

MEMO# 20608

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MSRB Files Proposed Advertising Amendments with the SEC

©2006 Investment Company Institute. All rights reserved. Information may be abridged and therefore incomplete. Communications from the Institute do not constitute, and should not be considered a substitute for, legal advice. [20608] November 24, 2006 TO: 529 PLAN ADVISORY COMMITTEE No. 21-06 529 PLAN MEMBERS No. 21-06 RE: MSRB FILES PROPOSED ADVERTISING AMENDMENTS WITH THE SEC The Municipal Securities Rulemaking Board has filed with the Securities and Exchange Commission proposed amendments to MSRB Rule G-21, relating to advertisements, and Rule G-27, relating to supervision, as well as an interpretive notice relating to the amendments.¹ Assuming the amendments are approved by the SEC, the MSRB has requested that they be made effective February 1, 2007, with certain exceptions. The exceptions are provisions relating to disclosure of fees and expenses in product advertisements and correspondence containing performance data for municipal fund securities, which the MSRB requests be made effective April 1, 2007. The proposed amendments are briefly summarized below.

AMENDMENTS TO RULE G-21; INTERPRETIVE NOTICE The amendments and related interpretive notice are substantially similar to those previously published for comment by the MSRB.² Some changes have been made in response to comments the MSRB received on the proposal.³ Most of the changes to Rule G-21 are intended to better conform the MSRB's requirements with those of the NASD or the SEC. Specific issues addressed in the amendments are as follows.

1 See MSRB Files Amendments and Interpretive Guidance Relating to Advertisements of Municipal Fund Securities, MSRB Notice 2006-32 (November 21, 2006), which is available at: <http://www.msrb.org/msrb1/whatsnew/2006-32.asp>. 2 See Institute Memorandum to 529 Plan Advisory Committee No. 15-06 and to 529 Plan Members No. 16-06 [20302], dated August 18, 2006. 3 See Institute Memorandum to 529 Plan Advisory Committee No. 18-06 and to 529 Plan Members No. 20-06 [20400], dated September 22, 2006, for a copy of the Institute's comment letter.

2 □ Definition of Form Letter – Rule G-21(a)(ii) has been revised to add a definition of “form letter” that expressly includes both written letters (e.g., post cards) and e-mail messages. □ Professional and Product Advertisements – Rule G-21(b) and (c) relating to professional advertisements and product advertisements, respectively, have been revised to add express definitions of these terms and the standards for such ads. Additionally, the definition of “product advertisement” clarifies that it applies to advertisements of specific municipal securities or that discuss specific features of municipal securities rather than to ads that merely mention general categories of municipal securities. □ Exceptions from the Rule's Disclosure Requirements: Generic Advertisements, Blind Advertisements, and Form Letters – The rule has been revised to except generic advertisements, certain blind advertisements (including logo materials), and certain form letters to customers from the disclosure requirements of Rule G-21(e)(i)(A)(1) and (2). We are pleased that, in response to the ICI's comment letter,

the exception for blind advertisements has been revised to permit orders to be accepted by a broker, dealer, or municipal securities dealer (or their affiliate) acting as an agent of the issuer in response to a blind advertisement provided that such order is initiated by the customer. (As originally proposed, the acceptance of such orders was prohibited.) The interpretive notice provides guidance to dealers acting as the issuer's agent in responding to customer inquiries and accepting customer orders in response to a blind advertisement and emphasizes that a blind advertisement may not identify the dealer or its affiliate. □

Performance Data: Disclosure of Fees and Expenses in Advertisements and Correspondence – Rule G-21(e)(i)(A) has been revised to incorporate provisions substantially similar to those recently adopted by the NASD to its Rule 2210(d)(3) relating to advertisements, sales literature, and correspondence containing performance data. As such, advertisements containing performance data for municipal fund securities will be required to disclose the relevant maximum sales charge or deferred sales charge and total annual operating expense ratio. Print advertisements must include text box disclosure of this information. Consistent with the NASD's rule, this provision in the MSRB's rule would be effective April 1st. □

Disclosure Relating to Tax-Adjusted Performance Data – The MSRB has deleted a provision in its previous proposal that would have required disclosures relating to lapses or changes in the federal tax laws that might adversely impact yields or returns of municipal fund securities. This deletion was recommended by the ICI in its comment letter. □

Substance of Disclosure – Revisions to Rule G-21 as well as the interpretive notice clarify that the disclosures required by the rule “are not legends requiring the inclusion of specific language but instead require that such information be effectively conveyed.” As such, compliance with the rule's disclosure requirements may be achieved if the substance of the information is effectively conveyed without the use of specific language. The MSRB's interpretive notice notes the importance of this flexibility in time-limited broadcast advertisements and advises that dealers “provide such disclosures in a manner that appropriately balances the intended message with the required disclosures.” According to the MSRB, the context in which the information is provided is an important factor in determining whether the information is effectively conveyed. The ICI had strongly supported including this flexibility in the rule. □

Omission of Home State Tax Benefits – Rule G-21(e)(i)(A)(2) has been revised to permit dealers to omit disclosures relating to home state tax benefits in advertisements (such as form letters, post cards, or emails) that are sent to residents of the state. □

Communications with Existing Customers – Added as Rule G-21(e)(i)(B)(3) is a new provision permitting dealers to distribute form letters to existing customers who have previously invested in municipal fund securities without such letters having to include all the disclosures required by Rule G-21. However, if the form letter relates to municipal fund securities other than, or unrelated to, the one the customer already invests in, the disclosures in Rule G-21 are required. □

Required Annual Reports Excluded from Definition of Advertisement – According to the MSRB's interpretive notice, where a dealer is required under state law to prepare or distribute an annual financial or similar report regarding a municipal fund security program, such report will not be treated as an advertisement so long as the dealer provides the report solely in the manner required by state law.

AMENDMENTS TO RULE G-27 In addition to the above amendments to Rule G-21, Rule G-27 was revised to require a dealer to develop written procedures to ensure that correspondence that presents performance data complies with the applicable requirements of Rule G-21. Tamara K. Salmon Senior Associate Counsel