

compliance concerns. Both the Commission and the MSRB believe that rule G-37 is essential to diminish pay-to-play practices in the municipal securities market. The rule has provided substantial benefit to the industry and the investing public by reducing the direct connection between political contributions to issuer officials and the awarding of municipal securities business.

The comment letters welcome the amendments proposed as a means to reduce industry costs and burdens. The Commission does not believe that the proposed rule change will threaten the purpose and efficacy of the pay-to-play restrictions. The Commission believes that the proposed rule change adequately provides essential protections in the exemption process and the revised definition of municipal finance professional. Furthermore, proposed revision of the look back and look forward periods to better correlate with the municipal finance professionals' role and business activity will continue to safeguard against the potential link between obtaining municipal securities business and contributions.

IV. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Exchange Act,¹¹ that the proposed rule change (File No. SR-MSRB-2002-12) 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. 34-47815; File No. SR-MSRB-2003-03]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Municipal Securities Rulemaking Board Relating to Marketing of 529 College Savings Plans in the Workplace

May 8, 2003.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (the "Exchange Act") and rule 19b-4 thereunder,¹ notice is hereby given that

on April 29, 2003, the Municipal Securities Rulemaking Board (the "MSRB") filed with the Securities and Exchange Commission (the "Commission") a proposed rule change (File No. SR-MSRB-2003-03) (the "proposed rule change") described in items, I, II, and III below, which items have been prepared by the MSRB. 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 has filed with the Commission a proposed rule change consisting of an interpretive notice on marketing by brokers, dealers and municipal securities dealers ("dealers") of 529 college savings plans in the workplace. The entire text of the proposed rule change appears at the end of this notice.

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

The MSRB has received a number of requests for guidance on dealer responsibilities under MSRB rules with respect to the marketing of 529 college savings plans (a type of state program that issues municipal fund securities) through the workplace to employees. Such workplace marketing programs raise unique interpretive issues under MSRB rules. The MSRB has determined to provide interpretive guidance on the application of rule G-8, on recordkeeping, rule G-17, on fair dealing, rule G-19, on suitability, rule G-27, on supervision, and rule G-32, on disclosure, in the context of workplace marketing programs relating to 529 college savings plans.

(2) Basis

The MSRB believes that the proposed rule change is consistent with section

15B(b)(2)(C) of the Exchange Act, which provides that the MSRB's 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.

The MSRB believes that the proposed rule change will provide guidance to dealers engaged in workplace marketing programs for 529 college savings plans as to how to comply with MSRB rules in a manner that ensures that the investor protection objectives of the rules are met.

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

The MSRB does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act since it would apply equally to all dealers involved in workplace marketing programs for 529 college savings plans.

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

On November 18, 2002, the MSRB published for comment draft interpretive notice on marketing of 529 college savings plan employee payroll deduction programs. The MSRB received six comment letters.² After reviewing these comments, the MSRB approved the draft interpretive notice, with certain modifications, for filing with the SEC.³ The comments and the MSRB's responses are discussed below.

² Letter from Robert W. Berta, Jr., Vice President—Compliance, Countrywide Investment Services, Inc. ("Countrywide"), to Ernesto A. Lanza, Senior Associate General Counsel, MSRB, dated December 17, 2002; letter from M. Shawn Drefflein, President, National Planning Corporation ("NPC"), to Ernesto A. Lanza, dated January 7, 2003; letter from Natalie A. Kavanaugh, Legal Specialist, Fidelity Investments ("Fidelity"), to Ernesto A. Lanza, dated January 9, 2003; letter from Diana F. Cantor, Chair, College Savings Plan Network ("CSPN") and Executive Director, Virginia College Savings Plan, to Ernesto A. Lanza, dated January 10, 2003; letter from Stuart J. Kaswell, Senior Vice President and General Counsel, Securities Industry Association ("SIA"), to Ernesto A. Lanza, dated January 10, 2003; and letter from Tamara K. Salmon, Senior Associate Counsel, Investment Company Institute ("ICI"), to Ernesto A. Lanza, dated January 10, 2003.

³ After reviewing the comments, the MSRB modified the draft interpretive guidance to: (i) Change the term "introducing broker" to "selling broker;" (ii) reflect the existence of other scenarios in which 529 college savings plans are marketed in

¹¹ 15 U.S.C. 78s(b)(2).

¹² 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1) and 17 CFR 240.19b-4 thereunder.