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Nancy M. Morris,
Secretary.

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SECURITIES AND EXCHANGE COMMISSION

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Self-Regulatory Organizations; Municipal Securities Rulemaking Board; Notice of Filing of Proposed Rule Change Consisting of Interpretive Guidance on Customer Protection Obligations of Brokers, Dealers and Municipal Securities Dealers Relating to the Marketing of 529 College Savings Plans

April 25, 2006.

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 March 31, 2006, 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 substantially 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 is filing with the Commission a proposed rule change consisting of interpretive guidance on customer protection obligations of brokers, dealers and municipal securities dealers ("dealers") relating to the marketing of 529 college savings plans. The MSRB proposes an effective date for the proposed rule change of 60 calendar days after Commission approval. 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

In a May 14, 2002 notice (the "2002 Notice"), the MSRB interpreted Rule G-17, on fair dealing, to require dealers selling out-of-state 529 college savings plan interests to customers to disclose at or prior to the sale to the customer (the "time of trade") that, depending upon the laws of the customer's home state, favorable state tax treatment for investing in a 529 college savings plan may be limited to investments made in a 529 college savings plan offered by the customer's home state.³ In addition, the MSRB provided guidance in the 2002 Notice on the application of Rule G-19, on suitability of recommendations and transactions, and other customer protection rules in the context of 529 college savings plan transactions.

The proposed rule change broadens the existing time-of-trade disclosure obligation with respect to the marketing of out-of-state 529 college savings plans. Under the proposed rule change, dealers selling out-of-state 529 college savings plan interests are required to disclose to the customer, at or prior to the time of trade, that: (i) Depending on the laws of the home state of the customer or designated beneficiary, favorable state tax treatment or other benefits offered by such home state may be available only if the customer invests in the home state's 529 college savings plan; (ii) state-based benefits should be one of many appropriately weighted factors to be considered in making an investment decision; and (iii) the customer should consult with his or her financial, tax or other adviser about how such state-based benefits would apply to the customer's specific circumstances and may wish to contact his or her home state or any other 529 college savings plan to learn more about their features. Guidance is provided as to the manner of delivering this revised out-of-state disclosure to ensure that such information is noted by the customer, and dealers are reminded that all

disclosures made to customers, regardless of whether they are made pursuant to a regulatory mandate, must not be false or misleading.

The proposed rule change further reminds dealers that providing disclosures to customers does not relieve them of their suitability duties—including their obligation to consider the customer's financial status, tax status and investment objectives—arising in connection with recommended transactions. The proposed rule change describes certain basic suitability principles applicable to recommended transactions in 529 college savings plans, advising dealers to consider whether a recommendation is consistent with the customer's tax status and any federal or state tax-related investment objectives of the customer. The proposed rule change emphasizes that any dealer that recommends a transaction must undertake an active suitability process involving a meaningful analysis that takes into consideration information about the customer and the security. Dealers are further advised that suitability determinations should be based on the various appropriately weighted factors that are relevant in any particular set of facts and circumstances. Finally, the proposed rule change reaffirms existing guidance from the 2002 Notice on other customer protection obligations applicable to dealer sales practices in the 529 college savings plan market.

2. Statutory Basis

The MSRB believes that the proposed rule change is consistent with Section 15B(b)(2)(C) of the Act,⁴ 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 strengthening and clarifying dealers' customer protection obligations relating to the marketing of 529 college savings plans, including but not limited to the duty to provide important disclosures to customers investing in out-of-state 529 college

³ See Rule G-21 Interpretation—Application of Fair Practice and Advertising Rules to Municipal Fund Securities, May 14, 2002, reprinted in MSRB Rule Book.

⁴ 15 U.S.C. 78o-4(b)(2)(C).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

savings plans and to undertake active suitability analyses for recommended transactions based on appropriately weighted factors.

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 June 10, 2004, the MSRB published for comment draft interpretive guidance relating to, among other things, the disclosure obligations of dealers selling out-of-state 529 college savings plans, strengthening the out-of-state disclosures originally mandated in the 2002 Notice (the "2004 Proposal").⁵ The MSRB received comments on the 2004 Proposal from eight commentators.⁶ After reviewing these comments, considering the concerns of

NASD and others regarding high levels of out-of-state sales and consulting with Commission staff, the MSRB published on May 19, 2005 a notice seeking further comment on a revised version of the draft interpretive guidance (the "2005 Proposal").⁷ The 2005 Proposal included a discussion of existing resources and challenges in connection with obtaining disclosure information in the 529 college savings plan marketplace and sought comment on the possible substantial expansion of the disclosure and suitability obligations described in the 2002 Notice. The MSRB received comments on the 2005 Proposal from 22 commentators.⁸

The 2004 and 2005 Proposals, as well as the comments received on these proposals, are discussed below. The

MSRB has considered these comments, together with important developments in the mechanisms for ensuring the free and effective flow of information to the public about all 529 college savings plans offered in the marketplace (discussed below), in determining to file this proposed rule change.

General. The 2004 Proposal proposed expanding the existing obligation of dealers under the 2002 Notice to advise their out-of-state 529 college savings plan customers of the potential loss of in-state benefits. The 2004 Proposal did not address issues relating to suitability. All commentators on the 2004 Proposal supported the importance of ensuring some degree of disclosure to customers of the existence of potential in-state benefits of 529 college savings plans but some commentators suggested changes to the specific proposal.

The 2005 Proposal covered a wider range of topics than the portion of the 2004 Proposal relating to disclosure. The 2005 Proposal sought to expand the time-of-trade disclosure obligation for out-of-state sales proposed in the 2004 Proposal to include a requirement that dealers identify for their out-of-state customers the specific tax and other benefits that each of their respective home states offer and that such customers would forego by investing in an out-of-state 529 college savings plan (the "special home state disclosure proposal"). More broadly, the 2005 Proposal discussed general disclosure practices and mechanisms in the 529 college savings plan market, including the possible establishment of centralized information sources. Dealers were reminded that disclosures made to customers do not relieve dealers of their suitability duties—including their obligation to consider the customer's financial status, tax status and investment objectives—arising in connection with recommended transactions. The 2005 Proposal discussed existing suitability standards as applied to recommendations of 529 college savings plan transactions and proposed expanding such standards to require dealers recommending out-of-state 529 college savings plan investments to undertake a comparative suitability analysis involving a comparison of the recommended out-of-state 529 college savings plan with the customer's home state 529 college savings plan (the "comparative suitability proposal"). Finally, the 2005 Proposal discussed other sales practice obligations under the MSRB's fair

