(b) any municipal fund securities of a different issuer of municipal fund securities, provided that the advertisement includes the applicable disclosures under clause (e)(i)(A)(1)(c) and subparagraph (e)(i)(A)(2) of this rule.

(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) *source of data* — to the extent that information necessary to calculate performance data or to determine loads, fees and expenses for purposes of clause (e)(i)(A)(3)(b) or (c) is not available from an applicable balance sheet included in a registration statement, or from a prospectus, the broker, dealer or municipal securities dealer shall use information derived from the issuer's official statement, otherwise made available by the issuer or its agents, or (when unavailable from the official statement, the issuer or the issuer's agents) derived from such other sources which the broker, dealer or municipal securities dealer reasonably believes are reliable;

(B) *period of calculation* — if the issuer first began issuing the municipal fund securities fewer than one, five, or ten years prior to the date of the submission of the advertisement for publication, such shorter period shall be substituted for any otherwise prescribed longer period in connection with the calculation of average annual total return or any similar returns;

(C) *currentness of calculation* — performance data and total annual operating expense ratio shall be calculated as of the most recent practicable date considering the type of municipal fund securities and the media through which data will be conveyed, except that any advertisement containing total return quotations will be considered to have complied with this paragraph provided that:

(1) (a) the total return quotations are current to the most recent calendar quarter ended prior to the submission of the advertisement for publication for which such performance data, or all information required for the calculation of such performance data, is available to the broker, dealer or municipal securities dealer as described in paragraph (A) of this subsection (e)(ii); and

(b) total return quotations (current to the most recent month ended seven business days prior to the date of any use of the advertisement for which such total return, or all information required for the calculation of such total return, is available to the broker, dealer or municipal securities dealer as described in paragraph (A) of this subsection (e)(ii)) are provided at the toll-free (or collect) telephone number or website identified pursuant to clause (i)(A)(3)(a) of this section (e) and the month to which such information is current is identified; or

(2) the total return quotations are current to the most recent month ended seven business days prior to the date of any use of the advertisement for which such total return, or all information required for the calculation of such total return, is available to the broker, dealer or municipal securities dealer and the month to which such information is current is identified.

(D) *12b-1-type plans* — where such calculation is required to include expenses accrued under a plan adopted under Investment Company Act Rule 12b-1, the broker, dealer or municipal securities dealer shall include all such expenses as well as any expenses having the same characteristics as expenses under such a plan where such a plan is not required to be adopted under said Rule 12b-1 as a result of Section 2(b) of the Investment Company Act of 1940;

(E) *tax-adjusted calculations* — in calculating tax-equivalent yields or after-tax returns, the broker, dealer or municipal securities dealer shall assume that any unreinvested distributions are used in the manner intended with respect to such municipal fund securities in order to qualify for any federal tax-exemption or other federally tax-advantaged treatment with respect to such distributions, provided that the advertisement must also provide a general description of how federal law intends that such distributions be used and disclose that such yield or return would be lower if distributions are not used in this manner.

(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 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) *Nature of Issuer and Security*. An advertisement for a specific municipal fund security must provide sufficient information to identify such specific security in a manner that is not false or misleading. An advertisement that identifies a specific municipal fund security must include the name of the issuer (or the issuer's marketing name for its issuance of municipal fund securities, together with the state of the issuer), presented in a manner no less prominent than any other entity identified in the advertisement, and must not imply that a different entity is the issuer of the municipal fund security. An advertisement must not raise an inference that, because municipal fund securities are issued under a government-

sponsored plan, investors are guaranteed against investment losses if no such guarantee exists. If an advertisement concerns a specific class or category of an issuer's municipal fund securities (*e.g.*, A shares versus B shares; direct sale shares versus advisor shares; in-state shares versus national shares; etc.), this must clearly be disclosed in a manner no less prominent than the information provided with respect to such class or category.

(iv) *Capacity of Dealer and Other Parties*. An advertisement that relates to or describes services provided with respect to municipal fund securities must clearly indicate the entity providing those services. If any person or entity other than the broker, dealer or municipal securities dealer is named in the advertisement, the advertisement must reflect any relationship between the broker, dealer or municipal securities dealer and such other person or entity. An advertisement soliciting purchases of municipal fund securities that would be effected by a broker, dealer or municipal securities dealer or any other entity other than the broker, dealer or municipal securities dealer that publishes the advertisement must identify which entity would effect the transaction, provided that the advertisement may identify one or more such entities in general descriptive terms but must specifically name any such other entity if it is the issuer, an affiliate of the issuer, or an affiliate of the broker, dealer or municipal securities dealer that publishes the advertisement. This subsection (iv) shall not apply to any advertisement described in subparagraph (e)(i)(B)(2) of this rule.

