

Special Notice to Members

MARCH 2003

SUGGESTED ROUTING

Executive Representatives
Institutional
Legal & Compliance
Options
Senior Management

KEY TOPICS

Investment Companies
Municipal Fund Securities/529 Plans
Sales Material

INFORMATIONAL

Municipal Fund Securities

Sales Material for Municipal Fund Securities

Executive Summary

NASD recognizes that the market for municipal fund securities, particularly Section 529 college savings plan securities, continues to evolve rapidly. Many NASD members active in the municipal fund securities market have no other experience effecting municipal securities transactions and therefore may not be familiar with the regulatory treatment of these securities. Further, even when a broker/dealer or municipal securities dealer has a sound understanding derived from its other municipal securities activities relating to traditional debt securities, the unique nature of municipal fund securities may result in these otherwise familiar rules being applied in unfamiliar ways.

NASD is committed to providing interpretive guidance regarding the application of our rules to dealers effecting transactions in municipal fund securities as we become aware of issues in which such guidance would be beneficial. Consequently, NASD is issuing this *Special Notice to Members* to clarify the treatment of sales material for municipal fund securities.

Question/Further Information

Any questions concerning this *Special Notice* may be directed to Thomas A. Pappas, Associate Vice President, Advertising Regulation, at (240) 386-4500.

03-17

Discussion

1. NASD Rules Apply to Certain Sales Material for Municipal Fund Securities

Municipal fund securities represent investments in pools of securities, such as securities issued by registered investment companies. Therefore, certain sales materials for municipal fund securities must comply with the advertising rules of the Securities and Exchange Commission (SEC) and NASD, including NASD Rule 2210.

This requirement covers any sales material prepared or used by an NASD member that refers to (1) the performance of the investment company securities or investment company families that underlie a municipal fund security, (2) the investment objectives or investment strategies of such an investment company, (3) the experience or capabilities of the investment adviser or portfolio manager of such an investment company, (4) the potential benefits or risks associated with investing in such an investment company and with any service provided to investors in the investment company, or (5) the fees and expenses associated with investing in such an investment company.

2. Filing of Sales Material with NASD

NASD recognizes that some NASD members may have already distributed sales material that refers to underlying investment company securities as described in the preceding paragraph, without having filed it with NASD. Members have until 30 days from the issuance of

this *Special Notice to Members* (March 25, 2003) to file with the NASD Advertising Regulation Department any such material that the member is currently using. Members need not file sales material that is no longer in use. Members must comply with the normal filing requirements with respect to sales material that they intend to use in the future.

3. MSRB Rules Apply to Sales Material for Municipal Fund Securities

Because municipal fund securities also represent municipal securities regulated by the Municipal Securities Rulemaking Board, sales material for municipal fund securities must comply with MSRB Rules G-17 and G-21, as well as all other applicable MSRB rules. MSRB Rules G-17 and G-21 establish a general ethical standard for dealer advertisements that prohibits a dealer from distributing any sales material concerning its facilities, services, or skills with respect to municipal securities that is materially false or misleading. In addition, a dealer may not distribute any sales material concerning municipal securities that it knows or has reason to know is materially false or misleading. Rule G-21 imposes a registered principal pre-use approval requirement and a three-year record-keeping requirement on sales material for municipal securities. The MSRB has provided guidance with respect to municipal fund security advertisements that include information regarding an underlying investment company security in its Rule G-21 Interpretation – Application of Fair Practice and Advertising Rules to Municipal Fund Securities, May 14,

2002. Generally, MSRB, SEC, and NASD rules are consistent. However, to the extent that SEC or NASD advertising rules impose additional specific requirements, members must adhere to them.

NASD has no authority to regulate the content, preparation, or use of sales material by issuers of municipal fund securities and this *Notice to Members* is not intended to do so. However, in order for NASD members to use such sales material, they must comply with SEC and NASD advertising rules. In order to avoid indirectly regulating issuers, NASD review of such sales material will be limited to matters relevant to the investment company securities or investment company families that underlie a municipal fund security. In particular, portions of sales materials that describe the issuer or its municipal fund securities program as a whole will not be reviewed. At the request of any member, NASD also will review any such sales material for compliance with MSRB advertising requirements applicable to municipal fund securities.

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