⁵ See MSRB Notice 2004-16 (June 10, 2004). The 2004 Proposal, together with a related proposal (MSRB Notice 2004-17 (June 15, 2004)), represented a comprehensive initiative of the MSRB to strengthen a broad range of customer protection obligations set out in the 2002 Notice. Portions of the 2004 Proposal significantly strengthening 529 college savings plan advertising requirements have been adopted, with certain additional requirements and modifications, by the MSRB and approved by the Commission. See Exchange Act Release No. 51736 (May 24, 2005), 70 FR 31551 (June 1, 2005). See also Exchange Act Release No. 52289 (August 18, 2005), 70 FR 49699 (August 24, 2005). In addition, the strengthened customer protection obligations with respect to 529 college savings plan sales incentives proposed in the related June 15, 2004 proposal have been adopted by the MSRB and approved by the Commission. See Exchange Act Release No. 52555 (October 3, 2005), 70 FR 59106 (October 11, 2005). The current proposed rule change represents the final stage of the MSRB's 2004 customer protection initiative.

⁶ Letters from: Kenneth B. Roberts, Hawkins Delafield & Wood LLP ("Hawkins"), to Ernesto A. Lanza, Senior Associate General Counsel, MSRB, dated August 20, 2004; Mary L. Schapiro, Vice Chairman, NASD, and President, Regulatory Policy and Oversight, to Mr. Lanza, dated September 9, 2004; Tamara K. Salmon, Senior Associate Counsel, Investment Company Institute ("ICI"), to Mr. Lanza, dated September 10, 2004; David J. Pearlman, Chairman, College Savings Foundation ("CSF"), to Mr. Lanza, dated September 13, 2004; Elizabeth L. Bordowitz, General Counsel, Finance Authority of Maine ("FAME"), to Mr. Lanza, dated September 13, 2004; Diana F. Cantor, Chair, College Savings Plan Network ("CSPN"), and Executive Director, Virginia College Savings Plan, to Mr. Lanza, dated September 15, 2004; Elizabeth Varley and Michael D. Udoff, Co-Staff Advisers, Securities Industry Association ("SIA") Ad Hoc 529 Plans Committee, to Mr. Lanza, dated September 15, 2004; and Raquel Alexander, PhD, Assistant Professor, and LeAnn Luna, PhD, Assistant Professor, University of North Carolina at Wilmington ("UNCW"), to Mr. Lanza, dated September 15, 2004.

⁷ See MSRB Notice 2005-28 (May 19, 2005).

⁸ Letters from: Ms. Alexander, Assistant Professor of Accounting, University of Kansas, and Ms. Luna, Assistant Professor of Accounting, University of Tennessee ("Alexander & Luna"), to Mr. Lanza, dated July 26, 2005; Judith A. Wilson, Compliance Attorney, 1st Global Capital Corp. ("1st Global"), to Mr. Lanza, dated July 28, 2005; Diana Scott, Senior Vice President & General Manager, John Hancock Financial Services ("Hancock"), to Mr. Lanza, dated July 28, 2005; John C. Heywood, Principal, Vanguard Group, Inc. ("Vanguard"), to Mr. Lanza, dated July 28, 2005; Mr. Pearlman, CSF, to Mr. Lanza, dated July 29, 2005 and February 13, 2006; Tim Berry, Chair, CSPN, and Indiana State Treasurer, to Mr. Lanza, dated July 29, 2005; Ms. Salmon, ICI, to Mr. Lanza, dated July 29, 2005; Jacqueline T. Williams, Executive Director, Ohio Tuition Trust Authority ("Ohio TTA"), to Mr. Lanza and Ghassan Hitti, Assistant General Counsel, MSRB, dated July 29, 2005; Ira D. Hammerman, Senior Vice President & General Counsel, SIA, to Mr. Lanza, dated July 29, 2005; Ms. Cantor, Executive Director, Virginia College Savings Plan ("Virginia CSP"), to Mr. Lanza, dated July 29, 2005; John D. Perdue, Chairman, Board of Trustees of the West Virginia College Prepaid Tuition and Savings Program, and State Treasurer ("West Virginia"), to Mr. Lanza, dated July 29, 2005; James F. Lynch, Associate Vice President for Finance, University of Alaska ("University of Alaska"), to Mr. Lanza, dated July 29, 2005; Eileen M. Smiley, Vice President & Assistant Secretary, USAA Investment Management Company ("USAA"), to Mr. Lanza, dated July 29, 2005; Ronald C. Long, Senior Vice President, Wachovia Securities, LLC ("Wachovia"), to Mr. Lanza, dated July 29, 2005; Michael L. Fitzgerald, State Treasurer of Iowa ("Iowa"), to Mr. Lanza, received August 1, 2005; Henry H. Hopkins, Vice President, Director & Chief Legal Counsel, T. Rowe Price Investment Services, Inc. ("T. Rowe"), to Mr. Lanza, dated August 1, 2005; Thomas M. Yacovino, Vice President, A.G. Edwards and Sons, Inc., ("AG Edwards"), to Mr. Lanza, dated August 3, 2005; W. Daniel Ebersole, Director, Georgia Office of Treasury and Fiscal Services ("Georgia"), to Mr. Lanza, dated August 4, 2005; Nancy K. Kopp, Treasurer, State of Maryland, and Chair, College Savings Plans of Maryland ("CSP-Maryland"), to Mr. Lanza, dated August 10, 2005; Mr. Pearlman, Senior Vice President and Deputy General Counsel, Fidelity Investments ("Fidelity"), to Mr. Lanza, dated December 7, 2005; James W. Pasman, Senior Vice President & Managing Director, PFPC Inc. ("PFPC"), to Mr. Lanza, dated December 12, 2005; and Randall Edwards, President, National Association of State Treasurers ("NAST"), and Oregon State Treasurer, to Amelia A.J. Bond, Chair, MSRB, dated March 20, 2006.

practice rule.⁹ Although some commentators supported the concept of centralized information sources for the 529 college savings plan market and the clarification of certain elements of existing basic disclosure and suitability obligations, the vast majority of commentators opposed any requirements to disclose specific in-state features foregone as a result of an out-of-state investment or to undertake a comparative suitability analysis.

