



COMMENTS DUE BY MAY 15, 1999

Municipal Fund Securities

Route To:	Comments Requested
<ul style="list-style-type: none"> • Manager, Muni Department • Underwriting • Trading • Sales • Operations • Public Finance • Compliance 	<p>The Board is requesting comments regarding the application of existing Board rules and certain draft rule changes relating to municipal fund securities: rules A-13, G-3, G-8, G-14, G-15, G-26 and G-34 and draft rule D-12.</p>

Comments from all interested parties are welcome. Comments should be submitted no later than May 15, 1999 and may be directed to Ernesto A. Lanza, Associate General Counsel. Written comments will be available for public inspection.

During the last year, the Board has learned that sales of certain interests in trust funds held by state or local governmental entities may be effected by or through brokers, dealers or municipal securities dealers ("dealers"). In particular, the Board has reviewed two types of state or local governmental programs in which dealers may effect transactions in such interests: pooled investment funds under trusts established by state or local governmental entities ("local government pools")¹ and higher education savings plan trusts established by states ("higher education trusts").² In response to a request of the Board, staff of the Division of Market Regulation of the Securities and Exchange Commission (the "SEC") has stated that "at least some interests in local government pools and higher education trusts may be, depending on the facts and circumstances, 'municipal securities' for purposes of the Exchange Act."³ Such interests that may, in fact, constitute municipal securities are referred to herein as "municipal fund securities." To the extent that dealers effect transactions in municipal fund securities, such transactions would be subject to the jurisdiction of the Board pursuant to Section 15B of the Exchange Act.

Although municipal fund securities constitute municipal securities, they may not have many of the features typically associated with traditional municipal securities. Instead, municipal fund securities appear to have features similar to investment company securities or variable contract products. For example, according to information provided to the Board by dealers (or their counsel) that participate in

programs involving these types of interests, municipal fund securities provide investment return and are valued based on the investment performance of an underlying pool of assets having an aggregate value that may increase or decrease from day to day, rather than providing interest payments (either paid currently or at maturity) at a stated rate or discount, as is the case for traditional municipal securities. In addition, unlike traditional municipal securities, municipal fund securities do not have stated par values or maturity dates and cannot be priced based on yield or dollar price.⁴

Although Board rules generally have been drafted to accommodate the characteristics of debt obligations and not investment interests such as municipal fund securities, the Board believes that most of its current rules can appropriately be applied to municipal fund securities. Nonetheless, the Board believes that certain rules should be amended to recognize the unique characteristics of municipal fund securities. The Board is seeking comment from industry participants regarding these draft rule changes as well as regarding the application of existing rules to municipal fund securities.

APPLICATION OF EXISTING RULES RELATING TO MUNICIPAL SECURITIES

SEC View Regarding Applicability of Securities Exchange Act Rule 15c2-12. With respect to the applicability to municipal fund securities of Securities Exchange Act Rule 15c2-12, relating to municipal securities disclosure, staff of the SEC's Division of Market Regulation has stated:

[W]e note that Rule 15c2-12(f)(7) under the Exchange Act defines a "primary offering" as including an offering of municipal securities directly or indirectly by or on behalf of an issuer of such securities. Based upon an analysis of programs that have been brought to our attention, it appears that interests in local government pools or higher education trusts generally are offered only by direct purchase from the issuer. Accordingly, we would view those interests as having been sold in a "primary offering" as that term is defined in Rule 15c2-12. If a dealer is acting as an "underwriter" (as defined in Rule 15c2-12(f)(8)) in connection with that primary offering, the dealer may be subject to the requirements of Rule 15c2-12.⁵

Rule 15c2-12(f)(8) defines an underwriter as "any person who has purchased from an issuer of municipal securities with a view to, or offers or sells for an issuer of municipal securities in connection with, the offering of any municipal security, or participates or has a direct or indirect participation in any such undertaking, or participates or has a participation in the direct or indirect underwriting of any such undertaking."⁶

Questions regarding application of Rule 15c2-12 should be directed to SEC staff.

