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November 30, 2018

Pamela K. Ellis  
Associate General Counsel  
Municipal Securities Rulemaking Board  
1300 I Street NW  
Washington, DC 20005

**RE: Request for More Information on Application of Content Standards to Advertisements by Municipal Advisors under MSRB Rule G-40**

Dear Ms. Ellis:

On behalf of the Bond Dealers of America (“BDA”), we welcome the opportunity to provide follow-up comments to the BDA’s comment letter<sup>1</sup> on the MSRB’s Request for Comment on the Application of Content Standards to Advertisements by Municipal Advisors under MSRB Rule G-40 (Notice 2018-25).

As stated in our comment letter, the BDA is concerned that some of the mock advertisements in the draft compliance resource are too simplistic and do not yield guidance on difficult interpretative questions related to the application of content standards to advertisements. We believe that additional nuanced and complex mock advertisement examples are needed to assist municipal advisors to implement and comply with these new requirements and ensure that examiners have enough details in the compliance resource related to content standards for advertisements. Per your request, below are five mock advertisement examples drafted by the BDA membership, which we believe are more nuanced and complex and which may better assist municipal advisors comply with the new content standards under Rule G-40.

We have compiled the five examples based on two categories: 1) The BDA edited two of the mock advertisement examples in the MSRB Notice to provide what we believe may be more meaningful guidance to municipal advisors and 2) The BDA gathered three actual advertisement examples from membership to provide real-world industry advertisements that are nuanced and complex and may be open for interpretation under Rule G-40(a)(iv).

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<sup>1</sup> Letter from Mike Nicholas, Chief Executive Officer, Bond Dealers of America, dated October 17, 2018 (the “BDA Letter”)

## **BDA Edited MSRB Advertisement No. 1**

### General Print Advertisement

Experience and independence are critical.

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

It takes an independent financial advisor to give independent financial advice that is truly independent. 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. Financial advisors consistently lower borrowing costs for state and local governments.

You deserve the best advice, you deserve us! Based on past experience, your borrowing costs will likely be substantially lower if you hire us.

Let us help you!

ABC Municipal  
Advisor

### **Main Concerns about Advertising Content:**

**“Since 2002, Municipal Advisor ABC has provided high-quality, unbiased advice to the public sector.”**

- Use of the term “unbiased” suggests that Municipal Advisor ABC’s advice is always free from conflicts. Municipal Advisor ABC must ensure that this implied claim that its advice has been free 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).

**“Financial advisors consistently lower borrowing costs for state and local governments.”**

- The advertisement asserts that financial advisors consistently lower borrowing costs,

but fails to provide any basis for this statement, such as a reference to a study. 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).

**“Your borrowing costs will likely be substantially lower if you hire us.”**

- The statement that “[y]our borrowing costs will likely be substantially lower if you hire 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, even though it uses the word “likely” and does not guarantee lower borrowing costs. *See* Rule G-40(a)(iv)(A) and (B). In addition, taken together with the phrase “[b]ased on past experience, the statement predicts or projects performance, implies that Municipal Advisor ABC’s past performance will recur, and constitutes an exaggerated or unwarranted claim, opinion, or forecast. *See* Rule G-40 (a)(iv)(F).

**BDA Edited MSRB 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

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 municipalities in State A to save financing costs 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: The municipal advisor’s advice on XYZ swaps in State A has been limited to large municipalities. As a result of changes in State A’s law, and under current market conditions, the use of swaps, including XYZ swaps, to lower financing costs is unlikely for any issuer in State A other than a large municipality.

**Main Concerns About Advertising Content:**

Use of XYZ Swap in State A

- Although the municipal advisor may have advised large municipalities in State A with regard to the use of XYZ swaps, as a result of regulatory developments and market conditions, a school district in State A is unlikely to be able to use these swaps to save financing costs. Accordingly, 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).

## **BDA Membership Advertisement Example No. 1**

### Firm Website

FIRM ABC is [a preeminent municipal advisory firm]. We deliver innovative solutions and fresh ideas to our clients in debt and equity financing, strategic, financial and municipal advisory services from our offices across the country. Our deep knowledge of the industry is matched with the knowhow needed to efficiently provide advice with respect to complex transactions of all sizes. With our exclusive focus on healthcare services, medical technology and life sciences, we have an unobstructed view of this rapidly evolving industry that enables us to provide unique perspectives to our clients. (FIRM ABC WEBSITE LINK)

## **BDA Membership Advertisement Example No. 2**

### Brochure

Firm ABC – the No. 1 financial advisor for State School bond issues\* - you have a well-known, well-respected advocate in your corner.\*Based on both par amount and number of issues for the past 10 years, according to Ipreo MuniAnalytics

## **BDA Membership Advertisement Example No. 3**

### Firm Website

[NAME OF FIRM] has one of the largest and most diverse housing finance groups in the nation. Our team of more than 30 bankers, quantitative analysts and syndicate specialists works with local and state housing agencies to pinpoint their needs and those of the communities they serve. Our high level of service before, during and after closing is what sets us apart from the competition.

Our institutional salespeople reach virtually every major institutional account throughout the nation.

With a reputation for strong pricing performance and a track record for execution in difficult markets, [NAME OF FIRM] has established itself as a proven leader in underwriting municipal securities.

Client service is our first priority and is defined by our ability to anticipate and exceed our clients' needs.

We are recognized as an industry leader in the structuring, underwriting and marketing of taxable and tax-exempt securities.

We have an unblemished record of excellence.

\* \* \*

If you or your staff has any questions or need additional information, please do not hesitate contact me directly at 202.204.7901 or [mnicholas@bdamerica.org](mailto:mnicholas@bdamerica.org). We look forward to your response.

Sincerely,

A handwritten signature in blue ink that reads "M. Nicholas". The signature is written in a cursive, flowing style.

Michael Nicholas  
Chief Executive Officer  
Bond Dealers of America