

Assessing Supervision of Municipal Advisor Advertising Regulations

The Municipal Securities Rulemaking Board (MSRB) is publishing this compliance resource to provide a tool for municipal advisors to assist in evaluating their supervisory controls in the implementation of MSRB Rule G-40, on advertising by municipal advisors. The principles discussed in this compliance resource were established in the MSRB's regulatory filings associated with the development of Rule G-40.¹ This resource highlights key rule provisions or considerations to enhance understanding of the rule. This compliance resource does not create new legal or regulatory requirements, or new interpretations of existing requirements, and municipal advisors, examining authorities and others should not interpret this resource as establishing new standards of conduct.

This resource should be read in conjunction with MSRB rules and interpretations as it does not provide an exhaustive list of considerations for ensuring compliance with all applicable rule(s). The complete text of all MSRB rules and interpretations is available at <http://msrb.org/Rules-and-Interpretations/MSRB-Rules.aspx>.

FREQUENTLY ASKED QUESTIONS²

ADVERTISEMENTS

1. The definition of "advertisement" includes materials published or used in any electronic or other public media. Is that the only form of an advertisement?

No. As a threshold matter, with limited exceptions, any material that relates to (i) the services of the municipal advisor or (ii) the engagement of a municipal advisory client by the municipal advisor may constitute an advertisement under Rule G-40, if such material is:

- ✓ Published or used in any electronic or other public media; or
- ✓ Written or electronic promotional literature distributed or made generally available to municipal entities, obligated persons, municipal advisory clients or the public.

2. If a public financing deal advised on by a municipal advisor is the subject of an article that is generally distributed, but the article was not written by the municipal advisor, would the article be deemed an advertisement?

Even assuming this article includes content regarding the services of the municipal advisor, whether the article is an advertisement by a municipal advisor would depend on the facts and circumstances. If a municipal advisor does not become entangled with or adopt the content of the article, then such article would not be deemed an advertisement because it is not material published, distributed or generally made available by, or on behalf of, the municipal advisor. However, if a municipal advisor solicits the publication of an article or explicitly or implicitly approves or endorses the content of the article, which would include, among other things, sharing the content of an article on

¹ See Exchange Act Release No. 83177 (May 7, 2018); File No. SR-MSRB-2018-01.

² These FAQs address subject matters covered during the MSRB's Compliance Workshops conducted on June 6, 2019 and June 27, 2019. The answers are intended to be read in conjunction with MSRB Rule G-40 and related guidance.

the firm's social media networking site, then the municipal advisor is considered to have become entangled with or adopted the article and it would, therefore, be deemed an advertisement.

3. Under Rule G-40, can a municipal advisor include testimonials in an advertisement?

No. Rule G-40 prohibits a municipal advisor from using any advertisement that refers, directly or indirectly, to a testimonial of any kind concerning the municipal advisor or concerning the advice, analysis, report or other services rendered by the municipal advisor. The prohibition on the use of a testimonial does not apply, however, to material that is not an advertisement (meaning the material is not published or used in any electronic or other public media nor is the material written or electronic promotional literature distributed or made generally available). For example, a response to a request for proposal (RFP) is normally distributed to one potential municipal advisory client and if the RFP is not published, distributed or made generally available, then it is not an advertisement and, consequently, the ban on the use of testimonials in advertisements would not apply.

4. Would a fact-based quote from a municipal advisor client, which bears no opinion from the client about a transaction or a deal, be considered a testimonial, if included on a municipal advisor's website?

Yes. A testimonial appearing on a municipal advisor's website, which is generally considered in and of itself an advertisement, would be prohibited under the rule's general ban on a municipal advisor using, directly or indirectly, testimonials of any kind concerning the municipal advisor or services rendered by the municipal advisor.

5. Under Rule G-40, could a municipal advisor's business card that includes a slogan or tagline, such as "top advisor in the west," be an advertisement?

Yes, certain content on a business card could result in the business card being deemed an advertisement. If the information appearing on a business card is general contact details and general information regarding the municipal advisor, such as an address and the date the municipal advisor was founded, the business card would not be an advertisement because, even though the business card is normally made generally available, the content is typically identifying information about a business and/or individual. However, if a municipal advisor's business card also contains content that is promotional in nature relating to the services

of the municipal advisor or the engagement of a municipal advisory client by the municipal advisor, the business card would be an advertisement. For example, a tagline such as "top advisor in the west" would be promotional regarding the services of the municipal advisor whereas a tagline "convenient downtown location" would not.

