MSRB
Municipal Securities Rulemaking Board

Regulatory Notice

2017-04

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Stakeholders
Municipal Securities Dealers, Municipal Advisors

Notice Type
Request for Comment

Comment Deadline
March 24, 2017

Category
Fair Practice

Affected Rules
Rule G-21

Request for Comment on Draft Amendments to MSRB Rule G-21, on Advertising, and on Draft Rule G-40, on Advertising by Municipal Advisors

Overview

The Municipal Securities Rulemaking Board (MSRB) is requesting comment on draft amendments to MSRB Rule G-21, on advertising, and on new draft MSRB Rule G-40, on advertising by municipal advisors.[1] The draft amendments to Rule G-21, applicable to brokers, dealers and municipal securities dealers (collectively, "dealers") would update as well as harmonize Rule G-21 with certain provisions of the advertising rules of other financial regulators. Further, consistent with the MSRB's regulation of dealers under Rule G-21, draft Rule G-40 would address advertising by municipal advisors.

Comments should be submitted no later than March 24, 2017, and may be submitted in electronic or paper form. Comments may be submitted electronically by clicking here. Comments submitted in paper form should be sent to Ronald W. Smith, Corporate Secretary, Municipal Securities Rulemaking Board, 1300 I Street, NW, Suite 1000, Washington, DC 20005. All comments will be available for public inspection on the MSRB's website.[2]

[1] At this juncture, the MSRB is requesting comment on the draft amendments to Rule G-21 and on draft Rule G-40. The MSRB may or may not determine to proceed beyond requesting comment. *See* discussion on Draft Rule G-40 below. Further, as with any potential rulemaking, the MSRB may revise the potential rulemaking that it may file with the Securities and Exchange Commission (SEC) from the draft amendments to Rule G-21 and draft Rule G-40 set forth in this request for comment. The MSRB may make those revisions in response to comments from market participants or otherwise.

[2] Comments generally are 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 should only submit information that they wish to make available publicly.

(ii) *Definition of "Form Letter."* For purposes of this rule, the term "form letter" means any written letter or electronic mail message distributed to more than 25 persons within any period of 90 consecutive days.

(iii) *Definition of Municipal Advisory Client.* For the purposes of this rule, the term municipal advisory client shall include either a municipal entity or obligated person for whom the municipal advisor engages in municipal advisory activities as defined in Rule G-42(f)(iv), or a broker, dealer, municipal securities dealer, municipal advisor, or investment adviser (as defined under section 202 of the Investment Advisers Act of 1940) on behalf of whom the municipal advisor undertakes a solicitation of a municipal entity or obligated person, as defined in Rule 15Ba1-1(n), 17 CFR 240.15Ba1-1(n), under the Act.

(iv) *Content Standards.*

(A) All advertisements by a municipal advisor, 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.

(B) No municipal advisor may make any false, exaggerated, unwarranted, promissory or misleading statement or claim in any advertisement.

(C) A municipal advisor may place information in a legend or footnote only in the event that such placement would not inhibit a municipal advisory client's understanding of the advertisement.

(D) A municipal advisor must ensure that statements are clear and not misleading within the context in which they are made, and that they provide 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.

(E) A municipal advisor must consider the nature of the audience to which the advertisement will be directed and must provide details and explanations appropriate to the audience.

(F) An advertisement may not predict or project performance, imply that past performance will recur or make any exaggerated or unwarranted claim, opinion or forecast; provided, however, that this paragraph (a)(iv)(F) does not prohibit:

(1) A hypothetical illustration of mathematical principles, provided that it does not predict or project the performance of a municipal financial product; and

(2) An investment analysis tool, or a written report produced by an investment analysis tool.

(G) A municipal advisor shall not, directly or indirectly, publish, circulate or distribute 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.

(H) A municipal advisor may indicate registration with the Municipal Securities Rulemaking Board in any advertisement that complies with the applicable standards of all other rules of the Board and that neither states nor implies that the Municipal Securities Rulemaking Board or any other corporate name or facility owned by the Municipal Securities Rulemaking Board, or any other regulatory organization endorses, indemnifies, or guarantees the municipal advisor's business practices, services, skills, or any specific municipal security or municipal financial product.

(v) *General Standard for Advertisements*. Subject to the further requirements of this rule relating to professional advertisements, no municipal advisor shall publish or disseminate, or cause to be published or disseminated, any advertisement relating to municipal securities or municipal financial products that such municipal advisor knows or has reason to know contains any untrue statement of material fact or is otherwise false or misleading.

(b) *Professional Advertisements*.

(i) *Definition of "Professional Advertisement."* The term "professional advertisement" means any advertisement concerning the facilities, services or skills with respect to the municipal advisory activities of the municipal advisor or of another municipal advisor.

(ii) *Standard for Professional Advertisements*. No municipal advisor shall publish or disseminate, or cause to be published or disseminated, any professional advertisement that contains any untrue statement of material fact or is otherwise false or misleading.

(c) *Approval by Principal*. Each advertisement subject to the requirements of this rule must be approved in writing by a municipal advisor principal prior to first use. Each municipal advisor shall make and keep current in a separate file records of all such advertisements.

ALPHABETICAL LIST OF COMMENT LETTERS ON NOTICE 2017-04 (FEBRUARY 16, 2017)

1. Acacia Financial Group, Inc.: Letter from Noreen P. White, Co-President, and Kim M. Whelan, Co-President, dated April 7, 2017

2. Bond Dealers of America: Letter from Mike Nicholas, Chief Executive Officer, dated March 24, 2017

3. Fidelity Investments: Letter from Norman L. Ashkenas, Chief Compliance Officer, Fidelity Brokerage Services, LLC, Richard J. O'Brien, Chief Compliance Officer, National Financial Services, LLC, and Jason Linde, Chief Compliance Officer, Fidelity Investments Institutional Services Company, LLC, dated March 24, 2017

4. Financial Services Institute: Letter from David T. Bellaire, Executive Vice President and General Counsel, dated March 24, 2017

5. Lewis Young Robertson & Burningham, Inc.: Letter from Laura D. Lewis, Principal, dated March 24, 2017

6. National Association of Municipal Advisors: Letter from Susan Gaffney, Executive Director, dated March 24, 2017

7. PFM: Letter from Leo Karwejna, Chief Compliance Officer, Cheryl Maddox, General Counsel, and Catherine Humphrey-Bennett, Municipal Advisory Compliance Officer, dated March 23, 2017

8. Securities Industry and Financial Markets Association: Letter from Leslie M. Norwood, Managing Director and Associate General Counsel, dated March 24, 2017

9. Strategic Insight: Letter from Paul Curley, Director of College Savings Research, dated May 16, 2017

10. Third Party Marketers Association: Letter from Donna DiMaria, Chairman of the Board of Directors and Chair of the 3PM Regulatory Committee, dated March 23, 2017

11. Wells Fargo Advisors: Letter from Robert J. McCarthy, Director of Regulatory Policy, dated March 24, 2017

ACACIA
FINANCIAL GROUP, INC.

601 Route 73 North
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April 7, 2017

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

Re: Regulatory Notice 2017-04, Request for Comment on Draft Amendments to MSRB Rule G-21 on Advertising and on Draft MSRB Rule G-40 on Advertising by Municipal advisors

Dear Mr. Smith:

Acacia Financial Group, Inc. is a national financial advisory firm that serves high profile issuers, local small issuers and infrequent issuers. We are supportive of establishing a regulatory regime for municipal advisors, however, with respect to Rule G-40, we agree with other commenters that this rule is unnecessary and applies a regulatory burden and cost which is not proportional to the MSRB's stated goal of preventing misleading information to investors, issuers or obligated persons. The core rules of G-17 coupled with G-42 and the fiduciary duty required under Dodd-Frank provides ample regulation to prevent false or misleading statements by municipal advisors.

In an attempt to have parallel rules for broker-dealers and municipal advisors, the MSRB is needlessly drafting a rule which is more applicable to the selling of municipal financial products rather than municipal advisor services. For example, almost all prospective clients will receive materials regarding our "firm resume" containing our qualifications and services, resumes of professionals, case studies and tailored financial analysis. This is the same material provided to prospective clients through their procurement process which could include a formal RFQ/RFP/RFI process or an informal request for information on the firm. The existing regulatory framework would clearly govern false or misleading statements in those materials.

If the MSRB wants to pursue the regulation of advertisements by municipal advisors, then more thought needs to be given as to what constitutes an advertisement and it needs to be targeted to the professional services provided by Municipal advisors as opposed to the selling of municipal financial products. Municipal advisors make recommendations on the use of various financial products, however, G-42 would govern this activity. Any rule on advertisements should clearly differentiate between these items.

In reconsidering G-40, we would recommend the exclusion of responses to both formal and informal requests for information, proposals and qualifications, client lists, case studies, resumes, tailored financial analysis and factual information regarding types of financing products and general market conditions. Additionally, clarification would be needed regarding the materials noted above as whether if provided to clients, as opposed to prospective clients, if they would constitute advertisements. An argument could be made that providing refunding analyses, factual information on types of financing vehicles and the pros

and cons of such instruments would not and should not constitute advertisements and the recommendations made by advisors as noted previously would be covered by G-42. Finally, as many municipal advisors have web sites, guidance would need to be given as to how G-40 would apply, if at all to the materials posted.

In the comment notice, there were several questions raised and the following addresses some of those areas:

Role of municipal advisors in the development or distribution of municipal security product advertisements, new issue product advertisements and or municipal fund security product advertisements: Municipal advisors advise clients on the use of various securities and do not advertise these products and generally have no role in development of advertisements used to sell these products.

Marketing of non-security products: The MSRB would be over reaching if it attempted to regulate the use of non-security products. While there may be a subset of advisors who engage in this activity, we can see no nexus for the MSRB to become involved in non-security related regulations.

G-40 benefits in municipal advisor selection: In the notice, the MSRB states its belief that advertising regulations will improve the selection process of municipal advisors. We disagree with this statement as numerous issuers hire municipal advisors through some type of competitive process and we believe the provision of materials in response to such a solicitation should not be deemed an advertisement and such materials are already governed by existing rules.

As a former member of the MSRB who was an active participant in the drafting of the first set of rules for municipal advisors that were subsequently withdrawn, I would urge the Board to focus on the unique services provided by advisors. The effort to level the playing field or to automatically subject non-dealer municipal advisors to the same rules as broker dealers does not acknowledge the differences between the roles broker dealers and municipal advisors play in the financial markets. Simply duplicating rules in an effort to minimize the disruption to the existing compliance regimes of broker-dealers is not an appropriate metric for rulemaking. I would urge the Board to craft regulations with an eye to the services provided, recognizing the best way to level the playing field is adopting rules that accurately reflect these roles.

Sincerely,

Noreen P. White
Co-President

Kim M. Whelan
Co-President

BDA Bond Dealers of America

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March 24, 2017

Submitted Electronically

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

RE: Request for Comment on Draft Amendments to MSRB Rule G-21 on Advertisements and Proposed MSRB Rule G-40 for Municipal Advisor Advertisements (2017-14)

Dear Mr. Smith:

On behalf of the Bond Dealers of America ("BDA"), I am pleased to submit this letter in response to the MSRB's request for comment on proposed draft amendments to MSRB Rule G-21 on Advertisements and on proposed MSRB Rule G-40 on Municipal Advisor Advertisements. The BDA supports harmonization of MSRB rules with FINRA rules to create compliance clarity and efficiencies. This request for comment outlines a confusing approach that harmonizes G-21 with FINRA 2210 in some areas while harmonizing Rule G-21 and G-40 with existing SEC rules applicable to investment advisers in other areas. The BDA believes that the MSRB should revise both rules by tightly conforming Rule G-21 to FINRA 2210 and changing Rule G-40 to tailor it to the context of the municipal advisory relationship.

BDA disagrees with how MSRB conceptualizes harmonization.

We disagree with the order of priority that the MSRB places on harmonization. The MSRB has chosen to prioritize the harmonization of MSRB G-21, applicable to broker-dealers with MSRB G-40, which is applicable to municipal advisors. However, MSRB G-40 contains some elements of SEC rules applicable to investment advisers. These elements, including the prohibition on testimonials, are not found in FINRA 2210, the existing broker-dealer rule for communication with the public applicable to the corporate securities market. This has led to the odd result that dealers in the municipal securities market will need to live under a different regime than dealers in the corporate securities market.

BDA members believe that proper harmonization of the two broker-dealer regimes is essential. When MSRB rules applicable to dealers do not harmonize with FINRA rules, it imposes a significant compliance burden on dealers to create two compliance regimes that become easy to confuse and time consuming to implement and enforce. The BDA believes that the MSRB needs to harmonize Rule G-21 with FINRA 2210.

MSRB should publish a request for comment that more fully harmonizes MSRB G-21 with the FINRA 2210 framework.

The primary reason why the BDA does not support the proposed amendments to MSRB Rule G-21 is that the MSRB sought to primarily harmonize the rule with new Rule G-40 instead of FINRA 2210, which governs a wide range of communications with the public. For BDA members, there are two essential parts of harmonization with FINRA 2210. In order for harmonization of MSRB rules with FINRA rules to be successful, MSRB must follow this framework.

1. FINRA 2210 is focused on three categories of communication with the public as outlined by FINRA 12-29.[1] These categories are: institutional communication, retail communication, and correspondence.
2. The requirements of the FINRA 2210 rules are dependent on who, in terms of retail versus institutional, receives the communication. Additionally, with respect to rules applicable to correspondence, the applicability of the rule is dependent on how many ***retail*** investors receive the correspondence within a 30 calendar-day period.

If MSRB has a rule that applies different definitions and different sets of responsibilities to municipal securities and does not differentiate between communications sent to retail and institutional customers, it will have created a new and unnecessarily increased regulatory burden along with considerable confusion for broker-dealers.

BDA urges the MSRB to strike the definition of "advertisement" as a part of harmonizing with FINRA 2210.

BDA notes that the definition of "advertisement" only exists in MSRB Rule G-21 and that the MSRB's definition of "form letter" differs in crucial ways from FINRA's definition of "correspondence". BDA believes, as part of harmonization, that the MSRB should take the following actions as it tailors its communication rules to focus on the three categories of communication in FINRA 2210: retail, institutional, and correspondence.

[1] http://www.finra.org/sites/default/files/NoticeDocument/p127014.pdf

1. Strike the definition of "Advertisement": MSRB should pursue harmonization with FINRA 2210 and the materials that are included and excluded from the scope of the rule should be addressed in the section of the rule specifically dealing with what retail communications should be required to be pre-approved by a principal.
2. The definition of "Form Letter" should be amended to focus exclusively on retail communications.
3. The definitions of standards for "Product Advertisement" and "Professional Advertisement" are made redundant by the inclusion of the proposed general and content standards of proposed G-21 and G-40. These provisions should be deleted to signify that these types of communications are covered by the general and content standards of the proposed rule.

BDA believes that only retail communication should require pre-approval by a principal. Correspondence and institutional communication should be exempt from the pre-approval requirements.

BDA members strongly urge the MSRB to follow the existing framework of FINRA 2210. The FINRA framework requires pre-approval by a principal or supervisory analyst of retail communications prior to first use. However, FINRA appropriately does not apply the same standard to institutional communications.

BDA urges the MSRB to create institutional standards that are harmonized with the existing framework of FINRA 2210, which requires a firm to have written supervisory procedures that establish guidelines for the review of institutional communications designed to ensure compliance with applicable standards. Furthermore, FINRA 2210 requires that documented and supervised personnel education policies are in place to ensure member firm personnel are informed of the communication standards when pre-review of institutional communications is not required by the firm.

BDA believes that, just like free writing prospectuses are excluded from FINRA 2210, investor roadshows and similar materials should be excluded from the scope of Rule G-21. The exclusion should also include other common materials not intended as advertisements, such as RFPs and RFQs sent to issuers.

