

concerns and, therefore, the burden of making and keeping such records would exceed any benefits of requiring them." ICI further noted that this revision would provide uniformity between MSRB and NASD recordkeeping requirements. The MSRB does not agree with this recommendation. The provisions in NASD Rule 3060, on influencing or rewarding employees of others, require firms to keep a separate record of *all* payments or gratuities in any amount. The MSRB believes that a recordkeeping requirement for *de minimis* gifts is necessary for both the dealer and the appropriate regulatory agency to determine whether a rule violation has occurred.

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

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

- A. By order approve such proposed rule change, or
- B. Institute proceedings to determine whether the proposed rule change should be disapproved.

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. Please include File Number SR-MSRB-2005-02 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549-9303. All submissions should refer to File Number SR-MSRB-2005-02. 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-2005-02 and should be submitted on or before September 14, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁴

Margaret H. McFarland,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-52289, File No. SR-MSRB-2005-09]

Self-Regulatory Organizations; Municipal Securities Rulemaking Board; Order Approving Proposed Rule Change Relating to Month-End Performance Data for Municipal Fund Securities Under MSRB Rule G-21

August 18, 2005.

On June 2, 2005, the Municipal Securities Rulemaking Board ("MSRB" or "Board"), filed with the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-4 thereunder,² a proposed rule change amending MSRB Rule G-21, on advertising, to establish requirements relating to the availability of performance data current to the most recent month-end in connection with advertisements by brokers, dealers and

municipal securities dealers containing performance data for municipal fund securities. The proposed rule change was published for comment in the **Federal Register** on July 11, 2005.³ The Commission received one comment letter regarding the proposal.⁴ This order approves the proposed rule change.

The proposed rule change would amend Rule G-21 to require dealers to include in advertisements that contain performance data for municipal fund securities a phone number or Web address where investors may obtain performance data current to the most recent month-end, unless the data included in the advertisement is itself current to the most recent month-end. A full description of the proposal is contained in the Commission's Notice.⁵ The MSRB proposes that dealers be required to comply with the proposed rule change for advertisements of municipal fund securities submitted or caused to be submitted for publication on or after December 1, 2005.⁶

ICI's Letter strongly supported the proposed amendments, which would bring advertising rules for municipal fund securities more in line with the requirements of Rule 482 adopted by the SEC under the Securities Act of 1933, as amended.⁷ The ICI's Letter stated that greater uniformity with the advertising requirements applicable to mutual funds is appropriate because municipal fund securities and mutual funds share many common features, including the manner in which they are advertised to investors. The ICI's Letter also stated that uniform standards will facilitate the NASD's ability to conduct inspections because the NASD is charged with inspecting securities firms for compliance with both MSRB and SEC advertising rules.

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 MSRB⁸ and, in particular, the requirements of Section 15B(b)(2)(C) of the Act and the rules and

³ See Securities Exchange Act Release No. 51951 (June 30, 2005), 70 FR 39833 (July 11, 2005).

⁴ See letter to Jonathan G. Katz, Secretary, Commission, from Tamara K. Salmon, Senior Associate Counsel, Investment Company Institute ("ICI"), dated July 25, 2005 ("ICI's Letter").

⁵ See *supra* note 3.

⁶ This effective date conforms to the effective date for other changes made to Rule G-21 earlier this year. See Exchange Act Release No. 51736 (May 24, 2005), 70 FR 31551 (June 1, 2005).

⁷ 15 U.S.C. 77a *et seq.*

⁸ 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).

¹⁴ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

regulations thereunder.⁹ 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.¹⁰ In particular, the Commission finds that the proposed rule change will further investor protection by making information provided in advertisements of municipal fund securities more up-to-date and more comparable among different municipal fund securities investments and between municipal fund securities and registered mutual funds.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,¹¹ that the proposed rule change (SR-MSRB-2005-09) be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹²

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-52294; File No. SR-NASD-2004-025]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Approving Proposed Rule Change To Amend NASD's Minor Rule Violation Plan

August 18, 2005.

On February 10, 2004, the National Association of Securities Dealers, Inc. ("NASD") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² a proposed rule change to amend its minor rule violation plan ("MRVP"). On March 17, 2005, NASD filed Amendment No. 1 to the proposed rule

change. On June 27, 2005, NASD filed Amendment No. 2 to the proposed rule change. The proposed rule change, as amended, was published for comment in the **Federal Register** on July 14, 2005.³ The Commission received two comments on the proposal.⁴ This order approves the proposed rule change, as amended.

