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Request for Comment on Draft Amendments to MSRB Rule G-21, on Advertising, and on Draft Rule G-40, on Advertising by Municipal Advisors

Overview

The Municipal Securities Rulemaking Board (MSRB) is requesting comment on draft amendments to MSRB Rule G-21, on advertising, and on new draft MSRB Rule G-40, on advertising by municipal advisors.¹ The draft amendments to Rule G-21, applicable to brokers, dealers and municipal securities dealers (collectively, “dealers”) would update as well as harmonize Rule G-21 with certain provisions of the advertising rules of other financial regulators. Further, consistent with the MSRB’s regulation of dealers under Rule G-21, draft Rule G-40 would address advertising by municipal advisors.

Comments should be submitted no later than March 24, 2017, and may be submitted in electronic or paper form. [Comments may be submitted electronically by clicking here.](#) Comments submitted in paper form should be sent to Ronald W. Smith, Corporate Secretary, Municipal Securities Rulemaking Board, 1300 I Street, NW, Suite 1000, Washington, DC 20005. All comments will be available for public inspection on the MSRB’s website.²

¹ At this juncture, the MSRB is requesting comment on the draft amendments to Rule G-21 and on draft Rule G-40. The MSRB may or may not determine to proceed beyond requesting comment. See discussion on Draft Rule G-40 below. Further, as with any potential rulemaking, the MSRB may revise the potential rulemaking that it may file with the Securities and Exchange Commission (SEC) from the draft amendments to Rule G-21 and draft Rule G-40 set forth in this request for comment. The MSRB may make those revisions in response to comments from market participants or otherwise.

² Comments generally are 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 should only submit information that they wish to make available publicly.



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Questions about this notice should be directed to Pamela K. Ellis, Associate General Counsel, or Meghan Burns, Economic Researcher, at 202-838-1500.

Background

Draft Amendments to Rule G-21

Rule G-21 is a core fair practice rule of the MSRB. Rule G-21 applies to all advertisements by dealers, as defined by Rule G-21(a)(i).³ Rule G-21 became effective in 1978, and has been amended several times since then as the MSRB has enhanced its rule book.

More recently, in 2012, the MSRB issued a request for comment on its entire rule book.⁴ In response, two market participants requested that the MSRB harmonize its advertising rules with FINRA Rule 2210, on communications with the public.⁵ Market participants echoed those requests more generally in their latest responses to a request for comment on the MSRB's strategic priorities.⁶ Further, and apart from the MSRB's requests for comment, the

³ An advertisement, as defined by Rule G-21:

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.

As such, Rule G-21 not only applies to print advertisements, but also applies to an advertisement "published or used in any electronic or other public media," such as a social media post.

⁴ MSRB Notice 2012-63, Request for Comment on MSRB Rules and Interpretive Guidance (Dec. 18, 2012).

⁵ See Letter from David L. Cohen, Managing Director, Associate General Counsel, Securities Industry and Financial Markets Association, dated February 19, 2013, to Ronald W. Smith, Corporate Secretary, Municipal Securities Rulemaking Board; Letter from Gerald K. Mayfield, Senior Counsel, Wells Fargo & Company Law Department, dated February 19, 2013, to Ronald W. Smith, Corporate Secretary, Municipal Securities Rulemaking Board.

⁶ MSRB Notice 2016-25, MSRB Seeks Input on Strategic Priorities (Oct. 12, 2016); see Letter from Michael Decker, Managing Director, Securities Industry and Financial Markets Association, dated November 11, 2016, to Ronald W. Smith, Secretary, Municipal Securities Rulemaking Board; Letter from Robert J. McCarthy, Director of Regulatory Policy, Wells

MSRB solicited input about possible amendments to Rule G-21 from market participants, including industry groups that represent dealers.

After considering the important suggestions made by market participants, the MSRB prepared draft amendments to Rule G-21. These draft amendments, among other things:

- Enhance the MSRB’s fair-dealing provisions by harmonizing Rule G-21 with the advertising rules of other financial regulators;
- Update Rule G-21(e), on municipal fund security product advertisements; and
- Harmonize Rule G-21(a)(ii), the definition of “form letter,” with FINRA Rule 2210’s definition of “correspondence.”⁷

Concurrent with its efforts to enhance, update and harmonize Rule G-21, the MSRB prepared new draft Rule G-40 to address advertising by municipal advisors.

Draft Rule G-40

In August 2011, in the exercise of its new rulemaking authority over municipal advisors,⁸ the MSRB solicited public comment on a proposal to amend Rule G-21 and MSRB Rule G-9, on preservation of records, and to issue an interpretive notice under MSRB Rule G-17, on conduct of municipal securities activities, to address advertising by municipal advisors.⁹ However, the MSRB did not proceed beyond requesting comment. In anticipation of the SEC’s adoption of its rules relating to municipal advisor registration, the MSRB determined to withdraw or otherwise re-examine and revisit its then pending rulemaking proposals, including the 2011 request for comment.

Fargo Advisors, LLC, dated November 11, 2016, to Ronald W. Smith, Corporate Secretary, Municipal Securities Rulemaking Board.

⁷ The draft amendments also include several technical changes, such as substituting FINRA for NASD.

⁸ Pub. Law No. 111-203, 124 Stat. 1376 (2010) (the “Dodd-Frank Act”).

⁹ MSRB Notice 2011-41 (Aug. 10, 2011) (“2011 request for comment”). The draft amendments, among other things, would have extended Rule G-21 and its related recordkeeping requirements to municipal advisors. Further, the draft interpretive notice would have reminded dealers and municipal advisors that Rule G-17’s fair practice requirements apply to all communications (written and oral), including the content of advertisements, sales or marketing communications and correspondence.