As a part of its harmonization effort, the MSRB should exclude materials that are comparable to offering materials that accompany preliminary official statements, such as investor roadshow presentations and other similar materials information. In addition, there are several other materials that should be excluded. First, private placement memorandum and limited offering memorandum are frequently used as offering memoranda and thus should be excluded alongside preliminary official statements.

Second, both underwriters and municipal advisors respond to RFPs and RFQs and those responses may be made public and could fall into the current definition of "form letter". BDA does not believe it is appropriate to regulate responses to RFPs and RFQs in the same way as retail communications, requiring principal approval for each RFP and RFQ response that is sent to an issuer. The MSRB should follow the framework of FINRA 2210, which defines "correspondence" as a communication to 25 or more retail investors. The MSRB notes in the request for comment that if 25 or more persons receive the response, it would meet the definition of "form letter". BDA does not believe that is appropriate. Responses to RFQs and RFPs should be explicitly excluded from the coverage of both Rule G-21 and G-40.

If the MSRB choses to not harmonize the definition of "form letter" with the FINRA 2210 definition of "correspondence", the BDA recommends that the MSRB clearly define that a response to an RFP or RFQ sent to one issuer is not a "form letter" irrespective of how many employees of that one issuer, including 25 or more employees, subsequently receive the response.

BDA does not think MSRB's prohibition on testimonials in both Rule G-21 and Rule G-40 is warranted.

FINRA 2210 does not prohibit testimonials and BDA members do not see any broad-based investor protection rationale to prohibit testimonials for municipal securities. MSRB should include the same disclosure provisions as FINRA 2210, which rely on disclosure of potential conflicts related to testimonials. Furthermore, BDA does not believe that because the average age of a municipal bond investor is 61, as MSRB notes in footnote 14, that means that the average municipal bond investor lacks the cognitive ability to understand a testimonial or its associated disclosures.

Additionally, BDA notes that prohibiting testimonials would harmonize with existing rules applicable to investment advisers, not existing broker-dealer regulations. It is unclear why the MSRB would pursue this policy. It is confusing and naturally inconsistent to pursue a patchwork approach that takes portions of FINRA rules applicable to broker-dealers along with SEC rules applicable to investment advisers and label that approach harmonization.

BDA does not think the MSRB's inclusion of a principal approval requirement in Rule G-40 makes sense given the context of the municipal advisory relationship.

By definition, all clients of municipal advisors are institutions and do not need many of the mechanistic protections applicable to dealer relationships with retail investors. This is a point where harmonization with Rule G-21 (and SEC investment

adviser rules) does not make sense. Municipal advisory firms should be required to develop policies and procedures and be required to educate and train their municipal advisory professionals. But given the audience of advertisements by municipal advisors, the BDA does not believe that a principal needs to approve every advertisement.

* * *

In conclusion, while the BDA appreciate the MSRB's efforts to harmonize its rules with FINRA's rules, it cautions MSRB that harmonization that results in differing standards harms dealers. There is no compelling policy reason to have different communication standards for municipal securities and corporate securities. BDA urges MSRB to focus on full harmonization between Rule G-21 and FINRA 2210.

Thank you for the opportunity to provide these comments.

Sincerely,

Mike Nicholas
Chief Executive Officer

March 24, 2017

Submitted electronically

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

Re: MSRB Regulatory Notice 2017-04: Request for Comment on Draft Amendments to MSRB Rule G-21, on Advertising, and on Draft Rule G-40, on Advertising by Municipal Advisors

Dear Mr. Smith:

Fidelity Investments[1] ("Fidelity") appreciates the opportunity to respond to the Municipal Securities Rulemaking Board's ("MSRB's") Regulatory Notice 2017-04 (the "Proposal").[2] Among other items, the Proposal would update, as well as harmonize, MSRB Rule G-21, applicable to brokers, dealers and municipal securities dealers (collectively, "dealers"), with certain provisions of the advertising rules of other financial regulators, notably the SEC and FINRA.

Fidelity submits this letter on behalf of several affiliated Fidelity broker-dealers[3] that advertise municipal bonds and municipal fund securities through 529 programs managed by Fidelity.[4] Fidelity has also been selected as the ABLE Program Manager for the Massachusetts ABLE Program and anticipates advertising this new product once it is available. Thus, Fidelity's comments reflect the views of multiple broker-dealers that advertise municipal products across different programs that will be affected by the Proposal.

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[1] Fidelity is one of the world's largest providers of financial services. Fidelity provides investment management, retirement planning, portfolio guidance, brokerage, benefits outsourcing and many other financial products and services to more than 20 million individuals and institutions, as well as through 10,000 financial intermediary firms.

[2] *See* MSRB Regulatory Notice 2017-04; *Request for Comment on Draft Amendments to MSRB Rule G-21, on Advertising, and on Draft Rule G-40, on Advertising by Municipal Advisors* (January 2017) *available at* http://www.msrb.org/~/media/Files/Regulatory-Notices/RFCs/2017-04.ashx?n=1 Unless otherwise defined in this letter, capitalized terms have the meanings ascribed to them in the Proposal.

[3] Fidelity Brokerage Services, LLC, National Financial Services LLC, and Fidelity Investments Institutional Services Company are affiliates of Fidelity Investments and MSRB, SEC and FINRA registered broker-dealers.

[4] Fidelity manages The UNIQUE College Investing Plan, U. Fund College Investing Plan, Delaware College Investment Plan, and Fidelity Arizona College Savings Plan which are offered by the state of New Hampshire, Massachusetts Educational Financing Authority, the state of Delaware, and the Arizona Commission for Postsecondary Education, respectively.

Fidelity fully supports MSRB efforts to harmonize certain provisions of its advertising requirements with those of other financial regulators, including FINRA and the SEC. Retail investors benefit from consistent disclosures across similar products. Moreover, given the large segment of dealers that are registered with both the MSRB and FINRA, harmonization of certain FINRA and MSRB advertising rules will promote efficiencies at member firms. Our comments include the following points:

EXECUTIVE SUMMARY

- The MSRB should review and endeavor to adopt FINRA rules and guidance under FINRA Rule 2210, in particular FINRA guidance on hyperlinks, investment analysis tools, and social media;

- The MSRB should permit the use of testimonials in dealer communications; and

- The MSRB should consider additional ways to stay engaged on current methods by which dealers communicate with their customers.

Each of these points is discussed in further detail below.

The MSRB should review and endeavor to adopt FINRA interpretations under FINRA Rule 2210.

Because municipal and municipal fund securities are regulated by the MSRB, their sales material must comply with MSRB rules, including MSRB Rule G-21, concerning dealer advertisements. Additionally, certain sales materials for municipal fund securities must comply with the advertising rules of the SEC and FINRA, including FINRA Rule 2210. Thus, in creating a communication that references municipal securities and/or municipal fund securities, dealers who are registered with both the MSRB and FINRA must consult at minimum, three different rule sets (MSRB, FINRA, SEC) to ensure that their communications are compliant. In practice this can result in advertisements that are short on substantive content, but lengthy in regulatory disclosures.

We acknowledge challenges in designing rules that are consistent across regulators, dealers, and similar products, but believe that retail investors and market participants are well served by rules that are uniform in design and approach. This is particularly true in the area of public communications which are by their nature intended to advertise and help educate investors about specific products.

To help make regulations more efficient and effective, we encourage the MSRB to review existing and upcoming FINRA guidance concerning communications with the public and where at all possible adopt this guidance as their own. We encourage the MSRB to engage with FINRA during the rulemaking process or comment on FINRA proposals directly, so that

potential MSRB concerns and questions can be addressed.[5] Coordinated SRO regulation of dealer communications with the public is a more efficient and effective form of regulation than two different set of regulations governing similar content.

Moreover, greater alignment of FINRA and MSRB advertising rules will help facilitate compliance across MSRB and FINRA registered firms through the creation of common standards. In contrast, to the extent that the MSRB does not adopt particular FINRA guidance or rules regarding communications with the public, we urge the MSRB to clearly articulate its reasons for not doing so, and publicize this difference to dealer firms. Our comments that follow emphasize this approach.

Hyperlinks

In our experience, simple, clear communications help empower investors to make investing decisions that are in their best interest. Too much information can overwhelm investors, leading to confusions and/or inaction. Clear communications increase a retail investor's ability to make informed investment decisions, particularly if the information is packaged in a format and context that is understandable and actionable by the average investor.

The draft amendments to Rule G-21 would permit the use of hyperlinks to obtain more current municipal fund security performance information. We fully support these draft amendments and believe that hyperlinks are a commonly used method of communication, well understood by investors, through which investors can obtain additional details on facts that matter to them.

We also encourage the MSRB to permit the use of hyperlinks more broadly and in other advertising contexts outside of municipal fund security performance information. For example, the MSRB should allow dealers to provide hyperlinks to EMMA as a way to convey more information to retail investors outside of the four corners of an advertisement. As the official repository for information on virtually all municipal bonds and municipal fund securities, EMMA contains a significant amount of detailed information for investors. Moreover, based on MSRB improvements to the site, EMMA has been designed as an easy to navigate site.

We also foresee that ABLE Program communications will have some additional complexities, which will result in significantly more disclosure in these advertisements. For example, ABLE Program advertisements will likely reference disability benefits and governmental programs, and the ability for dealers' to include hyperlinks to certain external governmental sources (*i.e.*, the Social Security Administration or Internal Revenue Service) would be helpful to dealers while also providing guidance to prospective and current customers on where to find more information on these important and complicated topics.

[5] We similarly encourage FINRA to work with the MSRB on MSRB proposals concerning communications with the public, and also look to the SEC to help coordinate rules governing communications with the public between FINRA and the MSRB.

Lastly, over the past few years, FINRA has been more receptive to the use of hyperlinks in member firm communications. We encourage the MSRB to consider ascribing to FINRA interpretations regarding hyperlinks as FINRA continues to develop guidance on this topic, and to work with FINRA so these interpretations reflect MSRB input.

Investment Analysis Tools

The draft amendments to Rule G-21 prohibit a dealer from using an advertisement that, in part, predicts or projects performance, but do not prohibit the use of an investment analysis tool. We support MSRB advertising rules that permit the use of investment analysis tools under certain conditions.

Investment analysis planning tools can help retail investors in a number of ways. For example, in the college planning context, such tools can help investors determine their savings goals and how much they will need to save to reach them; how inflation could increase the cost of college; and what the investor's savings might be worth when it's time for college. The use of investment analysis in these tools, typically through Monte Carlo simulation, can help investors understand a range of potential outcomes and how uncertainty affects planning for future college expenses.

FINRA rules permit the presentation of projections in certain contexts. FINRA Rule 2210 provides a limited exception to FINRA's general prohibition against predictions or projections of performance for investment analysis tools and hypothetical illustrations of mathematical principals, among other areas. Moreover, as the MSRB references in the Proposal, FINRA has issued a request for comment on a new exception to FINRA Rule 2210 which would permit a firm to distribute a customized hypothetical investment planning illustration that includes the projected performance of an asset allocation or other investment strategy subject to specified conditions, but would not permit performance projections of individual securities.[6]

We encourage the MSRB to review and adopt FINRA guidance on predictions and projections. If the MSRB is attempting to harmonize certain of its advertising rules to those of FINRA, we do not see the need for a different regulatory approach on this particular topic.

Social Media

MSRB Rule G-21 applies to advertisements, regardless of whether electronic or other public media, including social media, is used with those advertisements. The MSRB has not yet issued specific guidance on the use of social media by MSRB registered dealers and we agree that such guidance would be helpful. Dealers can use social media in many different ways to communicate with retail investors, and regulatory guidance on this topic can help ensure that dealers are using social media pursuant to guidelines established by the MSRB.

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[6] *See* FINRA Regulatory Notice 17-06 *Communications with the Public, FINRA Requests Comment on Proposed Amendments to Rules Governing Communications with the Public.* (February 2017) available at: http://finra.complinet.com/net_file_store/new_rulebooks/r/e/Regulatory-Notice-17-06.pdf

In recent years, different financial regulators have considered and provided guidance on the application of their communications rules to new technologies. This is often an iterative process as new technologies continue to develop and their application to communication rules needs to be continuously assessed. On the topic of social media, FINRA has provided guidance on the application of its rules governing communications with the public to social media sites and has provided periodic clarification concern application of these rules to new technologies. For example, we understand that FINRA is currently working on a new social media Q & A that will permit the use of hyperlinks to layer disclosure. We encourage the MSRB to review this guidance with FINRA prior to its public release to address any MSRB concerns with the goal of its wholesale application to municipal securities and municipal fund securities.

Testimonials.

Draft Rule G-21(a)(iii) prohibits dealers from using testimonials in advertisements. The MSRB states that "the use of a testimonial by a dealer presents significant issues – including the potential for the testimonial to mislead investors who may not be fully aware of the facts and circumstances that led to the testimonial" and further notes that "Many investors in municipal securities are senior investors, who may not appreciate the limits of a testimonial, even if certain limits are disclosed."[7]

We do not understand the MSRB's blanket prohibition on testimonials in dealer advertising, particularly given the Proposal's intent to harmonize certain provisions of Rule G-21 with FINRA and SEC rules. FINRA allows testimonials in their communications with the public under certain circumstances[8] and the SEC has provided guidance that allows investment advisers to use testimonials in certain contexts.[9] Moreover, both FINRA and the SEC have articulated a clear priority to address concerns specific to senior investors.[10]

If the MSRB has investor protection concerns with the use of testimonials in dealer advertisements, we believe that there are more targeted and tailored ways to address these

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[7] The Proposal at page 6.

[8] FINRA Rule 2210(d)(6)(A) currently provides that, if any testimonial in a communication with the public concerns a technical aspect of investing, the person making the testimonial must have the knowledge and experience to form a valid opinion. FINRA Rule 2210(d)(6)(B) requires any advertisement or sales literature that includes a testimonial concerning the investment advice or investment performance of a firm or its products to prominently disclose the fact that: (i) the testimonial may not be representative of the experience of other customers; (ii) the testimonial is no guarantee of future performance or success; and (iii) if more than $100 in value is paid for the testimonial, the fact that it is a paid testimonial.

[9] Securities and Exchange Commission Division of Investment Management Guidance Update 2014-04 *Guidance on the Testimonial Rule and Social Media* (March 2014) *available at*: https://www.sec.gov/investment/im-guidance-2014-04.pdf

[10] For example, the SEC recently approved a FINRA proposed rule change to amend FINRA Rule 4512 (Customer Account Information) and adopt FINRA Rule 2165 (Financial Exploitation of Specified Adults). Securities and Exchange Commission Release No. 34-79964 (February 3, 2017) *available at*: https://www.sec.gov/rules/sro/finra/2017/34-79964.pdf

concerns than through a blanket prohibition on the use of testimonials. For example, the MSRB might allow the use of testimonials in dealer advertisements but place restrictions and requirements on their use, much like FINRA Rule 2210(d)(6). Also, since many municipal fund security communications by a dealer registered with FINRA and the MSRB must be filed with FINRA and reviewed by FINRA staff, the MSRB might consider a pilot program with FINRA to determine if dealer advertisements using testimonials appropriately address the MSRB's investor protection concerns. Regardless of the specific approach taken, we urge the MSRB to reconsider its prohibition on the use of testimonials in dealer advertisements.

The Need for Continued Industry Outreach.

Given the pace of growth in different methods of communication, we encourage the MSRB to consider different ways in which it can stay informed on new communications technologies.

To this end, we observe that from time to time regulators create advisory committees on specific topics to help keep apprised of emerging areas. Advisory committees are typically comprised of a cross section of market participants and are typically charged with providing the regulator diverse perspectives on specific topics as well as advice and recommendations on matters related to those topics. For example, FINRA has a member firm committee on communications with the public. To continue to understand market developments the MSRB might similarly consider forming a committee that would meet periodically and be charged with providing recommendations to the MSRB on municipal and municipal fund security communications topics. Fidelity is fortunate to have a number of qualified professionals available to offer perspectives to the MSRB in this area and if the MSRB creates an advisory committee on communications with the public, we would be honored to serve in any manner the MSRB believes appropriate.