Board View Regarding Applicability of Existing Board Rules. Although the draft rule changes described below are designed to make the Board's rules better accommodate the nature of municipal fund securities, dealers should be aware that if they effect any transactions in municipal fund securities prior to completion by the Board of rulemaking in this area, they nonetheless are obligated to comply with all existing Board rules. Set forth below are certain principles that dealers should keep in mind in seeking to comply with Board rules.

Consistent with SEC staff's view regarding the sale in primary offerings of municipal fund securities,

dealers acting as underwriters in primary offerings of municipal fund securities would be subject to the requirements of rule G-36. Thus, unless such primary offering falls within one of the stated exemptions in Rule 15c2-12, the Board expects that the dealer would receive a final official statement from the issuer or its agent under its contractual agreement entered into pursuant to Rule 15c2-12(b)(3). Such official statement should be received from the issuer in sufficient time for the dealer to send the official statement, together with Form G-36(OS), to the Board within one business day of receipt but no later than 10 business days after any final agreement to purchase, offer, or sell the municipal fund securities.⁷ Since (as described below) the Board believes that municipal fund securities remain in their underwriting period so long as they continue to be sold and delivered, the dealer would remain obligated under rule G-36(d) to send to the Board, within one business day of receipt, any amendments made to the official statement during such extended underwriting period.⁸

In addition, municipal fund securities sold in a primary offering would constitute new issue municipal securities for purposes of rule G-32 so long as the securities remain in their underwriting period. Since the Board understands that issuers of municipal fund securities, unlike issuers of traditional municipal securities, are continuously issuing and delivering the securities as customers make purchases, the Board believes that municipal fund securities would remain in their underwriting period so long as such issuance and delivery continues.⁹ Thus, a dealer effecting a transaction in a municipal fund security would be required to deliver to the customer the official statement by settlement of such transaction. However, in the case of a customer purchasing such securities who is a repeat purchaser, no new delivery of the official statement would be required so long as the customer has previously received it in connection with a prior purchase and the official statement has not been changed from the one previously delivered to that customer.

Certain other implications arise under Board rules as a result of the status, in the view of SEC staff, of sales of municipal fund securities as primary offerings. For example, the Board believes that all purchases of municipal fund securities from an issuer by or through a dealer, whether acting as principal or agent, as part of a primary offering are subject to the underwriting fee assessed under rule A-13, unless such primary offering meets the requirements of any of the existing exceptions in the rule. Furthermore, dealers are reminded that the definition of "municipal securities business" under rules G-37 and G-38 includes the purchase of a primary offering from the issuer on other than a competitive bid basis or the offer or sale of a primary offering on behalf of any issuer. Thus, a dealer's transactions in municipal fund securities may impact upon such dealer's obligations under rules G-37 and G-38.

Dealers that effect transactions in municipal fund securities prior to completion of the Board's rulemaking process should contact Board staff with any questions regarding application of existing Board rules.

DRAFT RULE CHANGES

The draft rule changes would provide a definition, "municipal fund securities," that is designed to include interests in local government pools and higher education trusts as they have been described to the Board. As a general matter, the draft rule changes have been drafted with the view that municipal fund securities should be treated differently from other municipal securities only under circumstances where current rules clearly would not apply properly. In addition, the Board has not attempted to draft any rule changes intended to address secondary market transactions in municipal fund securities since the Board understands that no such market now exists. The Board would undertake appropriate action

should a secondary market develop in municipal fund securities.

Rule D-12 – Definition of Municipal Fund Security. New rule D-12 would define municipal fund security as, in essence, a municipal security that would qualify as a security of an investment company under the Investment Company Act if it had not been issued by a state or local governmental entity.¹⁰ If an investment is a municipal fund security, then dealer transactions in such investments are subject to all Board rules as a municipal security but would receive special treatment in those instances where provisions are added relating specifically to municipal fund securities.

The draft definition of municipal fund security is not strictly limited to interests in local government pools or higher education trusts but would apply as well to any other municipal security issued under a program that would, but for the identity of the issuer as a state or local governmental entity, constitute an investment company under the Investment Company Act. Furthermore, the Board recognizes that investments having substantially the same purpose as do interests in local government pools or higher education trusts could fail to meet the definition of municipal fund security if the investment program is structured in a manner substantially different from the programs described in this notice. The Board notes that, if such other investments in fact constitute municipal securities, dealer transactions in such investments would be subject to all Board rules as municipal securities.