(v) *Tax Consequences and Other Features*. Any discussion of tax implications or other benefits or features of investments in municipal fund securities included in an advertisement must not be false or misleading. In the case of an advertisement that includes generalized statements regarding tax or other benefits offered in connection with such municipal fund securities or otherwise offered under state or federal law, the advertisement also must include a generalized statement that the availability of such tax or other benefits may be conditioned on meeting certain requirements. If the advertisement describes the nature of specific benefits, such advertisement must also briefly list the substantive factors that may materially limit the availability of such benefits (such as residency, purpose for or timing of distributions, or other factors, as applicable). Such statements of conditions or limitations must be presented in close proximity to, and in a manner no less prominent than, the description of such benefits.

(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 other 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 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) *Correspondence Presenting Performance Data*. Notwithstanding any other provision of this rule, all correspondence with the public that includes performance data relating to municipal fund securities must comply with the provisions of subparagraph (e)(i)(A)(3) (presented in the manner provided in subparagraph (e)(i)(A)(4)) and subsection (e)(ii) as if such correspondence were a product advertisement under this rule.

(f) *Approval by Principal*. Each advertisement subject to the requirements of this rule must be approved in writing by a municipal securities principal or general securities principal prior to first use.

(g) *Interactive Content*. Notwithstanding the requirement of section (f), interactive content that is an advertisement and that would be posted or disseminated in an interactive electronic forum is exempt from the requirement to be approved in writing by a municipal securities principal or general securities principal prior to first use.

(h) *Records*. Each broker, dealer and municipal securities dealer shall make and keep current in a separate file records of all advertisements.

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).

.02 Contractual Financial Support Provided to Underlying Fund. Under Rule G-21(e)(i)(A)(2)(c), a dealer may omit the last sentence of the specified disclosure ("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") if that disclosure is not applicable to the underlying fund under Rule 482(b)(4) pursuant to the Securities Act of 1933.

.03 Number of Persons. For purposes of Rule G-21(a)(ii), the number of "persons" for a response to a request for proposal (RFP), a request for qualifications, or similar request is determined at the entity level. Therefore, for example, if a dealer were to send a response to an RFP to a municipal entity, that municipal entity would count as one "person" no matter how many employees of the municipal entity may review the response to the RFP.

.04 Supervision of Interactive Content. Notwithstanding Rule G-21(g), each broker, dealer and municipal securities dealer must supervise and review interactive content in the same manner in which that broker, dealer, or municipal securities dealer supervises and reviews correspondence under Rule G-27(e), on review of correspondence.

Rule G-21 Interpretations

FAQs regarding the Use of Social Media under MSRB Rule G-21, on Advertising by Brokers, Dealers or Municipal Securities Dealers, and MSRB Rule G-40, on Advertising by Municipal Advisors

August 23, 2019

The Municipal Securities Rulemaking Board (MSRB) provides these answers to frequently asked questions (FAQs) to enhance market participants' understanding of permissible and impermissible uses of social media as part of their municipal securities business or municipal advisory activities under MSRB Rule G 21, on advertising by brokers, dealers or municipal securities dealers (collectively, "dealers"), and under MSRB Rule G-40, on advertising by municipal advisors (Rule G-21, together with Rule G-40, the "advertising rules"). These FAQs can assist dealers and municipal advisors (collectively, "regulated entities") with their compliance with the MSRB's advertising rules.

In developing these FAQs, the MSRB has been mindful of the potential burden on a regulated entity if there were to be unnecessary inconsistencies between any adopted MSRB social media guidance and similar guidance issued by other regulators that may be applicable to other aspects of the regulated entity's business. To that end, and to the extent practicable, the MSRB has endeavored to align these FAQs with the social media guidance published by the U.S. Securities and Exchange Commission (SEC) and the Financial Industry Regulatory Authority, Inc. (FINRA).[1]

The FAQs discuss compliance with MSRB rules; regulated entities are reminded that they also may be subject to the rules of other financial regulators, including state regulators. Further, a regulated entity's use of social media to conduct municipal securities or municipal advisory activities is optional, and the responsibilities that follow from that social media usage are not new here. In particular, a regulated entity should consider its ability to comply with the existing recordkeeping requirements under the federal securities laws and incorporated into MSRB rules when determining whether to use social media to conduct municipal securities or municipal advisory activities and whether to permit its associated persons to use social media to conduct municipal securities or municipal advisory activities.

Background

Amended Rule G-21 and new Rule G-40, effective as of the date of these FAQs, set forth general provisions, address professional advertisements by the relevant regulated entity and require principal approval, in writing, for advertisements by regulated entities before their first use.

