

2018-14

Publication Date

June 27, 2018

Stakeholders

Municipal Advisors

Notice Type

Request for Comment

Comment Deadline

July 27, 2018

Category

Fair Practice

Affected Rules

[Rule G-40](#)

Request for Comment on Draft Frequently Asked Questions Regarding Rule G-40 and the Use of Municipal Advisory Client Lists and Case Studies

Overview

The Municipal Securities Rulemaking Board (MSRB) requests comment from market participants and the public on a draft set of frequently asked questions (FAQs) related to the application of MSRB Rule G-40, on advertising by municipal advisors, to the use of municipal advisory client lists and case studies by municipal advisors. This notice seeks information and insight from commenters to further inform the MSRB's development of the FAQs for planned publication.

The MSRB invites market participants and the public to submit comments in response to this request, along with any other information that they believe would be useful to the MSRB in developing the FAQs. Information may be submitted through July 27, 2018 in electronic or paper form. [Information may be submitted electronically by clicking here](#). Information submitted in paper form should be sent to Ronald W. Smith, Corporate Secretary, MSRB, 1300 I Street, NW, Washington, DC 20005. Generally, the MSRB will make available for public inspection on the MSRB's website all information submitted.¹

Questions about this request for comment should be directed to Pamela K. Ellis, Associate General Counsel, at 202-838-1500.

¹ Comments are generally posted on the MSRB's website without change. For example, personal identifying information such as name, address, telephone number or email address will not be edited from submissions. Therefore, commenters only should submit information that they wish to make publicly available.



Receive emails about
MSRB Notices.

Background

Rule G-40, which becomes effective on February 7, 2019, sets forth 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, such as the requirement that an advertisement be based on the principles of fair dealing and good faith and be fair and balanced; 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(a)(iv)(G) prohibits a municipal advisor, directly or indirectly, from publishing, circulating or distributing any advertisement which refers, directly or indirectly, to any testimonial of any kind concerning the municipal advisor or concerning the advice, analysis, report or other service rendered by the municipal advisor.

Recognizing that municipal advisors were not federally regulated in that capacity before the enactment of the Dodd-Frank Act,² the MSRB remains sensitive to the challenges that municipal advisors face in complying with a new regulatory framework. During the development of Rule G-40, the MSRB received requests for guidance regarding (i) whether municipal advisory client lists and case studies would be advertisements under Rule G-40, and (ii) whether a municipal advisor would be able to use municipal advisory client lists and case studies in light of Rule G-40(a)(iv)(G)’s ban on the use of testimonials in advertising by municipal advisors. As a result, the MSRB committed to providing guidance on these matters.³ In addition, since the SEC approved Rule G-40,⁴ the MSRB has continued to engage with the municipal advisor industry and other stakeholders about Rule G-40, including the development of compliance support tools that may be helpful for

² Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law No. 111-203, 124 Stat. 1376 (2010) (Dodd-Frank Act).

³ See Letter from Pamela K. Ellis, Associate General Counsel, Municipal Securities Rulemaking Board, dated April 30, 2018 available at http://www.msrb.org/~media/Files/SEC-Filings/2018/MSRB-2018-01_MSRB_Letter_to_SEC.ashx.

⁴ Exchange Act Release No. 83177 (May 7, 2018), 83 FR 21794 (May 10, 2018), File No. SR-MSRB-2018-01.

municipal advisors. Further, the MSRB has announced a workshop to assist municipal advisors with their Rule G-40 compliance.⁵

Request for Comment

The MSRB believes that public comment will provide useful insight to help ensure that the FAQs provide practical compliance assistance. Therefore, before publication, the MSRB is seeking comment regarding the content and appropriateness of the proposed FAQs, as well as the usefulness of the draft responses. In addition to any other comment in this regard, the MSRB specifically seeks comment on the following questions:

- Do the proposed responses to the FAQs add to the understanding of the rule? How could they be improved to provide greater understanding?
- Are there additional questions that the MSRB should respond to relating to a municipal advisor's use of a municipal advisory client list or case study under Rule G-40?
- Are the examples presented practical and helpful in understanding the application of the rule to municipal advisory client lists and case studies? Do the examples realistically reflect the use of a municipal advisory client list or case study by a municipal advisor? If not, how could the examples be improved?

