



SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549

For complete Form 19b-4 instructions please refer to the EFFS website.

**Form 19b-4 Information**

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The self-regulatory organization must provide all required information, presented in a clear and comprehensible manner, to enable the public to provide meaningful comment on the proposal and for the Commission to determine whether the proposal is consistent with the Act and applicable rules and regulations under the Act.

**Exhibit 1 - Notice of Proposed Rule Change**

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The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)

**Exhibit 2 - Notices, Written Comments, Transcripts, Other Communications**

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Exhibit Sent As Paper Document

Copies of notices, written comments, transcripts, other communications. If such documents cannot be filed electronically in accordance with Instruction F, they shall be filed in accordance with Instruction G.

**Exhibit 3 - Form, Report, or Questionnaire**

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Exhibit Sent As Paper Document

Copies of any form, report, or questionnaire that the self-regulatory organization proposes to use to help implement or operate the proposed rule change, or that is referred to by the proposed rule change.

**Exhibit 4 - Marked Copies**

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The full text shall be marked, in any convenient manner, to indicate additions to and deletions from the immediately preceding filing. The purpose of Exhibit 4 is to permit the staff to identify immediately the changes made from the text of the rule with which it has been working.

**Exhibit 5 - Proposed Rule Text**

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The self-regulatory organization may choose to attach as Exhibit 5 proposed changes to rule text in place of providing it in Item I and which may otherwise be more easily readable if provided separately from Form 19b-4. Exhibit 5 shall be considered part of the proposed rule change.

**Partial Amendment**

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If the self-regulatory organization is amending only part of the text of a lengthy proposed rule change, it may, with the Commission's permission, file only those portions of the text of the proposed rule change in which changes are being made if the filing (i.e. partial amendment) is clearly understandable on its face. Such partial amendment shall be clearly identified and marked to show deletions and additions.

**1. Text of Proposed Rule Change**

(a) The Municipal Securities Rulemaking Board (“MSRB” or “Board”) is hereby filing with the Securities and Exchange Commission (“Commission” or “SEC”) a proposed rule change to delay, until February 29, 2008, implementation of amendments to Rule G-27, on supervision, that are scheduled to be implemented on November 26, 2007.<sup>1</sup> There are no new changes to the text of Rule G-27 as amended in File Number SR-MSRB-2006-10.

(b) Not applicable.

(c) Not applicable.

**2. Procedures of the Self-Regulatory Organization**

The proposed rule change was adopted by the Board pursuant to MSRB Rule A-4(d), relating to action without a meeting. Questions concerning this filing may be directed to Jill C. FINDER, Associate General Counsel, at (703) 797-6600.

**3. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

**(a) Purpose**

On May 22, 2007, the Commission approved File Number SR-MSRB-2006-10, which incorporated into Rule G-27 most of the requirements of NASD Rules 3010 (Supervision) and 3012 (Supervisory Control System), to help ensure a coordinated regulatory approach in the area of supervision and to facilitate inspection and enforcement. The Commission also granted the MSRB’s request for a delayed effective date of November 26, 2007.

Shortly after approval of the amendments, MSRB staff began receiving inquiries from industry members indicating some confusion over which type of principal is required based on the activities conducted at branch offices and offices of supervisory jurisdiction. The MSRB is currently reviewing the amendments to Rule G-27 in light of these inquiries and anticipates publishing a notice in the near future addressing the questions and concerns raised. Pending the completion of such review and anticipated publication of further guidance in this area, the MSRB has filed the proposed rule change for immediate effectiveness to immediately delay, until February 29, 2008, the implementation date of the recently approved amendments to Rule G-27, which otherwise would be implemented on November 26, 2007.

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<sup>1</sup> The Commission approved the amendments in Exchange Act Release No. 55792 (May 22, 2007), 72 FR 29564 (May 29, 2007) (File No. SR-MSRB-2006-10) and granted a delayed effective date of November 26, 2007. *See also* MSRB Notice 2007-16 (May 25, 2007).

(b) **Statutory Basis**

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

The MSRB believes that delaying the implementation date of the recently approved amendments to Rule G-27 will give brokers, dealers and municipal securities dealers the time needed to determine which, if any, of their personnel must be registered as a principal (either a municipal securities principal (Series 53) or a municipal fund securities limited principal (Series 51)) based on the activities undertaken at a branch office and/or office of supervisory jurisdiction.

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

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

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

The MSRB has received two letters requesting guidance on Rule G-27, as amended, from the College Savings Foundation and from Sutherland Asbill & Brennan, LLP. These commentators raised certain substantive questions regarding the application of the amendments. The MSRB is currently reviewing the amendments to Rule G-27 in light of these inquiries and anticipates publishing a notice in the near future addressing the questions and concerns raised.<sup>2</sup> The commentators also requested that the MSRB delay the effective date of the amendments. The MSRB believes that it would be appropriate to delay the implementation of the amendments until February 29, 2008, in light of its pending review of questions on the amendments, anticipated publication of further guidance in this area, and desire to prevent firms from expending unnecessary time and expense in registering as principals certain people who may not need to be so registered.

