pursuant to **clause (i)(A)(3)(a) paragraph (i)(C)(1)** of this section (e) and the month to which such information is current is identified; or

(2) the total return quotations are current to the most recent month ended seven business days prior to the date of any use of the advertisement for which such total return, or all information required for the calculation of such total return, is available to the broker, dealer or municipal securities dealer and the month to which such information is current is identified.

(D) **12b-1-type plans** – where such calculation is required to include expenses accrued under a plan adopted under Investment Company Act Rule 12b-1, the broker, dealer or municipal securities dealer shall include all such expenses as well as any expenses having the same characteristics as expenses under such a plan where such a plan is not required to be adopted under said Rule 12b-1 as a result of Section 2(b) of the Investment Company Act of 1940;

(E) **tax-adjusted calculations** – in calculating tax-equivalent yields or after-tax returns, the broker, dealer or municipal securities dealer shall assume that any unreinvested distributions are used in the manner intended with respect to such municipal fund securities in order to qualify for any federal tax-exemption or other federally tax-advantaged treatment with respect to such distributions, provided that:

(1) the advertisement must also provide a general description of how federal law intends that such distributions be used and disclose that such yield or return would be lower if distributions are not used in this manner; and

(2) if the then-effective federal income tax treatment upon which such yield or return was based is subject to lapse or other adverse change without extension or change of federal law, the advertisement must disclose this fact and that such yield or return would be lower if the then-effective federal income tax treatment is not extended or otherwise changed.

(F) **applicability with respect to underlying assets** – notwithstanding any of the foregoing, this **subsection (e)(ii) paragraph** shall apply solely to the calculation of performance relating to municipal fund securities and does not apply to, or limit the applicability of any rule of the Commission, NASD or any other regulatory body relating to, the calculation of performance for any security held as an underlying asset of the municipal fund securities.

(iii) **Nature of Issuer and Security**. An advertisement for a specific municipal fund security must provide sufficient information to identify such specific security in a manner that is not false or misleading. An advertisement that identifies a specific municipal fund security must include the name of the issuer (or the issuer's marketing name for its issuance of municipal fund securities, together with the state of the issuer), presented in a manner no less prominent than any other entity identified in the advertisement, and must not imply that a different entity is the issuer

of the municipal fund security. An advertisement must not raise an inference that, because municipal fund securities are issued under a government-sponsored plan, investors are guaranteed against investment losses if no such guarantee exists. If an advertisement concerns a specific class or category of an issuer's municipal fund securities (*e.g.*, A shares versus B shares; direct sale shares versus advisor shares; in-state shares versus national shares; etc.), this must clearly be disclosed in a manner no less prominent than the information provided with respect to such class or category.

(iv) *Capacity of ~~d~~Dealer and ~~o~~Other ~~p~~Parties.* An advertisement that relates to or describes services provided with respect to municipal fund securities must clearly indicate the entity providing those services. If any person or entity other than the broker, dealer or municipal securities dealer is named in the advertisement, the advertisement must reflect any relationship between the broker, dealer or municipal securities dealer and such other person or entity. An advertisement soliciting purchases of municipal fund securities that would be effected by a broker, dealer or municipal securities dealer or any other entity other than the broker, dealer or municipal securities dealer that publishes the advertisement must identify which entity would effect the transaction, provided that the advertisement may identify one or more such entities in general descriptive terms but must specifically name any such other entity if it is the issuer, an affiliate of the issuer, or an affiliate of the broker, dealer or municipal securities dealer that publishes the advertisement. **This subsection (iv) shall not apply to any advertisement described in subparagraph (e)(i)(B)(2) of this rule.**

(v) *Tax ~~e~~Consequences and ~~o~~Other ~~f~~Features.* Any discussion of tax implications or other benefits or features of investments in municipal fund securities included in an advertisement must not be false or misleading. In the case of an advertisement that includes **generalized** statements regarding tax or other benefits offered in connection with such municipal fund securities or otherwise offered under state or federal law, the advertisement also must **include a generalized statement** ~~state~~ that the availability of such tax or other benefits may be conditioned on meeting certain requirements. If the advertisement describes the nature of specific benefits, such advertisement must also briefly **list name** the **substantive** factors that may materially limit the availability of such benefits (such as residency, purpose for or timing of distributions, or other factors, as applicable). Such statements of conditions or limitations must be presented in close proximity to, and in a manner no less prominent than, the description of such benefits.

