

VIA ELECTRONIC MAIL

October 5, 2007

Nancy M. Morris
Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090

RE: File Number SR-MSRB-2007-03 – Delay of Implementation of Amendments to Rule G-27

Dear Ms. Morris:

On May 22, 2007, the Securities and Exchange Commission (SEC) approved amendments to Municipal Securities Rulemaking Board (MSRB) Rule G-27 (Amended Rule). These amendments were designed to incorporate many of the requirements of NASD (now FINRA) Conduct Rules 3010 and 3012 in order to promote regulatory consistency and specifically apply such rules to the municipal securities activities of broker-dealers. The requirements of the Amended Rule were scheduled to become effective on November 26, 2007. However, the MSRB is now proposing to delay implementation of the Amended Rule until February 29, 2008.

Members of the Financial Services Institute¹ (FSI) are concerned that the Amended Rule will have significant unintended consequences for the distribution of 529 college savings plans and other municipal securities to appropriate investors and the supervision efforts of broker-dealers over these sales. As a result, we have encouraged the MSRB to reassess the Amended Rule's requirement that dealers designate one or more appropriately registered municipal securities principals in each Office of Supervisory Jurisdiction (OSJ). FSI, therefore, supports this delay in the implementation of the Amended Rule as we believe such a delay will allow the MSRB the time necessary to carefully consider these concerns.

Background on FSI Members

The Amended Rule is of particular interest to FSI members. The independent broker-dealer (IBD) community has been an important and active part of the lives of the American investors for more than 30 years. The IBD business model focuses on comprehensive financial planning services and unbiased investment advice with little, if any, proprietary product bias.² IBD members also share a number of other similar business characteristics. They generally clear their securities business on a fully disclosed basis; primarily engage in the sale of packaged products, such as mutual funds, variable insurance products, and 529 college savings plans; take a comprehensive approach to their clients' financial goals and objectives; and provide investment advisory services

¹ FSI members are independent broker-dealers, often dually registered as federal investment advisors, and their affiliated independent financial advisors. FSI's 110 Broker-Dealer members have more than 130,000 independent contractor registered representatives serving more than 14 million American households and generating in excess of \$13.5 billion in annual revenues. FSI also has more than 8,100 Financial Advisor members.

² Some large independent broker-dealer firms offer proprietary products such as mutual fund, variable annuity, and/or investment advisor products produced by an affiliated or parent insurance company, broker-dealer or investment advisor. Nevertheless, these IBD firms, and their proprietary products, represent the exception to the rule.

through either affiliated registered investment advisor firms or such firms owned by their registered representatives. IBD firms utilize extensive OSJ networks to supervise their financial advisor's activities, while consolidating certain particularly sensitive supervisory functions at their home office. Due to their unique business model, IBDs and their affiliated financial advisors are especially well positioned to provide middle-class Americans with the financial advice, products, and services necessary to achieve their financial goals and objectives.

In the U.S., approximately 110,000 independent financial advisors – or almost 20 percent of all registered representatives – practice in the IBD channel.³ These financial advisors are independent contractors, rather than employees of the IBD firms. Independent financial advisors are entrepreneurial business owners who typically have strong ties, visibility, and individual name recognition within their communities and client base. Independent financial advisors provide comprehensive and affordable financial services that help millions of individuals, families, small businesses, associations, organizations, and retirement plans with financial education, planning, implementation, and investment monitoring. Clients of independent financial advisors are typically “Main Street America” – it is, in fact, almost part of the “charter” of the independent channel. The core market for advisors affiliated with IBDs is clients with a net worth of \$250,000. Independent financial advisors get to know their clients personally and provide them investment advice in face-to-face meetings. Education and retirement planning are issues of primary importance to these investors. Most independent financial advisors' new clients come through referrals from existing clients or other centers of influence.⁴ Due to their close ties to the communities in which they operate their small businesses, we believe these financial advisors have a strong incentive to make the achievement of their clients' investment objectives their primary goal.

Detailed Comments

FSI supports the proposed delay in implementation of the Amended Rule because of our concern that the Amended Rule will have significant unintended consequences for the distribution of 529 college savings plans and other municipal securities to appropriate investors and the supervision efforts of broker-dealers over sales of these products. These unintended consequences include:

1. Amended Rule Mandates an Ineffective Supervision Structure – We agree with the MSRB's conclusion that broker-dealers' municipal securities activities should be subject to supervision by persons who have demonstrated in-depth knowledge of MSRB rules by passing the Series 51 or 53 exam. However, we believe that the Amended Rule's requirement that supervision of municipal securities activities be carried out by designated municipal securities principals physically located in each OSJ may very well result in less stringent supervision of these activities than other viable supervisory structures.

