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**Stakeholders**

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**Notice Type**

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**Category**

Fair Practice

**Affected Rules**

[Rule G-40](#)

## MSRB Provides Compliance Resource on Application of Content Standards to Advertisements by Municipal Advisors under MSRB Rule G-40

### Overview

On September 17, 2018, the Municipal Securities Rulemaking Board (MSRB) sought public comment on a draft compliance resource regarding the application of the content standards under MSRB Rule G-40, on advertising by municipal advisors.<sup>1</sup> The MSRB received five comment letters<sup>2</sup> and revised the compliance resource to reflect those comments as well as the insight gained from the MSRB's ongoing engagement with the industry concerning compliance with Rule G-40.

The revised compliance resource is designed to provide practical assistance to municipal advisors with their understanding of Rule G-40's content standards through the analysis of mock advertisements.

The MSRB derived the principles discussed in this compliance resource from Rule G-40 and its related rulemaking record, and this compliance resource should be read in conjunction with Rule G-40 and its related guidance. The compliance resource does not create new legal or regulatory requirements or new interpretations of existing requirements. The MSRB does not intend for this compliance resource to be interpreted by municipal advisors or examining authorities as establishing new standards of conduct.

<sup>1</sup> MSRB Notice 2018-25 (Sept. 17, 2018) (Request for Comment). As of the date of this notice, Rule G-40 will become effective on February 7, 2019.

<sup>2</sup> Letter from Mike Nicholas, Chief Executive Officer, Bond Dealers of America (BDA) dated October 17, 2018 ("BDA October"); Letter from Mike Nicholas, Chief Executive Officer, BDA dated November 30, 2018 ("BDA November"); Letter from Susan Gaffney, Executive Director, National Association of Municipal Advisors (NAMA) dated October 17, 2018; Letter from Leslie M. Norwood, Managing Director and Associate General Counsel, Securities Industry and Financial Markets Association (SIFMA) dated October 17, 2018; and Letter from Kathleen A. Aho, President, Springsted Incorporated (Springsted) dated October 17, 2018.



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## Background

Rule G-40 includes general provisions, addresses professional advertisements by municipal advisors and requires principal approval, in writing, for advertisements by municipal advisors before their first use. The general provisions (i) define key terms, including the term “advertisement,” (ii) provide content standards and (iii) provide general standards for advertisements, namely that a municipal advisor shall not publish or disseminate an advertisement that the municipal advisor knows or has reason to know contains any untrue statement of material fact or is otherwise false or misleading.

Rule G-40’s content standards are contained in Rule G-40(a)(iv) and require that:

- an advertisement be based on the principles of fair dealing and good faith, be fair and balanced and provide a sound basis for evaluating the municipal security or type of municipal security, municipal financial product, industry or service and that a municipal advisor not omit any material fact or qualification if such omission, in light of the context presented, would cause the advertisement to be misleading;
- an advertisement not contain any false, exaggerated, unwarranted, promissory or misleading statement or claim;
- a municipal advisor limit the types of information placed in a legend or footnote of an advertisement so as to not inhibit a municipal advisory client’s or potential municipal advisory client’s understanding of the advertisement;
- a municipal advisor ensure that the statements made in the advertisement are clear and not misleading within the context that they are made and that they provide a balanced treatment of risks and potential benefits; an advertisement must be consistent with the risks inherent to the municipal financial product or the issuance of the municipal security;
- a municipal advisor consider the audience to which the advertisement will be directed and that the advertisement provide details and explanations appropriate to that audience;
- an advertisement not predict or project performance, imply that past performance will recur or make any exaggerated or unwarranted claim, opinion or forecast; and

- an advertisement not refer, directly or indirectly, to any testimonial of any kind concerning the municipal advisor or concerning the advice, analysis, report or other service of the municipal advisor.

During the development of Rule G-40, the MSRB received requests for guidance regarding the application of the content standards to advertisements by municipal advisors, as well as requests for guidance regarding the use of municipal advisory client lists, case studies and social media by municipal advisors. The MSRB committed to providing that guidance,<sup>3</sup> and this compliance resource provides the requested guidance regarding the application of the content standards to advertisements by municipal advisors.

To provide practical assistance to municipal advisors with their understanding of the Rule G-40(a)(iv)'s content standards, this compliance resource provides guidance through the analysis of mock advertisements. The MSRB developed the mock advertisements to illustrate the application of the content standards to advertisements. Following the MSRB's analysis of the mock advertisements, the MSRB provides considerations for corrective action (generally, those considerations are in lieu of deleting the content that is the subject of the correction action). The corrective action considerations are not intended to identify an exhaustive list of considerations for ensuring compliance with Rule G-40(a)(iv).

## Response to Comments

Commenters provided input regarding the nature of the draft compliance resource and other suggestions for guidance.

**Nature of resource.** Two commenters, NAMA and SIFMA, expressed concerns about the nature of the compliance resource. Specifically, SIFMA cautioned that the compliance resource content standards set forth in Rule G-40 are not “bright line tests[,]” and that it therefore could be challenging for non-dealer municipal advisors that are not subject to any standards promulgated by the Financial Industry Regulatory Authority, Inc. (FINRA) and its rules and guidance to comply with Rule G-40(a)(iv).<sup>4</sup> NAMA stated that municipal advisors should only be subject to the rule language that the MSRB has developed.<sup>5</sup>

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<sup>3</sup> See Letter from Pamela K. Ellis, Associate General Counsel, Municipal Securities Rulemaking Board, dated April 30, 2018.

