BDA Bond Dealers of America

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September 14, 2018

Submitted Electronically

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

RE: Request for Comment on Draft Frequently Asked Questions Regarding Use of Social Media under MSRB Advertising Rules

Dear Mr. Smith:

On behalf of the Bond Dealers of America ("BDA"), I am submitting this letter to provide comments to the MSRB's Regulatory Notice 2018-19 (Request for Comment on Draft Frequently Asked Questions ("Draft FAQs") Regarding Use of Social Media under MSRB Advertising Rules) (the "Notice"). BDA is the only DC-based group representing the interests of securities dealers and banks exclusively focused on the U.S. fixed income markets. We welcome this opportunity to present our comments.

The BDA believes that the Draft FAQs should draw the distinction between interactive and static websites, as does FINRA guidance.

The Draft FAQs recognize the importance of consistency in guidance across regulatory bodies, stating that the MSRB has endeavored to align the FAQs with social media guidance of the SEC and FINRA. However, the Draft FAQs are inconsistent with FINRA's social media guidance in at least one significant respect. In its guidance on social media[1], FINRA draws a distinction between static websites, on which information is posted on a long-term basis and does not represent an interactive conversation, and interactive websites, on which statements are posted within the context of interactive conversations. Consistent with FINRA's view, as expressed in its guidance, the BDA believes posts on interactive websites that are in the nature of interactive conversations should be construed as communications but not advertisements. The Draft FAQs draw no distinction between static and interactive postings. The BDA believes that the FAQs should state that posts on interactive websites should be treated as communications and subject to the rules and supervisory requirements of the MSRB's rules on communications and not advertisements. Conversely, when a dealer or municipal advisor posts on a static website, that post could be construed as an advertisement if the facts and circumstances described in the Draft FAQs are present. Such an approach would be consistent with FINRA's well-established guidance on social media.

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[1] See http://www.finra.org/industry/social-media.

The BDA believes that recordkeeping and record retention rules should apply to posts by third parties on an associated person's personal social networking page only in extremely limited circumstances.

Draft FAQ 11 states that third-party posts on an associated person's personal social networking page are subject to the MSRB's recordkeeping and record retention rules if they relate to the associated person's municipal securities or municipal advisory activities. By taking this position, the MSRB would be effectively mandating an extraordinary intrusion by registrants into the personal activities of associated persons. Subjecting an associated person's own posts regarding the registrant's business on a social networking site to the recordkeeping and record retention rules is reasonable. However, third-party posts should not be subject to those rules unless solicited or adopted by the associated person.

* * *

Thank you for the opportunity to provide these comments.

Sincerely,

Mike Nicholas
Chief Executive Officer

NATIONAL ASSOCIATION OF MUNICIPAL ADVISORS

September 17, 2018

Mr. Ronald Smith
Corporate Secretary
Municipal Securities Rulemaking Board
1300 I Street, NW
Washington, D.C. 20005

RE: MSRB Notice 2018-19

Dear Mr. Smith:

Thank you again for allowing the draft frequently asked questions (FAQs) related to MSRB Rule G-40 (Rule) as applied to social media, in MSRB Notice 2018-19 (August 14, 2018), to be open for public comment. Such process will help the MSRB understand critical areas of interest from municipal advisors, and help municipal advisors better understand the Rule. We believe this is a beneficial new process that the MSRB should continue to pursue for future regulatory initiatives. However, we would like to continue to express our general concern with having the MSRB produce guidance that is not formally approved by the SEC. A key reason for raising this issue is that examination staff may apply statements or concepts from informational/informal guidance in a manner that is reserved for actual Rules and formal guidance.[1]

Our comments relate to two key areas that need further discussion and understanding. The first is related to application of the Rule, and the second deals with corresponding compliance procedures that will be necessary to demonstrate municipal advisor (MA) firms are adhering to the Rule. Although we realize that the FAQs apply both to municipal dealers and MAs, we limit our comments to the perspective of and applicability to MAs, unless otherwise noted. References to individual questions in the FAQs include both the question and corresponding answer.