The MSRB established the principles discussed in the draft FAQs in the MSRB's submissions into the rulemaking record for Rule G-40. These draft FAQs do not create new legal or regulatory requirements, or new interpretations of existing requirements. The MSRB does not intend these draft FAQs to be interpreted by municipal advisors or examining authorities as establishing new standards of conduct.

June 27, 2018

* * * * *

⁵ MSRB Establishes Advertising Rule for Municipal Advisors and Enhances Dealer Advertising Rule (May 7, 2018) available at <http://msrb.org/News-and-Events/Press-Releases/2018/MSRB-Establishes-Advertising-Rule-for-Municipal-Advisors-and-Enhances-Dealer-Advertising-Rule.aspx>.

Text of Draft FAQs

Draft FAQs regarding the Use of Municipal Advisory Client Lists and Case Studies under MSRB Rule G-40, on Advertising by Municipal Advisors

The Municipal Securities Rulemaking Board (MSRB) provides these answers to frequently asked questions (FAQs) to enhance market participants' understanding of permissible and impermissible uses of municipal advisory client lists and case studies by municipal advisors under MSRB Rule G-40, on advertising by municipal advisors. These FAQs can assist municipal advisors with their compliance with the MSRB's new advertising rule. In addition, these FAQs illustrate the potential application of certain other MSRB rules to municipal advisors' use of client lists and case studies.

The MSRB established the principles discussed in these FAQs in the MSRB's submissions into the rulemaking record for Rule G-40. These FAQs do not create new legal or regulatory requirements, or new interpretations of existing requirements. The MSRB does not intend these FAQs to be interpreted by municipal advisors or examining authorities as establishing new standards of conduct.

Background

Rule G-40, which becomes effective on February 7, 2019, enhances the MSRB's fair practice rules relating to advertising by municipal advisors to help prevent fraud and to help ensure consistent regulation among regulated entities in the municipal securities market. Rule G-40 sets forth 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, such as the requirement that an advertisement be based on the principles of fair dealing and good faith and be fair and balanced, 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(a)(iv)(G) prohibits a municipal advisor, directly or indirectly, from publishing, circulating or distributing any advertisement which refers, directly or indirectly, to any *testimonial* of any kind concerning the municipal advisor or concerning the advice, analysis, report or other service rendered by the municipal advisor. Rule G-40(a)(iv)(G) thus also would prohibit a testimonial about an associated person of a municipal advisor to the extent it concerns the municipal advisor or concerns the advice, analysis, report or other service rendered by the municipal advisor. During the development of Rule G-40, the MSRB received requests for guidance regarding (i) whether municipal advisory client lists and case studies would be advertisements under Rule G-40 and (ii) whether a municipal advisor would be able to use municipal advisory client lists and case studies in light of Rule G-40(a)(iv)(G)'s ban on the use of testimonials in advertising by municipal advisors. These FAQs provide the requested guidance.

1. Is a municipal advisory client list or a case study an advertisement that is subject to Rule G-40?

Some municipal advisors use municipal advisory client lists to highlight their past experience or current engagements. Similarly, some municipal advisors use case studies¹ to illustrate how the municipal advisor handled, or is currently handling, a particular engagement for a municipal advisory client.² In this context, both municipal advisory client lists and case studies concern the prior engagement or engagements of the municipal advisor for municipal advisory services.

Depending on the facts and circumstances, a municipal advisory client list or a case study may be an advertisement under Rule G-40(a). In part, Rule G-40(a)(i) defines an advertisement as any material:

published or used in any electronic or other public media, or any written or electronic promotional literature distributed or generally made available to municipal entities, obligated persons, municipal advisory clients or the public, concerning the services of a municipal advisor or the engagement of a municipal advisory client, including any notice, circular, report, market letter, form letter, telemarketing script, seminar text, press release concerning the services of the municipal advisor or the engagement of a municipal advisory client (as defined in paragraph (a)(iii)(B)), or reprint, or any excerpt of the foregoing or of a published article. . .