<sup>4</sup> SIFMA letter at 2.

<sup>5</sup> See NAMA letter.

Rule G-40, by its nature, provides guard rails for advertising by municipal advisors, but does not provide “bright line tests” for specific advertisement content. Rather, Rule G-40 relies on principal approval of the advertisement before first use,<sup>6</sup> as well as on the principles-based content standards provided by the rule itself, to promote compliance.

In the compliance resource, the MSRB analyzed the mock advertisements to provide practical compliance guidance to municipal advisors, recognizing that unlike FINRA, municipal advisor advertisements that are subject to Rule G-40 are not submitted to the MSRB for review. The compliance resource is not intended to suggest that a municipal advisor that is not already subject to regulation by FINRA is now obligated to act consistent with the MSRB’s compliance resource as well as with any guidance published by FINRA under its communications rule, FINRA Rule 2210.

The MSRB has reviewed carefully FINRA’s rules and guidance concerning advertisements and communications. Further, the MSRB has consulted with FINRA staff in developing Rule G-40 and the guidance thereunder (including this compliance resource) in an effort to promote consistency to the maximum extent possible, particularly in an effort to ease the regulatory burden on municipal advisors that are also FINRA members. Nevertheless, the MSRB does not mean to suggest that FINRA’s rules or guidance in this area are incorporated into Rule G-40 or the guidance thereunder or are otherwise applicable to municipal advisors that are not FINRA members.

**Other suggestions.** Commenters also made other suggestions, including requests for:

- the analysis of additional mock advertisements;<sup>7</sup>

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<sup>6</sup> A principal must ensure that the advertisement complies with the content standards of Rule G-40(a)(iv), including the requirement that the municipal advisor not make any misleading statement or claim in an advertisement. Rule G-40(c) provides, in part, that “[e]ach advertisement subject to the requirements of this rule must be approved in writing by a municipal advisor principal, as defined in Rule G-3(e)(i), prior to first use.”

<sup>7</sup> BDA October and November letters; NAMA letter at 1; SIFMA letter at 3; and Springsted letter.

- more nuances and complexity in existing mock advertisements;<sup>8</sup>
- guidance about corrective action that could be taken to bring each mock advertisement into compliance with Rule G-40(a)(iv);<sup>9</sup>
- additional guidance or clarification concerning the use of the marketing names and statistical information<sup>10</sup> and about how a municipal advisor could discuss its fiduciary duty in an advertisement;<sup>11</sup> and
- other guidance not specifically related to the Rule G-40(a)(iv).<sup>12</sup>

The MSRB revised the compliance resource in response to the comments, as described below.

#### Additional mock advertisements

In response to requests for the analysis of additional mock advertisements, the MSRB has analyzed three additional mock advertisements, in addition to those that were included in the Request for Comment, to illustrate the application of Rule G-40(a)(iv) to advertisements by municipal advisors. The MSRB views the compliance resource as part of an initial set of guidance about the MSRB's advertising rules; the MSRB anticipates that it will provide additional guidance, as appropriate, and may analyze additional mock advertisements at that time.

#### More nuanced mock advertisements

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<sup>8</sup> BDA October and November letters; and Springsted letter.

<sup>9</sup> BDA October letter; NAMA letter; and SIFMA letter at 3.

<sup>10</sup> BDA October letter; NAMA letter; and SIFMA letter at 2.

<sup>11</sup> NAMA letter.

<sup>12</sup> NAMA also suggested formatting edits regarding the titles of each advertisement. NAMA letter. The MSRB determined not to incorporate those suggestions because the title of certain of the mock advertisements would become unduly complicated to list each issue illustrated by the mock advertisement.

BDA provided suggestions to make the mock advertisements more nuanced to provide additional meaningful guidance to municipal advisors.<sup>13</sup> The MSRB has incorporated many of BDA's suggestions.

### Corrective action

In response to requests that the MSRB provide guidance about corrective action that could be taken to bring the mock advertisement into compliance with Rule G-40(a)(iv), the MSRB has provided corrective action considerations following its analysis of each advertisement. Those considerations, however, are not intended to identify an exhaustive list of considerations for ensuring compliance with Rule G-40(a)(iv).

### Additional guidance in mock advertisements

BDA, NAMA and SIFMA requested additional guidance or clarification concerning the use of the marketing names and statistical information as well as concerning the discussion of a municipal advisor's fiduciary duty in an advertisement.<sup>14</sup> The MSRB has revised its analysis of the mock advertisements to provide that guidance or clarification. *See* Advertisement Nos. 1 – 4 and 9.

### Other Guidance

Commenters also provided suggestions for guidance under Rule G-40 not specifically related Rule G-40's content standards. Those suggestions related to additional scenarios in which the advertisements could be used and the use of social media.