(vi) *Underlying ~~r~~Registered ~~s~~Securities.* If an advertisement for a municipal fund security provides specific details of a security held as an underlying asset of the municipal fund security, the details included in the advertisement relating to such underlying security must be presented in a manner that would be in compliance with any Commission or NASD advertising rules that would be applicable if the advertisement related solely to such underlying security; provided that details of the underlying security must be accompanied by any further statements relating to such details as are necessary to ensure that the inclusion of such details does not cause the advertisement to be false or misleading with respect to the municipal fund securities advertised. This **subsection paragraph** does not limit the applicability of any rule of the Commission, NASD or any other regulatory body relating to advertisements of securities other

than municipal fund securities, including advertisements that contain information about such other securities together with information about municipal securities.

(vii) Correspondence Presenting Performance Data. Notwithstanding any other provision of this rule, all correspondence with the public that includes performance data relating to municipal fund securities must comply with the provisions of subparagraph (e)(i)(A)(3) (presented in the manner provided in subparagraph (e)(i)(A)(4)) and subsection (e)(ii) as if such correspondence were a product advertisement under this rule.

(f) *Approval by Principal.* Each advertisement subject to the requirements of this rule must be approved in writing by a municipal securities principal or general securities principal prior to first use. Each broker, dealer and municipal securities dealer shall make and keep current in a separate file records of all such advertisements.

Rule G-27. Supervision

(a)-(c) No change.

(d) *Review of Correspondence*

(i) No change.

(ii) *Review of correspondence.* Each dealer shall develop written procedures that are appropriate to its business, size, structure, and customers for the review of incoming and outgoing written (i.e., non-electronic) and electronic correspondence with the public relating to its municipal securities activities, **including review for compliance with Rule G-21(e)(vii).** Procedures shall include the review of incoming, written correspondence directed to municipal securities representatives and related to the dealer's municipal securities activities to properly identify and handle customer complaints and to ensure that customer funds and securities are handled in accordance with the dealer's procedures. Where such procedures for the review of correspondence do not require review of all correspondence prior to use or distribution, they must include provisions for the education and training of associated persons as to the dealer's procedures governing correspondence; documentation of such education and training; and surveillance and follow-up to ensure that such procedures are implemented and adhered to.

(iii) No change.

(e) No change.

Alphabetical List of Comment Letters on MSRB Notice 2006-26 (August 11, 2006)

1. College Savings Plans Network: Letter to Ernesto A. Lanza, MSRB, from Jacqueline T. Williams, Chair (September 22, 2006)
2. Investment Company Institute: Letter to Ernesto A. Lanza, MSRB, from Dorothy M. Donohue, Associate Counsel (September 22, 2006)
3. Securities Industry Association: Letter to Ernesto A. Lanza, MSRB, from Michael Udoff, Vice President, Associate General Counsel and Secretary, and Elizabeth Varley, Vice President and Director, Retirement Policy (September 22, 2006)

September 22, 2006

Ernesto A. Lanza
Senior Associate General Counsel
Municipal Securities Rulemaking Board
1900 Duke Street – Suite 600
Alexandria, Virginia 22314

Re: Notice 2006-26 (August 11, 2006) Request for Comments on Draft Amendments
Relating to Rule G-21, On Advertising

Dear Mr. Lanza:

The College Savings Plans Network (“CSPN”), the national organization of states that establish and administer Section 529 Plans, respectfully submits the following comments in response to the captioned Notice, released by the Municipal Securities Rulemaking Board (“MSRB”) on August 11, 2006 (the “Notice”). In these comments, our suggested additions to language appearing in the Notice are shown as underscored and suggested deletions are stricken through.

