Municipal Rules and 529 Plans Update
Friday, October 25, 2019
11:00 a.m. – 12:00 p.m.

The municipal securities advertising rules have changed. Attend this session to learn how the regulators are applying the modernized standards including the new rule for municipal adviser firms. Plus FINRA staff will discuss the recent sweep involving 529 educational savings plans and developments in the marketing of these products. Panelists discuss how these rule changes impact firms marketing and advertising efforts.

Moderator: Amy Sochard
Senior Director, Advertising Regulation
FINRA Advertising Regulation

Speakers: Pamela Ellis
Associate General Counsel
Municipal Securities Rulemaking Board (MSRB)

Christopher Kelly
Senior Vice President, Enforcement
FINRA Enforcement

Municipal Rules and 529 Plans Update Panelist Bios:

Moderator:

Amy C. Sochard is Senior Director in FINRA's Advertising Regulation Department. The department helps protect investors by ensuring broker-dealer members of FINRA use advertisements and other sales communications that are fair, balanced and not misleading. Ms. Sochard leads the department's complex and targeted review activities and serves as liaison to FINRA's Member Supervision and Enforcement departments. She also oversees staff dedicated to the routine review of communications filed with the department by broker-dealers. Ms. Sochard assists in the development of rules and interpretations for communications with the public and social media, and she routinely speaks at industry events on these topics. Prior to joining FINRA's predecessor (NASD), Ms. Sochard worked with a real estate syndication firm in Washington, DC. She received a bachelor's degree with distinction in English from the University of Virginia and studied poetry writing at Columbia University.

Speakers:

Pamela Ellis is Associate General Counsel for the Municipal Securities Rulemaking Board (MSRB). She provides legal expertise and support associated with the development of regulations governing municipal market professionals, including dealers and municipal advisors. Among her areas of expertise are the MSRB's advertising rules and the MSRB's regulation of dealers that sell interests in 529 savings plans and ABLE programs. Before joining the MSRB, Ms. Ellis was counsel at Sutherland Asbill & Brennan LLP (Sutherland), where she worked for more than 15 years. At Sutherland, she advised financial institutions on the organization and operation of Section 529 savings plans; she also advised financial institutions on the development, disclosure, and administration of innovative life insurance products, including variable, indexed and fixed products. Further, Ms. Ellis served on the staff of the U.S. Securities and Exchange Commission in the Division of Investment Management. Ms. Ellis earned an A.B. from Wellesley College as a Wellesley College Scholar with Honors in Political Science and a juris doctor from Vanderbilt University School of Law.

Christopher Kelly serves as Senior Vice President of Sales Practice Enforcement within FINRA's Enforcement Department. As Senior Vice President, Mr. Kelly oversees the work of the Enforcement Staff in 14 FINRA District Offices throughout the country. He joined FINRA in 2014 and served as Chief Counsel in FINRA's North Region until early 2018. Prior to joining FINRA, Mr. Kelly served as Deputy Chief of the Criminal Division at the U.S. Attorney's Office for the District of New Jersey. In that role, Mr. Kelly supervised more than 35 Assistant U.S. Attorneys in the Office's white collar units: Economic Crimes, National Security, Healthcare and Government Fraud, and Cybercrime. Prior to his promotion to the position of Deputy Chief, Mr. Kelly served as the Chief of the Economic Crimes Unit at the U.S. Attorney's Office, where he oversaw the Office's prosecution of complex economic crimes, including crimes involving insider trading, securities fraud, tax evasion, bank fraud, corporate fraud and embezzlement. Mr. Kelly also served as the lead prosecutor on numerous criminal prosecutions. Mr. Kelly graduated from Duke University and Harvard Law School. Prior to joining the U.S. Attorney's Office, he was an associate at the law firm Dechert LLP. Mr. Kelly also clerked for the Honorable Joseph E. Irenas, U.S. District Court Judge for the District of New Jersey.