Application of the Rule

In the past the MSRB has stated that the application of Rule G-40 is the same regardless of the medium used to advertise or potentially advertise. However, the application of the Rule to social media raises the question as to whether the traditional thresholds stated in Rule G-40 for when the advertising rule applies (information that is publically available and/or sent to more than 25 persons) are effective in social media contexts. Below are some questions and discussion that we would like to raise in this area.

[1] Of interest, see the September 13, 2018 statement from SEC Chairman Clayton on the role of staff views, https://www.sec.gov/news/public-statement/statement-clayton-091318 and the September 11, 2018 statement from the Federal Reserve and other agencies on the role of supervisory guidance at https://www.federalreserve.gov/newsevents/pressreleases/bcreg20180911a.htm.

Rules G-8 and G-9

In questions 10 and 11, there is discussion that a broad variety of individualized communications (including posts, chats and text messages, messages sent through other social media means and third party postings) related to municipal securities and advisory activities must be retained as they relate to MA activities. **While this is an important point, we believe this discussion should be separated from discussion on the advertising rule, and suggest that the information be provided separately, perhaps in a shaded box, to bring awareness to the issue without confusing it within the context of Rule G-40.** We would also argue that a separate document or FAQ on the application of electronic communications such as chat and text messages and MSRB Rules G-8 and G-9 is something that the MSRB should address. As written, the FAQs provide a blurred view as to which communications are subject to the advertising rule and may impair the ability of MAs to achieve compliance in an efficient and effective manner.

Social Media and Rule G-40 Thresholds

While we understand that advertisements on social media platforms need to be addressed in rulemaking, confusion remains as to how the Rule applies in this area. It is understood that a firm may have Twitter, LinkedIn, and Facebook accounts, available for public viewing, and are subject to analysis to determine if the posting is advertising and then, if so, the firm must review it in accordance with Rule G-40. But the FAQs need to better address the application of the Rule on individual communications.

The MSRB should clarify that a mere identification that a person is an employee of a municipal advisor is not covered by advertising rules. For example, if an individual announces on social media that s/he has just been hired as an associated person of a particular municipal advisor, without in any way marketing the firm or its capabilities, such an announcement falls outside of the Rule. Thus, as a potential third example in question 3 of the FAQs, the MSRB could modify the facts from the second example to read as follows: "I'm happy to be part of the ABC municipal advisor team as their new Managing Director!" The MSRB should confirm that such a statement would be viewed as not constituting an advertisement. Similarly, the inclusion of the name of the firm that employs an individual in that person's social media profile (as well as other factual information such as job title, location, basic duties, etc.) should not be viewed as an advertisement.[2] These are all merely factual statements, subject to Rule G-17 if the statements are made in the context of the individual's municipal advisory activities.[3] If the MSRB believes that such information (without other statements that cause the information to take on a marketing function) is not covered by the advertising rules, it should make this very clear.

Responsibility of Third Party Postings

The MSRB states in questions 8 and 9 that third parties can make posts on MA social networking pages, even testimonials, as long as the MA is not entangled with or explicitly adopts the posting, without running afoul of Rule G-40. This differs from the previous FAQ on client lists and case studies, where the

[2] A description of basic duties limited to a description of what the job is, without marketing the level of skills or specific successes, should not be viewed as rising to the level of being an advertisement.

[3] In our view, such factual statements on the individual's social media page that is not otherwise used to engage in municipal advisory activities should presumptively not be viewed as related to the municipal advisory activities of the firm, but instead personal information routinely shared among individuals in the general population, and therefore fall outside of MSRB rules.

MSRB states that the MA firm itself cannot include testimonials on its web page or use them in other advertising mediums. **We raise this point to question whether it makes sense for there to be two different applications of the Rule for testimonials, which is dependent on the medium, and whether the MSRB's position regarding testimonials relating to municipal advisors should be revisited**.

