



September 14, 2018

Ronald W. Smith
Corporate Secretary
Municipal Securities Rulemaking Board
1300 I Street NW
Suite 1000
Washington, DC 20005

Re: MSRB Notice 2018-19: Request for Comment on Draft Frequently Asked Questions Regarding Use of Social Media Under MSRB Advertising Rules

Dear Mr. Smith:

The Securities Industry and Financial Markets Association (“SIFMA”)¹ appreciates this opportunity to respond to Notice 2018-19² (the “Notice”) issued by the Municipal Securities Rulemaking Board (the “MSRB”) in which the MSRB requests comment on draft set of frequently asked questions (“FAQs”) regarding the use of social media by brokers, dealers or municipal securities dealers (collectively, “dealers”), as part of their municipal securities activities, or municipal advisors, as part of their municipal advisory activities. These draft FAQs seek to illustrate the application to social media of MSRB G-21, on advertising by dealers, and of MSRB Rule G-40, on advertising by municipal advisors (Rule G-21, together with Rule G-40, the “advertising rules”). SIFMA and its members appreciate the MSRB’s efforts to provide further guidance on the advertising rules. SIFMA feels that guidance in the form of examples is generally helpful, and overall the guidance is generally clear. We do have comments and a few suggestions for further clarifications as set forth below.

¹ SIFMA is the leading trade association for broker-dealers, investment banks and asset managers operating in the U.S. and global capital markets. On behalf of our industry’s nearly 1 million employees, we advocate on legislation, regulation and business policy, affecting retail and institutional investors, equity and fixed income markets and related products and services. We serve as an industry coordinating body to promote fair and orderly markets, informed regulatory compliance, and efficient market operations and resiliency. We also provide a forum for industry policy and professional development. SIFMA, with offices in New York and Washington, D.C., is the U.S. regional member of the Global Financial Markets Association (GFMA). For more information, visit <http://www.sifma.org>.

² MSRB Notice 2018-19 (August 14, 2018).

I. Harmonization of MSRB Advertising Rules and Further Rulemaking

SIFMA feels that the proposed responses to the FAQs are generally helpful and are somewhat harmonized with the FINRA and SEC rules on social media. We do not have any suggestions at this time for additional questions that need to be addressed relating to a regulated entity's use of social media under the MSRB's advertising rules, however, we do have issues with the current FAQ as set forth below. We strongly feel that the rules and associated guidance need to be simple, and for that reason we do not support developing separate social media guidance for dealers and municipal advisors. SIFMA and its members do not feel there are any distinctions in how dealers and municipal advisors use social media that may warrant deviating from the social media guidance that has been provided by the other financial regulators. Harmonization of the MSRB rules with those of the other financial regulators is critical to our members on a subject, such as advertising and social media, that is not product specific. SIFMA and its members do not believe that the MSRB should amend its rules to prescriptively address social media usage, rather than providing guidance in the form of FAQs. Further rule amendments are not necessary in this instance, as the general advertising rule is seen to sufficiently cover such matters as books and records. Finally, other than clarifying the points set forth below, SIFMA believes that the MSRB does not need to provide additional guidance or amend its rules to address the supervisory issues pertaining to social media at this time. Again, SIFMA and its members feel that the MSRB advertising rules sufficiently address this matter as they largely use the same analysis as FINRA, and our suggestions below request further harmonization.

The most significant issue with the MSRB FAQs is that they fail to adopt the concepts of static content and interactive content or correspondence as described in FINRA 10-06³. The current language of the MSRB FAQ could be interpreted to require pre-approval of almost any use of social media. Under the FINRA guidance, static content requires supervisor pre-approval, and interactive content does not require pre-approval. Therefore, FAQ 1 should be amended and clarified to incorporate these concepts. "Chats" are interactive and should be treated like correspondence. "Posts" could be either static or interactive, and would need to be analyzed under this rubric. A distinction should be made, as in the FINRA guidance, between static content and interactive content, such as correspondence. In this MSRB FAQ, as in the FINRA guidance, MSRB should apply a risk based post-review approach similar to any correspondence, such as email.

³ FINRA Notice 10-06 (Jan. 2010).

Regarding FAQ 2, the FAQ says approval before use is required. If analyzing the situation under the FINRA guidance, analysis needs to be made as to whether the content is static or interactive. The MSRB is either making an assumption that the content is static or making a distinction between the MSRB's guidance and FINRA's guidance. Here again, however, SIFMA and its members feel that the MSRB guidance should mirror the FINRA guidance. To do so, a determination should be made whether the content is interactive or static, and if interactive, then apply a risk based post-review approach similar to email or any other correspondence.

In FAQ 5, SIFMA and its members feel that this is another area in which the MSRB expands on the obligations firms have regarding ongoing links in the FINRA guidance. A firm's responsibilities are initially set when a firm determines to offer a particular link as ongoing. A firm would not have the capacity to monitor the third-party website on a continual basis. The language in this FAQ should mirror FINRA guidance.

The current FINRA guidance defines adoption in regard to sharing or linking, but not "liking". In FAQ 8, the MSRB states that an entity or its associated person adopts a third-party post if it "likes" the content. SIFMA and its members don't view "liking" as the adoption of the content.

SIFMA's final concern is that the MSRB guidance should make clear that recordkeeping and record retention rules will only apply to an associated person's personal social networking page if: a) the associated person uses the personal social networking page for business-related communications or b) the associated person takes action to adopt the content. We disagree with the premise in FAQ 11 that states that the MSRB's recordkeeping and record retention rules should apply if a third-party posts on an associated person's personal social networking page about the associated person's municipal securities or municipal advisory activities. The MSRB is expanding its reach into third-party posts on the personal pages of associated persons. We feel that applying the MSRB recordkeeping and record retention rules in this case is unreasonable, unless such posts were solicited or otherwise adopted by the associated person.

As made clear in the Notice, FINRA has had a long history of rulemaking and guidance with respect to social media issues. With this in mind, it would be helpful if dealers could rely on outstanding FINRA enforcement actions or other guidance on social media issues.

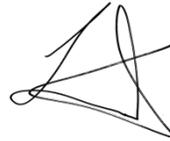
II. Conclusion

Again, SIFMA and its members appreciate the MSRB's efforts to provide guidance on the MSRB advertising rules and consideration given to our comments herein. We look forward to the MSRB's proposed guidance on Rule G-40's content standards. Other issues we believe that would benefit from further clarification are: the definition of advertising and exemptions thereof, especially related to RFP

Mr. Ronald W. Smith
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Page 4 of 4

responses and correspondence with clients; documentation standards; expectations of firms that are both broker dealers and municipal advisors to conform to both MSRB Rules G-21 and G-40; and meeting both FINRA 2210 standards and MSRB Rules G-21 and G-40 rulemaking when they are incompatible. We would be pleased to discuss any of these comments in greater detail, or to provide any other assistance that would be helpful. If you have any questions, please do not hesitate to contact the undersigned at (212) 313-1130.

Sincerely yours,

A handwritten signature in black ink, appearing to be 'L. Norwood', written in a cursive style.

Leslie M. Norwood
Managing Director and
Associate General Counsel

cc: ***Municipal Securities Rulemaking Board***
Lynnette Kelly, Executive Director
Michael Post, General Counsel
Lanny Schwartz, Chief Regulatory Officer
Pamela K. Ellis, Associate General Counsel