During the development of the amendments to Rule G-21 and of new Rule G-40, the MSRB received requests for guidance regarding the use of social media by a regulated entity under those rules. These FAQs provide the requested guidance.

Consistent with MSRB Rule D-11, references in the FAQs to a dealer, municipal advisor or regulated entity generally include the associated persons of such dealer, municipal advisor or regulated entity.[2]

Use of Social Media

1. Is social media use by a regulated entity relating to its municipal securities business or municipal advisory activities considered advertising under the MSRB's advertising rules?

Yes, depending on the facts and circumstances. With limited exceptions, any material that relates to (i) the products or services of the dealer, (ii) the services of the municipal advisor, or (iii) the engagement of a municipal advisory client by the municipal advisor, may constitute an advertisement under the MSRB's advertising rules, if it is:

- published or used in any electronic or other public media; or
- written or electronic promotional literature distributed or made generally available to either customers or municipal entities, obligated persons, municipal advisory clients or the public.

To the extent that the use of social media, including blogs, microblogs and social and professional networks, by a regulated entity is deemed advertising based on its content and distribution, that advertising would be subject to all applicable provisions of Rules G-21 and G-40. Those provisions include content standards and a requirement that an advertisement be pre-approved by a principal before its first use.

Further, dealers and municipal advisors should bear in mind that "posts" or "chats" on social media, including those deemed advertising, are subject to all other applicable MSRB rules.

Those rules include:

- MSRB Rule G-17, on conduct of municipal securities and municipal advisory activities;
- MSRB Rule G-27, on supervision;
- MSRB Rule G-44, on supervisory and compliance obligations of municipal advisors;

- MSRB Rule G-8, on books and records to be made by brokers, dealers, municipal securities dealers, and municipal advisors; and
- MSRB Rule G-9, on retention of records.

2. Can an associated person's personal social media use be deemed "advertising" that is subject to the MSRB's advertising rules?

Potentially, yes. An associated person's personal social media use would not *per se* be advertising that is subject to the MSRB's advertising rules. Whether an associated person's personal social media use is advertising depends on whether the content of the social media relates to (i) the products or services of the dealer, (ii) the services of the municipal advisor, or (iii) the engagement of a municipal advisory client by the municipal advisor, as relevant.

- For example, an associated person of a regulated entity "posts" the following on his personal social media that is viewable by the public rather than a selected audience:

  > Let's help our children! ABC Youth Group is having a car wash to raise funds for a new basketball court on May 18th at 3:00 pm at XYZ address. Get your car washed and help out.

The content in the "post" in the above example does not relate to (i) the products or services of the dealer, (ii) the services of the municipal advisor, or (iii) the engagement of a municipal advisory client by the municipal advisor. Even though the "post" is publicly available, the "post" would not be advertising that is subject to the MSRB's advertising rules.

Similarly, an associated person may hyperlink from his or her personal social media to content on his or her dealer's or municipal advisor's social media. The "hyperlinking" by the associated person to the regulated entity's social media would not constitute an advertisement if that hyperlinked content does not relate to the matters referenced in the preceding paragraph.[3]

- For example, a "post" from associated person FGH's personal social media contains a hyperlink to an article on municipal advisor ABC's website about an animal shelter rebuilding after recent flooding. The "post" is viewable by the public.

The "post" would not be advertising that is subject to the MSRB's advertising rules. The "post," although it contains a hyperlink to a regulated entity's website, links to content that does not relate to the services of the municipal advisor or the engagement of a municipal advisory client by a municipal advisor.

By contrast, to the extent that an associated person of a municipal advisor engages in advertising, as defined by Rules G-21 and G-40, on his or her personal social media, that advertising would be subject to the requirements of the MSRB's advertising rules.

- For example, an associated person of ABC municipal advisor posts the following on his or her personal social networking page that is viewable by the general public:

  > I'm happy to be part of the team! ABC municipal advisor was rated the best in XYZ state for airport financings during 2017 according to DEF rating service. ABC municipal advisor has great experience in airport financings, and can help you with your next project.

The "post" would be an advertisement, as defined in Rule G-40(a)(i). The content of the electronically distributed "post" (i) promotes the expertise and experience of ABC municipal advisor and solicits inquiries about its services and (ii) is generally available to municipal entities, obligated persons, municipal advisory clients or the public. As such, even though the advertisement was "posted" on the associated person's personal social networking page, the "post" would be subject to the requirements of Rule G-40 as well as all other applicable MSRB rules. *See* question 1.

3. Do the MSRB's advertising rules apply to hyperlinked content on an independent third-party website from a regulated entity's website?

