

October 17, 2018

Submitted Electronically

Ronald W. Smith
Corporate Secretary
Municipal Securities Rulemaking Board
1300 I Street NW
Washington, DC 20005

RE: Request for Comment on Application of Content Standards to Advertisements by Municipal Advisors under MSRB Rule G-40

Dear Mr. Smith:

On behalf of the Bond Dealers of America (“BDA”), I am submitting this letter to provide comments to the MSRB’s Regulatory Notice 2018-25 (Request for Comment on Application of Content Standards to Advertisements by Municipal Advisors under MSRB Rule G-40) (the “Notice”). BDA is the only DC-based group representing the interests of securities dealers and banks exclusively focused on the U.S. fixed income markets. We welcome this opportunity to present our comments.

The BDA believes that a number of the mock advertisement examples in the Notice are too general or simple to provide meaningful guidance.

The BDA supports the use of mock advertisements as a compliance resource. However, we are concerned that some of the mock advertisements in the draft compliance resource are too simplistic and do not yield guidance on difficult interpretative questions related to the application of content standards to advertisements. For example, in Advertisement No. 1 the advisor states “[w]e always lower our client’s borrowing costs,” which represents a fairly obvious example of a promissory statement not permitted under Rule G-40. More nuanced and complex examples are needed to assist municipal advisors to implement and comply with these new requirements and ensure that examiners have enough details in the compliance resource related to content standards for advertisements.

Following each mock advertisement, the BDA believes the MSRB should provide examples of acceptable content for each concern listed within the advertisement.

The BDA believes that the MSRB needs to be more clear in explaining, for each advertisement, what type of content would comply with the rule—not just what does not comply. The lack of corrections to the mock advertisements creates more confusion and ambiguity as to what is permissible under the content standards. The BDA believes if the mock advertisements contained examples of, or at least specific guidance on, acceptable content, they would result in more helpful guidance.

The BDA disagrees with the MSRB approach in Advertisement No. 2 in which the MSRB states that the reference to DEF Statistical Service does not provide sufficient basis for evaluating the claim.

The BDA believes that MSRB's approach in Advertisement No. 2 does not reflect correctly interpret Rule G-40. Rule G-40 requires that any advertisement "must be based on the principles of fair dealing and good faith, must be fair and balanced, and must 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." With respect to Advertisement No. 2, the BDA believes that Rule G-40 requires the municipal advisor to have a "sound basis" for the claim. But the MSRB's interpretation goes beyond the requirements of Rule G-40. The MSRB's interpretation would require the municipal advisor's reference to "DEF Statistical Service" to be publicly accessible to the client such that the client can validate the claim from publicly available sources. The BDA does not read Rule G-40 as containing this requirement.

* * *

Thank you for the opportunity to provide these comments.

Sincerely,

A handwritten signature in blue ink that reads "Nicholas".

Mike Nicholas
Chief Executive Officer



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Washington, DC 20006
202.204.7900
www.bdamerica.org

November 30, 2018

Pamela K. Ellis
Associate General Counsel
Municipal Securities Rulemaking Board
1300 I Street NW
Washington, DC 20005

RE: Request for More Information on Application of Content Standards to Advertisements by Municipal Advisors under MSRB Rule G-40

Dear Ms. Ellis:

On behalf of the Bond Dealers of America (“BDA”), we welcome the opportunity to provide follow-up comments to the BDA’s comment letter¹ on the MSRB’s Request for Comment on the Application of Content Standards to Advertisements by Municipal Advisors under MSRB Rule G-40 (Notice 2018-25).

As stated in our comment letter, the BDA is concerned that some of the mock advertisements in the draft compliance resource are too simplistic and do not yield guidance on difficult interpretative questions related to the application of content standards to advertisements. We believe that additional nuanced and complex mock advertisement examples are needed to assist municipal advisors to implement and comply with these new requirements and ensure that examiners have enough details in the compliance resource related to content standards for advertisements. Per your request, below are five mock advertisement examples drafted by the BDA membership, which we believe are more nuanced and complex and which may better assist municipal advisors comply with the new content standards under Rule G-40.

