

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-51736, File No. SR-MSRB-2004-09)

May 24, 2005

Self-Regulatory Organizations; Municipal Securities Rulemaking Board; Order Approving Proposed Rule Change Relating to Advertisements of Municipal Fund Securities Under MSRB Rule G-21

On December 16, 2004, the Municipal Securities Rulemaking Board (“MSRB” or “Board”), filed with the Securities and Exchange Commission (“SEC” or “Commission”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change amending MSRB Rule G-21, on advertising, to establish specific requirements with respect to advertisements by brokers, dealers and municipal securities dealers (“dealers”) relating to municipal fund securities. The proposed rule change was published for comment in the Federal Register on December 30, 2004.<sup>3</sup> The Commission received three comment letters regarding the proposal.<sup>4</sup> On March 8, 2005, the MSRB filed a response to the first two comment letters and requested that the SEC make the proposed rule change effective 180 days after the

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

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> See Securities Exchange Act Release No. 50919 (December 22, 2004), 69 FR 78499 (December 30, 2004).

<sup>4</sup> See e-mail letter from David Pearlman, Chairman, College Savings Foundation (“CSF”), to [rule-comments@sec.gov](mailto:rule-comments@sec.gov), dated January 14, 2005 (“CSF’s Letter”); letter to Jonathan G. Katz, Secretary, Commission, from Tamara K. Salmon, Senior Associate Counsel, Investment Company Institute (“ICI”), dated January 19, 2005 (“ICI’s Letter”); and letter from Joseph J. Connolly, Eckert Seamans Cherin & Mellott, LLC, on behalf of its client PFM Fund Distributors, Inc. (“Fund Distributors”), dated February 18, 2005 (“Fund Distributors’ Letter”).

proposed rule change is approved.<sup>5</sup> On May 10, 2005, the MSRB filed a response to the third comment letter from Fund Distributors and modified the MSRB's request in the First Response Letter regarding the effective date of the proposed rule change.<sup>6</sup> This order approves the proposed rule change.

The proposed rule change amends MSRB Rule G-21 to establish specific standards applicable to advertisements of municipal fund securities by dealers. In its filing, the MSRB proposed an effective date for the proposed rule change of the first calendar day of the month beginning 90 or more calendar days after SEC approval.

CSF's Letter and ICI's Letter generally supported the proposed amendments, which would bring advertising rules for municipal fund securities more in line with the requirements of Rule 482 adopted by the SEC under the Securities Act of 1933, as amended.<sup>7</sup> CSF's Letter requested additional time to implement systems changes needed to comply with the proposal, and requested that there be a 180-day transition period from the effective date of the proposal until the date of required compliance. ICI's Letter recommended that the proposed 90-day compliance period be extended to a period of at least 210 days to accommodate the changes necessitated by the revised rule.

In addition, ICI's Letter noted that the MSRB has published for comment related amendments to Rule G-21 that would supplement the proposed rule change (the

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<sup>5</sup> See letter from Ernesto A. Lanza, Senior Associate General Counsel, MSRB, to Martha M. Haines, Chief, Office of Municipal Securities, Commission, dated March 8, 2005 ("MSRB's First Response Letter"). The MSRB's First Response Letter does not respond to Fund Distributors' Letter because Fund Distributors' Letter was received by the Commission after the end of the comment period.

<sup>6</sup> See letter from Ernesto A. Lanza, Senior Associate General Counsel, MSRB, to Martha M. Haines, Chief, Office of Municipal Securities, Commission, dated May 4, 2005 ("MSRB's Second Response Letter").

<sup>7</sup> 15 U.S.C. 77a et seq.

“additional draft amendments”), and recommended the proposed rule change and the additional draft amendments, if ultimately approved, be made effective in a coordinated manner to avoid a two-step compliance process.