To the extent that a municipal advisory client list or a case study is not published or used in any electronic or other public media, or written or electronic promotional literature generally made available to municipal entities, obligated persons, municipal advisory clients or the public, a municipal advisor's use of a municipal advisory client list or a case study would not be an advertisement.

In some instances, it is necessary to determine whether a communication (which may include a municipal advisory client list or case study), which does not otherwise meet the definition of an "advertisement," is a "form letter." Under Rule G-40(a)(ii), a written letter or electronic mail message would only be a form letter potentially constituting an advertisement if the written letter or electronic mail message is distributed to more than 25 persons within any period of 90 consecutive days.³ To the extent that a municipal advisory client list or a case study is a written letter or electronic mail message distributed to

¹ See, e.g., Letter from Catherine Humphry-Bennett, Municipal Advisory Compliance Officer, Public Financial Management, Inc. and PFM Financial Advisors LLC, dated February 28, 2018 (stating that a municipal advisor may use a case study as an example of the types of services performed for existing or previous clients) available at <https://www.sec.gov/comments/sr-msrb-2018-01/msrb201801-3177878-161986.pdf>.

² These FAQs do not address the use of hypothetical illustrations.

³ However, an email that includes only required regulatory disclosures and does not contain any material that is promotional in nature, that is sent to more than 25 municipal advisory clients through blind carbon copies would not be an advertisement. See Letter from Pamela K. Ellis, Associate General Counsel, Municipal Securities Rulemaking Board, dated April 30, 2018, at 18-19, available at http://www.msrb.org/~media/Files/SEC-Filings/2018/MSRB-2018-01_MSRB_Letter_to_SEC.ashx (Response Letter).

fewer than 25 persons within any period of 90 consecutive days and not otherwise subject to Rule G-40(a)(i), the municipal advisory client list or case study would not be an advertisement.⁴

One example of a municipal advisory client list and/or a case study, in general, not constituting an advertisement is where a municipal advisory client list and/or a case study is included in a municipal advisor's typical response to a request for proposal (RFP), a request for qualification (RFQ) or a similar request. A response to an RFP, RFQ or similar request is normally distributed to one potential municipal advisory client at a time such that the municipal advisory client list and/or case study therefore would not be material that is published, made generally available to municipal entities, obligated persons, municipal advisory clients or the public, or meet the definition of a form letter. As provided in Supplementary Material .01 to Rule G-40, for purposes of Rule G-40(a)(ii), the number of "persons" for a response to an RFP, RFQ or similar request is determined at the entity level. Therefore, for example, if a municipal advisor were to send a response to an RFP to a municipal entity, that municipal entity would count as one "person" no matter how many employees of the municipal entity may review the response to the RFP.⁵

In addition, the MSRB reminds non-solicitor municipal advisors that, whether or not a communication, such as a response to an RFP or RFQ, is an advertisement for purposes of Rule G-40, it would nevertheless be subject to MSRB Rule G-42(e)(i)(C), on duties of non-solicitor municipal advisors, which prohibits a municipal advisor from making any representation or submitting any information (including in a response to an RFP or RFQ) that the municipal advisor knows or should know is materially false or materially misleading.⁶ Therefore, the use of a municipal advisory client list in a response to an RFP or RFQ in a manner that is false or misleading would be a violation of MSRB rules even though the response is not, itself, an advertisement.

⁴ Regardless of the manner of distribution of the communication, it does not constitute an advertisement for purposes of Rule G-40 unless it concerns the municipal advisory services of the municipal advisor or the engagement of a municipal advisory client.