6. Under Rule G-40, would presentation slides prepared for and presented at an industry conference be an advertisement?

Yes, if the slides concern the services of the municipal advisor or the engagement of a municipal advisory client and the slides are made available or are distributed to conference attendees, then the presentation slides would be deemed an advertisement.

7. Under Rule G-40, would a municipal advisor's published policy document or white paper that describes generally accepted financing practices and includes a factual description of the municipal advisory services of the municipal advisor be considered an advertisement?

Yes. As described, this white paper concerns, among other things, the services of the municipal advisor, and a published policy document, white paper or other such similar material that is published or generally distributed (e.g., a form letter to more than 25 persons within any period of 90 consecutive days) would be deemed an advertisement.

8. Does Rule G-40 require municipal advisors to reference the source of a statement or representation contained in an advertisement?

Rule G-40 does not require municipal advisors to reference a source of a statement or representation contained in each advertisement; however, in reviewing and approving an advertisement, a municipal advisor should consider whether the advertisement meets the content standards of the rule absent the reference source. More specifically, municipal advisors should consider whether failing to reference a source makes the statement or representation used in an advertisement misleading in light of the context in which the statement or representation is made. An advertisement cannot contain any false, exaggerated, unwarranted, promissory or misleading statements or claims. For example, it could be misleading for an advertisement to refer to a ranking and not give the source of such ranking or suggest the ranking is current when in fact the ranking is dated by a few years.

SUPERVISION

9. Who is required to pre-approve advertisements by a municipal advisor?

An individual acting in the capacity of a municipal advisor principal³ who is qualified with the Municipal Advisor Representative Qualification Examination (Series 50)⁴ must review and pre-approve the municipal advisor's advertisements under Rule G-40; no other qualification, such as the Series 53 or Series 24, qualifies an individual to approve municipal advisor advertising, even if the municipal advisor is also registered as a broker-dealer.

10. Can a sole practitioner review and pre-approve their own advertisements?

Yes. Rule G-44, on supervisory and compliance obligations of municipal advisors, allows a municipal advisor to tailor its written supervisory procedures (WSPs) based on, among other things, the firm's size. A sole practitioner (or small municipal advisor) could establish reasonably designed procedures for compliance with Rule G-40 that include the review and written pre-approval of the firm's advertisements by the sole municipal advisor principal even though, that principal may have also authored or taken part in authoring the advertisement.

11. Should municipal advisors have WSPs to address the use of social media by their associated persons?

Yes. Rule G-44, on supervisory and compliance obligations of municipal advisors, states that a municipal advisor shall establish, implement and maintain a system to supervise the municipal advisory activities of the municipal advisor and its associated persons that is reasonably designed to achieve compliance with applicable securities laws and regulations, which would include compliance with Rule G-40. Therefore, if a municipal advisor permits the use of social media for business purposes, then the municipal advisor would need to establish WSPs to supervise such activities to ensure that its associated persons that use social media in relation to their municipal advisory activities are compliant with the applicable laws and regulations.⁵ In addition, in implementing a supervisory system reasonably designed to ensure compliance, a municipal advisor should

consider whether its associated persons understand their obligations to comply with the firm's policies, including any policy regarding the use of social media.

12. If a municipal advisor has a policy prohibiting associated persons from using social media in relation to the municipal advisory activities of the municipal advisor, is the municipal advisor required to review its associated persons' personal social media account(s) for unsanctioned advertisements?

A municipal advisor is required to establish, implement, maintain and enforce WSPs that are reasonably designed to ensure that the conduct of the municipal advisory activities of the municipal advisor and its associated persons complies with applicable rules. For example, it could be reasonable for a municipal advisor to establish a policy that prohibits its associated persons from using social media with respect to their business activities and WSPs that require annual training to ensure the associated persons understand their obligations under the policy. However, if a municipal advisor becomes aware that its policy is not being adhered to, then the municipal advisor should take action, such as remedial measures or training to maintain and enforce compliance.

13. How can a municipal advisor principal document the review and pre-approval of the municipal advisor's website as an advertisement?

Rule G-44 allows a municipal advisor flexibility in establishing reasonably designed procedures. A municipal advisor could implement procedures that provide, for example, that the content of a municipal advisor's website be reviewed by a municipal advisor principal in hard copy and the approval for the use of the content be obtained by a signature and date handwritten on the printed copy of the web page content. An alternative example would be procedures that require the content of the website to be reviewed by a municipal advisor principal in electronic format and the approval for the use of the content be obtained in an electronic format (e.g., email). If changes are made to a municipal advisor's website, the municipal advisor principal would need to review and approve the modified content prior to first use of the new content on the firm's website.