IBD firms typically use the services of independent contractor registered principals working in OSJs to facilitate the supervision of their affiliated financial advisors.⁵ These

³ Cerulli Associates, Quantitative Update: Intermediary Markets 2006. Please note that this figure represents a conservative estimate of independent financial advisors. In fact, more than 130,000 financial advisors are affiliated with FSI member firms.

⁴ These “centers of influence” may include lawyers, accountants, human resources managers, other trusted advisors, or members of affinity groups.

⁵ NASD Conduct Rule 3010(g) defines an OSJ as “any office of a member at which any one or more of the following functions take place: (A) order execution and/or market making; (B) structuring of public offerings or private placements; (C) maintaining custody of customers' funds and/or securities; (D) final acceptance (approval) of new accounts on behalf of the member; (E) review and endorsement of customer orders, pursuant to paragraph (d) above; (F) final approval of advertising or sales literature for use by persons associated with the member, pursuant to Rule

OSJ Managers are appropriately licensed individuals who agree to undertake certain supervisory obligations for the offices under their supervisory jurisdiction as defined by the IBD firm. The average IBD has 150 registered principals who serve as OSJ Managers in the field - ranging from an average of 58 for IBD firms with fewer than 500 financial advisors to 389 for IBD firms with more than 2000 financial advisors. The OSJ Manager is generally compensated for his supervisory services through a percentage of the commissions and fees generated by the financial advisors he supervises.⁶ Frequently the OSJ Manager also dedicates time to servicing his own clientele. As a result, the OSJ Manager's time is allocated between sales and service of investor accounts and supervision of the activities of other financial advisors.

In light of these competing demands on the time and attention of their OSJ Managers, many IBD firms have chosen to limit the supervisory responsibilities delegated to them. These firms have chosen to centralize certain compliance functions at either their corporate home office or in regional supervisory offices staffed by appropriately licensed compliance professionals. Some IBD firms have gone so far as to create separate supervisory units dedicated full-time to the oversight of producing OSJ Managers. The review of advertising, outside business activities, and transactions in certain complicated product types (e.g., municipal securities, including 529 college savings plans) are commonly handled in this fashion. Regional supervisory managers or other broker-dealer personnel handling these functions are experienced compliance professionals who have often developed specialized skills and knowledge in their area of expertise. IBD firms work closely with their regional supervisory managers and home office compliance staff to insure they have the information and resources necessary to properly supervise their assigned representatives. These regional managers and home office compliance personnel are a very important and effective part of an IBD firm's compliance program.

IBD firms have endeavored to create a culture of compliance within their organizations, which they believe is best served through their chosen supervisory structure. They have developed these supervisory structures in response to regulatory guidance and their own hard earned experience.⁷ Nevertheless, the Amended Rule would mandate that a municipal securities principal be physically located in each OSJ despite the fact that this structure has been rejected by many IBD firms because it is prone to a lack of uniformity of supervision, results in the delegation of responsibility to persons who are less experienced or informed in an area requiring specialized knowledge, and has otherwise proven ineffective. For these reasons, we believe that it would be unfortunate if the MSRB chose to replace their reasoned judgment with a regulatory mandate that is likely to result in less effective investor protection efforts.

2210(b)(1); or (G) responsibility for supervising the activities of persons associated with the member at one or more other branch offices of the member."

⁶ "Keeping Up," *Investment Advisor*, June 2005.

⁷ See example of NASD guidance in Notice to Members 86-65 at http://nasd.complinet.com/nasd/display/display.html?rbid=1189&record_id=1159004789&highlight=86-65#r1159004789. See examples of SEC guidance in Letter to Gordon S. Macklin, President, NASD, from Douglas Scarff, Director, Division of Market Regulation, the Commission (1982-83 Transfer Binder), Fed. Sec. L. Rep. (CCH) paragraph 77,303, at 78,116 (June 12, 1982), and Division of Market Regulation, Staff Legal Bulletin No. 17, Remote Office Supervision (March 19, 2004) at <http://www.sec.gov/interps/legal/mrslb17.htm>. Also see, In re Royal Alliance Associates, Inc., Securities Exchange Act Release No. 34-31874, 63 S.E.C. Docket 1606 (Jan. 15, 1997) and In re Signal Securities, Inc., et al., Securities Exchange Act Release No. 34-43350, 73 S.E.C. Docket 928 (Sept. 26, 2000).

