



July 26, 2018

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

Re: MSRB Notice 2018-14: Request for Comment on Draft Frequently Asked Questions Regarding Rule G-40 and the Use of Municipal Advisory Client Lists and Case Studies

Dear Mr. Smith:

The Securities Industry and Financial Markets Association (“SIFMA”)¹ appreciates this opportunity to respond to Notice 2018-14² (the “Notice”) issued by the Municipal Securities Rulemaking Board (the “MSRB”) in which the MSRB requests comment on draft frequently asked questions regarding Rule G-40 and the use of municipal advisory client lists and case studies. SIFMA and its members appreciate the MSRB’s efforts to provide guidance on Rule G-40. SIFMA feels that guidance in the form of examples is helpful, and overall the guidance is generally clear. We do have a few suggestions for further clarifications set forth below.

I. Clarification Regarding Form Letters

SIFMA has concerns regarding the definition and clarification of form letter. Rule G-21 and G-40 both define form letter as follows:

¹ SIFMA is the voice of the U.S. securities industry. We represent the broker-dealers, banks and asset managers whose nearly 1 million employees provide access to the capital markets, raising over \$2.5 trillion for businesses and municipalities in the U.S., serving clients with over \$18.5 trillion in assets and managing more than \$67 trillion in assets for individual and institutional clients including mutual funds and retirement plans. SIFMA, with offices in New York and Washington, D.C., is the U.S. regional member of the Global Financial Markets Association (GFMA). For more information, visit <http://www.sifma.org>.

² MSRB Notice 2018-14 (June 27, 2018).

(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.

We note that in the rulemaking process, the MSRB declined to grant a blanket exemption for responses to a request for proposals (“RFP Response”) to the advertising rules, Rule G-21 and Rule G-40. Instead, the MSRB clarified in the supplementary material to each rule that the number of “persons” that an RFP Response was sent to would be counted at the entity level, instead of the employee or natural person level. While somewhat helpful, this has generated additional questions and need for clarification.

SIFMA believes that RFP Responses that are tailored for issuers in any way should not be considered form letters, even if some of the language used therein has been used in other RFP Responses. For instance, in Example 2, it is unclear if a municipal advisor were to use the same set of language regarding its client list in multiple RFP Responses that were otherwise materially tailored to an issuer, whether that section of language may itself be considered a “form letter”. More generally, where materials are provided that are tailored for an issuer or obligor, even if some of that language is repurposed from another document or RFP Response, that should not turn the document into a form letter due to that subset of language being sent out to more than 25 persons within any period of 90 consecutive days. We feel it is critical to clarify that each RFP Response should be viewed as a whole, and not as each of its component parts taken individually.

II. Treatment of Tombstone Advertisements

A common form of advertising is the publication of a single “tombstone”, promoting the underwriting of a single, or series of related new issuances. SIFMA and its members ask the MSRB to clarify that such a publication of a single tombstone advertisement constitutes a partial client list. Further, does each partial list, including a single tombstone advertisement, need explanatory language stating it is a partial list? SIFMA’s members believe that such explanatory language is not always necessary, particularly for single-issue advertisements such as tombstones.

III. Case Studies as Conference Materials

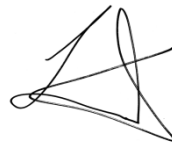
SIFMA’s members note that it is not uncommon to include municipal advisor case studies as part of presentation materials in connection with a conference or seminar. Per the FAQs, such use would likely be deemed an advertisement and require principal approval. If the MSRB intended to pick up this type of usage as an advertisement, there also may be inconsistency in relation to the MSRB Rules G-21 or G-40 treatment of such presentations.

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IV. Conclusion

Again, SIFMA and its members appreciate the MSRB's efforts to provide guidance on MSRB Rule G-40. We look forward to the MSRB's proposed guidance on social media and Rule G-40's content standards. Other issues we believe that would benefit from further clarification are: the definition of advertising and exemptions thereof, especially related to RFP responses and correspondence with clients; documentation standards; expectations of firms that are both broker dealers and municipal advisors to conform to both MSRB Rules G-21 and G-40; and meeting both FINRA 2210 standards and MSRB Rules G-21 and G-40 rulemaking when they are incompatible. We would be pleased to discuss any of these comments in greater detail, or to provide any other assistance that would be helpful. If you have any questions, please do not hesitate to contact the undersigned at (212) 313-1130.

Sincerely yours,



Leslie M. Norwood
Managing Director and
Associate General Counsel

cc: ***Municipal Securities Rulemaking Board***
Lynnette Kelly, Executive Director
Michael Post, General Counsel
Lanny Schwartz, Chief Regulatory Officer
Pamela K. Ellis, Associate General Counsel