The MSRB has determined to strengthen the existing time-of-trade disclosure and basic suitability obligations as applied to transactions in 529 college savings plans. However, in view of significant developments toward the maturation of the disclosure dissemination system for this market and with due regard to concerns expressed by the commentators and in press reports regarding the potentially substantial impact of the special home state disclosure and comparative suitability proposals, the MSRB has determined at this time not to adopt these two proposals pending further assessment of the efficacy of developments in the disclosure infrastructure.

Disclosure. General Time-of-Trade Disclosure Obligation and Established Industry Sources

Summary. The 2005 Proposal described dealers' obligations to make time-of-trade disclosures of all material facts about a 529 college savings plan investment they are selling to their customers that are known to the dealer or that are reasonably accessible from established industry sources.¹⁰ The 2005 Proposal included a discussion of established industry sources for 529 college savings plan information¹¹ and requested comments on whether one or

more centralized Web-based sources of information should be established by the private sector, industry associations or the MSRB. The 2005 Proposal noted that such a resource would ideally provide on-site summary information formatted to allow dealers and customers to make meaningful comparisons of the material features of 529 college savings plans, together with direct links to all 529 college savings plan official statements (typically referred to as "program disclosure documents") and related information. The types of material features summarized on such a site might include (among other things) state tax treatment, other state-based benefits, costs associated with investments and performance information. The 2005 Proposal suggested that such a centralized Web site could embed within its posted summary information direct hyperlinks to the portions of the program disclosure document or other 529 college savings plan materials that provide more detailed descriptions of the summarized information.¹² The 2004 Proposal did not address these issues.

Comments. Two commentators on the 2005 Proposal supported the establishment of a centralized Web site for summary 529 college savings plan information with links to 529 college savings plan materials for more detailed information.¹³ They stated that such a Web site would allow dealers and customers to make meaningful comparisons of features and reduce the complexity of gathering accurate, complete and timely information. Alexander & Luna listed what they viewed as several weaknesses of current third-party Web sites: (i) Information that is frequently out-of-date, incomplete or inaccurate; (ii) comparison information that is not universally available; (iii) information that is "summarized at a very high level;" (iv) Web site tools that are often over-simplified, which can distort results and ultimately provide incorrect guidance; and (v) many current Web sites that require users to pay for subscriptions in order to obtain basic information.

Many commentators opposed, or questioned the feasibility of,

establishing a centralized Web site.¹⁴ Some commentators expressed concern that disparate features of 529 college savings plans make presentation of parallel information nearly impossible and that information presented in a summary manner may omit material information or portray such information inaccurately.¹⁵ Some commentators expressed concerns about potential liabilities for dealers that might rely on summarized information obtained from any such centralized Web site.¹⁶ Hancock stated that existing Web sites are adequate for the marketplace.

CSPN stated that the creation of an MSRB-sponsored Web site would be contrary to the municipal securities exemption under federal securities laws and that it is already working to address 529 college savings plan disclosure concerns through its disclosure principles and its own Web site. CSPN noted that it had recently developed Disclosure Principles Statement No. 2 ("DP-2") which, "along with the information available on the CSPN Web site will be the most effective and appropriate approach to enhancing investor accessibility to pertinent 529 Plan information."¹⁷ CSPN stated that DP-2 included "an expanded locator concept, which will assist investors in finding similar information in the offering materials prepared by various State issuers, while still using only the materials authorized by that State issuer."¹⁸

Although the 2004 Proposal did not address broader disclosure issues in the 529 college savings plan market, two commentators on the 2004 Proposal made suggestions in this regard, stating that the MSRB should put in place a broader set of disclosure requirements to accompany the proposed disclosures described in the draft guidance.¹⁹ NASD suggested that the MSRB require standardized point-of-sale disclosure of fees and compensation in a manner similar to the point-of-sale disclosure requirements included by the Commission in its proposed Exchange

⁹ These provisions did not generate comments and have been included in the proposed rule change with only minimal modifications.

¹⁰ Established industry sources include the system of nationally recognized municipal securities information repositories, the MSRB's Municipal Securities Information Library® system and Real-Time Transaction Reporting System, rating agency reports and other sources of information relating to the municipal securities transaction generally used by dealers that effect transactions in the type of municipal securities at issue. See Rule G-17 Interpretation—Interpretive Notice Regarding Rule G-17, on Disclosure of Material Facts, March 20, 2002, published in *MSRB Rule Book*.

¹¹ The MSRB noted that many of the traditional established industry sources are designed specifically for debt securities, not 529 college savings plans, and that it viewed established industry sources for 529 college savings plans as encompassing a broad variety of information sources that professionals in this market can and do use to obtain material information about these investments and the state programs.

¹² The 2005 Proposal noted that the centralized Web site could, for example, provide hyperlinks to Web sites, or other contact information for sources, providing performance data current to the most recent month-end, as required under Rule G-21(e)(ii)(C) relating to 529 college savings plan advertisements containing performance information.

¹³ 1st Global; Alexander & Luna.

¹⁴ AG Edwards, CSF, CSPN (with the concurrence of CSP-Maryland, Georgia, Iowa, Ohio TTA, University of Alaska, Virginia CSP, West Virginia), Hancock, and USAA.

¹⁵ CSF, CSPN, Hancock.

¹⁶ Hancock, Vanguard.

¹⁷ DP-2 updated CSPN's Voluntary Disclosure Principles Statement No. 1 ("DP-1"), which CSPN published in 2004 to provide guidance to state programs in preparing their program disclosure documents. See also NAST.

¹⁸ CSP-Maryland, Georgia, Iowa, Ohio TTA, University of Alaska, Virginia CSP and West Virginia supported CSPN's position.

¹⁹ NASD and UNCW.

Act Rule 15c2-3.²⁰ UNCW described an academic study on factors influencing investor choices of 529 college savings plans and concluded that “investors appear to be choosing high fee/broker sold funds rather than the lower fee, direct investment options * * * [and] appear to be ignoring state tax benefits.” Stating that its study suggested that investors may not have sufficient information in these areas, UNCW supported mandating disclosure of not only state tax benefits but also uniform disclosure of fees and performance for each 529 college savings plan portfolio and for each underlying fund in such portfolio, as well as the percentage of total investments that each underlying fund represents with respect to such 529 college savings plan portfolio.