On September 20, 2013, the SEC adopted its final rules for municipal advisor registration that the SEC had proposed in 2011 (the “final rules”). Among other things, the final rules interpreted the statutory definition of the term “municipal advisor” under the Securities Exchange Act of 1934 (the “Exchange Act”) and the statutory exclusions from that definition.¹⁰

Since September 2013, the MSRB has re-examined and adopted revised proposals addressing many of the issues that were the subject of its previously withdrawn municipal advisor rulemaking proposals. With the benefit of the final rules and of the MSRB’s development of its core regulatory framework for municipal advisors, the MSRB has determined to revisit its approach to advertising by municipal advisors.

To inform its approach, the MSRB solicited general input from market participants about the nature of municipal advisor advertising and about how municipal advisors use advertising. That outreach included industry groups that represent non-solicitor and/or solicitor municipal advisors. As a result of that outreach and the valuable input received from market participants, the MSRB developed draft Rule G-40.

Draft Rule G-40 applies to advertising by non-solicitor and solicitor municipal advisors. Similar to Rule G-21, draft Rule G-40:

- Provides general provisions that define the terms “advertisement” and “form letter,” and sets forth the general standards and content standards for advertisements;
- Provides the definition of professional advertisements, and defines the standard for those advertisements; and
- Requires the approval by a principal, in writing, before the first use of an advertisement.

Also, similar to Rule G-21, draft Rule G-40 applies to all advertisements by a municipal advisor, as defined in draft Rule G-40(a)(i).¹¹ However, unlike Rule G-21, draft Rule G-40 contains certain substituted terms that are more relevant to municipal advisors, and draft Rule G-40, at this request for comment juncture, omits the three provisions in Rule G-21 (Rule G-21(c)-(e)) that concern product advertisements.

¹⁰ Rule 15Ba1-1(d), 17 CFR 240.15Ba1-1(d), under the Exchange Act.

¹¹ See *supra* note 3.

Draft Amendments to Rule G-21

Enhancement of Fair Dealing Provisions and Harmonization with the Advertising Rules of Other Financial Regulators

To enhance Rule G-21's fair dealing requirements, as well as to harmonize Rule G-21 with the advertising rules of other financial regulators, the draft amendments to Rule G-21 include content standards and amendments to Rule G-21's general standards for advertisements.

(i) *Content standards*

The draft amendments to Rule G-21 add content standards in subparagraph (a)(iii) to make explicit many of the MSRB's 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 them to advertising. The draft amendments enhance Rule G-21's fair dealing provisions by, among other things, requiring that (i) an advertisement be fair and balanced and provide a sound basis for evaluating the municipal security, (ii) an advertisement not contain any false, exaggerated, unwarranted, promissory or misleading statement or claim, (iii) a dealer limit the types of information placed in footnotes, (iv) an advertisement provide a balanced treatment of the benefits and risks associated with a municipal security, (v) a dealer consider the audience to which the advertisement will be directed and that the advertisement provide details and explanations appropriate to that audience, and (vi) an advertisement not predict or project performance, imply that past performance will recur or make any exaggerated or unwarranted claim, opinion or forecast.¹² By so doing, draft Rule G-21(a)(iii) harmonizes Rule G-21 with certain of FINRA Rule 2210's content standards for advertisements.¹³

¹² However, draft Rule G-21(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.

¹³ See FINRA Rule 2210(d)(1).

Further, draft Rule G-21(a)(iii) prohibits dealers from using testimonials in advertisements. The MSRB believes, at this juncture, that the use of a testimonial by a dealer presents significant issues – including the potential for the testimonial to mislead investors who may not be fully aware of the facts and circumstances that led to the testimonial. An important part of the MSRB’s mission is to protect investors. Many investors in municipal securities are senior investors,¹⁴ who may not appreciate the limits of a testimonial, even if certain limits are disclosed. Consistent with the MSRB’s mission to protect investors, including senior investors, draft Rule G-21(a)(iii)(G) prohibits the use of testimonials by dealers.

Draft Rule G-21(a)(iii) also expands 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. Draft Rule G-21(a)(iii)(H) continues to permit a dealer to state that it is MSRB registered. However, draft Rule G-21(a)(iii)(H) 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. Draft Rule G-21(a)(iii)(H) harmonizes Rule G-21, as applicable, with FINRA Rule 2210(e), on analogous limitations on the use of FINRA’s name and any other corporate name owned by FINRA.

(ii) *General standards*

The draft amendments to subparagraphs (a)(iv), (b)(ii), and (c)(ii) of Rule G-21 harmonize Rule G-21’s general standard for advertisements, standard for professional advertisements, and standard for product advertisements (collectively, the “general standards”) with 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 draft amendments replace the phrase “materially false or misleading” with “any untrue statement of material fact” as well as add “or is otherwise false or misleading.” The MSRB believes that this harmonization with FINRA Rule 2210(d) is consistent with Rule G-21’s current general standards and would ensure consistent regulation between similar regulated entities.

¹⁴ See Daniel Bergstresser and Randolph Cohen, [Changing Patterns in Household Ownership of Municipal Debt: Evidence from the 1989-2013 Surveys of Consumer Finances](#) (July 2015) (finding that, in part, from 1989-2013, the average age of a municipal bond investor was 61, and 85 year-olds held a significant portion of all outstanding municipal bonds).

Update Rule G-21(e), on Municipal Fund Security Product Advertisements

The MSRB last amended Rule G-21, effective in 2007, to address municipal fund security product advertisements. Many of the provisions in Rule G-21(e), municipal fund security product advertisements, are based, in part, on the SEC's advertising rules for registered investment companies, such as mutual funds. Since 2007, the SEC has amended those advertising rules.¹⁵ The draft amendments to Rule G-21(e) incorporate certain of the provisions included in the SEC's amendments to its registered investment company advertising rules. In particular, the draft amendments to Rule G-21(e) replace the money market mutual fund disclosure required by current Rule G-21 with a modified version of the money market mutual fund disclosure currently required by SEC rules.

