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SEC Approves Advertising Rule Changes for Dealers and Municipal Advisors

Overview

The Municipal Securities Rulemaking Board (MSRB) received approval from the Securities and Exchange Commission (SEC) on May 7, 2018 to amend MSRB Rule G-21, on advertising by brokers, dealers or municipal securities dealers, and to adopt new MSRB Rule G-40, on advertising by municipal advisors. The SEC also approved a technical amendment to MSRB Rule G-42, on duties of non-solicitor municipal advisors.¹

With these rule changes, as well as the previously announced development of the municipal advisor principal examination (Series 54), the MSRB, in the exercise of authority granted by the Dodd-Frank Wall Street Reform and Consumer Protection Act, has completed the core of its Congressionally mandated comprehensive regulatory framework for municipal advisors.

The rule changes will become effective on February 7, 2019.

Questions about this notice may be directed to Pamela K. Ellis, Associate General Counsel, at 202-838-1500.

Summary of Rule Changes

The MSRB designed the rule changes to enhance the MSRB's fair practice rules relating to advertising so as to help prevent fraud from entering the municipal securities market and to help ensure consistent regulation of advertisements among related entities in the municipal securities market. As discussed below, the amendments to Rule G-21 (i) provide more specific content standards for advertisements by brokers, dealers or municipal securities dealers (collectively, dealers), (ii) revise the rule's general standards for advertisements, and (iii) reconcile analogous provisions relating to the definition of "form letter" in Rule G-21 with the definition of



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¹ Exchange Act Release No. 83177 (May 7, 2018); File No. SR-MSRB-2018-01.

correspondence in FINRA Rule 2210, on communications. The amendments also include a technical amendment in paragraph (e) to streamline the rule.

Similar to Rule G-21, Rule G-40 applies to advertisements by a municipal advisor, as the term “advertisement” is defined in Rule G-40(a)(i). Rule G-40 sets forth general provisions, addresses professional advertisements and requires principal approval in writing for advertisements by municipal advisors before their first use. However, as discussed below, Rule G-40 does not address product advertisements, as that term is defined in Rule G-21. In addition, to assist municipal advisors with their compliance with Rule G-40, prior to the effective date, the MSRB will provide guidance relating to:

- A municipal advisor’s use of case studies and municipal advisory client lists;
- Rule G-40’s content standards; and
- A municipal advisor’s use of social media.

Rule G-21

As noted above, to enhance MSRB’s fair practice provisions, as well as to promote regulatory consistency among Rule G-21 and the advertising rules of other financial regulators, the amendments to Rule G-21 provide more specific content standards. The amendments also revise Rule G-21’s general standards for advertisements.

A. Enhancement of Fair Practice and Fair Dealing Obligations and Promotion of Regulatory Consistency with Certain Standards of Other Financial Regulators

(i) Content standards

Rule G-21(a)(iii) adds content standards to make explicit many of the MSRB’s fair practice and fair dealing obligations that follow from the MSRB’s requirements set forth in Rule G-21 and Rule G-17, on conduct of municipal securities and municipal advisory activities, and the interpretive guidance the MSRB has provided under those rules, and to specifically address those obligations with respect to advertising.² Specifically, the content standards enhance Rule G-21’s fair practice provisions by requiring that:

- An advertisement be based on principles of fair dealing and good faith, be fair and balanced and provide a sound basis for evaluating

² The rule changes do not supplant the MSRB’s regulatory guidance provided under Rule G-17.

the facts about any particular municipal security or type of municipal security, industry, or service, and that a dealer not omit any material fact or qualification if such omission, in light of the context presented, would cause the advertisement to be misleading;

- An advertisement not contain any false, exaggerated, unwarranted, promissory or misleading statement or claim;
- A dealer limit the types of information placed in a legend or footnote of an advertisement so as to not inhibit a customer's or potential customer's understanding of the advertisement;
- An advertisement provide statements that are clear and not misleading within the context that they are made, that the advertisement provide a balanced treatment of the benefits and risks, and that the advertisement is consistent with the risks inherent to the investment;
- A dealer consider the audience to which the advertisement will be directed and that the advertisement provide details and explanations appropriate to that audience;
- An advertisement not predict or project performance, imply that past performance will recur or make any exaggerated or unwarranted claim, opinion or forecast;³ and
- An advertisement not include a testimonial unless it satisfies certain conditions.⁴

³ However, Rule G-21(a)(iii)(F) permits:

- (1) A hypothetical illustration of mathematical principles, provided that it does not predict or project the performance of an investment; and
- (2) An investment analysis tool, or a written report produced by an investment analysis tool.