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<sup>2</sup> The MSRB believes that a notice should fully address such questions and concerns. If, however, the MSRB concludes that a notice is insufficient and that further rulemaking is necessary, the MSRB will file a separate rule change with the Commission.

**6. Extension of Time Period for Commission Action**

Not applicable.

**7. Basis for Summary Effectiveness Pursuant to Section 19(b)(3) or for Accelerated Effectiveness Pursuant to Section 19(b)(2)**

The proposed rule change is effective upon filing pursuant to Section 19(b)(3) of the Act and paragraph (f)(1) of Rule 19b-4 thereunder<sup>3</sup> in that the proposed rule change constitutes a stated policy, practice or interpretation with respect to the meaning, administration, or enforcement of an existing rule. The proposed rule change would delay, until February 29, 2008, the implementation and enforcement of the recently approved amendments to Rule G-27, on supervision.

**8. Proposed Rule Change Based on Rules of Another Self-Regulatory Organization or of the Commission**

Not applicable.

**9. Exhibits**

Exhibit 1. Federal Register Notice

Exhibit 2. Comment letters requesting guidance on Rule G-27

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<sup>3</sup> 17 CFR 240.19b-4(f)(1).

**EXHIBIT 1**

**SECURITIES AND EXCHANGE COMMISSION**

(Release No. 34- ; File No. SR-MSRB-2007-03)

Self-Regulatory Organizations; Municipal Securities Rulemaking Board; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Delay the Implementation of Amendments to Rule G-27 on Supervision,

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on September 14, 2007 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 proposed rule change pursuant to Section 19(b)(3)(A)(i) of the Act,<sup>3</sup> and Rule 19b-4(f)(1)<sup>4</sup> thereunder, as one constituting a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule, which renders the proposed rule change 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 proposing to delay, until February 29, 2008, implementation of the amendments to Rule G-27, on supervision, approved in File Number SR-MSRB-

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

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

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

<sup>4</sup> 17 CFR 240.19b-4(f)(1).

2006-10, and which are scheduled to be implemented on November 26, 2007. There are no new changes to the text of Rule G-27 as amended. 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 May 22, 2007, the Commission approved File Number SR-MSRB-2006-10, which incorporated into Rule G-27 most of the requirements of NASD Rules 3010 (Supervision) and 3012 (Supervisory Control System), to help ensure a coordinated regulatory approach in the area of supervision and to facilitate inspection and enforcement. The Commission also granted the MSRB's request for a delayed effective date of November 26, 2007.

Shortly after approval of the amendments, MSRB staff began receiving inquiries from industry members indicating some confusion over which type of principal is required based on the activities conducted at branch offices and offices of supervisory

jurisdiction. The MSRB is currently reviewing the amendments to Rule G-27 in light of these inquiries and anticipates publishing a notice in the near future addressing the questions and concerns raised. Pending the completion of such review and anticipated publication of further guidance in this area, the MSRB has filed the proposed rule change for immediate effectiveness to immediately delay, until February 29, 2008, the implementation date of the recently approved amendments to Rule G-27, which otherwise would be implemented on November 26, 2007.

## **2. Statutory Basis**

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

The MSRB believes that delaying the implementation date of the recently approved amendments to Rule G-27 will give brokers, dealers and municipal securities dealers the time needed to determine which, if any, of their personnel must be registered as a principal (either a municipal securities principal (Series 53) or a municipal fund securities limited principal (Series 51)) based on the activities undertaken at a branch office and/or office of supervisory jurisdiction.

### **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**

The MSRB has received two letters requesting guidance on Rule G-27, as amended, from the College Savings Foundation and from Sutherland Asbill & Brennan, LLP. These commentators raised certain substantive questions regarding the application of the amendments. The MSRB is currently reviewing the amendments to Rule G-27 in light of these inquiries and anticipates publishing a notice in the near future addressing the questions and concerns raised.<sup>5</sup> The commentators also requested that the MSRB delay the effective date of the amendments. The MSRB believes that it would be appropriate to delay the implementation of the amendments until February 29, 2008, in light of its pending review of questions on the amendments, anticipated publication of further guidance in this area, and desire to prevent firms from expending unnecessary time and expense in registering as principals certain people who may not need to be so registered.

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

The foregoing proposal has become effective pursuant to Section 19(b)(3)(A)(i) of the Act and Rule 19b-4(f)(1) thereunder, in that it constitutes a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an

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<sup>5</sup> The MSRB believes that a notice should fully address such questions and concerns. If, however, the MSRB concludes that a notice is insufficient and that further rulemaking is necessary, the MSRB will file a separate rule change with the Commission.

existing rule. 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.

#### **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-2007-03 on the subject line.

##### Paper comments:

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-MSRB-2007-03. 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, 100 F Street, NE, Washington, DC 20549. 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-2007-03 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission by the Division of Market Regulation, pursuant to delegated authority (17 CFR 200.30-3(a)(12)).