In addition, Rule G-21(e)(i)(A)(2) requires that certain advertisements of municipal fund securities contain additional disclosures. The draft amendments to Rule G-21 enhance those disclosures as they relate to 529 college savings plans in subparagraph (b) by expanding the disclosure about the other state benefits that are available only for investments in such state's qualified tuition program.

Further, Rule G-21 currently requires that more current performance data be available through a toll-free telephone number or through a website. The draft amendments to Rule G-21(e) clarify that the advertisement may contain a hyperlink to the website that contains the updated performance data.

Draft Supplementary Material .01 defines the term investment option as used in Rule G-21(e). Investment option has the same meaning as the term is defined in Rule G-45(d)(iv).

Harmonize the Definition of Form Letter with FINRA Rule 2210 Definition of Correspondence

Currently, Rule G-21 defines a form letter, in part, as a written letter distributed to 25 or more persons. FINRA Rule 2210(a)(2)'s definition of

¹⁵ For example, since 2007, the SEC has twice amended Rule 482 under the Securities Act of 1933. See Securities Act Release No. 9616 (Jul. 23, 2014), 79 FR 47736 (Aug. 14, 2014) (in part, amending Rule 482 to address money market fund reform); Securities Act Release No. 8998 (Jan. 13, 2009), 74 FR 4546 (Jan. 26, 2009) (in part, revising Rule 482 to clarify that the rule does not apply to a summary prospectus or to a communication that is not deemed a prospectus under Section 2(a)(10) of the Securities Act of 1933).

correspondence, however, defines correspondence, in part, as written communications distributed to 25 or fewer persons. 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 draft amendments to Rule G-21 eliminate that one-person difference. Under the draft amendments to Rule G-21, a form letter, in part, is defined as a written letter distributed to more than 25 persons.¹⁶

Draft Rule G-40

Draft Rule G-40, similar to Rule G-21, sets forth general provisions, addresses professional advertisements and requires principal approval for advertisements by municipal advisors. However, as discussed below, draft Rule G-40 does not address product advertisements, as that term is defined in Rule G-21.

General Provisions

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

(i) *Definitions*

Advertisement. The term “advertisement” in draft Rule G-40(a)(i) parallels the term “advertisement” in the draft amendments to 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 a “municipal advisory client” (discussed below) by a municipal advisor. In addition, similar to the draft amendments to Rule G-21(a)(i), Rule G-40(a)(i) excludes certain types of documents from the definition of advertisement. Those documents are preliminary official statements, official statements, preliminary prospectuses, summary prospectuses or registration statements. Nonetheless, as with Rule G-21, an abstract or summary of those documents or other such similar documents prepared by the municipal advisor is considered an advertisement.

For example, a municipal advisor may assist with the preparation of an official statement. An official statement is excluded from the definition of an advertisement. As such, under draft Rule G-40(a)(i), the municipal advisor that assists with the preparation of an official statement generally would not

¹⁶ 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.

be assisting with an advertisement as the municipal advisor's work on the official statement generally would not be subject to the requirements of draft Rule G-40.

Form letter. The term "form letter" is identical to the definition of that term set forth in the draft amendments to Rule G-21(a)(ii). A form letter means any written letter or electronic mail message distributed to more than 25 persons within any period of 90 consecutive days.¹⁷

For example, a municipal advisor may respond to a request for proposals or qualifications from a municipal entity or obligated person for services in connection with a municipal financial product or the issuance of municipal securities. That response, however, most likely, would not be an advertisement under draft Rule G-40. The response to a request for proposals or qualifications, most likely, would not be made generally available to municipal advisory clients or to the public. More likely, the response for proposals or qualifications would be made to one person or to a discreet number of persons that are no more than 25 persons so that the response would not be a form letter as defined by draft Rule G-40(a)(ii).

Municipal advisory client. Draft 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 identical 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.¹⁸ The definition of municipal advisory client accounts for differences in the activities of non-solicitor and solicitor municipal advisors.¹⁹

(ii) *Content standards*

Draft Rule G-40(a)(iv) sets forth content standards for advertisements. Those content standards are substantially similar in all material respects to the content standards set forth in Rule G-21 and the draft amendments thereto. Nonetheless, draft Rule G-40 replaces certain terms used in the draft

¹⁷ *See id.*

¹⁸ Exchange Act Release No. 79801 (Jan. 13, 2017), 82 FR 7898 (Jan. 23, 2017). *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).

¹⁹ Draft Rule G-40(a)(iv)'s content standards also include terms to address the activities of solicitor municipal advisors.

amendments to Rule G-21 with terms more applicable to municipal advisors. The MSRB believes that incorporating content standards for advertisements into draft Rule G-40 will ensure consistent regulation between regulated entities in the municipal market, as well as to level the playing field between dealer municipal advisors and non-dealer municipal advisors.

Draft Rule G-40 prohibits a municipal advisor from using a testimonial in an advertisement. As discussed above with respect to the draft amendments to Rule G-21, the MSRB believes that a testimonial presents significant issues, including the ability to mislead an investor. The Board notes that in adopting Rule 206(4)-1 under the Investment Advisers Act of 1940, as amended (the “Advisers Act”), the rule that applies to advertisements by registered investment advisers, the SEC found that the use of testimonials in advertisements by an investment adviser was misleading.²⁰ Thus, Rule 206(4)-1 provides that the use of a testimonial by an investment adviser would constitute a fraudulent, deceptive, or manipulative act, practice, or course of action. To ensure consistent regulation between similar regulated entities, as well as to help ensure a level playing field between municipal advisors/investment advisers and other municipal advisors, draft Rule G-40 prohibits the use of testimonials by a municipal advisor.

