

2017-16

**Publication Date**  
August 21, 2017

**Stakeholders**  
Municipal Securities  
Dealers

**Notice Type**  
Approval Notice

**Effective Date**  
November 18, 2017

**Category**  
Fair Practice

**Affected Rules**  
[Rule G-21](#)

## SEC Approves Amendments to the MSRB's Rule on Municipal Fund Security Product Advertisements

### Overview

The Municipal Securities Rulemaking Board (MSRB) received approval from the Securities and Exchange Commission (SEC) on August 18, 2017, to amend MSRB Rule G-21(e), on municipal fund security product advertisements by brokers, dealers and municipal securities dealers (collectively, "dealers").<sup>1</sup> The amendments will address important regulatory developments and enhance investor protection in connection with municipal fund security product advertisements.

The amendments will become effective on November 18, 2017.

Questions about this notice may be directed to Pamela K. Ellis, Associate General Counsel at 202-838-1500.

### Background

In the context of developing a rule to address advertising by municipal advisors, the MSRB undertook a holistic review of its advertising rules, and determined to request public comment on draft amendments to Rule G-21, which addresses advertising by dealers, as well as draft new Rule G-40, to address advertising by municipal advisors.<sup>2</sup> While the MSRB considers the comments it received in response to that Request for Comment on various other potential changes to advertising regulations, the MSRB determined separately to file the amendments limited to Rule G-21(e).

<sup>1</sup> See Exchange Act Release No. 81432 (Aug. 18, 2017), File No. SR-MSRB-2017-04 (Jun. 22, 2017).

<sup>2</sup> [MSRB Notice 2017-04 \(Feb. 16, 2017\)](#) ("Request for Comment").



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## Summary of Rule Changes

The rule changes are designed to address important regulatory developments and enhance investor protection. As discussed below, the amendments to Rule G-21(e) will: (i) reflect relevant regulatory developments; (ii) enhance the “out-of-state disclosure obligation” about the potential other benefits an investor may be provided by investing in a 529 college savings plan offered by the home state of the investor or of the designated beneficiary; (iii) clarify that certain advertisements that contain performance data may include a hyperlink to a website that contains more recent performance data; and (iv) include several revisions that are designed to promote understanding of and compliance with the rule.

### Regulatory Developments

Rule G-21(e)(i)(A)(2)(c) currently requires that a municipal fund security advertisement of an investment option that the issuer holds out as having the characteristics of a money market fund include certain disclosures. The MSRB requires those disclosures in order to protect investors by alerting them to the potential risks of investing in that investment option, and modeled the disclosures on the disclosures required for money market fund advertisements by Rule 482(b)(4) under the Securities Act of 1933, as amended (the “1933 Act”).

Money market funds generally invest in short-term obligations and have a principal investment objective of maintaining a net asset value of \$1.00 per share. During the financial crisis of 2008, however, money market funds experienced high redemption rates that caused a money market fund to “break the buck” (*i.e.*, maintain a net asset value of less than \$1.00 per share).

Following the financial crisis, the SEC adopted amendments that were designed, among other things, to make money market funds more resilient to certain short-term market risks and to provide greater protections for investors.

The disclosures that will be required by amended Rule G-21(e) reflect the SEC’s money market reforms. The amendments will require that a municipal fund security advertisement of an investment option that invests solely in a money market fund include enhanced disclosure about the risks associated with investing in that investment option. The MSRB tailored the disclosure for each of the three categories of money market funds in which a municipal fund security investment option could invest. Those categories are: (i) money market funds that are not government money market funds or retail money market funds with floating net asset values that may impose liquidity fees

and that may temporarily suspend redemptions; (ii) money market funds that are government money market funds or retail money market funds that maintain stable net asset values that may impose liquidity fees or that may temporarily suspend redemptions; and (iii) money market funds that are government money market funds that maintain stable net asset values and that have elected not to impose liquidity fees or to temporarily suspend redemptions.

