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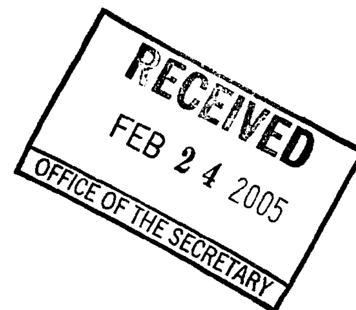


Securities and Exchange Commission
450 Fifth Street, N.W.
Washington, D.C. 20549-0609

Attention: Jonathan G. Katz, Secretary

Re: File No. SR-MSRB-2004-~~08~~ 09
Comments on Proposed Rule Change
Relating to Advertisements of Municipal
Fund Securities Under MSRB Rule G-21

Gentlemen/Ladies:

Eckert Seamans Cherin & Mellott, LLC requests leave to submit out of time the within comments to the Municipal Securities Rulemaking Board's proposed amendments to MSRB Rule G-21 as set forth in Commission Release 34-50919 (December 22, 2004)(the "Proposed Amendments").

The MSRB proposes to add to Rule G-21 additional provisions which would require that "dealer advertising" of the historical performance of "Municipal Fund" securities be limited and conform only to certain forms of presentation -- which are those required under Rule 482 under the Securities Act of 1933 to be employed in respect of the publicly offered shares of federally registered investment companies.

This submission contends that the Proposed Amendments, insofar as they relate to dealer advertising of historical performance data of Local Government Investment Pools ("LGIPs") fail to recognize the unique perspective of the financially sophisticated municipal governments which use LGIPs in their cash management programs. This submission urges the Commission to deal with publication of performance data in the distribution of LGIP securities only after the MSRB has fully explored the needs and preference of the relevant officers of local governments, as to which there is no evidence that the MSRB has made any study.

Eckert Seamans submits these comments on behalf of its client PFM Fund Distributors, Inc. ("Fund Distributors"), a registrant under Section 15 of the

Securities Exchange Act of 1934. Fund Distributors acts, to the extent required, as the distributor of shares of LGIPs for which Fund Distributor's parent, PFM Asset Management LLC ("PFM"), an investment advisor registered under the Investment Advisers Act of 1940, serves as investment manager and administrator (with responsibility to interface with depositors and prospective depositors).

Municipal Fund securities (an appellation coined by the MSRB) consist of the securities of two broad classes of issuers: LGIPs and what are known as Section 529 Plans, which are creatures of state statutes that authorize an instrumentality within a state to offer unregistered investment company securities for individual savings for higher education expenses.

It is entirely clear from the Notices of the MSRB both offering the Rule G-21 amendments for comment and announcing the submission of the Proposed Amendments to the Commission that the MSRB's concerns in drafting the Proposed Amendments lay almost entirely with Section 529 plans. MSRB Notice 2004-16 (June 10, 2004); MSRB Notice 2004-42 (December 16, 2004). Section 529 Plans are long term investment vehicles that are sold to individuals, can be invested largely or entirely in equities, frequently are distributed by major brokerage firms on a fee basis, and, remarkably, are in strenuous competition with each other for investors across the country as a result of the enabling provisions of state laws.

There is little dispute, because Section 529 Plans are in competition for the savings of unsophisticated individual investors, that there is a need to examine and make uniform the comparability of published historical performance data. None of those considerations, however, apply to the performance data of LGIPs, which are available for cash management only to institutional investors of a single state and which are in competition as to short-term funds largely with the direct activities of financial institution issuers of certificates of deposit (which are unregulated by the federal securities laws) and repurchase agreements. In the less frequent cases where municipal governments seek to invest funds, such as bond escrows, on a longer-term basis, LGIPs are in competition also with issuers of guaranteed investment contracts and direct offerings of U.S. Treasury or agency securities.