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Panelists: Pamela Ellis
Associate General Counsel
Municipal Securities Rulemaking Board

Christopher Kelly
SVP, Member Regulation Enforcement
FINRA Enforcement

Timed Agenda:

I. Introduction
II. MSRB Rule Changes
   a) Amendments to MSRB Rule G-21 for Municipal Dealer Advertising
   b) New MSRB Rule G-40 for Municipal Advisor Advertising
   c) New MSRB Social Media Guidance
III. FINRA's 529 Self-Reporting Initiative
   a) Background/Impetus for the Initiative
   b) The Self-Reports
   c) Status
   d) Restitution Methodologies
   e) Next Steps
IV. Recent Developments in Marketing 529 Educational Savings Plans
V. Wrap Up and Final Remarks

2019 **Advertising Regulation Conference**

October 24 – 25, 2019 | Washington, DC

Municipal Rules and 529 Plans Update

FINRA®

Panelists

- **Moderator**
  - Amy Sochard, Senior Director, Advertising Regulation, FINRA Advertising Regulation
- **Panelists**
  - Pamela Ellis, Associate General Counsel, Municipal Securities Rulemaking Board (MSRB)
  - Christopher Kelly, Senior Vice President, Enforcement, FINRA Enforcement

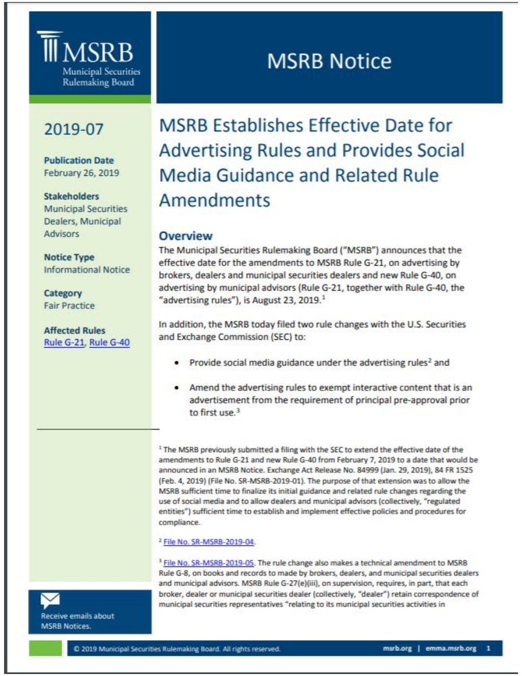
Agenda

- Amendments to MSRB Rule G-21, Advertising by Brokers, Dealers or Municipal Securities Dealers
- New MSRB Rule G-40, Advertising by Municipal Advisors
- New MSRB Interpretive Guidance on Social Media Use
- FINRA’s 529 Self-Reporting Initiative
- Current Considerations for 529 Plan Advertisements

MSRB Advertising Rules Update

Amendments to MSRB Rule G-21

- **Effective August 23, 2019**
- **Make explicit many of the fair dealing obligations outlined in Rules G-21 and G-17**
- **Promote regulatory consistency with the advertising or communications rules of other financial regulators**



MSRB Municipal Securities Rulemaking Board

MSRB Notice

2019-07

Publication Date
February 26, 2019

Stakeholders
Municipal Securities Dealers, Municipal Advisors

Notice Type
Informational Notice

Category
Fair Practice

Affected Rules
Rule G-21, Rule G-40

MSRB Establishes Effective Date for Advertising Rules and Provides Social Media Guidance and Related Rule Amendments

Overview

The Municipal Securities Rulemaking Board ("MSRB") announces that the effective date for the amendments to MSRB Rule G-21, on advertising by brokers, dealers and municipal securities dealers and new Rule G-40, on advertising by municipal advisors (Rule G-21, together with Rule G-40, the "advertising rules"), is August 23, 2019.[1]

In addition, the MSRB today filed two rule changes with the U.S. Securities and Exchange Commission (SEC) to:

- Provide social media guidance under the advertising rules[2] and
- Amend the advertising rules to exempt interactive content that is an advertisement from the requirement of principal pre-approval prior to first use.[3]

[1] The MSRB previously submitted a filing with the SEC to extend the effective date of the amendments to Rule G-21 and new Rule G-40 from February 7, 2019 to a date that would be announced in an MSRB Notice. Exchange Act Release No. 84999 (Jan. 29, 2019), 84 FR 1525 (Feb. 4, 2019) (File No. SR-MSRB-2019-01). The purpose of that extension was to allow the MSRB sufficient time to finalize its initial guidance and related rule changes regarding the use of social media and to allow dealers and municipal advisors (collectively, "regulated entities") sufficient time to establish and implement effective policies and procedures for compliance.

[2] File No. SR-MSRB-2019-04.

