

# Chapman Client Alert

February 20, 2017

Current Issues Relevant to Our Clients

## MSRB Proposes Amendments to Dealer Advertising Rule and New Advertising Rule for Municipal Advisors

The Municipal Securities Rule Making Board (“MSRB”) is requesting comments on proposed amendments to its advertising rule for brokers, dealers, and municipal securities dealers (“dealers”) and a new advertising rule for municipal advisors. Amendments to Rule G-21 on dealer advertising would:

- Enhance the MSRB’s fair-dealing provisions by harmonizing Rule G-21 with the advertising rules of the Financial Industry Regulatory Authority (“FINRA”);
- Update advertising standards for municipal fund security products (e.g., 529 college saving plans); and
- Harmonize the definition of “form letter” with FINRA Rule 2210’s definition of “correspondence.”

New Rule G-40 would apply to non-solicitor and solicitor municipal advisors and is substantially similar to Rule G-21 but tailored towards municipal advisors. The MSRB notice proposing the amended and new rules is available [here](#).

### Rule G-21 Amendments

MSRB Rule G-21 sets requirements for all advertisements for products and services by dealers. The proposed amendments to Rule G-21 would alter both the content standards and the general standards of the rule, alter the definition of “form letter” and update standards for municipal fund security products. The draft amendments to Rule G-21 harmonize many of the rule’s requirements with FINRA Rule 2210.

#### Content and General Standards

The amendments would add content standards to make explicit many of the MSRB’s fair dealing obligations on conduct of municipal securities and municipal advisory activities, and the interpretive guidance the MSRB has provided under existing rules, and to specifically address them to advertising. The content standards amendments would require that:

- an advertisement be fair and balanced and provide a sound basis for evaluating the municipal security,
- an advertisement not contain any false, exaggerated, unwarranted, promissory or misleading statement or claim,

- a dealer limit the types of information placed in footnotes,
- an advertisement provide a balanced treatment of the benefits and risks associated with a municipal security,
- 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
- an advertisement not predict or project performance, imply that past performance will recur or make any exaggerated or unwarranted claim, opinion or forecast.

The amended content standards would also prohibit dealers from using testimonials in their advertisements and permits dealers to state that they are MSRB registered in their advertising, subject to certain conditions.

The current general standards under Rule G-21 prohibit dealers from publishing material that is “materially false or misleading.” The amendments would replace “materially false or misleading” with “any untrue statement of material fact” and add “or is otherwise false or misleading.” The MSRB intends these changes to harmonize the MSRB and FINRA standards and ensure consistent regulation between similar regulated entities.

### “Form Letter” Definition

The amendments also would change the definition of “form letter” under Rule G-21 to a letter distributed to more than 25 people instead of the current 25 people or more. This would align the definition of “form letter” with the FINRA rule definition of “correspondence” to avoid confusion with the current one person difference between rules.

### Municipal Fund Securities Products

The amendments to Rule G-21 would also incorporate the money market mutual fund disclosure currently required by Securities and Exchange Commission rules, and expand the required disclosure relating to 529 college saving plans about state benefits that are available only for investments in such state’s qualified tuition program.

### New Rule G-40

Draft Rule G-40 is similar to Rule G-21 in that it sets forth general provisions, addresses professional advertisements and requires principal approval for advertisements but is tailored to municipal advisors. For instance, the definition of “advertisement” under draft Rule G-40 is similar to the definition under Rule G-21 except that instead of the term

“customers” it uses the term “municipal advisory client.” The definition of municipal advisory client under draft Rule G-40 is identical to the definition of that term as set forth in amendments to Rule G-8, which become effective October 13, 2017. Draft Rule G-40 contains content standards and general standards substantially similar to Rule G-21 but with terms more applicable to municipal advisors. Draft Rule G-40 does not, however, include provisions regarding product advertisements, new issue product advertisements and municipal fund security product advertisements. The MSRB believes that municipal advisors do not prepare such advertisements. Firms that do prepare such advertisements likely must register separately as dealers and would be governed by Rule G-21.

### Submitting Comments

You may submit comments to the MSRB through March 24, 2017 by submitting a hard copy or by submitting comments electronically [here](#).

### For More Information

To discuss any topic covered in this Client Alert, please contact a member of the Investment Management Group or visit us online at [chapman.com](http://chapman.com).

## Chapman and Cutler LLP

Attorneys at Law • Focused on Finance®

This document has been prepared by Chapman and Cutler LLP attorneys for informational purposes only. It is general in nature and based on authorities that are subject to change. It is not intended as legal advice. Accordingly, readers should consult with, and seek the advice of, their own counsel with respect to any individual situation that involves the material contained in this document, the application of such material to their specific circumstances, or any questions relating to their own affairs that may be raised by such material.

To the extent that any part of this summary is interpreted to provide tax advice, (i) no taxpayer may rely upon this summary for the purposes of avoiding penalties, (ii) this summary may be interpreted for tax purposes as being prepared in connection with the promotion of the transactions described, and (iii) taxpayers should consult independent tax advisors.

© 2017 Chapman and Cutler LLP. All rights reserved. Attorney Advertising Material.