MSRB Response. Since publishing the 2005 Proposal, the MSRB has engaged the 529 college savings plan industry and other federal securities regulators in a dialogue regarding the 2005 Proposal. In particular, the MSRB has emphasized that a crucial factor underlying the special home state disclosure and comparative suitability proposals for out-of-state sales was the difficulty that the average investor faces in obtaining and understanding the key items of information relevant in making an informed investment decision in the context of the varied and complex national 529 college savings plan marketplace.²¹

²⁰ See Securities Act Release No. 8358 (January 29, 2004), 69 FR 6438 (February 10, 2004). See also Securities Act Release No. 8544 (February 28, 2005), 70 FR 10521 (March 4, 2005). The proposed rulemaking by the Commission would apply to dealer sales of 529 college savings plan interests, in addition to sales of mutual funds and variable annuities. The MSRB observes that NASD has provided comments to the Commission on this proposal that are similar to those provided to the MSRB. The MSRB also has provided comments to the Commission in support of its point-of-sale disclosure proposal (available at www.sec.gov/rules/proposed/s70604/s70604-629.pdf). The MSRB has taken NASD's suggestions in this regard under advisement pending final action by the Commission on proposed Rule 15c2-3.

²¹ Investor confusion has often been reported to result from the large number of states offering valuable state tax or other benefits for investing in-state and the fact that virtually every plan has unique and sometimes complicated features not included in most other plans. The difficulties that investors face finding and understanding relevant information (in spite of the existence of a handful of Web-based resources on 529 college savings plans), as well as some recent steps toward improving the ability of investors to understand their choices in the marketplace, have been detailed by the press. See, e.g., Ross Kerber, “Complaints Mounting over College Savings Accounts,” *Boston Globe*, February 14, 2006, at www.boston.com/business/personalfinance/articles/2006/02/14/complaints_mounting_over_college_savings_accounts; John Wasik, “How to Find the Best 529 College Savings Programs,” *Bloomberg.com*, February 13, 2006, at <http://www.bloomberg.com/apps/news?pid=1000039&>

The MSRB has long been an advocate for the best possible disclosure practices by the 529 college savings plan community, having previously noted that investor protection concerns dictate that disclosure in this market should be based on six basic characteristics: comprehensiveness, understandability, comparability, universality, timeliness and accessibility.²² However, the MSRB has no authority to mandate that 529 college savings plans make specific disclosures, including disclosure of costs associated with investments in the plans, descriptions of the state tax consequences of investing in their plans or in out-of-state plans, or disclosure of performance under uniform standards.²³

The MSRB is of the view that a more comprehensive and user-friendly system of established industry sources is needed in the 529 college savings plan market. Such a system would be based on centralized Web sites providing direct access to official issuer disclosure materials for the entire universe of 529 college savings plan offerings, together with understandable educational information and tools allowing for side-by-side comparisons of different 529 college savings plans. It is crucial for ensuring that dealers and other investment professionals seeking to provide advice to their customers on their college savings options are able to do so with a full view of the available alternatives. In addition, this maturation of the disclosure dissemination system

sid=aUh68emzUVE&refer=columnist_wasik; Albert B. Crenshaw, “529 College Savings Plans and State of Confusion,” *Washington Post*, February 12, 2006, at F8; Aleksandra Todorova, “529 Plans Get Report Card,” *SmartMoney.com*, February 10, 2006, at www.smartmoney.com/consumer/index.cfm?story=200602101; Jonathan Clements, “Choosing a 529 College-Savings Plan: When It Makes Sense to Go Out of State,” *Wall Street Journal*, January 4, 2006, at D1; Michelle Singletary, “Get the Straight Facts on Section 529,” *Washington Post*, December 1, 2005, at D2; Ashlea Ebling, “College Savers Unite!” *Forbes.com*, September 28, 2005, at www.forbes.com/estateplanning/2005/09/27/beltway-college-savings-cz_ae_0928beltway.html.

²² See Oversight Hearing on 529 College Savings Plans, Hearing Before the Subcomm. on Financial Management, The Budget, and International Security of the Senate Comm. on Governmental Affairs, 108th Cong. (Sept. 30, 2004) (testimony of Ernesto A. Lanza, Senior Associate General Counsel, MSRB).

²³ When dealers market 529 college savings plans, the MSRB requires time-of-trade disclosures of material information to customers, including but not limited to disclosure of the possible loss of state tax benefits if investing out-of-state. Proposed Exchange Act Rule 15c2-3, if adopted, would mandate that point-of-sale fee disclosures be made by dealers in a uniform manner. Furthermore, the MSRB has adopted uniform requirements for the calculation and presentation of up-to-date performance data in 529 college savings plan advertisements published by dealers that also require that advertisements disclose the possible loss of state tax benefits if investing out-of-state.

for the 529 college savings plan market would be particularly crucial to allowing customers to have direct access to the types of information and other resources they need to make informed investment decisions, thereby promoting investor confidence in their own abilities to make such informed choices, whether with the advice of an investment professional or as a self-directed investor.

The MSRB understands that CSPN has undertaken to upgrade its existing Web site to provide a comprehensive centralized Web-based utility for the 529 college savings plan market.²⁴ This CSPN utility is expected to provide a combination of on-site and hyperlinked resources, including summary information formatted to allow meaningful comparisons of many of the material features of different 529 college savings plans, together with direct links to all 529 college savings plan program disclosure documents and related information as well as to other sources providing tools designed for analyzing potential 529 college savings plan investments. The MSRB understands that the types of material features to be disclosed through this utility include, but are not limited to, state tax treatment and other state-based benefits, costs associated with investments, types of underlying investments, performance information and other important features that can vary considerably from state to state, with hyperlinks embedded within such summary information providing direct links to a full description of such specific feature in the issuer's official program disclosure document or other reliable sources. CSPN has also recently published its DP-2, which updates its baseline disclosure standards designed to assist the states in improving the quality and comparability of their 529 college savings plan disclosures in the program disclosure document. In the 2005 Proposal, the MSRB had urged CSPN and the individual 529 college savings plans to strive for the maximum possible ease of access to, and uniformity of content in, the program disclosure documents consistent with providing information that is complete, understandable and not misleading. The MSRB views the upcoming implementation of the CSPN Web site disclosure utility and the development and universal adoption of DP-2 as significant steps toward achieving the goals the MSRB had set out for the 529 college savings plan market.