⁴ Rule G-21(a)(iii)(G) provides:

- (1) If an advertisement contains a testimonial about a technical aspect of investing, the person making the testimonial must have the knowledge and experience to form a valid opinion;
- (2) If an advertisement contains a testimonial about the investment advice or investment performance of a broker, dealer or municipal securities dealer or its products, that advertisement must prominently disclose the following:
 - (a) The fact that the testimonial may be not be representative of the experience of other customers.
 - (b) The fact that the testimonial is no guarantee of future performance or success.
 - (c) If more than \$100 in value is paid for the testimonial, the fact that it is a paid testimonial.

By so doing, Rule G-21(a)(iii) promotes regulatory consistency with FINRA Rule 2210(d)(1)'s and FINRA Rule 2210(d)(6)'s content standards for advertisements.⁵

The amendments to Rule G-21 also expand upon the guidance provided by MSRB Rule A 12, on registration. Rule A-12(e) permits a dealer to state that it is MSRB-registered in its advertising, including on its website. Rule G-21 continues to permit a dealer to state that it is MSRB-registered. However, Rule G 21(a)(iii)(H) also provides that a dealer shall only state in an advertisement that it is MSRB-registered as long as, among other things, the advertisement complies with the applicable standards of all other MSRB rules and neither states nor implies that the MSRB endorses, indemnifies, or guarantees the dealer's business practices, selling methods, the type of security offered, or the security offered. By so doing, the rule changes promote regulatory consistency with FINRA Rule 2210(e)'s analogous limitations on the use of FINRA's name and any other corporate name owned by FINRA.

(ii) General standards

The changes to Rules G-21(a)(iv), (b)(ii), and (c)(ii) promote regulatory consistency among Rule G-21's general standard for advertisements, standard for professional advertisements, and standard for product advertisements (collectively, the "general standards") and the content standards of FINRA Rule 2210(d). Currently, Rule G-21's general standards prohibit a dealer, in part, from publishing or disseminating material that is "materially false or misleading." The rule changes replace the phrase "materially false or misleading" with "any untrue statement of material fact" as well as add "or is otherwise false or misleading." This harmonization with FINRA Rule 2210(d) is consistent with Rule G-21's current general standards.

B. Reconcile the Definition of Form Letter with FINRA Rule 2210 Definition of Correspondence

⁵ The other topics and standards addressed by other provisions of FINRA Rule 2210(d) have not been historically addressed by Rule G-21 and/or may not be relevant to the municipal securities market. Those other topics and standards addressed by FINRA Rule 2210(d) relate to: comparisons between investments or services (FINRA Rule 2210(d)(2)); disclosure of the member's name (FINRA Rule 2210(d)(3)); tax considerations (FINRA Rule 2210(d)(4)); disclosure of fees, expenses, and standardized performance relating to non-money market fund open-end investment company performance data (FINRA Rule 2210(d)(5)); recommendations (FINRA Rule 2210(d)(7)); BrokerCheck (FINRA Rule 2210(f)(8)); and prospectuses filed with the SEC (FINRA Rule 2210(d)(9)).

Currently, Rule G-21(a)(ii) defines a “form letter,” in part, as a written letter distributed to 25 or more persons. The analogous provision in FINRA’s communications with the public rule to Rule G-21(a)(ii) is FINRA Rule 2210’s definition of correspondence. FINRA Rule 2210(a)(2)’s definition of correspondence, however, defines “correspondence,” in part, as written communications distributed to 25 or fewer retail investors. The MSRB understands 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 amendments to Rule G 21(a)(ii) eliminate that one-person difference. The amendments to Rule G-21 define a “form letter,” in part, as a written letter distributed to more than 25 persons.⁶

In addition, the amendments to Rule G-21 added Supplementary Material .03 to Rule G-21 to give guidance on the meaning of the term “person” when used in the context of a form letter under Rule G-21(a)(ii). Specifically, Supplementary Material .03 explains that the number of “persons” is determined for the purposes of a response to a request for proposal (RFP), request for qualifications (RFQ) or similar request at the entity level. Therefore, for example, if a dealer were to respond to an RFP from an issuer, the issuer entity would count as one person, no matter how many persons employed by the issuer reviewed the dealer’s response to the RFP.

