

2018-25

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Stakeholders
Municipal Advisors

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Request for Comment

Comment Deadline
October 17, 2018

Category
Fair Practice

Affected Rules
[Rule G-40](#)

Request for Comment on Application of Content Standards to Advertisements by Municipal Advisors under MSRB Rule G-40

Overview

The Municipal Securities Rulemaking Board (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. This request seeks information and insight from commenters to further inform the MSRB's development of the compliance resource for planned publication.

The MSRB invites market participants and the public to submit comments in response to this request, along with any other information that they believe would be useful to the MSRB in developing this compliance resource. Information may be submitted through October 17, 2018 in electronic or paper form. [Comments may be submitted electronically by clicking here.](#) Information submitted in paper form should be sent to Ronald W. Smith, Corporate Secretary, MSRB, 1300 I Street, NW, Washington, DC 20005. Generally, the MSRB will make available for public inspection on the MSRB's website all information submitted.¹

Questions about this request for comment should be directed to Pamela K. Ellis, Associate General Counsel, at 202-838-1500.

¹ Comments are generally 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 only should submit information that they wish to make publicly available.



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Background

New Rule G-40 becomes effective on February 7, 2019. During the development of Rule G-40, the MSRB received requests for guidance regarding the application of the rule's content standards to advertisements by municipal advisors set forth in Rule G-40(a)(iv), and the MSRB committed to providing such guidance.² In addition, since the Securities and Exchange Commission (SEC) approved new Rule G-40,³ the MSRB has continued to engage with municipal advisors, dealers, and other industry stakeholders about Rule G-40 and Rule G-21, on advertising by brokers, dealers or municipal securities dealers, including the application of such rules to a regulated entity's use of social media.⁴ The MSRB views the guidance that it committed to provide as part of the recent rulemaking process as an initial set of guidance; the MSRB anticipates that it will provide additional guidance, as appropriate, under those rules and related rules (such as rules concerning supervision), and welcomes suggestions about the topics that the additional guidance may address.

Request for Comment

The MSRB recognizes that public comment will provide useful insight to help ensure that the compliance resource provides practical assistance. Therefore, the MSRB is seeking comment regarding the content and appropriateness of the draft compliance resource, as well as the usefulness of the draft resource. In addition to any other comment in this regard, the MSRB specifically seeks comment on the following questions:

- The draft compliance resource provides guidance by analyzing mock advertisements. Would a different format for the guidance on the application of the content standards to advertisements by municipal advisors be more useful? If so, what should that format be?
- Does the proposed analysis of the mock advertisements add to the understanding of Rule G-40? How could the proposed analysis be improved to provide greater understanding?
- Are there additional issues in the mock advertisements that need to be addressed?

² See [Letter from Pamela K. Ellis, Associate General Counsel, Municipal Securities Rulemaking Board, dated April 30, 2018](#).

³ Exchange Act Release No. 83177 (May 7, 2018), 83 FR 21794 (May 10, 2018), File No. SR-MSRB-2018-01.

⁴ [SEC Approves Advertising Rule Changes for Dealers and Municipal Advisors \(May 7, 2018\)](#).

- Would it be useful to provide guidance through additional mock advertisements? If so, what should those mock advertisements address?

The MSRB derived the principles discussed in this compliance resource from Rule G-40 and its related rulemaking record, and this draft compliance resource should be read in conjunction with Rule G-40 and its related guidance. This draft compliance resource does not create new legal or regulatory requirements, or new interpretations of existing requirements. The MSRB does not intend this draft compliance resource to be interpreted by municipal advisors or examining authorities as establishing new standards of conduct.

September 17, 2018

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Text of Draft Compliance Resource

Draft Compliance Resource Regarding the Application of the Content Standards to Advertisements by Municipal Advisors under MSRB Rule G-40

The Municipal Securities Rulemaking Board (MSRB) provides this draft compliance resource to illustrate the application of the content standards to advertisements by municipal advisors under MSRB Rule G-40, on advertising by municipal advisors. This compliance resource can assist municipal advisors with their compliance with the MSRB's advertising rule.

The MSRB derived the principles discussed in this draft compliance resource from Rule G-40 and its related rulemaking record, and this draft compliance resource should be read in conjunction with Rule G-40 and its related guidance. This draft compliance resource does not create new legal or regulatory requirements, or new interpretations of existing requirements. The MSRB does not intend for this draft compliance resource to be interpreted by municipal advisors or examining authorities as establishing new standards of conduct.