⁵ See, e.g., Response Letter at 18. In addition, the *unilateral publication* of a response to an RFP or RFQ or similar request by an *issuer official* would not make that response an advertisement. *Id.*

⁶ Rule G-42(e)(i)(C) that provides a municipal advisor is prohibited from:
making any representation or the submission of any information that the municipal advisor knows or should know is either materially false or materially misleading due to the omission of a material fact about the capacity, resources or knowledge of the municipal advisor, in response to requests for proposals or qualifications or in oral presentations to a client or prospective client, for the purpose of obtaining or retaining an engagement to perform municipal advisory activities.

The MSRB has developed the examples below to illustrate the application of Rule G-40 to a municipal advisor's use of a municipal advisory client list and a case study.

As used in these examples, the hypothetical municipal advisor is Municipal Advisor ABC, a large regional municipal advisor with 25 years of experience that engages in municipal advisory activities with multiple municipal advisory clients each year, and the hypothetical municipal entity client is Issuer XYZ. The hypothetical facts are limited to the example in which they are discussed.

- **Example 1:** Municipal Advisor ABC develops a municipal advisory client list that sets forth Municipal Advisor ABC's municipal advisory clients for the past two years. Next to each municipal advisory client included on the list, Municipal Advisor ABC adds a brief statement from the municipal advisory client about Municipal Advisor ABC's services. For example, next to Issuer XYZ, Municipal Advisor ABC includes the statement:

“Municipal Advisor ABC gave us great advice helping us to secure low cost financing; Issuer XYZ will use Municipal Advisor ABC again.”

Municipal Advisor ABC posts the municipal advisory client list on its website, which is accessible to the general public on an unrestricted basis.

Advertisement: The municipal advisory client list would be an advertisement under Rule G-40(a)(i), since it is published material used in electronic media and it is electronic promotional literature generally made available to municipal entities, obligated persons, municipal advisory clients or the public concerning the services of the municipal advisor or the engagement of a municipal advisory client.⁷

Testimonial: The municipal advisory client list includes an endorsement by a municipal advisory client. Rule G-40(a)(iv)(G) prohibits a municipal advisor from directly or indirectly publishing, circulating, or distributing any advertisement which refers, directly or indirectly to any testimonial of any kind concerning the municipal advisor or concerning the advice, analysis, report or other service rendered by the municipal advisor. The endorsement by the municipal advisory client would be a prohibited testimonial under Rule G-40(a)(iv)(G).

⁷ The MSRB reminds municipal advisors that once material or promotional literature meets the definition of an advertisement, that material or promotional literature becomes subject to other provisions of Rule G-40, including Rule G-40(a)(iv)'s content standards and Rule G-40(c)'s requirement for a principal to approve the advertisement before its first use. In addition, the municipal advisor's advertising activities are subject to other MSRB rules, including MSRB Rule G-8, on books and records to be made by brokers, dealers, municipal securities dealers and municipal advisors, and Rule G-44, on supervisory and compliance obligations by municipal advisors.

Compliance considerations under Rule G-40: Under the facts and circumstances discussed in this Example 1, Municipal Advisor ABC’s posting on its website of the municipal advisory client list, because it includes a testimonial, would not comply with Rule G-40(a)(iv)(G).⁸

- **Example 2:** In its response to an RFP by a municipal entity, Municipal Advisor ABC includes a list of its municipal advisory clients for the past two years in a particular geographic region for which Municipal Advisor ABC provided advice relating to school financings. Similar to Example 1 above, Municipal Advisor ABC includes a brief statement from each listed municipal advisory client about Municipal Advisor ABC’s services. For example, next to Issuer XYZ, Municipal Advisor ABC includes the statement:

“Municipal Advisor ABC gave great advice helping us to secure low cost financing; Issuer XYZ will use Municipal Advisor ABC again.”

Municipal Advisor ABC furnishes the RFP response to the potential municipal entity client. Municipal Advisor ABC limits the distribution of the municipal entity client list to the municipal entity for which Municipal Advisor ABC prepared its response to the RFP. Municipal Advisor ABC does not distribute the municipal entity client list to more than 25 other municipal entities, obligated persons, municipal advisory clients or the public within a consecutive 90-day period from the date Municipal Advisor ABC furnished its response to the RFP to the potential municipal advisory client.