Rule A-13 – Assessments. Rule A-13 would be amended to impose, as a separate line item, an underwriting assessment on the sale of municipal fund securities in a primary offering. Since municipal fund securities do not have a par value, the assessment would be based on the purchase price paid by customers, less any commission.¹¹

Rule G-3 – Professional Qualifications. Amended rule G-3 would permit an associated person qualified as an investment company limited representative to effect transactions in municipal fund securities (but no other municipal securities).¹² However, a dealer must have one or two municipal securities principals as required under section (b) of rule G-3, even if the dealer's only municipal securities transactions are sales of municipal fund securities.

Rule G-8 – Recordkeeping. Rule G-8 would be amended to ensure consistency with rules G-3 and G-15, as amended. Thus, amended rule G-8 would recognize that municipal fund securities do not have par values, dollar prices, yields and accrued interest and that some investment company limited representatives would be permitted to effect transactions in municipal fund securities.

Rule G-14 – Transaction Reporting. The draft rule change would make a minor technical modification in rule G-14(b)(i) in order to make clear that certain types of municipal securities transactions may be excluded from transaction reporting as provided in the Rule G-14 Transaction Reporting Procedures. In the Procedures, the language change would expressly exempt any transaction in municipal fund securities from the customer transaction reporting system.¹³

Rule G-15 – Customer Confirmations. Various amendments would be made to rule G-15 to deal with the concepts of par value, yield, dollar price, maturity date and interest, none of which appropriately apply to a municipal fund security. Thus, in connection with a confirmation of a transaction in municipal fund securities, a dealer would use the purchase or sale price of the securities, as appropriate, rather than par value and would omit yield, dollar price, accrued interest, extended principal, maturity date and interest rate. Dealers selling municipal fund securities would be required to include the denomination or

purchase price of each share or unit of such securities as well as the number of such shares or units to be delivered. In addition, a confirmation of a municipal fund security transaction would require a disclosure to the effect that a deferred commission or other charge may be imposed upon redemption, if applicable.¹⁴ The amendment also would make clear that dealers must confirm redemptions of municipal fund securities by customers. Finally, the amendment would permit dealers to use quarterly statements, rather than transaction-by-transaction confirmations, if customers are purchasing municipal fund securities in an agreed amount on a periodic basis. This quarterly report alternative is essentially identical with the periodic reporting provision under SEC Rule 10b-10, with some consolidation to focus exclusively on municipal fund securities and the incorporation of an existing no-action position of the SEC applicable to certain investment company plans.¹⁵

Rule G-26 – Customer Account Transfers. The draft amendment to rule G-26 amends the definition of "nontransferable asset" to reflect the fact that the issuer of municipal fund securities may limit which dealers may carry accounts for customers in such securities.

Rule G-34 – CUSIP Numbers and Depository Eligibility. Municipal fund securities would be exempted from the requirements of rule G-34 since no secondary market is expected to develop.¹⁶

March 17, 1999

TEXT OF DRAFT AMENDMENTS⁽¹⁷⁾

Rule A-13. Underwriting and Transaction Assessments for Brokers, Dealers and Municipal Securities Dealers

(a) No change.

(b) Underwriting Assessments – Amount. For those primary offerings subject to assessment under section (a) above, the amount of the underwriting fee is:

(i) No change.

(ii) for primary offerings in which all securities offered, at the option of the holder thereof, may be tendered to an issuer of such securities or its designated agent for redemption or purchase at par value or more at least as frequently as every two years until maturity, earlier redemption, or purchase by an issuer or its designated agent, .001% (\$.01 per \$1,000) of the par value; ~~and~~

(iii) for primary offerings in which all securities offered constitute municipal fund securities, .001% (\$.01 per \$1,000) of the purchase price paid by customers, exclusive of any commission; and

(iv) for all other primary offerings subject to this rule, .003% (\$.03 per \$1,000) of the par value.

Rule D-12. "Municipal Fund Security"

The term "municipal fund security" shall mean a municipal security issued by an issuer that, but for the application of Section 2(b) of the Investment Company Act of 1940, would constitute an investment company within the meaning of Section 3 of the Investment Company Act of 1940.