CSPN believes that current rule G-21 limits the ability of Section 529 Plan administrators to (i) advise families of the availability of these investment vehicles and (ii) provide valuable information to the potential investor. We find that the proposed amendments strike a more appropriate balance of providing essential information to investors without overwhelming them with detailed information they will receive in the documents that constitute the Offering Materials¹. We believe the proposed exceptions from the general application of the provisions of Rule G-21 for the categories of generic advertisements, blind advertisements and form letters are enhancements that will assist in providing useful disclosures to potential and existing investors. We would, however, like to address several aspects of the proposed revision to Rule G-21 that we believe require further clarification.

¹ For purposes of this letter, any reference to Offering Materials pertains to the definition of Offering Materials contained in the College Savings Plans Network Disclosure Principles Statement No. 2, dated July 26, 2005 as follows: “all documents identified by the State Issuer as intended to provide substantive disclosure of the terms and conditions of an investment in its Savings Plan. Such Offering Materials may include appendices and physically separate documents. Offering Materials do not include marketing materials or advertisements that do not include substantive disclosure of such terms and conditions or that refer to the Offering Materials as the definitive statement of such terms and conditions. The Offering Materials should present information in a clear, concise and understandable manner.” The Offering Materials would include any official statement required to be delivered to the MSRB by a municipal securities dealer.

Definition of Product Advertisement

The definition of “Product Advertisement” in G-21(c)(i) appears to include directive language along with the definition. CSPN suggest the following modification for clarity:

(i) Definition of “Product Advertisement.” The term “product advertisement” means ~~No broker, dealer or municipal securities dealer shall publish or cause to be published~~ any advertisement published or caused to be published by a broker, dealer or municipal securities dealer concerning one or more specific municipal fund securities, one or more specific issues of municipal securities, the municipal securities of one or more specific issuers, or the specific features of municipal securities.

Use of Product Advertisements for Identified Products

The proposed amendment to Rule G-21(e)(i)(A)(2)(b) includes a reference to advertisements that are published or disseminated by, among others, “the issuer or any of the issuer’s agents”. Because the MSRB has no authority to regulate issuers, CSPN proposes that Section G-21(e)(i)(A)(2)(b) be amended to read:

~~(b) (2)~~ if the advertisement relates to municipal fund securities issued by a qualified tuition program under Internal Revenue Code Section 529, a statement to the effect that ~~advises an investor~~ should ~~to consider, before investing, whether the investor’s or designated beneficiary’s home state offers any state tax or other benefits that are only available for investments in such state’s qualified tuition program; provided, however, that this statement shall not be required for any advertisement relating to municipal fund securities of a specific state if such advertisement is sent to, or is otherwise distributed through means that are reasonably likely to result in the advertisement being received by, only residents of such state and is not otherwise published or disseminated by the broker, dealer or municipal securities dealer, or any of its affiliates, the issuer or any of the issuer’s agents;~~ and

Reference to Municipal Fund Security in Definition of Generic Advertisements

CSPN recommends deletion of the term “municipal fund security” from the definition of generic advertisement proposed in G-21(e)(i)(B)(1) because this term may be unduly and unintentionally limiting. The inclusion of the term “municipal fund security” suggests that the generic advertisement requirements might apply to something broader than a specific investment option or portfolio, creating unnecessary confusion, particularly as the Securities and Exchange Commission (“SEC”) has identified various interests in trusts and funds as exempt municipal securities in various “no action” letters. Thus, CSPN proposes deletion of the reference to municipal fund security from the definition of generic advertisement. CSPN also recommends modifying the reference to a portfolio “of an issuer” to “a portfolio offered by an issuer”. Taken together, these recommended changes would read as follows:

(1) generic advertisements ^{75 of 85} any advertisement that does not refer by name to any specific investment option or portfolio offered by an issuer of municipal fund securities . . .

CSPN intends that this modified definition will trigger the appropriately limited disclosures required of a generic advertisement when an advertisement merely refers to a brand name. For example, “NextGen College Investing Plan” or “IDeal” each refers to the brand of 529 plans, not to the specific Fund or Trust in which an investor’s interest is held.

