

COMMENT LETTER

September 22, 2006

ICI Comment Letter on MSRB Proposed Amendments to Advertising Rule (pdf)

September 22, 2006 Ernesto A. Lanza Senior Associate General Counsel Municipal Securities Rulemaking Board 1900 Duke Street, Suite 600 Alexandria, VA 22314 Re: Draft Amendments to Rule G-21 (MSRB Notice 2006-26) Dear Mr. Lanza: The Investment Company Institute¹ is pleased to express its support for the proposed amendments to the Municipal Securities Rulemaking Board's advertising rule, Rule G-21.2 The proposed amendments strike the right balance insofar as they require advertisements about municipal fund securities, including 529 college savings plans, to include important information for investors while providing flexibility to design advertisements in a way that effectively conveys this information. We also applaud the MSRB for proposing amendments that make Rule G-21 more consistent with Securities and Exchange Commission and NASD advertising rules for mutual funds. Mutual funds and 529 plans typically are advertised in the same manner. Consistent regulation of advertising for similar investment products benefits investors because it avoids the potential for confusion that might result from viewing advertisements that differ in content due to differences in regulations. The Institute particularly supports the proposed amendments that clarify the MSRB's intent to provide flexibility with respect to certain required basic disclosures and tax-related disclosures. We also support the MSRB's proposal to permit generic advertisements and blind advertisements, but we recommend certain clarifications to these provisions. Our comments are discussed in greater detail below. 1 The Investment Company Institute is the national association of the American investment company industry. More information about the Institute is available at the end of this letter. 2 See Request for Comments on Draft Amendments Relating to Rule G-21 on Advertising, MSRB Notice 2006-26 (August 11, 2006). Ernesto A. Lanza September 22, 2006 Page 2 of 6 Basic Disclosures Rule G-21 requires most advertisements for municipal fund securities to include certain basic disclosures. We strongly support the proposed amendments that clarify that these disclosures are not legends requiring that specific language be used in advertisements. Instead, the rule requires that such information be "effectively conveyed." As the MSRB correctly recognizes, this flexibility is particularly important in the context of time-limited television and radio advertisements. We also strongly support permitting the required information to be provided in an abbreviated manner and permitting a portion of the disclosure to be provided on the screen (rather than spoken) for television advertisements. We agree that the proposed amendments will facilitate the production of time-limited broadcast advertisements in a manner that appropriately balances the intended message with the required disclosures. Tax-Related Disclosures Rule G-21(e)(v) requires a "product advertisement" for municipal fund securities that discusses tax benefits to disclose that

such tax benefits may be conditioned on meeting certain requirements. We strongly support the proposed amendments that would clarify that generalized statements regarding the tax benefits require only a generalized statement that certain conditions apply. Our members believe that this clarification is important because it will permit them to alert potential purchasers to the fact that conditions might apply without having to specifically detail each of these conditions. This kind of detail detracts from the intended message of the advertisement and is unnecessary, given that investors will receive detailed information about the tax benefits and any related conditions in the official statement. For example, if an advertisement states that an investment in a 529 plan is tax-free or tax-advantaged, it should be sufficient to state in an advertisement that such advantageous tax treatment may be subject to conditions.³ We also support proposed amendments to Rule G-21(e)(i)(A)(2)(b) permitting dealers to omit disclosure stating that, "investors should consider before investing whether their home states offer state tax or other benefits only available for investors in the home state 529 plan" in advertisements that are distributed through means that are reasonably likely to result in the advertisements only being received by residents of the home state. This is a sensible change that recognizes that there is no practical benefit to providing such disclosure in these circumstances. ³ Some of our members report that they have been required to accompany a statement about a 529 plan being tax-free or tax-advantaged with disclosure that investors may be subject to a 10% penalty for any non-qualified distributions. We do not believe that such a generalized statement about tax treatment warrants such specific disclosure about the possibility of penalty. Rather, investors can find such detailed information in the official statement.

