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**Addendum: for use with the Series 53 online courses per a regulatory update effective 7/3/2023.**

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**General Supervision****D. Conduct of Business – Fair Practice****Advertising by Municipal Advisors – Use of Testimonials  
(MSRB Rule G-40)**

Under MSRB Rule G-40, a municipal advisor may not make any false, exaggerated, unwarranted, promissory, or misleading statement or claim in any advertisement, or omit any material fact or qualification if the omission would cause the advertisement to be misleading.

An amendment to MSRB Rule G-40 now allows municipal advisors to use testimonials in advertisements, subject to certain conditions. In addition, there are supervisory obligations and recordkeeping requirements.

For the purpose of this amendment, the following definitions apply:

- *Municipal advisory client* no longer includes a broker, dealer, and municipal securities dealer on behalf of whom a municipal advisor undertakes a solicitation of a municipal entity or obligated person
- *Testimonial* is defined as a statement of a person's or entity's experience concerning the municipal advisor or concerning the municipal advisory services rendered by the municipal advisor.

**Conditions**

The amendment to MSRB Rule G-40 permits a municipal advisor to publish, circulate, or distribute an advertisement that includes or refers to a testimonial, if the following conditions are met if:

- A municipal advisor intends to use a testimonial in an advertisement, there must be a reasonable belief that the person or entity making the testimonial has the knowledge and experience to make a statement concerning their experience with the municipal advisor or with the municipal advisory services rendered by the municipal advisor.



- A municipal advisor intends to use a testimonial concerning the municipal advisor or concerning the municipal advisory services rendered by the municipal advisor, certain disclosures also must appear in the advertisement near the associated testimonial statement and with the same prominence. The clear and prominent disclosures must note:
  - Whether the testimonial was given by a current municipal advisory client or given by a person or entity other than a current municipal advisory client;
  - That the testimonial may not be representative of the experience of other clients; and
  - That the testimonial is no guarantee of future performance or success.

In addition, if the municipal advisor pays more than \$100 in total value in cash or non-cash compensation for the testimonial, then the advertisement also must include the following clear and prominent disclosures:

- The fact that it is a paid testimonial; and
- A brief statement by the municipal advisor of any material conflicts of interest on the part of the person or entity providing the testimonial resulting from the municipal advisor's relationship with that person or entity.

While certain payments for testimonials are permitted under Rule G-40, a municipal advisor should consider whether payments are consistent with the municipal advisor's obligations under other MSRB rules.

*For example*, the payment might trigger a disclosure under Rule G-42 on duties of non-solicitor municipal advisors. Also, municipal advisors are prohibited from providing any compensation for a testimonial to a person or entity, directly or indirectly, of more than \$1,000 in total value in cash or non-cash compensation during the preceding 12 months.

### **Supervision**

Before a municipal advisor uses any advertisement for the first time, the advertisement must be approved in writing by a municipal advisor principal to establish that the advertisement meets the required content standards,

e.g., not making any false, exaggerated, unwarranted, promissory, or misleading statement or claim.

When advertisements include a testimonial, the municipal advisor principal has additional supervisory responsibilities under the amendments.

Specifically, a municipal advisor principal responsible for approving a municipal advisor's advertisements also must form a reasonable belief that the testimonial complies with the related requirements. Prior to approving an advertisement that includes a testimonial, the municipal advisor principal should have a process for:

- Forming a reasonable belief that a third party making a testimonial has the knowledge and experience to make a statement relative to their experience with the municipal advisor or with the municipal advisory services rendered by the municipal advisor;
- Determining if more than \$100 in total value in cash or non-cash compensation was paid for the testimonial and confirming that the person or entity was not paid, directly or indirectly, more than \$1,000 in total value in cash or non-cash compensation during the preceding 12 months; and
- Reviewing the advertisement to establish that the requisite disclosures are made, including those required if more than \$100 in total value was paid for the testimonial, and that such disclosures are made close to the associated testimonial statement and with the same prominence.

### **Recordkeeping**

While municipal advisors are currently required to make and keep current in a separate file, records of all advertisements, under the amended rule, a municipal advisor's records also are required to include a record of any compensation paid to a person or entity, directly or indirectly, for a testimonial. In addition, the amended rule establishes conforming recordkeeping requirements concerning compliance to provide more certainty for municipal advisors with respect to their recordkeeping obligations and more certainty on preserving such records.



The recordkeeping requirements also can serve as a compliance tool for a municipal advisor to evidence the municipal advisor principal's review and approval. In addition, recordkeeping can aid the municipal advisor in safeguarding against inadvertently providing compensation for a testimonial that exceeds more than \$1,000 in total value during the preceding 12 months, or aid in assessing whether paying for any testimonial triggers any actual or potential conflict of interest that may be required to be disclosed.

### **Social Media**

Because the amendments to Rule G-40 now permit municipal advisors to use testimonials in advertisements, the use of a third-party post on a municipal advisor's social media page is considered to be an advertisement containing a testimonial if:

- The municipal advisor paid for the third-party comment and posts it to its social media page; and
- The municipal advisor did not pay for the third-party comment but likes, shares, or comments on a third-party post and the municipal advisor posts it to its social media page.

Prior to posting the testimonial on its social media page, the municipal advisor would need to ensure that the advertisement containing a testimonial meets the requirements of Rule G-40 and that the requisite disclosures are clearly and prominently posted to the social media page in close proximity to the testimonial.