The MSRB might also look to ways to partner with FINRA on topics concerning communications with the public. Given the large number of dealer firms that are both MSRB and FINRA registered and that advertise municipal and municipal fund security products, a coordinated and collaborative approach to regulating dealer communications with the public would work to the benefit of regulators, dealers, and retail investors.

* * * * *

Fidelity thanks the MSRB for considering our comments. We would be pleased to provide any further information and respond to any questions that you may have.

Sincerely,

Norman L. Ashkenas
Chief Compliance Officer
Fidelity Brokerage Services, LLC

Richard J. O'Brien
Chief Compliance Officer
National Financial Services, LLC

Jason Linde
Chief Compliance Officer
Fidelity Investments Institutional Services Company, LLC

cc:

Ms. Lynette Kelly, Executive Director, MSRB
Mr. Robert Fippinger, Chief Legal Officer
Mr. Michael Post, General Counsel – Regulatory Affairs
Ms. Pamela K. Ellis, Associate General Counsel

Mr. Robert Cook, FINRA
Mr. Joseph Price, FINRA
Mr. Thomas Pappas, FINRA

Ms. Heather Seidel, Acting Director, Division of Trading and Markets, SEC
Mr. Gary Goldsholle, Deputy Director, Division of Trading and Markets, SEC
Mr. David Shillman, Associate Director, Division of Trading and Markets, SEC
Ms. Jessica S. Kane, Director, Office of Municipal Securities, SEC

FINANCIAL SERVICES INSTITUTE

VOICE OF INDEPENDENT FINANCIAL SERVICES FIRMS AND INDEPENDENT FINANCIAL ADVISORS

VIA ELECTRONIC MAIL

March 24, 2017

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

Re: File Number 2017-04 Request for Comment on Draft Amendments to MSRB Rule G-21 (Advertising) and on Draft Rule G-40 (Advertising by Municipal Advisors)

Dear Secretary Smith:

On February 16, 2017, the Municipal Securities Rulemaking Board (MSRB) announced proposed draft amendments to MSRB Rule G-21 and new draft MSRB Rule G-40 (Proposed Rule).[1] The Proposed Rule would update, as well as harmonize, Rule G-21 with certain provisions of the advertising rules of other financial regulators. Further, consistent with the MSRB's regulation of dealers under Rule G-21, draft Rule G-40 would address advertising by municipal advisors.

The Financial Services Institute[2] (FSI) appreciates the opportunity to comment on this important proposal. We support the Proposed Rule both for its content and because it serves to further harmonize rules applicable to our members across regulatory jurisdictions.

Background on FSI Members

The independent financial services community has been an important and active part of the lives of American investors for more than 40 years. In the US, there are approximately 167,000 independent financial advisors, which account for approximately 64.5% percent of all producing registered representatives.[3] These financial advisors are self-employed independent contractors, rather than employees of the Independent Broker-Dealers (IBD).

FSI's IBD member firms provide business support to independent financial advisors in addition to supervising their business practices and arranging for the execution and clearing of customer transactions. Independent financial advisors are small-business owners with strong ties to

[1] See Proposed Rule, *available at*, http://www.msrb.org/~/media/Files/Regulatory-Notices/RFCs/2017-04.ashx

[2] The Financial Services Institute (FSI) is an advocacy association comprised of members from the independent financial services industry, and is the only organization advocating solely on behalf of independent financial advisors and independent financial services firms. Since 2004, through advocacy, education and public awareness, FSI has been working to create a healthier regulatory environment for these members so they can provide affordable, objective financial advice to hard-working Main Street Americans.

[3] The use of the term "financial advisor" or "advisor" in this letter is a reference to an individual who is a registered representative of a broker-dealer, an investment adviser representative of a registered investment adviser firm, or a dual registrant. The use of the term "investment adviser" or "adviser" in this letter is a reference to a firm or individual registered with the SEC or state securities division as an investment adviser.

their communities and know their clients personally. These financial advisors provide comprehensive and affordable financial services that help millions of individuals, families, small businesses, associations, organizations, and retirement plans. Their services include financial education, planning, implementation, and investment monitoring. Due to their unique business model, FSI member firms and their affiliated financial advisors are especially well positioned to provide Main Street Americans with the financial advice, products, and services necessary to achieve their investment goals.

FSI members make substantial contributions to our nation's economy. According to Oxford Economics, FSI members nationwide generate $48.3 billion of economic activity. This activity, in turn, supports 482,100 jobs including direct employees, those employed in the FSI supply chain, and those supported in the broader economy. In addition, FSI members contribute nearly $6.8 billion annually to federal, state, and local government taxes. FSI members account for approximately 8.4% of the total financial services industry contribution to U.S. economic activity.[4]

Discussion

FSI appreciates the opportunity to comment on the Proposed Rule. FSI commends MSRB for taking efforts to update their rules and in the process, harmonize this rule with other regulator's similar rules.

I. FSI strongly supports efforts to harmonize Rule G-21 with other financial regulations

The Proposed Rule would harmonize Rule G-21 with the advertising rules under FINRA Rule 2210, Communications with the Public. Specifically, Rule G-21(a)(ii), harmonizes the definition of "form letter," with FINRA Rule 2210's definition of "correspondence." Currently, Rule G-21 defines a form letter, in part, as a written letter distributed to 25 or more persons. FINRA Rule 2210(a)(2)'s definition of correspondence, however, defines correspondence, in part, as written communications distributed to 25 or fewer persons. The MSRB has acknowledged that the one-person difference between Rule G-21 and FINRA Rule 2210 has created confusion and compliance challenges for dealers. To respond to this concern, the Proposed Rule eliminated that one-person difference and a form letter, in part, is defined as a written letter distributed to more than 25 persons.[5] The Proposed Rule also amends Rule G-21(e) to incorporate the provisions included in the SEC's amendments to its registered investment company advertising rules.[6] The draft amendments to Rule G-21(e) replace the money market mutual fund disclosure required by current Rule G-21 with a modified version of the money market mutual fund disclosure currently required by SEC rules.[7]

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[4] Oxford Economics for the Financial Services Institute, The Economic Impact of FSI's Members (2016).

[5] See Proposed Rules, available at, http://www.msrb.org/~/media/Files/Regulatory-Notices/RFCs/2017-04.ashx

[6] The SEC has been making amendments to their advertisement rules many times over, for example, since 2007, the SEC has twice amended Rule 482 under the Securities Act of 1933. See Securities Act Release No. 9616 (Jul. 23, 2014), 79 FR 47736 (Aug. 14, 2014) (in part, amending Rule 482 to address money market fund reform); Securities Act Release No. 8998 (Jan. 13, 2009), 74 FR 4546 (Jan. 26, 2009) (in part, revising Rule 482 to clarify that the rule does not apply to a summary prospectus or to a communication that is not deemed a prospectus under Section 2(a)(10) of the Securities Act of 1933)

[7] See Proposed Rules, available at, http://www.msrb.org/~/media/Files/Regulatory-Notices/RFCs/2017-04.ashx

II. FSI strongly supports further harmonization of regulatory requirements through the adoption of Rule G-40

Draft Rule G-40(b) is substantially similar in all material respects to the draft amendments to Rule G-21(b), and retains the long-standing strict liability standard for professional advertisements set forth in Rule G-21. This is consistent with FINRA Rule 2210. The liability standard, as amended in 2010, requires municipal advisors to deal fairly with all persons and not engage in any deceptive, dishonest, or unfair practice.[8] Draft Rule G- 40 reiterates that the obligations of a municipal advisor for fair dealing extend to advertising conduct and content.[9] The regulatory consistency will benefit FSI members in removing the burden of complying with two separate inconsistent rule requirements and eliminating any unnecessary confusion as they tailor their compliance to a single consistent standard. The consistency in regulations has the additional important benefit to investors. When firms are confident that they are complying with industry regulations and requirements, this allows them to focus their resources in other areas and streamlines their operations. Furthermore, FSI strongly supports regulatory harmonization because greater coordination and cooperation amongst the regulators increases regulatory transparency, reduces regulatory arbitrage, promotes product innovation, and increases confidence in our markets. As such, FSI strongly supports MSRB's efforts to develop consistent advertising requirements.

Conclusion

We are committed to constructive engagement in the regulatory process and welcome the opportunity to work with MSRB on this and other important regulatory efforts.

Thank you for considering FSI's comments. Should you have any questions, please contact me at (202) 803-6061.

Respectfully submitted,

David T. Bellaire, Esq.
Executive Vice President & General Counsel

[8] See MSRB Rule G-17, available at http://www.msrb.org/Rules-and-Interpretations/MSRB-Rules/General/Rule-G-17.aspx

[9] See Proposed Rules, available at, http://www.msrb.org/~/media/Files/Regulatory-Notices/RFCs/2017-04.ashx

LEWIS YOUNG
ROBERTSON & BURNINGHAM, INC.
AN INDEPENDENT MUNICIPAL FINANCIAL ADVISORY
AND CONSULTING FIRM

March 24, 2017

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

Re: MSRB Notice 2017-4, Request for Comment on Revised Draft MSRB Rule G-40 and Draft Revisions to Rule G-21

Ladies & Gentlemen:

Lewis Young Robertson & Burningham ("LYRB") is pleased to submit comments on the above-referenced Notice.

LYRB is an independent financial advisory firm which has elected, since its inception 21 years ago, to be regulated as a broker dealer and, therefore, has been and remains subject to MSRB regulations. We are now also registered as a municipal advisor with the Securities and Exchange Commission and the MSRB.

LYRB does not underwrite or purchase securities for our own account or for sale to others nor do we carry customer account of any kind. We do not participate as a co-manager or member of selling groups and do not act as a remarketing agent. We are a major financial advisor in the State of Utah and work in some other states as well. LYRB has acted as a financial advisor on hundreds of transactions with a volume of over $8 billion. These transactions run the gamut from small to large, and include general obligation bonds, various types of revenue and tax backed bonds, revenue and bond anticipation notes, and taxable and tax-exempt (including Build America Bonds) bonds in both fixed rate and variable rate structures.

We have numerous comments to and objections to the regulatory regime proposed by draft Rule G-40.

First, the statutory basis for regulation is the Dodd Frank Act. This imposes a fiduciary standard on all municipal advisors. This generic level of regulation, as explicated by Rule G-42, already imposes a high level of probity and care upon advisors. In the context of the realities of the municipal advisory business set out

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in the next paragraph, no further specific regulation of "advertising" is needed or useful.

Second, the "target market" of municipal advisors is radically different from the base market of a Broker/Dealer. Municipal Advisors sell no investments to unsophisticated customers to whom they owe no fiduciary duty. Consumers of our services are relatively sophisticated and rarely, if ever, make their selection of an advisor based in whole or even in small part upon generic advertising. There is therefore little scope to usefully regulate, only burdens of compliance to impose.

Third, you make much of a "level playing field" as to "advertising" between (regulated) Broker/Dealer municipal advisors and (presently unregulated) non-dealer advisors. This point has some merit. To the extent it does, we suggest you turn your energies to exempting all broker/dealer activities governed by Rule G-42 from the broker/dealer advertising rules, rather than needlessly imposing such rules where they are not needed in the name of a "level playing field". This would get the playing field "level" without adding regulation.

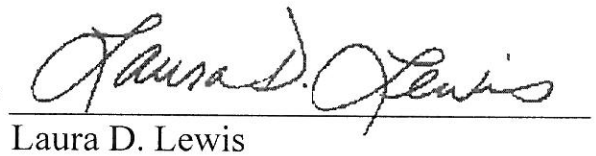
Fourth, in cases (rare) in which unsophisticated municipal issuers may be duped or deceived by an unscrupulous municipal advisor's "advertising" communication, we suggest that Rule G-17 and Rule G-42 provide ample scope for enforcement. This approach would avoid all the compliance costs imposed on by proposed Rule G-40 and relieve those currently imposed by G-21 on activities to which they have little connection.

Fifth, an illustrative anecdote: some years ago one of our senior advisors, then working for a large broker/dealer, prepared a presentation for an individual school district client, specifically tailored to that client's debt. This material was to be presented to the school board in a "power point" presentation on a screen in a public meeting and could in no way be considered "advertising" in any usual sense. That firm's compliance department insisted that because of the potential "general public" audience who *might* attend the school board meeting and therefore *could* see this presentation, it "might" be advertising and should be vetted by the compliance department before it could be shown. This imposed costs, not to mention incongruities. To begin with, the compliance department was not competent to evaluate the material they were asked to "review", as their expertise was in rules, not issuing general obligation school bonds. Second, this meant the presentation slides had to be completed three days earlier than would otherwise be required so they could be "reviewed". This imposed cost and inconvenience on the advisor and the firm to no useful public purpose.

In conclusion, we suggest you eliminate the current provisions related to advertising of Rule G-21 on broker/dealer activities otherwise governed by both G-17 and G-42 and that you not impose a Rule G-40 on non-broker/dealer advisors.

If that is unsatisfactory to you, an alternative would be a principles based "truth in advertising" version of G-40 which could be written in one or two sentences. Rule G-21 could be correspondingly simplified.

Lewis Young Robertson & Burningham, Inc.

By 

Laura D. Lewis
Principal

NATIONAL ASSOCIATION OF MUNICIPAL ADVISORS

March 24, 2017

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

RE: MSRB Notice 2017-04

Dear Mr. Smith:

The National Association of Municipal Advisors (NAMA) appreciates the opportunity to respond to the MSRB's Request for Comment on Draft Rule G-40, Advertising by Municipal Advisors. NAMA represents Municipal Advisory Firms and Municipal Advisors (MA) from across the country and serves to promote and provide educational efforts, and assist its members navigate through the federal regulatory and municipal marketplace landscapes.

NAMA supports the general intent of the proposal to protect the public, and potential MA clients, from being misled by MA advertisements. However, this general point is already covered in Rule G-17 (Conduct of Municipal Securities and Municipal Advisory Activities - *In the conduct of its municipal securities or municipal advisory activities, each broker, dealer, municipal securities dealer, and municipal advisor shall deal fairly with all persons and shall not engage in any deceptive, dishonest, or unfair practice.*), making this present proposal unnecessary.

The unnecessary nature of the proposal is further underscored because the answer to the MSRB's question if MAs have any role "with the development or distribution of municipal security product advertisements, new issue product advertisements, and/or municipal fund security product advertisements" is "no." The proposed rulemaking contains many provisions that are framed for advertising of securities or "products" offered by underwriters and investment advisors to retail customers, rather than speaking to the *services performed* by municipal advisors to issuer clients.

It is also worth commenting that while respecting the MSRB's work and goals to regulate broker/dealers and municipal advisors impartially and in most ways equally to avoid harm to investors and issuers respectively, the need to automatically develop rules for MAs to mirror current broker/dealer rules should not be done just for the sake of doing so and is not proper rationale for regulation under the *Exchange Act*. While some MSRB Rules such as G-20 and G-37 certainly should apply in the same fashion to both broker/dealers and MAs, the proposed rules on advertising cannot be as easily applied to different types of professionals and actually creates a wholly unnecessary rule in the proposed Rule G-40.

Therefore, we respectfully request that the Proposed Rule G-40 be withdrawn as the same results of ensuring falsehood or misleading statements are not used in advertising for MA professional services can already be found in Rule G-17. The MSRB could further explore the application of advertising for MA services under Rule G-

17, with additional guidance or FAQs to ensure that MAs have a full understanding of the broad scope and reach of Rule G-17 related to the services that they offer and perform.