[3] File No. SR-MSRB-2019-05. The rule change also makes a technical amendment to MSRB Rule G-8, on books and records to made by brokers, dealers, and municipal securities dealers and municipal advisors. MSRB Rule G-27(e)(iii), on supervision, requires, in part, that each broker, dealer or municipal securities dealer (collectively, "dealer") retain correspondence of municipal securities representatives "relating to its municipal securities activities in

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MSRB Rule G-21(a)(iii): New Content Standards

- Fair dealing and good faith, fair and balanced, sound basis for evaluating the facts, material omissions prohibited;
- False, exaggerated, unwarranted, promissory or misleading statements or claims prohibited;
- Footnotes permitted only when they do not “inhibit” customer’s understanding;
- Statements must be clear and not misleading in context, balance risks and potential benefits, and be consistent with the risks of the investment.

MSRB Rule G-21(a)(iii): New Content Standards (cont'd.)

- Prohibition on predictions or projections with two exceptions –
  - Illustration of mathematical principles does not predict or project the performance of an investment; and
  - An investment analysis tool, or a written report produced by an investment analysis tool.
- Testimonials about technical aspects of investing may only be by qualified persons and all testimonials must include required applicable disclosures; and,
- May indicate MSRB registration in conformance with specific requirements.

MSRB Rule G-21(b) and (c): Amended General Standards

- Professional Advertisements: updated to prohibit any professional advertisement that contains any untrue statement of a material fact or is otherwise false or misleading (see Rule G-21(b)(ii));
- Product Advertisements: updated to prohibit any product advertisement that the broker, dealer or municipal securities dealer knows or has reason to know contains any untrue statement of material fact or is otherwise false or misleading… (see Rule G-21(c)(ii)).

MSRB Rule G-21(a)(ii): Form Letters Changes

- **Reconciles the Definition of a Form Letter with FINRA Rule 2210 Definition of Correspondence**
  - "Form Letter" means any written letter or electronic mail message distributed to more than 25 persons within any period of 90 consecutive days.
  - Supplementary Material .03 gives guidance on the meaning of the term "person," i.e., the number of "persons" is determined for purposes of a response to a request for proposal (RFP), request for qualification (RFQ) or similar request is at the entity level.

New MSRB Rule G-40: Municipal Advisor Advertising

- Effective August 23, 2019
- General provisions: definitions, content standards, general standard for advertisements.
- Professional Advertisements: definition and standard.
- Pre-Approval by a Principal in Writing
- Interactive Content
- Records

New MSRB Rule G-40: Municipal Advisor Advertising

- Content standards generally similar to Rule G-21 with the exception of testimonials.
  - Rule G-40(a)(iv)(G) states: "A municipal advisor shall not, directly or indirectly, publish, circulate or distribute any advertisement which refers, directly or indirectly, to any testimonial of any kind concerning the municipal advisor or concerning the advice, analysis, report or other service rendered by the municipal advisor."

MSRB Notice 2019-07

- Established August 23, 2019 effective date for the rule changes;
- Announced social media guidance;
- Announced amendments to Rules G-21 and G-40 to exempt interactive content that is an advertisement from principal pre-approval prior to first use.
  - G-21 Supplementary Material .04 and G-40 Supplementary Material .02 require supervision and review of interactive content.

MSRB Interpretative Guidance on Social Media Use

- **The interpretative guidance is designed to:**
  - **Enhance market participants' understanding of permissible and impermissible uses of social media as part of their municipal securities business or municipal advisory activities; and**
  - **Assist with compliance with MSRB advertising rules**
- **To the extent practicable, the MSRB aligned its interpretative guidance on social media use with the social media guidance published the SEC and FINRA**

Interpretive Guidance

MSRB Municipal Securities Rulemaking Board

FAQs on Use of Social Media under MSRB Advertising Rules (effective Aug. 23, 2019)

The Municipal Securities Rulemaking Board (MSRB) filed these FAQS regarding the Use of Social Media under MSRB Rule G-21, on Advertising by Brokers, Dealers and Municipal Securities Dealers, and MSRB Rule G-40, on Advertising by Municipal Advisors, with the U.S. Securities and Exchange Commission.

These answers to frequently asked questions (FAQs) are provided 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]

MSRB Interpretative Guidance on Social Media Use

- The FAQs in the guidance cover:
  - Use of social media, including hyperlinked content
  - Third-party posts
  - Supervision
  - Recordkeeping

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FINRA’s 529 Self-Reporting Initiative

529 Educational Savings Plans

- Named for a section of the tax code, the plans are issued by states and allow investors to save tax-deferred for future educational expenses.
  - States may provide various benefits to participants such as state tax savings or even bonuses to invest.
- Under MSRB rules the plans are regulated as “municipal fund securities.”
- Mutual funds often underlie many of the investment choices offered in the plans.