The CSPN utility will join other commercial, industry group and

²⁴ NAST. CSPN is an affiliate of NAST.

regulator Web-based resources providing useful information for individuals seeking to save for college expenses and for investment professionals active in the 529 college savings plan market. Several commercial ventures already provide, in summary and often tabular form, some categories of information for all available 529 college savings plans. Such information can include fees and expenses, minimum and maximum investments, nature of the underlying investments, distribution channels, and state tax treatment, as well as proprietary ratings based on varying criteria. Much of this information is available at no cost, with some sources making available, for a fee, premium or membership-based services for professionals that provide greater detail or more comprehensive analyses of the available information. Many of these commercial Web sites have taken recent steps to augment and refine the information they offer to the public, and the MSRB understands that alternative pricing structures suitable for retail investors for access to these premium services are being considered. In addition, the MSRB, the Commission, NASD and the North American Securities Administrators Association ("NASAA") all provide general information about investing in 529 college savings plans useful to individual investors and market participants.²⁵ NASD plans to introduce on its Web site in the near future an improved expense analyzer for the 529 college savings plan market using a live datafeed that should allow for more reliable calculations and cost comparisons among different 529 college savings plans. The CSPN utility is expected to serve as a central hub through which investors can easily access many of these other Web-based resources.

The MSRB believes that improved disclosures can only be effective if potential investors actually access such disclosures with sufficient time to make use of the information in coming to an investment decision. The MSRB urges dealers and other participants in the 529 college savings plan market to provide

the investing public with easy access to, and to affirmatively encourage the use of, this market-wide information. The MSRB will monitor the 529 college savings plan market closely with respect to the concerns it sought to address through the 2005 Proposal. The MSRB will be acutely sensitive to, and will consider whether further rulemaking would be appropriate in the event of, any significant failures in the further development of the disclosure dissemination system or in the efficacy of this dissemination system to address the MSRB's stated investor protection concerns.

Time-of-Trade Disclosure Obligation in Connection With Out-of-State Sales.

Summary. Currently, a dealer's time-of-trade disclosure obligation under Rule G-17 requires the dealer, when selling an out-of-state 529 college savings plan interest to a customer, to disclose that, depending upon the laws of the customer's home state, favorable state tax treatment for investing in a 529 college savings plan may be limited to investments made in a 529 college savings plan offered by the customer's home state.²⁶ The 2004 Proposal sought to broaden this time-of-trade disclosure obligation to include reference to other potential benefits (such as scholarships to in-state colleges, matching grants into 529 college savings plan accounts, or reduced or waived program fees, among other benefits), in addition to state tax benefits, offered solely in connection with in-state investments.²⁷

The 2005 Proposal retained the baseline time-of-trade disclosure proposed in the 2004 Proposal, with a modification to include reference to the designated beneficiary's home state in addition to that of the customer. The 2005 Proposal also would add to the baseline time-of-trade disclosure a requirement that the dealer advise the customer that any state-based benefits offered with respect to a particular 529 college savings plan should be considered as one of many appropriately weighted factors that should be considered by the customer in making his or her investment decision. The dealer also would be required to

suggest that the customer consult with his or her financial, tax or other adviser to learn more about how such home state features (including any limitations) may apply to the customer's specific circumstances, and that the customer also may wish to contact his or her home state or any other 529 college savings plan to learn more about any state-based benefits (and any limitations thereto) that might be available in conjunction with an investment in that state's 529 college savings plan.

In a significant expansion from the 2004 Proposal, the 2005 Proposal sought to impose the special home state disclosure proposal in addition to the baseline time-of-trade disclosure described above. Under this special home state disclosure proposal, a dealer would be required to inquire of any out-of-state customer as to whether the realization of state-based benefits was an important factor in the customer's investment decision. If the customer were to answer affirmatively, the dealer would be required to disclose (i) material information available from established industry sources about state-based benefits offered by the home state of the customer or designated beneficiary for investing in its 529 college savings plan and (ii) whether such state-based benefits are available in the case of an investment in an out-of-state 529 college savings plan.

Finally, the 2005 Proposal reminded dealers that the time-of-trade disclosure obligation with respect to sales of out-of-state 529 college savings plan interests is in addition to dealers' existing general obligation under Rule G-17 to disclose to their customers at the time of trade all material facts known by dealers about the 529 college savings plan interests they are selling to the customers, as well as material facts about such 529 college savings plan that are reasonably accessible to the market through established industry sources. Further, the 2005 Proposal reminded dealers that disclosures made to customers as required under MSRB rules do not relieve dealers of their suitability obligations—including the obligation to consider the customer's financial status, tax status and investment objectives—if they have recommended investments in 529 college savings plans.

Comments. All commentators on the 2004 Proposal supported the importance of ensuring disclosure to customers of the potential existence of state-specific features of 529 college savings plans, with many providing suggested modifications. CSF expressed concern about the potential for over-emphasizing state variations in a way that may

²⁵ The MSRB provides information for investors in 529 college savings plans at www.msrb.org/msrb1/mfs/ruleinfo.asp. The Commission also has published an investor-oriented introduction to 529 college savings plans at www.sec.gov/investor/pubs/intro529.htm. NASD has created a college savings center for investors at http://apps.nasd.com/investor_information/Smart/529/000100.asp. NASAA, an association of state securities regulators, has published (in conjunction with CSPN and ICI) a brochure on understanding college savings plans, available at www.nasaa.org/Investor_Education/3136.cfm.

²⁶ The 2002 Notice also stated that such disclosure, coupled with a suggestion that the customer consult a tax adviser about any state tax consequences of the investment, would provide adequate notice of the potential loss of in-state tax benefits.

²⁷ The 2004 Proposal would require the dealer to suggest that the customer consult with a qualified adviser or contact his or her home state's 529 college savings plan to learn more about any state tax or other benefits that might be available in conjunction with an investment in that state's 529 college savings plan.

detract from more fundamental considerations in making an investment decision. Two commentators stated that not every difference in state treatment ultimately will be a benefit to the investor, particularly in view of potential recapture of state tax benefits or other restrictions that some states impose under certain circumstances.²⁸ These commentators suggested that the best course would be to remind investors to carefully review the program disclosure documents of their home state programs and to consult their own advisors before investing, with one commentator stating that it would be inappropriate to suggest to investors that they seek help from their home state programs because it is unclear whether the programs can provide complete information regarding such consequences and because some states may seek to persuade investors to make an investment in their program rather than to impart disinterested information.²⁹ Two other commentators stated that the proposed disclosure should reflect that some benefits may be dependent on the designated beneficiary's home state (rather than or in addition to the home state of the investor).³⁰

Most commentators on the 2005 Proposal accepted the modified baseline time-of-trade disclosure. However, most commentators strongly opposed the newly proposed special home state disclosure proposal requiring disclosure of specific in-state features that an out-of-state investor may forego,³¹ with no commentator expressing support for this proposal. Several commentators argued that the specific disclosures under the special home state disclosure proposal would inevitably result in state-based benefits being given disproportionate weight as compared to the many other important factors to be considered in making an investment decision.³² In addition, commentators observed that, without a reliable source of market-wide information, dealers would be required to undertake substantial effort (with concomitant expenditure of resources) to understand and track the details of constantly changing state law treatment of all 529 college savings plans.³³ Two

commentators warned that requiring dealers to make specific disclosures about 529 college savings plans they do not offer could result in potential liability.³⁴ SIA stated that the special home state disclosure proposal would have the counter-intuitive result of compromising a dealer's ability to develop in-depth expertise regarding the range of investment products it is reasonably capable of servicing. Wachovia expressed concern that this requirement would have the potential to paralyze investors with an overabundance of information.