Background

Rule G-40, which becomes effective on February 7, 2019, includes general provisions, addresses professional advertisements by municipal advisors, and requires principal approval, in writing, for advertisements by municipal advisors before their first use. The general provisions (i) define key terms, including the term "advertisement," (ii) provide content standards, and (iii) provide general standards for advertisements, namely that a municipal advisor shall not publish or disseminate an advertisement 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's content standards are contained in Rule G-40(a)(iv) and require 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;¹ 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.

During the development of Rule G-40, the MSRB received requests for guidance regarding the application of the content standards to advertisements by municipal advisors. This draft compliance resource is part of the process to provide the requested guidance.

To provide practical assistance to municipal advisors with their understanding of the Rule G-40(a)(iv)'s content standards, this draft compliance resource provides guidance through the analysis of mock advertisements. The MSRB developed the mock advertisements to illustrate the application of the content standards to advertisements.

Below are six mock advertisements. Following each mock advertisement, is an analysis of certain concerns that the mock advertisement presents under Rule G-40(a)(iv)'s content standards. Although the MSRB limited its analysis to certain concerns with each mock advertisement, there may be additional concerns presented by the mock advertisement under Rule G-40(a)(iv) that are not discussed.

¹ 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.

Advertisement No. 1
General Print Advertisement

Experience and independence are critical.

Since 2002, ABC Municipal Advisor has provided high-quality advice to the public sector, free of conflicts.

It takes an independent financial advisor to give genuine independent financial advice. A firm cannot provide financial advice and serve as a municipal entity's underwriter on the same transaction.

Debt issuance can be an expensive undertaking for a municipality. Studies have shown that financial advisors can lower borrowing costs for state and local governments.

You deserve the best advice, you deserve us! We always lower our client's borrowing costs and your borrowing costs will always be substantially lower with us.

Let us help you!

ABC
Municipal Advisor

Main Concerns about Advertising Content:

“Since 2002, Municipal Advisor ABC has provided high-quality advice to the public sector, free of conflicts.”

- Municipal Advisor ABC must ensure that this absolute claim of the absence of any conflicts for such a lengthy period of time is not false, exaggerated, unwarranted or misleading. See Rule G-40(a)(iv)(B). This is a high standard because there are many types of potential conflicts that can be presented for a municipal advisor.

“It takes an independent financial advisor to give genuine independent financial advice.”

- The advertisement suggests that only an “independent financial advisor” (commonly understood to mean an advisor that is not also a dealer or affiliated with a dealer) can provide “genuine” independent (*i.e.*, unbiased) financial advice. The claim inaccurately suggests that the ability to provide independent advice is limited to those municipal advisors that are not also registered as or affiliated with a dealer, and thus, presents a false, exaggerated or misleading statement or claim in an advertisement. See Rule G-40(a)(iv)(B).

“Studies have shown that financial advisors can lower borrowing costs for state and local governments.”

- The advertisement asserts that studies have shown that financial advisors can lower borrowing costs, but fails to provide any source for, or other pertinent information regarding, those studies. Thus, the advertisement fails to provide a sound basis to evaluate the facts in regard to the municipal advisory service. *See* Rule G-40(a)(iv)(A).

“We always lower our client’s borrowing costs and your borrowing costs will always be substantially lower with us.”

- The statement that borrowing costs “will always be substantially lower with us” presents multiple issues under Rule G-40(a)(iv). Among those issues is that the statement presents a promissory statement or claim in an advertisement. *See* Rule G-40(a)(iv)(A) and (B). In addition, the statement follows the claim that “we always lower our client’s borrowing costs” and taken together, the statements predict or project performance, imply that that ABC Municipal Advisor’s past performance will recur, or make an exaggerated or unwarranted claim, opinion, or forecast. *See* Rule G-40(a)(iv)(F).

Advertisement No. 2**ABC State Public Finance Annual Conference Brochure****XYZ Public Finance, Inc.**

XYZ Public Finance, Inc. provides innovative valuable financing tools for all your capital improvement needs. We have talented experts in multiple areas!

