



## NAMA Resource: Using Testimonials in Advertisements

*This document serves as a resource for NAMA members on the use of testimonials in advertisements and social media platforms. This document provides an overview of the July 2023 amendments to Rule G-40. Each firm should consult counsel or make their own determinations on how best to proceed with their firm practices and advertisements. This document should not be solely relied on for compliance purposes nor does it constitute legal advice. (June 2023)*

The SEC has approved amendments to MSRB Rule G-40, Advertising for Municipal Advisors, that allow testimonials to be used under certain conditions. MAs have not been able to use testimonials in advertisements since G-40 was approved in 2019, although they have been able to use testimonials in non-advertisement documents, such as pitch books.

### General Conditions for Using Testimonials

- MA may not make false, exaggerated, unwarranted, promissory, or misleading statements or claims in advertisements, including omitting material facts.
- MA must have a reasonable belief that the person making the testimonial has the knowledge and experience to do so. A testimonial meeting these conditions may come from clients, former clients, or other market participants.
- Certain disclosures must appear near the advertisement stating whether the testimonial is given by a MA client or person other than an MA client; the fact 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. NAMA supports such disclosures being in the same size font and very close proximity to the testimonial.
- Advertisements with testimonials meeting the above conditions may be used in all mediums – printed, posting on firm’s web site, and in social media postings.
- While allowed in the revised Rule, **NAMA strongly encourages members to avoid using paid testimonials\* for numerous reasons, including potential conflicts with Rules G-40 and G-20, state laws, and client policies.**

### Social Media Considerations

Under the revised Rule, an MA may “like, share, or comment” on a third-party social media post and such post may also be linked to the MA’s social media page. It is important to note that such action constitutes an advertisement, and must comply with all supervisory and recordkeeping requirements. The threshold for these actions becoming an advertisement that must adhere to Rule G-40, is if “entanglement” occurred where the MA/MA firm involved themselves in the preparation of the content, or that “adoption” takes place which is when the MA explicitly or implicitly approves or endorses the content (e.g., “like”).

## Supervision and Recordkeeping Requirements

Prior to use of advertisements, including when a testimonial is used, the advertisement must be approved in writing by a MA principal in the firm stating that it meets the qualifications of the Rule. However, if the content that constitutes advertisement is posted in an interactive electronic forum, then approval may come following the use/posting.

The appropriate firm principal must form a reasonable belief that the testimonial complies with the applicable requirements of Rule G-40(a)(iv)(G), and have a process for forming and documenting this belief in writing, and for ensuring that appropriate disclosures have been made.

The firm must keep a file of all advertisements, including those that utilize testimonials. If a firm updates a current advertisement with a testimonial, they will need to ensure that the updated advertisement is approved in writing by a MA principal before first use and that the other supervisory and documentation processes are conducted. All advertisement records must be preserved for at least five years.

### \*Paid Testimonials

**NAMA does not support the use of paid testimonials by MAs.** There are numerous potential conflicts associated with such action, including concerns with Rules G-40 and G-20, state laws, and local policies. The Rule allows for paid testimonials, under \$100, with no additional disclaimers than already need to accompany the testimonial. If an MA pays \$101-1000 for a paid testimonial, it must state that the testimonial is a paid testimonial in the same size font next to the testimonial. Paying more than \$1000 for a testimonial is not permitted. Numerous supervisory and recordkeeping requirements also apply.

MSRB Notice (2023): <https://www.msrb.org/Regulatory-Documents?id=13815>

NAMA Rule G-40 Compliance Resource (2019):  
<https://www.municipaladvisors.org/assets/G40resource.pdf>

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