The MSRB's advertising rules would apply to hyperlinked content on an independent third-party's website from a regulated entity's website in those instances where the regulated entity either:

- involved itself in the preparation of content on that third-party website—this is known as **entanglement**;[4] or
- implicitly or explicitly approved or endorsed the content on that third-party website—this is known as **adoption**.[5]

Accordingly, if a regulated entity either becomes entangled with or adopts the hyperlinked content, the regulated entity has obligations under MSRB's advertising rules for that content.

- For example, on its website, ABC dealer states that XYZ municipal entity has a great article about the financing for its new school (ABC dealer was the underwriter for that financing), and ABC dealer provides a hyperlink to that article.

In this case, ABC dealer, by stating it was a great article, would have adopted the article on XYZ's website, and the content of that article would be subject to Rule G-21. Further, depending on the facts and circumstances, ABC may have adopted the article by linking to its specific content even without stating that the article was a great article. See question 4. A regulated entity should consider whether the context of the hyperlink and the content of the hyperlinked information together create a reasonable inference that the regulated entity has approved or endorsed the hyperlinked information.[6]

Similarly, a regulated entity may become entangled with hyperlinked content.

- For example, CDE municipal advisor assists XYZ issuer with the preparation of a press release about a financing to build a new school. The press release discusses how the financing method will save taxpayer dollars, but does not mention CDE municipal advisor. CDE municipal advisor then posts a hyperlink on its website to the press release on XYZ issuer's website.

In this case, CDE municipal advisor, because it helped prepare the press release, would have become entangled with the press release, and the hyperlinked content would be an advertisement subject to Rule G-40.

See Question 7 for discussion regarding third-party posts.

4. What factors are relevant for a regulated entity to consider as it determines whether it has adopted the hyperlinked content on an independent third-party's website?

While non-exclusive, some factors to consider are:[7]

- **Does the context suggest that the regulated entity has approved or endorsed the hyperlinked content?** The regulated entity may want to consider its disclosure about the hyperlink and what a reader may imply by the location and presentation of the hyperlink. For example:
  - — Does the regulated entity state that it approves or endorses the prominently-featured hyperlinked content (in which case, the regulated entity would have adopted the hyperlinked content), or does the regulated entity have a portion of its website that links to recent general news articles and provides hyperlinks to the websites of various newspapers or magazines (depending on the facts and circumstances, in most cases, the regulated entity would not have adopted such content)?[8]
  - — Does the hyperlinked content indicate a degree of selective choice by the regulated entity, such as a hyperlink to a specific news article that is laudatory of the regulated entity, as compared to a hyperlink to the website of the newspaper?[9]
  - — Does the regulated entity provide an explanation about the source of a hyperlinked article and why the regulated entity is hyperlinking to it in order to avoid the inference that the regulated entity is adopting the hyperlinked content?[10]

Although a regulated entity's hyperlink to specific independent third-party content may indicate adoption of that content, if the hyperlinked content itself is not an advertisement, the regulated entity's hyperlink to that content would not be an advertisement under Rules G-21 and G-40.

- For example, ABC dealer includes a hyperlink on its website to an article regarding the importance of saving for college on an independent third-party's website. The article does not identify any particular 529 savings plan, any dealer, or any municipal security.

In this case, ABC dealer hyperlinks to an article that is purely educational. Because the hyperlinked content does not address ABC dealer or a municipal security offered through ABC dealer, the hyperlinked content would not be an advertisement, and ABC dealer's hyperlink to that content would not be an advertisement that is subject to Rule G-21.

- **Does the hyperlink create customer or municipal advisory client confusion?** The regulated entity may want to consider whether a customer or municipal advisory client would be confused and not fully appreciate that the hyperlink is to third-party content. Does the regulated entity provide disclosure to explain that the hyperlink is to third-party content?[11]
- **Is the hyperlink to content that is not controlled by the regulated entity and is the hyperlink ongoing?** When a regulated entity links to content that is hosted by an independent third-party that is not controlled or influenced by the regulated entity, that content may not be advertising subject to the MSRB's advertising rules if the hyperlink is "ongoing."

  An "ongoing" link is one which: (i) is continuously available to visitors to the regulated entity's website; (ii) visitors to the regulated entity's site have access to even though the independent third-party site may or may not contain favorable material about the regulated entity; and (iii) visitors to the regulated entity's website have access to even though the independent third-party's website may be revised.[12] A regulated entity may not have adopted the content on the independent third-party's website if the link is "ongoing."

