

amendments”), and recommended the proposed rule change and the additional draft amendments, if ultimately approved, be made effective in a coordinated manner to avoid a two-step compliance process.

The MSRB’s First Response Letter stated that the MSRB had approved the filing with the SEC of the additional draft amendments to Rule G–21 at its February meeting, and also stated that the MSRB would request an effective date for the additional draft amendments that coincides with the effective date for the proposed rule change.

The MSRB’s First Response Letter also stated that they understand that, in many cases, issuers will be involved in the process of preparing the disseminated performance data that dealers will use in their advertisements and for compliance with the requirements in the additional draft amendments. Accordingly, the MSRB’s First Response Letter stated that they believe that additional time for the issuer community to prepare for the timeframes required under the new advertising requirements would be appropriate, and requested that the SEC amend the proposed rule change to be effective 180 days after the proposed rule change is approved. The MSRB’s Second Response Letter, drafted after additional discussions with SEC staff, recommended that all advertisements for municipal fund securities submitted or caused to be submitted for publication by a dealer on or after September 1, 2005 comply with section (e) of Rule G–21, as amended by the proposed rule change, except for paragraphs (e)(i)(C) and (e)(ii) relating to calculation and presentation of performance data and those provisions of paragraph (e)(i)(D) pertaining to paragraph (e)(i)(C), and that all advertisements for municipal fund securities submitted or caused to be submitted for publication by a dealer on or after December 1, 2005 comply with all provisions of section (e) of Rule G–21.

Fund Distributors’ Letter stated that municipal fund securities consist of the securities of two broad classes of issuers: local government investment pools (LGIPs) and what are known as section 529 college savings plans. Fund Distributors’ Letter urged the Commission to decline to adopt the proposed rule change to the extent that the amendments apply to the historical performance data of LGIPs because those amendments fail to recognize the unique perspective of the financially sophisticated municipal governments which use LGIPs in their cash

management programs. The MSRB’s Second Response Letter stated that although they agree that many investors in the LGIP market may be “financially sophisticated municipal governments,” as characterized by Fund Distributors, they believe that a large number of LGIP investors consist of entities such as small municipalities, school and other special purpose districts, and various other governmental entities that may have only part-time or otherwise limited financial staffs who may well not be financially sophisticated. The MSRB’s Second Response Letter further stated that they believe that the proposed rule change will further investor protection in the LGIP market and therefore should be approved as submitted.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the MSRB<sup>8</sup> and, in particular, the requirements of Section 15B(b)(2)(C) of the Act and the rules and regulations thereunder.<sup>9</sup> Section 15B(b)(2)(C) of the Act requires, among other things, that the MSRB’s rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in municipal securities, to remove impediments to and perfect the mechanism of a free and open market in municipal securities, and, in general, to protect investors and the public interest.<sup>10</sup> In particular, the Commission finds that the proposed rule change will further investor protection by raising the standards for advertisements of municipal fund securities and by making information provided in such advertisements comparable for different municipal fund securities investments and between municipal fund securities and registered mutual funds.

The Commission finds that the MSRB’s recommendation concerning the effective date of the proposal falls within the statutory parameters and therefore agrees that all advertisements for municipal fund securities submitted or caused to be submitted for publication by a dealer on or after September 1, 2005 must comply with section (e) of Rule G–21, as amended by the proposed rule change, except for

<sup>8</sup> In approving this rule the Commission notes that it has considered the proposed rule’s impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

<sup>9</sup> 15 U.S.C. 78o–4(b)(2)(C).

<sup>10</sup> *Id.*

paragraphs (e)(i)(C) and (e)(ii) relating to calculation and presentation of performance data and those provisions of paragraph (e)(i)(D) pertaining to paragraph (e)(i)(C), and that all advertisements for municipal fund securities submitted or caused to be submitted for publication by a dealer on or after December 1, 2005 must comply with all provisions of section (e) of Rule G–21. These compliance dates also would apply to the additional draft amendments, when filed with (and if approved by) the Commission. In addition, the Commission believes that the amendments should be applied to LGIPs as well as section 529 plans because investor protection issues may be raised in connection with the sale by dealers of interests in local government pools as well as section 529 plans.

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>11</sup> that the proposed rule change (SR–MSRB–2004–09) be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>12</sup>

**Margaret H. McFarland,**  
*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–51737; File No. SR–MSRB–2005–07]

### Self-Regulatory Organizations; Municipal Securities Rulemaking Board; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Regarding Amendment to Rule G–8, on Recordkeeping, Relating to Delivery of Customer Agreements Containing Predispute Arbitration Clauses

May 24, 2005.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),<sup>1</sup> and Rule 19b–4 thereunder,<sup>2</sup> notice is hereby given that on April 29, 2005, the Municipal Securities Rulemaking Board (“MSRB” or “Board”), filed with the Securities and Exchange Commission (“Commission” or “SEC”) the proposed rule change as described in Items I and II below, which Items have been prepared by the MSRB. The MSRB has filed the proposal as a “non-controversial” rule change pursuant to Section 19(b)(3)(A)(iii) of

<sup>1</sup> 15 U.S.C. 78s(b)(2).