We are a full service investment banking leader and can help you in any one of the areas below:

- **Underwriting**—We value ABC state and our underwriting/trading desk is located in ABC state.*
- **Municipal Studies**—Our experts produce high quality studies to help with your analysis.
- **Municipal Advisor**—Over the past 15 years, we have been the number one municipal advisor for ABC state issuances, based on par value and number of issuances.**

XYZ Public Finance, Inc.
Registered with and endorsed by 

* XYZ Public Finance, Inc. is a wholly-owned subsidiary of XYZ Broker-Dealer. Underwriting services offered through XYZ Broker-Dealer.

** Information based from data compiled by DEF Statistical Service 2002-2017.

Main Concerns about Advertising Content:

“XYZ Public Finance, Inc. . . . We are a full service investment leader and can help you in any one of the areas below: . . . Underwriting, Municipal Studies, and Municipal Advisor.”

- The advertisement is for XYZ Public Finance, Inc., yet the advertisement states “[w]e are a full service investment banking leader” and can help in underwriting, municipal studies and municipal advisory services. It appears that XYZ Public Finance, Inc. is providing the services discussed in the advertisement, but it is not. The advertisement footnotes that the underwriting is provided through XYZ Broker-Dealer; however, at a minimum, the footnote, taken together with the main text, creates an inconsistency or ambiguity regarding which entity is providing investment banking services. Thus, the advertisement fails to provide a sound basis for evaluating the facts in regard to underwriting and municipal advisory activities, and is potentially misleading. *See* Rule G-40(a)(iv)(A) and (B).

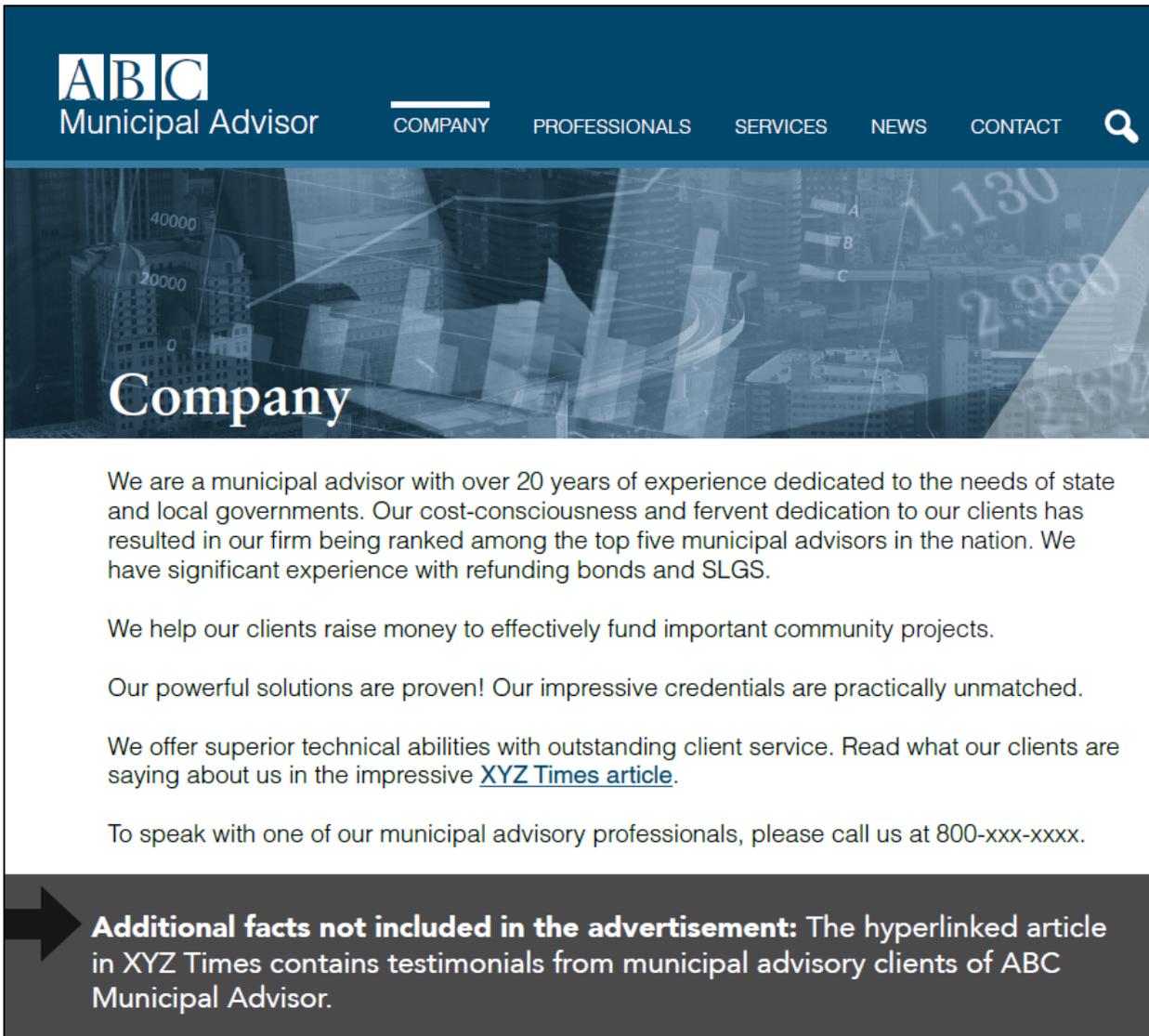
“ Information based from data compiled by DEF Statistical Service 2002-2017.”**