However, where a regulated entity has become entangled with the hyperlinked content on a third-party website (to the extent that hyperlinked content otherwise meets the definition of an advertisement), that hyperlinked content would be an advertisement under Rules G-21 and G-40 and the regulated entity must consider all applicable provisions of the MSRB's advertising rules, including with respect to the hyperlinked content.[13] Therefore, a regulated entity should not include hyperlinked content on its website if there are any red flags that indicate that the hyperlinked content contains false or misleading material.[14]

5. May a regulated entity use a disclaimer alone to disclaim potential MSRB rule violations for hyperlinked content on an independent third-party website?

No, the MSRB generally would not view a disclaimer alone as sufficient to insulate a regulated entity from potential MSRB rule violations related to hyperlinked content on an independent third-party website that the regulated entity knows or has reason to know is materially false or misleading. A regulated entity that hyperlinks to content that the regulated entity knows or has reason to know is materially false or misleading may violate Rules G-17, G-21 and/or G-40.[15]

6. Do the MSRB's advertising rules apply to linked content within independent third-party content to which a regulated entity hyperlinked?

No, Rules G-21 and G-40, in general, would not apply to linked content within content to which the regulated entity linked ("secondary links"). However, to avoid triggering the application of Rules G-21 and G-40:

- The regulated entity must not have adopted or become entangled with the content in the secondary link – *See* question 3;
- The regulated entity must have no influence or control over the content in the secondary links – *See* question 4;
- The original linked content must not be a mere vehicle for the secondary links or not rely completely on the information available in the secondary links; and
- The regulated entity must not know or have reason to know that the information contained in the secondary links contains any untrue statement of material fact or is otherwise false or misleading.[16] A regulated entity should not include a link on its website if there are any red flags that indicate that the hyperlinked website contains false or misleading content.[17]

Third-Party Posts

7. Do Rules G-21 and G-40 apply to posts by a customer, municipal entity client or another third-party (collectively, "third-party posts") on a regulated entity's or its associated person's social networking page?

In general, no. Rules G-21 and G-40 generally would not apply to posts by a third-party on a regulated entity's or its associated person's social networking page. The post would not be considered material that is published, distributed or made available by the dealer or municipal advisor.

Notwithstanding, Rules G-21 and G-40 may apply to such third-party posts under certain circumstances. For example, Rules G-21 and G-40 would apply to such posts if the dealer or municipal advisor becomes entangled with or adopts the content of such posts. *See also* question 3.

- **Entanglement.** A regulated entity becomes entangled with a post by a third-party on the regulated entity's social networking page if the regulated entity has involved itself with the preparation of the third-party content.[18] For example, a regulated entity or its associated person may become entangled with a third-party post if the regulated entity or its associated person pays for or solicits a third-party to post certain comments on the regulated entity's social networking page.
- **Adoption.** A regulated entity adopts the content of the third-party post if the regulated entity explicitly or implicitly approves or endorses the content.[19] A regulated entity or its associated person may adopt a third-party post if it "likes," "shares," or otherwise indicates approval or endorsement of the content.

See question 3 above for a discussion of hyperlinked content on an independent third-party website; *see* question 4 above for a discussion of the non-exclusive factors to consider when determining whether a regulated entity or its associated person has adopted third-party content.

8. May a municipal advisory client post positive comments about its experience with the municipal advisor on the municipal advisor's social media page without such post being a testimonial under Rule G-40?

As with question 7 above, if a municipal advisory client posts positive comments on a municipal advisor's social media page and the municipal advisor does not become entangled with or adopt that content, the municipal advisor could allow such content on its social media page. This would be true even if the municipal advisory client's comments were to include a testimonial.

However, if the municipal advisor paid for or solicited a municipal advisory client to post positive comments about its experience with the municipal advisor on the municipal advisor's social media page, that post would be deemed to be an advertisement by the municipal advisor that contains a testimonial within Rule G-40.

Specifically, by paying for or soliciting positive comments from a third-party, the municipal advisor would become entangled with those comments, and the posting of those third-party comments on the municipal advisor's social media page would be deemed to be an advertisement by the municipal advisor that contains a testimonial within Rule G-40(a)(iv)(G). *See* question 7. As such, the municipal advisor's use of that testimonial content would be prohibited.[20] Similar considerations would prohibit the municipal advisor from "liking" the municipal advisory client's post or by forwarding the municipal advisory client's post to others, thereby adopting the content.

Recordkeeping

9. Must regulated entities retain records of "posts," "chats," text messages or messages sent through messaging applications related to the regulated entity's business conducted through social media?

Yes, the MSRB's recordkeeping and record retention requirements apply to all written, including electronic, communications sent or received as well as records of advertisements under the MSRB's advertising rules.

