

COMMENT LETTER

January 19, 2005

ICI's Comments to MSRB, SEC on 529 Plan Ad Rules (pdf)

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-21.² 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 ¹ The Investment Company Institute is the national association of the American investment company industry. More information about the Institute is included at the end of this letter. 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). Mr. Jonathan G. Katz January 19, 2005 Page 2 of 2 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.³ 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, /s/ Tamara K. Salmon Tamara K. Salmon Senior Associate Counsel cc: Ernie Lanza, Senior Associate General Counsel Jill C. Finder, Assistant General Counsel Municipal Securities Rulemaking Board

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). About the Investment Company Institute The Investment Company Institute's membership includes 8,553 open-end investment companies ("mutual funds"), 633 closed-end investment companies, 141 exchange-traded funds and 5 sponsors of unit investment trusts. Its mutual fund members manage assets of about \$7.377 trillion. These assets account for more than 95% of assets of all U.S. mutual funds. Individual owners represented by ICI member firms number 87.7 million as of mid 2004, representing 51.2 million households. January 19, 2005 Ernesto A. Lanza, Esquire Senior Associate General Counsel Municipal Securities Rulemaking Board 1900 Duke Street, Suite 600 Alexandria, Virginia 22314 Re: MSRB Notice 2004-43 Relating to Performance Data in Advertisements For Municipal Fund Securities Dear Mr. Lanza: The Investment Company Institute¹ appreciates the opportunity to express support for the Municipal Securities Rulemaking Board's proposed amendments to Rule G-21, relating to advertisements.² In particular, the MSRB Notice proposes to require that advertisements for municipal fund securities that show performance data include a phone number or website where an investor may obtain more current performance information. The proposal is consistent with the Institute's September 2004 comments on related proposed amendments to Rule G-21.³ Facilitating access to more current performance information will benefit investors, thereby better protecting them from reliance upon stale performance information. It will also increase uniformity between the MSRB's advertising requirements and those imposed on mutual funds.⁴ Uniformity is appropriate because municipal fund securities and mutual funds share many common features, including the manner in which they are advertised to investors. Subjecting these investment products to similar regulatory standards reduces both potential investor confusion and the burdens of conflicting regulatory requirements for persons that offer and sell both types of securities. In addition, because the NASD is charged with inspecting securities firms for compliance with both MSRB and SEC advertising rules, 1 The Investment Company Institute is the national association of the American investment company industry. More information is included at the end of this letter. 2 See MSRB Notice 2004-43, Request for Comments on Draft Amendments Relating to Performance Data in Advertisements of Municipal Fund Securities (Dec. 16, 2004) (the "MSRB Notice"). 3 See Letter from Tamara K. Salmon, Senior Associate Counsel, ICI, to Ernesto A. Lanza, Senior Associate General Counsel, dated September 10, 2004, commenting on MSRB Notice 2004-16, Request for Comments on Draft Amendments Relating to Advertisements of Municipal Fund Securities and Draft Interpretive Guidance on Disclosures in Connection with Out-of-State Sales of College Savings Plan Shares (June 10, 2004). 4 See Rule 482 under the Securities Act of 1933, which governs the contents of mutual fund performance advertisements. Ernesto A. Lanza, Esquire January 19, 2005 Page 2 uniform standards also will facilitate the NASD's ability to conduct such inspections. For these reasons, we strongly support adoption of the MSRB's current proposal. COMPLIANCE DATE Should the MSRB adopt the proposed amendments, we strongly recommend that it

coordinate the compliance date with the compliance date for the related advertising rule amendments that the MSRB recently filed with the Securities and Exchange Commission.⁵ Taken together, these proposals will require changes to the contents of advertisements, to a dealer's operational systems to obtain and disseminate the updated performance information, and to a dealer's website or telephone system to provide such updated information. Such coordination will avoid the need for a two-step implementation process, which would only serve to increase a municipal securities dealer's compliance burdens and costs without enhancing investor protection. * * * * The Institute appreciates the opportunity to comment on the MSRB's proposal. If you have any questions concerning these comments, please do not hesitate to contact the undersigned by phone at (202) 326-5825 or by e-mail at tamara@ici.org. Sincerely, /s/ Tamara K. Salmon
Tamara K. Salmon Senior Associate Counsel cc: Jill C. Finder, Assistant General Counsel
5 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).
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