



May 14, 2007

Nancy M. Morris  
Secretary  
Securities and Exchange Commission  
Station Place  
100 F Street, NE  
Washington, DC 20549

***Re: File No. SR-MSRB-2006-9***

Dear Ms. Morris:

On November 21, 2006, the Municipal Securities Rulemaking Board (the “MSRB”) filed with the Securities and Exchange Commission (the “Commission”) a proposed rule change relating to advertisements of municipal fund securities, which was subsequently amended on February 12, 2007 (as amended, the “proposed rule change”).<sup>1</sup> The proposed rule change consists 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 Commission published the proposed rule change for comment in the Federal Register (the “Federal Register Notice”).<sup>2</sup> The Commission received one comment letter,<sup>3</sup> and the Commission has requested that the MSRB provide its response to this letter.

In its letter, the College Savings Plans Network (“CSPN”) seeks clarification on several items in the proposed rule change, a revision to the proposed interpretive notice, and a delayed implementation of a portion of the proposed rule change. This letter provides the MSRB’s response to these requests.

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<sup>1</sup> File No. SR-MSRB-2006-09.

<sup>2</sup> Exchange Act Release No. 55302 (February 15, 2007), 72 FR 8222 (February 23, 2007).

<sup>3</sup> Letter from Jacqueline T. Williams, Chair, College Savings Plans Network, to Nancy M. Morris, Commission Secretary, dated March 16, 2007.

**Status of Transaction Confirmations and Periodic Statements.** CSPN seeks clarification that transaction confirmations and periodic statements sent to customers in lieu of such confirmations (along with any messages printed thereon, enclosed therewith or attached thereto) would constitute form letters under proposed Rule G-21(a)(ii). CSPN states, “This should be the case regardless of whether the tuition savings program, or any applicable plan therein, is identified in or adjacent to the text of such messages. Such messages are an essential means of transmitting program information to account owners, all of whom are required to have received full disclosure, and should in no event be considered as advertising subject to requirements intended to safeguard the investing public at large.”

Provisions relating to transaction confirmations and periodic statements in lieu of such confirmations are set forth in MSRB Rule G-15(a). Information provided to customers in connection with transactions in municipal fund securities in satisfaction of the requirements of Rule G-15(a), or as reasonably contemplated thereunder to be included in a confirmation or periodic statement, is treated for purposes of MSRB rules in the same manner as confirmations sent to customers in connection with transactions in any other type of municipal security, such as municipal bonds or notes. A determination of the status of information provided to customers beyond such items of information required under or reasonably contemplated by Rule G-15(a) (whether such information is physically attached to or otherwise included within a traditional confirmation or periodic statement, or is included in a separate writing or data file), such as whether such additional information would be treated as a form letter under proposed Rule G-21(a)(ii), generally should be based on a consideration of the specific nature of such additional information and any other relevant facts and circumstances.

**Form Letters Regarding Related Municipal Fund Securities.** CSPN seeks clarification of descriptive information appearing in the Federal Register Notice and in MSRB Notice 2006-32 (November 21, 2006) (the “MSRB Notice”) regarding the intended operation of proposed Rule G-21(e)(i)(B)(3) concerning certain form letters to existing customers. CSPN requests further language to the effect that “municipal fund securities shall be deemed to be related if offered by the same tuition savings program and described by a single official statement.”

Proposed Rule G-21(e)(i)(B)(3) provides, in part, that a form letter relating to an issuer’s municipal fund securities is not required to include certain disclosures under Rule G-21(e)(i)(A) and (B) if such form letter is distributed by a dealer solely to its existing customers to whom the dealer has previously provided an official statement for any municipal fund securities of such issuer. The Federal Register Notice and MSRB Notice, in language explaining the intended operation of the proposed rule change, described the universe of municipal fund securities issued by such issuer as, in general terms, “the same or related municipal fund securities.” Such general descriptive language does not limit or modify the plain language of the proposed rule itself, which we believe is clear and would include municipal fund securities offered by the same

tuition savings program, including but not limited to those described in a single official statement.<sup>4</sup> Thus, no change is needed.

**Disclosure of Loads and Annual Operating Expense Ratio.** CSPN seeks clarification that the cost information required to be disclosed under proposed Rule G-21(e)(i)(A)(3) is “solely the cost information that is actually applicable to the municipal fund securities, rather than other information that may be generally applicable to any underlying investment.” CSPN elaborates:

For example, the actual cost of investing in a tuition savings program that only assesses a single, unitary, fixed fee for investment in any program investment option could be extremely unclear to a potential investor if the advertisement must list the expense ratio for the mutual fund in which the option invests. In such a scenario, a potential investor could draw the erroneous conclusion that he or she would be required to pay both the fixed fee and the underlying fund expense. ... If an investment portfolio within a tuition savings program invests in multiple mutual funds similar to a fund of funds, it should not be necessary to identify in a performance advertisement about such investment portfolio each separate expense charge applicable to each separate mutual fund included in the investment portfolio. Rather, it should suffice to set forth a single blended expense charge that is calculated by combining the appropriately weighted expense charges of all of the underlying mutual funds in the portfolio. ... Moreover, a tuition savings program’s costs may reflect discounts from those generally applicable to one or more of the underlying investments or may be uniform across all investment alternatives offered, in which case reference to specific underlying fund expense charges could divert the investor’s attention away from a positive fee scenario and obfuscate the actual expense charges directly applicable to the investor.