Specifically, for dealers, Rule G-9(b)(viii)(C) requires that "all written and electronic communications received and sent, including inter-office memoranda, relating to the conduct of the activities of such municipal securities broker or municipal securities dealer with respect to municipal securities" be retained. Similarly, Rule G-9(h)(i) requires that a municipal

advisor retain records, which include, among other things, originals or copies of all written and electronic communications received and sent, including inter-office memoranda, relating to municipal advisory activities.[21] Neither the technology used for the communication nor the distinction between a communication made through a device issued by the regulated entity or its associated person's personal device is determinative for this analysis. *See* questions 10 and 11 regarding supervision.

Supervision[22]

10. Should a regulated entity consider establishing policies and procedures as part of its supervisory system to address the use of social media by the regulated entity and its associated persons?

Yes, given that recordkeeping requirements apply to electronic communications, a regulated entity should establish policies and procedures to address the use by the regulated entity and its associated persons of social media.[23] As a baseline, those policies and procedures would reflect the regulated entity's permitted and/or prohibited practices. Such permitted practices may include restrictions on the use of certain technologies or the prohibition of the use of social media to engage in municipal securities business or municipal advisory activities. Further, the supervisory system for a regulated entity that permits the use of social media would address all applicable MSRB rules, including, but not limited to:

- the MSRB's advertising rules;
- Rule G-17;
- Rule G-8; and
- Rule G-9.

See question 1.

11. What are some factors that a regulated entity should consider as it develops policies and procedures about the use of social media?

As with any policy and procedure, a regulated entity's social media policies and procedures would be tailored to reflect, among other things, its size, organizational structure and the nature and scope of its municipal securities or municipal advisory activities. Social media policies and procedures are not expected to be "one size fits all."

Among the factors that a regulated entity should consider as it develops social media policies and procedures are:

Usage Restrictions. While some regulated entities may prohibit an associated person from engaging in municipal securities business or municipal advisory activities through social media, other regulated entities may permit the use of social media for such purposes. A regulated entity that permits the use of social media by its associated persons, in whole or in part, should consider providing associated persons with a clear and concise list of permitted social media for the conduct of municipal securities business or municipal advisory activities. That list also may include any restrictions to the use of particular social media (for example, a regulated entity may permit certain messaging applications to be used only for internal communications among the regulated entity and its associated persons). If applicable, a regulated entity should consider making the list of permitted social media widely available and easily accessible to its associated persons.[24]

Further, recognizing the need to have policies and procedures that are reasonably designed to ensure compliance with MSRB rules as well as with other applicable securities laws and regulations, and in light of the pace of technology innovations, a regulated entity that permits the use of social media should consider periodically reviewing its list of permitted social media. As part of that review, the regulated entity should determine whether any updates to the list of permitted social media would be warranted.[25]

Along with the list of permitted social media, the regulated entity should consider addressing the consequences of non-compliance with its social media policies and procedures.[26]

- **Training and Education.** The regulated entity's social media policies and procedures may address the training that the regulated entity will provide related to those policies and procedures. For example, will the training include an initial training as well as training that is required on a periodic basis? In addition, a regulated entity's training on social media may address various topics likely to occur such as an explanation of the differences between business and personal social media use and how the lines between business and personal social media usage could be blurred. For example, an associated person could receive a request on his or her personal social media relating to municipal securities business or municipal advisory activities. A regulated entity may want to consider how the associated person should respond to such a request.
- **Recordkeeping and Record Retention.** As noted in question 1, it is possible that social media posts relating to the regulated entity's municipal securities business or municipal advisory activities would be subject to the MSRB's recordkeeping and record retention rules. A regulated entity should consider its recordkeeping and record retention obligations as it designs its social media compliance policies and procedures.[27]
- **Monitoring.** As a regulated entity develops its social media policies and procedures, the regulated entity should consider how it will monitor for compliance with those policies and procedures. For example, a regulated entity may determine to more frequently monitor various social media activities based on the

potential risks that the regulated entity has determined may be associated with those activities. *See* question 12 below for a discussion of various factors that the regulated entity may want to consider as it develops its policies and procedures. As a reminder, a regulated entity's supervisory procedures concerning social media should address not only the MSRB's advertising rules, but all applicable MSRB rules and other applicable federal securities laws and regulations.