Advertisement: Although the municipal advisory client list would be written promotional material made available to a municipal entity, the municipal entity client list would not be an advertisement subject to Rule G-40(a)(i). Municipal Advisor ABC includes the municipal entity client list as part of a response to an RFP that Municipal Advisor ABC only distributes to a single municipal entity.

In general, a response to an RFP would not be an advertisement primarily because such response would not be a form letter under Rule G-40(a)(ii). The response to an RFP would only be distributed to the potential municipal entity client (which is not more than 25 persons) within any period of 90 consecutive days.⁹

⁸ By contrast, the mere inclusion of a client list in an advertisement would ordinarily not be considered to be a testimonial. *Cf. Cambiar Investors, Inc.* (publicly avail. Aug. 27, 1997) (under analogous situations presented under the Investment Advisers Act of 1940, as amended, SEC staff has provided guidance that a testimonial is “a statement of a client’s experience with, or endorsement of, an investment adviser”). Unless the context of the presentation of a municipal advisory client list in an advertisement states or implies a statement regarding any client’s experience with the municipal advisor or an endorsement of the municipal advisor, it would not generally be a testimonial.

⁹ As noted above, Supplementary Material .01 to Rule G-40 provides that for purposes of Rule G-40(a)(ii), the number of “persons” for a response to an RFP is determined at the entity level, so that one recipient issuer counts as one person no matter how many personnel at the issuer might receive or review the response.

Testimonial: The municipal advisory client list would include an endorsement from a municipal advisory client that would be a testimonial under Rule G-40(a)(iv)(G). However, because the municipal advisory client list would be included in a response to an RFP, and a response to an RFP, in general, would not be an advertisement, it would appear that Municipal Advisor ABC's use of the endorsement in the municipal advisory client list would comply with Rule G-40(a)(iv)(G).

Compliance considerations under Rule G-40: Under the facts and circumstances discussed in this Example 2, Municipal Advisor ABC's inclusion and distribution of the municipal advisory client list in Municipal Advisor ABC's response to an RFP would not violate Rule G-40.¹⁰ Further, for the reasons discussed above, Municipal Advisor ABC could send the same municipal advisory client list to not more than 24 additional persons within any period of 90 consecutive days without violating Rule G-40.

- **Example 3:** Municipal Advisor ABC develops a case study about a financing for a municipal ice rink. The case study provides the following statement from Issuer XYZ:

“Municipal Advisor ABC's expert recommendations allowed us to meet our goals – we met our timeline and secured low cost financing. Municipal Advisor ABC was terrific.”

Municipal Advisor ABC includes the case study in the firm brochure that is included in a widely distributed promotional bag at a public finance industry conference.

Advertisement: The case study would be written promotional literature distributed or made generally available to municipal entities, obligated persons, municipal advisory clients or the public. As such, the case study would be an advertisement under Rule G-40(a)(i).

Testimonial: Because the case study includes an endorsement from Issuer XYZ, the case study would include a testimonial under Rule G-40(a)(iv)(G). Rule G-40(a)(iv)(G) prohibits a municipal advisor from distributing an advertisement that contains a testimonial.

Compliance considerations under Rule G-40: Under the facts and circumstances discussed in this Example 3, Municipal Advisor ABC's use of the case study would violate Rule G-40(a)(iv)(G).

¹⁰ However, non-solicitor municipal advisors should be mindful of their obligations under Rule G-42 relating to responses to RFPs and RFQs, *see supra* note 7, and obligations under Rule G-17 applicable to all municipal advisors.

2. Must a municipal advisor include all of its clients in a municipal advisory client list?

No, a municipal advisor may develop a partial municipal advisory client list as long as that partial municipal advisory client list (i) does not contain any untrue statement of material fact or is otherwise false or misleading and (ii) complies with all other applicable provisions of Rule G-40, including Rule G-40(a)(iv)'s content standards. Among other things, Rule G-40(a)(iv) requires that all advertisements by a municipal advisor be based on the principles of fair dealing and good faith, be fair and balanced, and that the statements made in an advertisement be clear and not misleading within the context in which they are made. A municipal advisor must consider these obligations under Rule G-40(a)(iv) as it prepares its municipal advisory client list. While Rule G-40(a)(iv) does not, *per se*, prohibit the inclusion of partial municipal advisory client lists in an advertisement, the municipal advisor must consider whether a partial municipal advisory client list would create a false or misleading impression under the circumstances and in the context in which the partial municipal advisory list is provided.