Clarification Regarding Use of Blind Advertisements

CSPN also believes that the provisions on blind advertisements proposed in Rule G-21(e)(i)(B)(2)(b) require further refinement or clarification. As proposed, this provision allows an advertisement to include the contact information of the issuer or an agent of the issuer, but would apparently preclude such an advertisement from identifying a broker-dealer or municipal securities dealer (or an affiliate of such entities). CSPN seeks clarification that the provision does not preclude the use of a phone number or web site that includes the name of a broker-dealer or municipal securities dealer acting as an agent for the issuer.

We also request further clarification for the proviso of this section, which reads: “. . . provided that, if any such agent of the issuer is a broker-dealer, or municipal securities dealer or an affiliate of a broker, dealer or municipal securities dealer, *no orders for municipal fund securities shall be accepted through such source*”. We understand that this means that if a blind advertisement includes a phone number and a call placed to this number is answered at the office of a broker-dealer, then the person answering the phone would be limited to providing information and would not be authorized to accept an order for the advertised Section 529 Plan.

Similarly, the referenced language suggests that an individual directed to a web site by a blind advertisement could not place an order through such a web site. This interpretation seems extreme. Every web site on which an individual can purchase interests in a Section 529 Plan requires the investor to acknowledge reading or receiving the Official Statement before investing. It is not clear what would be gained by requiring the potential investor to get information from one web site and then make the purchase on another web site. Again, given the nature of municipal fund securities and the various contractual arrangements between the State issuers and the various broker-dealers and/or municipal securities dealers that offer the Section 529 Plans, it is not always clear that a reference to a web site would be to an agent of the issuer or the issuer. For example, there are cases where the web site for the purchase of the municipal fund security is owned by the issuer, but maintained by the broker-dealer or where the advertisement may direct the potential investor to the web site of the issuer that has a direct link to the web site of the broker-dealer. Additionally, it appears that if the web site includes the name of the broker-dealer, it could not be identified in the advertisement. Given the many possibilities, it seems that the limitation cited above would not be effective and CSPN

suggests that it be stricken from the proposed rule. Accordingly, CSPN suggests that the provisions regarding blind advertisements clarify that:

- 1) The reference to an “order” only refers to an initial investment in the program; and
- 2) An individual making an initial investment in municipal fund securities after being directed to a web site by a blind advertisement, may do such an investment provided that the individual has been provided and acknowledges receipt of the Official Statement.

Deletion of Rule G-21(e)(ii)(E)(2)

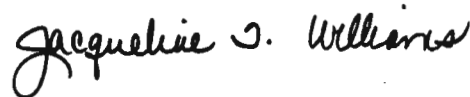
The Notice specifically requests comment on whether the above-referenced provision continues to have any relevance after enactment of the Pension Protection Act of 2006 (“Pension Act”), including repeal of the sunset of the federal tax exemption. CSPN believes that subsequent to the enactment of the Pension Act a disclosure that the yield on an investment would be less if that sunset became effective is no longer relevant and supports deletion of G-21(e)(ii)(E)(2).

Express Statement that Annual Reports are Not Advertisements Subject to the Requirements of Rule G-21

The broad definition of advertisement could be construed to include annual financial reports undertaken by many broker dealers, acting as program managers of programs that offer municipal fund securities. Such annual reports are not a solicitation of new business. Accordingly, CSPN suggests that audited annual reports produced for or in conjunction with the issuers of municipal securities be explicitly exempted from treatment as an advertisement.

Thank you for your consideration of these comments. Representatives of CSPN would be pleased to elaborate on, or discuss with you, any matters raised in these comments or in the Notice. In particular, you may contact Elizabeth Bordowitz, Chair, CSPN Lawyer’s Committee at 207-623-3263, Ext. 223.