Rule G-40

Rule G-40, similar to Rule G-21, sets forth general provisions, addresses professional advertisements, and requires principal approval, in writing, for advertisements by municipal advisors before their first use. However, Rule G-40 does not address “product advertisements,” as that term is defined in Rule G-21.

A. General Provisions

Rule G-40(a) defines the terms “advertisement,” “form letter” and “municipal advisory client,” and provides content standards and general standards for advertisements by non-solicitor and solicitor municipal advisors.

(i) Definitions

⁶ Written letters or electronic mail messages distributed to 25 or fewer persons within any period of 90 consecutive days may be subject to the fundamental fair dealing obligations of Rule G-17.

Advertisement. The term “advertisement” in Rule G-40(a)(i) parallels the term “advertisement” in Rule G-21(a)(i), but is tailored for municipal advisors. An advertisement refers, in part, to any promotional literature distributed or made generally available to municipal entities, obligated persons, municipal advisory clients (discussed below), or the public by a municipal advisor.⁷ Further, an advertisement includes the promotional literature used by a solicitor municipal advisor⁸ to solicit a municipal entity or obligated person on behalf of the solicitor municipal advisor’s municipal advisory client.

In addition, similar to Rule G-21(a)(i), Rule G-40(a)(i) excludes certain types of documents from the definition of “advertisement.” Rule G-40(a)(i) excludes preliminary official statements, official statements, preliminary prospectuses, prospectuses, summary prospectuses, and registration statements from the definition of “advertisement.” Those exclusions recognize the differences between the role of a dealer under Rule G-21 and the role of a solicitor municipal advisor under Rule G-40. Nonetheless, as with Rule G-21, an abstract or summary of those documents or other such similar document prepared by the municipal advisor is considered an “advertisement.”

For example, because official statements are excluded from the definition of an advertisement, a municipal advisor that assists with the preparation of an official statement generally would not be assisting with an advertisement and the municipal advisor’s work on the official statement generally would not be subject to the requirements of Rule G-40.

Form letter. The term “form letter” in Rule G-40 is identical to the definition of that term set forth in the amendments to Rule G-21(a)(ii). A form letter is

⁷ An advertisement, as defined by Rule G-40(a)(i) 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 entities, obligated persons, 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 the engagement of a municipal advisory client (as defined in paragraph (a)(iii)(B)), 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, but does apply to abstracts or summaries of the foregoing and other such similar documents prepared by municipal advisors.

⁸ A “solicitor municipal advisor,” is a municipal advisor that engages in a solicitation of a municipal entity or obligated person, as defined in Rule 15Ba1-1(n) under the Exchange Act.

defined as any written letter or electronic mail message distributed to more than 25 persons within any period of 90 consecutive days. Similar to the amendments to Rule G-21, Rule G-40 also includes Supplementary Material .01 to clarify the number of “persons” for a response to an RFP, RFQ or similar request, when used in the context of a form letter under Rule G-40(a)(ii), is determined at the entity level.

Further, the MSRB understands that a municipal advisor may send an e-mail that only contains regulatory disclosures through blind copies to more than 25 of its municipal advisory clients. In general, the MSRB believes that such an e-mail would not constitute an advertisement and would not be subject to Rule G-40. However, if the e-mail that contained the regulatory disclosures also included promotional material, then the e-mail could constitute an advertisement and could be subject to Rule G-40.

Municipal advisory client. Rule G-40(a)(iii), unlike Rule G-21, includes the definition of the term “municipal advisory client.” The definition of municipal advisory client is substantially similar in all material respects to the definition of that term as set forth in the recent amendments to Rule G-8, effective October 13, 2017, to address municipal advisory client complaint recordkeeping.⁹ The definition of municipal advisory client accounts for the differences in the activities of non-solicitor and solicitor municipal advisors.