In addition to the specific content standards of Rule G-40 for covered advertisements, in considering its use of client lists generally, the municipal advisor should be mindful of its obligations under other MSRB rules. For example, consistent with its obligations under MSRB Rule G-17, on conduct of municipal securities and municipal advisory activities, and Rule G-42, as applicable to non-solicitor municipal advisors, a municipal advisor must present any municipal advisory client list in a manner that complies with the MSRB's fair dealing and fair practice principles.¹¹

- **Example 4:** Municipal Advisor ABC publishes an advertisement regarding its municipal advisory services in an airport industry journal. Municipal Advisor ABC's advertisement includes an accurate list of recent municipal advisory clients to which Municipal Advisor ABC has provided advice about airport financings within the past three years. Municipal Advisor ABC discloses in the advertisement that the municipal advisory client list is a partial municipal advisory client list limited to Municipal Advisor ABC's municipal advisory engagements related to airport financings within the past three years. The partial municipal advisory client list does no more than list the relevant municipal advisory clients. Unlike Example 1, Municipal Advisor ABC does not add any statement from any of the municipal advisory clients about Municipal Advisor ABC's services.

Compliance considerations under Rule G-40: Under the facts and circumstances discussed in this Example 4, Municipal Advisor ABC's advertisement (i) does not contain any untrue statement of material fact or is otherwise false or misleading and (ii) complies with Rule G-40(a)(iv)'s content standards. Municipal Advisor ABC's advertisement discloses that the municipal advisory client list is a partial municipal advisory client list limited to Municipal Advisor ABC's municipal advisory engagements related to airport financings within the past three years. By disclosing the relevant factors it used to develop the municipal advisory list, Municipal Advisor ABC helps ensure that the

¹¹ Also, if a municipal advisor has agreed with the municipal advisory client that the municipal advisor will not use the client's name in advertisements, the breach of that agreement could be inconsistent with Rule G-17. The same general principle would apply to the use of a municipal advisory client's name in a case study.

partial municipal advisory client list is not misleading. Further, Municipal Advisor ABC does not include statements from municipal advisory clients about Municipal Advisor ABC's services in the advertisement. The publication by Municipal Advisor ABC of this partial municipal advisory client list would not be prohibited by Rule G-40(a)(iv).¹²

- **Example 5:** Municipal Advisor ABC posts on its website a municipal advisory client list under the title "Ten Recent Representative Municipal Advisory Clients." However, that municipal advisory client list includes (i) entities that did not actually engage Municipal Advisor ABC and for which Municipal Advisor ABC only provided casual and informal input and (ii) municipal advisory clients for which Municipal Advisor ABC has not provided advice for over fifteen years. Municipal Advisor ABC included those municipal advisory clients because they are well-known large issuers of municipal securities. Municipal Advisor ABC's website does not contain any explanation about its very minor involvement with certain of the "municipal advisory clients." Also, Municipal Advisor ABC's website does not disclose that some of the municipal advisory services that Municipal Advisor ABC provided to those municipal advisory clients were from fifteen years ago.

Compliance considerations under Rule G-40: Under the facts and circumstances discussed in this Example 5, Municipal Advisor ABC's municipal advisory client list is misleading. Municipal Advisor ABC entitles the list "Ten Recent Representative Municipal Advisory Clients." However, the list includes municipal advisory clients that did not actually engage Municipal Advisor ABC for municipal advisory services and includes municipal advisory clients for which Municipal Advisor ABC has not provided advice for over fifteen years. As noted in the introduction to the hypothetical examples above, Municipal Advisor ABC is a large regional MA with 25 years of experience that engages in municipal advisory activities for multiple municipal advisory clients each year. In addition, "recent" is generally understood to be a period of time that is less than 15 years ago. Municipal Advisor ABC's use of the municipal advisory client list would not comply with Municipal Advisor ABC's obligations under Rule G-40(a)(iv).