The University of Alaska stated that it did not wish to have its program features explained by dealers who are not authorized to market its 529 college savings plan, with other commentators echoing the concern that dealers would often be required to disclose information about a security they do not offer and about which they may not have sufficient expertise.³⁵ CSF observed that the burden this requirement would place on the 529 college savings plan market does not exist for any other type of security. Two commentators suggested that the MSRB await final action by the Commission on its point-of-sale disclosure proposal before finalizing any significant changes in 529 college savings plan disclosure requirements.³⁶

MSRB Response. The MSRB continues to believe that it is important that investors are informed that they may be foregoing state tax and other benefits offered by their home states by investing in out-of-state 529 college savings plans. At the same time, the MSRB agrees that there is a potential for over-emphasizing the importance of a particular state's beneficial state tax treatment of an investment in its 529 college savings plan, such as where a state offers a tax benefit that ultimately is relatively small in value compared to the financial impact that a marginally higher expense figure may have or under a variety of other circumstances. As a result, the MSRB has adopted the revised out-of-state disclosure obligation, which retains the baseline time-of-trade disclosure as modified in the 2005 Proposal. The MSRB believes that this time-of-trade disclosure in connection with out-of-state sales of 529 college savings plans, as embodied in the revised out-of-state disclosure obligation, achieves the appropriate balance between providing for the disclosure to customers of material information about the potential loss of

state tax or other benefits relevant to their investment decision in 529 college savings plans without imposing a significant burden on dealers and other 529 college savings plan market participants that could possibly result in an over-simplification of the complexity of state law factors or an over-emphasis of state law factors as compared to other relevant investment factors. The MSRB has also retained the reminders in the 2005 Proposal to the effect that these disclosures do not obviate other disclosure requirements or suitability obligations arising as a result of a recommendation.

The MSRB has determined not to retain the proposal to expand the time-of-trade disclosure obligation to include disclosures of specific state tax and other state-based features of the investor's home state as set out in the special home state disclosure proposal. The MSRB has based this determination in large measure on the potential adverse impact of this proposal and the significant steps currently in process toward improvements in the 529 college savings plan disclosure system.

Fulfilling the Revised Out-of-State Disclosure Obligation Through the Program Disclosure Document.

Summary. The 2004 Proposal would have clarified that dealers could meet their baseline time-of-trade disclosure obligation with respect to potentially foregone in-state benefits through the issuer's program disclosure document so long as the program disclosure document is provided to the customer at or prior to the time of trade. The 2004 Proposal also would have strengthened the minimum standards for prominence in the program disclosure document in order to meet the baseline time-of-trade disclosure obligation. Thus, to meet this obligation through the program disclosure document, the disclosure must appear in a manner that is reasonably likely to be noted by an investor. A presentation of this disclosure in the program disclosure document in close proximity and with equal prominence to the first presentation of information regarding other federal or state tax-related consequences of investing in the 529 college savings plan, and in close proximity and with equal prominence to each other presentation of information regarding state tax-related consequences of investing in the 529 college savings plan, would be deemed to satisfy this requirement. The 2005 Proposal modified this presentation standard to provide for equal prominence with the principal (rather than first) presentation of substantive information regarding

²⁸ CSF and SIA.

²⁹ CSF. However, Hawkins disagreed, stating that with respect to non-tax state benefits, customers should be directed to the specific state program for more information.

³⁰ CSPN and FAME.

³¹ AG Edwards, CSF, CSP-Maryland, CSPN, Georgia, ICI, Iowa, Ohio TTA, SIA, T. Rowe, University of Alaska, USAA, Vanguard, Virginia CSP, Wachovia and West Virginia.

³² AG Edwards, CSF, ICI and Vanguard.

³³ Hancock, ICI, SIA, T. Rowe, USAA, Vanguard and Wachovia.

³⁴ Hancock and ICI.

³⁵ ICI and Vanguard.

³⁶ USAA and Wachovia.

other federal or state tax-related consequences of investing in the 529 plan, and the inclusion of a reference to this disclosure (rather than restating such disclosure in full) in close proximity and with equal prominence to each other presentation of information regarding state tax-related consequences of investing in the 529 plan. Neither proposal required that such disclosure be made through the program disclosure document, noting that the MSRB does not have the authority to mandate the inclusion of any particular item of information in the issuer's disclosure document. Both proposals provided that dealers would be required to separately make such disclosure if the program disclosure document did not include the information in the manner prescribed.

Comments. Two commentators expressed concern that the 2004 Proposal would effectively establish requirements for what information must be included in the program disclosure document.³⁷ They noted that the MSRB does not have authority to directly impose such requirements. CSF stated that the MSRB should not establish specific requirements for how such disclosure should appear in the program disclosure document, while two other commentators suggested limiting some of the presentation requirements described in the 2004 Proposal.³⁸ SIA stated that the requirement that the information appearing in the program disclosure document must appear in a manner "reasonably likely to be noted by an investor" would place dealers in the position to question the judgment of the state issuers and suggested that there should be a presumption that the placement and adequacy of the disclosure in the program disclosure document is reasonable.

CSPN also expressed concern with respect to the reformulation of this language in the 2005 Proposal, stating that dealers would have to determine whether the issuer has satisfactorily made such disclosures, potentially calling into question the issuer's determination to include or omit particular information.³⁹ CSPN stated that this would create a constant second-guessing aspect as to the validity of offering materials created and distributed by state issuers. SIA stated that this provision would likely lead dealers to create their own disclosure

documents for use in marketing 529 college savings plans, conflicting with most distribution agreements and program disclosure documents.