NAMA and Springsted requested that the MSRB provide various scenarios for the advertisement similar to the scenarios that the MSRB provided in the guidance regarding the use of municipal advisory client lists and case studies and the draft social media guidance. While the MSRB recognizes that having all compliance resources concerning Rule G-40 consolidated into a single compliance resource may be helpful, the MSRB believes that having shorter compliance resources allows each resource to be more focused and more easily updated as technology or regulations change. For that reason, the MSRB has determined not to accept NAMA's suggestions.

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<sup>13</sup> BDA October and November letters.

<sup>14</sup> *See* Notes 9 and 10, *supra*.

In addition, NAMA requested guidance regarding advertisements on social media platforms and regarding the use of hyperlinks. The MSRB will address those issues in its social media guidance. For that reason, the MSRB is not addressing those issues in this compliance resource.

The MSRB welcomes additional comments or questions about the compliance resource. In addition, the MSRB welcomes suggestions about topics that future guidance may address.

December 19, 2018

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## Text of Compliance Resource

### **Application of the Content Standards to Advertisements by Municipal Advisors under MSRB Rule G-40**

The Municipal Securities Rulemaking Board (MSRB) provides this compliance resource to illustrate the application of content standards to advertisements by municipal advisors under MSRB Rule G-40, on advertising by municipal advisors. This resource provides guidance through the analysis of mock advertisements to provide practical assistance to municipal advisors with their understanding of Rule G-40(a)(iv)'s content standards.

The MSRB derived the principles discussed in this resource from Rule G-40 and its related rulemaking record, and this resource should be read in conjunction with Rule G-40 and its related guidance. This resource does not create new legal or regulatory requirements or new interpretations of existing requirements. The MSRB does not intend for this resource to be interpreted by municipal advisors or examining authorities as establishing new standards of conduct.

#### **Background**

Rule G-40 includes general provisions, addresses professional advertisements by municipal advisors and requires principal approval, in writing, for advertisements by municipal advisors before their first use. The general provisions (i) define key terms, including the term "advertisement," (ii) provide content standards and (iii) provide general standards for advertisements, namely that a municipal advisor shall not publish or disseminate an advertisement that the municipal advisor knows or has reason to know contains any untrue statement of material fact or is otherwise false or misleading.

Rule G-40's content standards are contained in Rule G-40(a)(iv) and require that:

- an advertisement be based on the principles of fair dealing and good faith, be fair and balanced and provide a sound basis for evaluating the municipal security or type of municipal security, municipal financial product, industry or service and that a municipal advisor not omit any material

fact or qualification if such omission, in light of the context presented, would cause the advertisement to be misleading;

- an advertisement not contain any false, exaggerated, unwarranted, promissory or misleading statement or claim;
- a municipal advisor limit the types of information placed in a legend or footnote of an advertisement so as to not inhibit a municipal advisory client's or potential municipal advisory client's understanding of the advertisement;
- a municipal advisor ensure that the statements made in the advertisement are clear and not misleading within the context that they are made and that they provide a balanced treatment of risks and potential benefits; an advertisement must be consistent with the risks inherent to the municipal financial product or the issuance of the municipal security;
- a municipal advisor consider the audience to which the advertisement will be directed and that the advertisement provide details and explanations appropriate to that audience;
- an advertisement not predict or project performance, imply that past performance will recur or make any exaggerated or unwarranted claim, opinion or forecast; and
- an advertisement not refer, directly or indirectly, to any testimonial of any kind concerning the municipal advisor or concerning the advice, analysis, report or other service of the municipal advisor.

Below are nine mock advertisements that illustrate the application of the content standards to advertisements by municipal advisors. Following each mock advertisement is an analysis of the concerns that the mock advertisement presents under Rule G-40(a)(iv)'s content standards. After that analysis, the MSRB provides considerations for corrective action, where appropriate. Those considerations are generally in lieu of simply deleting the content that requires the corrective action. The considerations for corrective action are not intended to identify an exhaustive list of considerations for ensuring compliance with Rule G-40(a)(iv).

**Advertisement No. 1**  
**General Print Advertisement**

**Experience and independence are critical.**

Since 2002, ABC Municipal Advisor has provided high-quality advice to the public sector, free of conflicts.

It takes an independent financial advisor to give independent financial advice that is truly independent. A firm cannot provide financial advice and serve as a municipal entity's underwriter on the same transaction.

Debt issuance can be an expensive undertaking for a municipality. Financial advisors consistently lower borrowing costs for state and local governments.

You deserve the best advice, you deserve us! We always lower our client's borrowing costs and your borrowing costs will always be substantially lower with us.

Let us help you!

**ABC**  
Municipal Advisor

**Concerns about Advertising Content:**

**“Since 2002, Municipal Advisor ABC has provided high-quality advice to the public sector, free of conflicts.”**

- Municipal Advisor ABC must ensure that this absolute claim of the absence of any conflicts for such a lengthy period of time is not false, exaggerated, unwarranted or misleading. See Rule G-40(a)(iv)(B). This is a high standard because there are many types of potential conflicts that can be presented for a municipal advisor.
  - **Corrective action considerations:** If the claim cannot be substantiated, corrective action could include deleting the claim that ABC Municipal Advisor’s advice is free of conflicts.