<sup>2</sup> 17 CFR 200.30–3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b–4.

the Act,<sup>3</sup> and Rule 19b-4(f)(6) thereunder,<sup>4</sup> which renders the proposal effective upon filing with the Commission. However, the MSRB has set an effective date of May 1, 2005, to coincide with recent amendments to NASD Rule 3110(f), on predispute arbitration agreements with customers.<sup>5</sup> The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The MSRB is filing with the Commission a proposed rule change consisting of an amendment to Rule G-8, on recordkeeping, to conform to NASD's recent amendments to Rule 3110(f). NASD's amendments conform its requirements with the Commission's recordkeeping rules by extending the time period for delivery of a copy of a customer account agreement containing a predispute arbitration clause from the time of signing to within 30 days of signing.<sup>6</sup> The MSRB has set an effective date for the amendments of May 1, 2005, to coincide with the effective date of the recent amendments to NASD Rule 3110(f), and, consistent with NASD, has extended the compliance date to June 1, 2005 for the prior amendments to Rule G-8(a)(xi)(M)(1), on required disclosures in customer agreements containing predispute arbitration clauses.<sup>7</sup> The text of the proposed rule change is available on the MSRB's Web site (<http://www.msrb.org>), at the MSRB's principal office, and at the Commission's Public Reference Room.

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the MSRB included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The MSRB has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

#### A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

##### 1. Purpose

On March 21, 2005, the MSRB filed, for immediate effectiveness, a proposed rule change consisting of an amendment to Rule G-8 to add requirements governing the use of predispute arbitration agreements with customers, consistent with NASD requirements as set forth in NASD Rule 3110(f).<sup>8</sup> Shortly thereafter, NASD filed an amendment to Rule 3110(f) to conform to SEC recordkeeping rules, in particular Exchange Act Rule 17a-3(a)(17)(i)(B)(1),<sup>9</sup> by extending the time period for delivery of a copy of a customer account agreement containing a predispute arbitration clause from the time of signing to within 30 days of signing.<sup>10</sup> The NASD amendments also extend the compliance date of its prior amendments to Rule 3110(f)(1), on required disclosures, to June 1, 2005.

As stated previously, it is the MSRB's intent to make its requirements governing the use of predispute arbitration agreements with customers consistent with NASD requirements in this area. Accordingly, the MSRB is submitting the proposed rule change to amend Rule G-8, consistent with NASD Rule 3110(f) as most recently amended. As noted in NASD's filing, the purpose of the proposed rule change regarding the delivery of customer agreements is to conform the time period for delivery of copies of any customer agreement containing a predispute arbitration clause to customers with SEC requirements as set forth in its recordkeeping rules.<sup>11</sup> Specifically, the proposed rule change would require

<sup>8</sup> File No. SR-MSRB-2005-05. The filing also contained a technical amendment to Rule A-11, on indemnification, to delete its obsolete references to arbitrators. On April 1, 2005, the MSRB submitted Amendment No. 1 to the filing to replace, in its entirety, the proposed language to Rule G-8 with new language that conformed with the language of NASD Rule 3110(f), as amended. See MSRB Notices 2005-18 (March 21, 2005) and 2005-21 (April 1, 2005). The Commission published notice of the filing for immediate effectiveness in Release No. 34-51534 (April 12, 2005). The effective date for the amendments to Rule G-8 is May 1, 2005.

<sup>9</sup> 17 CFR 240.17a-3(a)(17)(b)(1). This SEC rule requires a broker-dealer, among other things, to keep a record indicating that the broker-dealer has furnished to each customer within 30 days of opening the account a copy of the account record, or alternate document, containing the customer's name, address, telephone number, date of birth, employment status, annual income, net worth, the account's investment objectives, and other information.

<sup>10</sup> The Commission published notice of the NASD filing and an order granting accelerated approval in Release No. 34-51526 (April 12, 2005).

<sup>11</sup> File No. SR-NASD-2005-045 at 19.

dealers to comply with such delivery requirements within 30 days of signing of the customer agreement.

Both NASD and MSRB requirements, as previously filed, are effective as of May 1, 2005.<sup>12</sup> As part of its most recent amendments, NASD extended to June 1, 2005 the compliance date for its provision regarding required disclosures in any customer agreement containing a predispute arbitration clause.<sup>13</sup> Thus, the MSRB has set an effective date for the amendments of May 1, 2005, and has extended the compliance date for its prior amendments to Rule G-8(a)(xi)(M)(1), on required disclosures, to June 1, 2005. Beginning June 1, 2005, all customer agreements containing predispute arbitration clauses must include the new disclosure required by Rule G-8(a)(xi)(M)(1).<sup>14</sup> The MSRB is requesting that the Commission waive the five-day pre-filing notice requirement and the 30-day delayed effective date requirement for "non-controversial" filings submitted pursuant to Section 19(b)(3)(A) of the Act and Rule 19b-4(f)(6) thereunder, so that MSRB effective dates will coincide with NASD's for the same requirements.

