of the license. However, because competitive pressures in the industry have resulted in the waiver of transaction fees for Public Customers,[7] the Exchange proposes to exclude Public Customer Orders [8] from this surcharge fee. Accordingly, this surcharge fee will only be charged to Exchange members with respect to non-Public Customer Orders (*e.g.*, Market Maker and Firm Proprietary orders) and shall apply to Linkage Orders under a pilot program that is set to expire on July 31, 2005.[9]

Additionally, if it is concluded by the courts, after all avenues of appeal, that no license from Standard and Poor's was required by the Exchange to list SPDR options, then upon any refund by Standard and Poor's, the Exchange shall submit a rule filing to the Commission providing for a reimbursement of the surcharge fees paid by members to the Exchange as a result of this surcharge fee.

The Exchange now proposes to extend this surcharge fee retroactively to all applicable transactions occurring since January 10, 2005.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act [10] in general, and furthers the objectives of 6(b)(4) of the Act [11] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among its members and other persons using its facilities.

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

The Exchange does not believe that the proposed rule change will impose any burden on competition that is 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

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties with respect to this proposed rule change.

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 Exchange consents, the Commission will:

(A) By order approve such proposed rule change, as amended, or

(B) institute proceedings to determine whether the proposed rule change, as amended, 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, as amended, 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–ISE–2005–28 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–ISE–2005–28. 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 the filing also will be available for inspection and copying at the principal office of the ISE. 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–ISE–2005–28 and should be submitted on or before August 1, 2005.

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

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. E5–3623 Filed 7–8–05; 8:45 am]

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[7] Public Customer is defined in ISE Rule 100(a)(32) as a person that is not a broker or dealer in securities.

[8] Public Customer Order is defined in ISE Rule 100(a)(33) as an order for the account of a Public Customer.

[9] *See* ISE Rule 1900(10) (defining Linkage Orders). The surcharge fee will apply to the following Linkage Orders: Principal Acting as Agent Orders and Principal Orders.

[10] 15 U.S.C. 78f(b).

[11] 15 U.S.C. 78f(b)(4).

[12] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–51951; File No. SR–MSRB–2005–09]

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

June 30, 2005.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 2, 2005, the Municipal Securities Rulemaking Board (''MSRB'' or ''Board'') 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 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 SEC a proposed rule change amending 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 (''dealers'') containing performance data for municipal fund securities. The MSRB proposes that dealers be required to comply with the proposed rule change

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

for advertisements of municipal fund securities submitted or caused to be submitted for publication on or after December 1, 2005. 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

The MSRB has recently amended Rule G–21 to, among other things, establish requirements relating to the inclusion of performance data in advertisements used or produced by dealers relating to municipal fund securities (the ''recent amendments'').[3] These requirements are, in most respects, consistent with the requirements applicable under Rule 482 adopted by the SEC under the Securities Act of 1933, as amended[4] (the ''Securities Act''), for mutual fund advertisements that contain performance data. However, one provision of Securities Act Rule 482 that was not included in the recent amendments requires that mutual fund advertisements showing performance data that is not current as of the most recent month-end also include a phone number or Web site address at which performance data may be obtained that is current to the most recent month-end, available no later than seven business days after the end of the month.

The proposed rule change would further 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. Specifically, the proposed rule change would amend clause (C) of Rule G–21(e)(ii) to provide that performance data in advertisements must be calculated as of the most recent practicable date considering the type of municipal fund securities and the media used, except that any advertisement containing total return quotations would be in compliance with this requirement if:

(1)(a) Total return quotations are current to the most recent calendar quarter ended prior to the submission of the advertisement for publication for which such return, or all information required for the calculation of such return, is available to the dealer, and (b) total return quotations (current to the most recent month ended seven business days prior to the date of any use[5] for which such return, or all information required for the calculation of such return, is available to the dealer) are provided at a toll-free or collect telephone number or Web site identified in the advertisement and the month to which such information is current is identified; or

(2) Total return quotations are current to the most recent month ended seven business days prior to the date of any use of the advertisement for which such return, or all information required for the calculation of such return, is available to the dealer and the month to which such information is current is identified.

In addition, the proposed rule change would amend clause (C)(1) of Rule G–21(e)(i) to require that any municipal fund securities advertisement that displays performance information must identify either a toll-free (or collect) telephone number or a Web site where an investor may obtain total return quotations current to the most recent month-end for which such return is available.

2. Statutory Basis

The MSRB believes that the proposed rule change is consistent with Section 15B(b)(2)(C) of the Act,[6] 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 is consistent with the Act because it 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.

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 since it would apply equally to all dealers.