**“It takes an independent financial advisor to give independent financial advice that is truly independent.”**

- The advertisement suggests that only an “independent financial advisor” (commonly understood to mean an advisor that is not also a dealer or affiliated with a dealer) can provide “truly independent” (*i.e.*, unbiased) financial advice. The claim inaccurately suggests that the ability to

provide independent advice is limited to those municipal advisors that are not also registered as or affiliated with a dealer, and thus, presents a false, exaggerated or misleading statement or claim in an advertisement. *See* Rule G-40(a)(iv)(B).

**“Financial advisors consistently lower borrowing costs for state and local governments.”**

- The advertisement asserts that financial advisors consistently lower borrowing costs but fails to provide any source for or other pertinent information regarding that affirmative statement, such as reference to an independent study. Thus, the advertisement fails to provide a sound basis to evaluate the facts in regard to the municipal advisory service. *See* Rule G-40(a)(iv)(A).
  - **Corrective action considerations:** In lieu of deleting the content that is the subject of the corrective action, corrective action could include providing a citation to an independent study or other source for the assertion that financial advisors consistently lower borrowing costs, if there is one.

**“We always lower our client’s borrowing costs and your borrowing costs will always be substantially lower with us.”**

- The statement that borrowing costs “will always be substantially lower with us” presents multiple issues under Rule G-40(a)(iv). Among those issues is that the statement presents a promissory statement or claim in an advertisement. *See* Rule G-40(a)(iv)(A) and (B). In addition, the statement follows the claim that “we always lower our client’s borrowing costs” and taken together, the statements predict or project performance, imply that that ABC Municipal Advisor’s past performance will recur or make an exaggerated or unwarranted claim, opinion or forecast. *See* Rule G-40(a)(iv)(F).
  - **Corrective action considerations:** In lieu of deleting the content that is the subject of the corrective action, corrective action could include revising the sentence so that it is not promissory and does not imply that past performance will reoccur. For example, the sentence could be revised so it reads:

We help lower our client’s borrowing costs. Contact us, and let’s see if we might be able to lower your borrowing costs too.

**Advertisement No. 2****ABC State Public Finance Annual Conference Brochure****XYZ Public Finance, Inc.**

XYZ Public Finance, Inc. provides innovative valuable financing tools for all your capital improvement needs. We have talented experts in multiple areas!

We are a full service investment banking leader and can help you in any one of the areas below:

- **Underwriting**—We value ABC state and our underwriting/trading desk is located in ABC state.\*
- **Municipal Studies**—Our experts produce high quality studies to help with your analysis.
- **Municipal Advisor**—Over the past 15 years, we have been the number one municipal advisor for ABC state issuances, based on par value and number of issuances.

XYZ Public Finance, Inc.  
Registered with and endorsed by



\* XYZ Public Finance, Inc. is a wholly-owned subsidiary of XYZ Broker-Dealer. Underwriting services offered through XYZ Broker-Dealer.

### Concerns about Advertising Content:

**“XYZ Public Finance, Inc. . . . We are a full service investment banking leader and can help you in any one of the areas below: . . . Underwriting, Municipal Studies, and Municipal Advisor.”**

- The advertisement is for XYZ Public Finance, Inc., yet the advertisement states “[w]e are a full service investment banking leader” and can help in underwriting, municipal studies and municipal advisory services. It appears that XYZ Public Finance, Inc. is providing the services discussed in the advertisement, but it is not. The advertisement footnotes that underwriting is provided through XYZ Broker-Dealer; however, at a minimum, the footnote, taken together with the main text, creates an inconsistency or ambiguity regarding which entity is providing investment banking services. Thus, the advertisement fails to provide a sound basis for evaluating the facts in regard to underwriting and municipal advisory activities and is potentially misleading. *See* Rule G-40(a)(iv)(A) and (B).
  - **Corrective action considerations:** In lieu of deleting the content that is the subject of the corrective action, corrective action could include revising the advertisement to clarify which entity performs which services. The sentence could be revised to read:
 

XYZ Broker-Dealer, of which XYZ Public Finance, Inc. is a subsidiary, is a full service investment banking leader and can help you in any one of the areas below: . . .

Underwriting – We value ABC state and XYZ Broker-Dealer has an underwriting/trading desk located in ABC state . . .”

Alternatively, the statement “we are a full service investment banking leader” could be deleted, and the advertisement could make clear that XYZ Public Finance, Inc. offers municipal studies and municipal advisor services, while its parent, XYZ Broker-Dealer, offers underwriting.

**“Over the past 15 years, we have been the number one municipal advisor for ABC state issuances, based on par value and number of issuances.”**