If the MSRB chooses to not withdraw proposed Rule G-40, then we would strongly suggest that significant changes be made to the proposal. First, there are numerous areas where clarifications are needed, as noted below. Second, the focus of the rulemaking should apply to professional advertisements for MA services. If the MSRB has identified any meaningful subset of MAs that advertise products, then a separate section should apply solely to product advertisements. We have noted below how the Rulemaking could be bifurcated to better acknowledge different types of advertising.

For further presentation of our comments, please see Attachment A, which provides a redline of the proposal with NAMA's suggestions.

Suggestions for Additional Exclusions and Clarifications

SEC Rule "General Information Exclusions" Should be Excluded from the Definition of Advertising. The items discussed in the clauses (a), (b), (d) and (e), of the "general information exclusions" listed in the MA Rule FAQ[i], should not be considered advertising within MSRB rulemaking, and be included as an exemption in section (a)(i):

- *(a)information regarding a person's professional qualifications and prior experience (e.g., lists, descriptions, terms, or other information regarding prior experience on completed transactions involving municipal financial products or issuances of municipal securities); (b) general market and financial information (e.g., market statistics regarding issuance activity for municipal securities or current market interest rates or index rates for different types of bonds or categories of credits); (c) information regarding a financial institution's currently-available investments (e.g., the terms, maturities, and interest rates at which the financial institution offers these investments) or price quotes for investments available for purchase or sale in the market that meet criteria specified by a municipal entity or obligated person; (d) factual information describing various types of debt financing structures (e.g., fixed rate debt, variable rate debt, general obligation debt, debt secured by various types of revenues, or insured debt), including a comparison of the general characteristics, risks, advantages, and disadvantages of these debt financing structures; and (e) factual and educational information regarding various government financing programs and incentives (e.g., programs that promote energy conservation and the use of renewable energy).*

RFPs/RFQs Should Be Excluded from the Definition of Advertisements. The Rule should make clear that responses to RFPs, RFQs, and similar types of documents do not fall into the advertising category. While the Notice refers to this notion, the proposed rule does not encompass all types of responses an MA may provide to an issuer's request, and these should be a specific exemption within the Rule itself, in (a)(i).

Client Lists Should Be Excluded From the Definition of Advertisements, per SEC Guidance for Investment Advisors. The SEC has stated that client lists may be used within certain parameters, for Investment Advisors. We request that the MSRB allow client lists to be used by MAs in accordance with this guidance.

- *The staff has stated that an advertisement that contains a partial client list that does no more than identify certain clients of the adviser cannot be viewed either as a statement of a client's experience with, or endorsement of, the investment 206(4)-1(a)(5) depending on the facts and circumstances.* (https://www.sec.gov/investment/im-guidance-2014-04.pdf)

Testimonials Should Be Defined as Noted in the SEC No Action Letter Related to this Same Issue for Investment Advisors.

- *See DALBAR, Inc., SEC No-Action Letter (pub. avail. Mar. 24, 1998) ("Although the term 'testimonial' is not defined in Rule 206(4)-1, we consistently have interpreted that term to include a statement of a client's experience with, or endorsement of, an investment adviser.").*

Case Studies Should be Excluded from the Definition of Advertising. We request that Case Studies bearing factual information, without discussion by a client of experience with or endorsement of an MA, should be permissible. This would allow MAs to provide information about their experiences in the MA services field to assist with the public's and potential client's understanding of their background.

Specific Guidance Needed Related to the Application of the Rulemaking for MA Firm Websites. Most MA Firms do not use common forms of advertising but rather use web sites to explain and promote their services. FAQs or guidance on how Rule G-40 would apply to this most commonly used platform, would be essential to ensure compliance with the rulemaking.

Specific Guidance Needed for Use of Social Media Platforms. The MSRB should also provide guidance or FAQs on how the proposed rule would apply to the use of "LinkedIn" and other social media platforms.

General Guidance on the Application of Rule G-40 on Advertisements of Professional Advertisements for MA Services. In addition to the two areas notes above where specific guidance is necessary, the MSRB should also develop more general guidance on the application of the Rule to professional advertisements for MA services.

(iv) Content Standards

Delete Provision Already Covered in MSRB Rule G-17. Most of the language in the Content Standards section of the proposal is repetitive to the overriding principle that MAs must not provide misleading information to the public, which is part of MSRB Rule G-17. Therefore, we suggest that (A) be deleted from this proposal.

There Should Be a Clear Separation Between Content Standards of Product Advertising and Professional Services Advertising. Due to the fact that the clear majority of MAs do and would only conduct professional services advertising, the rule should be written in a manner that creates clear standards for those types of advertisements.

- Sections (D), (E), and (F) are related to products, and would be difficult to apply to the types of services performed by MAs, and therefore should only be included as content standards for products. For example -
  - (D) MA must "…provide balanced treatment of risks and potential benefits…"
  - (E) MA must consider "….nature of the audience…"
  - (F) "Advertisement may not predict or project performance…"
- Sections (B), (C), (G) and (H) are related to both products and services, and should be included in the content standards for both, but redrafted to eliminate overlapping and confusing language.

MAs Should be Allowed to Indicate SEC Registration in Addition to MSRB Registration. In section (H), the MSRB states that a MA may indicate MSRB registration that complies with certain standards noted in that section. We suggest that SEC registration be added to this section.

General Comments

In addition to the specific comments noted above related to the proposal, it is also important to note that the MSRB should consider the costs that MAs will incur to comply with this rulemaking, especially small MA firms. This consideration is a requirement of the *Exchange Act*. As written, the proposed rulemaking includes overlapping and confusing content standards for professional and product advertising that will especially raise the cost of compliance for small MA firms because examiners require the development of policies and procedures even for rules that do not apply to the MA.

Finally, while again we do agree with the MSRB that MAs should not engage in advertising that is misleading or provides inaccurate information to potential clients, and that objective criteria should always be used by issuers in hiring municipal bond professionals, we do not agree that these rules would significantly "improve the selection of MAs" by issuers. This sentiment seems to overemphasize both the use of advertising by the MA community and the issuer's reliance on advertising in their decision-making process. We believe it is unlikely that most issuers hire an MA for their services based on an advertising, but rather are far more likely to use an RFP/RFQ process to choose an MA. By dispelling this notion promoted in the Notice, we again use that as an example as to why new rulemaking on advertising is unnecessary, and the same goals can be achieved by referencing MSRB Rule G-17, and providing targeted guidance related to the application of Rule G-17 to professional services advertising used by MAs.

Thank you again for the opportunity to provide comments on this issue. Please feel free to contact me if I can provide you with any additional information or answer any questions about NAMA's response to proposed rule G-40.

Sincerely,

Susan Gaffney

Susan Gaffney
Executive Director

[i] See Registration of Municipal Advisors Frequently Asked Questions – Office of Municipal Securities, 5/19/14, page 3, https://www.sec.gov/info/municipal/mun-advisors-faqs.pdf

Attachment A

G-40 Redline with Suggestions

(a) *General Provisions*.

(i) *Definition of "Advertisement."* For purposes of this rule, the term "advertisement" means any material (other than listings of offerings) published or used in any electronic or other public media, or any written or electronic promotional literature distributed or made generally available to municipal advisory clients or the public, including any notice, circular, report, market letter, form letter, telemarketing script, seminar text, press release concerning the services of the municipal advisor, or reprint, or any excerpt of the foregoing or of a published article. The term does not apply to preliminary official statements, official statements, preliminary prospectuses, prospectuses, summary prospectuses or registration statements, responses to requests for proposals, responses to requests for qualifications or similar documents, client lists and case studies, but does apply to abstracts or summaries of the foregoing and other such similar documents prepared by municipal advisors. Furthermore, the term does not apply to the items discussed in the clauses (a), (b), (d) and (e), of the "general information exclusions" listed in the MA Rule FAQ [citation].

(ii) *Definition of "Form Letter."* For purposes of this rule, the term "form letter" means any written letter or electronic mail message distributed to more than 25 persons within any period of 90 consecutive days.

(iii) *Definition of Municipal Advisory Client.* For the purposes of this rule, the term municipal advisory client shall include either a municipal entity or obligated person for whom the municipal advisor engages in municipal advisory activities as defined in Rule G-42(f)(iv), or a broker, dealer, municipal securities dealer, municipal advisor, or investment adviser (as defined under section 202 of the Investment Advisers Act of 1940) on behalf of whom the municipal advisor undertakes a solicitation of a municipal entity or obligated person, as defined in Rule 15Ba1-1(n), 17 CFR 240.15Ba1-1(n), under the Act.

(iv) *Content Standards for Product Advertising.*

~~(A) All advertisements by a municipal advisor, 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.~~

(B) No municipal advisor may make any deceptive, dishonest or unfair~~false, exaggerated, unwarranted, promissory or misleading~~ statement or claim in any advertisement which includes exaggerated or misleading statements or claims.

(C) A municipal advisor may place information in a legend or footnote only in the event that such placement would not inhibit a municipal advisory client's understanding of the advertisement.

(D) A municipal advisor must ensure that statements are clear and not misleading within the context in which they are made, and that they provide 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.

(E) A municipal advisor must consider the nature of the audience to which the advertisement will be directed and must provide details and explanations appropriate to the audience.

(F) An advertisement may not predict or project performance, imply that past performance will recur or make any exaggerated ~~or unwarranted~~ or misleading claim, opinion or forecast; provided, however, that this paragraph (a)(iv)(F) does not prohibit:

(1) A hypothetical illustration of mathematical principles, provided that it does not predict or project the performance of a municipal financial product; and

(2) An investment analysis tool, or a written report produced by an investment analysis tool.

(G) A municipal advisor shall not, directly or indirectly, publish, circulate or distribute any advertisement which refers, directly or indirectly, to any testimonial[i] of any kind concerning the municipal advisor or concerning the advice, analysis, report or other service rendered by the municipal advisor.

(H) A municipal advisor may indicate registration with the Municipal Securities Rulemaking Board and the Securities and Exchange Commission in any advertisement that complies with the applicable standards of all other rules of the Board and SEC and that neither states nor implies that the SEC or Municipal Securities Rulemaking Board or any other corporate name or facility owned by the SEC or Municipal Securities Rulemaking Board, or any other regulatory organization endorses, indemnifies, or guarantees the municipal advisor's business practices, services, skills, or any specific municipal security or municipal financial product.

~~(v) *General Standard for Advertisements*. Subject to the further requirements of this rule relating to professional advertisements, no municipal advisor shall publish or disseminate, or cause to be published or disseminated, any advertisement relating to municipal securities or municipal financial products that such municipal advisor knows or has reason to know contains any untrue statement of material fact or is otherwise false or misleading.~~

(b) *Professional Advertisements*.

(i) *Definition of "Professional Advertisement."* The term "professional advertisement" means any advertisement concerning the facilities, services or skills with respect to the municipal advisory activities of the municipal advisor or of another municipal advisor.

(ii) Content *Standard for Professional Advertisements*. ~~No municipal advisor shall publish or disseminate, or cause to be published or disseminated, any professional advertisement that contains any untrue statement of material fact or is otherwise false or misleading.~~

(A) No municipal advisor may make any deceptive, dishonest or unfair statement or claim in any advertisement which includes exaggerated or misleading statements or claims.

(B) A municipal advisor may place information in a legend or footnote only in the event that such placement would not inhibit a municipal advisory client's understanding of the advertisement.

(C) A municipal advisor shall not, directly or indirectly, publish, circulate or distribute 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.

(D) A municipal advisor may indicate registration with the Municipal Securities Rulemaking Board in any advertisement that complies with the applicable standards of all other rules of the Board and that neither states nor implies that the Municipal Securities Rulemaking Board or any other corporate name or facility owned by the Municipal Securities Rulemaking Board, or any other regulatory organization endorses, indemnifies, or guarantees the municipal advisor's business practices, services, skills, or any specific municipal security or municipal financial product.

(E) A municipal advisor shall not, directly or indirectly, publish, circulate or distribute 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.

(c) *Approval by Principal*. Each advertisement subject to the requirements of this rule must be approved in writing by a municipal advisor principal prior to first use. Each municipal advisor shall make and keep current in a separate file records of all such advertisements.

March 23, 2017

VIA ELECTRONIC DELIVERY
Municipal Securities Rulemaking Board
Attention: Ronald Smith, Corporate Secretary
1300 I Street, NW Suite 1000
Washington, DC 20005

pfm

1735 Market Street
43rd Floor
Philadelphia, PA 19103
215.567.6100

pfm.com

RE: MSRB 2017-04 Request for Comment on Draft Amendments to MSRB Rule G-21, on Advertising, and on Draft MSRB Rule G-40 on Advertising by Municipal Advisors

Dear Ronald Smith:

On behalf of Public Financial Management, Inc., and PFM Financial Advisors LLC (collectively, referred to as "PFM" or "We"), PFM would like to thank the Municipal Securities Rulemaking Board (the "MSRB" or "Board") for the opportunity to comment on the MSRB's proposed draft amendments to MSRB Rule G-21 on advertising and draft MSRB Rule G-40, which establishes advertising rules for municipal advisors. As you are likely aware, PFM, which has been in existence for over 40 years, is the nation's largest independent municipal advisor and is the top-ranked municipal advisor in the nation in terms of both number of transactions and total dollar amount according to Thomson Reuters as of December 2016. We hope that you agree that our municipal market presence gives us a broad, national perspective on the proposed amendments and their potential effects on the municipal market.

PFM understands the implementation of advertising rules for municipal advisors because we believe that (a) the proposed rules will assist municipal advisors to more consistently market services to the public in a manner that promotes compliance with applicable regulations, and (b) such rules will enhance fair dealing with clients by requiring that municipal advisors not subject the municipal clients to advertising that would be false or misleading. We support the MSRB in its endeavors with respect to proposed amendments to MSRB Rule G-21 ("Rule G-21") and the new draft MSRB Rule G-40 ("Rule G-40"), however, PFM would like the Board to consider the following in its implementation of the proposed advertising rules for municipal advisors:

1) Further explicit refinement of the definition of advertising such that it includes specific exemptions for certain categories of information not typically interpreted to be advertising including, but not limited to, additional forms of Requests for Proposals (RFPs), general or educational information, case studies, and representative client lists;

2) More definitive content standards and distinctions for advertising products ("product advertising") and advertising for municipal advisor services ("professional advertising");

3) Allowance for the use of client testimonials with specific disclaimers as permitted in investment advisor advertising under corresponding SEC No-Action letters or other forms of guidance; and

4) Guidance with respect to advertising rules on websites and social media sites.

With respect to a more refined definition of what constitutes municipal advisor advertising, PFM believes that the definition of "advertising" should clearly provide for specific exclusions for certain categories of communications. While the MSRB has commented that RFPs would not be included, we feel that the statement should be expanded to include Requests for Qualifications (RFQs), Requests for Information (RFIs), statements of interest in response to municipal procurement processes, and the like, and should be more formally discussed and itemized as specific exemptions within amendments to Rule G-21 and the proposed Rule G-40 provision (a)(i). Further, in addition to RFP's being specifically exempted under the advertising rules, we also believe that the MSRB should exclude from the definition of advertising "client lists" or "representative client list" and past transaction "case studies" as these communications do not include commentary or opinions of clients, but rather are examples of the types of work that a municipal advisor has done in the past as part of the municipal advisory services performed for clients. Lastly, PFM believes that items identified as "general information exclusions" listed in Rule 15Ba1-1 (d) (ii) (the "MA Advice Rule"), should also explicitly not be considered advertising as such information constitutes general factual information or educational content about market conditions or financial information that are shared by municipal advisors with clients, and thus should explicitly not be deemed advertising under the proposed rules. Such items would include:

- Information regarding a person's professional qualifications and prior experience (e.g., lists, descriptions, terms, or other information regarding prior experience on completed transactions involving municipal financial products or issuances of municipal securities);
- General market and financial information (e.g., market statistics regarding issuance activity for municipal securities or current market interest rates or index rates for different types of bonds or categories of credits) regarding a financial institution's currently-available investments (e.g., the terms, maturities, and interest rates at which the financial institution offers these investments) or price quotes for investments available for purchase or sale in the market that meet criteria specified by a municipal entity or obligated person;

- Factual information describing various types of debt financing structures (including, but not limited to, fixed rate debt, variable rate debt, general obligation debt, debt secured by various types of revenues, or insured debt), with a comparison of the general characteristics, risks, advantages, and disadvantages of these debt financing structures; and
- Factual and educational information regarding various government financing programs and incentives (e.g., programs that promote energy conservation and the use of renewable energy).