Rule G-3. Classification of Principals and Representatives; Numerical Requirements; Testing; Continuing Education Requirements

(a) Municipal Securities Representative.

(i) No change.

(ii) Qualification Requirements.

(A)-(B) No change.

(C) The requirements of subparagraph (a)(ii)(A) of this rule shall not apply to any person who is duly qualified as a limited representative – investment company and variable contracts products by reason of having taken and passed the Limited Representative – Investment Company and Variable Contracts Products Examination, but only if such person's activities with respect to municipal securities described in paragraph (a)(i) of this rule are limited solely to municipal fund securities.

(D) Any person who ceases to be associated with a broker, dealer or municipal securities dealer (whether as a municipal securities representative or otherwise) for two or more years at any time after having qualified as a municipal securities representative in accordance with subparagraphs (a)(ii)(A), (B) or (C) ~~or (B)~~ shall again meet the requirements of subparagraphs (a)(ii)(A), (B) or (C) ~~or (B)~~ prior to being qualified as a municipal securities representative.

(iii) Apprenticeship.

(A) Any person who first becomes associated with a broker, dealer or municipal securities dealer in a representative capacity (whether as a municipal securities representative, ~~or~~ general securities representative or limited representative – investment company and variable contracts products) without having previously qualified as a municipal securities representative, ~~or~~ general securities representative or limited representative – investment company and variable contracts products shall be permitted to function in a representative capacity without qualifying pursuant to subparagraphs (a)(ii) (A), (B) or (C) ~~or (B)~~ for a period of at least 90 days following the date such person becomes associated with a broker, dealer or municipal securities dealer, provided, however, that such person shall not transact business with any member of the public with respect to, or be compensated for transactions in, municipal securities during such 90 day period, regardless of such person's having qualified in accordance with the examination requirements of this rule. A person subject to the requirements of this paragraph (a)(iii) shall in no event continue to perform any of the functions of a municipal securities representative after 180 days following the commencement of such person's association

with such broker, dealer or municipal securities dealer, unless such person qualifies as a municipal securities representative pursuant to subparagraphs (a)(ii)(A), (B) or (C) ~~or (B)~~.

(B) Prior experience, of at least 90 days, as a general securities representative, limited representative – investment company and variable contracts products mutual fund salesperson or limited representative – government securities representative, will meet the requirements of this paragraph (a)(iii).

Rule G-8. Books and Records to be Made by Brokers, Dealers and Municipal Securities Dealers

(a) Description of Books and Records Required to be Made. Except as otherwise specifically indicated in this rule, every broker, dealer and municipal securities dealer shall make and keep current the following books and records, to the extent applicable to the business of such broker, dealer or municipal securities dealer:

(i) Records of Original Entry. "Blotters" or other records of original entry containing an itemized daily record of all purchases and sales of municipal securities, all receipts and deliveries of municipal securities (including certificate numbers and, if the securities are in registered form, an indication to such effect), all receipts and disbursement of cash with respect to transactions in municipal securities, all other debits and credits pertaining to transactions in municipal securities, and in the case of ~~municipal securities~~ brokers, dealers and municipal securities dealers other than bank dealers, all other cash receipts and disbursements if not contained in the records required by any other provision of this rule. The records of original entry shall show the name or other designation of the account for which each such transaction was effected (whether effected for the account of such ~~municipal securities~~ broker, dealer or municipal securities dealer, the account of a customer, or otherwise), the description of the securities, the aggregate par value of the securities, the dollar price or yield and aggregate purchase or sale price of the securities, accrued interest, the trade date, and the name or other designation of the person from whom purchased or received or to whom sold or delivered. With respect to accrued interest and information relating to "when issued" transactions which may not be available at the time a transaction is effected, entries setting forth such information shall be made promptly as such information becomes available. Dollar price, yield and accrued interest relating to any transaction shall be required to be shown only to the extent required to be included in the confirmation delivered by the broker, dealer or municipal securities dealer in connection with such transaction under rule G-12 or rule G-15.

(ii)-(x) No change.

(xi) Customer Account Information. A record for each customer, other than an institutional account, setting forth the following information to the extent applicable to such customer:

(A)-(G) No change.