In understanding how this provision is intended to be implemented, two basic principles apply: (i) as the MSRB seeks to maximize the degree to which the public will be assured of receiving information that is comparable across both the municipal fund securities and investment company securities markets, the MSRB believes that the specific fee and expense information required to be disclosed under proposed Rule G-21(e)(i)(A)(3) generally should match such information required to be disclosed under NASD Rule 2210(d)(3) and Securities Act Rule 482; and (ii) as the MSRB seeks to maximize the understandability of information received by the public about potential investments and the actual costs that an investment may entail, the MSRB believes that the specific fee and expense information required to be disclosed

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<sup>4</sup> Similarly, the use of the term “unrelated” to describe in general terms the provision in proposed Rule G-21(e)(i)(B)(3) concerning municipal fund securities of a different issuer does not require further elaboration or clarification.

under proposed Rule G-21(e)(i)(A)(3) generally should be the fees and expenses that an investor would actually incur rather than a collection of the components used to determine such actual fees and expenses. Each advertisement or correspondence<sup>5</sup> that includes performance data must be examined in light of these basic principles as applied in the context of the specific facts and circumstances.

Thus, for example, if an advertisement includes performance data for a single investment option offered under a 529 college savings plan that consists of a portfolio of securities of several underlying registered investment companies, the requirements of this provision generally could be met with the inclusion of a single fee and expense figure if such figure accurately reflects the total fees and expenses that an investor would actually incur in connection with an investment in such option, taking into consideration any program level fees and expenses as well as any fees and expenses that may be attributable to the underlying securities in the portfolio or that are otherwise payable in connection with such investment. If such advertisement includes separate performance data for more than one investment option offered under a 529 college savings plan, the requirements of this provision generally could be met with the inclusion of a single fee and expense figure for each investment option for which performance data is shown if each such figure accurately reflects the total fees and expenses that an investor would actually incur in connection with an investment in each such option, taking into consideration any program level fees and expenses as well as any fees and expenses that may be attributable to the underlying securities in the option or that are otherwise payable in connection with such investment.

**Currentness of Total Annual Operating Expense Ratios.** CSPN requests clarification on how frequently updates must be made to the total annual operating expense ratios in performance advertisements. CSPN states that such information is already disclosed in official statements and suggests that performance advertisements “need only disclose the total annual operating expense ratios as reported in the most recent official statement for the program.”

Proposed Rule G-21(e)(ii)(C) provides that the total annual operating expense ratio that appears in advertisements and correspondence that include 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. NASD Rule 2210(d)(3) provides that the total annual operating expenses to be disclosed in investment company performance advertisements should be as stated in the fee table of the investment company’s prospectus current as of the date of submission of an advertisement for publication or as of the date of distribution of other communications with the public. Recognizing that the MSRB cannot mandate that such

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<sup>5</sup> Proposed Rule G-21(e)(vii) provides that all correspondence with the public that includes performance data relating to municipal fund securities must comply with the requirements of the rule regarding such performance data as if such correspondence were a product advertisement.

information be included in the issuer's official statement for municipal fund securities, proposed Rule G-21(e)(ii)(A) provides that, to the extent that information necessary to calculate performance data or to determine loads, fees and expenses is not available from a registration statement or prospectus, the dealer is to use information derived from the issuer's official statement, otherwise made available by the issuer or its agents or derived from such other sources which the dealer reasonably believes are reliable. The inclusion in an advertisement or correspondence of the total annual operating expense ratio obtained from the official statement, where the official statement is subject to periodic updating by the issuer and such ratio is from the most recent official statement as of the date of submission of the advertisement for publication or as of the date of distribution to the public, generally would be viewed as meeting the currentness standard under proposed Rule G-21(e)(ii)(C).

**Blind Advertisements.** CSPN seeks clarification of language in the proposed interpretive notice regarding proposed Rule G-21(e)(i)(B)(2)(b) concerning certain blind advertisements. CSPN states that "there is no need for a requirement that a 'distinct barrier between the providing of information and the seeking of orders' be maintained" as described in the proposed interpretive notice, arguing that "[s]uch barriers to the establishment of accounts by individuals who have already chosen to respond to a blind advertisement neither protect the investing public nor effect the policy of encouraging college savings."