Sincerely,



Jacqueline T. Williams
Chair, College Savings Plans Network

cc: Elizabeth Bordowitz

1401 H Street, NW, Washington, DC 20005-2148, USA
202/326-5800 www.ici.org

September 22, 2006

Ernesto A. Lanza
Senior Associate General Counsel
Municipal Securities Rulemaking Board
1900 Duke Street, Suite 600
Alexandria, VA 22314

Re: *Draft Amendments to Rule G-21 (MSRB Notice 2006-26)*

Dear Mr. Lanza:

The Investment Company Institute¹ is pleased to express its support for the proposed amendments to the Municipal Securities Rulemaking Board's advertising rule, Rule G-21.² The proposed amendments strike the right balance insofar as they require advertisements about municipal fund securities, including 529 college savings plans, to include important information for investors while providing flexibility to design advertisements in a way that effectively conveys this information.

We also applaud the MSRB for proposing amendments that make Rule G-21 more consistent with Securities and Exchange Commission and NASD advertising rules for mutual funds. Mutual funds and 529 plans typically are advertised in the same manner. Consistent regulation of advertising for similar investment products benefits investors because it avoids the potential for confusion that might result from viewing advertisements that differ in content due to differences in regulations.

The Institute particularly supports the proposed amendments that clarify the MSRB's intent to provide flexibility with respect to certain required basic disclosures and tax-related disclosures. We also support the MSRB's proposal to permit generic advertisements and blind advertisements, but we recommend certain clarifications to these provisions. Our comments are discussed in greater detail below.

¹ The Investment Company Institute is the national association of the American investment company industry. More information about the Institute is available at the end of this letter.

² See *Request for Comments on Draft Amendments Relating to Rule G-21 on Advertising*, MSRB Notice 2006-26 (August 11, 2006).

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Basic Disclosures

Rule G-21 requires most advertisements for municipal fund securities to include certain basic disclosures. We strongly support the proposed amendments that clarify that these disclosures are not legends requiring that specific language be used in advertisements. Instead, the rule requires that such information be “effectively conveyed.” As the MSRB correctly recognizes, this flexibility is particularly important in the context of time-limited television and radio advertisements.

We also strongly support permitting the required information to be provided in an abbreviated manner and permitting a portion of the disclosure to be provided on the screen (rather than spoken) for television advertisements. We agree that the proposed amendments will facilitate the production of time-limited broadcast advertisements in a manner that appropriately balances the intended message with the required disclosures.

Tax-Related Disclosures

Rule G-21(e)(v) requires a “product advertisement” for municipal fund securities that discusses tax benefits to disclose that such tax benefits may be conditioned on meeting certain requirements. We strongly support the proposed amendments that would clarify that generalized statements regarding the tax benefits require only a generalized statement that certain conditions apply. Our members believe that this clarification is important because it will permit them to alert potential purchasers to the fact that conditions might apply without having to specifically detail each of these conditions. This kind of detail detracts from the intended message of the advertisement and is unnecessary, given that investors will receive detailed information about the tax benefits and any related conditions in the official statement. For example, if an advertisement states that an investment in a 529 plan is tax-free or tax-advantaged, it should be sufficient to state in an advertisement that such advantageous tax treatment may be subject to conditions.³

We also support proposed amendments to Rule G-21(e)(i)(A)(2)(b) permitting dealers to omit disclosure stating that, “investors should consider before investing whether their home states offer state tax or other benefits only available for investors in the home state 529 plan” in advertisements that are distributed through means that are reasonably likely to result in the advertisements only being received by residents of the home state. This is a sensible change that recognizes that there is no practical benefit to providing such disclosure in these circumstances.

³ Some of our members report that they have been required to accompany a statement about a 529 plan being tax-free or tax-advantaged with disclosure that investors may be subject to a 10% penalty for any non-qualified distributions. We do not believe that such a generalized statement about tax treatment warrants such specific disclosure about the possibility of penalty. Rather, investors can find such detailed information in the official statement.

Generic Advertisements

The proposed amendments incorporate in Rule G-21(e)(i)(B)(1) a definition of “generic advertisement.” The permissible content of generic advertisements of municipal fund securities is very limited and, as such, these advertisements would not be required to include the general disclosures that are required to appear in most other types of advertisements. We support this approach, which is modeled on the SEC’s rule governing generic advertisements for mutual funds. Advertisements that alert the public in general terms to the benefits of municipal fund securities do not need the other required disclosure.