(H) signature of municipal securities representative, ~~and~~ general securities representative or limited representative – investment company and variable

contracts products introducing the account and signature of a municipal securities principal, municipal securities sales principal or general securities principal indicating acceptance of the account;

(I)-(K) No change.

For purposes of this subparagraph, the terms "general securities representative," ~~and~~ "general securities principal" and "limited representative – investment company and variable contracts products" shall mean such persons as so defined by the rules of a national securities exchange or registered securities association. For purposes of this subparagraph, the term "institutional account" shall mean the account of (i) a bank, savings and loan association, insurance company, or registered investment company; (ii) an investment adviser registered under Section 203 of the Investment Advisers Act of 1940; or (iii) any other entity (whether a natural person, corporation, partnership, trust, or otherwise) with total assets of at least \$50 million. Anything in this subparagraph to the contrary notwithstanding, every ~~municipal securities~~ broker, ~~dealer~~ and municipal securities dealer shall maintain a record of the information required by items (A), (C), (F), (H), (I) and (K) of this subparagraph with respect to each customer which is an institutional account.

(xii)-(xix) No change.

(b)-(f) No change.

(g) Price substituted for par value of municipal fund securities. For purposes of this rule, each reference to the term "par value," when applied to a municipal fund security, shall be substituted with (i) in the case of a purchase of a municipal fund security by a customer, the purchase price paid by the customer, exclusive of any commission, and (ii) in the case of a sale or tender for redemption of a municipal fund security by a customer, the sale price or redemption amount paid to the customer, exclusive of any commission or other charge imposed upon redemption or sale.

Rule G-14. Reports of Sales or Purchases

(a) No change.

(b) Transactions Reporting Requirements.

(i) Each broker, dealer or municipal securities dealer shall report to the Board or its designee information about its transactions in municipal securities to the extent required by, and using the formats and within the timeframes specified in, Rule G-14 Transaction Reporting Procedures. Transaction information collected by the Board under this rule will be used to make public reports of market activity and prices and to assess transaction fees. The transaction information will be made available by the Board to the Commission, securities associations registered under Section 15A of the Act and other appropriate regulatory agencies defined in Section 3(a)(34)(A) of the Act to assist in the inspection for compliance with and the enforcement of Board rules.

(ii)-(iii) No change.

Rule G-14 Transaction Reporting Procedures

(a) No change.

(b) Customer Transactions.

(i)-(ii) No change.

(iii) The following transactions shall not be required to be reported under this section (b):

(A) ~~A~~ a transaction in a municipal security that is ineligible for assignment of a CUSIP number by the Board or its designee; ~~shall not be required to be reported under this section (b).~~

(B) a transaction in a municipal fund security.

(iv) No change.

Rule G-15. Confirmation, Clearance and Settlement of Transactions with Customers

(a) Customer Confirmations

(i) At or before the completion of a transaction in municipal securities with or for the account of a customer, each broker, dealer or municipal securities dealer shall give or send to the customer a written confirmation that complies with the requirements of this paragraph (i):

(A) Transaction information. The confirmation shall include information regarding the terms of the transaction as set forth in this subparagraph (A):

(1)-(2) No change.

(3) Par value. The par value of the securities shall be shown, with special requirements for the following securities:

(a) No change.

(b) Municipal fund securities. For municipal fund securities, in place of par value, the confirmation shall show (i) in the case of a purchase of a municipal fund security by a customer, the total purchase price paid by the customer, exclusive of any commission, and (ii) in the case of a sale or tender for redemption of a municipal fund security by a customer, the total sale price or redemption amount paid to the customer, exclusive of any

commission or other charge imposed upon redemption or sale.

(4) No change.

(5) Yield and dollar price. Yields and dollar prices shall be computed and shown in the following manner, subject to the exceptions stated in subparagraph (A)(5)(d) of this paragraph:

(a)-(c) No change.

(d) Notwithstanding the requirements noted in subparagraphs (A)(5)(a) through (c) of this paragraph; above:

(i)-(v) No change.

(vi) Municipal fund securities. For municipal fund securities, neither yield nor dollar price shall be shown.

(6) Final Monies. The following information relating to the calculation and display of final monies shall be shown:

(a) No change.

(b) amount of accrued interest, with special requirements for the following securities:

(i)-(ii) No change.