This is especially true as we note that SEC staff guidance provides some flexibility on testimonial use by investment advisers, which the MSRB previously refused to incorporate into its rulemaking on Rule G-40. Yet the FAQs cite to the SEC's IM Guidance Update No. 2014-04 (see footnote 20 of the FAQs) in justifying a prohibition on municipal advisors. It is unclear why the MSRB can rely on SEC staff guidance in establishing stricter guidance but not in establishing more flexible guidance. If the MSRB as a matter of policy believes that the substance of SEC (and FINRA) staff guidance should not apply to municipal advisors, the MSRB should clearly state that position regarding such substance with appropriate justifications, rather than rely (inconsistently) on this notion that staff guidance (regardless of its substance) should not be incorporated into how MSRB rules are to be applied. As a broader matter, it makes no logical sense for the testimonial restrictions on municipal advisors to be stricter (as both a legal and practical matter) than for investment advisers and broker-dealers. This stricter approach means either (or both) that the MSRB views (a) municipal advisors as inherently less reliable and more likely to try to mislead their clients than are investment advisers and broker-dealers, or (b) issuers and obligated persons as inherently less sophisticated and more gullible than clients (including retail investors) of investment advisers and broker-dealers.

Also, the MSRB should explicitly state after the last sentence of question 5 that, notwithstanding the prohibition on testimonials in advertisements, **an unsolicited third-party opinion or comment posted on a social network (as described in FAQ #8 in FINRA Notice 17-18) is not an advertisement or communication of a municipal advisor and therefore would not be a prohibited testimonial**.

In questions 8 and 9 we would like to also raise the following issues:

- In the definition of "Entanglement," the MSRB adds the term "encourages," which is not found in similar SEC or FINRA language regarding entanglement. That term has too broad of a meaning to be consistent with the established principles of entanglement – while encouraging a specific third-party to post a specific favorable review could be viewed as a solicitation, a more general encouragement of anyone to post any comment (positive, neutral, negative, purely factual, questions, etc.) should not be viewed as a basis for entanglement. This again becomes a "testimonials" problem, and the language in question 9 relating to encouragement is problematic without appropriate context being included.

- In the definition of "Adoption", while the language includes the notion of indicating approval or endorsement, the MSRB should acknowledge that a link or share undertaken to refute the original statement, as described below under "Disclaimers," would not be viewed as being "adopted".

- In the last paragraph of question 8, the MSRB needs to be explicit that "complaint" relates to regulated business activities – for broker-dealers, a complaint must be alleging a grievance involving the firm or the individual "with respect to any matter involving a customer's account" [see MSRB Rule G-8(a)(xii)], for municipal advisors, a complaint must be "alleging a grievance involving the municipal advisory activities" of the firm or individual [see MSRB Rule G-8(h)(vi)]. As written, readers may view the term more broadly than intended.

Our members are also concerned with the need for clarification related to the use of hyperlinks. For instance, if a city puts out a press release that contains a complimentary statement about the MA firm, including the firm's social media address, and then that press release is picked up by the local newspaper that writes a longer story about the project and includes a link to the original press release, can a MA firm post a hyperlink on its web site to the news story, without it being considered advertising? We would argue that the MA firm's link is to a news story, and therefore it is not a testimonial, and believe that the FAQ should include this type of example to show MA firms how to approach these types of situations.