3. What standards apply to a municipal advisor's use of a case study in advertising?

While it may be possible for a municipal advisor to generalize about the facts and circumstances concerning the municipal advisor's past or existing engagement in a case study, a municipal advisor's use of a case study in an advertisement remains subject to the standards of Rule G-40(a)(iv). Among other things, the rule requires that all advertisements by a municipal advisor be based on the principles of fair dealing and good faith, and that the statements made in an advertisement be clear and not misleading within the context in which they are made. A municipal advisor must ensure that its use of a case study in advertising is consistent with the municipal advisor's obligations under Rule G-40(a)(iv).

In addition, as a municipal advisor prepares its case study, the municipal advisor should be mindful of its obligations under other MSRB rules. For example, consistent with its obligations under Rules G-17 and G-

¹² As noted above, municipal advisors should consider the potential application of other MSRB rules in connection with all publications of municipal advisory client lists.

42, a municipal advisor must present any case study in a manner that complies with the MSRB's fair dealing and fair practice principles.

- **Example 6:** At its booth at a well-attended public finance industry conference, Municipal Advisor ABC makes available a brochure containing a case study. The case study discusses a recent bond issuance and the services that a municipal advisor provided in that bond issuance. The case study is silent about which municipal advisor advised the municipality on a long-term bond issuance and debt management plan that resulted in a bond rating upgrade but implies that it was Municipal Advisor ABC. Another municipal advisor, not Municipal Advisor ABC, actually provided the advice to the municipality that resulted in the bond rating upgrade.

Compliance considerations under Rule G-40: Under the facts and circumstances presented in this Example 6, Municipal Advisor ABC's use of the case study is misleading. The case study is an advertisement under Rule G-40(a)(i). The case study is written material that would be generally made available to conference attendees, likely more than 25 persons. Those attendees could include representatives from municipal entities, obligated persons and municipal advisory clients.

Further, Municipal Advisor ABC's use of the case study would not comply with Rule G-40(a)(iv). Among other issues, Municipal Advisor ABC would be using a case study that omits material information and that is misleading.¹³ Municipal Advisor ABC, by including the case study with its firm brochure, implies that Municipal Advisor ABC provided the services discussed in the case study, but fails to disclose that another municipal advisor actually provided those services. Municipal Advisor ABC's use of the case study would not comply with Municipal Advisor ABC's obligations under Rule G-40(a)(iv).

Additional Resources

SR-MSRB-2018-01 (January 24, 2018) available at <http://msrb.org/~media/Files/SEC-Filings/2018/MSRB-2018-01-REVISED.ashx>.

Letter from Pamela K. Ellis, Associate General Counsel, Municipal Securities Rulemaking Board, dated April 30, 2018 available at <http://www.msrb.org/~media/Files/SEC-Filings/2018/MSRB-2018-01 MSRB Letter to SEC.ashx>.

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

¹³ *Cf., In re Barcelona Strategies, LLC, et al.* Exchange Act Release No. 83191 (May 9, 2018) (order instituting cease-and-desist proceedings; finding that a municipal advisor and its associated person, among other things, violated MSRB Rule G-17 when the municipal advisor circulated a brochure to municipalities that overstated its experience). Because the conduct in question took place before the effective date of Rule G-40, Rule G-40 did not apply. Nonetheless, the facts of this case illustrate conduct that would likely be violative of Rule G-40 following its effective date.

Municipal Advisors available at <http://msrb.org/~media/Files/SEC-Filings/2018/MSRB-2018-01-REVISED.ashx>.

MSRB Notice 2018-08 SEC Approves Advertising Rule Changes for Dealers and Municipal Advisors available at <http://msrb.org/~media/Files/Regulatory-Notices/Announcements/2018-08.ashx?n=1>.