(iii) General standard for advertisements

Draft Rule G-40(a)(v) sets forth a general standard that a municipal advisor must follow for advertisements. That standard requires, in part, that a municipal advisor not publish or disseminate 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. The draft rule, is similar to the draft amendments to Rule G-21(a)(iv) in all material respects, except draft Rule G-40 substitutes “municipal advisor” for the term “dealer” and, consistent with Section 15B(e)(4) of the Exchange Act, applies to municipal financial products in addition to municipal securities.

²⁰ Advisers Act Rule 206(4)-1, 17 CFR 275.206(4)-1, provides, in part, that it would be a fraudulent, deceptive, or manipulative act or course of business for an investment adviser to publish, circulate, or distribute an advertisement that refers to any testimonial concerning the investment adviser. See Advisers Act Release No. 121 (Nov. 2, 1961), 26 FR 10548, 10549 (Nov. 9, 1961) (prohibiting testimonials of any kind and finding that “such advertisements are misleading; by their very nature they emphasize the comments and activities favorable to the investment adviser and ignore those which are unfavorable. This is true even when the testimonials are unsolicited and are printed in full.”).

Professional Advertisements

Draft Rule G-40(b) defines the term “professional advertisement” and provides the standard for such advertisements. A professional advertisement, in part, is an advertisement concerning the services with respect to the municipal advisory activities of the municipal advisor. Draft Rule G-40(b) 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.

Draft Rule G-40(b) is substantially similar in all material respects to the draft amendments to Rule G-21(b), and retains the long-standing strict liability standard for professional advertisements set forth in Rule G-21.²¹ The MSRB continues to believe that such standard is appropriate for a professional advertisement, including for municipal advisors, because the advertisement relates by definition to the firm’s “facilities, services or skills.”

Principal Approval

Draft Rule G-40(c) requires that each advertisement that is subject to draft Rule G-40 be approved in writing by a municipal advisor principal before its first use.²² Draft Rule G-40(c) also requires that the municipal advisor keep a record of all such advertisements. Draft Rule G-40(c) is similar in all material respects to Rule G-21(f). The MSRB anticipates that the supervisory and compliance procedures required by Rule G-44, on supervisory and compliance obligations of municipal advisors, will address draft Rule G-40(c).

Product Advertisements

Draft 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 municipal advisors most likely do not prepare such advertisements.²³

²¹ 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).

²² 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.

²³ The MSRB notes that the Guide to Broker-Dealer Registration, Division of Trading and Markets, U.S. Securities and Exchange Commission (Apr. 2008) available at

Nonetheless, as set forth below, the MSRB is seeking public comment from municipal advisors about their role with regard to product advertisements.

Economic Analysis

1. The need for the draft rule and how the draft rule will meet that need

Draft Amendments to Rule G-21

Rule G-21 applies to all advertisements by dealers, as defined by Rule G-21(a)(i). The draft amendments to Rule G-21 harmonize certain of the MSRB's advertising standards with those of other regulators, namely FINRA, to eliminate compliance burdens and costs on dealers, as well as unnecessary confusion for those dealers. The harmonization is also intended to benefit retail and institutional investors, where transparency, consistency, and ease of comparison of different financial products would be highly valued.

In addition, the draft amendments update the disclosure required in particular municipal fund security advertisements, such as 529 college savings plan advertisements, to harmonize that disclosure with disclosure required by the recent amendments made by the SEC to certain of its advertising rules.

Draft Rule G-40

By subjecting municipal advisors to regulation, Congress contemplated them being regulated in comparable fashion to other entities and persons in the financial services sector. The Advisers Act gives the SEC authority to regulate advertising by registered investment advisors.²⁴ FINRA has standards for communications with the public by broker-dealers.²⁵ The CFTC also has

<https://www.sec.gov/divisions/marketreg/bdguide.htm> provides that an individual and business may need to register as a broker if those persons "market or effect transactions in insurance products that are securities, such as variable annuities, or other investment products that are securities."

²⁴ Investment adviser advertising, including performance advertising, is principally regulated at the federal level under the general antifraud provision of the Advisers Act – Section 206 – and Rule 206(4)-1 thereunder.

²⁵ See FINRA Rule 2210 on advertising regulation.

advertising standards for commodity trading advisors (CTAs).²⁶ Prior to the enactment of the Dodd-Frank Act, municipal advisors were largely unregulated as to their municipal advisory activities.²⁷ The Dodd-Frank Act amended the Exchange Act, in part, to establish a federal regulatory regime for municipal advisors and that grants the MSRB certain regulatory authority over municipal advisors. In addition, Congress contemplated comparable regulation designed to prevent acts, practices, or courses of business by municipal advisors that are inconsistent with accepted standards for regulating other entities or persons in the financial services sector. Therefore, advertising standards for municipal advisors are needed to ensure consistency in application of advertising standards in the financial services sector.

Relatedly, the need for draft Rule G-40 also arises from the fact that investment advisers, some of which are also municipal advisors, are subject to advertising standards under the SEC rules. In the absence of an advertising rule applicable to all municipal advisors, some municipal advisors (that are also investment advisers) would be at a competitive disadvantage as compared to municipal advisors who are not also acting as investment advisers. Presently, dealer-municipal advisors experience a similar disadvantage. Thus, draft Rule G-40 applies to all advertisements by a municipal advisor, as defined in draft Rule G-40(a)(i).