With respect to advertising "Content Standards" of MSRB draft amendments to Rule G-21 and draft Rule G-40, while PFM firmly believes in the overriding principle that municipal advisors must not provide false or misleading information about their services to the public, we believe that provision (A) of the "Content Standards" is duplicative and should be deleted because MSRB Rule G-17 governing Conduct of Municipal Securities and Municipal Advisory Activities already addresses these standards. Further, we believe that the MSRB should provide a clearer demarcation between the content standards for advertising products within the regulatory conventions set for broker-dealers (more typically considered "product advertising") and the standards for advertising municipal advisory services more akin to regulatory conventions set for registered investment advisors who are also subject to a fiduciary standard (generally "professional advertising") because our experience clearly shows that the vast majority of municipal advisors predominately engage in the latter type of advertising. In addition to advertising services advising on methods of sale, municipal advisory services include myriad activities including, but not limited to:

- Developing the plan of finance and related transaction timetables;
- Assisting in the preparation of rating agency strategies and presentations;
- Identifying and analyzes financing solutions and alternatives for funding capital improvement plan;
- Advising on the method of sale, taking into account market conditions and near-term activity in the municipal market;
- Assisting with the selection of underwriters, syndicate structure and bond allocations;
- Developing requests for proposals and qualifications for finance team members (e.g., underwriters, bond counsel, and paying agents);
- Coordinating internal and external finance team members;
- Preparing preliminary cash flows/preliminary refunding analyses;
- Planning and coordinating bond closings;
- Evaluating market conditions and the pricing performance of the senior manager(s) and co-managers in their distribution of bonds; and

- Verifying cash flow calculations.

While Sections (B), (C), (G) and (H) of the Content Standards could be applicable to both products and services described above, and should be included in the "Content Standards" of both Rule G-21 and Rule G-40, we believe that proposed Sections (D), (E), and (F) providing that municipal advisors advertisements must "provide balanced treatment of risks and potential benefits," or "consider the nature of the audience..." and "may not predict or project performance..." should not be included under the "Content Standards" for Rule G-40 for these provisions are more directly related to advertisements for *products* distributed by brokers, dealers, or municipal securities dealers, and should not be construed as necessary to administer to the types of *services* that municipal advisors may provide. Accordingly, for the foregoing reasons, PFM requests that the MSRB delete proposed Section (D), (E), and (F) and provide provisions that would be more relevant to advertising for the services such as those articulated above.

In discussing the harmonization of Rules G-21 and G-40 with the advertising rules of other financial regulators, the MSRB noted that in adopting Rule 206(4)-1, under the Investment Advisers Act of 1940, as amended (the "Advisers Act"), the rules that applies to advertisements by registered investment advisers, the Securities and Exchange Commission ("SEC") found that the use of testimonials in advertisements by an investment adviser was misleading. In the Adviser's Act the term "testimonial" was defined as a statement of a "customer's experience with" or "endorsement of" an investment adviser. While PFM would agree that the use of testimonials should be prohibited in municipal advisor advertising as they may be misleading, in harmonizing the rules of municipal advisors to those afforded to investment advisers, we request that the prohibition from using testimonials in advertisements under draft amendments of Rule G-21, and draft Rule G-40 be similarly narrowed to prohibit statements of a "customer's experience with" or "endorsement of" municipal services, but allow for the inclusion of partial client lists in advertising consistent with prior SEC guidance associated with testimonials and the use of partial client lists. Through a series of SEC No-Action letters, Denver Investment Advisors, Inc. (Publicly Available July 30, 1993), and Cambiar Investors, Inc. (Publicly Available August 28, 1997), the SEC provided that as the definition of a "testimonial" was "a statement of a customer's experience" or an "endorsement", it would require "actual statements" to be made by clients, which in turn would be utilized in investment adviser advertising. Further the SEC stated a "partial client list" is "not a statement of a customer's experience" for it does not relay the "experience" of the clients listed, and "since the experience of clients is not listed, it cannot run the risk of fraudulently or deceptively implying the experience of listed clients or what prospective clients can expect." Therefore, these client lists should be permitted as previously asserted because they constitute communications that provide examples of the

types of work that a municipal advisor has done in the past as part of the municipal advisory services performed for clients, and such advertisement concerning the municipal advisor's services is clearly permissible as a Professional Advertisement under draft Rule G-40(b). Moreover, given the disclaimers and disclosures, which would be required to accompany client lists consistent with the requirements under the Adviser's Act, prospective clients should not be misled. Accordingly, we request that the prohibition on the use of testimonials in MSRB Rule G-21 and proposed Rule G-40 be clarified for consistency with similar registered investment adviser regulatory requirements to not include partial client lists that are accompanied by clarifying disclosures such as a description of the objective criteria in compiling the list, and a disclaimer in accordance with applicable SEC No-Action guidance.

Lastly, PFM believes that while a vast majority of municipal advisors do not engage in traditional types of advertising associated with broker-dealers, most do have web sites, where potential municipal clients may learn about the firm and through which medium firms can explain and promote their available services. Accordingly, it would be beneficial in ensuring compliance with MSRB rulemaking if the MSRB provided further clarity (ex. cross-reference to existing regulation regarding this subject matter), FAQs or guidance on how the advertising rules apply to postings on websites and the use of social media sites (e.g., LinkedIn), and how the advertising rules would impact those advertising or media outlets frequently used by financial services professionals. Alternatively, we believe the existing regulation itself could be sufficiently relied upon.

Therefore, PFM respectfully requests that the MSRB reflect and remit the proposed draft amendments to MSRB Rule G-21 and draft Rule G-40 back to the MSRB for additional analysis and further clarification in accordance with feedback received in this comment with respect to the proposed rule changes.

Sincerely,

Leo Karwejna
Chief Compliance Officer

Cheryl Maddox
General Counsel

Catherine Humphrey-Bennett
Municipal Advisory Compliance Officer

sifma
Invested in America

March 24, 2017

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

Re: MSRB Notice 2017-04: Draft Amendments to MSRB Rule G-21, on Advertising, and on Draft Rule G-40, on Advertising by Municipal Advisors

Dear Mr. Smith:

The Securities Industry and Financial Markets Association ("SIFMA")[1] appreciates this opportunity to respond to Notice 2017-04 [2] (the "Notice") issued by the Municipal Securities Rulemaking Board (the "MSRB") in which the MSRB is making a request for comment on draft amendments to MSRB Rule G-21, on advertising, and on new draft MSRB Rule G-40, on advertising by municipal advisors. SIFMA and its members appreciate the MSRB's efforts to update MSRB Rule G-21. We agree with the principles in the rules that communications to the public must be consistent with fair dealing duties and in good faith, must be fair and balanced, and must provide a sound basis for evaluating the facts in regard to any particular security. We are pleased that, at long last, there will be a leveling of the regulatory playing field between brokers, dealers, and municipal securities dealers (collectively, "dealers"), who have long been regulated by MSRB Rule G-21, and non-dealer municipal advisors, whose advertising activities will become regulated under new MSRB Rule G-40. We agree that the MSRB should have two rules on public communications, and we believe the rules should be divided based on activity, not by registration category. We do feel, however, that FINRA Rule 2210

[1] SIFMA is the voice of the U.S. securities industry. We represent the broker-dealers, banks and asset managers whose nearly 1 million employees provide access to the capital markets, raising over $2.5 trillion for businesses and municipalities in the U.S., serving clients with over $18.5 trillion in assets and managing more than $67 trillion in assets for individual and institutional clients including mutual funds and retirement plans. 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 2017-04 (Feb. 16, 2017).

should be incorporated by reference into Rule G-21, or at a minimum the two rules should be more closely harmonized.

I. Rule G-21 Should Incorporate FINRA Rule 2210 by Reference and Be Focused on Dealer Activity

MSRB Rule G-21 was adopted in 1978, and since its adoption the rule has not been regularly or uniformly harmonized with what is now Financial Industry Regulatory Authority ("FINRA") Rule 2210. This discordance leads to confusion among all market participants (investors and dealers alike) and regulatory risk for dealers. SIFMA has advocated in the past,[3] and continues to advocate for harmonization between MSRB Rule G-21 and FINRA Rule 2210.

SIFMA and its members feel that FINRA Rule 2210 should be incorporated by reference into MSRB Rule G-21 to cover any communications by a dealer in its role as a dealer, including transactions in municipal securities, with certain exceptions. A cross-reference is beneficial regulatory construction in that it both eliminates any concern that some dealers may not be covered by the rule, and eliminates concerns about a lack of harmonization between the FINRA and MSRB rules.

If a purpose of the Notice and the draft amendments is to update Rule G-21 and harmonize its provisions with FINRA Rule 2210, the best way to accomplish this is to have one governing rule that is cross-referenced by other self-regulatory organizations ("SROs"). Again, this methodology is the most efficient way to reduce confusion and risk to investors, and reduce regulatory risk to dealers. Maintaining a separate substantive Rule G-21 for dealer activity that is already clearly set forth in FINRA Rule 2210 does not efficiently further the regulatory goals as stated in the Notice. We do feel, however, that the filing requirements in FINRA 2210(c) are unnecessary and burdensome, and should be exempted from application in this context. Alternatively, the MSRB could make filing of retail communications with FINRA under FINRA Rule 2210(c) permissive. Additionally, we feel FINRA Rule 2210(e) should be exempted from application in this context. Alternatively, if the MSRB believes there is a need to have a comparable provision with regard to the use of the MSRB's name, then the MSRB could include a parallel provision that would be retained in Rule G-21 along with the municipal fund securities advertising requirements as described below.

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[3] *See* Letter from David L. Cohen, Managing Director and Associate General Counsel, Securities Industry and Financial Markets Association, dated Feb. 19, 2013, to Ronald W. Smith, Corporate Secretary, Municipal Securities Rulemaking Board (regarding MSRB Notice 2012-63: Request for Comment on MSRB Rules and Interpretive Guidance).

For these reasons, SIFMA and its members feel strongly that MSRB Rule G-21, should be amended to incorporate FINRA Rule 2210 by reference as follows, "Municipal securities brokers, dealers and municipal securities dealers, with respect to their activities as such, shall comply with FINRA Rule 2210, on communications with the public, and any amendments thereto, as if such Rule is part of MSRB's Rules, with the exception of sections (c) and (e)."[4]

Although we understand the MSRB has concerns about incorporating by reference other SRO's rules into its rulebook, we feel these concerns are overstated and can easily be overcome. One of the concerns discussed by MSRB staff with us was a concern about lack of notice to the regulated municipal securities community regarding a potential or approved amendment to a FINRA rule incorporated by reference. SIFMA and its members feel that a regulatory notice by the MSRB highlighting proposed or adopted rule changes would be sufficient notice, and would be no more confusing or burdensome on market participants than if the MSRB had proposed or adopted amendments itself. We point out that that the MSRB itself said in its 2013 filing to amend its suitability rule to be more consistent with FINRA's rule:

> Given the extensive interpretive guidance surrounding FINRA Rule 2111 and the impracticality and inefficiency of republishing each iteration of such FINRA guidance, substantively similar provisions of Rule G-19 will be interpreted in a manner consistent with FINRA's interpretations of Rule 2111. If the MSRB believes an interpretation should not be applicable to Rule G-19, it will affirmatively state that specific provisions of FINRA's interpretation do not apply.[5]

Certainly, rulemaking is undertaken at a more measured pace then some interpretive activity and therefore there would be abundant opportunity for the MSRB to provide appropriate notification to the municipal securities community about changes in the FINRA advertising rule, and would also provide the MSRB

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[4] There is precedent in the MSRB Rulebook for incorporation of other regulator's rules by reference. *See* MSRB Rule G-41 on Anti-Money Laundering Compliance Program. Another alternative could be structured similarly to current MSRB Rule G-35 on Arbitration, in that bank dealers who are not NASD members are subject to the NASD Code of Arbitration Procedure as if they were a member of the NASD.

[5] *See* Proposed Rule G-47, on Time of Trade Disclosure Obligations, Proposed Revisions to Rule G-19, on Suitability of Recommendations and Transactions, and Proposed Rules D-15 and G-48, on Sophisticated Municipal Market Professionals found at http://www.msrb.org/~/media/Files/SEC-Filings/2013/MSRB-2013-07.ashx?la=en, at page 8.

with sufficient time to evaluate whether some change or interpretation of the FINRA rule should not be adhered to for the municipal market.

II. If MSRB Rule G-21 Does Not Incorporate FINRA Rule 2210 by Reference, Then the Rules Should Be More Closely Harmonized

If the MSRB decides not to incorporate FINRA Rule 2210 by reference into Rule G-21 to govern communications by a dealer in its role as a dealer, then SIFMA and its members feel that it is necessary for Rule G-21 to be more closely harmonized with FINRA Rule 2210. The current Rule G-21 and its draft amendments do not reflect the current construction of FINRA Rule 2210, which divides communications with the public into three categories: retail communications, correspondence,[6] and institutional communications. FINRA Rule 2210 establishes different requirements for retail communications and institutional communications. This approach takes into account the critical differences in the intended audiences. Generally, FINRA's rule on retail communications requires pre-use approval by a principal, while institutional communications do not; instead, dealers are given the ability to establish review procedures for institutional communications that are appropriate to their business, subject to certain specified parameters.

The MSRB has not made any effort to harmonize these concepts from FINRA Rule 2210 into Rule G-21, but instead continues to treat all advertisements as subject to one-size-fits-all pre-use approval by a principal, regardless of the audience. The definition of "advertisement" in Rule G-21 is different and broader than that of "retail communication" in FINRA Rule 2210. We strongly support removal of the definition of "advertisement", "form letter", and "professional advertisement" in favor of harmonizing Rule G-21 with the three categories of communications (retail communications, correspondence, and institutional communications) as set forth in FINRA Rule 2210.[7] Harmonization of the MSRB and FINRA rules would also necessitate the removal of the confusing and duplicative definition of "product advertisement", the only purpose of which is to add what is covered in content standards. Draft Rule G-40(c) requires that each advertisement that is subject to draft Rule G-40 be approved in writing by a municipal advisory principal before its first use.

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[6] We recognize the regulation of correspondence is handled separately in FINRA Rule 3110, pursuant to FINRA Rule 2210(b)(2).

[7] We draw your attention to FINRA Regulatory Notice 12-29 (Communications with the Public) (June 2012), available at http://www.finra.org/industry/notices/12-29 (last visited Mar. 24, 2017), wherein FINRA specifically reduces the number of categories and definitions of communications from six categories to three.

SIFMA and its members feel strongly that the MSRB should adopt the FINRA approach to dividing the regulatory framework for communications into categories for retail and institutional communications, so that dealers can apply common approval processes for institutional communications across all asset classes. This approach is significantly preferable over requiring pre-use principal approval for municipal securities advertisements that are used exclusively with institutional customers, when FINRA permits establishment of alternate approval procedures for these institutional communications for all other asset classes.