Nancy M. Morris  
Secretary

**Alphabetical List of Comment Letters on MSRB Rule G-27, as Amended**

1. College Savings Foundation: Letter to Ernesto A. Lanza, Senior Associate General Counsel, MSRB, from David J. Pearlman, Chairman, (August 10, 2007)
2. Sutherland Asbill & Brennan, LLP: Letter to Ernesto A. Lanza, Senior Associate General Counsel, MSRB, from Michael Koffler, Esq. (September 6, 2007)



CollegeSavings  
FOUNDATION

August 10, 2007

Mr. Ernesto A. Lanza  
Senior Associate General Counsel  
Municipal Securities Rulemaking Board  
1900 Duke Street, Suite 600  
Alexandria, VA 22314-3412  
703.797.6700

Re: Notice 2007-16

Dear Mr. Lanza:

I am writing to you today on behalf of the College Savings Foundation ("CSF"). CSF is a 501(c)(6) organization dedicated to the advancement of 529 college savings programs. CSF's mission is to help American families achieve their education savings goals by working with public policy makers, media representatives and financial services industry executives in support of education savings programs. CSF's members include many of the country's leading financial services firms, and collectively manage more than \$50 billion in savings-type qualified tuition programs, representing more than one-half of the dollars in such programs. CSF also includes associate members that are governmental and non-profit agencies and individuals who support CSF and its mission.

CSF serves the education savings industry as a central repository of information and an expert resource for its members and for representatives of state and federal government, institutions of higher education and other related organizations and associations. The primary focus of CSF is building public awareness of and providing public policy support for 529 plans - an increasingly vital college-savings vehicle.

This letter is in response to MSRB Notices 2007-16 and 2006-33 (the "Notices"), which addressed changes to MSRB Rule G-27. We seek two things. First, we are asking for explicit guidance stating that an Office of Supervisory Jurisdiction ("OSJ") not engaged in any of the enumerated activities listed below need not be staffed with either a Series 51 or Series 53 registered person. Second, if Notice 2007-16 is a departure from the principles stated in Notice 2006-33, we request an extension of the compliance deadline from November 26, 2007, to not earlier than August 30, 2008.

Notice 2006-33 observes that "As a general principle, the requirements of Rule G-27 apply only with respect to those registered persons who engage in municipal securities activities and those offices in which such municipal securities activities are undertaken (regardless of the level or amount of such municipal securities activities)." We are concerned that Notice 2007-16 might be read in a way inconsistent with that language. Specifically, Notice 2007-16 states in part:

"Pursuant to the amendments (as well as NASD requirements), dealers must designate one or more appropriately registered principals in each office of supervisory jurisdiction ("OSJ") and each such principal must be located on site in each OSJ. The definition of OSJ in Rule G-27 includes (among other things) structuring of public offerings or private placements. Thus, if a person in a one-person office is

Ernesto A. Lanza  
August 10, 2007  
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involved in such activities, then that office is an OSJ and that person must be registered as a municipal securities principal."

We request clarification that an OSJ in which none of the following activities takes place with respect to municipal securities will not be considered one that is required to have either a Series 51 or Series 53 registered person. These activities are as follows: (1) order execution; (2) structuring of public offerings or private placements; (3) maintaining custody of customers' funds and/or securities; (4) final acceptance (approval) of new accounts on behalf of the member firm; (5) review and endorsement of customer orders pursuant to subparagraph (c)(i)(G)(2) of Rule G-27; (6) final approval of advertising or sales literature for use by persons associated with the member, pursuant to Rule G-21(f), or (7) responsibility for supervising the activities of persons associated with the member at one or more other branch offices of the member.

We also believe that the foregoing activities are a complete list of the types of activities that would give rise to the obligation to have a Series 51 or Series 53 registered person under Rule G-27(b)(iv). In this respect, we also have the understanding to the extent an OSJ's activities relate solely to 529 plan business the appropriate registered principal would only need to have a Series 51. If other activities could give rise to the application of the rule, we request guidance setting forth the nature of such other activities.

We believe that this is consistent with the language of Notice 2006-33 cited above, and that Notice 2006-33 is the correct expression of Rule G-27, which does not on its face apply to offices not engaged in the types of municipal securities activities enumerated in the previous paragraph. If Notice 2007-16 was intended to contradict the language quoted from Notice 2006-33, we believe it is inconsistent with the application of Rule G-27, which applies only to municipal securities business, not all business of the member firm. We believe that applying Rule G-27 to all business of the member would exceed the jurisdiction of the MSRB, which is limited to the regulation of the distribution of municipal securities.

The costs of compliance with Rule G-27, as amended, will be significant. If the language in Notice 2007-16 is not read consistently with the quoted language from Notice 2006-33 and the scope of the MSRB's authority generally, it will be even greater, with no corresponding benefit to the investing public.

If the MSRB is interpreting G-27 inconsistently with Notice 2006-33, to accomplish the necessary changes by November 26, 2007 will be an excessive burden on member firms, given the needed changes to organizational structures and the need for individuals in OSJs to pass the Series 51 or Series 53 exam. If such is the intent of Notice 2007-16, we respectfully request that the compliance deadline be extended to not earlier than August 30, 2008, so firms can update their policies and procedures, and implement any necessary changes required.

