



Wells Fargo Advisors

Regulatory Policy
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September 14, 2018

Via Online Submission at: <http://www.msrb.org/CommentForm.aspx>

Mr. Ronald W. Smith
Corporate Secretary
Municipal Securities Rulemaking Board
1300 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:

Wells Fargo Advisors (“WFA”) appreciates the opportunity to comment on the Municipal Securities Rulemaking Board’s (“MSRB” or the “Board”) above-referenced notice (the “Proposal”) proposing the draft set of frequently asked questions (“FAQs”) centered around the application of the MSRB rules governing the use of social media by brokers, dealers or municipal securities dealers.¹ We believe further refinement of certain FAQs to better align with existing regulatory guidance will benefit both retail investors and regulated entities.

WFA is a dually registered broker-dealer and investment adviser that administers approximately \$1.6 trillion in client assets. We provide investment advice and guidance to help clients achieve their financial goals through 14,400 Financial Advisors and referrals from 4,523 Licensed Bankers in Wells Fargo branches across the U.S.²

¹ MSRB Regulatory Notice 18-19: Request for Comment on Draft Frequently Asked Questions Regarding Use of Social Media under MSRB Advertising Rules (August 14, 2018); *available at*: <http://www.msrb.org/~media/Files/Regulatory-Notices/RFCs/2018-19.ashx??n=1>.

² “Wells Fargo Advisors” is the trade name for Wells Fargo Clearing Services, LLC (“WFCS”), a dually-registered broker-dealer and investment adviser, member FINRA/SIPC, and a separate non-bank affiliate of Wells Fargo & Co. “First Clearing” is the

I. We Recommend Alignment with Existing Regulatory Guidance.

WFA supports the MSRB's efforts to provide guidance regarding the application of new MSRB Rule G-40 and recent amendments to MSRB Rule G-21 on the use of social media by MSRB regulated entities. We particularly applaud MSRB's continuing engagement efforts with market participants to clarify the application of these rules prior to their relevant effective dates. We believe this initial guidance is a positive step for both industry stakeholders and public investors. While we also recognize that the Board generally harmonized its guidance with current Securities and Exchange Commission ("SEC") and Financial Industry Regulatory Authority ("FINRA") published social media guidance, further refinement would address certain remaining regulatory inconsistencies without impacting investor protections. Consequently, we respectfully recommend the following:

- First, we recommend the MSRB align its guidance regarding the timing of principal review of social media posts by a regulated entity or an associated person, with FINRA Rule 2210 review requirements. Specifically, that principal review of certain interactive communications, such as social posts, can be conducted on a post-use basis rather than on a pre-use basis as proposed in Question 2 of the Proposal.
- Secondly, we recommend the MSRB align its guidance with Questions 3 and 4 of FINRA Regulatory Notice 17-18, Social Media and Digital Communications ("FINRA Regulatory Notice 17-18") concerning when content from a third-party post is considered "adopted" and thus subject to MSRB advertising rules. As set forth in Question 8 of the Proposal, a regulated entity or associated person is considered to have "adopted" the content of a third-party post by the simple act of "liking" the post. FINRA, on the other hand, requires the additional act of "sharing" or "linking" to a third-party post before the content of the post is considered to have been adopted. WFA believes the simple action of "liking" is not the basis for adoption of content.
- Lastly, we recommend the MSRB align its guidance with Question 5 of FINRA Regulatory Notice 17-18,³ regarding the review of the content within an "ongoing link."

II. Discussion - Specific Recommendations

A. Supervisory Expectations Should Align in Regards to Posts.

Question 2 of the Proposal states that if a "post," which would include a "tweet," includes content that is an advertisement as defined in Rule G-21(a)(i) and Rule G-40(a)(i), as applicable, a

trade name for WFCS's clearing business, providing services to unaffiliated introducing broker-dealers. WFCS is affiliated with Wells Fargo Advisor Financial Network ("FiNet"), a broker-dealer also providing advisory and brokerage services. For the ease of this discussion, this letter will use WFA to refer to all of these brokerage operations.