III. MSRB Should Include Other Communications Exceptions Allowed by FINRA

SIFMA and its members note that FINRA's three categories of communications makes institutional communications exempt from the requirement of prior approval. This is a critical distinction between the rules, and we appeal to the MSRB to incorporate this concept into the MSRB rules. The MSRB should consider all the exceptions and guidance in FINRA Rule 2210(d) regarding content standards, not just (d)(1). SIFMA and its members feel very strongly about these exceptions, particularly FINRA Rule 2210(d)(6) on testimonials (as discussed in more detail in Section III(d) below); FINRA Rule 2210(d)(7) on recommendations; and FINRA Rule 2210(d)(9) on prospectuses (as discussed in more detail in Section III(a) below).

a. Private Placement Memoranda and Limited Offering Memoranda

The amendments to Rule G-21 and draft Rule G-40 do not create an exception for issuer offering and disclosure documents from the definition of an advertisement. Issuer offering and disclosure documents (including, but not limited to, private placement memoranda, commercial paper offering memoranda, offering circulars, limited offering memoranda, free writing prospectuses, official statements and prospectuses) should all be excluded from the definition of a covered communication within the rules. Even though a dealer or advisor may have potentially had a role in the preparation of these documents, these are issuer documents and not dealer or municipal advisor advertisements. For example, a "tombstone" or other offering summary would potentially be a covered communication, but the entire official statement, limited offering memorandum, or other offering and disclosure documents would be exempt from the rules. Incorporating these concepts into the draft amendments would harmonize the rules with FINRA Rule 2210(d)(9).

b. Responses to Requests for Proposals

The Notice stated that a response by a municipal advisor to a request for proposals from a municipal entity or obligated person for services in connection with a municipal financial product or the issuance of municipal securities would "most likely" not be an advertisement under draft Rule G-40. SIFMA and its members feel strongly

that the MSRB should clarify that a response by a dealer or a municipal advisor to a request for proposals is not a covered communication and won't be deemed an advertisement. The idea that a solicited response to a request for comment or qualifications is potentially an advertisement is nonsensical. It should not matter how many people receive or view the response. If twenty-six employees at one municipal securities issuer view the response, SIFMA and its members feel strongly that the communication is not an advertisement because it was solicited, and the number of people that received the response at the issuer is not relevant. If the response went to one issuer, that is the relevant number distributed, not the number of employees at that issuer that viewed the document. It is the one issuer that decides whether or not to engage the municipal advisor or dealer based on its response, and there is one potential engagement; not twenty-six potential engagements with twenty-six different employees. To that end, we would appreciate the MSRB clarifying the language in the Notice that responses to requests for proposals are not advertisements under the amendments to Rule G-21 or new draft Rule G-40.

c. Social Media

The amendments to Rule G-21 and draft Rule G-40(c) apply to advertisements, regardless of whether electronic or other public media is used with those advertisements. As such, we feel no additional guidance by the MSRB is needed regarding the use of social media by a dealer or municipal advisor at this time. We believe that FINRA is currently working on guidance regarding social media. In line with our earlier comments, we feel the MSRB should ascribe to this guidance or clearly articulate why it is not appropriate in this market.

d. The Use of Testimonials Should be Permitted

Draft Rule G-21(a)(iii) prohibits dealers from using testimonials in advertisements. The concerns the MSRB states are based on a study which analyzes the age of municipal securities investors. FINRA Rule 2210 permits testimonials, with clear limitations, which SIFMA and its members feel provide sufficient investor protections. SIFMA feels these protections are strong enough for retail communications. SIFMA and its members believe that regulatory harmonization and consistency is paramount. The MSRB should harmonize the exception for use of testimonials with FINRA Rule 2210(d)(6), subject to the content standards and requirements that apply.

Additionally, the MSRB's concerns in this area regarding retail investors are not credible when applied to communications with institutional investors or municipal advisory activity. The use of testimonials should not be prohibited by firms acting as a municipal advisor. The MSRB cites to concerns set forth in the 1961 adopting release for Securities and Exchange Commission ("SEC") Rule 206(4)-1 for investment advisors. In this case, municipal advisors can be distinguished from investment advisors due to the differences in their client base.

Municipal advisors are not selling securities to elderly retail investors; they are advising professional state and local government officials about municipal securities issuance and investments. SIFMA and its members agree there should be a level regulatory playing field between municipal advisors/investment advisers and other municipal advisors. Again, MSRB should harmonize the exception for use of testimonials with FINRA Rule 2210(d)(6), subject to the content standards and requirements that apply.

e. Investment Analysis Tools

The amendments to Rule G-21 and draft Rule G-40(c) prohibit a dealer or municipal advisor from using an advertisement that, in part, predicts or projects performance, but does not prohibit the use of an investment analysis tool. Investment analysis tools are frequently used and serve to better inform investors. The use of such tools should continue to be permitted. SIFMA and its members do not believe additional guidance about the definition of an investment analysis tool and about the use of such tools is necessary at this time. If the MSRB feels strongly about additional guidance in this area, we believe that reference to or harmonization with FINRA Rule 2214 would be acceptable.

f. The Use of Illustrations Should be Permitted

As described in the Notice, FINRA recently requested comment on proposed amendments to FINRA Rule 2210.[8] In RN 17-06, FINRA proposes to amend FINRA Rule 2210 to create an exception to the rule's prohibition on projecting performance to permit a firm to distribute a "customized hypothetical investment planning illustration that includes the projected performance of an asset allocation or other investment strategy, but not an individual security." As a general matter, SIFMA believes the proposed amendment in RN 17-06 would better align FINRA Rule 2210's investor protection benefits and economic impacts. Importantly, the proposed amendment in RN 17-06 enhances a firms' ability to provide investors with only brokerage accounts access to potentially useful projections currently available to investment advisory clients. SIFMA supports these amendments to FINRA Rule 2210,[9] and supports similar exceptions in the draft amendments to Rule G-21 and draft new Rule G-40.

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[8] *See generally* FINRA Regulatory Notice 17-06 (Communications with the Public) (Feb. 2017), available at http://www.finra.org/sites/default/files/notice_doc_file_ref/Regulatory-Notice-17-06.pdf (last visited Mar. 6, 2017) ("RN 17-06").

[9] *See* Letter from Kevin Zambrowicz, Managing Director and Associate General Counsel, SIFMA, to Marcia E. Asquith, Office of the Corporate Secretary, FINRA, anticipated to be dated Mar. 27, 2017 (regarding RN 17-06).

IV. Municipal Fund Securities

Rule G-21(e) addresses municipal fund security product advertisements. As set forth in the Notice, these rules regulate dealer sales of these products and are largely based on the SEC's advertising rules for registered investment companies, such as mutual funds. This section can be easily separated from the rest of the rule, if necessary. SIFMA and its members support the ability to use hyperlinks in this rule, and whenever possible elsewhere within the MSRB rule set, as appropriate. We do not have further suggestions regarding the advertising rules for Achieving a Better Life Experience Act of 2014 (ABLE) programs at this time, as we believe it is too early in the product's lifecycle to ascertain the need for any additional regulatory guidance.

V. MSRB Rule G-40 Should Be Limited in Scope to Municipal Advisory Activities

MSRB Rule G-40 should cover communications by firms acting as a municipal advisor, whether they be dealer firms or non-dealer municipal advisors. Rule G-21 (whether as amended or if using incorporation of FINRA Rule 2210 by reference) should explicitly provide that it does not cover advertising or communications relating to municipal advisory activities of dealers; such municipal advisory advertising or communications of dealer municipal advisors should be governed solely by new draft Rule G-40. SIFMA strongly supports the harmonization of draft Rule G-40 with FINRA Rule 2210 with respect to the categorization of communications (retail communications, correspondence and institutional correspondence), instead of the single broad category of "advertising". SIFMA also supports the removal of the definitions of "advertisement", "form letter", "product advertisement" and "professional advertisement", as not being consistent with the concepts and terms in FINRA Rule 2210. Further, we also strongly support the same harmonization with the content standards and other communications exceptions described above.

In general, municipal advisors have little to no role in the development or the distribution of municipal security product advertisements, new issue product advertisements, and/or municipal fund security product advertisements. As stated above, we feel Rule G-40 should only cover municipal advisory activity advertisements. Thus, to the extent that municipal advisors use product advertisements, MSRB Rule G-40 should cover such advertisements but only insofar as they relate to municipal advisory activities. For example, if a municipal advisor is selling computer software, books or other products to assist their clients with municipal securities transactions, then we feel those product advertisements should be covered by the rule; if such products are unrelated to municipal advisory activities but instead relate to other business activities of the firm, then the advertisements should not be covered. SIFMA believes a nexus to municipal

advisory activities (as defined in Rule G-42(f)(iv)) is critical to establishing the MSRB's jurisdiction in this area. We feel that any activities of a municipal advisor other than municipal advisory activities are outside the scope of the rule.

VI. Economic Analysis

a. Effect on Competition, Efficiency, and Capital Formation

As noted above, SIFMA fully supports the regulation of the advertising activities of municipal advisors, which levels the regulatory playing field. Dealers have long been governed by Rule G-21, regardless of their activity or role in a transaction. However, as noted above, we believe the rules should be structured to cover the requisite activity or role, and not based on the firm's corporate structure or registration classification.

Also, SIFMA believes the proposed amendment described in RN 17-06 would help level the regulatory playing field between investment advisors, municipal advisors and broker dealers. As noted above, allowing firms to provide projections and illustrations to investors can be potentially useful, and is already permitted under the SEC rules for investment advisory clients.

b. Costs and Benefits

The draft changes to MSRB Rule G-21, as proposed, and new MSRB Rule G-40, do not substantively harmonize the rules with FINRA Rule 2210. SIFMA and its members believe that separate and distinct rules for municipal securities are valuable when there exists something unique about the market that warrants a different rule than that promulgated by FINRA. With respect to advertising or public communications for most municipal securities products (except for municipal advisory business and municipal fund securities), we feel there is no compelling reason to establish a different rule set than that which exists under FINRA Rule 2210. While SIFMA applauds the MSRB for its efforts to update MSRB Rule G-21 as well as bringing municipal advisor advertising and public communications under the regulatory regime, SIFMA feels strongly that costs of implementation and ongoing compliance would be greatly reduced if these rules more closely mirror FINRA Rule 2210.

VII. Conclusion

Again, SIFMA and its members appreciate the MSRB's efforts to update MSRB Rule G-21. We agree that the MSRB should have two advertising rules, and we believe the rules should be divided based on activity, not by registration category. We do feel, however, that FINRA Rule 2210 should be incorporated by reference into Rule G-21, or at a minimum the two rules should be more closely

harmonized. We would be pleased to discuss any of these comments in greater detail, or to provide any other assistance that would be helpful. If you have any questions, please do not hesitate to contact the undersigned at (212) 313-1130.

Sincerely yours,

Leslie M. Norwood
Managing Director and
Associate General Counsel

cc: ***Municipal Securities Rulemaking Board***
Lynnette Kelly, Executive Director
Robert Fippinger, Chief Legal Officer
Michael Post, General Counsel – Regulatory Affairs
Pamela K. Ellis, Associate General Counsel
Meghan Burns, Economic Researcher

Financial Industry Regulatory Authority
Robert Cook, President and CEO
Joseph Price, Senior Vice President of Corporate Financing and Advertising Regulation
Thomas Pappas, Vice President and Director, Advertising Regulation
Cynthia Friedlander, Director, Fixed Income Regulation

Securities and Exchange Commission
Heather Seidel, Acting Director, Division of Trading and Markets
Gary Goldsholle, Deputy Director, Division of Trading and Markets
David Shillman, Associate Director, Division of Trading and Markets
Jessica S. Kane, Director, Office of Municipal Securities
Rebecca Olsen, Deputy Director, Office of Municipal Securities

Intelligence amplified

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May 16, 2017

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

strategic insight™

Re: Comments Concerning MSRB 2017-04 (February 16, 2017)

MSRB Request for Comment on Draft Amendments to MSRB Rule G-21, on Advertising, and on Draft Rule G-40, on Advertising by Municipal Advisors

Dear Mr. Smith:

Strategic Insight commends the MSRB's efforts to improve the 529 and ABLE industry through a collaborative and engaging approach with industry organizations. For more than fifteen years, Strategic Insight (SI) has provided critical and proprietary data, business intelligence, research and marketing services to institutions throughout the 529 community. More recently, we have expanded our coverage to include ABLE programs given the product's structure and goal to help all families to successfully succeed through saving and saving efficiently.

In MSRB Notice 2017-04, the Municipal Securities Rulemaking Board ("MSRB") requested public comment on "Municipal Fund Security Product Advertisements." In observation of the request for comment, Strategic Insight provides the following response relating to Rule G-21 (e)(i)(A)(2)(b) on page 24:

- Strategic Insight appreciates the higher level of detail and clarity by expanding the description of "other benefits" to include reference to "such as financial aid, scholarship funds, and protection from creditors" as these are important factors that investors often overlook. By expanding the description, 529s will also be easier to understand which encourages use of the product. Ultimately, the added detail and clarity will enhance the value of 529s for investors and advisors, as they may not have been able to identify what the "other benefits" were referencing previously.

Thank you for providing the opportunity to respond to the Request for Comment, and please do not hesitate to contact me by phone (617-399-5621) or email (paul.curley@strategic-i.com) if you have any questions concerning our comments or require additional information.

Sincerely,

Paul Curley, CFA
Director of College Savings Research
Strategic Insight

Offices:
New York (HQ)
Boston
Denver
London
Melbourne
Munich
San Diego
San Francisco
Stamford
Toronto
Vancouver

3PM
THIRD PARTY MARKETERS ASSOCIATION

OUTSOURCED GLOBAL MARKETING OF ALTERNATIVE + TRADITIONAL INVESTMENTS

March 23, 2017

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

***Re: MSRB Notice 2017-04: Request for Comment on* Draft Amendments to MSRB Rule G-21, on Advertising, and on Draft Rule G-40, on Advertising for Municipal Advisors.**

Dear Mr. Smith;

I am writing to you today on behalf of the Third-Party Marketer's Association ("3PM") to express the thoughts and concerns of our association regarding the draft provisions proposed in MSRB Notice 2017-03. While it is our goal to respond to requests for comments in a manner beneficial to the majority of 3PM's members, it should be noted that the views of the commenters involved in preparing this response may not be representative of the views of the entirety of the 3PM membership or our industry group in general. 3PM's response will be from the perspective of a solicitor municipal advisor and will be related solely to Rule G-40.

Municipal Advisory Client Definition

First, before commenting on the rule, we would like to ask for clarification of the definition of "municipal advisory client" discussed in Regulatory Notice 2017-04. This is an important point of clarification since the definition of this term impacts the entire reading of proposed Rule G-40.

The definition of an advertisement in Rule G-40(a)(i) has been tailored to municipal advisors and discusses the term "municipal advisory client". G40(a)(iii) defines "municipal advisory client" as identical to the definition of that term as set forth in the recent amendments to Rule G-8, effective October 13, 2017.

The definition of a "municipal advisory client as outlined in G-8 (e) as well as the definition outlined in G-40 states: "For the purposes of this rule, a municipal advisory client shall include either a municipal entity or obligated person for whom the municipal advisor engages in municipal advisory activities, as defined in Rule G-42(f)(iv), or a broker, dealer, municipal securities dealer, municipal advisor, or investment adviser (as defined in section 202 of the Investment Advisers Act of 1940) on behalf of

whom the municipal advisor undertakes a solicitation of a municipal entity or obligated person, as defined in Rule 15Ba1-1(n), 17 CFR 240.15Ba1-1(n), under the Act."

The definition starts with the language "a 'municipal advisory client' shall include **either**" and then goes on to define the two definitions of what constitutes a "municipal advisory client".

The first part of the definition states that the definition shall include "either a municipal entity or obligated person for whom the municipal advisor engages in municipal advisory activities, as defined in Rule G-42(f)(iv)". Given that Rule G-42 is called "The duties of Non-Solicitor Municipal Advisors" our reading of this means that the first part of the definition does not apply to solicitor municipal advisors.