- The advertisement footnotes XYZ Public Finance, Inc.’s source for its claim that it was the number one municipal advisor for state issuances. However, the reference to DEF Statistical Service is not sufficient to allow a reader to access the relevant source information. The advertisement must provide a sound basis for evaluating the claim. *See* Rule G-40(a)(iv)(A).

“Registered with and endorsed by  MSRB”

- XYZ Public Finance, Inc. cannot state or imply that the MSRB endorses the municipal advisor. In addition, XYZ Public Finance, Inc. may only indicate registration with the MSRB in an advertisement as long as the advertisement complies with applicable standards of all other MSRB rules. *See* Rule G-40(a)(iv)(G).

Advertisement No. 3
Firm Website



ABC
Municipal Advisor

COMPANY PROFESSIONALS SERVICES NEWS CONTACT

Company

We are a municipal advisor with over 20 years of experience dedicated to the needs of state and local governments. Our cost-consciousness and fervent dedication to our clients has resulted in our firm being ranked among the top five municipal advisors in the nation. We have significant experience with refunding bonds and SLGS.

We help our clients raise money to effectively fund important community projects.

Our powerful solutions are proven! Our impressive credentials are practically unmatched.

We offer superior technical abilities with outstanding client service. Read what our clients are saying about us in the impressive [XYZ Times article](#).

To speak with one of our municipal advisory professionals, please call us at 800-xxx-xxxx.

Additional facts not included in the advertisement: The hyperlinked article in XYZ Times contains testimonials from municipal advisory clients of ABC Municipal Advisor.

Main Concerns about Advertising Content:

“Our cost-consciousness and fervent dedication to our clients has resulted in our firm being ranked among the top five municipal advisors in the nation.”

- The advertisement claims that ABC Municipal Advisor is ranked among the top five municipal advisors in the nation, but fails to provide a source or basis for that ranking. As such, the advertisement fails to provide a sound basis for evaluating the facts in regard to the municipal advisory services. See Rule G-40(a)(iv)(A).

