

COMMENT LETTER

January 19, 2005

ICI's Comments to SEC on 529 Plan Ad Rules, January 2005

January 19, 2005

Mr. Jonathan G. Katz
Secretary
U.S. Securities and Exchange Commission
450 Fifth Street, NW
Washington, DC 20549-0609

Re: Advertisements of Municipal Fund Securities Under MSRB Rule G-21 File No. SR-MSRB-2004-09

Dear Mr. Katz:

The Investment Company Institute¹ appreciates the opportunity to express its support for the Municipal Securities Rulemaking Board's proposed enhancements to its advertising rule, Rule G-21.¹ The MSRB's proposal will benefit investors by adding specific standards and disclosure requirements to the MSRB's general prohibition against fraudulent advertising application. These revisions deliberately track the requirements imposed on mutual funds advertisements by Rule 482 under the Securities Act of 1933. Adoption of the proposed amendments will provide greater uniformity between the advertising rules applicable to mutual funds and 529 plan securities.

Mutual funds and 529 plan securities share many common features in their offer and sale, including in the manner in which they are advertised to investors. As such, it is appropriate to have consistent regulation between these products. Investors are better served by consistent regulation because it will reduce the confusion resulting from viewing advertisements that differ in their content due to disparate regulation. Broker-dealers also are better served by consistent regulation because it reduces the burdens on their compliance systems. Finally, inasmuch as the NASD is charged with inspecting securities firms for compliance with the rules of both the MSRB and the SEC, including the advertising rules, uniform standards should facilitate the NASD's ability to conduct such inspections.

For these reasons, we support the proposed amendments in their current form. We recommend, however, that the proposed 90-day compliance period be extended to a period of at least 210 days. As mentioned above, the proposed amendments largely track the requirements in Rule 482 under the Securities Act of 1933. When Rule 482 was substantially revised in 1988, the Commission originally proposed a compliance period of

90 days. The Commission subsequently expanded this period to 210 days to accommodate the vast changes necessitated by the revised rule. We believe the process for achieving full compliance with revised Rule G-21 will be comparable to that experienced by mutual funds in 1988. We therefore recommend the same compliance period.

In addition, the MSRB has published for comment related amendments to Rule G-21 to require advertisements for 529 plan securities with performance information to provide a phone number or website where an investor can obtain more current performance information.¹ If these additional amendments are adopted, the Institute recommends that the MSRB coordinate the compliance periods for both sets of amendments to avoid a two-step compliance process. Requiring changes to 529 plan advertisements in two stages will increase a municipal securities dealer's compliance burdens and costs without enhancing investor protection.

We appreciate the opportunity to comment on the MSRB's proposal. If you have any questions about our comments or need additional information, please contact me at (202) 326-5825.

Sincerely,

Tamara K. Salmon
Senior Associate Counsel

cc: Ernie Lanza, Senior Associate General Counsel
Jill C. Finder, Assistant General Counsel
Municipal Securities Rulemaking Board

ENDNOTES

¹ The Investment Company Institute is the national association of the American investment company industry.

² See Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Municipal Securities Rulemaking Board Relating to Advertisements of Municipal Fund Securities Under MSRB Rule G-21, 69 Fed. Reg. 78499 (Dec. 30, 2004).

³ See MSRB Notice 2004-43, Request for Comments on Draft Amendments Relating to Performance Data in Advertisements of Municipal Fund Securities (Dec. 16, 2004).