Disclaimers

In question 6, while the general principle makes sense, the MA's disclaimer/disclosures do need to be read in context with the language being linked to in order to determine whether there may be a false or misleading statement. For example, in some contexts, the MA may be trying to refute negative commentary which itself may be false or misleading, and in social networking contexts that refutation will normally be linked to the original post that is being shared – thus, the MA definitely should not be viewed as adopting the language it is in fact refuting. This notion is consistent with the definition of "Adoption" in question 8 in that the MA is definitely not approving or endorsing the content. **Finally, the MSRB should provide the additional guidance provided by FINRA Notice 10-06 in FAQ #9, where FINRA states that a disclaimer is part of the facts and circumstances considered with regard to adoption or entanglement with third-party posts.**

Informational Tweets and Postings

Additional clarification is also needed in the instance where a firm may post "Visit us in Booth 72 during the Nebraska GFOA's conference." If the posting only makes that statement (as compared to "Learn About Our MA Services in Booth 72," which includes language closer to the trigger for Rule G-40[4]), then we believe it would not be considered advertising. We think this type of example, including a discussion of what type of language included in signage beyond purely identifying language might be covered by the Rule, would be beneficial in the FAQ document.

Compliance with the Rule

While the guidance provided in the FAQs is, with the exceptions described in this letter, largely consistent with existing social media guidance provided by the SEC and FINRA, in certain respects the MSRB's more succinct statement of such guidance raises questions about how certain matters that were specifically dealt with in SEC or FINRA guidance but not mentioned in the FAQs should be understood. We outline below changes the MSRB should make in order to provide greater consistency with the approach of the other regulators and to make the process of compliance and supervision more effective and efficient.

For example, FINRA draws a distinction between static and interactive content on social media platforms, which distinction is not adequately captured by the MSRB's distinction in the FAQs between posts and chats. Based on our reading of the FAQs and existing FINRA guidance, the FINRA guidance provides for a more workable supervisory process, particularly by not requiring pre-use approval by a principal prior to posting interactive content. For example, the use of the term "post" in question 3 does

[4] In fact, we believe even the second example is best not viewed as an advertisement under Rule G-40.

not adequately provide for a distinction between static and interactive content, so that depending on the specific circumstances, some posts would be viewed under FINRA rules as being interactive content not subject to pre-use approval while potentially being viewed under the FAQs as an advertisement requiring pre-use approval. **We believe it is critical for the MSRB to affirmatively incorporate the distinction between static and interactive content into its own guidance on social media, as without such a distinction many smaller MAs may effectively be shut out of the use of social media, which would be an inequitable result inconsistent with Exchange Act Section 15B(b)(2)(L)(iv). This change is critical in order to make supervisory processes workable for MAs and, probably, many broker-dealers**.

In addition, the FAQs have numerous footnotes to prior FINRA and SEC guidance. Should regulated entities assume that, by citing a particular item and absent any contrary language or disclaimer, the MSRB has adopted the positions taken by FINRA and the SEC in such guidance to the same effect as if the MSRB had provided such guidance directly? And what does that mean for portions of FINRA and SEC guidance that are not specifically cited by the MSRB?

When discussing usage restrictions, the FAQs should include the approach set out in FINRA Notice 11-39 FAQ 9, which provides a process for dealing with situations where a third-party reaches out for business to an individual through a personal social media platform that the firm has restricted from being used for business. That FINRA FAQ actually addresses the situation that the MSRB describes in the last two sentences in question 13 under "Training and Education" in a substantively more helpful way then the current MSRB language does.

The stated language that regulated entities "should consider" their recordkeeping obligations under "Recordkeeping and Record Retention" in question 13 amounts to merely issue spotting and provides no guidance. The MSRB should note that, particularly for smaller regulated entities such as the vast majority of municipal advisors, the decision not to utilize costly existing technology used by broker-dealers and investment advisers to monitor, extract and/or retain communications would not be viewed prejudicially by the MSRB (and therefore should not be so viewed by the enforcement agencies) so long as reasonable alternative methods are used. For example, where an employee uses her/his own communication device[5], FINRA allows in FINRA Notice 07-59 (page 9) for the regulated entity to establish a process of pre-approval of such usage, with the individual required to allow the firm to access the device. This approach could also apply to specific social media platforms, where the firm would pre-approve use of the platform, would require access to the individual's account on the platform, and would allow the firm to engage in required reviews and to extract and preserve required records. Regulated entities could make use of social media contingent upon the individual agreeing to these or similar requirements. For example, chat, direct messaging or other similar one-to-one or one-to-few messages could be used on the condition that a firm-designated account be made a recipient of all messages and subject to a prohibition on the individual deleting any posts, messages or other materials unless a copy of such materials is first saved and forwarded to a firm-designated file. The individual would be subject to the loss of rights if upon review it is found that the individual has not complied with the requirements.