This submission does not revisit the issue, one of several previously submitted to the Commission but never authoritatively resolved, that insofar as they relate to the LGIPs of which PFM serves as investment advisor, the MSRB's Municipal Fund Security Rules were improvidently and perhaps unlawfully adopted. It appears now that the MSRB is unconcerned with the legitimate

needs of the local governments which those Rules should exist only to promote. The sole reference to LGIPs in the MSRB Notice seeking the Commission's adoption of the Proposed Amendments is as follows:

> ***Applicability to LGIPS*** - One commentator suggested that the general disclosure provisions be made inapplicable to advertisements of LGIPs, arguing that the required references to the official statement are inappropriate because official statements are not typically prepared by LGIPs. The MSRB understands that most LGIPs do in fact prepare official statements (often referred to as information statements), and dealers marketing LGIPs generally are subject to SEC Rule 15c2-12. Therefore, the MSRB has not exempted dealer advertisements of LGIPs from the rule requirements.

Thus, the MSRB appears to be satisfied to dismiss any analysis of the particularities of local government investors by referring to the "general" applicability of Rule 15c2-12 (which deals only with the protection of purchasers of municipal debt) to dealers distributing "most" LGIP shares of beneficial interest. The MSRB's statement not only fails to deal with the issue of the reasonableness of the application to LGIPs of the performance-reporting rules governing '33 Act registered funds, discussed below, but it ignores significant reasons why Rule 15c2-12 should not apply to the distribution of LGIP shares by single-purpose distributors which are affiliates of the investment adviser to the LGIP (an issue upon which a request for guidance by the SEC Staff was not responded to. See letter of Joseph J. Connolly to Martha Mahan Haines, Chief, Office of Municipal Securities, March 12, 2001).

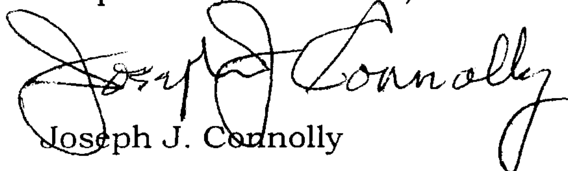
This submission does not quarrel with the proposed Subsection (e)(i) amendments to Rule G-21, which relate to common investment-admonition legends and information. As odd as it may be for a California LGIP to be mandated to warn the Treasurer of Los Angeles County to read carefully the LGIP's official statement and to consider a risk of loss, the burden of complying with such requirements is too slight to justify objection. More serious problems are presented by the MSRB's proposed Section (e)(ii) amendments, which require any person engaged in the distribution of LGIP shares to present performance experience as if the LGIP were registered under the Securities Act of 1933 -- something that the Congress has refused to require a municipal government to do.

The reason for our opposition is that -- contrary to the confusion which individual investors in Section 529 Plans may experience as a result of publication of disparate measures of performance -- the relationship between local financial officers and an LGIP of that state may require that the LGIP

provide current performance information to suit the needs, or preferences, of local officials without regard to the considerations which underlay the design of Rule 482. Thus, municipal officials -- to give effect to their own methodology for investment decisions -- may call for historical performance data for different intervals than are specified for the universe of individual investors under Rule 482, or for data which take account of the effects of portfolio transactions on the actual returns which are achieved by investments in the LGIP. To be sure, the LGIP itself may respond to such needs directly (through its employees or contract administrators) or through the use of impersonal means such as websites without concern for the rigid program proposed by the MSRB. But it makes little sense for the managers of a valuable and historically honest investment service to local governments to be required to bend their relationship to their clients to satisfy what is, in respect to this segment of financial services, an inapposite and poorly conceived set of regulations.

In conclusion, we urge the Commission to decline to adopt the Proposed Amendments to MSRB Rule G-21 to the extent that they apply to the publication of historical performance data of LGIPs. We submit that the Commission should return the proposal to the MSRB for reconsideration and revision on the basis of a study of prevailing practices in LGIP service to governments, including direct inquiry into the needs and preferences of municipal governments which employ LGIPs as cash investment vehicles.

Respectfully submitted,



Joseph J. Connolly

JJC/mzg
cc: Ernesto A. Lanza, Esquire
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