(ii) Content standards

Rule G-40(a)(iv) sets forth content standards for advertisements by municipal advisors. Except with regard to testimonials, those content standards are substantially similar to the content standards set forth in the amendments to Rule G-21 for dealers. However, Rule G-40 replaces certain terms used in Rule G-21 with terms more applicable to municipal advisors. The MSRB believes that incorporating content standards for advertisements into Rule

⁹ Exchange Act Release No. 79801 (Jan. 13, 2017), 82 FR 7898 (Jan. 23, 2017) (SR-MSRB-2016-15). See MSRB Notice 2017-03, SEC Approves Extension of MSRB’s Customer Complaint and Related Recordkeeping Rules to Municipal Advisors and the Modernization of Those Rules (Jan. 18, 2017). Specifically, Rule G-8(e)(ii) defines a municipal advisory client to 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.

G-40 ensures consistent regulation between regulated entities in the municipal securities market, and promotes regulatory consistency between dealer municipal advisors and non-dealer municipal advisors.

Specifically, Rule G-40 requires that:

- An advertisement be based on the principles of fair dealing and good faith, be fair and balanced and provide a sound basis for evaluating the municipal security or type of municipal security, municipal financial product, industry, or service and that a municipal advisor not omit any material fact or qualification if such omission, in light of the context presented, would cause the advertisement to be misleading;
- An advertisement not contain any false, exaggerated, unwarranted, promissory or misleading statement or claim;
- A municipal advisor limit the types of information placed in a legend or footnote of an advertisement so as to not inhibit a municipal advisory client's or potential municipal advisory client's understanding of the advertisement;
- An advertisement provide statements that are clear and not misleading within the context that they are made, that the advertisement provides a balanced treatment of risks and potential benefits, and that the advertisement is consistent with the risks inherent to the municipal financial product or the issuance of the municipal security;
- A municipal advisor consider the audience to which the advertisement will be directed and that the advertisement provide details and explanations appropriate to that audience;
- An advertisement not predict or project performance, imply that past performance will recur or make any exaggerated or unwarranted claim, opinion or forecast;¹⁰ and
- An advertisement not refer, directly or indirectly, to any testimonial of any kind concerning the municipal advisor or concerning the advice, analysis, report or other service of the municipal advisor.

To assist municipal advisors with their understanding of Rule G-40's content standards, the MSRB will publish guidance about those standards before Rule G-40 becomes effective.

¹⁰ However, Rule G-40(a)(iv)(F) permits:

- (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.

However, as noted above, unlike with Rule G-21, Rule G-40 prohibits a municipal advisor from using a testimonial in an advertisement. The MSRB believes that any testimonial presents significant issues, including the ability of the testimonial to be misleading, but this is particularly the case with a testimonial about a municipal advisor. Dealers and municipal advisors have different types of relationships and roles with their customers or municipal advisory clients and have different models for providing advice. The differences between dealers and municipal advisors are recognized in the Securities Exchange Act of 1934, as amended (Exchange Act), particularly with regard to the fiduciary duties owed by a municipal advisor to its municipal entity clients.

Nevertheless, the MSRB believes that, in general, the use of a municipal advisory client list or case study by a municipal advisor will not be “testimonial” under Rule G-40. To assist municipal advisors, the MSRB will publish guidance about the use of municipal advisory client lists and case studies that would not be testimonials, before Rule G-40 becomes effective.

Existing Rule A-12(e) permits a municipal advisor to state that it is MSRB registered in its advertising, including on its website. New Rule G-40(a)(iv)(H), like Rule G-21(a)(iii)(H) for dealers, permits a municipal advisor to state that it is MSRB registered. However, Rule G 40(a)(iv)(H) provides that a municipal advisor shall only state in an advertisement that it is MSRB registered as long as, among other things, the advertisement complies with the applicable standards of all other MSRB rules and neither states nor implies that the MSRB endorses, indemnifies, or guarantees the municipal advisor’s business practices, services, skills, or any specific municipal security or municipal financial product.

(iii) General standard for advertisements

Rule G-40(a)(v) sets forth a general standard with which a municipal advisor must comply for advertisements. That standard requires, in part, that a municipal advisor not publish or disseminate, or cause to be published or disseminated, any advertisement relating to municipal securities or municipal financial products that the municipal advisor knows or has reason to know contains any untrue statement of material fact or is otherwise false or misleading. Rule G-40 is similar to the amendments to Rule G-21(a)(iv) in all material respects, except Rule G-40 substitutes “municipal advisor” for the

term “dealer” and, consistent with Section 15B(e)(4) of the Exchange Act,¹¹ applies with regard to municipal financial products in addition to municipal securities.