##### 2. Statutory Basis

The MSRB believes that the proposed rule change is consistent with Section 15B(b)(2)(C) and (D) of the Act,<sup>15</sup> which provides that MSRB rules shall:

be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in municipal securities, to remove impediments to and perfect the mechanism of a free and open market in municipal securities, and, in general, to protect investors and the public interest \* \* \* [and] if the Board deems appropriate, provide for the arbitration of claims, disputes, and controversies relating to transactions in municipal securities \* \* \*.

The MSRB believes that the proposed rule change is consistent with these provisions in that it would provide for the protection of investors and the public interest by ensuring that customers of brokers, dealers and municipal securities dealers, including bank dealers and municipal-only dealers, receive information regarding arbitration and predispute arbitration

<sup>12</sup> SEC Release No.'s 34-50713 (November 22, 2004) and 34-51534 (April 12, 2005).

<sup>13</sup> SEC Release No. 34-51526 (April 12, 2005).

<sup>14</sup> However, any dealer that wishes to use customer agreements containing the new disclosure language required by MSRB Rule G-8(a)(xi)(M)(1) may do so prior to the compliance date of June 1, 2005.

<sup>15</sup> 15 U.S.C. 78o-4(b)(2)(C), (D).

<sup>3</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>4</sup> 17 CFR 240.19b-4(f)(6).

<sup>5</sup> SEC Release No. 34-51526 (April 12, 2005).

<sup>6</sup> NASD's filing (File No. SR-NASD-2005-045) was granted accelerated approval in SEC Release No. 34-51526 (April 12, 2005).

<sup>7</sup> SEC Release 34-51534 (April 12, 2005).

agreements in a timely fashion. The proposed rule change also would ensure consistent treatment across the securities markets regarding these requirements.

#### *B. Self-Regulatory Organization's Statement on Burden on Competition*

The MSRB does not believe that the proposed rule change will result in any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

#### *C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others*

Written comments were neither solicited nor received on the proposal.

### **III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Because the proposed rule change: (i) Does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) does not become operative for 30 days (or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest) from the date on which it was filed, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>16</sup> and Rule 19b-4(f)(6) thereunder.<sup>17</sup>

A proposed rule change filed under Rule 19b-4(f)(6) normally does not become operative prior to 30 days after the date of the filing. However, Rule 19b-4(f)(6)(iii) permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The MSRB has asked the Commission to waive the 30-day operative delay. The Commission hereby grants this request. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because such waiver will enable the MSRB to make the effective date of the proposed rule change coincide with NASD's for the same requirements. The effective date for the amendments will be May 1, 2005. The MSRB has extended the compliance date for its prior amendments to Rule G-8(a)(xi)(M)(1) to June 1, 2005, to coincide with NASD's compliance date for the same provisions. The MSRB has also requested that the Commission waive the pre-filing notice requirement of at least five business days (or such

shorter time as designated by the Commission).<sup>18</sup> The Commission hereby grants the MSRB's request to waive the pre-filing requirement.<sup>19</sup>

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.<sup>20</sup>

### **IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

#### *Electronic Comments*

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-MSRB-2005-07 on the subject line.

#### *Paper Comments*

• Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-0609. All submissions should refer to File Number SR-MSRB-2005-07. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be

available for inspection and copying at the principal office of the MSRB. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-MSRB-2005-07 and should be submitted on or before June 22, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>21</sup>

**Margaret H. McFarland,**  
*Deputy Secretary.*

[FR Doc. E5-2751 Filed 5-31-05; 8:45 am]

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## **SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-51735; File No. SR-NASD-2004-165]

### **Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Notice of Filing of Proposed Rule Change and Amendment Nos. 1 and 2 Thereto Relating to NASD Rule 2790**

May 24, 2005.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Exchange Act" or "Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on October 29, 2004, the National Association of Securities Dealers, Inc. ("NASD") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by NASD. On February 1, 2005, NASD submitted Amendment No. 1 to the proposed rule change.<sup>3</sup> On April 18, 2005, NASD submitted Amendment No. 2 to the proposed rule change.<sup>4</sup> The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

#### **I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

NASD is filing with the Commission a proposed rule change to amend subparagraph (i)(9) of NASD Rule 2790

<sup>21</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> Amendment No. 1 included minor changes to the rule text of the proposed rule change.

<sup>4</sup> Amendment No. 2 included minor changes to the proposed rule change including clarifying that most REITs have invested assets at the time of their initial public offering.

<sup>16</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>17</sup> 17 CFR 240.19b-4(f)(6).

<sup>18</sup> 17 CFR 240.19b-4(f)(6)(iii).

<sup>19</sup> For purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>20</sup> See Section 19(b)(3)(C) of the Act, 15 U.S.C. 78s(b)(3)(C).