Rule G-21(e)(i)(A)(2)(c) will be substantially similar to the SEC's amended Rule 482(b)(4) under the 1933 Act, as modified to reflect the differences in the characteristics between municipal fund securities and money market funds. Specifically, the current disclosure required by Rule G-21(e)(i)(A)(2)(c) alerts a 529 college savings plan investor that an investment option that is held out as having the characteristics of a money market fund (i) is not insured or guaranteed by the Federal Deposit Insurance Corporation or any other government agency (unless such guarantee is provided by or on behalf of such issuer) and (ii) if the money market fund is held out as maintaining a stable net asset value, that although the issuer seeks to preserve the value of the investment at \$1.00 per share or such other applicable fixed share price, it is possible to lose money by investing in the investment option. In addition to the currently required disclosure, the amendments to Rule G-21(e) will require enhanced disclosure to alert the investor that, as applicable, the underlying mutual fund may impose a liquidity fee or suspend redemptions and that the investor generally should not expect the underlying fund sponsor to provide financial support to the underlying mutual fund.<sup>3</sup>

#### **Out-of-State Disclosure Obligation**

The amendments to Rule G-21(e) will enhance the out-of-state disclosure required by Rule G-21(e)(i)(A)(2)(b). Under that provision, certain advertisements for a 529 college savings plan must provide disclosure that an investor should consider, before investing, whether the investor's or the designated beneficiary's home state offers any state tax or other benefits that are only available for investment in such state's 529 college savings plan. To assist an investor's understanding of what those other state benefits may include, Rule G-21(e) will require disclosure that those other state benefits may include financial aid, scholarship funds, and protection from creditors.

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<sup>3</sup> The amendments will update Rule G-21(e)(ii)(F) and Rule G-21(e)(vi) to substitute FINRA for references to the National Association of Securities Dealers, Inc. ("NASD").

**Performance Data**

The amendments to Rule G-21(e) will provide two clarifications to the legend that must be provided in an advertisement of performance data by a municipal fund security. Rule G-21(e)(i)(A)(3)(a) requires that a municipal fund security's advertisement of performance data include a legend that discloses that the performance data set forth in the advertisement represents past performance; that past performance does not guarantee future results; that the investment return and the value of the investment will fluctuate so that an investor's shares, when redeemed, may be worth more or less than their original cost; and that current performance may be lower or higher than the performance data included in the advertisement. The amendments to Rule G-21(e) will clarify that an investment option that invests in a government money market fund or a retail money market fund may omit the disclosure about principal value fluctuation. That clarification is consistent with SEC Rule 482(b)(3), which permits government money market funds and retail money market funds to omit that disclosure.

Further, Rule G-21(e)(i)(A)(3)(a) requires that the legend in a municipal fund security's advertisement of performance data that is not current to the most recent month ended seven business days before the date of any use of the advertisement, also must disclose where the investor may obtain more current performance data. The legend must include a toll-free number or a website where the investor may obtain that information. The amendments to Rule G-21(e) will clarify that the advertisement may provide a hyperlink to the website where the investor may obtain total return quotations current to most recent month end for which such total return information is available. The MSRB believes that the use of the hyperlink to a website will assist investors in obtaining more current performance data. Further, the use of a hyperlink to provide certain data is consistent with the rules of other financial regulators.

**Enhancements to Terms Used in Rule G-21(e)**

To assist the reader's understanding of the disclosure and to assist with dealer compliance with the rule, the amendments will use terms more commonly used with municipal fund securities and that are used with the MSRB's other rules applicable to municipal fund securities (*e.g.*, the term "investment option"), such as Rule G-45, on reporting of information on municipal fund securities. The amendments to Rule G-21(e) will amend Rule G-21(e)(i)(A)(2)(c) and Rule G-21(e)(i)(A)(3)(c) to clarify that a municipal fund security offers investment options and that those investment options, in turn, may invest in mutual funds. Paragraph .01 of the Supplementary Material will clarify that the term "investment option" shall have the same meaning as defined in Rule G-45(d)(vi). Paragraph .02 of the Supplementary Material will clarify that under Rule G-21(e)(i)(A)(2)(c), a dealer may omit the

last sentence of the required disclosure if that disclosure is not applicable to the underlying fund according to SEC Rule 482(b)(4). In addition, Rule G-21(e)(i)(A)(3)(a) will clarify that an investor receives units in the municipal fund security.

August 21, 2017

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## Text of Amendments\*

### Rule G-21: Advertising

(a) - (d) No change.

(e) *Municipal Fund Security Product Advertisements*. In addition to the requirements of section (c), all product advertisements for municipal fund securities shall be subject to the following requirements:

(i) No change.

(A) No change.

(1) No change.

(2) *additional disclosures for identified products* – that refers by name (including marketing name) to any municipal fund security, issuer of municipal fund securities, state or other governmental entity that sponsors the issuance of municipal fund securities, or to any securities held as assets of municipal fund securities or to any issuer thereof, must include the following disclosures, as applicable:

(a) No change.