Please do not hesitate to call me at 817-474-8298 if you believe we can be of further help.

Sincerely,



David J. Pearlman  
Chairman



1114 Avenue of the Americas  
40th Floor  
New York, NY 10036  
212.389.5000  
fax 212.389.5099  
www.sablaw.com

September 6, 2007

Mr. Ernesto A. Lanza  
Senior Associate General Counsel  
Municipal Securities Rulemaking Board  
1900 Duke Street, Suite 600  
Alexandria, VA 22314-3412

**Re: Notice 2007-16**

Dear Mr. Lanza:

I respectfully submit this letter requesting interpretive guidance from the Municipal Securities Rulemaking Board ("MSRB") on behalf of a number of broker-dealers (the "Firms") that sell municipal bonds and municipal fund securities ("529 Plans"). On May 22, 2007, the Securities and Exchange Commission (the "SEC") approved amendments to MSRB Rule G-27 (the "Rule") that effectively will require the Firms and many other broker-dealers selling municipal securities to significantly revamp their supervisory structures. The Firms request that the Rule be interpreted so as to not require broker-dealers to maintain a municipal securities principal (a "Municipal Securities Principal") or a municipal fund securities limited principal (a "Municipal Fund Securities Principal"), as appropriate, in each office of supervisory jurisdiction ("OSJ") in the circumstances described below.

## **I. BACKGROUND**

The Firms are general securities, retail broker-dealers that offer and sell various types of securities including, but not limited to, equities, corporate bonds, government securities, mutual funds, variable insurance products, 529 Plans and municipal bonds for their customers. All of the Firms are members of the Financial Industry Regulatory Authority ("FINRA"), formerly the National Association of Securities Dealers, Inc. ("NASD"). The Firms do not make markets in municipal securities, structure public offerings or private placements of municipal securities or maintain customer funds and/or securities with respect to their municipal securities activities. In addition, the Firms are introducing broker-dealers that have clearing arrangements with clearing

broker-dealers that complete the execution of securities trades. 529 Plans are processed by the Firms on a “check and application” basis.<sup>1</sup>

Each Firm has registered representatives spread throughout the country or in various sections of the country. Collectively, the Firms have approximately 28,900 registered representatives. Virtually all of the Firms’ registered representatives are located at offices that are “branch offices” within the meaning of NASD Conduct Rule 3010(g)(2).

#### **A. Supervisory Systems**

The securities activities of the registered representatives at each Firm are supervised by principals located at multiple locations. Each Firm has Municipal Securities Principals (or Municipal Fund Securities Principals, as appropriate) located at one or more regional offices, “back offices” or the home office (collectively, “Operational OSJs”). The Operational OSJs are responsible for reviewing and supervising particular activities with respect to certain types of securities. If the relief requested by this letter is granted, these Operational OSJs would generally be responsible for the following functions regarding such securities:

- The review of securities transactions, including the review of municipal bond transactions and 529 Plan transactions;<sup>2</sup>
- The review of incoming and outgoing written ( *i.e.*, non-electronic) and electronic correspondence by the Firms’ registered representatives with the public, including the review of outgoing correspondence relating to municipal bonds and 529 Plans;
- The review of customer complaints, including those relating to municipal bonds and 529 Plans;
- The review of the periodic inspections of branch offices and Field OSJs (discussed below), including the municipal securities activities of such offices (as required by Rule G-27(d)(i)(B));<sup>3</sup> and
- The review of advertisements, including the review of advertisements (within the meaning of MSRB Rule G-21) relating to municipal bonds and 529 Plans.<sup>4</sup>

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<sup>1</sup> This means that a customer completes a 529 Plan application and submits the application along with a check made payable to the 529 Plan issuer. The Firms review, process and forward the application and check to the program manager, primary distributor or other agent specified in the Official Statement.

<sup>2</sup> In addition to the suitability reviews conducted by the Municipal Securities Principals or Municipal Fund Securities Principals located in the Operational OSJs, some of the Firms have their Field OSJ managers conduct a preliminary suitability review of transactions in municipal bonds or 529 Plans. These preliminary reviews do not represent the Firms’ official transaction reviews and are an additional investor protection safeguard that has been implemented by such Firms.

<sup>3</sup> For some of the Firms, Municipal Securities Principals or Municipal Fund Securities Principals, as appropriate, are responsible for the review and approval of periodic inspection reports, and appropriate follow-up thereon, that are written by individuals who are not Municipal Securities Principals or Municipal Fund Securities Principals following inspections conducted by such individuals.

