

July 27, 2018

Submitted Electronically

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

RE: MSRB 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:

On behalf of the Bond Dealers of America (“BDA”), I am submitting this letter to provide comments to the MSRB’s Regulatory 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) (the “Notice”). BDA is the only DC-based group representing the interests of securities dealers and banks exclusively focused on the U.S. fixed income markets. We welcome this opportunity to present our comments.

The BDA disagrees with the MSRB’s approach to RFPs in Example 2, in which the MSRB states that components of a response can potentially be a form letter instead of considering the entire response.

Under the discussion of the compliance considerations under Rule G-40 for Example 2, the MSRB states that “Municipal Advisor ABC could send the same municipal advisory client list to not more than 24 additional persons within any period of 90 consecutive days without violating Rule G-40.” This statement implies that the MSRB is extracting components of an RFP response and then analyzing whether any of those components, individually, constitute a “form letter” under Rule G-40. We disagree with this interpretation of Rule G-40. Where a municipal advisor is making a response to an RFP, we believe that the “written letter or electronic mail message” for purposes of the definition of form letter in Rule G-40 is the entire response, and not just one component of that response such as the client list.

The BDA believes that the MSRB should add an additional FAQ to address use of pitch books.

The BDA believes that the Draft FAQs omit an important fact pattern. Many municipal advisors prepare “pitch books,” which are neither form advertisements (such as brochures) nor responses to RFPs. When municipal advisors meet with prospective clients (or existing clients concerning prospective business), they will prepare a pitch book that provides various information relevant to the municipal entity and the municipal advisor will often include a client list or list of representative clients or transactions. Typically, the pitch book and any included client or transaction list varies from client to client because the municipal advisor may tailor the pitch book to the needs or interests of the

client. Accordingly, the municipal advisor would not use the same pitch book in broad communications with clients or prospective clients. The BDA proposes the following FAQ:

Example __: A municipal advisor prepares a pitch book (which is not in response to an RFP or other similar request) when it meets with a municipal advisory client and, in that pitch book, the municipal advisor prepares market information relevant to the client, information concerning the debt portfolio of the client, information concerning transactions the client may consider, and a selected list of clients and transactions that are relevant to the municipal advisory client. The municipal advisor tailors the pitch book for each client, although some clients may receive pitch books with overlapping information, including the same client list, because they are similarly situated.

Advertisement: Although the pitch book would be written promotional material made available to a municipal entity, because the pitch book is tailored to each client, the pitch book (including the municipal advisory client list) is not an advertisement under Rule G-40. Further, the pitch book would only become an advertisement under Rule G-40 when the municipal advisor distributes the same pitch book to more than 25 persons within a period of 90 consecutive days.

The BDA believes that the MSRB should redraft Footnote 8 as its own FAQ.

The BDA believes that the MSRB's guidance in Footnote 8 is critical enough to formulate as an FAQ. Many municipal advisors use client lists in promotional materials of one kind or another and, given the prohibition on testimonials, the BDA believes that the MSRB should address the principle that the mere inclusion in a client list is not a testimonial in an FAQ. In addition, it would be helpful for the FAQ to provide guidance regarding when a client list could cross the line into a testimonial.

The BDA believes that several of the FAQs present fact patterns that are not realistic and therefore do not result in useful guidance.

In the Notice, the MSRB asked for comments on whether the examples presented were "practical and helpful in understanding the application of the rule" to client lists and case studies and on whether the examples were realistic. We believe that while several of the examples presented realistic fact patterns, several others presented factual patterns that were unrealistic and therefore did not result in useful guidance:

- We did not find that Example 1 presented a realistic fact pattern because a statement by a client that a municipal advisor "gave us great advice" is a relatively obvious example of a testimonial, and municipal advisors are undoubtedly aware that the posting of the statement on a website makes it an advertisement.
- For Example 5, the BDA believes that it would be helpful to use a more nuanced fact pattern that the MSRB would consider to violate the rule.

- Example 6 presents a fact pattern that quite clearly violates the rule. The BDA believes that a different example involving a case study—particularly one that illustrates the acceptable use of case studies—would result in more helpful guidance.

* * *

Thank you for the opportunity to provide these comments.

Sincerely,

A handwritten signature in blue ink that reads "Mike Nicholas". The signature is written in a cursive style with a prominent initial "M".

Mike Nicholas
Chief Executive Officer