(b) if the advertisement relates to municipal fund securities issued by a qualified tuition program under Internal Revenue Code Section 529, a statement to the effect that an investor should consider, before investing, whether the investor's or designated beneficiary's home state offers any state tax or other state benefits such as financial aid, scholarship funds, and protection from creditors that are only available for investments in such state's qualified tuition program; provided, however, that this statement shall not be required for any advertisement relating to municipal fund securities of a specific state if such advertisement is sent to, or is otherwise

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\* Underlining indicates new language; strikethrough denotes deletions.

distributed through means that are reasonably likely to result in the advertisement being received by, only residents of such state and is not otherwise published or disseminated by the broker, dealer or municipal securities dealer, or made available by the broker, dealer or municipal securities dealer to any of its affiliates, the issuer or any of the issuer's agents with the expectation or understanding that such other parties will otherwise publish or disseminate such advertisement; and

(c) if the advertisement is for a municipal fund security that has an investment option that the issuer holds out as having the characteristics of a invests solely in a money market fund:

(i) and that money market fund is not a government money market fund, as defined in Rule 2a-7(a)(14), 17 CFR 270.2a-7(a)(14), under the Investment Company Act of 1940 or a retail money market fund, as defined in Rule 2a-7(a)(21), 17 CFR 270.2a-7(a)(21), under the Investment Company Act of 1940, statements to the effect that:

You could lose money by investing in this investment option. Because the share price of the money market fund in which your investment option invests (the "underlying fund") will fluctuate, when you redeem your units in that investment option, those units may be worth more or less than what you originally paid for them. The underlying fund may impose a fee upon sale of those shares or may temporarily suspend the ability of the investment option to redeem shares if the underlying fund's liquidity falls below required minimums because of market conditions or other factors. An investment in the investment option is not insured or guaranteed by the Federal Deposit Insurance Corporation or any other government agency. The underlying fund's sponsor has no legal obligation to provide financial support to the underlying fund, and you should not expect that the sponsor will provide financial support to the underlying fund at any time.

(ii) and that money market fund is a government money market fund, as defined in Rule 2a-7(a)(14), 17 CFR 270.2a-7(a)(14), under the Investment Company Act of 1940 or a retail money market fund, as defined in Rule 2a-7(a)(21), 17 CFR 270.2a-7(a)(21), under the Investment Company Act of 1940, and that is subject to the requirements of Rule 2a-7(c)(2)(i) and/or (ii), 17 CFR 270.2a-7(c)(2)(i) and/or (ii), under the Investment Company Act of 1940 (or is not subject to the requirements of Rule 2a-7(c)(2)(i) and/or (ii), 17 CFR 270.2a-7(c)(2)(i) and/or (ii), pursuant to Rule 2a-7(c)(2)(iii), 17 CFR

270.2a-7(c)(2)(iii), under the Investment Company Act of 1940, but has chosen to rely on the ability to impose liquidity fees and suspend redemptions consistent with the requirements of Rule 2a-7(c)(2)(i) and/or (ii), 17 CFR 270.2a-7(c)(2)(i) and/or (ii), under the Investment Company Act of 1940), statements to the effect that:

You could lose money by investing in this investment option. Although the money market fund in which your investment option invests (the “underlying fund”) seeks to preserve the value of its shares at \$1.00 per share, the underlying fund cannot guarantee it will do so. The underlying fund may impose a fee upon the investment option’s redemption of the underlying fund’s shares or the underlying fund may temporarily suspend the investment option’s ability to redeem its shares if the underlying fund’s liquidity falls below required minimums because of market conditions or other factors. An investment in the investment option is not insured or guaranteed by the Federal Deposit Insurance Corporation or any other government agency. The underlying fund’s sponsor has no legal obligation to provide financial support to the underlying fund, and you should not expect that the sponsor will provide financial support to the underlying fund at any time.

(iii) and that money market fund is a government money market fund, as defined in Rule 2a-7(a)(14), 17 CFR 270.2a-7(a)(14), under the Investment Company Act of 1940, that is not subject to the requirements of Rule 2a-7(c)(2)(i) and/or (ii), 17 CFR 270.2a-7(c)(2)(i) and/or (ii), under the Investment Company Act of 1940, pursuant to Rule 2a-7(c)(2)(iii), 17 CFR 270.2a-7(c)(2)(iii), under the Investment Company Act of 1940, and that has not chosen to rely on the ability to impose liquidity fees and suspend redemptions consistent with the requirements of Rule 2a-7(c)(2)(i) and/or (ii), 17 CFR 270.2a-7(c)(2)(i) and/or (ii), under the Investment Company Act of 1940, a statement to the effect that:

You could lose money by investing in this investment option. Although the money market fund in which your investment option invests (the “underlying fund”) seeks to preserve its value at \$1.00 per share, the underlying fund cannot guarantee it will do so. An investment in this investment option is not insured or guaranteed by the Federal Deposit Insurance Corporation or any other government agency. The underlying fund’s sponsor has no legal obligation to provide

financial support to the underlying fund, and you should not expect that the sponsor will provide financial support to the underlying fund at any time.