MSRB Response. The MSRB reaffirms its view that it has no authority to mandate the inclusion of any particular items in the issuer's program disclosure document. As noted in both the 2004 and 2005 Proposals, disclosure through the program disclosure document in the manner described by the MSRB is not the sole manner in which a dealer may fulfill the revised out-of-state disclosure obligation. Just as a dealer could meet this disclosure obligation through a separate communication, it stands to reason that a disclosure made through the program disclosure document in a manner that is reasonably likely to be noted by an investor could also be used by a dealer to fulfill this duty. Thus, the MSRB has provided in the proposed rule change that, if the issuer has not included the information in the program disclosure document in the manner described, inclusion in the program disclosure document in another manner may nonetheless fulfill the dealer's out-of-state disclosure obligation so long as disclosure in such other manner is reasonably likely to be noted by an investor.⁴⁰

General Suitability Obligations

Summary. The 2005 Proposal reaffirmed the guidance originally provided in the 2002 Notice regarding general suitability standards under Rule G-19 for recommended transactions in 529 college savings plans. The 2005 Proposal added reminders to dealers to the effect that their suitability obligation requires a meaningful analysis that

⁴⁰ Some commentators stated that certain portions of the 2005 Proposal might not be consistent with the notion that the issuer's program disclosure document serves as "the fundamental, stand-alone disclosure" for the offering of its securities. See, e.g., AG Edwards. The MSRB believes that dealers generally may view the issuer's program disclosure document as the definitive source from which to obtain information about the securities they are selling to their customers. The requirement that a dealer make the revised out-of-state disclosure separately if such disclosure is not included in the program disclosure document in a manner reasonably likely to be noted by an investor is not intended to imply otherwise, consistent with prior Commission guidance regarding the obligations of underwriters and other dealers in connection with municipal issuers' disclosure materials under the federal securities laws. See Exchange Act Release No. 26100 (September 22, 1988), 53 FR 37778 (Section III—Municipal Underwriter Responsibilities), as modified by Exchange Act Release No. 26985 (June 28, 1989), 54 FR 28799 (Section III—Interpretation of Underwriter Responsibilities), and as reaffirmed by Exchange Act Release No. 33741 (March 9, 1994), 59 FR 12748 (Section V—Interpretive Guidance with Respect to Obligations of Municipal Securities Dealers).

establishes the reasonable grounds for believing that the recommendation is suitable and that they must have and enforce written supervisory procedures reasonably designed to ensure compliance with this obligation for every recommended transaction. The 2004 Proposal did not address suitability issues.

Comments. No commentator opposed the 2005 Proposal's discussion of general suitability standards.

MSRB Response. The MSRB has retained this discussion of general suitability standards.

Comparative Suitability Obligation for Out-of-State Sales

Summary. The 2005 Proposal would require a dealer to undertake a comparative suitability analysis if the dealer has recommended an out-of-state 529 college savings plan transaction to a customer who has indicated that one of his or her investment objectives is realization of state-based benefits, as contemplated under the special home state disclosure proposal. This would involve the consideration of the state-based benefits available from the customer's home state 529 college savings plan in a comparative analysis with the out-of-state 529 college savings plan being offered. Any such state-based benefits offered with respect to a particular 529 college savings plan would be considered as one of many appropriately weighted factors that have an ultimate bearing on the relative strengths of a particular investment, and the existence of state-based benefits would not create a presumption that investment in the home state 529 college savings plan is necessarily superior to an out-of-state 529 college savings plan. If a dealer were to conclude that an investment in the home state 529 college savings plan would be superior to an investment in the offered out-of-state 529 college savings plan under every reasonable scenario, then the dealer would be obligated to inform the customer of this determination and would be permitted to effect a transaction in the offered out-of-state 529 college savings plan only if the customer has directed to do so after this suitability determination has been disclosed and if the out-of-state 529 college savings plan would, without regard to the comparative analysis with the home state 529 college savings plan, be suitable for the customer under traditional suitability standards. The 2004 Proposal did not contain comparable language.

Comments. Most commentators strongly opposed the comparative

³⁷ CSPN and FAME. These commentators, as well as Hawkins, noted that CSPN's DP-1 already contained language on this topic.

³⁸ Hawkins and ICL.

³⁹ CSP-Maryland, Georgia, Iowa, Ohio TTA, University of Alaska, Virginia CSP and West Virginia supported CSPN's position.

suitability proposal,⁴¹ although two commentators conceded that, depending on the facts and circumstances, the availability of in-state benefits may be one of many appropriate factors to consider in making a suitability determination under traditional suitability standards.⁴² Three commentators stated that there has been no evidence of abuse in the offering of out-of-state 529 college savings plans to justify these new requirements, observing that no enforcement actions have been taken.⁴³ Several commentators observed that federal securities regulation has never been premised on the concept that a dealer is obligated to determine the most suitable investment of a particular type for any customer and that the comparative suitability proposal is inconsistent with the application of the suitability rule to every other product sold by dealers.⁴⁴ Two commentators stated that comparisons are highly disfavored by NASD rules.⁴⁵ The University of Alaska noted that one result of a more stringent suitability obligation for recommendations of 529 college savings plan transactions might be that dealers would place their clients in other investment vehicles that do not carry such regulatory risk.

Many commentators viewed the comparative suitability proposal as effectively requiring dealers to become fully familiar with the terms of all 529 college savings plans before offering any particular 529 college savings plan.⁴⁶ These commentators argued that this extraordinary burden is unprecedented

and is likely to significantly discourage the marketing of 529 college savings plans. NAST agreed, emphasizing that the comparative suitability proposal would have substantially increased the burden on the states themselves. Wachovia suggested that the MSRB undertake a cost-benefit analysis before adopting the comparative suitability proposal, while USAA stated that the incremental costs associated with meeting this standard would cause firms to reevaluate whether offering 529 college savings plans continues to make sense or to pass the incremental costs on to investors. AG Edwards argued that it is untenable to require a dealer to inform a client that one 529 college savings plan is unequivocally superior to another. Two other commentators stated that they are receiving anecdotal evidence that some selling dealers are withdrawing from the 529 college savings plan market in response to this proposal and to recent NASD enforcement activity.⁴⁷ CSF noted that one potential result may be that some customers who are accustomed to relying on their financial advisors and who otherwise might invest in suitable 529 college savings plans may ultimately never make such an investment.