³ The term "municipal advisor principal" means a natural person associated with a municipal advisor who is directly engaged in the management, direction or supervision of the municipal advisory activities of the municipal advisor and its associated person.

⁴ Once the Municipal Advisor Principal Qualification Examination (Series 54) becomes available, individuals functioning in the capacity of a municipal advisor principal will also need to take and pass the Series 54 exam to become duly qualified.

⁵ Municipal advisors are reminded that their social media use also may be subject to the rules and regulations of other financial regulators, including state regulators.

SUPERVISORY CONSIDERATIONS

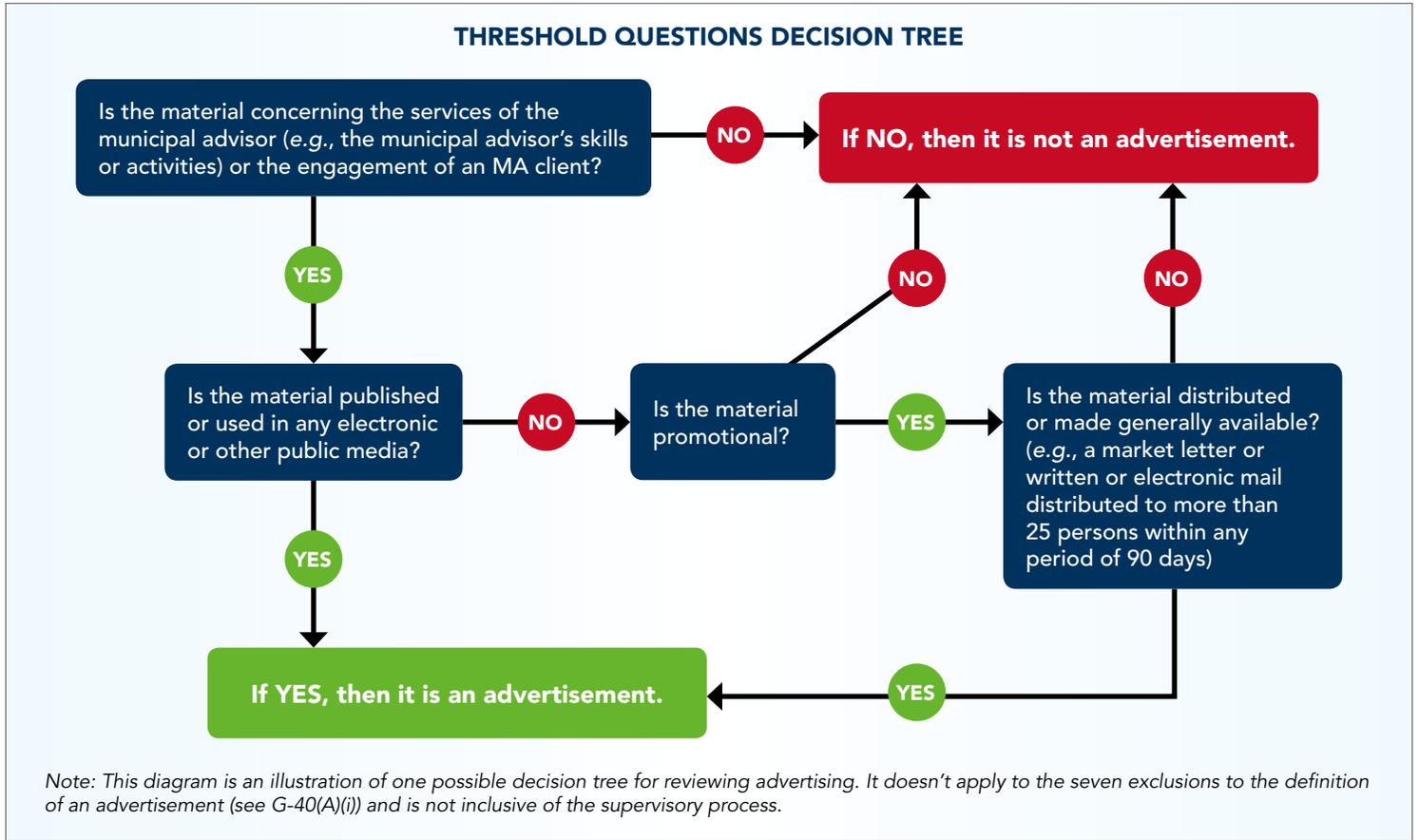
Rule G-44 requires each municipal advisor to establish, implement and maintain a system to supervise the municipal advisory activities of the municipal advisor and its associated persons that is reasonably designed to achieve compliance with applicable rules.⁶ The considerations, illustration and checklist below are provided to aid a municipal advisor in assessing whether its compliance controls are reasonably designed to ensure that its advertisements are reviewed and approved in a manner that is consistent with the standards established in Rule G-40. Recognizing that one firm's approach to compliance may not necessarily be appropriate or reasonable for another firm, municipal advisors should consider their own business model, practices and activities in utilizing this resource.

