



October 17, 2018

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

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

Dear Mr. Smith:

The Securities Industry and Financial Markets Association (“SIFMA”)<sup>1</sup> appreciates this opportunity to respond to Notice 2018-25<sup>2</sup> (the “Notice”) issued by the Municipal Securities Rulemaking Board (the “MSRB”) in which the MSRB requests comment from market participants and the public on a draft compliance resource regarding the application of the content standards under MSRB Rule G-40 on advertising by municipal advisors. SIFMA and its members appreciate the MSRB’s efforts to provide further guidance on the advertising rules. The mock advertisements generally are helpful and add to the understanding of Rule G-40. SIFMA and its members feel this compliance resource could be particularly useful for smaller municipal advisors, and that additional examples could be helpful. In particular, examples of permissible advertisements would be constructive. We do have comments and a few suggestions for further clarifications as set forth below.

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

<sup>2</sup> MSRB Notice 2018-25 (September 17, 2018).

## **I. Harmonization with FINRA Standards and Examination Expectations**

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

## **II. Citing Statistics and Third-Party Information**

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

## **III. Use of Marketing Names**

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<sup>3</sup> Also, see generally, FINRA 2210.

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

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

#### **IV. Additional Examples**

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

#### **V. Conclusion**

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

assistance that would be helpful. If you have any questions, please do not hesitate to contact the undersigned at (212) 313-1130.

Sincerely yours,

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

Leslie M. Norwood  
Managing Director and  
Associate General Counsel

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