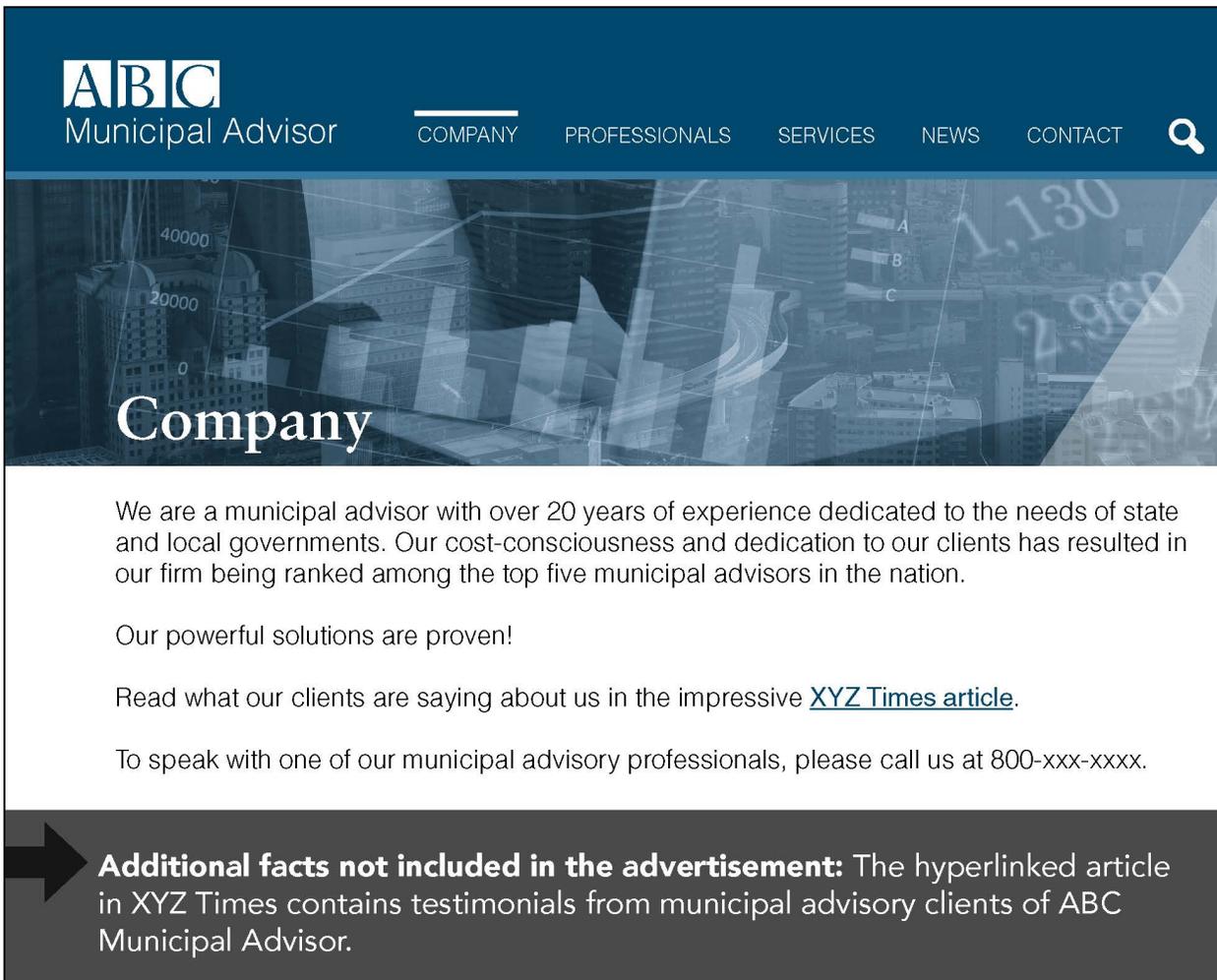
- The advertisement fails to provide any source for its claim that XYZ Public Finance, Inc. was the number one municipal advisor for state issuances. The advertisement must provide a sound basis for evaluating the claim. *See* Rule G-40(a)(iv)(A).
  - **Corrective action considerations:** In lieu of deleting the content that is the subject of the corrective action, corrective action would be to provide a source and the relevant dates for the material compiled on which the claim that XYZ Public Finance, Inc. was number one was based.

“Registered with and endorsed by  MSRB”

- XYZ Public Finance, Inc. cannot state or imply that the MSRB endorses the municipal advisor. In addition, XYZ Public Finance, Inc. may only indicate registration with the MSRB in an advertisement as long as the advertisement complies with applicable standards of all other MSRB rules. See Rule G-40(a)(iv)(G).

**Advertisement No. 3**

**Firm Website**



The screenshot shows the website for ABC Municipal Advisor. The header includes the company logo and navigation links: COMPANY, PROFESSIONALS, SERVICES, NEWS, CONTACT, and a search icon. The main content area features a large image with the word "Company" overlaid. Below the image, there is a paragraph of text, a sub-heading "Our powerful solutions are proven!", another paragraph, and a call to action. A dark grey box at the bottom contains a warning icon and text regarding additional facts not included in the advertisement.

**ABC**  
Municipal Advisor

COMPANY PROFESSIONALS SERVICES NEWS CONTACT 

## Company

We are a municipal advisor with over 20 years of experience dedicated to the needs of state and local governments. Our cost-consciousness and dedication to our clients has resulted in our firm being ranked among the top five municipal advisors in the nation.

Our powerful solutions are proven!

Read what our clients are saying about us in the impressive [XYZ Times article](#).

To speak with one of our municipal advisory professionals, please call us at 800-xxx-xxxx.

 **Additional facts not included in the advertisement:** The hyperlinked article in XYZ Times contains testimonials from municipal advisory clients of ABC Municipal Advisor.