(iii) Municipal fund securities. For municipal fund securities, no figure for accrued interest shall be shown;

(c) if the securities pay interest on a current basis but are traded without interest, a notation of "flat;"

(d) extended principal amount, with special requirements for the following securities:

(i) No change.

(ii) Municipal fund securities. For municipal fund securities, no extended principal amount shall be shown;

(e)-(h) No change.

(7) Delivery of securities. The following information regarding the delivery of securities shall be shown:

(a) Securities other than bonds or municipal fund securities. For securities other than bonds or municipal fund securities, denominations to be delivered;

(b) No change.

(c) Municipal fund securities. For municipal fund securities, the denomination or purchase price, exclusive of commission, of each share or unit and the number of shares or units to be delivered;

(d) Delivery instructions. Instructions, if available, regarding receipt or delivery of securities; and form of payment, if other than as usual and customary between the parties.

(8) No change.

(B) Securities identification information. The confirmation shall include a securities identification which includes, at a minimum:

(1)-(2) No change.

(3) maturity date, if any, with special requirements for the following securities:

(a) No change.

(b) Municipal fund securities. For municipal fund securities, no maturity date shall be shown;

(4) interest rate, if any, with special requirements for the following securities:

(a)-(e) No change.

(f) Municipal fund securities. For municipal fund securities, no interest rate shall be shown;

(C) No change.

(D) Disclosure statements:

(1)-(2) No change.

(3) The confirmation for securities for which a deferred commission or other charge is imposed upon redemption or as a condition for payment of principal or interest thereon shall include a statement that the customer may be required to make a payment of such deferred commission or other charge upon redemption of such securities or as a condition for payment of principal or interest thereon, as appropriate, and that information concerning such deferred commission or other charge will be furnished upon written request.

(ii)-(iii) No change.

(iv) Confirmation to customers who tender put option bonds or municipal fund securities. A broker, dealer, or municipal securities dealer that has an interest in put option bonds (including acting as remarketing agent) and accepts for tender put option bonds from a customer, or that has an interest in municipal fund securities (including acting as agent for the issuer thereof) and accepts for redemption municipal fund securities tendered by a customer, is engaging in a transaction in such municipal securities and shall send a confirmation under paragraph (i) of this section.

(v) No change.

(vi) Definitions. For purposes of this rule, the following terms shall have the following meanings:

(A)-(F) No change.

(G) The term "periodic municipal fund security plan" shall mean any written authorization for a broker, dealer or municipal securities dealer, acting as agent, to purchase, sell or redeem for a customer a specific municipal fund security or securities, in specific amounts (calculated in security units or dollars), at specific time intervals and setting forth the commissions or charges to be paid by the customer in connection therewith (or the manner of calculating them).

(vii) Price substituted for par value of municipal fund securities. For purposes of this rule, each reference to the term "par value," when applied to a municipal fund security, shall be substituted with (i) in the case of a purchase of a municipal fund security by a customer, the purchase price paid by the customer, exclusive of any commission, and (ii) in the case of a sale or tender for redemption of a municipal fund security by a customer, the sale price or redemption amount paid to the customer, exclusive of any commission or other charge imposed upon redemption or sale.

(viii) Alternative periodic reporting for transactions in municipal fund securities pursuant to a periodic municipal fund security plan. Notwithstanding any other provision of this section (a), a broker, dealer or municipal securities dealer may effect transactions in municipal fund securities with customers without giving or sending to such customer the written confirmation required by paragraph (i) of this section (a) at or before completion of each such transaction if:

(A) such transactions are effected pursuant to a periodic municipal fund security plan;
and

(B) such broker, dealer or municipal securities dealer gives or sends to such customer within five business days after the end of each quarterly period a written statement disclosing, for each purchase, sale or redemption effected for or with, and each payment of investment earnings credited to or reinvested for, the account of such customer during the reporting period, the information required to be disclosed to customers pursuant to subparagraphs (A) through (D) of paragraph (i) of this section (a), with the information regarding each transaction clearly segregated; provided that it is permissible for the name and address of the broker, dealer or municipal securities dealer and the customer to appear once at the beginning of the document; and