In addition to the Operational OSJs, the Firms maintain approximately 635 “Field OSJs” that are typically staffed with managers who are general securities principals for purposes of NASD Membership and Registration Rule 1022(a) (“General Securities Principals”) or Limited Principals - Investment Company and Variable Contracts Products for purposes of NASD Membership and Registration Rule 1022(d). The Field OSJ managers are tasked with serving as the Firms’ “eyes and ears.” They accomplish this by visiting registered representatives under their supervision, performing compliance interviews with the registered representatives, facilitating registered representatives’ education, testing, registration and attendance at training meetings, monitoring and evaluating registered representatives’ sales activities and transactions from commission records, summaries, transaction reports and/or exception reports, occasionally accompanying registered representatives’ on sales calls, communicating and distributing information from the Home Office, Compliance Department or Legal Department to registered representatives, acting as liaison between the registered representatives and the Home Office, Compliance Department and/or Legal Department, assisting the Home Office, Compliance Department and/or Legal Department in gathering documents, following up with the registered representatives as requested by the Home Office, Compliance Department and/or Legal Department, reporting findings regarding exceptions or other red flags to the Home Office, Compliance Department and/or Legal Department or a principal located in an Operational OSJ (who is a Municipal Securities Principal or Municipal Fund Securities Principal, as appropriate) and providing information and informal training to registered representatives (collectively, “Limited General Supervision”).

#### **B. NASD Supervisory Requirements**

The supervisory structures employed by the Firms and the division of supervisory responsibility among the Operational OSJs and Field OSJs are an outgrowth of the Firms’ historical development and compliance with long-standing supervision requirements of the NASD. In this respect, NASD Conduct Rule 3010(a)(4) requires a broker-dealer’s supervisory system to provide for “[t]he designation of one or more appropriately registered principals in each OSJ, including the main office, and one or more appropriately registered representatives or principals in each non-OSJ branch office with authority to carry out the supervisory responsibilities assigned to that office by the member.” NASD Conduct Rule 3010(a)(5) requires a broker-dealer’s supervisory system to provide for “[t]he assignment of each registered person to an appropriately registered representative(s) and/or principal(s) who shall be responsible for supervising that person’s activities.” In explaining the requirements imposed by this rule, the NASD wrote in Notice to Members (“NTM”) 99-45 that “[p]aragraph (a)(5) of the Rule requires that each registered person be assigned to at least one supervisor.”<sup>5</sup> These rules

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<sup>4</sup> Some of the Firms might have General Securities Principals continue to review municipal securities advertisements, as permitted by Rule G-21(f).

<sup>5</sup> NTM 99-45 gives examples of registered representatives’ various activities being supervised by multiple principals.

thus provide for and anticipate that broker-dealers will, if appropriate for their business, assign various principals to supervise a registered representative's activities.<sup>6</sup>

The principle of "specialization" that is embodied in Rule 3010 underlies the Firms' supervisory structures described above. It allows principals with a particular expertise and knowledge to bring their area of specialization to bear on the Firms' securities activities and thereby provide consistency, uniformity and a high level of review of the securities activities of registered representatives who are spread out in the thousands of offices around the country. The ability to have principals specialize and be responsible for discrete activities or functions allows the Firms to mitigate risks that would otherwise arise by having crucial supervisory activities carried out at thousands of small office locations. Another benefit of specialization is that it permits Field OSJ managers to focus on what they can do most effectively. Specialization thus helps the Firms meet their obligation, under NASD Rule 3010, to craft supervisory systems that are tailored to their business. NTM 99-45, for instance, states:

Regardless of its size or complexity, each member must adopt and implement a supervisory system that is *tailored specifically to the member's business* and must address the activities of all its registered representatives and associated persons. . . . To fulfill its obligations to establish and maintain a supervisory system, a member must determine the types of business it conducts, how the firm is organized and operated, and the current regulatory requirements. This analysis will enable the member to design a supervisory system that is current and appropriately tailored to its specific attributes and structure. (Emphasis in original).

The supervisory structures adopted by the Firms fit their business structures and the large number of small offices they have around the country. They permit the Field OSJ managers to be in close proximity to and to keep tabs on the securities activities of the registered representatives in their region and to spot red flags. As discussed below, these structures, which the Firms have had in place for many years, are in jeopardy if the interpretive relief requested by this letter is not granted.

## II. DISCUSSION

In MSRB Notice 2006-33, the MSRB announced that it had proposed amendments to the Rule ("Proposed Amendments"). Among other things, the Proposed Amendments would modify section (b) of the Rule and incorporate certain provisions from NASD Conduct Rule 3010 into the Rule. In particular, the Proposed Amendments would require broker-dealers to:

- Designate certain locations as OSJs (Rule G-27(b)(iii));
- Designate one or more appropriately registered principals in each OSJ, including the main office, and one or more appropriately registered representatives or principals in

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<sup>6</sup> NASD Conduct Rule 3010(a)(6) also requires member firms to determine that all supervisory personnel are qualified by virtue of experience or training to carry out their assigned responsibilities.

each non-OSJ branch office with authority to carry out the supervisory responsibilities assigned to that office (Rule G-27(b)(iv));

- Assign each registered person to an appropriately registered representative(s) or principal(s) who shall be responsible for supervising that person's activities (Rule G-27(b)(v)); and
- Make reasonable efforts to determine that all supervisory personnel are qualified by virtue of experience or training to carry out their assigned responsibilities (Rule G-27(b)(vi)).