FINRA Regulatory Notice 19-04: 529 Plans

Regulatory Notice 19-04

529 Plans

FINRA's 529 Plan Share Class Initiative Encourages Firms to Self-Report Potential Violations

January 28, 2019

Notice Type
- Guidance

Suggested Routing
- Compliance
- Legal
- Registered Representatives
- Senior Management

Key Topics
- 529 Plans
- Share Classes
- Suitability
- Supervision

Referenced Rules & Notices
- MSRB Rule G-19
- MSRB Rule G-27

Summary

Over the past several years, FINRA has found that some firms have failed to reasonably supervise brokers' recommendations of multi-share class products.[1] FINRA has raised concerns specifically regarding firms' supervision of share-class recommendations to customers of 529 savings plans ("529 plans").[2]

FINRA is launching a 529 Plan Share Class Initiative to promote firms' compliance with the rules governing 529 plan recommendations, to promptly remedy potential supervisory and suitability violations related to recommendations that customers of 529 plans buy share classes that are inconsistent with the accounts' investment objectives, and to return money to harmed investors as quickly and efficiently as possible. As described in this *Notice*, to encourage voluntary reporting under this initiative, FINRA's Department of Enforcement (Enforcement) will recommend that FINRA accept favorable settlement terms for firms that self-report these potential violations and provide FINRA with a detailed remediation plan.[3]

Questions concerning this *Notice* should be directed to:

- Christopher Kelly, Senior Vice President, Enforcement, at (732) 596-2082; or
- Christopher Burky, Senior Director, Enforcement, at (312) 899-4348.

Background & Discussion

529 plans are tax-advantaged municipal securities that are designed to encourage saving for the future educational expenses of a designated beneficiary. Because 529 plans are municipal securities, the sale of 529 plans are governed by the rules of the Municipal Securities Rulemaking Board (MSRB).[4] MSRB Rule G-19 (Suitability of Recommendations and Transactions)

FINRA Financial Industry Regulatory Authority

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- FINRA's 529 Plan Share Class Initiative Encourages Firms to Self-Report Potential Violations
- Issued January 29, 2019
- Follows up on FINRA's 2016 Regulatory and Examination Priorities Letter

FINRA’s 529 Self-Reporting Initiative

- Background for the Initiative
- The Self-Reports
- Status
- Restitution methodologies
- Next steps

Current Considerations for 529 Plan Advertisements

Expanded Use of Plans for K-12 Education

- In January 2018, amendments to the Internal Revenue Code expanded the use of 529 plans for tuition for grades K-12, subject to certain limitations.
- Some states that offer state tax deductions or credits for using their 529 plans may not permit use of plan funds for K-12 educational costs.
  - Residents of those states might incur state taxes, penalties or clawbacks if they use their plans to fund K-12 educational costs.
- When discussing the use of 529 plans to fund K-12 in advertisements, firms should ensure that their advertisements are fair and balanced with respect to these risks.

Rollovers

- Some states that offer tax incentives, including credits, may penalize investors who rollover assets out of their plans and into another state's plan.
- When using 529 Plan advertisements that encourage rollovers, firms should ensure such discussions are fair and balanced.
  - For example, explain that investors may face penalties or recapture of credits when rolling over assets from one state's plan to another.

Hypothetical Illustrations of Mathematical Principles

- Amended Rule G-21 permits hypothetical illustrations of mathematical principles provided they do not predict or project investment performance.
  - For example, advertisements might illustrate how an investment in a hypothetical tax-deferred product might compound over time as compared to a taxable product.
  - Such illustrations must also meet the fair and balanced standards of the rule, must be consistent with the risks of the investment and must not be exaggerated.

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“Stretch” Hypothetical Illustrations

- FINRA has observed some misleading advertisements that depict hypothetical 529 plan investments
  - For example, an illustration that assumes a 60+ year investment earning 6% per year in a single 529 plan account held over multiple generations.
- Firms should ensure that their illustrations are not misleading or exaggerated:
  - Use reasonable and realistic assumptions; and,
  - Explain the basis for the illustration and its hypothetical nature.

Questions and Answers