³ FINRA Notice 17-18, Social Media and Digital Communications (April 25, 2017); available at: http://www.finra.org/sites/default/files/notice_doc_file_ref/Regulatory-Notice-17-18.pdf.

principal must approve that advertisement before its first use. FINRA however, treats a “post” or a “tweet” like retail communications from a supervisory perspective, thereby permitting a post-use review of that particular content rather than a pre-use review. Requiring a pre-use review of interactive communication, content that appears instantaneously, is impractical for the supervision of such content. Rather, we believe the MSRB should follow FINRA’s risk-based approach for the supervision of interactive communications and allow for a post-use review of such communications.

B. Standards and Definition of “Adoption” Should Align.

In Question 8 of the Proposal, the MSRB states that the simple action of “liking” content posted by an independent third-party constitutes “adoption” of the post’s content.

WFA believes that simply “liking” a post does not rise to the same level as “sharing” or “linking” to a post for the fundamental reason that “liking” a post can reflect many actions that are not intended to represent the promotion of the content. Such actions include recognizing a colleague’s work, indicating they have read a particular article, or merely bookmarking an article for easy reference recall. All of which reflect no intention of marketing the article itself.

Consequently, we recommend the MSRB align its guidance regarding “adoption” of content from a third-party post to Questions 3 and 4 of FINRA Regulatory Notice 17-18. The effect would be that “adoption” of content from a third-party post would not be based on the simple act of “liking” a post but would also require another act such as “sharing” or “linking” for “adoption” of content to occur. Furthermore, a regulated entity or associated person would not be responsible for information contained on additional links, or secondary links, located within the third-party post.

C. Guidance for Ongoing Links Should Align.

The MSRB and FINRA generally align in regards to the guidance provided around the standards concerning what constitutes an ongoing link. Specifically, the two regulators align on the fundamental definition of an ongoing link whereby the content must not be controlled by the regulated entity and that the ongoing link is continuously available to visitors regardless of whether the content contains favorable or unfavorable material about the regulated entity.

What is unclear from Question 5 in the Proposal is (1) whether the obligation to review an ongoing link for potentially misleading content is limited to the timing of the establishment of the link or required on an ongoing basis; and (2) why it is necessary to review the link’s content for testimonial status.

We recommend the MSRB align its guidance with Question 5 of FINRA Regulatory Notice 17-18, which, among other things, states that the review for potentially misleading content of a link to third-party content should occur at the time of the establishment of the link. Credentials for an ongoing link are set initially when a firm determines to offer a particular link

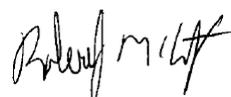
as an ongoing link. The content throughout the third-party link may change constantly making ongoing monitoring problematic.

Consistent with Question 5 in FINRA Regulatory Notice 17-18, FINRA also limited a member's ongoing review responsibilities in FINRA's Interpretive Letter to ICI⁴ stating that where an "ongoing hyperlink" meets the following description; 1) the hyperlink is continuously available to investors who visit the member's site; 2) the member has no discretion to alter the information on the third-party site; 3) investors have access to the hyperlinked site whether or not it contains favorable material about the member; and 4) the linked site could be updated or changed by the third-party and investors would nonetheless be able to use the hyperlink, "the staff would not hold the member responsible for the content or filing of information contained in the site."⁵ WFA believes the interpretive letter coincides with FINRA Regulatory Notice 17-18 and effectively covers the scope of supervisory review for ongoing links and therefore recommends the Proposal mirror such position.

III. CONCLUSION

WFA appreciates the opportunity to provide feedback to the MSRB in regards to the Proposal. If you would like to discuss this matter further, please feel free to contact me directly at (314) 242-3193 or robert.j.mccarthy@wellsfargoadvisors.com.

Sincerely,



Robert J. McCarthy
Director of Regulatory Policy

Cc: Stephen Bard/Senior Vice President - WIM Director of Social Media

⁴ FINRA Interpretive Letter to Craig S. Tyle, Investment Company Institute;(November 11, 1997); available at: <http://www.finra.org/industry/interpretive-letters/november-11-1997-1200am>.

⁵ *Id.*