The second part of the definition states that a "municipal advisory client" is a broker, dealer, municipal securities dealer, municipal advisor, or investment adviser (as defined in section 202 of the Investment Advisers Act of 1940) on behalf of whom the municipal advisor undertakes a solicitation of a municipal entity or obligated person. Under this part of the definition, the investment manager that engages a solicitor municipal advisor would be considered a "municipal advisory client" under G-40 as well as the under the complaint rules.

While ours is a technical interpretation of the definition of "municipal advisory client", we do not believe that this was the intent of the MSRB. The MSRB was given purview over municipal advisors as a way to protect municipal entities from unregistered activities. Given this, it makes no sense that the only advertisements covered by G-40 for solicitor municipal advisors would be those we use to solicit investment managers and not the municipal entity which we are soliciting on behalf of our investment manager client.

Given this, a minor adjustment to this definition, would fix the issue. We believe that the MSRB should remove the language in the definition referring to Rule G-42 and instead reference a rule whereby the definition of "municipal advisory activities" apply to both solicitor and non-solicitor municipal advisors.

Furthermore, it is our belief that the term "engages", which is utilized in a multitude of rules issued by the MSRB and approved by the SEC, should be clarified especially for solicitor municipal advisors for which this word has multiple meanings.

3PM's comments going forward will be based on what we believe is the intent of the rule and will consider an advertisement to a "municipal advisory client" to apply to not only the investment manager clients that engage us, but also to any advertising that is sent to a municipal entity in regards to the advisory services we are soliciting.

Definition of an Advertisement

Generally, 3PM is not averse to the definition of an advertisement, unless otherwise noted in this response.

Form Letter

For purposes of Rule G-40, the term "form letter" is defined as any written letter or electronic mail message distributed to more than 25 persons within any period of 90 consecutive days.

When beginning an engagement with a new investment manager, marketers will often draft an introductory letter that will be sent out to prospects. These letters will likely all contain the same content, but will be personalized by a third party marketer prior to sending. Often, third party marketers will cover a segment of potential investors, and in the case of firm's marketing to institutional investors, this list of potential investors could contain, hundreds or thousands of potential investors depending on the size of the firm. Alternatively, based on the offering, these letters might only be sent to a handful of prospects. While these letters will not likely be sent out in one batch, sales professionals often send a few at a time and then follow-up by phone.

In most situations, a solicitor municipal advisor will be able to distinguish which letter will go out to more than 25 persons within 90 days, smaller firms may have a difficulty determining this up front. However, given that Rule-G40 will only require that advertisements be pre-approved if the advertisement is sent to 25 or more "municipal advisory clients", many solicitor municipal advisors may have a more difficult time discerning this fact.

Given the logistical complexities of isolating one potential investor type from an entire distribution channel most solicitor municipal advisors will instead take the more conservative route and have a Principal pre-approve the "form-letter" prior to allowing their sales professionals to send out the letter.

While this seems easy enough, there is however a cost involved. This process will require solicitor municipal advisors to dedicate more compliance resources to oversee this procedure. Compliance will now not only be responsible for pre-approving all "form-letters" but they will also be required to track who the email was sent to, segregating out the municipal entities from other prospects.

Furthermore, once the classification is put into place, pre-approval will be required from a municipal advisor Principal, requiring firms to add more municipal advisor Principals.

While this may seem like a small incremental cost, the issue is that being solicitor municipal advisors requires registration with multiple regulators. Given this, every time a regulator adds or changes a rule, it requires firms to re-evaluate their compliance functions and often, add to their compliance resources which is costly in terms of both time and dollars. Given this, we have seen many solicitors trying to

evaluate whether working with municipal entities is worthwhile. While the cost of doing business might be worth it for conducting business in an entire distribution channel, many firms do not think the cost is commensurate for the potential revenue that might be earned by engaging a municipal entity and instead may choose to exit this business altogether. Furthermore, as this rule does not apply to internal sales and marketing professionals working on behalf of an investment adviser who is their employer, entities that work in an external role and who are identify as 'solicitor municipal advisors' are constrained by this Rule when working on behalf of third party investment advisers. We believe that this creates an unfair playing field and is detrimental to the goal of fair and open markets.

Should municipal advisor solicitors choose to exit this business, investment managers will need to find other avenues to offer their services to municipal entities or also determine to exit this sub-channel. If this were to occur, public entities would have less access to the products that municipal advisor solicitors represent and the investment arena would be further monopolized by the largest firms who can afford an internal team infrastructure.

Most of our members, given that they are small in terms of number of employees, are already resource constrained when it comes to compliance. Adding additional responsibilities on to an already overwhelmed compliance staff to accommodate yet another regulatory rule that is not harmonized across the industry is frankly unfair to small firms from a competitive standpoint and will prevent the formation and growth of new small firms in this industry.

We believe that further harmonization with FINRA would help facilitate this process and alleviate an unnecessary burden that will be put on small firms.

Content Standards

The content standards in general are in line with FINRA rules, however, they specifically refer to advertisements pertaining to municipal securities, municipal financial products or the issuance of the municipal security. As mentioned earlier, 3PM's members who are municipal advisor solicitors do not offer any type of municipal security or municipal financial products. Our members offer either investment advisory services managed by investment management firms or securities issued by private issuers. Accordingly, the MSRB's content standards as written in ***Section iv (A)*** and ***(D)*** do not apply to our members.

3PM is not averse to the standards set out in ***Section iv (B), (C)*** or ***(H)***.

We believe ***Section iv (E)*** is at odds with FINRA's advertising rules which segregate institutional investors from retail investors and address the nature of the audience to which an advertisement is sent. Given this we believe that the MSRB should also consider segregating advertisements by investor group as well for solicitor municipal advisors. This would allow for further harmonization with other regulatory authorities and streamline the rules for more sophisticated investors, like muni entities with whom we

engage. Please see additional comments on this discussion below in the first question the MSRB asked firms to share their opinions on.

While we appreciate the MSRB's attempt to harmonize ***Section iv (F)*** with FINRA rules, this provision is one that we are also against in FINRA's Retroactive Rule Review of their Communications with the Public Rule. While we agree that past performance may not recur, we do believe that being allowed to discuss the targeted return for investment products and services should be permitted to at least some investors, namely institutional investors which include municipal entities.

Most investment advisers and fund sponsors want to be able to provide investors with some type of targeted return so they can better understand whether the risks and rewards of a strategy are balanced. Furthermore, when looking for an investment, investors, specifically institutional investors, which most our members with, will want to be able to tell immediately if an investment warrants a further look. In the day and age when investors are inundated with product, they need a mechanism by which they can shrink down the enormous universe of investments into a small sub-set of strategies at which they can look at more closely. Targeted return is one of the ways they do this.

If not permitted to do this, municipal advisor solicitors are put at a disadvantage when offering product to investors. Fund managers and their internal employees will always discuss the targeted return of an investment. This leads to an uneven playing field in a very competitive market place where many investors will immediately pass on a product that does not show a targeted return.

Inherently, 3PM does not believe that what information is permitted to be shared should differ by who is delivering the message. This puts solicitors at a disadvantage, and hurts the investment advisers that choose to hire solicitors rather than in-house employees. In our opinion, regulators should not be influencing the business decisions an investment manager makes in regards to whether to hire internal or external sales and marketing professionals.

3PM's members are not averse to including disclosures explaining how the targeted performance was calculated or disclosures that reinforce that there is no guarantee that the investment will actually generate the targeted return. It is important to reinforce that we do not think that targeted returns should be allowed for all investors. We do however fee that institutional investors, most of whom either have an experienced gatekeeper assisting with their investments or a knowledgeable internal staff who is accustomed to reviewing available products and ascertaining whether the targeted return is reasonable in light of the investment strategy and approach, should be permitted to receive materials with projected or targeted returns.

As such we believe both the MSRB and FINRA should further investigate this issue and allow third party marketers to operate on a level playing field with others offering product.

Section iv (G) prohibits a municipal advisor from using a testimonial in an advertisement. This is a harmonization with SEC rules, but not with FINRA rules which allow for the use of testimonials. This creates issues for municipal advisors that are registered with both the MSRB and FINRA.

We believe that It is particularly problematic for those firms that allow their Associated Persons to utilize social media sites that give users the ability to like or recommend items on the platform. Such a divergent set of rules requires firms to either further segregate their businesses to avoid these conflicts or requires them to adhere to the stricter of the conflicting standards.

While we are not necessarily against the notion of adhering to the strictest standard, this approach does require additional compliance and oversight resources to be dedicated to a function and ultimately results in additional cost to the municipal advisor.

Professional Advertisements

3PM requests some clarity be provided in regards to ***Section (b) Professional Advertisements*** of the Rule.

As we discussed in this comment letter, 3PM's municipal advisor solicitor members generally have two sets of clients. First the investment managers that contract with us to offer their services or securities to potential investors and second, the municipal entities that we solicit to invest with our investment manager clients.

3PM members will not send "professional advertisements" to municipal entities, since they are not the ones that will engage our services. Alternatively, for the purpose of "professional advertisements", our members will only advertise to investment managers. More often than not, 3PM's members are not approaching potential investment manager clients saying 'I will solicit public entities on your behalf'. Rather the conversation is generally based on the services a third-party marketer can supply to the manager in terms of capital raising and marketing support services industry wide.

Generally, third party marketers will discuss potential investors in the context of whether they are institutional investors or individual investors. Further, if a third-party marketer discussed its experience with institutional investors it will most often discuss several potential sub-channels including Corporations, Endowments, Foundations, Family Offices, Investment Consultants, RIAs, Wealth Manager Platforms and Public Funds (municipal entities). In other words, the discussion of soliciting to municipal entities is generally a part of a bigger discussion relating to institutional mandates overall, whether through public entities or private ones.

Given the above, along with the fact that a third-party marketer's advertisements may not specifically discuss offering securities or services to a municipal entity, would the advertisement of a third party marketers "general" services, constitute a "professional advertisement?" Please provide some

clarification on this issue and help us understand where the line would be drawn for a professional advertisement. For example, would the mention of the ability to solicit to a municipal entity cause the advertisement to require pre-approval by a Principal in advance or would the advertisement need to mention a specific municipal entity to trigger the requirement?

Approval by Principal

Under FINRA rules, Registered Representative generally have some latitude in sending materials to institutional investor, since these materials do not require Principal pre-approval. Given the lack of harmonization with FINRA rules, many third party marketers will be required to increase their compliance resources to accommodate this new rule. See discussion on form-letter for more information on 3PM's view point.

In addition to the information above, we also wanted to share our **opinions on some of the questions posed in 2017-04:**

- **The draft amendments to Rule G-21 and draft new Rule G-40 incorporate and/or harmonize the provisions of those rules with certain provisions of the advertising rules of other financial regulators. Are there other provisions of the advertising rules of those financial regulators which the MSRB should consider either incorporating into MSRB rules or with which the MSRB should consider harmonizing its advertising rules?**

  Although Rule G-40 may be in harmony with the SEC's advertising rule, many of 3PM's members are also registered with FINRA, not the SEC. While the definition of an advertisement is similar in scope to FINRA's retail communication definition, FINRA also separates communications with the public by the audience that will be receiving the communication. For example, most of 3PM's members deal with entities that fall under the definition of institutional investors, which does not subject the advertisement to pre-approval by a Principal of the firm.

  Given that third party marketers are soliciting investors for a private issuer who is likely to be a registered investment adviser, it is very common that the marketer will want to send out the investment adviser's quarterly review and update to potential investors. Such pieces discuss the advisory service's performance versus a stated benchmark and sometimes an applicable peer group. This type of information helps investors to determine the competitive nature of an advisory product or whether the product is performing according to characteristics the investment adviser has told them will influence performance.

  When sending out these quarterly letters, third party marketers may send them to an approved distribution list of potential institutional investors. Until now, given the institutional nature of these mailings, they have not been subject to pre-approval. Now under the MSRB's proposed

rule, such a mailing would be considered an advertisement if it is sent to more than 25 "municipal advisory clients".

In addition, third party marketers are now required to carveout one sub-set of institutional investors from their marketing efforts (municipal entities or public funds) and treat them differently because of the SEC and MSRB's oversight. This not only creates confusion with a third-party marketing firm but also requires additional man hours to monitor and carve out those potential investors that are treated differently than the rest.

This leaves third party marketers with two options:

- Carve out municipal entities from the rest of the institutional investor channel and subject just these firms to the municipal advisor rules or
- Treat all institutional investors equally but hold them to the highest standard; that of municipal entity.

The issue here is that both solutions create an uneven playing field for those third-party marketers working with municipal entities and who are registered as municipal advisors.

If a firm decides to carve out municipal entities from the rest of the institutional investor universe, it is likely that the firm will require additional compliance resources to handle the more complex processes that must now be followed.

While the second alternative would also require additional compliance resources to treat all investors the same under the municipal advisor rules, it would also complicate the reporting requirements municipal advisors have to the SEC and MSRB. In addition, this approach would create an unlevel playing field between third party marketers who are municipal advisors and those who are not registered or required to follow the MSRB's rules. It could also potentially place an investment adviser client at a disadvantage in regards to what they could send out themselves to a public entity or a municipal advisor solicitor could send out to a non-public entity

- **The MSRB drafted a new rule, draft Rule G-40, to address advertising by a municipal advisor. An alternative approach would be to address municipal advisor advertising in Rule G-21. Would the current approach of having a new rule, or an alternative approach including all advertising provisions in one rule, be preferable?**

  In 3PM's opinion, the rules for municipal advisors are already confusing enough given different requirements for solicitor and non-solicitor municipal advisors. Including municipal advisor

advertising within the body of G-21 would only complicate the issue further. We believe the municipal advisor rules should remain as Rule G-40, separate from G-21.

A perfect example of the confusion created by this is exemplified by Rule G-8. In general, the part of the rule that applies to municipal advisors is contained in section (h), Municipal Advisor Records. Alternatively, the definition of a "municipal advisory client" is buried with in the text of the rule in section (e) of this rule, definitions.

Given the rule segments out the municipal advisor records that need to be maintained, we believe that it is unrealistic to expect municipal advisors to read through pages of rule text to find this definition. This approach will only lead to confusion by municipal advisors who are trying to understand what applies to them.

It is our opinion that creating a streamlined rule-set that applies only to municipal advisors is the best course of action and the most efficient approach for those operating under these rules.

- **The draft amendments to Rule G-21 permit hyperlinks to obtain more current municipal fund security performance information. Are there other areas where the MSRB should consider expressly permitting the use of a hyperlink in an advertisement?**

  Contrary to how the rule was written, we believe that it was in fact the MSRB's intent to include sales literature relating to an investment adviser to also be covered by Rule G-40. Given this, we believe that when utilizing sales literature regarding an investment adviser's offerings that it is often necessary to create long disclosure to create a fair and balanced representation of the benefits and risks associated with the advisory service. In some instances, this results in a disclosure which is multiple pages long, even for a one page investment summary. Given this, 3PM would suggest that municipal advisor solicitors should be permitted to include a link in all advertisements to a full disclosure while including a summary disclosure in the actual advertisement.

- **A municipal advisor may market non-security products, such as a software program, to its municipal advisory clients. Draft Rule G-40(a) applies to any material (other than listings of offerings) published or used in any electronic or other public media, or any written or electronic promotional literature distributed or made generally available to municipal advisory clients or the public, including any notice, circular, report, market letter, form letter, telemarketing script, seminar text, press release concerning the services of the municipal advisor, or reprint, or any excerpt of the foregoing or of a published article. Nonetheless, should draft Rule G-40 specifically address advertisements relating to non-security products, such as any software program, that the municipal advisor may market to its municipal advisory clients?**

We believe that guidance regarding advertisements of non-security products should only be put in place for firms who are also conducting a security business and who have "municipal advisory clients" that they plan to send non-security advertisements to. Firms who have "municipal advisory clients that they are also soliciting on behalf of non-security products should be required to advise the buyers in the municipal entity of the arrangements that already exist with a municipal advisor. We also believe that the reverse should be true and any municipal advisor who has a municipal entity client for a non-securities product should have to disclose this relationship to the municipal entity if they decide to advertise a security product to the municipal entity.