#### **A. New Requirements Imposed by Rule G-27**

According to Notice 2006-33, the MSRB intended the amendments to incorporate most of the requirements contained in NASD Conduct Rule 3010 in order to promote regulatory consistency and make these requirements specifically applicable to the municipal securities activities of broker-dealers. In approving the Proposed Amendments, the SEC noted "[t]he MSRB intends generally that the provisions of Rule G-27 be read consistently with the analogous NASD provisions, unless the MSRB specifically indicates otherwise."<sup>7</sup> However, the Rule, as amended by the Order (the "Amended Rule"), imposes a second layer of supervisory requirements on top of the Firms' existing supervisory structures (which have been in place for many years to comply with the supervisory requirements imposed by NASD Conduct Rule 3010). By doing so, the Proposed Amendments impose an enormous regulatory burden on the Firms with little public benefit.

##### **1. Definition of OSJ**

The Amended Rule introduces the concept of an OSJ to the MSRB's regulatory framework, which is defined as any office of a broker-dealer at which any one or more of the following functions take place:

- (i) Order execution and/or market making;
- (ii) Structuring of public offerings or private placements;
- (iii) Maintaining custody of customers' funds and/or securities;
- (iv) Final acceptance (approval) of new accounts on behalf of the broker-dealer;
- (v) Review and endorsement of customer orders, pursuant to Rule G-27(c)(i)(G)(2);

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<sup>7</sup> Securities Exchange Act of 1934 Release No. 55792 (May 22, 2007), Self-Regulatory Organizations; Municipal Securities Rulemaking Board; Order Approving Proposed Rule Change Relating to Amendments to Rule G-27, on Supervision, Rule G-8, on Recordkeeping, and Rule G-9, on Record Retention, (the "Order").

- (vi) Final approval of advertising or sales literature for use by persons associated with the broker-dealer, pursuant to Rule G-21(f); or
- (vii) Responsibility for supervising the activities of persons associated with the broker-dealer at one or more other branch offices (the "Supervision Requirement").

The Amended Rule defines a "branch office" as any location where one or more associated persons of a broker-dealer regularly conducts the business of effecting any transactions in, or inducing or attempting to induce the purchase or sale of any municipal security, or is held out as such, subject to a number of exceptions. In addition, any location that is responsible for supervising the activities of persons associated with the member at one or more non-branch locations of the broker-dealer is considered to be a branch office.

## 2. Appropriately Registered Principal

Subparagraph (b)(ii)(C) of the Amended Rule is entitled "Appropriate Principal" and specifies which types of principals can be responsible for a broker-dealer's supervision of its municipal securities activities. While the subparagraph defaults to a Municipal Securities Principal, importantly there are various exceptions. For instance, the subparagraph permits broker-dealers to designate municipal securities sales principals, General Securities Principals and financial and operations principals to be responsible for supervising various aspects of a broker-dealer's municipal securities business. In particular, a *municipal securities sales principal* may be designated as responsible for handling customer complaints concerning municipal securities activities (Rule G-27(c)(i)(B)), supervising the regular review of customer accounts introduced or carried by the broker-dealer (Rule G-27(c)(i)(C)), reviewing and approving the opening of customer accounts and transactions in municipal securities (Rule G-27(c)(i)(G)), and reviewing incoming and outgoing correspondence (Rule G-27(e)(i)), to the extent the activities pertain to sales to or purchases from a customer. A *General Securities Principal* may be designated as responsible for supervising the maintenance and preservation of the broker-dealer's books and records (Rule G-27(c)(i)(E)), reviewing and approving the opening of customer accounts (Rule(c)(i)(G)(1)) and reviewing and approving advertisements relating to municipal securities (Rule G-21(f)).<sup>8</sup> In addition, a *financial and operations principal* may be designated as responsible for supervising the processing, clearance and, in the case of a non-bank broker-dealer, safekeeping of municipal securities (Rule G-27(c)(i)(F)).

It thus appears that the Rule permits the activities of a registered representative to be supervised by various principals. However, this flexibility is significantly curtailed by the way the Amended Rule is currently interpreted by the MSRB. For instance, the Order affirms:

The MSRB states in its response that under current NASD requirements and the MSRB's proposed amendments, dealers must designate one or more appropriately registered

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<sup>8</sup> Rule G-21(f) permits general securities principals to review advertisements relating to municipal securities. In a conversation with you on August 14, 2007, you indicated that the reference in Rule G-27(b)(ii)(C) to Rule G-21(e) was incorrect and that the reference should in fact be to Rule G-21(f).

principals in each OSJ and each such principal must be located on site in each OSJ. The MSRB understands that in the equities market, which is subject to NASD's supervisory requirements, there are many one-person offices which, as OSJs, are involved in structuring corporate financing. The MSRB further understands that such functions, when performed at an OSJ, are significant enough to warrant supervision by an on-site principal who is permanently located in that office. The MSRB concluded that in the case of the one-person OSJ described by Banc of America, the practical effect of the proposed rule change on bank dealers would be to require that one person to be registered as a municipal securities principal, just as NASD requires securities firms to register as a principal any one-person OSJ. The MSRB further noted that the purpose of the proposed rule change is to promote regulatory consistency, and that the MSRB does not believe that the situation described by Banc of America justifies deviating from this purpose.

