



October 17, 2018

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

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

Dear Mr. Smith:

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

#### General Comments

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

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

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

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

#### Specific Comments

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

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

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

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

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

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

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

Example 1 – Misleading Statements in General Print Advertisements

Example 2 – Misleading Statements in Conference Brochures

Example 3 – Misleading Statements and Testimonials on Firm Website

Example 4 – Misleading Statements on Firm Website

Example 5 – Misleading Statements in Mass Email Communication

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

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

Sincerely,



Susan Gaffney  
Executive Director

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