SIA expressed concern that the comparison contemplated by the proposal would be difficult to implement from a practical standpoint. ICI agreed, identifying a number of specific practical concerns. Some commentators stated that the comparative suitability proposal would place inordinate focus on state benefits while effectively ignoring the many other reasons why an investor might choose to invest in an out-of-state 529 college savings plan.⁴⁸ Other commentators predicted that the potential liabilities that would arise under the comparative suitability proposal would result in many dealers limiting their sales solely to the in-state 529 college savings plan, regardless of

its advantage or disadvantage.⁴⁹ CSF requested that the MSRB defer action on the comparative suitability proposal pending implementation of the planned CSPN Web site enhancement.

MSRB Response. The MSRB has determined not to retain the comparative suitability proposal, based in large measure on the potential adverse impact of this proposal and the significant steps currently in process toward dramatic improvements in the 529 college savings plan disclosure system. However, the MSRB agrees with those commentators that noted that the availability of in-state benefits may be one of many appropriate factors to consider in making a suitability determination under traditional suitability standards, depending on all the facts and circumstances. Thus, the MSRB has added guidance to this effect in the proposed rule change, in conjunction with additional guidance to the effect that dealers should consider whether a recommendation is consistent with the customer's tax status and any customer investment objectives materially related to federal or state tax consequences of an investment.

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

The MSRB proposes an effective date for the proposed rule change of 60 calendar days after Commission approval. 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

⁴¹ AG Edwards, CSF, CSP-Maryland, CSPN, Fidelity, Georgia, Hancock, ICI, Iowa, NAST, Ohio TTA, PFPC, SIA, T. Rowe, University of Alaska, USAA, Virginia CSP, Wachovia and West Virginia. No commentator expressed support for the comparative suitability proposal.

⁴² AG Edwards and Hancock.

⁴³ CSF, ICI and USAA. NASD subsequently announced on October 26, 2005 that it had reached a settlement agreement with Ameriprise Financial Services, Inc., in connection with the failure of the firm to establish and maintain supervisory systems and procedures reasonably designed to achieve compliance with suitability obligations relating to recommended transactions in 529 college savings plans. See www.nasd.com/web/idcplg?IdcService=SS_GET_PAGE&ssDocName=NASDW_015319. This settlement agreement appears to have been the basis for concern expressed by Fidelity and PFPC that NASD may be incorporating the comparative suitability proposal into its enforcement posture prior to its final approval. The MSRB understands that NASD did not intend certain language included in the settlement agreement to imply that the comparative suitability proposal is currently in effect.

⁴⁴ CSF, Fidelity, Hancock, PFPC, SIA, University of Alaska and USAA.

⁴⁵ CSF and SIA.

⁴⁶ CSPN (with the concurrence of CSP-Maryland, Georgia, Iowa, Ohio TTA, University of Alaska, Virginia CSP, West Virginia), Hancock, ICI, T. Rowe Price and Wachovia.

⁴⁷ Fidelity and PFPC. Concerns regarding the negative impact of the comparative suitability proposal have also been detailed in press reports. See Charles Paikert, "MSRB to Decide on Controversial 529 Proposals," *Investment News*, February 13, 2006, at 2; Terry Savage, "Political Issues Put the Hurt on College Savings," *The Street*, February 10, 2006, at www.thestreet.com/funds/investing/10267688.html; Jillian Mincer, "Sales of 529 College Savings Plans Fell '05 Amid Scrutiny," *Wall Street Journal*, February 9, 2006, at D2; Jillian Mincer, "Disclosure Proposals for 529s Risk a Broker Backlash," *Wall Street Journal*, January 3, 2006, at D2; Lauren Barack, "Will Reform Drive Brokers From 529 Sales?" *Registered Rep*, November 1, 2005, at www.registeredrep.com/mag/finance_reform_drive_brokers.

⁴⁸ ICI, Hancock and Wachovia.

⁴⁹ AG Edwards, Fidelity and PFPC.

• Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR-MSRB-2006-03 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-2006-03. 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. 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-2006-03 and should be submitted on or before May 23, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁵⁰

Nancy M. Morris,
Secretary.

[FR Doc. E6-6555 Filed 5-1-06; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-53720; File No. SR-NASD-2006-051]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Expand the Maximum Single Order Share Amount in Nasdaq's INET Facility

April 25, 2006.

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 April 19, 2006, the National Association of Securities Dealers, Inc. ("NASD"), through its subsidiary, the Nasdaq Stock Market, Inc. ("Nasdaq"), submitted to the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by Nasdaq. Nasdaq filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act³ which renders it 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

Nasdaq proposes to expand the single order maximum share amount in its INET Facility to 999,999 shares. Nasdaq will implement the proposed rule change immediately. The text of the proposed rule change is below. Proposed new language is in *italics*; deletions are in [brackets].⁴

4953. Order Entry Parameters

(a) INET System Orders

(1)–(3) No Change.

(4) *Any order in whole shares up to 999,999 shares may be entered into the System for normal execution processing.*

* * * * *

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A).

⁴ Changes are marked to the rule text that appears in the electronic NASD Manual found at <http://www.nasdaq.com>. Prior to the date when The NASDAQ Stock Market LLC ("NASDAQ LLC") commences operations, NASDAQ LLC will file a conforming change to the rules of NASDAQ LLC approved in Securities Exchange Act Release No. 53128 (January 13, 2006).

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq 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. Nasdaq 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

Nasdaq's INET Facility currently operates using a 200,000 share maximum single order limit for orders sent to the New York Stock Exchange's DOT system. For all other orders, INET applies a 999,999 share single order maximum share amount. Nasdaq proposes to codify for its INET Facility a maximum single order share amount standard, for all orders, of 999,999 shares, the same share number maximum already in place in the Nasdaq Market Center.⁵ The proposed rule change will ensure that the INET system provides an adequate and uniform capability to accept large-size orders as well as reduce technological complexity for Nasdaq and users of its systems by enhancing the degree of uniformity among single order share maximums across its systems.⁶

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with Section 15A of the Act,⁷ in general, and furthers the objectives of Section 15A(b)(6) of the Act,⁸ in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, remove impediments to a free and open market and a national market system, and, in general, to protect investors and the public interest.

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

Nasdaq does not believe that the proposed rule change will result in any burden on competition that is not

⁵ See NASD Rule 4706(d)(1).

⁶ The single order maximum share number limit for Nasdaq's Brut Facility shall remain 1,000,099 shares. See NASD Rule 4903(f).

⁷ 15 U.S.C. 78o-3.

⁸ 15 U.S.C. 78o-3(6).

⁵⁰ 17 CFR 200.30-3(a)(12).