- **Rule G-21 and draft Rule G-40 apply to advertisements, regardless of whether electronic or other public media is used with those advertisements. As such, Rule G-21 and draft Rule G-40 apply to an advertisement on social media. Nonetheless, should the MSRB consider specific guidance about the use of social media by a dealer or a municipal advisor? If so, what guidance would be helpful?**

  Yes, we believe that the MSRB should issue guidance for dealers and municipal advisors using social media for advertisements. Guidance should relate to profiles, posting of advertisements and other information to social media sites, static versus interactive content, comments and likes of other people's posts and whether this action is considered a testimonial. The MSRB should review FINRA's guidance as well as other regulators who have issued guidance in this area and where possible harmonize the MSRB's guidance to municipal advisors and dealers.

- **The draft amendments to Rule G-21 and draft Rule G-40 prohibit a dealer or municipal advisor from using an advertisement that, in part, predicts or projects performance, but does not prohibit the use of an investment analysis tool. How often are such tools used? Should the MSRB consider additional guidance about the definition of an investment analysis tool and about the use of such tools?**

  3PM's members do not advertise any such investment analysis tools.

- **Rule G-21 and draft Rule G-40 do not except a private placement memorandum from the definition of an advertisement. Should the MSRB consider providing guidance about (i) a dealer's potential recommendation of a private placement, (ii) a dealer's or municipal advisor's potential role in a private placement, such as with the preparation of a private placement memorandum, and/or (iii) dealer and municipal advisor supervisory obligations concerning private placements?**

  It is our understanding based on conversations with the SEC and MSRB that most of 3PM's members would not generally work with private placement memorandums under their municipal advisor registration. 3PM's members who solicit investors for private placements

offered through a commingled fund are registered with FINRA and offer interests of private placements of a third party private issuer, not a municipal entity. As such, these members would not be engaging in the solicitation of investment advisory services. Please confirm this understanding.

Furthermore, sub-bullet (i) asks about a dealer's potential recommendation of a private placement. We are also requesting clarity as to whether this refers to a municipal dealer or a traditional broker / dealer. Again, given our understanding of the definition of a municipal advisor, a broker / dealer offering securities to municipal entities would not be required to register as a municipal advisor. Please confirm this understanding.

As part of a 3PM's role, our members often provide private issuers with comments and feedback related to the content contained in private placement memorandums. This guidance is not legal advice but is related to terms and conditions contained in these offering documents and whether certain potential investors would be comfortable with such items. Given our member's experience in dealing with private placements, our feedback is often very helpful to issuers who plan to offer their securities in a variety of distribution channels.

Furthermore, given that a private placement memorandum as it related to a private issuer is a legal document, our members would never send these documents out on a wholesale basis to potential investors. Private placement memorandums are only sent to those potential investors who are interested in the offering and are conducting a due diligence review. Given the nature of a private placement memorandum for private issuers, we do not believe these documents should be classified as an advertisement and should be excepted from the rule as are preliminary official statements, official statements, preliminary prospectuses, summary prospectuses or registration statements.

- **FINRA recently requested comment on proposed amendments to FINRA Rule 2210. Those amendments would create an exception to the rule's prohibition on projecting performance to permit a firm to distribute a customized hypothetical investment planning illustration that includes the projected performance of an asset allocation or other investment strategy. How often do dealers or municipal advisors create such illustrations? Should the MSRB consider such an exception in the draft amendments to Rule G-21 and in draft new Rule G-40?**

  The text of this response was excerpted from Section iv (F) Content standards above and is added here verbatim to express our opinion on this question.

  While we appreciate the MSRB's attempt to harmonize ***Section iv (F)*** with FINRA rules, this provision is one that we are also against in FINRA's Retroactive Rule Review of their Communications with the Public Rule. While we agree that past performance may not recur, we do believe that being allowed to discuss the targeted return for investment products and

services should be permitted to at least some investors, namely institutional investors which include municipal entities. As noted previously, this is also permitted for internal marketing staff and investment managers themselves.

Most investment advisers and fund sponsors want to be able to provide investors with some type of targeted return so they can better understand whether the risks and rewards of a strategy are balanced. Furthermore, when looking for an investment, investors, specifically institutional investors, which most our members with, will want to be able to tell immediately if an investment warrants a further look. In the day and age when investors are inundated with product, they need a mechanism by which they can shrink down the enormous universe of investments into a small sub-set of strategies at which they can look at more closely. Targeted return is one of the ways they do this and is as stated—targeted—and not guaranteed in anyway.

If not permitted to do this, municipal advisor solicitors are put at a disadvantage when offering product to investors. Fund managers and their employees will always discuss the targeted return of an investment. This leads to a very uneven playing field in a very competitive market place where many investors will immediately pass on a product that does not show a targeted return. This not only puts solicitors at a disadvantage, but it also hurts the investment advisers that choose to hire solicitors rather than in-house employees. In our opinion, regulators should not be influencing the business decisions an investment manager makes in regards to whether to hire internal or external sales and marketing professionals.

3PM's members are not averse to including disclosures explaining how the targeted performance was calculated or disclosures that reinforce that there is no guarantee that the investment will actually generate the targeted return. It is important to reinforce that we are not commenting on the appropriateness of providing targeted returns to all investors. We do however feel that institutional investors, most of whom either have an experienced gatekeeper assisting with their investments or a knowledgeable internal staff who is accustomed to reviewing available products and ascertaining whether the targeted return is reasonable in light of the investment strategy and approach, should be permitted to receive materials with projected or targeted returns.

As such we believe both the MSRB and FINRA should further investigate this issue and allow third party marketers to operate on a level playing field with others offering product.

- **What is the likely impact of the draft amendments to Rule G-21 and draft Rule G-40 on competition, efficiency and capital formation?**

3PM believes that such a rule puts municipal advisors at a disadvantage to solicitors who are not registered with the MSRB or working with municipal entities. We further believe that some of

the rules also impact the investment advisers that we represent. In addition, we feel that such a rule's primary result will be to increase the oversight, reporting requirements and costs without any commensurate investor protection.

While we understand the MSRB's intent, which is to protect municipal entities, we believe that the MSRB should focus their efforts on firms with no regulatory oversight rather than focusing on municipal advisor solicitors that already fall under the purview of other regulatory bodies and layering them with additional compliance requirements.

Also, please see our comments throughout other sections of this comment letter discussing the harm this rule will bring to municipal advisor solicitors as well as the investment managers we represent.

Finally, we believe that the implementation of this Rule in its current state will bring an unintended consequence to the very constituents the MSRB is trying to protect; municipal entities. Ultimately, if Rules like proposed Rule G-40 continue to be enacted, it will leave municipal advisor solicitors with a regulatory compliance burden that far out-weighs the benefits of offering product to municipal entities. Accordingly, many municipal solicitors will choose to exit this distribution channel, in favor of ones where they can compete on a level playing field. We have already seen the universe of firms offering products to municipal entities diminish significantly in the past 3-5 years because of the additional regulation that has been enacted. As a result, municipal entities will be limited to only those investment options provided by the largest and most well-funded managers, who either choose or can afford an in-house staff to distribute their products and services directly. A decrease in available managers could potentially eliminate some of the best performing investment options, bringing harm pensioners who rely on their retirement plans to survive. A result that is not good for any one.

Thank you for the opportunity to share our thoughts with you regarding this proposal. Please feel free to reach out to me at (585) 364-3065 or by email at donna.dimaria@tesseracapital.com should you have any questions or require additional information pertaining to the proposed Advertising Rule for MAs.

Regards,

<<Donna DiMaria>>

Donna DiMaria
Third Party Marketers Association
Chairman of the Board of Directors and
Chair of the 3PM Regulatory Committee

About the Third Party Marketer's Association (3PM)

3PM is an association of independent, global outsourced sales and marketing firms that support the alternative and traditional investment management industry worldwide.

3PM Members are properly registered and licensed organizations consisting of experienced sales and marketing professionals who come together to establish and encourage best practices, share knowledge and resources, enhance professional standards, build industry awareness and generally support the growth and development of professional outsourced investment management marketing.

Members of 3PM benefit from:

- Regulatory Advocacy
- Best Practices and Compliance
- Industry Recognition and Awareness
- Manager Introductions
- Educational Programs
- Online Presence
- Conferences and Networking
- Service Provider Discounts

3PM began in 1998 with seven member-firms. Today, the Association has more than 35 member organizations, as well as significant number of prominent firms that support 3PMs and participate in the Association as 3PPs, Industry Associates, Member Benefit Providers, Media Partners and Association Partners.

A typical 3PM member-firm consists of two to five highly experienced investment management marketing executives with, on-average, more than 10 years' experience selling financial products in the institutional and/or retail distribution channels. The Association's members run the gamut in products they represent. Members work with traditional separate account managers covering strategies such as domestic and international equity, as well as fixed income. In the alternative arena, members represent fund products such as mutual funds, hedge funds, private equity, fund of funds and real estate. Some firms' business is comprised of both types of product offerings. Most 3PM's members are currently registered with FINRA or affiliated with a broker-dealer that is a member of FINRA.

For more information on 3PM or its members, please visit www.3pm.org.

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March 24, 2017

***Via* Online Submission at: http://www.msrb.org/CommentForm.aspx**

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

RE: Regulatory Notice 2017-04, Request for Comment on Draft Amendments to MSRB Rule G-21, on Advertising, and on Draft Rule G-40, on Advertising by Municipal Advisors

Dear Mr. Smith:

Wells Fargo Advisors[1] ("WFA") appreciates the opportunity to comment on the Municipal Securities Rulemaking Board's ("MSRB" or the "Board") Regulatory Notice 2017-04, Request for Comment on Draft Amendments to MSRB Rule G-21, on Advertising, and on Draft Rule G-40, on Advertising by Municipal Advisors ("Proposal").[2]

[1]"Wells Fargo Advisors" is the trade name for Wells Fargo Clearing Services, LLC ("WFCS"), a dually-registered broker-dealer and investment adviser, member FINRA/SIPC, and a separate non-bank affiliate of Wells Fargo. "First Clearing" is the trade name for WFCS's clearing business, providing services to unaffiliated introducing broker-dealers. WFCS is affiliated with Wells Fargo Advisor Financial Network ("FiNet"), a broker-dealer also providing advisory and brokerage services. For the ease of this discussion, this letter will use WFA to refer to all of those brokerage operations.

[2]MSRB Regulatory Notice 2017-04, Request for Comment on Draft Amendments to MSRB Rule G-21, on Advertising, and on Draft Rule G-40, on Advertising by Municipal Advisors (February 16, 2017), available at: http: http://www.msrb.org/~/media/Files/Regulatory-Notices/RFCs/2017-04.ashx?n=1

WFA is a dually registered broker-dealer and investment advisor that administers approximately $1.5 trillion in client assets. We employ approximately 15,086 full-service financial advisors in branch offices in all 50 states and 3,899 licensed bankers in retail bank branches across the country. WFA and its affiliates help millions of customers of varying means and investment needs obtain the advice and guidance they need to achieve their financial goals. Furthermore, WFA offers access to a full range of investment products and services that retail investors need to pursue these goals.

I. CURRENT PROPOSAL

The MSRB is proposing amendments to current Rule G-21 to largely harmonize requirements with FINRA Rule 2210. These draft amendments include enhancements to the MSRB's fair-dealing provisions, updates to municipal fund security product advertisements and harmonization of the definition of "form letter." In addition, the Proposal creates new Draft Rule G-40 to address advertising requirements specifically for Municipal Advisors.

II. DISCUSSION

As a registered broker-dealer, WFA largely supports the draft amendments to MSRB Rule G-21 and believes that harmonization with FINRA Rule 2210 creates a more consistent regulatory regime within the industry. We believe the MSRB should also consider expanding the proposal to allow the use of testimonials in municipal securities advertisements. Additionally, we reference FINRA Regulatory Notice 17-06 Communications with the Public - FINRA Requests Comments on Proposed Amendments to Rules Governing Communications with the Public [3] ("FINRA's Current Proposal"), where FINRA proposes to amend Rule 2210 to adopt an exception to allow the use of projected performance. We support FINRA's proposal and request the MSRB to extend harmonization in this Proposal to include FINRA's exception to allow limited performance projections.

A. The MSRB Should Adopt FINRA Rule 2210 Requirements Regarding Testimonials or Should Mirror SEC Relief.

The draft amendments to Rule G-21 prohibit dealers from using testimonials in advertisements stating that they could potentially mislead senior investors. As a firm that has led the industry in efforts to protect and inform senior investors of potential harm, financial and/or otherwise, WFA fully supports the MSRB's objective to protect senior investors. However, protecting senior investors is a regulatory goal not limited to the municipal market.

FINRA Rule 2210(d)(6) allows the use of testimonials in advertisements and provides associated disclosures designed to be meaningful to all investors, including senior investors and vulnerable adults. WFA includes testimonials within our advertising in accordance with FINRA Rule 2210(d)(6), and believes the required disclosures provide investors with context for the

[3] Regulatory Notice 17-06, Communications with the Public – FINRA Requests Comments on Proposed Amendments to Rules Governing Communications with the Public (February 2017). http://www.finra.org/sites/default/files/notice_doc_file_ref/Regulatory-Notice-17-06.pdf

testimonials. Rankings and testimonials appear regularly in advertising and the public therefore expects to read how others feel about a particular security. We strongly believe that having consistency across all securities, including municipal securities, in regards to the use of testimonials is essential in providing regulatory uniformity within the industry and we encourage the MSRB to follow suit in adopting similar provisions.

Furthermore, the SEC published Guidance Update ("Guidance") dated March 2014 where it provided guidance in regards to the use of testimonials for investment advisers.[4] In the Guidance, the SEC seeks to assist firms in applying Rule 206(4) of the Investment Advisers Act of 1940 and Rule 206(4)-1(a)(1) to their use of social media. The Guidance essentially provides relief in certain circumstances where the use of testimonials would not implicate the concern underlying the testimonial rule, which is that "the testimonial may give rise to a fraudulent or deceptive implication or mistaken reference." WFA supports the relief granted by the SEC and believes the MSRB should extend such relief as it relates to municipal securities should the MSRB not adopt FINRA Rule 2210 regarding the use of testimonials.

B. The MSRB Should Adopt the Proposed Exception That Would Allow the Use of Projected Performance.

WFA believes an additional opportunity for harmonization exists related to FINRA's Current Proposal to include an exception to Rule 2210's prohibition on projecting performance. The proposed amendment will allow firms to better inform investors about the recommended investment strategies, including the underlying assumptions upon which those recommendations are based. WFA notes that this exception will especially benefit those investors that may only have access to this information through investment advisors. This will help provide a "more level playing field" by allowing performance projections similar to those available for clients of investment advisors. To this point, WFA believes the MSRB should ensure the FINRA proposed exception is included in their harmonization efforts.

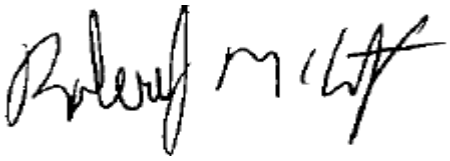
III. CONCLUSION

WFA appreciates the opportunity to provide feedback to the MSRB on the draft amendments to the MSRB's advertising rules and commends the Board on its harmonization efforts. For the reasons stated above, WFA believes additional harmonization of the Proposal with other industry rules will ultimately benefit investors through increased consistency in the communications they receive.

[4] SEC IM Guidance Update (March 2014), available at: https://www.sec.gov/investment/im-guidance-2014-04.pdf.

If you would like to further discuss this issue, please contact me at (314) 242-3193 or robert.j.mccarthy@wellsfargoadvisors.com.

Sincerely,



Robert J. McCarthy
Director of Regulatory Policy