



Rule G-40 Overview and Compliance Considerations

MSRB RULE G-40 BECOMES EFFECTIVE ON AUGUST 23, 2019

This resource provides information about some of the key provisions of Rule G-40, and raises issues that firms may wish to consider as they develop and implement policies and procedures to comply with Rule G-40. This document is not to be considered legal advice.

It is important for municipal advisors to understand the full reach of Rule G-40 which impacts communications that one may not identify as traditional advertisements.

Municipal advisors should review Rule G-40 and other MSRB FAQs and materials for Rule G-40 (links in Resource section), and consult counsel or their compliance professionals about the integration of Rule G-40 into your firm's policies and practices.

Municipal advisors should also be aware that the presentation of information, recordkeeping and other compliance duties related to MA communications (whether advertisements or not) – including those within social media platforms – are governed by other MSRB Rules including G-8&9 (recordkeeping), G-17 (fair dealing), and G-44 (supervisory procedures).

Rule Framework

Under Rule G-40, advertisements refer to certain materials (as described in the Rule) concerning the services of the municipal advisor or the engagement of a municipal advisory client.

Advertisements include any firm generated electronic or other public media, written or electronic promotional literature available to the general public, municipal entities, and municipal advisory clients. This includes any notice, circular, report, market letter, form letter, telemarketing script, seminar text, press releases, firm website content, and social media postings concerning the services of the municipal advisor or the engagement of a municipal advisory client.

Rule G-40 is in place to ensure that advertisements used by municipal advisors are based on the principles of fair dealing and good faith. Advertisements 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 security, municipal financial product, industry or service. No MA may omit any material fact or qualification if the omission, in light of the context of the material presented, would cause the advertisements to be misleading.

Rule Parameters

There are multiple factors that need to be considered to determine if a communication by an MA firm is advertising subject to Rule G-40 and, if it is advertising, whether it is permissible advertising. Some of the key highlights of the Rule include:

- Does NOT apply, in most cases, to POS, OS, preliminary prospectus, prospectuses.
- Does NOT apply to RFP responses, generally, or pitch books even if a firm uses standard materials in multiple RFP responses and those responses are distributed to multiple individuals within an entity.
- Does NOT apply to normal advisory communications with a client.
- Does NOT apply to “Tombstone” advertisements when the facts of the issuance are stated.
- Does apply to published material that is distributed to more than 25 people within a 90-day period. The 25 person limit is determined at the entity level and not at the individual person level. Also, this applies to publicly available information including information on publicly available Firm websites even if not accessed by anyone.
- A Municipal Advisor Principal (as designated by your firm and Series 50 and 54 (when applicable) qualified) must pre-approve, in writing, all advertisements.
- Statements made in advertisements need to be substantiated. Without that, the advertisement would not be permissible.
- Client lists may be used as long as the list is accurate and not misleading (as noted in Rule G-40 (a)(iv)), and may not include any testimonial or endorsement. Firms should be careful not to create a false or misleading impression (including exaggeration). The client list used should specify what the list demonstrates (e.g., all clients, clients within a time frame, clients of a certain type, clients within a geographic region) and the include the source from which the list is derived.
- Case studies may be presented within the guidelines of the Rule G-40(a)(iv) and be accurate and not misleading. The case studies must not include any testimonial type statement nor should the case study make statements that imply the MA was involved in matters where they were not.
- Firm may indicate registration with the MSRB and SEC but may not make any statement that implies that the MSRB nor the SEC is making a statement about your firm and professional skills and services.
- Presentations given at conferences which may include information about the MA firm and services would be considered advertisement. Third party content that includes testimonials or information about the MA firm would also need to be reviewed as possible advertising content.
- Sections of a Firm’s website that may be password protected or available only to clients may fall into the parameters of the Rule, if more than 25 entities can access that section of the website.
- Rule G-40 would apply to third party content shared by an MA if the MA was involved in the preparation of that content or implicitly or explicitly endorsed the content such as by stating “check out this great article out the XYZ School District about their successful bond sale.” Any such content subject to G-40 would be subject to approval by a Municipal Advisor Principal and may not contain prohibited content such as “testimonials.”
- A firm is not responsible for a third party’s postings on the Firm’s social media platforms if the Firm did not generate the content and does not comment or “like” the posting as that would show “entanglement or adoption” of the content which make such content subject to Rule G-40.
- Advertisements include content or postings about the firm’s advisory services or the engagement of firm clients on an individual MA’s personal social media account.

Compliance Considerations

MA firms should address all aspects of the Rule in relations to their firm's operations and policies and procedures. Key items that firms should consider in order to comply with the Rule include:

- Gain clear understanding of the parameters of advertising under Rule G-40 and its impact on firm materials (newsletters, promotional materials distributed at conferences, ads in publications such as state GFOA conference materials, firm website).
- Revise Firm WSP to include Rule G-40 responsibilities.
- Have supervisory procedures in place to monitor firm policies related to Rule G-40 compliance.
- Educate employees on new G-40 requirements, including marketing and administrative staff who may be responsible for disseminating information.
- Establish process for written approval by Municipal Advisor Principal of Firm's outstanding "advertisements" including web pages on firm website that prior to the effective date of Rule G-40.
- Establish process for pre-approval by Municipal Advisor Principal of future advertisements, including recordkeeping of the approvals.
- Review and possibly revise current publications and materials and firm website to determine if these documents meet the 'advertising' threshold and are in line with permitted advertisements (e.g., do not contain testimonials, promissory or misleading statements, predict or project performance, untrue statements) under Rule G-40.
- Review and possibly revise criteria for content presented within firm social media accounts.
- Review and possible revise criteria for employee use of social media accounts that intersect with professional duties (e.g., LinkedIn). For instance, a firm may wish to adopt a policy that states that no employees may discuss, post, or engage in MA business through any firm or personal electronic or social media platforms or have static information (such as a LinkedIn profile) unless approved by a Municipal Advisor Principal prior to use.
- If using case studies ensure, that they are written in a manner that is allowable under Rule G-40.
- If citing a ranking of the firm (e.g., HUSKER Advisors is a top 3 MA firm in Nebraska), it may be advisable for the source of the information to be cited in the advertisement because ads must provide a sound basis for evaluating the facts included in them and not make any misrepresentations. Firm should keep a copy of original source as part of its recordkeeping duties.
- Check documentation and website for links to external materials or third party information that may be subject to Rule G-40, including material or information prohibited by Rule G-40.
- If firm has other business segments that are regulated outside of municipal advisor rules (e.g., Investment Advisers, Broker-Dealers), then the firm should have processes in place to ensure that the Firm complies with the necessary rules of various regulators, especially when an advertisement might include information on two services (e.g., MA and IA).
- If firm has other business segments that are not subject to similar advertising rules (e.g., advice regarding municipal government operations), then the firm should have processes in place to ensure that any joint marketing materials (including the firm website) are being properly reviewed for Rule G-40 compliance.

Resources

MSRB Rule G-40

MSRB FAQ: Use of Social Media Under MSRB Advertising Rule

MSRB FAQ: Use of Municipal Advisory Client Lists and Case Studies