(C) in the case of a periodic municipal fund security plan that consists of an arrangement involving a group of two or more customers and contemplating periodic purchases of municipal fund securities by each customer through a person designated by the group, such broker, dealer or municipal securities dealer:

(1) gives or sends to the designated person, at or before the completion of the transaction for the purchase of such municipal fund securities, a written notification of the receipt of the total amount paid by the group;

(2) sends to anyone in the group who was a customer in the prior quarter and on whose behalf payment has not been received in the current quarter a quarterly written statement reflecting that a payment was not received on such customer's behalf; and

(3) advises each customer in the group if a payment is not received from the designated person on behalf of the group within 10 days of a date certain specified in the arrangement for delivery of that payment by the designated person and either (a) thereafter sends to each customer the written confirmation described in paragraph (i) of this section (a) for the next three succeeding payments, or (b) includes in the quarterly statement referred to in subparagraph (B) of this paragraph (viii) each date certain specified in the arrangement for delivery of a payment by the designated person and each date on which a payment received from the designated person is applied to the purchase of municipal fund securities; and

(D) such customer is provided with prior notification in writing disclosing the intention to send the written information referred to in subparagraph (B) of this paragraph (viii) on a quarterly basis in lieu of an immediate confirmation for each transaction, and such customer has consented in writing.

(b)-(e) No change.

Rule G-26. Customer Account Transfers

(a) Definitions. For purposes of this rule, the following terms have the following meanings:

(i)-(ii) No change.

(iii) The term "nontransferable asset" means an asset that is incapable of being transferred from the carrying party to the receiving party because (A) it is an issue in default for which the carrying party does not possess the proper denominations to effect delivery and no transfer agent is available to re-register the securities, or (B) it is a municipal fund security which the issuer requires to be held in an account carried by one or more specified brokers, dealers or municipal securities dealers that does not include the receiving party.

(b) No change.

(c) Transfer Instructions.

(i) No change.

(ii) If an account includes any nontransferable assets, the carrying party must request, in writing and prior to or at the time of validation of the transfer instruction, further instructions from the customer with respect to the disposition of such assets. Such request shall provide the customer with the following alternative methods of disposition of nontransferable assets, if applicable:

(A) No change.

(B) retention by the carrying party for the customer's benefit; or

(C) in the case of a nontransferable asset described in section (a)(iii)(B), transfer to another broker, dealer or municipal securities dealer, if any, which the issuer has specified as being permitted to carry such asset.

(d)-(i) No change.

Rule G-34. CUSIP Numbers and New Issue Requirements

(a)-(b) No change.

(c) ~~CUSIP Number Eligibility Exemptions.~~ The provisions of this rule shall not apply to an issue of municipal securities (or for the purpose of section (b) any part of an outstanding maturity of an issue) which (i) does not meet the eligibility criteria for CUSIP number assignment or (ii) consists entirely of municipal fund securities.