#### **B. Request for Relief**

The MSRB's assertion that it is following the NASD's lead and promoting regulatory consistency does not justify the conclusion that any office that falls within the definition of OSJ merits having a Municipal Securities Principal (or Municipal Fund Securities Principal, as appropriate) in situations where (i) the only reason an office is an OSJ is the Supervision Requirement and (ii) the principals at such OSJs provide the limited supervision described herein. In such circumstances, the burdens imposed on the Firms by layering a second supervisory structure over the NASD's supervisory structure vastly outweighs the minimal benefits that may be achieved in the form of investor protection. The Firms therefore request that the MSRB provide interpretive guidance that the Firms do not need to have a Municipal Securities Principal (or Municipal Fund Securities Principal, as appropriate) in any Field OSJ that falls within the definition of "office of supervisory jurisdiction" in Rule G-27(g)(i) *solely* because of the Supervision Requirement in Rule G-27(g)(i)(G).

As noted above, aside from supervision the Firms' Field OSJs would not engage in any of the other activities listed in Rule G-27(g)(i). This is in large part because the Operational OSJs would be staffed with Municipal Securities Principals and/or Municipal Fund Securities Principals, as appropriate, that review municipal securities transactions, advertisements, complaints and outgoing written (*i.e.*, non-electronic) and electronic correspondence and conduct periodic office inspections, all in accord with the requirements of the Amended Rule. The supervision provided by the Operational OSJs leaves the Field OSJs with responsibility for Limited General Supervision over the registered representatives in their region as described above. This limited level of supervision should not give rise to the obligation to have Municipal Securities Principals (or Municipal Fund Securities Principals) in each Field OSJ.

The Firms note that the plain language of the Amended Rule does not support the position taken by the MSRB that is described in the SEC's Order. In this respect, Subparagraph (b)(ii)(C) of the Amended Rule leads to the opposite conclusion; in listing the various supervisory activities which require a Municipal Securities Principal the MSRB did not include principals located in OSJs. Accordingly, the structure and language of the Amended Rule, along with fundamental principles of rule construction, support the conclusion that principals in OSJs

do not need to be a Municipal Securities Principal (or a Municipal Fund Securities Principal, if appropriate).

Given the experience of the Firms' Field OSJ managers and their Limited General Supervision responsibilities, there is no public policy reason to require such individuals to be registered as Municipal Securities Principals (or Municipal Fund Securities Principals, if appropriate). In this respect, we note that the limited functions they carry out do not require expertise in the intricacies of municipal securities – there is absolutely no reason to believe that they will not be just as effective in providing Limited General Supervision over the registered representatives' municipal securities activities as they are with respect to the Firms' other securities activities. Furthermore, it is inconsistent and illogical for the MSRB to permit General Securities Principals to conduct activities such as reviewing and approving municipal securities advertisements, reviewing and approving the opening of customer accounts in which transactions in municipal securities are effected and maintaining books and records relating to municipal securities, and not to permit the Firms' Field OSJ managers to carry out their Limited General Supervision functions unless they are registered as Municipal Securities Principals (or Municipal Fund Securities Principals, if appropriate). The Field OSJ managers certainly have the expertise and experience necessary to carry out these responsibilities with respect to municipal securities.

While there would be virtually no additional investor protection afforded to the public by requiring the Firms' Field OSJ managers to be registered as Municipal Securities Principals (or Municipal Fund Securities Principals, if appropriate),<sup>9</sup> the costs of complying with such an interpretation are quite significant. Such costs include initial regulatory exam fees, regulatory exam preparatory classes, the time lost to prepare for the exams, ongoing regulatory exam fees and the logistical and operational costs of getting thousands of managers registered. In addition, limited compliance resources that could otherwise be allocated to address more pressing regulatory issues will need to be devoted to registration efforts.

Section 15B(b)(2)(C) of the Securities Exchange Act of 1934, as amended (“1934 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. None of these goals will be furthered to any material extent by requiring the Field OSJ Managers to register as Municipal Securities Principals (or Municipal Fund Securities Principals, if appropriate) because their Limited General Supervision would not be enhanced by having these registrations.<sup>10</sup>

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<sup>9</sup> In this respect, the MSRB’s current position does not take account of the number of individuals in or supervised by an OSJ or the level or amount of municipal securities activities carried out at or supervised by an OSJ.