2. Relevant baselines against which the likely economic impact of elements of the draft amendments to Rule G-21 and draft Rule G-40 can be measured

In considering the economic consequences of implementing the draft amendments to Rule G-21 and draft Rule G-40, the MSRB has defined and analyzed several baselines to serve as points of reference. Given that the request for comment contains different elements, the MSRB has considered a separate baseline for the different elements. The purpose of the baselines is to compare the expected state with the proposal in effect to the baseline state prior to the rule and amendments taking effect. The economic impact

²⁶ CFTC Rule 4.41 prohibits CTAs from advertising in a manner that employs any fraudulent device or involves any transaction or course of business that operates as a fraud or deceit upon any existing or prospective pool participant or client. Rule 4.41 expressly applies to “any publication, distribution or broadcast of any report, letter, circular, memorandum, publication, writing, advertisement or other literature or advice, including the texts of standardized oral presentations and of radio, television, seminar or similar mass media presentations.”

²⁷ Only certain MSRB rules applied to a subset of municipal advisors consisting of dealers acting as financial advisors in connection with new issues of municipal securities.

of the draft amendments or draft rule is the difference between these two states.

Baseline for Amendments to Rule G-21

For the draft amendments to Rule G-21, the relevant baseline is the existing Rule G-21, which sets out standards of advertising conduct and content for dealers. The costs and benefits of the draft amendments to Rule G-21 for dealers are considered against this baseline.

Baseline for Draft Rule G-40

The MSRB considers a relevant baseline for the advertising standards set out by draft Rule G-40 for municipal advisors to be Rule G-17. That rule, as amended in 2010, requires municipal advisors to deal fairly with all persons and not engage in any deceptive, dishonest, or unfair practice. Draft Rule G-40 reiterates that the obligations of a municipal advisor for fair dealing extend to advertising conduct and content.

A subset of municipal advisors that are also dealers are subject to existing Rule G-21 which establishes advertising standards for dealers. For this group, the current version of Rule G-21 serves as a baseline for advertising standards to the extent that their presently regulated dealer activities are also now defined as municipal advisory activities. This baseline could change if, as expected, Rule G-21 is amended.

Another baseline for the standards under draft Rule G-40 is the current state law on advertising standards. To the extent that municipal advisors are subject to advertising laws of at least some states the MSRB regards these laws as a baseline.

In addition, municipal advisors that are also registered as investment advisers are subject to advertising standards under this regulatory regime that can serve as baseline requirements for that subset of the municipal advisor population.

3. Identifying and evaluating reasonable alternative regulatory approaches

The MSRB policy on economic analysis in rulemaking addresses the identification and evaluation of reasonable regulatory alternatives.

Amendments to Rule G-21

The MSRB considered as an alternative to the draft amendments leaving Rule G-21 in its current state and not harmonizing the rule with FINRA Rule 2210. In that case, dual registrants would continue to face two separate rules,

which could cause compliance burdens and costs, as well as unnecessary confusion.

As to the updating of the disclosure required in particular municipal fund security advertisements, an alternative of no updates to that disclosure would fail to eliminate the inconsistency between MSRB's amended Rule G-21 and certain of the SEC's advertising rules.

Rule G-40

One alternative to draft Rule G-40 would be for the MSRB not to engage in additional rulemaking, and thus, not establish guidance with respect to advertising content and conduct for municipal advisors. Under this alternative, the needs of municipal advisors for guidance on advertising content and conduct would go unmet.

Another alternative is for the MSRB to use a solely principles-based approach to its rulemaking on this subject. Under this approach, the regulatory objectives would be specified but individual firms would be free to select the means used to meet these objectives. Employing a solely principles-based approach, however, might provide insufficient guidance on meeting the advertising standards for municipal advisors that are comparable to the standards applied to other persons and entities in the financial services sector as contemplated under the Dodd-Frank Act. The MSRB believes, at this request for comment stage, that the advertising standards articulated in draft Rule G-40, although some are relatively more prescriptive, provide balanced and useful guidance. In addition, this balanced approach serves to minimize the risks attendant to the framework of municipal securities regulation by multiple enforcement organizations.

The MSRB invites public comment to suggest alternatives, as well as comments on the potential costs and benefits of alternative approaches.

4. Assessing the benefits and costs, both quantitative and qualitative, and the main alternative regulatory approaches

Below, the MSRB preliminarily addresses the likely costs and benefits of draft Rule G-40 against the context of the economic baselines discussed above, primarily in terms of the specific changes from the baseline and, to some degree, in terms of the potential overall impact on the markets for dealer and municipal advisory services. In considering these costs, benefits, and impacts, reasonable alternatives are addressed, where applicable.

At the outset, the MSRB notes it is currently unable to quantify the economic effects of the proposed amendments to Rule G-21 and draft Rule G-40

because the information necessary to provide reasonable estimates is not available. For example, with regard to draft Rule G-40, the MSRB observes that there is little publicly available information on a detailed breakdown of incremental expense items as reported by the municipal advisory industry. In addition, estimating the costs for municipal advisory firms to comply with draft Rule G-40 is hampered by the fact that these costs depend on the business activities and size of these municipal advisory firms, which can vary greatly. Given the limitations on the MSRB's ability to conduct a quantitative assessment of the costs and benefits associated with draft Rule G-40, the Board has thus far considered these costs and benefits primarily in qualitative terms.

Proposed Amendments to Rule G-21: Benefits, Costs, and Effect on Competition, Efficiency and Capital Formation

Benefits

The proposed amendments to existing Rule G-21 are, in part, a response to requests from the industry. The MSRB believes that, through harmonization among regulators, dealers may experience less potential confusion among similar regulations or reduced compliance costs. Investors should benefit from better information in the form of more truthful and accurate advertising, including updated requirements for certain municipal fund security advertisements.