[5] It is important to point out that some states prohibit employers from accessing their employees' social media accounts, and that key issue is not addressed in the FAQ and has significant compliance control implications.

As NAMA has stated numerous times, we understand the need to develop and implement rules over MA firms and MA professionals. That is not an issue we quibble with, nor that Rule G-40 is necessary. However, we do think that the FAQs are unclear in certain areas and would cause unnecessary compliance hurdles. These hurdles are further amplified when considering that the potentially extensive set of tasks to achieve compliance with the guidance as set forth in the current draft of the FAQs go far beyond the safeguards mandated for actual substantive MA work on which the MSRB's rulemaking to protect issuers and obligated persons is most appropriately focused. Without greater clarification and paring down of the type of monitoring that is needed, a small MA firm could have to spend more effort on this rule than one that affects the actual services they provide their clients. We would ask that the MSRB carefully review this and its other regulatory pronouncements with this in mind.

As social media will continue to evolve, we do not believe that the information provided in the FAQs should instead be provided through amending current rules or developing new ones. The nature of this medium is fluid and dynamic. The MSRB should retain sufficient flexibility to update guidance as warranted, and doing so through rulemaking would be premature and constricting.

Finally, we would like to note that the costs associated with the new Rule do not adequately take into account the costs to comply with the Rule, especially if the MSRB does not provide further clarifications in the FAQs. The issue of costs incurred by MA firms to comply with individual MSRB rules and the entire MSRB rulebook continues to be adverse to the mandate in the *Dodd Frank Act* that the MSRB must consider the effect of its actions on small MA firms. We ask once again for the MSRB to further review the costs associated with complying with Rule G-40, as it was not directly addressed in MSRB Notice 2017-04 (see attachment A).

Thank you again for the opportunity to provide comments on the FAQs. Please feel free to contact me if I can provide you with any additional information or answer any questions about NAMA's response.

Sincerely,

Susan Gaffney
Executive Director

MSRB Notice 2017-04

Pages 15-16

At the outset, the MSRB notes it is currently unable to quantify the economic effects of the proposed amendments to Rule G-21 and draft Rule G-40 because the information necessary to provide reasonable estimates is not available. For example, with regard to draft Rule G-40, the MSRB observes that there is little publicly available information on a detailed breakdown of incremental expense items as reported by the municipal advisory industry. In addition, estimating the costs for municipal advisory firms to comply with draft Rule G-40 is hampered by the fact that these costs depend on the business activities and size of these municipal advisory firms, which can vary greatly. Given the limitations on the MSRB's ability to conduct a quantitative assessment of the costs and benefits associated with draft Rule G-40, the Board has thus far considered these costs and benefits primarily in qualitative terms.

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Furthermore, the MSRB believes that much of the costs associated with both draft amendments to Rule G-21 (as well as draft Rule G-40) will be up-front costs resulting from investments in advertisements that are no longer compliant. These costs can be mitigated by setting a future effective date for the rule changes, if adopted.

sifma

Invested in America

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 2018-19 [2] (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.

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[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 medial 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 10-06[3]. 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.

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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

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,

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

Wells Fargo Advisors

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Member FINRA/SIPC

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]

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[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

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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

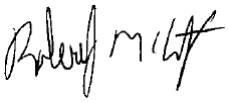
as an ongoing link. The content throughout the third-party link may change constantly making ongoing monitoring problematic.

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 ICI[4] 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.*