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

On December 16, 2004, the MSRB published for comment a draft amendment to Rule G–21 with respect to advertisements of municipal fund securities.[7] The MSRB received four comment letters.[8] ICI, CSF and Vanguard fully support the draft amendments, while CSPN is generally supportive of the draft amendments subject to certain concerns regarding the deadlines imposed under the proposal. The comments received are discussed below. After reviewing these comments, the MSRB approved the draft amendments, with certain modifications described below, for filing with the SEC.

Impact on State 529 Plan Community

Comments Received. CSPN states that it has conducted an informal poll of its issuer members regarding the impact of the draft amendments on their activities. CSPN notes that all but one issuer prepare monthly performance data but that less than half currently target having such data available for all of their investment options within seven business days of month-end as provided for in the draft amendments. CSPN states that most (but not all) issuers that

[3] *See* Exchange Act Release No. 51736 (May 24, 2005), 70 FR 31551 (June 1, 2005).

[4] 15 U.S.C. 77a *et seq.*

[5] The term ''use'' is used with the same meaning as in Securities Act Rule 482.

[6] 15 U.S.C. 78o–4(b)(2)(C).

[7] *See* MSRB Notice 2004–43 (December 16, 2004).

[8] Letter from David J. Pearlman, Chairman, College Savings Foundation (''CSF''), to Ernesto A. Lanza, dated January 14, 2005; letter from Tamara K. Salmon, Senior Associate Counsel, Investment Company Institute (''ICI''), to Ernesto A. Lanza, dated January 19, 2005; letter from Heidi Stam, Principal, Securities Regulation, Vanguard Group, Inc. (''Vanguard''), to Ernesto A. Lanza, dated January 19, 2005; and letter from Tim Berry, Chair, College Savings Plan Network (''CSPN''), and Indiana State Treasurer, to Ernesto A. Lanza, dated January 27, 2005.

do not meet the seven business day timeframe indicate that 10 business days would be an appropriate outside posting date.

CSPN also notes that some issuers express concern that ''implementation of the proposed Rule without modification might unfairly disadvantage programs, or investment options within programs, which are not invested entirely (or at all) in mutual funds of one mutual fund family, thereby negatively affecting depositor choice.'' CSPN observes that ''application of the proposed standard to qualified tuition programs * * * [is] more complex than is the case with mutual funds. Many issuers' programs include investment options that are invested in assets other than mutual funds. Many issuers rely upon contractual arrangements with financial institutions to obtain performance data with respect to some or all of their program's investment options.'' CSPN states:

> Many issuers also rely upon contractual arrangements with financial institutions with respect to the marketing of their programs, including in some instances the marketing of investment options managed for investment purposes by other financial institutions, by the issuer or by another public entity. An inability to include the most recent available total return data in advertisements may disadvantage an issuer's program as compared with other programs. In addition, an inability to include an investment option in advertisements because total return data is not then available with respect to such investment option may disadvantage such investment option as compared with other investment options within the same program.

Other concerns that issuers express to CSPN include initial and ongoing costs of implementing appropriate procedures to assure compliance and the speed at which such procedures can be put in place. CSPN argues that the draft amendments ''effectively impose the compliance burden of the proposed requirement upon unregulated issuers, as it is issuers who will be financially and, in some instances, operationally responsible for the provision of the referenced total return data through a toll-free (or collect) telephone number or Web site.''

With respect to specific elements of the draft amendments, CSPN seeks clarification that the language would never require that performance data be current as of a date other than the end of a month (*i.e.*, that it would never require mid-month calculations). In addition, CSPN requests that the month-end data that is required to be made available by telephone or the Internet not be made subject to the posting deadline of seven business days after the end of the month. In the alternative, if the MSRB retains a posting deadline, CSPN suggests that such deadline be extended to 15 business days. In addition, CSPN states that this posting deadline be based on when the performance data (or information needed to calculate performance data) becomes available to the issuer, rather than available to the dealer.

MSRB Response. The MSRB does not view the rule language to require that performance data be calculated other than on an end-of-month basis unless the advertisement in which such data appears otherwise states or reasonably implies. Therefore, no change to the rule is required for this purpose.

The MSRB believes that it is important that the rule retain the seven business day from end of month deadline, both to ensure consistency with mutual fund rules and to avoid large-scale mismatches between the timeframes for performance data available to investors for one municipal fund security versus another. This deadline provides that performance data must be current to the most recent month ended seven business days prior to the date of any use for which such return, or all information required for the calculation of such return, is available to the dealer. In general, so long as either the actual performance data, or all the information necessary to calculate performance, for the most recently ended calendar month is available to the dealer within seven business days after the end of such month, such performance must be used for compliance with the rule. However, if neither the performance data nor the information required to calculate performance is available to the dealer within that seven business day period, the dealer may continue to use the performance data from the preceding month until the most recent month's data is available or can be calculated. Where the issuer has undertaken to prepare performance data for use by dealers in their advertisements, the performance data will be presumed to be first made available to the dealer for purposes of this requirement when such performance data is made available by the issuer to the dealer, regardless of whether some or all of the information needed to calculate performance has previously become available to the dealer.[9] The MSRB has added a requirement that dealers disclose the month to which month-end performance data is current to ensure that investors understand the information they are provided and are in a better position to make meaningful comparisons between different investment options.