Ernesto A. Lanza September 22, 2006 Page 3 of 6 Generic Advertisements The proposed amendments incorporate in Rule G-21(e)(i)(B)(1) a definition of "generic advertisement." The permissible content of generic advertisements of municipal fund securities is very limited and, as such, these advertisements would not be required to include the general disclosures that are required to appear in most other types of advertisements. We support this approach, which is modeled on the SEC's rule governing generic advertisements for mutual funds. Advertisements that alert the public in general terms to the benefits of municipal fund securities do not need the other required disclosure. We recommend deleting the reference in proposed Rule G-21(e)(i)(B)(1) to any "specific municipal fund security" to clarify the scope of the provision. This change would make clear that, while a generic advertisement cannot reference a specific investment option or portfolio, the rule does not preclude mentioning a 529 plan, including by its brand name. Thus, for example, generic advertisements could include the following: a banner advertisement on a website that states "You should consider investing in ABC 529 plan;" a pencil with the name of a 529 plan on it; or a radio broadcast followed by the words, "sponsored by XYZ 529 plan."

Blind Advertisements The proposed amendments create another category of advertisements called "blind advertisements." Like generic advertisements, blind advertisements are excepted from the general disclosure requirements that apply to other advertisements, and the permissible contents are strictly limited. The Institute supports the blind advertisement concept but recommends a modification to make the provision workable. As proposed, Rule G-21(e)(i)(B)(2)(b) would permit a blind advertisement to include contact information for an issuer of municipal fund securities or any agent of such issuer to obtain an official statement or other information. The ability to provide contact information would be subject to a proviso that, "if any such agent of the issuer is a broker, dealer or municipal securities dealer or an affiliate of a broker, dealer or municipal securities dealer, no orders for municipal fund securities shall be accepted through such source." For example, if a contact phone number is provided, the rule contemplates that the person answering the phone at that number could provide information or agree to send an official statement, but could not accept orders for the advertised municipal fund

securities. The Institute is concerned that the quoted language could be read to suggest that where a blind advertisement references a website, an investor directed to the website by the advertisement may not place an order through that website. This restriction is unnecessary to accomplish the MSRB's intended purpose. Ernesto A. Lanza September 22, 2006 Page 4 of 6 It appears that the proviso is designed to ensure that investors do not place orders for municipal fund securities solely on the basis of the limited information in the blind advertisement. We understand that websites through which investors can purchase municipal fund securities typically require each investor to acknowledge receipt of the official statement before investing. This approach addresses the MSRB's policy concern by assuring that investors have access to important information about the securities before they invest. We recommend incorporating this protection into the rule by replacing the phrase "no orders for municipal fund securities shall be accepted through such source" in subsection (e)(i)(B)(2)(b) with the following: "no initial orders for municipal fund securities shall be accepted through such source, unless before placing such an order an investor is required to acknowledge that he or she has received the official statement for such securities". We also recommend that the MSRB clarify that Section (e)(i)(B)(2), which permits a blind advertisement to provide contact information for an agent of the issuer but prohibits such an advertisement from identifying a broker, dealer, or municipal securities dealer or any affiliate of a broker, dealer or municipal securities dealer, does not prohibit a blind advertisement from providing a reference to a phone number or website that includes the name of a broker, dealer or municipal securities dealer acting as an agent of the issuer.

Disclosure Regarding Changes in the Tax Law In response to the MSRB's specific request for comment, we recommend that the MSRB eliminate required disclosure regarding the possibility that beneficial tax treatment of 529 plans may lapse. In view of the recent passage of the Pension Protection Act of 2006, which repeals the sunset provisions of the Economic Growth and Tax Relief Reconciliation Act of 2001 as it applies to 529 plans, this disclosure is no longer relevant. * * * * Ernesto A. Lanza September 22, 2006 Page 5 of 6

The Institute appreciates the opportunity to comment on the MSRB's proposal. If you have any questions concerning these comments, please feel free to contact me at 202-218-3563 or Frances Stadler at 202-326-5822. Sincerely, /s/ Dorothy M. Donohue Associate Counsel cc: Ms. Jill C. Finder Assistant General Counsel Municipal Securities Rulemaking Board Ernesto A. Lanza September 22, 2006 Page 6 of 6

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