We have compiled the five examples based on two categories: 1) The BDA edited two of the mock advertisement examples in the MSRB Notice to provide what we believe may be more meaningful guidance to municipal advisors and 2) The BDA gathered three actual advertisement examples from membership to provide real-world industry advertisements that are nuanced and complex and may be open for interpretation under Rule G-40(a)(iv).

¹ Letter from Mike Nicholas, Chief Executive Officer, Bond Dealers of America, dated October 17, 2018 (the “BDA Letter”)

BDA Edited MSRB Advertisement No. 1

General Print Advertisement

Experience and independence are critical.

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

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! Based on past experience, your borrowing costs will likely be substantially lower if you hire us.

Let us help you!

ABC Municipal
Advisor

Main Concerns about Advertising Content:

“Since 2002, Municipal Advisor ABC has provided high-quality, unbiased advice to the public sector.”

- Use of the term “unbiased” suggests that Municipal Advisor ABC’s advice is always free from conflicts. Municipal Advisor ABC must ensure that this implied claim that its advice has been free 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.

“It takes an independent financial advisor to give genuine independent financial advice.”

- 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 “genuine” 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 basis for this statement, such as a reference to a 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).

“Your borrowing costs will likely be substantially lower if you hire us.”

- The statement that “[y]our borrowing costs will likely be substantially lower if you hire 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, even though it uses the word “likely” and does not guarantee lower borrowing costs. *See* Rule G-40(a)(iv)(A) and (B). In addition, taken together with the phrase “[b]ased on past experience, the statement predicts or projects performance, implies that Municipal Advisor ABC’s past performance will recur, and constitutes an exaggerated or unwarranted claim, opinion, or forecast. *See* Rule G-40 (a)(iv)(F).

BDA Edited MSRB 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

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 municipalities in State A to save financing costs 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: The municipal advisor’s advice on XYZ swaps in State A has been limited to large municipalities. As a result of changes in State A’s law, and under current market conditions, the use of swaps, including XYZ swaps, to lower financing costs is unlikely for any issuer in State A other than a large municipality.

Main Concerns About Advertising Content:

Use of XYZ Swap in State A

- Although the municipal advisor may have advised large municipalities in State A with regard to the use of XYZ swaps, as a result of regulatory developments and market conditions, a school district in State A is unlikely to be able to use these swaps to save financing costs. Accordingly, 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).

BDA Membership Advertisement Example No. 1

Firm Website

FIRM ABC is [a preeminent municipal advisory firm]. We deliver innovative solutions and fresh ideas to our clients in debt and equity financing, strategic, financial and municipal advisory services from our offices across the country. Our deep knowledge of the industry is matched with the knowhow needed to efficiently provide advice with respect to complex transactions of all sizes. With our exclusive focus on healthcare services, medical technology and life sciences, we have an unobstructed view of this rapidly evolving industry that enables us to provide unique perspectives to our clients. (FIRM ABC WEBSITE LINK)

BDA Membership Advertisement Example No. 2

Brochure

Firm ABC – the No. 1 financial 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 Ipreo MuniAnalytics

BDA Membership Advertisement Example No. 3

Firm Website

[NAME OF FIRM] has one of the largest and most diverse housing finance groups in the nation. Our team of more than 30 bankers, quantitative analysts and syndicate specialists works with local and state housing agencies to pinpoint their needs and those of the communities they serve. Our high level of service before, during and after closing is what sets us apart from the competition.

Our institutional salespeople reach virtually every major institutional account throughout the nation.

With a reputation for strong pricing performance and a track record for execution in difficult markets, [NAME OF FIRM] has established itself as a proven leader in underwriting municipal securities.

Client service is our first priority and is defined by our ability to anticipate and exceed our clients' needs.

We are recognized as an industry leader in the structuring, underwriting and marketing of taxable and tax-exempt securities.

We have an unblemished record of excellence.

* * *

If you or your staff has any questions or need additional information, please do not hesitate contact me directly at 202.204.7901 or mnicholas@bdamerica.org. We look forward to your response.

Sincerely,

A handwritten signature in blue ink that reads "M. Nicholas". The signature is written in a cursive, flowing style.