CONSIDERATIONS FOR WSPS MAY INCLUDE:

- Do the WSPs identify the types of advertisements that the municipal advisor utilizes (e.g., white papers, market letters, form letters or social media)?
- Do the WSPs identify the method and medium for providing advertising materials to the municipal advisor principal for review and approval prior to the first use of an advertisement?
- Do the WSPs identify if that method and medium differs depending on the type of advertisement (e.g., form letters, website or market letters)?
- Do the WSPs identify the name of the designated municipal advisor principal(s) responsible for the review and pre-approval of the municipal advisor's advertisements?
- Do the WSPs identify what training, if any, will be provided to associated persons and how any such training will be delivered and documented?
- Do the WSPs identify the method for maintaining records of the review and approval of advertisements?
- Do the WSPs identify the method and medium for making and maintaining separate file records for all advertisements?

⁶ See Sample Template and Checklist for Municipal Advisors WSPs (March 2018), available at <http://msrb.org/Regulated-Entities/~media/08C04C924B614C05AF63C04E672686C8.ashx?>

CONSIDERATIONS FOR REVIEWING ADVERTISEMENTS MAY INCLUDE:



CONSIDERATIONS FOR CONTENT STANDARDS:

✔ Permitted content ✔ Neutral content consideration ✔ Prohibited content

Topic	Reference	Content Standard Considerations:
Fair and Balanced	G-40(a)(iv)(A)	<ul style="list-style-type: none"> ✔ Is the content and context of the advertisement based on principles of fair dealing? ✔ Is the content and context of the advertisement based on principles of good faith? ✔ Is the content and context of the advertisement fair and balanced? ✔ Does the information in the advertisement provide a sound basis for evaluating the facts in regard to any particular municipal security or type of municipal security, municipal financial product, industry or service? ✔ Is the content of the advertisement clear within the context in which the information is presented? ✔ Is the content of the advertisement misleading within the context in which the information is presented? ✔ Does the advertisement omit any material fact or qualification which could cause the advertisement to be misleading in light of the context of the information presented?

✔ Permitted content ✔ Neutral content consideration ✔ Prohibited content

Topic	Reference	Content Standard Considerations:
Exaggerations/ Misleading Statements	G-40(a)(iv)(B)	<ul style="list-style-type: none"> ✔ Does the advertisement contain any statement or claim that is contrary to a fact? ✔ Does the advertisement contain any exaggerated statement or claim? ✔ Does the advertisement contain any unwarranted statement or claim? ✔ Does the advertisement contain any promissory statement or claim? ✔ Does the advertisement contain any misleading statement or claim?
Legends/ Footnotes	G-40(a)(iv)(C)	<ul style="list-style-type: none"> ✔ Does the advertisement contain a legend or footnote? ✔ If so, does the legend or footnote include any information that is, or could be construed as, important, causing the placement of the information in a legend or footnote to inhibit the reader's understanding of the advertisement?
Risks/Potential Benefits	G-40(a)(iv)(D)	<ul style="list-style-type: none"> ✔ Does the advertisement relate to a municipal financial product or the issuance of a municipal security? ✔ If so, does the advertisement contain the statements necessary to provide a balanced treatment of the risks and potential benefits of the municipal financial product or the issuance of a municipal security? ✔ Are the statements regarding the risks consistent with the risks inherent to the municipal financial product or the issuance of the municipal security?
Audience	G-40(a)(iv)(E)	<ul style="list-style-type: none"> ✔ Is the advertisement designed for a particular audience? ✔ Considering the nature of the audience to which the advertisement will be directed, is the information contained in the advertisement sufficient to provide the details and explanations appropriate to the audience?
Predictions/ Projections	G-40(a)(iv)(F)	<ul style="list-style-type: none"> ✔ Does the advertisement use an investment analysis tool or a written report produced by an investment tool? ✔ Does the advertisement use a hypothetical illustration of mathematical principles? <ul style="list-style-type: none"> ✔ If so, does the illustration predict or project the performance of a municipal financial product? ✔ Does the advertisement otherwise contain content that predicts or projects performance? ✔ Does the advertisement contain content that implies that past performance will recur? ✔ Does the advertisement contain content that makes an exaggerated or unwarranted claim? ✔ Does the advertisement contain content that makes an exaggerated or unwarranted opinion? ✔ Does the advertisement contain content that makes an exaggerated or unwarranted forecast?