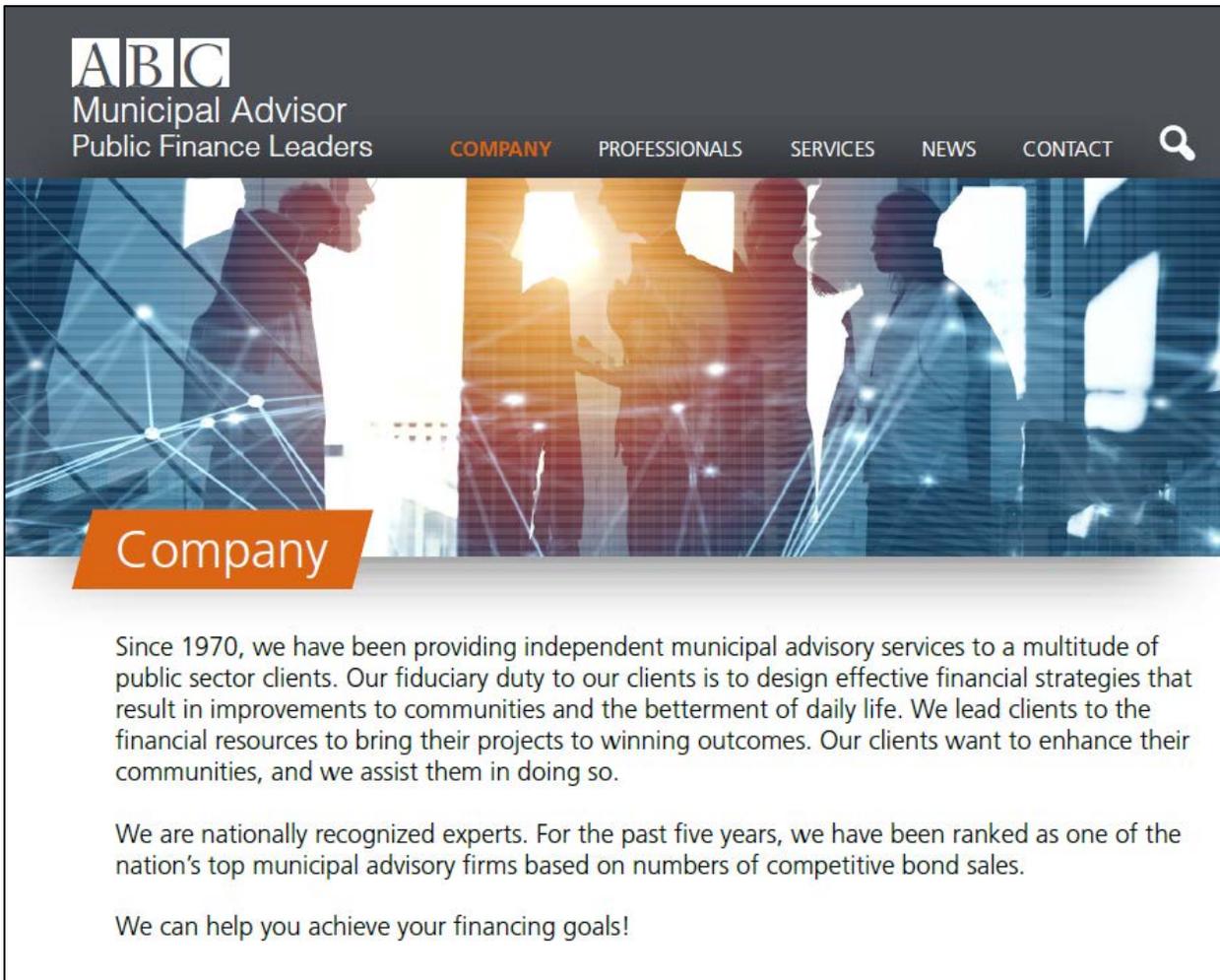
“Our powerful solutions are proven!”

- The advertisement claims “[o]ur powerful solutions are proven!” However, ABC Municipal Advisor fails to discuss how those powerful solutions are proven. As such, the advertisement fails to provide a sound basis for evaluating the facts in regard to the municipal advisory service. See Rule G-40(a)(iv)(A).

“Read what our clients are saying about us in the impressive [XYZ Times article](#).”

- The advertisement links to a news article that contains testimonials from clients of ABC Municipal Advisor. Further, ABC Municipal Advisor adopts the article by indicating that it is an impressive article and providing a hyperlink to that article. A municipal advisor shall not directly or indirectly refer to a testimonial from a municipal advisory client in the municipal advisor’s advertisement. See Rule G-40(a)(iv)(G).

Advertisement No. 4
Firm Website



The screenshot shows the website for ABC Municipal Advisor, Public Finance Leaders. The navigation menu includes COMPANY, PROFESSIONALS, SERVICES, NEWS, and CONTACT. The main content area features a large image of people in a meeting, overlaid with a network diagram. Below the image is a section titled 'Company' with the following text:

Since 1970, we have been providing independent municipal advisory services to a multitude of public sector clients. Our fiduciary duty to our clients is to design effective financial strategies that result in improvements to communities and the betterment of daily life. We lead clients to the financial resources to bring their projects to winning outcomes. Our clients want to enhance their communities, and we assist them in doing so.