Michael Nicholas
Chief Executive Officer
Bond Dealers of America



October 17, 2018

Mr. Ronald W. Smith
Corporate Secretary
Municipal Securities Rulemaking Board
1300 I Street, NW
Washington, DC 20005

RE: MSRB Notice 2018-25/MSRB Rule G-40 and Content Standards

Dear Mr. Smith:

The National Association of Municipal Advisors (NAMA) appreciates the opportunity to provide comments to the MSRB on its draft compliance resource related to content standards and MSRB Rule G-40. NAMA represents independent municipal advisory firms, and individual municipal advisors (MAs) from around the country. Our members are very interested in understanding Rule G-40 and having tools available in order to implement and comply with the new Rule by the time it becomes effective next February.

General Comments

While the mock advertisements in the Notice are helpful, additional examples are needed to illustrate the overarching impact of Rule G-40. We suggest that the MSRB develop examples for social media platforms such as Twitter and LinkedIn to help Municipal Advisory firms better understand when Rule G-40 is triggered, and what are permissible and not permissible posts in these types of platforms.

The MSRB should also review comments it received in the previous two draft FAQs on social media and client lists and testimonials and determine if there are issues raised in those letters that should be addressed in the content standards FAQ.

In the "FAQs on the Use of Municipal Advisory Client Lists and Case Studies" the MSRB states that information used in pitch books is generally not considered advertising because it does not meet the form letter standard nor are these documents distributed to the public. We suggest that this notion be expanded in new examples within this FAQ document so that MAs can clearly and readily understand that information used in RFPs and pitch books going to specific clients or potential clients would generally not be considered advertising even if the MA firm uses some of the same information in over 25 RFP responses and/or pitch books within 90 days.

Finally, as we note below (and this should be addressed in a broader context), examples of permissible advertisements, and/or what changes could be made to the current examples that would make those examples permissible, would greatly compliment the examples provided in this compliance resource.

Specific Comments

Advertisements 2, 3 and 4 showcase the problem with stating that a firm is ranked as a top municipal advisory firm. Especially in Example 2, the commentary provided by the MSRB is confusing. The MSRB states that providing the

source where the information is derived is not sufficient and that the firm must “provide a sound basis for evaluating the claim.” The MSRB needs to be more clear on what it means to have a sound basis for making a sourced comment and how MA firms can accurately use sourced information in their advertisements. More generally, it is unclear what triggers an obligation to provide precise sourcing information for statements made in advertisements, and what standards might exist for determining whether the specificity of such sourcing meets the new regulatory requirement. We view this as creating an open-ended and nebulous approach to determining what may be acceptable for inclusion in an advertisement.

We are also concerned that the MSRB is introducing into the rule compliance process judgment-based standards derived from FINRA advertising standards (in many cases unpublished or not otherwise generally available to the municipal advisor community) that are currently administered by FINRA. FINRA provides such guidance through an interactive process between its member firms and FINRA’s advertising department that does not exist with respect to municipal advisor advertising and that in many ways is designed to create a safe margin from non-compliance rather than to establish with legal precision what is permitted or prohibited.¹ We believe that municipal advisors should be subject to the rule language that the MSRB has adopted rather than the informal views that have been developed through the non-municipal broker-dealer advertising process established by FINRA. This is particularly problematic as the vast majority of MAs are not subject to FINRA oversight.

The MSRB should also develop an example about when and how providing a hyperlink to a news article is allowable. Example 3 seems to state that the MA firm must read the article and if in that article there is any statement about the firm that could be interpreted as a testimonial, then a hyperlink to that article is not permissible, even though it is a third party news story. This appears to be a subjective rather than objective process.

Further in Example 4, the MSRB seems to be stating that a municipal advisor can not highlight the fiduciary duty standard and how that is applied in practice to clients. We would request that the MSRB provide a permissible reference/example about the role MAs play in a transaction and how best to highlight the benefits of an MA’s fiduciary duty to clients.

In Example 5, could the MSRB state whether an announcement of Mrs. Smith joining the firm would be permissible if it did not specifically state her municipal advisor representative role?