**Concerns about Advertising Content:**

**“Our cost-consciousness and dedication to our clients has resulted in our firm being ranked among the top five municipal advisors in the nation.”**

- The advertisement claims that ABC Municipal Advisor is ranked among the top five municipal advisors in the nation but fails to provide a source or basis for that ranking. As such, the advertisement fails to provide a sound basis for evaluating the facts in regard to the municipal advisory services. *See* Rule G-40(a)(iv)(A).
  - **Corrective action considerations:** In lieu of deleting the content that is the subject of the corrective action, corrective action would be to provide a source for the claim that Municipal Advisor ABC is ranked among the top five municipal advisors in the nation.

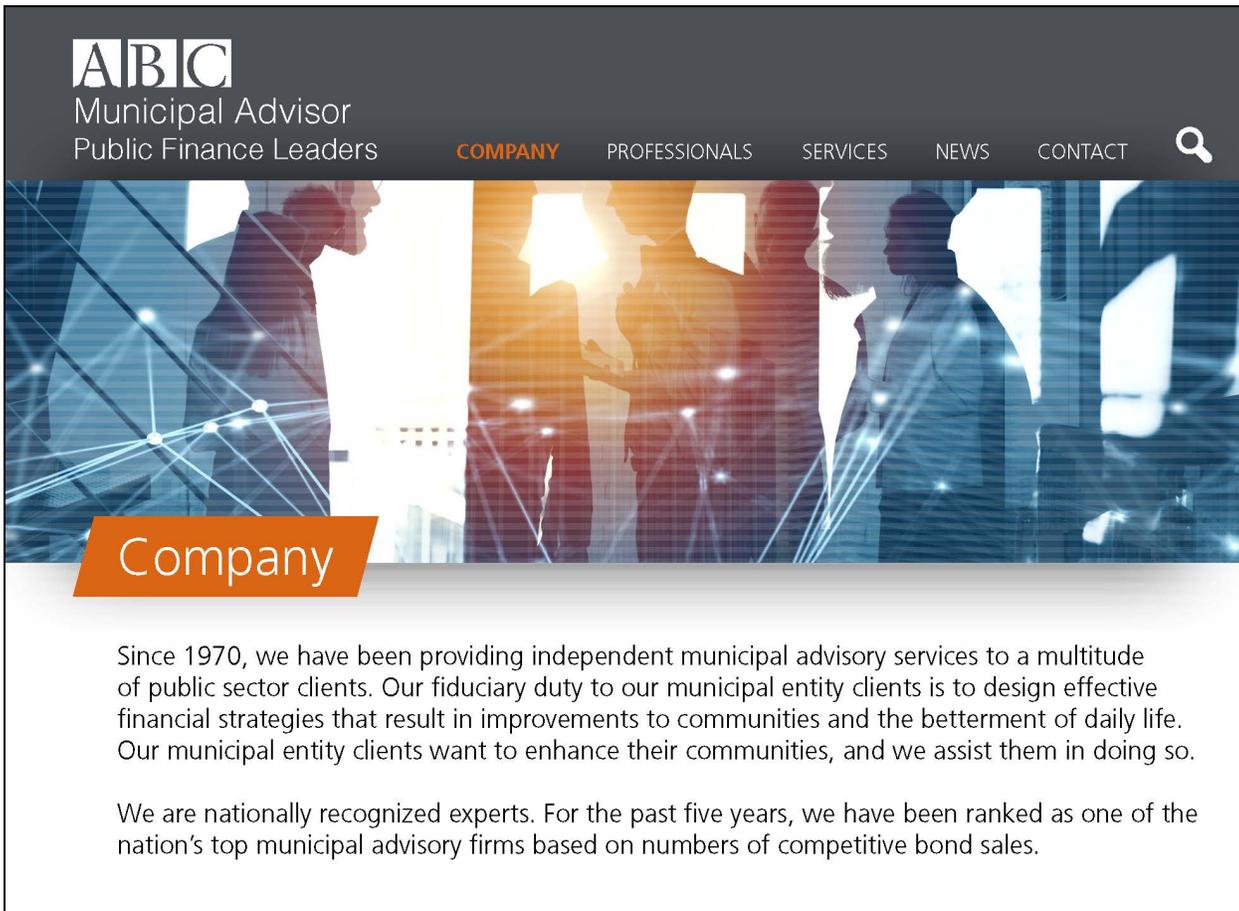
**“Our powerful solutions are proven!”**

- The advertisement claims “[o]ur powerful solutions are proven!” ABC Municipal Advisor must ensure that these absolute claims are not false, exaggerated, unwarranted or misleading. These claims may be difficult to substantiate as it may be difficult to demonstrate that ABC Municipal Advisor’s solutions are both powerful and proven. *See* Rule G-40(a)(iv)(B).
  - **Corrective action considerations:** If the claims cannot be substantiated, corrective action could include deleting the claims that ABC Municipal Advisor’s powerful solutions are proven.

**“Read what our clients are saying about us in the impressive [XYZ Times article](#).”**

- The advertisement links to a news article that contains testimonials from clients of ABC Municipal Advisor. Further, ABC Municipal Advisor adopts the article by indicating that it is an impressive article and providing a hyperlink to that article. A municipal advisor is prohibited from directly or indirectly referring to a testimonial from a municipal advisory client in the municipal advisor’s advertisement. *See* Rule G-40(a)(iv)(G).