We recommend deleting the reference in proposed Rule G-21(e)(i)(B)(1) to any “specific municipal fund security” to clarify the scope of the provision. This change would make clear that, while a generic advertisement cannot reference a specific investment option or portfolio, the rule does not preclude mentioning a 529 plan, including by its brand name. Thus, for example, generic advertisements could include the following: a banner advertisement on a website that states “You should consider investing in ABC 529 plan;” a pencil with the name of a 529 plan on it; or a radio broadcast followed by the words, “sponsored by XYZ 529 plan.”

Blind Advertisements

The proposed amendments create another category of advertisements called “blind advertisements.” Like generic advertisements, blind advertisements are excepted from the general disclosure requirements that apply to other advertisements, and the permissible contents are strictly limited. The Institute supports the blind advertisement concept but recommends a modification to make the provision workable.

As proposed, Rule G-21(e)(i)(B)(2)(b) would permit a blind advertisement to include contact information for an issuer of municipal fund securities or any agent of such issuer to obtain an official statement or other information. The ability to provide contact information would be subject to a proviso that, “if any such agent of the issuer is a broker, dealer or municipal securities dealer or an affiliate of a broker, dealer or municipal securities dealer, no orders for municipal fund securities shall be accepted through such source.” For example, if a contact phone number is provided, the rule contemplates that the person answering the phone at that number could provide information or agree to send an official statement, but could not accept orders for the advertised municipal fund securities.

The Institute is concerned that the quoted language could be read to suggest that where a blind advertisement references a website, an investor directed to the website by the advertisement may not place an order through that website. This restriction is unnecessary to accomplish the MSRB’s intended purpose.

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It appears that the proviso is designed to ensure that investors do not place orders for municipal fund securities solely on the basis of the limited information in the blind advertisement. We understand that websites through which investors can purchase municipal fund securities typically require each investor to acknowledge receipt of the official statement before investing. This approach addresses the MSRB's policy concern by assuring that investors have access to important information about the securities before they invest. We recommend incorporating this protection into the rule by replacing the phrase "no orders for municipal fund securities shall be accepted through such source" in subsection (e)(i)(B)(2)(b) with the following:

"no initial orders for municipal fund securities shall be accepted through such source, unless before placing such an order an investor is required to acknowledge that he or she has received the official statement for such securities".

We also recommend that the MSRB clarify that Section (e)(i)(B)(2), which permits a blind advertisement to provide contact information for an agent of the issuer but prohibits such an advertisement from identifying a broker, dealer, or municipal securities dealer or any affiliate of a broker, dealer or municipal securities dealer, does not prohibit a blind advertisement from providing a reference to a phone number or website that includes the name of a broker, dealer or municipal securities dealer acting as an agent of the issuer.

Disclosure Regarding Changes in the Tax Law

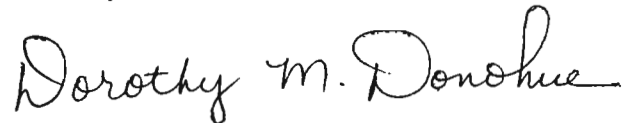
In response to the MSRB's specific request for comment, we recommend that the MSRB eliminate required disclosure regarding the possibility that beneficial tax treatment of 529 plans may lapse. In view of the recent passage of the Pension Protection Act of 2006, which repeals the sunset provisions of the Economic Growth and Tax Relief Reconciliation Act of 2001 as it applies to 529 plans, this disclosure is no longer relevant.

* * * *

Ernesto A. Lanza
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The Institute appreciates the opportunity to comment on the MSRB's proposal. If you have any questions concerning these comments, please feel free to contact me at 202-218-3563 or Frances Stadler at 202-326-5822.

Sincerely,

A handwritten signature in black ink that reads "Dorothy M. Donohue". The signature is written in a cursive style with a large, looped initial "D".