B. Professional Advertisements

Rule G-40(b) defines the term “professional advertisement,” and provides the standard for such advertisements. As defined in Rule G-40(b)(i), a professional advertisement is an advertisement “concerning the facilities, services or skills with respect to the municipal advisory activities of the municipal advisor or of another municipal advisor.” Rule G-40(b)(ii) provides, in part, that a municipal advisor shall not publish or disseminate any professional advertisement that contains any untrue statement of material fact or is otherwise false or misleading. The strict liability standard for professional advertisements in Rule G-40(b)(ii) is consistent with the MSRB’s long-standing belief that a regulated entity should be strictly liable for an advertisement about its facilities, skills, or services, and that a knowledge standard is not appropriate.¹²

C. Principal Approval

Rule G-40(c) requires that each advertisement that is subject to Rule G-40 be approved in writing by a municipal advisor principal before its first use.¹³ Rule G-40(c) also requires that the municipal advisor keep a record of all such advertisements. Rule G-40(c) is similar in all material respects to Rule G-21(f).

D. Product Advertisements

Rule G-40 omits the provisions set forth in Rule G-21 regarding product advertisements, new issue product advertisements, and municipal fund security product advertisements. The MSRB believes, at this juncture, that

¹¹ 15 U.S.C. 78o-4(e)(4).

¹² Notice of Filing of Fair Practice Rules, [1977-1987 Transfer Binder] Municipal Securities Rulemaking Board Manual (CCH) ¶10,030 at 10,376 (Sept. 20, 1977).

¹³ MSRB Rule G-3(e)(i), on professional qualifications, defines a municipal advisor principal as:

a natural person associated with a municipal advisor who is qualified as a municipal advisor representative and is directly engaged in the management, direction or supervision of the municipal advisory activities of the municipal advisor and its associated persons.

municipal advisors most likely do not prepare such advertisements as the MSRB understands that municipal advisors generally advertise their municipal advisory services and not products.

Rule G-42

The rule changes make a technical amendment to Rule G-42(f)(iv) to correct a cross-reference to the intended subsection (f)(iii), which defines the term “municipal advisor” for purposes of Rule G-42.

May 7, 2018

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Text of Amendments*

Rule G-21: Advertising by Brokers, Dealers or Municipal Securities Dealers

(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 customers or the public, including any notice, circular, report, market letter, form letter, telemarketing script, seminar text, press release concerning the products or services of the broker, dealer or municipal securities dealer, or reprint, or any excerpt of the foregoing or of a published article. The term does not apply to preliminary official statements or official statements, but does apply to abstracts or summaries of ~~official statements, offering circulars~~ the foregoing and other such similar documents prepared by brokers, dealers or municipal securities dealers.

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

(iii) Content Standards.

(A) All advertisements by a broker, dealer or municipal securities dealer 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, industry or service. No broker, dealer or municipal securities dealer 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.

* Underlining indicates new language; strikethrough denotes deletions.

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

(C) A broker, dealer or municipal securities dealer may place information in a legend or footnote only in the event that such placement would not inhibit a customer's or a potential customer's understanding of the advertisement.

(D) A broker, dealer or municipal securities dealer 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 investment.

(E) A broker, dealer or municipal securities dealer 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)(iii)(F) does not prohibit:

(1) A hypothetical illustration of mathematical principles, provided that it does not predict or project the performance of an investment; and

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

(G) (1) If an advertisement contains a testimonial about a technical aspect of investing, the person making the testimonial must have the knowledge and experience to form a valid opinion;

(2) If an advertisement contains a testimonial about the investment advice or investment performance of a broker, dealer or municipal securities dealer or its products, that advertisement must prominently disclose the following:

(a) The fact that the testimonial may not be representative of the experience of other customers.

(b) The fact that the testimonial is no guarantee of future performance or success.

(c) If more than \$100 in value is paid for the testimonial, the fact that it is a paid testimonial.