**Advertisement No. 4**  
**Firm Website**



The screenshot shows the website for ABC Municipal Advisor, Public Finance Leaders. The navigation menu includes: COMPANY (highlighted in orange), PROFESSIONALS, SERVICES, NEWS, and CONTACT. A search icon is also present. The main content area features a large image of people in a meeting, with an orange banner reading 'Company'. Below the banner, the text reads: 'Since 1970, we have been providing independent municipal advisory services to a multitude of public sector clients. Our fiduciary duty to our municipal entity clients is to design effective financial strategies that result in improvements to communities and the betterment of daily life. Our municipal entity clients want to enhance their communities, and we assist them in doing so. We are nationally recognized experts. For the past five years, we have been ranked as one of the nation's top municipal advisory firms based on numbers of competitive bond sales.'

**Concerns about Advertising Content:**

**“Our fiduciary duty to our clients is to design effective financial strategies that result in improvements to communities and the betterment of daily life.”**

- The advertisement is misleading in that ABC Municipal Advisor is suggesting that its fiduciary standard is to “design effective financial strategies that result in improvements to communities and the betterment of daily life.” As set forth in MSRB Rule G-42(a)(ii), on duties of non-solicitor municipal advisors, a non-solicitor municipal advisor is subject to a fiduciary duty that includes a duty of loyalty and a duty of care in the conduct of municipal advisory activities (as defined in MSRB Rule D-13) for a municipal entity client. These standards apply to a municipal advisor’s conduct and do not necessarily subsume the stated specific results. As such, the advertisement contains a false, exaggerated, unwarranted, promissory or misleading statement or claim. See Rule G-40(a)(iv)(B).

**“We are nationally recognized experts. For the past five years, we have been ranked as one of the nation’s top municipal advisory firms based on numbers of competitive bond sales.”**

- The advertisement states that ABC Municipal Advisors are nationally ranked experts and that they have been ranked as one of the top five municipal advisory firms for the past five years but fails to provide a basis and/or source for each of the statements. As such, the advertisement fails to provide a sound basis for evaluating the facts in regard to the municipal advisory service. See Rule G-40(a)(iv)(A).
  - **Corrective action considerations:** In lieu of deleting the content that is the subject of the corrective action, corrective action could include providing a basis for the statement that ABC Municipal Advisor is a nationally ranked expert and ranked as one of the nation’s top municipal advisory firms.

#### **Advertisement No. 5**

**E-mail Sent to 40 Unique Municipal Advisory Clients**



**ABC**  
Municipal Advisor

# Announcement

We are pleased to announce that Ms. Sharon Smith has joined our office as a new municipal advisor representative. She has over 20 years of public finance experience.

Contact us and see how ABC Municipal Advisor and Ms. Smith can help you.

➔ **Additional facts not included in the advertisement:** Ms. Smith has not yet taken her municipal advisor representative qualification examination (Series 50), and therefore Ms. Smith may not engage in municipal advisory activities.

**Concerns about Advertising Content:**

“We are pleased to announce that Ms. Sharon Smith has joined our office as a new municipal advisor representative.”

- The advertisement implies that Ms. Smith is presently qualified to act as a municipal advisor representative but omits that Ms. Smith has not taken her qualification exam. Ms. Smith is not qualified as a municipal advisor representative until she passes her qualification exam. The advertisement contains a material omission and a misleading statement or claim. See Rules G-40(a)(iv)(A) and G-40(a)(iv)(B).
  - **Corrective action considerations:** Corrective action would be to postpone sending the e-mail until Ms. Smith becomes a new qualified representative.

#### Advertisement No. 6

E-mail Sent to 40 First-Time Chief Financial Officers of “State A” Small Cities and Towns Attending XYZ Conference on Financing for School Districts

**A|B|C**  
Municipal Advisor

News

*We have been providing advice on sophisticated financings to your peers and predecessors since 1980.*

■ ■ ■

Please stop by our booth at the **XYZ Conference**.

Let us explain how we have assisted large municipalities in State B to save financing cost using XYZ swaps, and how this technique could be helpful to you.

**Let us help you with your next financing!**

➔ **Additional facts not included in the advertisement:** State A law prohibits school districts in State A from engaging in swaps, including XYZ swaps.

## Concerns about Advertising Content:

### Use of XYZ Swaps in “State A”

- Swaps, including XYZ swaps, are prohibited by law for school district financings in State A. As such, this targeted advertisement fails to consider the nature of the audience to which the advertisement will be directed and provide details and explanations appropriate to the audience. See Rule G-40(a)(iv)(E).
  - **Corrective action considerations:** In lieu of deleting the content that is the subject of the corrective action, corrective action could include revising the sentence to delete references to the use of swaps to save financing costs. The sentence could be revised to read:
    - We can explain how we might help you save financing costs.

**Advertising No. 7****Standing Banner Display at XYZ Conference on Financing for School Districts**

**ABC**  
Municipal Advisor

**Your schools are not  
the only things that  
should be innovative.  
Graduate to innovative  
financing options!**

■ ■ ■

ABC Municipal Advisor's lesson plan  
for success will include the use of:

- ✓ Interest Rate Swaps
- ✓ Total Return Swaps
- ✓ Floating Rate Notes
- ✓ Commodity Derivatives

ABC Municipal Advisor is certified with  
the Securities and Exchange Commission  
and the Municipal Securities Rulemaking  
Board as an independent municipal  
financial advisor and has received the  
Series 50 qualification.