The rule harmonization may also benefit both retail and institutional investors, where transparency, consistency, and ease of comparison of different financial products would be highly valued.

Costs

Our analysis does not consider all the costs associated with the rule, but instead focuses on the incremental costs attributable to the draft amendment requirements that exceed the baseline state. The costs associated with the baseline are in effect subtracted from the costs associated with the draft amendments to Rule G-21 to isolate the costs attributable to the incremental requirements because of the draft amendments.

Since the proposed amendments to existing Rule G-21 establish more stringent and prescriptive advertising standards for dealers than are included in the baseline, the MSRB expects that dealers may experience increased costs because of the new requirements. However, efficiency gains resulting from harmonization may offset costs associated with more prescriptive standards. Furthermore, the MSRB believes that much of the costs associated with both draft amendments to Rule G-21 (as well as draft Rule G-

40) will be up-front costs resulting from investments in advertisements that are no longer compliant. These costs can be mitigated by setting a future effective date for the rule changes, if adopted.

Effect on Competition, Efficiency and Capital Formation

Since dealers are already subject to advertising standards, the MSRB believes, at this request for comment stage, that the proposed amendments are unlikely to hinder capital formation and may improve efficiency through harmonization with other regulatory regimes. The MSRB believes that the proposed amendments will not harm competition, and may indeed enhance competition due to a uniform set of advertising standards for dual registrants that is more transparent for the market and investors.

Proposed Rule G-40: Benefits, Costs, and Effect on Competition, Efficiency, and Capital Formation

Benefits

The MSRB believes that draft Rule G-40 would result in several benefits by enhancing protections to issuers and obligated persons engaging municipal advisors and to investors in municipal issues by providing guidance to municipal advisors for applying advertising standards that are consistent with standards for other persons and entities in the financial services industry, including the municipal securities industry.

The MSRB believes that one benefit of draft Rule G-40 may follow from the increased level and accuracy of information available to clients through advertising by municipal advisors relative to the baseline, which may lead to an improvement in the selection of municipal advisors. As a result of applying draft Rule G-40's advertising standards, municipal entities and obligated persons may be able to more easily establish objective criteria to use in selecting municipal advisors and may increase the likelihood that municipal advisors are hired because of their qualifications as opposed to other reasons.

Draft Rule G-40 should also result in improved quality-based competition among municipal advisors to the extent that the clients of municipal advisors rely on information from advertising in the municipal advisor selection process.

Costs

The Board recognizes that municipal advisors would incur costs to meet the standards of conduct and content contained in draft Rule G-40. These costs may include additional compliance costs. However, as elaborated above, the MSRB believes that much of the costs associated with both draft Rule G-40

(as well as the draft amendments to Rule G-21) will be up-front costs resulting from investments in advertisements that are no longer compliant. These costs can be mitigated by setting a future effective date for the rule changes, if adopted. However, there will be some ongoing costs associated with sign-off (for new advertisements) and record-keeping requirements.

To ensure compliance with the advertising standards of draft Rule G-40, municipal advisors may incur costs by seeking advice from compliance professionals when preparing advertising materials. The magnitude of these additional costs is not quantifiable using available data and the Board seeks public comment on this cost component.

The MSRB believes that any increase in municipal advisory fees attributable to the additional costs of draft Rule G-40 compared with the baseline state will be, in the aggregate, minimal and that the cost per municipal advisory firm will be spread across the number of advisory engagements for each firm. The MSRB recognizes, however, that for smaller municipal advisors with fewer clients, the cost of compliance with draft Rule G-40's standards of conduct and duties may represent a greater percentage of annual revenues, and thus, such advisors may be more likely to pass those costs along to their advisory clients.

The MSRB recognizes that, because of these costs, some municipal advisors may decide to curtail their advertising activities or pass the costs on to municipal entities and obligated persons in the form of higher fees.

The MSRB has also considered the possibility that some compliance costs could be greater in the absence of draft Rule G-40. Municipal advisors are currently subject to Rule G-17 and any associated enforcement actions. By articulating advertising standards, draft Rule G-40 should reduce possible confusion and uncertainty about what is "fair dealing" as it applies to advertising content and conduct. Therefore, draft Rule G-40 may reduce certain costs of compliance that might have otherwise been incurred by allowing municipal advisors to more quickly and accurately determine compliance requirements.

Effect on Competition, Efficiency and Capital Formation

The MSRB considered that the costs associated with draft Rule G-40 relative to the relevant baseline may lead some municipal advisors to curtail their advertising expenditures and compete less aggressively through advertising. At the margin, some municipal advisors may determine to consolidate with other municipal advisors to benefit from economies of scale (*e.g.*, by leveraging existing compliance resources of a larger firm) rather than to incur separately the costs associated with draft Rule G-40. The MSRB believes that

the market for municipal advisory services is likely to remain competitive despite the potential curtailment of advertising expenditures, or the potential consolidation of some municipal advisors, or the potential deterring of some new entrants into the market.

As we have noted above, the better-quality information conveyed by municipal advisors through advertising that meets the standards of draft Rule G-40 (relative to the relevant baseline) may lead to an improved municipal advisor selection process which may increase the willingness of municipal entities and obligated persons to use municipal advisors. This, in turn, may contribute to a more efficient capital formation process as municipal entities and obligated persons may make different decisions about issuance relative to other financing options.

In addition, investment advisers, some of which are also municipal advisors, are subject to advertising standards under SEC rules. In the absence of advertising standards applicable to all municipal advisors, those municipal advisors that are also investment advisers or dealers are at a competitive disadvantage as compared to municipal advisors that are not also acting as investment advisers or dealers.