~~statements to the effect that an investment in the security is not insured or guaranteed by the Federal Deposit Insurance Corporation or any other government agency (unless such guarantee is provided by or on behalf of such issuer) and, if the security is held out as maintaining a stable net asset value, that although the issuer seeks to preserve the value of the investment at \$1.00 per share or such other applicable fixed share price, it is possible to lose money by investing in the security.~~

(3) *additional disclosures concerning performance* – that includes performance data must include:

(a) a legend disclosing that the performance data included in the advertisement represents past performance; that past performance does not guarantee future results; that the investment return and the value of the investment will fluctuate so that an investor's ~~shares~~ units, when redeemed, may be worth more or less than their original cost; and that current performance may be lower or higher than the performance data included in the advertisement. Unless the advertisement includes total return quotations current to the most recent month ended seven business days prior to the date of any use of the advertisement, the legend must also identify either a toll-free (or collect) telephone number or a website (that may be hyperlinked) where an investor may obtain total return quotations current to the most recent month-end for which such total return, or all information required for the calculation of such total return, is available, however an investment option that invests in a money market fund that is a government money market fund, as defined in Rule 2a-7(a)(14), 17 CFR 270.2a-7(a)(14), under the Investment Company Act of 1940 or a retail money market fund, as defined in Rule 2a-7(a)(21), 17 CFR 270.2a-7(a)(21), under the Investment Company Act of 1940 may omit the disclosure about principal value fluctuation;

(b) No change.

(c) to the extent that such performance data relates to municipal fund ~~securities~~ security investment options that are not held out as having the characteristics of a money market fund and to the extent applicable, the total annual operating expense ratio of such municipal fund ~~securities~~ security investment options (calculated in the same manner as the total annual fund operating expenses required to be included in the registration



statement for a registered investment company, subject to paragraph (e)(ii)(A) hereof), gross of any fee waivers or expense reimbursements.

(4) No change.

(B) No change.

(ii) *Performance Data*. Each product advertisement that includes performance data relating to municipal fund securities must present performance data in the format, and calculated pursuant to the methods, prescribed in paragraph (d) of Securities Act Rule 482 (or, in the case of a municipal fund security that the issuer holds out as having the characteristics of a money market fund, paragraph (e) of Securities Act Rule 482) and, to the extent applicable, subparagraph (e)(i)(A)(4) of this rule, provided that:

(A) - (E) No change.

(F) *applicability with respect to underlying assets* – notwithstanding any of the foregoing, this subsection (e)(ii) shall apply solely to the calculation of performance relating to municipal fund securities and does not apply to, or limit the applicability of any rule of the Commission, ~~NASD~~ Financial Industry Regulatory Authority, Inc. (FINRA) or any other regulatory body relating to, the calculation of performance for any security held as an underlying asset of the municipal fund securities.

(iii) – (v) No change.

(vi) *Underlying Registered Securities*. If an advertisement for a municipal fund security provides specific details of a security held as an underlying asset of the municipal fund security, the details included in the advertisement relating to such underlying security must be presented in a manner that would be in compliance with any Commission or ~~NASD~~ FINRA advertising rules that would be applicable if the advertisement related solely to such underlying security; provided that details of the underlying security must be accompanied by any further statements relating to such details as are necessary to ensure that the inclusion of such details does not cause the advertisement to be false or misleading with respect to the municipal fund securities advertised. This subsection does not limit the applicability of any rule of the Commission, ~~NASD~~ FINRA or any other regulatory body relating to advertisements of securities other than municipal fund securities, including advertisements that contain information about such other securities together with information about municipal securities.

(vii) No change.

(f) No change.

**---Supplementary Material:**

**.01 Investment Option**. As used in Rule G-21(e), the term investment option shall have the same meaning as defined in Rule G-45(d)(vi).

**.02 Contractual Financial Support Provided to Underlying Fund.** Under Rule G-21(e)(i)(A)(2)(c), a dealer may omit the last sentence of the specified disclosure (“The underlying fund’s sponsor has no legal obligation to provide financial support to the underlying fund, and you should not expect that the sponsor will provide financial support to the underlying fund at any time”) if that disclosure is not applicable to the underlying fund under Rule 482(b)(4) pursuant to the Securities Act of 1933.