### Concerns about Advertising Content:

**“Graduate to innovative financing options! ABC Municipal Advisor’s lesson plan for success will include the use of . . .”**

- The statement that ABC Municipal Advisor’s lesson plan for success will include the use of . . .” presents multiple issues under Rule G-40(a)(iv). Among those issues is that the statement presents a promissory statement or claim in an advertisement. See Rule G-40(a)(iv)(A) and (B). In addition, the statement that the plan will include the use of certain financing options assumes that those financing options would be available to each school district. Taken together, the claims make an exaggerated or unwarranted claim, opinion or forecast. See Rule G-40(a)(iv)(F).
  - **Corrective action considerations:** In lieu of deleting the content that is the subject of the corrective action, corrective action could include revising the statement to reflect that while the ABC Municipal Advisor may have expertise in innovative financing options, those options may be not appropriate for every school district. The statements could be revised to read:

We design innovative financing options.  
ABC Municipal Advisor’s lesson plan to help with your financing could include . . .

**“ABC Municipal Advisor is certified with the Securities and Exchange Commission and the Municipal Securities Rulemaking Board as an independent municipal financial advisor and has received the Series 50 qualification.”**

- Under MSRB rules, ABC Municipal Advisor cannot state or imply that it is certified by the MSRB as an independent municipal financial advisor. Rather, ABC Municipal Advisor registers as a municipal advisor with the MSRB. In addition, ABC Municipal Advisor may only indicate registration with the MSRB as long as the advertisement complies with applicable standards of all other MSRB rules. See, e.g., Rule A-12(e) and Rule G-40(a)(iv)(G).
- Further, the statement is misleading as the Securities and Exchange Commission does not certify independent municipal financial advisors. Rather, a municipal advisor registers with the Securities and Exchange Commission. See Rule G-40(a)(iv)(B).
- ABC Municipal Advisor’s statement that it has “received the Series 50 qualification” is false because municipal financial advisor firms do not receive the Series 50 qualification. See Rule G-40(a)(iv)(B).

- **Corrective action considerations:** In lieu of deleting the content that is the subject of the corrective action, corrective action could include rewriting the claim to properly denote registration as a municipal advisor. For example, the statement could be rewritten to read:

ABC Municipal Advisor is registered as a municipal advisor with the Securities and Exchange Commission and with the MSRB.

## Advertisement No. 8 Firm Website



Municipal Advisor EFG is a preeminent municipal advisory firm. We deliver innovative solutions and fresh ideas to our clients through financial and municipal advisory services from our offices across the country. Our deep knowledge of the industry is matched with the know-how needed to efficiently provide advice with respect to complex transactions of all sizes.

### Concerns about Advertising Content:

#### **“Municipal Advisor EFG is a preeminent municipal advisory firm.”**

- Municipal Advisor EFG must ensure that the assertion that Municipal Advisor EFG is a preeminent municipal advisory firm is not false, exaggerated, unwarranted or misleading. *See* Rule G-40(a)(iv)(B). This is a high standard because the claim that Municipal Advisor EFG is a preeminent municipal advisory firm suggests that Municipal Advisor EFG has extensive experience and a strong reputation. Depending on the facts and circumstances, this claim might be difficult to substantiate (for example, it may be more difficult for a new or less established firm to establish that it is a preeminent municipal advisory firm).

- **Corrective action considerations:** If the claim cannot be substantiated, corrective action would be to delete the claim that Municipal Advisor EFG is a preeminent municipal advisory firm.

**Advertisement No. 9**  
**Firm Brochure**

**Municipal  
Advisor  
ABC**

**THE NO. 1  
MUNICIPAL ADVISOR  
FOR STATE SCHOOL  
BOND ISSUES\***

*You have a well-known, well-respected  
advocate in your corner*

\*Based on both par amount and number of issues for the past 10 years, according to DEF Analysis.

**Concerns about Advertising Content:**

**“ . . . you have a well-known, well-respected advocate in your corner.”**

Absent special circumstances concerning the context or the municipal advisory firm (for example, if Municipal Advisor ABC is a new municipal advisory firm or if Municipal Advisor ABC is the only municipal advisor in State xyz that provides municipal advisory services regarding State School bond issues), the firm brochure appears to comply with Rule G-40(a)(iv).

**Additional Resources**

[SR-MSRB-2018-01 \(January 24, 2018\).](#)

[Letter from Pamela K. Ellis, Associate General Counsel, Municipal Securities Rulemaking Board, dated April 30, 2018.](#)

[Self-Regulatory Organizations; Municipal Securities Rulemaking Board; Order Granting Approval of a Proposed Rule Change, Consisting to Amendments to Rule G-21, on Advertising, Proposed New Rule G-40, on Advertising by Municipal Advisors, and a Technical Amendment to Rule G-42, on Duties of Non-Solicitor Municipal Advisors.](#)

[MSRB Notice 2018-08 SEC Approves Advertising Rule Changes for Dealers and Municipal Advisors.](#)

[MSRB Notice 2018-24 MSRB Answers FAQs Regarding Use of Municipal Advisory Client Lists and Case Studies under MSRB Rule G-40.](#)