Request for Comment

The MSRB seeks public comment on the following questions, as well as on any other topic raised in this request. The MSRB particularly welcomes statistical, empirical, and other data from commenters that may support their views and/or support or refute the views, assumptions, or issues raised in this request for comment.

- The draft amendments to Rule G-21 and draft new Rule G-40 incorporate and/or harmonize the provisions of those rules with certain provisions of the advertising rules of other financial regulators. Are there other provisions of the advertising rules of those financial regulators which the MSRB should consider either incorporating into MSRB rules or with which the MSRB should consider harmonizing its advertising rules?
- The MSRB drafted a new rule, draft Rule G-40, to address advertising by a municipal advisor. An alternative approach would be to address municipal advisor advertising in Rule G-21. Would the current approach of having a new rule, or an alternative approach including all advertising provisions in one rule, be preferable?

- The draft amendments to Rule G-21 permit hyperlinks to obtain more current municipal fund security performance information. Are there other areas where the MSRB should consider expressly permitting the use of a hyperlink in an advertisement?
- In 2016, the first programs designed to implement the Stephen A. Beck, Jr., Achieving a Better Life Experience Act of 2014 (ABLE) became operational. As ABLE programs continue to develop and become operational, is there more specific guidance that the MSRB should consider providing under Rule G-21 or draft Rule G-40 to address ABLE programs?
- What role, if any, do municipal advisors have with the development or distribution of municipal security product advertisements, new issue product advertisements, and/or municipal fund security product advertisements?
- A municipal advisor may market non-security products, such as a software program, to its municipal advisory clients. Draft Rule G-40(a) applies to 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 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 reprint, or any excerpt of the foregoing or of a published article. Nonetheless, should draft Rule G-40 specifically address advertisements relating to non-security products, such as any software program, that the municipal advisor may market to its municipal advisory clients?
- Rule G-21 and draft Rule G-40 apply to advertisements, regardless of whether electronic or other public media is used with those advertisements. As such, Rule G-21 and draft Rule G-40 apply to an advertisement on social media. Nonetheless, should the MSRB consider specific guidance about the use of social media by a dealer or a municipal advisor? If so, what guidance would be helpful?
- The draft amendments to Rule G-21 and draft Rule G-40 prohibit a dealer or municipal advisor from using an advertisement that, in part, predicts or projects performance, but does not prohibit the use of an investment analysis tool. How often are such tools used? Should the

MSRB consider additional guidance about the definition of an investment analysis tool and about the use of such tools?

- Rule G-21 and draft Rule G-40 do not except a private placement memorandum from the definition of an advertisement. Should the MSRB consider providing guidance about (i) a dealer's potential recommendation of a private placement, (ii) a dealer's or municipal advisor's potential role in a private placement, such as with the preparation of a private placement memorandum, and/or (iii) dealer and municipal advisor supervisory obligations concerning private placements?
- FINRA recently requested comment on proposed amendments to FINRA Rule 2210. Those amendments would create an exception to the rule's prohibition on projecting performance to permit a firm to distribute a customized hypothetical investment planning illustration that includes the projected performance of an asset allocation or other investment strategy. How often do dealers or municipal advisors create such illustrations? Should the MSRB consider such an exception in the draft amendments to Rule G-21 and in draft new Rule G-40?
- Are there data or studies relevant to the evaluation of the per firm cost of implementing the draft amendments to Rule G-21 and draft Rule G-40?
- What is the likely impact of the draft amendments to Rule G-21 and draft Rule G-40 on competition, efficiency and capital formation?

February 16, 2017

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Text of Draft 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~~ 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.

(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 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.

* Underlining indicates new language; strikethrough denotes deletions.

(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) A broker, dealer or municipal securities dealer shall not, directly or indirectly, publish, circulate or distribute any advertisement which refers, directly or indirectly, to any testimonial of any kind concerning the broker, dealer or municipal securities dealer or concerning the advice, analysis, report or other service rendered by the broker, dealer or municipal securities dealer.

(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 section (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.

(A) No change.

(1) No change.

(2) *additional disclosures for identified products* – that refers by name (including marketing name) to any municipal fund security, issuer of municipal fund securities, state or other governmental entity that sponsors the issuance of municipal fund securities, or to any securities held as assets of municipal fund securities or to any issuer thereof, must include the following disclosures, as applicable:

(a) No change.

(b) if the advertisement relates to municipal fund securities issued by a qualified tuition program under Internal Revenue Code Section 529, a statement to the effect that an investor should consider, before investing, whether the investor's or designated beneficiary's home state offers any state tax or other state benefits such as financial aid, scholarship funds, and protection from creditors that are only available for investments in such state's qualified tuition program; provided, however, that this statement shall not be required for any advertisement relating to municipal fund securities of a specific state if such advertisement is sent to, or is otherwise distributed through means that are reasonably likely to result in the advertisement being received by, only residents of such state and is not otherwise published or disseminated by the broker, dealer or municipal securities dealer to any of its affiliates, the issuer or any of the issuer's agents with the expectation or

understanding that such other parties will otherwise publish or disseminate such advertisement; and

(c) if the advertisement is for a municipal fund security that has an investment option that the issuer holds out as having the characteristics of a money market fund:

(i) and that money market fund is not a government money market fund, as defined in Rule 2a-7(a)(16), 17 CFR 270.2a-7(a)(16), under the Investment Company Act of 1940 or a retail money market fund, as defined in Rule 2a-7(a)(25), 17 CFR 270.2a-7(a)(25), under the Investment Company Act of 1940, statements to the effect that:

You could lose money by investing in this investment option. Because the share price of the money market fund in which your investment option invests (the “underlying fund”) will fluctuate, when you redeem your units in that investment option, those units may be worth more or less than what you originally paid for them. The underlying fund may impose a fee upon sale of those shares or may temporarily suspend the ability of the investment option to redeem shares if the underlying fund’s liquidity falls below required minimums because of market conditions or other factors. An investment in the investment option is not insured or guaranteed by the Federal Deposit Insurance Corporation or any other government agency. The underlying fund’s sponsor has no legal obligation to provide financial support to the underlying fund, and you should not expect that the sponsor will provide financial support to the underlying fund at any time.