Finally, where an issuer offers various different investment options, the rule's currentness standard should be read to apply to each investment option separately. Thus, so long as dealers display performance data for each investment option in a manner that complies with the preceding paragraph, it is possible that, at any given time, performance data for one investment option of an issuer may be current to a different month-end than with respect to the performance data for another investment option of the same issuer.

Fee and Expense Disclosure

Comments Received. Vanguard recommends that the MSRB require additional disclosures in advertisements that include performance data. Vanguard states:

> We urge the MSRB to consider enhancing fee disclosure in the context of municipal fund securities performance advertising. Accordingly, we ask the MSRB to consider requiring brokers and dealers, in any advertisement containing municipal fund securities performance data, to clearly and prominently disclose all fees and expenses applicable to an investment in those securities in close proximity to such performance data.

Vanguard observes that information about fees and expenses is critical in evaluating investments and making informed investment decisions, and such information is ''essential in order to achieve and maintain the proper balance'' with performance data. Vanguard notes that NASD has filed with the SEC a proposed amendment to its mutual fund advertising rule that would require mutual fund advertisements that include performance data to disclose, in a prominent text box, sales charges and annual expense ratio.[10] Vanguard states, however, that it does not support NASD's formatting requirements with respect to such disclosure.

MSRB Response. The MSRB agrees that disclosure of fees and expenses would be appropriate and that it is crucial for informed investment decisions that such information be available in conjunction with performance data. The MSRB believes that any such requirement in connection with municipal fund securities be made consistent with requirements that may

[9] This presumption may be lost if the dealer itself causes a material delay in the issuer's calculation of performance or if the issuer fails to fulfill its undertaking on a consistent basis.

[10] *See* Exchange Act Release No. 50226 (August 20, 2004), 69 FR 52738 (August 27, 2004) (SR–NASD–2004–043).

become applicable to mutual fund advertisements. The MSRB is taking this suggestion under advisement pending final action by the SEC on the NASD rulemaking proposal.

Effective Date

Comments Received. CSF requests that the draft amendments have an effective date of 180 days after SEC approval. CSPN also requests a delayed effectiveness of 180 days if the MSRB maintains specific deadlines for making month-end information available. The ICI recommends coordination of the effective date for the draft amendments with the recent amendments, which were then pending with a proposed effective date of three months after approval. However, in a separate comment letter to the SEC on the recent amendments, the ICI requested that such amendments become effective 210 days after approval. The ICI noted that the SEC had provided a 210-day transition period when it had adopted extensive changes to its mutual fund advertising rule in 1988.

MSRB Response. The MSRB agrees that the proposed rule change should have the same effective date as the performance data provisions of the recent amendments since the proposed rule change also relates to performance data and therefore is best implemented in tandem with the related provisions of the recent amendments. The MSRB observes that, under the recent amendments, the SEC provided that all advertisements for municipal fund securities submitted or caused to be submitted for publication on or after December 1, 2005 must come into compliance with Rule G–21(e)(ii) and certain other provisions relating to performance data.[11] As a result, dealers also would be required to comply with the amendments to Rule G–21(e)(ii) effected by the proposed rule change for advertisements of municipal fund securities submitted or caused to be submitted for publication on or after December 1, 2005.

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

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. 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–2005–09 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–2005–09. 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 MSRB's offices. 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–2005–09 and should be submitted on or before August 1, 2005.

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

Jill M. Peterson,

Assistant Secretary.

[FR Doc. E5–3615 Filed 7–8–05; 8:45 am]

BILLING CODE 8010–01–P

[11] *See* Exchange Act Release No. 51736 (May 24, 2005), 70 FR 31551 (June 1, 2005).

[12] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–51952; File No. SR–MSRB–2005–10]

Self-Regulatory Organizations; Municipal Securities Rulemaking Board; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Regarding Technical Amendment to Rule G–37, on Political Contributions and Prohibitions on Municipal Securities Business

June 30, 2005.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 2, 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, II and III 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 the Act,[3] and Rule 19b–4(f)(6) thereunder,[4] which renders the proposal effective upon filing with the Commission. 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 a technical amendment to Rule G–37, on political contributions and prohibitions on municipal securities business. The MSRB has set an effective date for the proposed rule change of July 5, 2005. 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

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(iii).

[4] 17 CFR 240.19b-4(f)(6).