



March 23, 2017

**VIA ELECTRONIC DELIVERY**

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

**pfm**

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Philadelphia, PA 19103  
215.567.6100

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pfm.com

RE: **MSRB 2017-04 Request for Comment on Draft Amendments to MSRB Rule G-21, on Advertising, and on Draft MSRB Rule G-40 on Advertising by Municipal Advisors**

Dear Ronald Smith:

On behalf of Public Financial Management, Inc., and PFM Financial Advisors LLC (collectively, referred to as "PFM" or "We"), PFM would like to thank the Municipal Securities Rulemaking Board (the "MSRB" or "Board") for the opportunity to comment on the MSRB's proposed draft amendments to MSRB Rule G-21 on advertising and draft MSRB Rule G-40, which establishes advertising rules for municipal advisors. As you are likely aware, PFM, which has been in existence for over 40 years, is the nation's largest independent municipal advisor and is the top-ranked municipal advisor in the nation in terms of both number of transactions and total dollar amount according to Thomson Reuters as of December 2016. We hope that you agree that our municipal market presence gives us a broad, national perspective on the proposed amendments and their potential effects on the municipal market.

PFM understands the implementation of advertising rules for municipal advisors because we believe that (a) the proposed rules will assist municipal advisors to more consistently market services to the public in a manner that promotes compliance with applicable regulations, and (b) such rules will enhance fair dealing with clients by requiring that municipal advisors not subject the municipal clients to advertising that would be false or misleading. We support the MSRB in its endeavors with respect to proposed amendments to MSRB Rule G-21 ("Rule G-21") and the new draft MSRB Rule G-40 ("Rule G-40"), however, PFM would like the Board to consider the following in its implementation of the proposed advertising rules for municipal advisors:

- 1) Further explicit refinement of the definition of advertising such that it includes specific exemptions for certain categories of information not typically interpreted to be advertising including, but not limited to, additional forms of Requests for Proposals (RFPs), general or educational information, case studies, and representative client lists;



- 2) More definitive content standards and distinctions for advertising products ("product advertising") and advertising for municipal advisor services ("professional advertising");
- 3) Allowance for the use of client testimonials with specific disclaimers as permitted in investment advisor advertising under corresponding SEC No-Action letters or other forms of guidance; and
- 4) Guidance with respect to advertising rules on websites and social media sites.

With respect to a more refined definition of what constitutes municipal advisor advertising, PFM believes that the definition of "advertising" should clearly provide for specific exclusions for certain categories of communications. While the MSRB has commented that RFPs would not be included, we feel that the statement should be expanded to include Requests for Qualifications (RFQs), Requests for Information (RFIs), statements of interest in response to municipal procurement processes, and the like, and should be more formally discussed and itemized as specific exemptions within amendments to Rule G-21 and the proposed Rule G-40 provision (a)(i). Further, in addition to RFP's being specifically exempted under the advertising rules, we also believe that the MSRB should exclude from the definition of advertising "client lists" or "representative client list" and past transaction "case studies" as these communications do not include commentary or opinions of clients, but rather are examples of the types of work that a municipal advisor has done in the past as part of the municipal advisory services performed for clients. Lastly, PFM believes that items identified as "general information exclusions" listed in Rule 15Ba1-1 (d) (ii) (the "MA Advice Rule"), should also explicitly not be considered advertising as such information constitutes general factual information or educational content about market conditions or financial information that are shared by municipal advisors with clients, and thus should explicitly not be deemed advertising under the proposed rules. Such items would include:

- Information regarding a person's professional qualifications and prior experience (e.g., lists, descriptions, terms, or other information regarding prior experience on completed transactions involving municipal financial products or issuances of municipal securities);
- General market and financial information (e.g., market statistics regarding issuance activity for municipal securities or current market interest rates or index rates for different types of bonds or categories of credits) regarding a financial institution's currently-available investments (e.g., the terms, maturities, and interest rates at which the financial institution offers these investments) or price quotes for investments available for purchase or sale in the market that meet criteria specified by a municipal entity or obligated person;



- Factual information describing various types of debt financing structures (including, but not limited to, fixed rate debt, variable rate debt, general obligation debt, debt secured by various types of revenues, or insured debt), with a comparison of the general characteristics, risks, advantages, and disadvantages of these debt financing structures; and
- Factual and educational information regarding various government financing programs and incentives (e.g., programs that promote energy conservation and the use of renewable energy).