(ii) and that money market fund is a government money market fund, as defined in Rule 2a-7(a)(16), 17 CFR 270.2a-7(a)(16), under the Investment Company Act of 1940 or a retail money market fund, as defined in Rule 2a-7(a)(25), 17 CFR 270.2a-7(a)(25), under the Investment Company Act of 1940, and that is subject to the requirements of Rule 2a-7(c)(2)(i) and/or (ii), 17 CFR 270.2a-7(c)(2)(i) and/or (ii), under the Investment Company Act of 1940 (or is not subject to the requirements of Rule 2a-7(c)(2)(i) and/or (ii), 17 CFR 270.2a-7(c)(2)(i) and/or (ii), pursuant to Rule 2a-7(c)(2)(iii), 17 CFR 270.2a-7(c)(2)(iii), under the Investment Company Act of 1940, but has chosen to rely on the ability to impose liquidity fees and suspend redemptions consistent with the requirements of Rule 2a-7(c)(2)(i) and/or (ii), 17 CFR 270.2a-7(c)(2)(i) and/or (ii), under the Investment Company Act of 1940), statements to the effect that:

You could lose money by investing in this investment option. Although the money market fund in which your investment option invests (the “underlying fund”) seeks to preserve the value of its shares at \$1.00 per share, the underlying fund cannot guarantee it will do so. The underlying fund may impose a fee upon the investment option’s redemption of the underlying fund’s shares or the underlying fund may temporarily suspend the investment option’s ability to redeem its shares if the underlying fund’s liquidity falls below required minimums because of market conditions or other factors. An investment in the investment option is not insured or guaranteed by the Federal Deposit Insurance Corporation or any other government agency. The underlying fund’s sponsor has no legal obligation to provide financial support to the underlying fund, and you should not expect that the sponsor will provide financial support to the underlying fund at any time.

(iii) and that money market fund is a government money market fund, as defined in Rule 2a-7(a)(16), 17 CFR 270.2a-7(a)(16), under the Investment Company Act of 1940, that is not subject to the requirements of Rule 2a-7(c)(2)(i) and/or (ii), 17 CFR 17 CFR 270.2a-7(c)(2)(i) and/or (i), under the Investment Company Act of 1940, pursuant to Rule 2a-7(c)(2)(iii), 17 CFR 270.2a-7(c)(2)(iii), under the Investment Company Act of 1940, and that has not chosen to rely on the ability to impose liquidity fees and suspend redemptions consistent with the requirements of Rule 2a-7(c)(2)(i) and/or (ii), 17 CFR 270.2a-7(c)(2)(i) and/or (ii), under the Investment Company Act of 1940, a statement to the effect that:

You could lose money by investing in this investment option. Although the money market fund in which your investment option invests (the “underlying fund”) seeks to preserve its value at \$1.00 per share, the underlying fund cannot guarantee it will do so. An investment in this investment option is not insured or guaranteed by the Federal Deposit Insurance Corporation or any other government agency. The underlying fund’s sponsor has no legal obligation to provide financial support to the underlying fund, and you should not expect that the sponsor will provide financial support to the underlying fund at any time.

~~statements to the effect that an investment in the security is not insured or guaranteed by the Federal Deposit Insurance Corporation or any other government agency (unless such guarantee is provided by or on behalf of such issuer) and, if the security is held out as maintaining a stable net asset value, that although the issuer seeks to preserve the value of the investment at \$1.00 per share or such other applicable fixed share price, it is possible to lose money by investing in the security.~~

(3) *additional disclosures concerning performance* – that includes performance data must include:

(a) a legend disclosing that the performance data included in the advertisement represents past performance; that past performance does not guarantee future results; that the investment return and the value of the investment will fluctuate so that an investor's ~~shares~~ units, when redeemed, may be worth more or less than their original cost; and that current performance may be lower or higher than the performance data included in the advertisement. Unless the advertisement includes total return quotations current to the most recent month ended seven business days prior to the date of any use of the advertisement, the legend must also identify either a toll-free (or collect) telephone number or a website (that may be hyperlinked) where an investor may obtain total return quotations current to the most recent month-end for which such total return, or all information required for the calculation of such total return, is available, however an investment option that invests in a money market fund that is a government money market fund, as defined in Rule 2a-7(a)(16), 17 CFR 270.2a-7(a)(16), under the Investment Company Act of 1940 or a retail money market fund, as defined in Rule 2a-7(a)(25), 17 CFR 270.2a-7(a)(25), under the Investment Company Act of 1940 may omit the disclosure about principal value fluctuation;

(b) No change.

(c) to the extent that such performance data relates to municipal fund ~~securities~~ security investment options that are not held out as having the characteristics of a money market fund and to the extent applicable, the total annual operating expense ratio of such municipal fund ~~securities~~ security investment options (calculated in the same manner as the total annual fund operating expenses required to be included in the registration statement for a registered investment company, subject to paragraph (e)(ii)(A) hereof), gross of any fee waivers or expense reimbursements.

(4) No change.

(B) 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, ~~NASD~~ 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 ~~NASD~~ FINRA 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, ~~NASD~~ 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 Investment Option. As used in Rule G-21(e), the term investment option shall have the same meaning as defined in Rule G-45(d)(vi).

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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 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 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 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 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.

(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 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 prior to first use. Each municipal advisor shall make and keep current in a separate file records of all such advertisements.