✔ Permitted content ✔ Neutral content consideration ✔ Prohibited content

Topic	Reference	Content Standard Considerations:
Testimonials	G-40(a)(iv)(G)	<ul style="list-style-type: none"> ✔ Does the advertisement directly or indirectly contain or refer to any testimonial of any kind concerning the municipal advisor? ✔ Does the advertisement directly or indirectly contain or refer to any testimonial of any kind concerning advice rendered by the municipal advisor? ✔ Does the advertisement directly or indirectly contain or refer to any testimonial of any kind concerning an analysis rendered by the municipal advisor? ✔ Does the advertisement directly or indirectly contain or refer to any testimonial of any kind concerning a report rendered by the municipal advisor? ✔ Does the advertisement directly or indirectly contain or refer to any testimonial of any kind concerning any other service rendered by the municipal advisor?
MSRB Registration	G-40(a)(iv)(H)	<ul style="list-style-type: none"> ✔ Does the advertisement indicate that the municipal advisor is “MSRB registered” consistent with MRSB Rule A-12 (<i>i.e.</i>, it does not indicate that the municipal advisor is a member of the MSRB)? ✔ Is the advertisement clear that the MSRB, nor any other corporate name or facility owned by the MSRB, endorses the municipal advisor’s business practices, services, skills or any specific municipal security or municipal financial product? ✔ Is the advertisement clear that neither the MSRB, or any other corporate name or facility owned by the MSRB, indemnifies or guarantees the municipal advisor’s business practices, services, skills or any specific municipal security or municipal financial product (<i>e.g.</i>, if the advertisement cites the MSRB Series 50 qualification, is it clear that the Series 50 is designed to test broad-based knowledge of the business and regulations applicable to municipal advisory activities and does not confer the degree of knowledge and expertise needed to provide a municipal entity or obligated person client with informed advice as required under MSRB Rule G-42)?
General Standards	G-40(a)(v)	<ul style="list-style-type: none"> ✔ Does the advertisement relate to municipal securities or municipal financial products? ✔ If yes, then regardless of whether the municipal advisor published or disseminated the advertisement or caused the advertisement to be published or disseminated: <ul style="list-style-type: none"> ✔ Does the municipal advisor know or have reason to know that such advertisement contains any untrue statement of material fact? ✔ Does the municipal advisor know or have reason to know that such advertisement is otherwise false or misleading?

ADDITIONAL RESOURCES

[MSRB Notice: SEC Approves Advertising Rule Changes for Dealers and Municipal Advisors](#)

[MSRB Rule G-40: Advertising by Municipal Advisors](#)

[MSRB Rule G-44: Supervisory and Compliance Obligations of Municipal Advisors](#)

[FAQs on Use of Municipal Advisory Client Lists and Case Studies](#)

[Application of the Content Standards to Advertisements by Municipal Advisors under MSRB Rule G-40](#)

[FAQs on Use of Social Media under MSRB Advertising Rules](#)

About the MSRB

The MSRB protects investors, state and local governments and other municipal entities, and the public interest by promoting a fair and efficient municipal securities market. The MSRB fulfills this mission by regulating the municipal securities firms, banks and municipal advisors that engage in municipal securities and advisory activities. To further protect market participants, the MSRB provides market transparency through its Electronic Municipal Market Access (EMMA[®]) website, the official repository for information on all municipal bonds. The MSRB also serves as an objective resource on the municipal market, conducts extensive education and outreach to market stakeholders, and provides market leadership on key issues. The MSRB is a self-regulatory organization governed by a 21-member board of directors that has a majority of public members, in addition to representatives of regulated entities. The MSRB is overseen by the Securities and Exchange Commission and Congress.