<sup>10</sup> We also note that certain interpretive issues would arise if the MSRB were to decline to provide the interpretive guidance requested herein. For instance, Rule G-21(f) permits General Securities Principals to approve advertisements relating to municipal securities. In situations where a given OSJ conducts the final approval of advertisements (but does not perform any other activity that would cause such office to be an OSJ), it would appear

The Firms also note that under Section 15B(b)(2) of the 1934 Act, the MSRB may only adopt rules that relate to transactions in municipal securities.<sup>11</sup> If a given OSJ does not participate in municipal securities transactions or supervise registered representatives involved in such transactions, then the activities and persons located at such office are beyond the jurisdiction of the MSRB. Accordingly, to the extent an OSJ has no involvement in a Firm's municipal securities activities, the language in Rule G-27(b)(iv) requiring an "appropriately registered principals in each office of supervisory jurisdiction" cannot be interpreted to require the OSJ principal to be registered as a Municipal Securities Principal (or Municipal Fund Securities Principal, as appropriate). In this respect, Notice 2006-33 acknowledges the inability of the MSRB to regulate broker-dealers' non-municipal securities activities by stating that "[a]s a general principle, the requirements of Rule G-27 apply only with respect to those registered persons who engage in municipal securities activities and those offices in which such municipal securities activities are undertaken . . . ." Furthermore, if a given OSJ does not participate in municipal securities transactions or supervise registered representatives involved in such transactions, then there is no purpose served in requiring a principal located in such office to be registered as a Municipal Securities Principal (or Municipal Fund Securities Principal, as appropriate). Therefore, in addition to the above request, the Firms would like the MSRB to interpret the foregoing phrase in Rule G-27(b)(iv) consistent with the statutory scheme of the 1934 Act and the limitations placed on the MSRB therein and the principle enunciated in Notice 2006-33 and conclude that if an OSJ is not involved in a Firm's municipal securities business, there is no need to have a Municipal Securities Principal (or Municipal Fund Securities Principal, as appropriate) located in such office.

If the MSRB does not provide the interpretive guidance requested by this letter, the Firms respectfully request that the MSRB grant an extension of the requirements in Rule G-27(b)(iv) for fifteen months from the date of the MSRB's decision. In this respect, the Firms note that the first time the MSRB made public its interpretation of the requirements of Rule G-27(b)(iv) was in a letter from the MSRB legal staff to the SEC a few months ago. If the MSRB does not provide the interpretive guidance requested by this letter, it will take the Firms over a year to get their thousands of Field OSJ managers registered as Municipal Securities Principals (or Municipal Fund Securities Principals, if appropriate). The overwhelming majority of their Field OSJ managers will not be able to get registered as Municipal Securities Principals (or Municipal Fund Securities Principals, if appropriate) by the November 26, 2007 compliance deadline specified in MSRB Notice 2007-16. If the guidance is not granted, the Firms will be forced to either (i) stop almost all sales of municipal securities or (ii) re-characterize their Field OSJs as not being offices of supervisory jurisdiction for purposes of Rule G-27 and replace them with

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that Rule G-27(b)(iv) would require, under the MSRB's interpretation of the rule, the principal(s) located at that office to be registered as Municipal Securities Principals (or Municipal Fund Securities Principals, if appropriate). However, since Rule G-21(f) explicitly states that the approval of advertisements can be conducted by a General Securities Principal, there is a question as to which rule should be followed.

<sup>11</sup> In discussing the Securities Acts Amendments of 1975, the U.S. Senate Committee on Banking, Housing and Urban Affairs wrote "The sole function and responsibility of the Board would be to prescribe rules for the municipal securities industry and with respect to transactions in municipal securities . . ." S. Rep. No. 94-75, at 114 (1975).

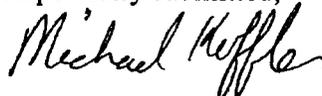
interim supervisory structures and systems in an extremely short time frame. Neither option is in the public's best interest.

The first option would impact the Firms' revenue and would effectively prevent the Firms' customers from purchasing municipal securities or selling municipal securities already purchased through the Firms. In the case of 529 Plans, even if customers were to enter into relationships with other broker-dealers, they might be unable to buy or sell certain 529 Plans available through the Firms if the other broker-dealers do not have selling agreements with the primary distributors of the 529 Plans.

The implications of the latter option are hard to quantify as it would impact virtually every aspect of the Firms' supervisory systems, including chains of supervision, work flow and paper flow, policies, procedures, manuals, technology systems, and compensation systems, among other things. We also note that any supervision over the Firms' registered representatives under such a scenario would be conducted by far fewer principals than currently supervise the registered representatives and by principals who are neither in close proximity to, nor familiar with the municipal securities activities of, the registered representatives. Such an upheaval would not be in the public's best interests and would certainly not further investor protection. As a result, a reasonable amount of time to transition to the new requirements is necessary if the MSRB were to refuse to grant the interpretive guidance requested in this letter. The Firms believe that given the numbers and logistics involved a fifteen month extension is needed to comply with the Amended Rule.

I would be more than happy to meet with members of the MSRB or its legal staff to discuss the request for interpretive relief and the issues raised herein. Please do not hesitate to call me with any questions at (202) 383-0106.

Respectfully submitted,

A handwritten signature in cursive script that reads "Michael Koffler".

Michael Koffler