NASD proposed to make the following changes to its MRVP:

- Combine in one entry all rule violations eligible for disposition under the MRVP that relate to transaction reporting and audit trail requirements in equity and debt securities. Specifically, NASD proposes to eliminate the separate minor rule violation pertaining to NASD Rules 6130 and NASD 6170 (transaction reporting to the Automated Confirmation Transaction Service) and add them to a consolidated entry; add to the MRVP, and this consolidated entry, violations of NASD Rules 4632A, 5430, 6130A, and 6170A, which relate to TRACS requirements; and eliminate the reference in the MRVP to a violation of the Fixed Income Pricing System, NASD Rule 6240, and replace it with a violation of NASD Rule 6230, the TRACE transaction reporting rule.

- Include in the MRVP violations of standards applicable to member communications with the public (NASD Rules 2210, 2211, and 2220, and related Interpretive Materials) which would allow NASD to address minor or technical violations of content-related advertising rules.

- Expand the MRVP to include a member's failure to identify to NASD and keep current information regarding any contact person that a member must provide to NASD under any current or future NASD rule.

- Change "the Association" to "NASD" in the minor rule violation provision relating to NASD Rule 3110 and change "ECN's" to "ECNs" in the minor rule violation provision relating to Rule 11Ac1-1(c)(5) under the Act.

The Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities association.⁵ In particular, the

³ See Securities Exchange Act Release No. 51994 (July 7, 2005), 70 FR 40764.

⁴ See e-mails to rule-comments@sec.gov from Scott Lynn Fagin, Chief Compliance Officer and Chief Financial Officer, The Jeffrey Matthews Financial Group, LLC, dated August 5, 2005; and Joseph W. Mays, Jr., President, Securities Consulting Group, Inc., dated August 1, 2005. The comments are not germane to the proposal and thus do not raise any issue that would preclude approval of this proposal.

⁵ In approving this proposed rule change, the Commission notes that it has considered the

Commission believes that the proposal is consistent with Section 15A(b)(6) of the Act,⁶ which requires that the rules of an association be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Commission also believes that the proposal is consistent with Sections 15A(b)(2) and 15A(b)(7) of the Act⁷ which require that the rules of an association enforce compliance and provide appropriate discipline for violations of Commission and association rules. In addition, because existing NASD Rule 9216(b) provides procedural rights to a person fined under the MRVP to contest the fine and permits a hearing on the matter, the Commission believes the MRVP, as amended by this proposal, provides a fair procedure for the disciplining of members and persons associated with members, consistent with Sections 15A(b)(8) and 15A(h)(1) of the Act.⁸

Finally, the Commission finds that the proposal is consistent with the public interest, the protection of investors, or otherwise in furtherance of the purposes of the Act, as required by Rule 19d-1(c)(2) under the Act,⁹ which governs minor rule violation plans. The Commission believes that the change to its MRVP will strengthen NASD's ability to carry out its oversight and enforcement responsibilities as a self-regulatory organization in cases where full disciplinary proceedings are unsuitable in view of the minor nature of the particular violation.

In approving this proposal, the Commission in no way minimizes the importance of compliance with NASD rules and all other rules subject to the imposition of fines under NASD's MRVP. The Commission believes that the violation of any self-regulatory organization's rules, as well as Commission rules, is a serious matter. However, an MRVP provides a reasonable means of addressing rule violations that do not rise to the level of requiring formal disciplinary proceedings, while providing greater flexibility in handling certain violations. The Commission expects that NASD will continue to conduct surveillance with due diligence and make a determination based on its findings, on a case-by-case basis, whether a fine of

proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

⁶ 15 U.S.C. 78o-3(b)(6).

⁷ 15 U.S.C. 78o-3(b)(2) and 78o-3(b)(7).

⁸ 15 U.S.C. 78o-3(b)(8) and 78o-3(h)(1).

⁹ 17 CFR 240.19d-1(c)(2).

⁹ 15 U.S.C. 78o-4(b)(2)(C).

¹⁰ *Id.*

¹¹ 15 U.S.C. 78s(b)(2).

¹² 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.