12. What factors may be important in determining the effectiveness of policies and procedures concerning social media?

As noted in question 10, MSRB Rules G-27 and G-44 generally require that a regulated entity establish, implement and maintain a supervisory system that is reasonably designed to achieve compliance with MSRB rules as well as with other applicable federal securities laws and regulations. To help test whether that goal is being met with regard to its social media compliance policies and procedures, a regulated entity may want to consider the following non-exclusive factors:

- **Content standards.** A regulated entity should consider whether there are certain risks associated with content created by the regulated entity for its social media and whether that content may create regulatory issues. For example, non-solicitor municipal advisors owe a fiduciary duty to their municipal entity clients. Is the social media content consistent with that duty (*e.g.*, such as content that contains information on specific municipal advisory activity or a recommendation regarding that activity)? Further, is the social media content consistent with the testimonial restrictions set forth in the MSRB's advertising rules?
- **Monitoring of third-party sites.** To the extent that the regulated entity permits the use of social networking sites, a regulated entity should consider how it will monitor for compliance with the regulated entity's social media policies and procedures on those sites.
- **Criteria for approving participation in social networking sites.** A regulated entity should consider whether to develop standards relating to social networking participation. For example, at a minimum, a regulated entity must ensure compliance with record retention requirements. As the regulated entity develops its criteria for approving the use of certain sites, the regulated entity also should address whether it has a process in place for revoking approval to participate in a particular social networking site should certain circumstances change.
- **Personal social networking sites.** A regulated entity should address whether the regulated entity or its associated persons may engage in municipal securities business or municipal advisory activities on personal social networking sites.
- **Enterprise-wide sites.** A regulated entity that is a part of a larger financial services organization should consider whether it needs to develop usage guidelines reasonably designed to prevent the larger financial services organization in organizational-wide advertisements from violating the MSRB's advertising rules including, for municipal advisors, the prohibition on the use of testimonials in municipal advisor advertising.

Additional Resources

SR-MSRB-2018-01 (January 24, 2018)

Letter from Pamela K. Ellis, Associate General Counsel, Municipal Securities Rulemaking Board, dated April 30, 2018

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

MSRB Notice 2018-08 SEC Approves Advertising Rule Changes for Dealers and Municipal Advisors

MSRB Notice 2018-32 Application of Content Standards to Advertisements by Municipal Advisors under MSRB Rule G-40

---

[1] *See, e.g.*, IM Guidance Update, No. 2014-04, Division of Investment Management, U.S. Securities and Exchange Commission (Mar. 2014) ("2014 IM Guidance Update"); National Examination Risk Alert, Office of Compliance Inspections and Examinations, U.S. Securities and Exchange Commission (Jan. 4, 2012) ("2012 Risk Alert"); Exchange Act Release No. 58288 (Aug. 1, 2008); FINRA Regulatory Notice 17-18 (Apr. 2017). These materials are identified for reference and such reference is not intended to suggest that regulated entities that are not subject to the guidance issued by the SEC or FINRA are responsible for compliance with that guidance. In addition, the MSRB does not intend for the guidance provided by these FAQs to modify or otherwise affect the guidance contained in the any of the referenced materials published by the SEC or FINRA.

[2] Rule D-11 provides that:

> Unless the context otherwise requires or a rule of the Board otherwise specifically provides, the terms "broker," "dealer," "municipal securities broker," "municipal securities dealer," "bank dealer," and "municipal advisor" shall refer to and include their respective associated persons. Unless otherwise specified, persons whose functions are solely clerical or ministerial shall not be considered associated persons for purposes of the Board's rules.

[3] For example, such hyperlinked content may include information about a charity event sponsored by the dealer or municipal advisor, a human interest article, an employment opportunity, or employer information covered by state and federal fair employment laws. *See, e.g.*, FINRA Regulatory Notice 17-18 (Apr. 2017) at 4.

[4] *See, e.g.*, Exchange Act Release No. 58288 (Aug. 1, 2008) at 32, 73 FR 45862 (Aug. 7. 2008) at 45870 (the "2008 release"); Exchange Act Release No. 42728 (Apr. 28, 2000), 65 FR 25843 (May 4, 2000) at 25848 (the "2000 release").

[5] *Id.*

[6] 2008 release at 34.

[7] *See* 2008 release at 33; 2000 release at 25849.

[8] *See* 2008 release at 34; 2000 release at 25849.

[9] *See* 2008 release at 35.

[10] *Id.*

[11] *See* 2008 release at 36; 2000 release at 25849.

[12] *See* FINRA Regulatory Notice 17-18 (Apr. 2017) at 5.

[13] *See* MSRB Notice 2018-14 (Jun. 27, 2018).

[14] *See* FINRA Regulatory Notice 11-39 (Aug. 2011) at 3.

[15] *See* 2008 release at 36-37; 2000 release at 25849.

[16] *See* FINRA Regulatory Notice 17-18 at Q:4; see Q:5.

[17] *See* FINRA Regulatory Notice 11-39 (Aug. 2011) at 3.