Dorothy M. Donohue
Associate Counsel

cc: Ms. Jill C. Finder
Assistant General Counsel
Municipal Securities Rulemaking Board

Ernesto A. Lanza
September 22, 2006
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About the Investment Company Institute

ICI members include 8,791 open-end investment companies (mutual funds), 652 closed-end investment companies, 195 exchange-traded funds, and 5 sponsors of unit investment trusts. Mutual fund members of the ICI have total assets of approximately \$9.273 trillion (representing 98 percent of all assets of US mutual funds); these funds serve approximately 89.5 million shareholders in more than 52.6 million households.



Securities Industry Association

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September 22, 2006

Ernesto A. Lanza
Senior Associate General Counsel
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1900 Duke Street
Suite 600
Alexandria, VA 22314

*Re: Notice 2006-26, Request for comments on draft amendments
relating on Rule G-21*

Dear Mr. Lanza:

On behalf of the Securities Industry Association (“SIA”)¹, we are submitting the following comments in response to Notice 2006-26, proposed amendments to Rule G-21. The SIA’s primary interest in these amendments is the impact they will have on Qualified Tuition Plans (529 savings plan) and the broker-dealer intermediaries who market them. In summary, SIA supports the efforts of the MSRB to promote consistency among the rules established by other regulatory organizations with respect to similar products and facilitate the marketing of this important product particularly after recent legislation to make the federal tax treatment of 529 savings plans permanent law.

Recent Tax Law Changes

¹ The Securities Industry Association brings together the shared interests of more than 600 securities firms to accomplish common goals. SIA’s primary mission is to build and maintain public trust and confidence in the securities markets. SIA members (including investment banks, broker-dealers, and mutual fund companies) are active in all U.S. and foreign markets and in all phases of corporate and public finance. According to the Bureau of Labor Statistics, the U.S. securities industry employs nearly 800,000 individuals, and its personnel manage the accounts of nearly 93-million investors directly and indirectly through corporate, thrift, and pension plans. In 2005, the industry generated an estimated \$322.4 billion in domestic revenue and an estimated \$474 billion in global revenues. (More information about SIA is available at: www.sia.com.)

The passage of H.R.4, the Pension Protection Act of 2006, has removed the sunset provision for 529 plans and no reference to the potential impact of the sunset should be required in communications with customers or the public.

Regulation of Product Advertisements

The MSRB draft amendments provide that product advertisements may include a more generalized statement regarding potential tax implications of a 529 savings plan investment. SIA strongly supports the clarifications regarding tax-related disclosures in these types of advertisements. This clarification is particularly important to ensure that the public will hear about the importance of saving for education. Specific disclosures regarding tax treatment that may have applied to only a very small portion of the public detract from that message.

Generic Advertisements

SIA supports the creation of a definition for “generic advertisement” under Rule G-21. We are aware of the proposed clarification included in the comment letter submitted by the College Savings Plan Network and support the alternative language proposed under G-21(e)(i)(B)(1).²

Blind Advertisements

SIA supports the use of a category of “blind advertisement” that would not be subject to the additional disclosure requirements. However, we recommend that the language be clarified to permit the inclusion of contact information in the advertisement. This is consistent with the application of the parallel rule for advertising of mutual funds adopted by the Securities and Exchange Commission. The application of that rule permits the inclusion of contact information for a broker-dealer but limits the ability of the broker-dealer to accept orders to situations where an official statement will be provided. In addition, contact information through a website should also be permitted. Today, websites are utilized for the purchase of 529 savings plan investments once an investor acknowledges that the information contained in an official statement has been read.

In conclusion, SIA strongly supports the changes the MSRB has proposed. Please contact the undersigned if you have any questions relating to this submission.

Sincerely,

² The CSPN alternative language is as follows: (1) generic advertisements – any advertisement that does not refer by name to any ~~specific municipal fund security~~ or specific investment option or portfolio of ~~offered~~ by an issuer of municipal fund securities . . .

Michael Udoff
Vice President
Associate General Counsel
and Secretary

Elizabeth Varley
Vice President and Director,
Retirement Policy

cc: Jill Silver