We are nationally recognized experts. For the past five years, we have been ranked as one of the nation's top municipal advisory firms based on numbers of competitive bond sales.

We can help you achieve your financing goals!

Main Concerns about Advertising Content:

“Our fiduciary duty to our clients is to design effective financial strategies that result in improvements to communities and the betterment of daily life.”

- The advertisement is misleading in that ABC Municipal Advisor is suggesting that its fiduciary standard is to “design effective financial strategies that result in improvements to communities and the betterment of daily life.” As set forth in MSRB Rule G-42(a)(ii), on duties of non-solicitor municipal advisors, a non-solicitor municipal advisor is subject to a fiduciary duty that includes a duty of loyalty and a duty of care in the conduct of municipal advisory activities (as defined in MSRB Rule D-13) for a municipal entity client. These standards apply to a municipal advisor’s conduct and do not necessarily subsume the stated specific results. As such, the advertisement contains a false, exaggerated, unwarranted, promissory or misleading statement or claim. See Rule G-40(a)(iv)(B).

“We are nationally recognized experts. For the past five years, we have been ranked as one of the nation’s top municipal advisory firms based on numbers of competitive bond sales.”

- The advertisement states that ABC Municipal Advisors are nationally ranked experts and that they have been ranked as one of the top five municipal advisory firms for the past five years but fails to provide a basis and/or source for each of the statements. As such, the advertisement fails to provide a sound basis for evaluating the facts in regard to the municipal advisory service. See Rule G-40(a)(iv)(A).

Advertisement No. 5

E-mail Sent to 40 Unique Municipal Advisory Clients

ABC
Municipal Advisor

Announcement

We are pleased to announce that next Monday, Ms. Sharon Smith will be joining our office as a new municipal advisor representative. She has over 20 years of public finance experience.

Contact us and see how ABC Municipal Advisor, the leading advisor in XYZ state, and Ms. Smith can help you.

Additional facts not included in the advertisement: Ms. Smith has not yet taken her municipal advisor representative qualification examination (Series 50), and therefore Ms. Smith may not engage in municipal advisory activities.

Main Concerns about Advertising Content:

“We are pleased to announce that next Monday, Ms. Sharon Smith will be joining our office as a new municipal advisor representative.”

- The advertisement implies that Ms. Smith will be joining as a new qualified municipal advisor representative, but omits that Ms. Smith has not taken her qualification exam. Ms. Smith is not qualified as a municipal advisor representative until she passes her qualification exam. The advertisement contains a material omission and a misleading statement or claim. See Rules G-40(a)(iv)(A) and G-40(a)(iv)(B).

Advertisement No. 6

E-mail Sent to 40 First-Time Chief Financial Officers of “State A” Small Cities and Towns Attending XYZ Conference on Financing for School Districts



ABC
Municipal Advisor

News

We have been providing advice on sophisticated financings to your peers and predecessors since 1980.

■ ■ ■

Please stop by our booth at the **XYZ Conference**.

Let us explain how we have assisted large municipalities in State B to save financing cost using XYZ swaps, and how this technique could be helpful to you.

Let us help you with your next financing!

➔ **Additional facts not included in the advertisement:** State A law prohibits school districts in State A from engaging in swaps, including XYZ swaps.

Main Concerns about Advertising Content:**Use of XYZ Swaps in “State A”**

- Swaps, including XYZ swaps, are prohibited by law for school district financings in State A. As such, this targeted advertisement fails to consider the nature of the audience to which the advertisement will be directed and provide details and explanations appropriate to the audience. See Rule G-40(a)(iv)(E).

Additional Resources

[SR-MSRB-2018-01 \(January 24, 2018\)](#)

[Letter from Pamela K. Ellis, Associate General Counsel, Municipal Securities Rulemaking Board, dated April 30, 2018](#)

[Self-Regulatory Organizations; Municipal Securities Rulemaking Board; Order Granting Approval of a Proposed Rule Change, Consisting to Amendments to Rule G-21, on Advertising, Proposed New Rule G-40, on Advertising by Municipal Advisors, and a Technical Amendment to Rule G-42, on Duties of Non-Solicitor Municipal Advisors](#)

[MSRB Notice 2018-08 \(SEC Approves Advertising Rule Changes for Dealers and Municipal Advisors\) \(May 7, 2018\)](#)