Proposed Rule G-21(e)(i)(B)(2) provides, in part, that an advertisement is not required to include certain disclosures under Rule G-21(e)(i)(A) and (B) if it does not identify a dealer or its affiliates and if it includes only one or more of the following: the issuer's name, contact information to obtain the official statement or other information, the issuer's logo, or an issuer mark or slogan that does not constitute a call to invest in municipal fund securities. Clause (b) of this provision provides that, if contact information is provided for a dealer acting as the issuer's agent in making the official statement or other information available, then no orders for municipal fund securities may be accepted through such source unless initiated by the customer. The proposed interpretive notice states, "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." The proposed interpretive notice also provides certain illustrative examples of this requirement.

The MSRB notes that the blind advertisement provision in proposed Rule G-21(e)(i)(B)(2) is somewhat unique within the structure of the federal securities laws and was created in part as a result of the public-private partnerships that most 529 college savings plans represent and that are not typically seen in other sectors of the securities markets. This provision was intended to permit dealers to partner with the state plans in providing to the public basic information regarding the states' public purpose goals without promoting the sales activities of the dealers. As such, the MSRB views the requirement of a distinct barrier as an appropriately

measured step to help ensure that the result of such blind advertisements is more information to the public rather than merely more opportunities for dealers to make sales.<sup>6</sup>

**Required Annual Reports.** CSPN seeks a revision to the proposed interpretive notice regarding the preparation or distribution of annual financial reports or other similar information about a 529 college savings plan or other municipal fund security program required to be undertaken by state law or the rules and regulations governing such plan or program. CSPN opposes limiting the reach of that portion of the notice to requirements under “actual state laws or formal administrative rulemaking,” stating:

This limitation is unnecessary to protect the investing public as a whole to the extent that such requirements typically address the distribution of information to existing customers. It is also both arbitrary and unnecessarily intrusive upon state discretion in administering their tuition savings programs in that it provides relief only in connection with programs operated under statutes that include disclosure requirements or administered by public entities that are authorized to adopt administrative rules or regulations and that choose to address their customer’s need for such information by exercising this authority. Some programs, however, are administered by public entities, such as trusts, that lack this authority or that choose to require dealers to prepare and provide such information as a contractual matter.

This interpretive guidance is intended to be consistent with similar guidance provided by NASD with respect its 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. The MSRB recognizes that there is considerable variability from state to state in the methods they may use to adopt binding requirements of general applicability. Therefore, the MSRB would not view the expression “rules and regulations adopted by the state or an instrumentality thereof governing a particular 529 plan or other municipal fund security program” as limiting the types of requirements to which the interpretation is applicable solely to those promulgated pursuant to a specific formal administrative rulemaking process. Instead, the MSRB generally views the interpretation as applicable where the state or instrumentality thereof establishes a mandate of general applicability to, and binding upon, any equally situated person or entity. However, a negotiated

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<sup>6</sup> To that end, any delays in the ability of an investor to invest as a result of the proposed barrier between the provision of information and sales activity could be viewed, if anything, as providing the potential customer with a greater opportunity to review the information he or she has received and to make an investment decision in a less hurried environment. Dealers seeking more direct promotion of potential investment opportunities may do so using materials that are subject to other provisions of Rule G-21.

contractual provision would not satisfy this requirement as this would permit dealers to avoid the appropriate application of Rule G-21 to promotional materials through narrowly tailored contractual arrangements.

**Effective and Implementation Dates.** With the exception described below, CSPN requests that the proposed rule change be made effective immediately upon publication of the Commission's approval order, rather than the MSRB's previously requested April 1, 2007 effective date. CSPN requests that the revisions to proposed Rule G-21(e)(i)(A)(3) and proposed new Rule G-21(e)(i)(A)(4)(a)(iii), relating to disclosures of maximum sales loads and total annual operating expense ratio, instead be made effective sixty days after the publication of such approval order and that dealers not be required to implement such provisions until 15 days after the end of the calendar quarter following such effectiveness.

The MSRB agrees that the sales load and operating expense ratio amendments may require additional time to implement. Thus, the MSRB believes that the proposed rule change should be made effective immediately upon approval, provided that dealers should not be required to implement the new provisions of Rule G-21(e)(i)(A)(3) and (4)(a)(iii) relating to disclosure of maximum sales load and total annual operating expense ratio (as well as the related provisions of Rule G-21(e)(ii)(A), G-21 (e)(vii) and G-27(d)(ii)) for any advertisement submitted or caused to be submitted for publication, or any advertisement or correspondence otherwise distributed to the public, prior to July 15, 2007. Such delay in mandated implementation is appropriate in view of potential production, publication and related technical issues that may exist in some cases and also would avoid potential problems arising from implementation of new requirements simultaneously with existing quarter-end calculation requirements. Nonetheless, the MSRB would urge dealers to implement these provisions as soon as practicable.

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If you have any questions, please do not hesitate to contact me.

Sincerely,



Ernesto A. Lanza  
Senior Associate General Counsel

cc: Martha Mahan Haines, Chief,  
Office of Municipal Securities, SEC