Lastly, we suggest that the examples should note the topic(s) being addressed. We recommend:

Example 1 – Misleading Statements in General Print Advertisements

Example 2 – Misleading Statements in Conference Brochures

Example 3 – Misleading Statements and Testimonials on Firm Website

Example 4 – Misleading Statements on Firm Website

Example 5 – Misleading Statements in Mass Email Communication

Example 6 – Misleading Statements and Not Considering Nature of the Audience in Mass Email Communication

We would welcome the opportunity to further discuss these topics with MSRB staff to ensure that the compliance resources are helpful to the municipal advisor community.

Sincerely,



Susan Gaffney
Executive Director

¹ NAMA wishes to make clear that the observation regarding the lack of a FINRA-like advertising review process should in no way be viewed as suggesting that such a process be instituted for municipal advisors. That would be wholly inappropriate and no justification exists for taking such an intrusive and high-cost approach to solving a non-existent problem.



October 17, 2018

Ronald W. Smith
Corporate Secretary
Municipal Securities Rulemaking Board
1300 I Street NW
Suite 1000
Washington, DC 20005

**Re: MSRB Notice 2018-25: Request for Comment on Application of
Content Standards to Advertisements by Municipal Advisors
under MSRB Rule G-40**

Dear Mr. Smith:

The Securities Industry and Financial Markets Association (“SIFMA”)¹ appreciates this opportunity to respond to Notice 2018-25² (the “Notice”) issued by the Municipal Securities Rulemaking Board (the “MSRB”) in which the MSRB requests comment from market participants and the public on a draft compliance resource regarding the application of the content standards under MSRB Rule G-40 on advertising by municipal advisors. SIFMA and its members appreciate the MSRB’s efforts to provide further guidance on the advertising rules. The mock advertisements generally are helpful and add to the understanding of Rule G-40. SIFMA and its members feel this compliance resource could be particularly useful for smaller municipal advisors, and that additional examples could be helpful. In particular, examples of permissible advertisements would be constructive. We do have comments and a few suggestions for further clarifications as set forth below.

¹ SIFMA is the leading trade association for broker-dealers, investment banks and asset managers operating in the U.S. and global capital markets. On behalf of our industry’s nearly 1 million employees, we advocate on legislation, regulation and business policy, affecting retail and institutional investors, equity and fixed income markets and related products and services. We serve as an industry coordinating body to promote fair and orderly markets, informed regulatory compliance, and efficient market operations and resiliency. We also provide a forum for industry policy and professional development. SIFMA, with offices in New York and Washington, D.C., is the U.S. regional member of the Global Financial Markets Association (GFMA). For more information, visit <http://www.sifma.org>.

² MSRB Notice 2018-25 (September 17, 2018).

I. Harmonization with FINRA Standards and Examination Expectations

FINRA's content standards and the content standards as described in this MSRB guidance are not bright lines tests. The MSRB's guidance generally appears to replicate the feel of a FINRA advertisement review, which is a required but informal process between FINRA and a dealer relating to FINRA advertisements. When a FINRA member submits an advertisement for review by FINRA, discussion ensues during which the FINRA reviewer shares their professional perception of the advertisement, including fine line judgments guided by experience and unofficial guidance. With respect to the MSRB guidance, the dealer is being asked to essentially anticipate the type of responses that a FINRA advertising reviewer would typically ask for, if it were consulted, which is a challenging standard given that the FINRA advertising review team would not actually be part of this review under the MSRB Rules. SIFMA and its members merely want to point out the future compliance challenges with this guidance, particularly for non-dealer municipal advisors who have no history with or oversight by FINRA in any area of their firm. It is precisely the smaller municipal advisors, and those that are only subject to SEC oversight, that most likely need guidance on such fine line distinctions.

II. Citing Statistics and Third-Party Information

Citing to primary source material is an important part of compliance with Rule G-40(a)(iv)(A), to ensure that the advertisement provides a sound basis to evaluate the facts in regard to the municipal advisory service. SIFMA members are concerned about the suggestion that a firm cannot use statistics or third-party information in an advertisement unless the reader can access the material in its original form or format.³ However, such form or format may not be available to the reader for a host of reasons. Cited sources may be fee-based services or have statistics behind a pay-wall. Publicly posting or circulating such source material may violate the user's subscription agreement, and it would likely not be seen to be comporting with the doctrine of fair use.⁴ In these instances, SIFMA and its members are concerned about what documentation would be sufficient to satisfy the relevant examiner. A reasonable approach would be to require a dealer to provide the backup source material only upon request. For all of the above reasons, we have concerns about the draft advertisements, and the comment that references

³ Also, see generally, FINRA 2210.