With respect to advertising "Content Standards" of MSRB draft amendments to Rule G-21 and draft Rule G-40, while PFM firmly believes in the overriding principle that municipal advisors must not provide false or misleading information about their services to the public, we believe that provision (A) of the "Content Standards" is duplicative and should be deleted because MSRB Rule G-17 governing Conduct of Municipal Securities and Municipal Advisory Activities already addresses these standards. Further, we believe that the MSRB should provide a clearer demarcation between the content standards for advertising products within the regulatory conventions set for broker-dealers (more typically considered "product advertising") and the standards for advertising municipal advisory services more akin to regulatory conventions set for registered investment advisors who are also subject to a fiduciary standard (generally "professional advertising") because our experience clearly shows that the vast majority of municipal advisors predominately engage in the latter type of advertising. In addition to advertising services advising on methods of sale, municipal advisory services include myriad activities including, but not limited to:

- Developing the plan of finance and related transaction timetables;
- Assisting in the preparation of rating agency strategies and presentations;
- Identifying and analyzes financing solutions and alternatives for funding capital improvement plan;
- Advising on the method of sale, taking into account market conditions and near-term activity in the municipal market;
- Assisting with the selection of underwriters, syndicate structure and bond allocations;
- Developing requests for proposals and qualifications for finance team members (e.g., underwriters, bond counsel, and paying agents);
- Coordinating internal and external finance team members;
- Preparing preliminary cash flows/preliminary refunding analyses;
- Planning and coordinating bond closings;
- Evaluating market conditions and the pricing performance of the senior manager(s) and co-managers in their distribution of bonds; and



- Verifying cash flow calculations.

While Sections (B), (C), (G) and (H) of the Content Standards could be applicable to both products and services described above, and should be included in the "Content Standards" of both Rule G-21 and Rule G-40, we believe that proposed Sections (D), (E), and (F) providing that municipal advisors advertisements must "provide balanced treatment of risks and potential benefits," or "consider the nature of the audience..." and "may not predict or project performance..." should not be included under the "Content Standards" for Rule G-40 for these provisions are more directly related to advertisements for *products* distributed by brokers, dealers, or municipal securities dealers, and should not be construed as necessary to administer to the types of *services* that municipal advisors may provide. Accordingly, for the foregoing reasons, PFM requests that the MSRB delete proposed Section (D), (E), and (F) and provide provisions that would be more relevant to advertising for the services such as those articulated above.

In discussing the harmonization of Rules G-21 and G-40 with the advertising rules of other financial regulators, the MSRB noted that in adopting Rule 206(4)-1, under the Investment Advisers Act of 1940, as amended (the "Advisers Act"), the rules that applies to advertisements by registered investment advisers, the Securities and Exchange Commission ("SEC") found that the use of testimonials in advertisements by an investment adviser was misleading. In the Adviser's Act the term "testimonial" was defined as a statement of a "customer's experience with" or "endorsement of" an investment adviser. While PFM would agree that the use of testimonials should be prohibited in municipal advisor advertising as they may be misleading, in harmonizing the rules of municipal advisors to those afforded to investment advisers, we request that the prohibition from using testimonials in advertisements under draft amendments of Rule G-21, and draft Rule G-40 be similarly narrowed to prohibit statements of a "customer's experience with" or "endorsement of" municipal services, but allow for the inclusion of partial client lists in advertising consistent with prior SEC guidance associated with testimonials and the use of partial client lists. Through a series of SEC No-Action letters, Denver Investment Advisors, Inc. (Publicly Available July 30, 1993), and Cambiar Investors, Inc. (Publicly Available August 28, 1997), the SEC provided that as the definition of a "testimonial" was "a statement of a customer's experience" or an "endorsement", it would require "actual statements" to be made by clients, which in turn would be utilized in investment adviser advertising. Further the SEC stated a "partial client list" is "not a statement of a customer's experience" for it does not relay the "experience" of the clients listed, and "since the experience of clients is not listed, it cannot run the risk of fraudulently or deceptively implying the experience of listed clients or what prospective clients can expect." Therefore, these client lists should be permitted as previously asserted because they constitute communications that provide examples of the



types of work that a municipal advisor has done in the past as part of the municipal advisory services performed for clients, and such advertisement concerning the municipal advisor's services is clearly permissible as a Professional Advertisement under draft Rule G-40(b). Moreover, given the disclaimers and disclosures, which would be required to accompany client lists consistent with the requirements under the Adviser's Act, prospective clients should not be misled. Accordingly, we request that the prohibition on the use of testimonials in MSRB Rule G-21 and proposed Rule G-40 be clarified for consistency with similar registered investment adviser regulatory requirements to not include partial client lists that are accompanied by clarifying disclosures such as a description of the objective criteria in compiling the list, and a disclaimer in accordance with applicable SEC No-Action guidance.

Lastly, PFM believes that while a vast majority of municipal advisors do not engage in traditional types of advertising associated with broker-dealers, most do have web sites, where potential municipal clients may learn about the firm and through which medium firms can explain and promote their available services. Accordingly, it would be beneficial in ensuring compliance with MSRB rulemaking if the MSRB provided further clarity (ex. cross-reference to existing regulation regarding this subject matter), FAQs or guidance on how the advertising rules apply to postings on websites and the use of social media sites (e.g., LinkedIn), and how the advertising rules would impact those advertising or media outlets frequently used by financial services professionals. Alternatively, we believe the existing regulation itself could be sufficiently relied upon.

Therefore, PFM respectfully requests that the MSRB reflect and remit the proposed draft amendments to MSRB Rule G-21 and draft Rule G-40 back to the MSRB for additional analysis and further clarification in accordance with feedback received in this comment with respect to the proposed rule changes.

Sincerely,

Leo Karwejna  
Chief Compliance Officer

Cheryl Maddox  
General Counsel

Catherine Humphrey-Bennett  
Municipal Advisory Compliance Officer