2. Amended Rule Will Limit Access to Municipal Securities Products – The Amended Rule’s requirement that OSJs have a municipal securities principal on-site is likely to limit investor access to municipal securities products by creating an unnecessary barrier to entry to the sale of these important products. This would be unfortunate in light of the essential role municipal securities products, including 529 college savings plans, can play in the financial planning efforts for most investors.

As you know, 529 plans allow investors to save for the college education expenses of their children on a tax deferred basis while retaining control of the funds within the plan. However, despite their many benefits to investors, obtaining the necessary principal exams may not be seen by some OSJ managers as an effective use of their time and resources. This is largely due to the relatively small size of the typical 529 college savings plan account and resulting commissions.⁸ The revenue generated by the typical 529 plan ticket simply isn’t compelling enough to motivate many OSJ Managers to obtain the necessary principal license. By placing this unnecessary hurdle before the OSJ Manager, the Amended Rule will have the unintended consequence of limiting the public’s access to these important products.

The same is true for other municipal securities. As the baby boom generation reaches retirement age, municipal bonds will grow in importance for their financial future. Financial advisors are aware that many of the clients will soon transition from the accumulation phase to the distribution phase of their financial lives. The unfortunate reality is that the complexity of the required principal exam and the necessary study time to ensure passage will serve as a significant impediment to OSJ Managers obtaining the necessary licenses and, therefore, as an impediment to properly licensed financial advisors’ ability to offer these securities to investors who could benefit from them. Even those OSJ managers who are motivated to attain the appropriate principal license will have a difficult time obtaining the necessary municipal securities principal exam by the November 26 deadline. A search of several exam preparation company web sites reveal that few offer training courses for the Series 51 or 53 examinations.⁹ As a result, OSJ managers will be forced to engage in self-study while continuing to service their existing clients, market their services to new clients, and perform supervisory functions over other producing financial advisors. It is likely that exam preparation will have stiff competition for the registered principal’s time and attention. Thus the Amended Rule serves to limit access to municipal securities.

While the MSRB’s desire to improve investor protection is laudable, the Amended Rule will have the unintended consequence of restricting access to these valuable securities products at a time when they are most needed by middle-class Americans. This is especially troubling in light of the fact that the Amended Rule is unlikely to achieve its goal. As a result, we ask the MSRB to reconsider this portion of the Amended Rule.

⁸ According to the Investment Company Institute, the average 529savings plan account size is approximately \$12,500.00. See at http://www.ici.org/funds/abt/faqs_529.html.

⁹ See, for example, Securities Training Corporation (STC) which offers a handful of Series 53 classroom courses in the states of Colorado, Florida, and New York despite the likelihood that demand will be at its peak during the next several months. Meanwhile, STC does not offer a classroom preparation for the Series 51 examination. See at <http://www.stcusa.com/content/securities/licensing.asp>.

Recommendation for Improving the Amended Rule

FSI supports the MSRB's proposal to delay implementation because we believe it will provide the time necessary to thoughtfully consider improvements to the Amended Rule. We recognize the MSRB's desire to harmonize with existing FINRA Rules for the purposes of promoting regulatory consistency. However, the Amended Rule's requirement that dealers designate one or more appropriately registered municipal securities principals in each OSJ would have significant unintended consequences. Therefore, we recommend that the MSRB delete section (b)(iv) of the Amended Rule. Such a change will allow broker-dealer firms the flexibility necessary to create effective supervisory structures appropriate for their unique business model and will allow investors greater access to important municipal securities products.

We are committed to constructive engagement in the regulatory process and, therefore, have offered to work with the MSRB to find solutions to these concerns that achieve their objectives without the unintended consequences outlined above.

Thank you for your consideration of our comments. Should you have any questions, please contact me at 770 980-8488.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "D. T. Bellaire". The signature is fluid and cursive, with a large initial "D" and "T" followed by the name "Bellaire".

David T. Bellaire, Esq.
General Counsel & Director of Government Affairs