⁴ See generally, <https://www.copyright.gov/fair-use/more-info.html>.

therein must be sufficient to allow a reader to access the relevant source information.

III. Use of Marketing Names

In Advertisement No. 2, the MSRB notes that there is a concern regarding which entity is providing investment banking services. Although in this instance, the MSRB's concern about potential confusion is understood, it does beg the question as to how an entity can permissibly use a marketing name. An example clarifying this point would be constructive.

IV. Additional Examples

As discussed above, additional examples of permissible or acceptable advertisements would be helpful and constructive. To start, SIFMA and its members would appreciate examples that set forth an acceptable way of using a marketing name or names in an advertisement. Further, for each of the mock ads in the Notice, it would be helpful if the MSRB either provided specific guidance as to how to remedy the non-compliant language or provided examples of compliant advertisements. Also, it is important to remember that municipal advisors work on a wide range of issues, that are not limited in scope to debt issuance. Specifically, there are many municipal advisors who give advice on the investment of bond proceeds. Another potential topic would be 529 advertisements. Examples of permissible advertisements in this area would also be helpful.

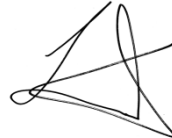
V. Conclusion

Again, SIFMA and its members appreciate the MSRB's efforts to provide a compliance resource regarding the application of the content standards under MSRB Rule G-40, on advertising by municipal advisors, and any consideration given to our comments herein. In addition to our suggestions above, we continue to believe the industry would benefit from MSRB guidance on other issues such as: the definition of advertising and exemptions thereof, especially related to RFP responses and correspondence with clients; documentation standards; expectations of firms that are both broker dealers and municipal advisors to conform to both MSRB Rules G-21 and G-40; and meeting both FINRA 2210 standards and MSRB Rules G-21 and G-40 rulemaking when they are incompatible. We would be pleased to discuss any of these comments in greater detail, or to provide any other

Mr. Ronald W. Smith
Corporate Secretary
Municipal Securities Rulemaking Board
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assistance that would be helpful. If you have any questions, please do not hesitate to contact the undersigned at (212) 313-1130.

Sincerely yours,

A handwritten signature in black ink, appearing to be 'L. Norwood', written in a cursive style.

Leslie M. Norwood
Managing Director and
Associate General Counsel

cc: ***Municipal Securities Rulemaking Board***
Lynnette Kelly, Executive Director
Michael Post, General Counsel
Lanny Schwartz, Chief Regulatory Officer
Pamela K. Ellis, Associate General Counsel



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October 17, 2018

Ronald W. Smith, Corporate Secretary
MSRB
1300 I Street NW
Washington DC 20005

submitted via email

Re: Request for Comment on Application of Content Standards to Advertisements by Municipal Advisors Under MSRB Rule G-40

Dear Mr. Smith,

Springsted Incorporated is a registered Municipal Advisor that has operated as a non-dealer municipal advisor since the early 1950's. The firm is a charter member of the National Association of Municipal Advisors (NAMA) and I currently serve on NAMA's Public Affairs Committee which offers comments on regulatory matters as part of the Committee's responsibilities. As such I have participated in the development of NAMA's separately provided comments on this subject matter and support NAMA's position as presented in its letter.

The analysis of mock advertisements is very helpful as we all work to understand the day-to-day impact of the new rule on our individual operations. The NAMA response has commented on how the content and form of the proposed document could be changed to increase its utility. I would add that additional examples are always helpful, perhaps some that deal with items that are considered advertising but don't present themselves obviously as advertising in the way that the example ads do. Potential examples might include conference booths, promotional handouts that will be distributed to more than 25 individuals or social media postings.

Thank you for your consideration.

Respectfully,

A handwritten signature in blue ink, appearing to read "Kathleen A. Aho".

Kathleen A. Aho, CIPMA
President