[18] *See* 2008 release at 32; 2000 release at 25848-49; FINRA Regulatory Notice 10-06 (Jan. 2010) at 7-8. The MSRB's definition of the entanglement and adoption theories is consistent with the definition of those theories set forth by the SEC and FINRA in those materials.

[19] *Id.*

[20] *See* 2014 IM Guidance Update at 3.

[21] Rule G-8(h)(i) requires municipal advisors to make and keep current all books and records described in Rule 15Ba1-8(a) under the Exchange Act. Particularly, Rule 15Ba1-8(a)(1) requires that municipal advisors make and keep true, accurate, and current "originals or copies of all written communications received, and originals or copies of all written communications sent, by such municipal advisor (including inter-office memoranda and communications) relating to municipal advisory activities, regardless of the format of such communications."

[22] While many regulated entities may find the guidance in these FAQs useful when establishing their supervisory systems, each regulated entity should develop a supervisory system that is tailored to its own business model, recognizing that some considerations may not apply in the same manner for every firm and others may not apply at all.

[23] In part, Rules G-27(b) and Rule G-44(a) require that a regulated entity establish a supervisory system to supervise the municipal securities and municipal advisory activities of the regulated entity and its associated persons. In general, a supervisory system includes:

(i) compliance policies and procedures that describe the practices that associated persons must adhere to in order to meet the standards of conduct established by the regulated entity consistent with applicable securities laws and regulations, including MSRB rules; and

(ii) written supervisory procedures that describe the practices that the supervisory personnel follow in order to reasonably ensure that associated persons meet the standards of conduct and the regulated entity can evidence a supervisory system.

[24] *See, e.g.*, 2012 Risk Alert at 3; FINRA Regulatory Notice 07-59 (Dec. 2007) at 7.

[25] *See, e.g.*, 2012 Risk Alert at 4.

[26] *See* FINRA Regulatory Notice 07-59 (Dec. 2007) at 7; *see also* National Exam Program Risk Alert, Observations from Investment Adviser Examinations Relating to Electronic Messaging, Office of Compliance Inspections and Examinations, U.S. Securities and Exchange Commission (modified Dec. 14, 2018) available at https://www.sec.gov/files/OCIE%20Risk%20Alert%20-%20Electronic%20Messaging.pdf ("2018 Risk Alert") at 4.

[27] *See* FINRA Regulatory Notice 07-59 (Dec. 2007) at 6-7; 2018 Risk Alert at 3-4.

Interpretation on General Advertising Disclosures, Blind Advertisements and Annual Reports Relating to Municipal Fund Securities Under Rule G-21

June 5, 2007

Rule G-21, on advertising, establishes specific requirements for advertisements by brokers, dealers and municipal securities dealers ("dealers") of municipal fund securities, including but not limited to advertisements for 529 college savings plans ("529 plans"). This notice sets forth interpretive guidance under Rule G-21 with respect to time-limited broadcast advertisements, blind advertisements, and annual reports or other similar information required to be distributed under state mandates.

General Disclosures in Time-Limited Broadcast Advertisements

Rule G-21(e)(i)(A) requires certain basic disclosures to be provided in product advertisements for municipal fund securities. These disclosures are not legends requiring the inclusion of specific language. Rather, these disclosure requirements may be complied with if the substance of such information is effectively conveyed, regardless of the specific language used in the advertisement. In general, the context in which the information is provided is an important factor in determining whether the information is effectively conveyed.

These required disclosures may present challenges in the context of broadcast advertisements, such as traditional television or radio commercials with 30-second run-times or public service announcements with shorter run-times. In the context of time-limited broadcast advertisements, dealers should provide such disclosures in a manner that appropriately balances the intended message with the required disclosures. Given the unique nature of broadcast advertisements, where the oral presentation of more information can often result in a decreased likelihood that the central message of such information will be understood and retained, somewhat abbreviated forms of the required disclosures may be appropriate for such time-limited broadcast advertisements, particularly if the disclosures are made with close attention paid to ensuring that they are presented with equal prominence to the remainder of the message.

Thus, for example, in a time-limited broadcast advertisement for a non-money market 529 plan, the following language, spoken in a manner consistent with the remaining oral presentation of information, generally would satisfy the disclosure requirements of Rule G-21(e)(i)(A): "To learn about [529 plan name], its investment objectives, risks and costs, read the official statement available from [source]. Check with your home state to learn if it offers tax or other benefits for investing in its own 529 plan." Further, in a time-limited television advertisement, the source for the official statement, together with a contact telephone number or web address, generally could be displayed on screen while other portions of the disclosures are spoken. This example is intended to be illustrative and is not intended to be exclusive or to necessarily establish a baseline for disclosure.