The MSRB’s First Response Letter stated that the MSRB had approved the filing with the SEC of the additional draft amendments to Rule G-21 at its February meeting, and also stated that the MSRB would request an effective date for the additional draft amendments that coincides with the effective date for the proposed rule change.

The MSRB’s First Response Letter also stated that they understand that, in many cases, issuers will be involved in the process of preparing the disseminated performance data that dealers will use in their advertisements and for compliance with the requirements in the additional draft amendments. Accordingly, the MSRB’s First Response Letter stated that they believe that additional time for the issuer community to prepare for the timeframes required under the new advertising requirements would be appropriate, and requested that the SEC amend the proposed rule change to be effective 180 days after the proposed rule change is approved. The MSRB’s Second Response Letter, drafted after additional discussions with SEC staff, recommended that all advertisements for municipal fund securities submitted or caused to be submitted for publication by a dealer on or after September 1, 2005 comply with section (e) of Rule G-21, as amended by the proposed rule change, except for paragraphs (e)(i)(C) and (e)(ii) relating to calculation and presentation of performance data and those provisions of paragraph (e)(i)(D) pertaining to paragraph (e)(i)(C), and that all advertisements for municipal fund securities submitted or caused to be submitted for publication by a dealer on or after December 1, 2005 comply with all provisions of section (e) of Rule G-21.

Fund Distributors' Letter stated that municipal fund securities consist of the securities of two broad classes of issuers: local government investment pools (LGIPs) and what are known as section 529 college savings plans. Fund Distributors' Letter urged the Commission to decline to adopt the proposed rule change to the extent that the amendments apply to the historical performance data of LGIPs because those amendments fail to recognize the unique perspective of the financially sophisticated municipal governments which use LGIPs in their cash management programs. The MSRB's Second Response Letter stated that although they agree that many investors in the LGIP market may be "financially sophisticated municipal governments," as characterized by Fund Distributors, they believe that a large number of LGIP investors consist of entities such as small municipalities, school and other special purpose districts, and various other governmental entities that may have only part-time or otherwise limited financial staffs who may well not be financially sophisticated. The MSRB's Second Response Letter further stated that they believe that the proposed rule change will further investor protection in the LGIP market and therefore should be approved as submitted.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the MSRB<sup>8</sup> and, in particular, the requirements of Section 15B(b)(2)(C) of the Act and the rules and regulations thereunder.<sup>9</sup> Section 15B(b)(2)(C) of the Act requires, among other things, that the MSRB's rules be designed to prevent fraudulent and manipulative acts and

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<sup>8</sup> In approving this rule the Commission notes that it has considered the proposed rule's impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

<sup>9</sup> 15 U.S.C. 78o-4(b)(2)(C).

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.<sup>10</sup> In particular, the Commission finds that the proposed rule change 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.

The Commission finds that the MSRB's recommendation concerning the effective date of the proposal falls within the statutory parameters and therefore agrees that all advertisements for municipal fund securities submitted or caused to be submitted for publication by a dealer on or after September 1, 2005 must comply with section (e) of Rule G-21, as amended by the proposed rule change, except for paragraphs (e)(i)(C) and (e)(ii) relating to calculation and presentation of performance data and those provisions of paragraph (e)(i)(D) pertaining to paragraph (e)(i)(C), and that all advertisements for municipal fund securities submitted or caused to be submitted for publication by a dealer on or after December 1, 2005 must comply with all provisions of section (e) of Rule G-21. These compliance dates also would apply to the additional draft amendments, when filed with (and if approved by) the Commission. In addition, the Commission believes that the amendments should be applied to LGIPs as well as section 529 plans because

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<sup>10</sup> Id.

investor protection issues may be raised in connection with the sale by dealers of interests in local government pools as well as section 529 plans.

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,<sup>11</sup> that the proposed rule change (SR-MSRB-2004-09) be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>12</sup>

Margaret H. McFarland  
Deputy Secretary

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<sup>11</sup> 15 U.S.C. 78s(b)(2).

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