ENDNOTES

1. The Board understands that local government pools are established by state or local governmental entities as trusts that serve as vehicles for the pooled investment of public moneys of participating governmental entities. Participants purchase interests in the trust and trust assets are invested in a manner consistent with the trust's stated investment objectives. Investors generally do not have a right to control investment of trust assets.
2. The Board understands that higher education trusts are established by states under section 529(b) of the Internal Revenue Code as "qualified state tuition programs" through which individuals make investments for the purpose of accumulating savings for qualifying higher education costs of beneficiaries. Individuals purchase interests in the trust and trust assets are invested in a manner consistent with the trust's stated investment objectives. Investors do not have a right to control investment of trust assets.
3. Letter dated February 26, 1999 from Catherine McGuire, Chief Counsel, Division of Market Regulation, SEC, to Diane G. Klinke, General Counsel of the Board, in response to letter dated June 2, 1998 from Diane G. Klinke to Catherine McGuire (the "February 26 SEC Letter").
4. *See* New York State College Choice Tuition Savings Program, SEC No-Action Letter (Sept. 10, 1998), and incoming letter from Steven B. Boehm, Sutherland Asbill & Brennan LLP, dated August 31, 1998; New Hampshire Higher Education Savings Plan Trust, SEC No-Action Letter (June 30, 1998), and incoming letter from Georgie A. Thomas, Treasurer, State of New Hampshire, and Gregory A. Sandomirsky and Leonard Weiser-Varon, Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C., dated April 4, 1998.
5. February 26 SEC Letter. *See also* Teachers Personal Investors Services, Inc. and TIAA-CREF Individual and Institutional Services, Inc., SEC No-Action Letter (Sept. 10, 1998).
6. The definition of underwriter excludes any person whose interest is limited to a commission, concession, or allowance from an underwriter or dealer not in excess of the usual and customary distributors' or sellers' commission, concession, or allowance.
7. If a primary offering of municipal fund securities is exempt from Rule 15c2-12 (other than as a result of being a limited offering as described in section (d)(1)(i) of the Rule) and an official statement has been prepared by the issuer, then the dealer would be expected to send the official statement, together with Form G-36(OS), to the Board under rule G-36(c)(i).
8. Rule G-36(d) provides that a dealer that has previously provided an official statement to the Board is required to send any amendments to the official statement made by the issuer during the underwriting period. In view of the extended underwriting period for municipal fund securities and the possibility that the issuer may change the dealer that participates in the sale of the securities during the life of the program, the Board believes that this provision of the rule should be read to obligate any dealer that is at the time of an amendment then serving as underwriter for the municipal fund securities to send the amendment to the Board, regardless of whether that dealer or another dealer sent the original official statement to the Board.
9. Rule G-32 defines underwriting period for securities purchased by a dealer (*i.e.*, not by a syndicate) as the period commencing with the first submission to the dealer of an order for the purchase of the securities or the purchase of the securities from the issuer, whichever first occurs, and ending at such

time as the following two conditions both are met: (1) the issuer delivers the securities to the dealer, and (2) the dealer no longer retains an unsold balance of the securities purchased from the issuer or 21 calendar days elapse after the date of the first submission of an order for the securities, whichever first occurs. However, since the issuer continuously delivers municipal fund securities, the first condition for the termination of the underwriting period remains unmet.

10. This should be distinguished from shares in a mutual fund registered under the Investment Company Act with assets invested in municipal securities, which shares would not constitute municipal fund securities.

11. The actual amount of such assessment is not reflected in the draft amendment since the Board has recently begun a review of all Board fees and expects to consider the level of assessments relating to offerings of municipal fund securities in conjunction with this review.

12. Thus, an associated person who sells both municipal fund securities and other types of municipal securities would continue to be required to qualify as either a municipal securities representative or a general securities representative.

13. A number of factors unique to municipal fund securities have contributed to the Board's determination to exempt such securities from rule G-14 at this time. In particular, municipal fund securities do not trade in the secondary market. Thus, for example, unlike the bulk of data currently received by the Board through the system, any data obtained regarding transactions in municipal fund securities would be limited to one-time sales to customers upon initial issuance and one-time purchases (or redemptions) from customers upon cashing out. Municipal fund securities are sold by dealers on an agency basis generally without payment of commissions by customers; therefore, dealers effecting transactions in municipal fund securities would have little opportunity to alter the pricing on such securities from that set by the issuer. Furthermore, certain critical data elements which the transaction reporting system is currently structured to collect (*e.g.*, dollar price, yield, etc.) would not apply to transactions in such securities. Nonetheless, should the Board in the future receive information that practices have developed in the municipal fund security market that merit reporting of transaction information, the Board would consider whether to revisit the exemption from rule G-14.

14. Disclosure of deferred commissions or other charges would cover, for example, any deferred sales load as is sometimes seen with traditional mutual funds or, in the case of interests in certain higher education trusts, any penalty imposed on a redemption that is not for a qualifying higher education expense.

15. *See* College Retirement Equities Fund, SEC No-Action Letter (Jan. 31, 1991).

16. The requirements of rule G-34 had been imposed on dealers principally to improve secondary market efficiencies and therefore would provide little or no benefit in connection with municipal fund securities. However, dealers may still elect to acquire CUSIP numbers for municipal fund securities and to make such securities depository eligible, subject to meeting all of the eligibility requirements of the CUSIP Service Bureau and of any securities depository, respectively.

17. Underlining indicates additions; strikethrough indicates deletions.

[Contents](#) | [Home Page](#)

Copyright 2000 Municipal Securities Rulemaking Board. All Rights Reserved. Terms and Conditions of Use