(H) A broker, dealer or municipal securities dealer may indicate registration with the Municipal Securities Rulemaking Board in any advertisement that complies with the applicable standards of all other Board rules 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 broker, dealer or municipal securities dealer's business practices, selling methods, the class or type of securities offered, or any specific security.

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

(b) Professional Advertisements.

(i) No change.

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

(c) Product Advertisements.

(i) No change.

(ii) *Standard for Product Advertisements.* No broker, dealer or municipal securities dealer shall publish or disseminate, or cause to be published or disseminated, any product advertisement that such broker, dealer or municipal securities dealer knows or has reason to know ~~is materially~~ contains any untrue statement of material fact or is otherwise false or misleading and, to the extent applicable, that is not in compliance with sections (d) or (e) hereof.

(d) No change.

(e) Municipal Fund Security Product Advertisements. In addition to the requirements of section (c), all product advertisements for municipal fund securities shall be subject to the following requirements:

(i) No change.

(ii) *Performance Data.* Each product advertisement that includes performance data relating to municipal fund securities must present performance data in the format, and calculated pursuant to the methods, prescribed in paragraph (d) of Securities Act Rule 482 (or, in the case of a municipal fund security that the issuer holds out as having the characteristics of a money market fund, paragraph (e) of Securities Act Rule 482) and, to the extent applicable, subparagraph (e)(i)(A)(4) of this rule, provided that:

(A) – (E) No change.

(F) *applicability with respect to underlying assets* – notwithstanding any of the foregoing, this subsection (e)(ii) shall apply solely to the calculation of performance relating to municipal fund securities and does not apply to, or limit the applicability of any rule of the Commission, ~~Financial Industry Regulatory Authority, Inc. (FINRA)~~ or any other regulatory body relating to, the calculation of performance for any security held as an underlying asset of the municipal fund securities.

(iii) – (v) No change.

(vi) *Underlying Registered Securities*. If an advertisement for a municipal fund security provides specific details of a security held as an underlying asset of the municipal fund security, the details included in the advertisement relating to such underlying security must be presented in a manner that would be in compliance with any Commission or ~~FINRA~~ other advertising rules that would be applicable if the advertisement related solely to such underlying security; provided that details of the underlying security must be accompanied by any further statements relating to such details as are necessary to ensure that the inclusion of such details does not cause the advertisement to be false or misleading with respect to the municipal fund securities advertised. This subsection does not limit the applicability of any rule of the Commission, ~~FINRA~~ or any other regulatory body relating to advertisements of securities other than municipal fund securities, including advertisements that contain information about such other securities together with information about municipal securities.

(vii) No change.

(f) No change.

--- Supplementary Material:

.01 - .02 No change.

.03 Number of Persons. For purposes of Rule G-21(a)(ii), the number of “persons” for a response to a request for proposal (RFP), a request for qualifications, or similar request is determined at the entity level. Therefore, for example, if a dealer were to send a response to an RFP to a municipal entity, that municipal entity would count as one “person” no matter how many employees of the municipal entity may review the response to the RFP.

Rule G-40: Advertising by Municipal Advisors

(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 entities, obligated persons, 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 the engagement of a municipal advisory client (as defined in paragraph (a)(iii)(B)), 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, but does apply to abstracts or summaries of the foregoing and other such similar documents prepared by municipal advisors.

(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) 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

(B) 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. No municipal advisor 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.

(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 or potential 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, as defined in Rule G-3(e)(i), prior to first use. Each municipal advisor shall make and keep current in a separate file records of all such advertisements.

Supplementary Material:

.01 Number of Persons. For purposes of Rule G-40(a)(ii), the number of “persons” for a response to a request for proposal (RFP), a request for qualifications, or similar request is determined at the entity level. Therefore, for example, if a municipal advisor were to send a response to an RFP to a municipal entity, that municipal entity would count as one “person” no matter how many employees of the municipal entity may review the response to the RFP.

Rule G-42: Duties of Non-Solicitor Municipal Advisors

(a) – (e) No change.

(f) *Definitions.*

(i) - (iii) No change.

(iv) “Municipal advisory activities” shall, for purposes of this rule, mean those activities that would cause a person to be a municipal advisor as defined in subsection ~~(f)(iv)~~ (f)(iii) of this rule.

(v) - (ix) No change.

--- **Supplementary Material:**

.01 - .15 No change.