



Wells Fargo Advisors
Regulatory Policy
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March 24, 2017

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: Regulatory Notice 2017-04, Request for Comment on Draft Amendments to MSRB Rule G-21, on Advertising, and on Draft Rule G-40, on Advertising by Municipal Advisors

Dear Mr. Smith:

Wells Fargo Advisors¹ (“WFA”) appreciates the opportunity to comment on the Municipal Securities Rulemaking Board’s (“MSRB” or the “Board”) Regulatory Notice 2017-04, Request for Comment on Draft Amendments to MSRB Rule G-21, on Advertising, and on Draft Rule G-40, on Advertising by Municipal Advisors (“Proposal”).²

¹“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. “First Clearing” is the 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 those brokerage operations.

²MSRB Regulatory Notice 2017-04, Request for Comment on Draft Amendments to MSRB Rule G-21, on Advertising, and on Draft Rule G-40, on Advertising by Municipal Advisors (February 16, 2017), available at: <http://www.msrb.org/~media/Files/Regulatory-Notices/RFCs/2017-04.ashx?n=1>

WFA is a dually registered broker-dealer and investment advisor that administers approximately \$1.5 trillion in client assets. We employ approximately 15,086 full-service financial advisors in branch offices in all 50 states and 3,899 licensed bankers in retail bank branches across the country. WFA and its affiliates help millions of customers of varying means and investment needs obtain the advice and guidance they need to achieve their financial goals. Furthermore, WFA offers access to a full range of investment products and services that retail investors need to pursue these goals.

I. CURRENT PROPOSAL

The MSRB is proposing amendments to current Rule G-21 to largely harmonize requirements with FINRA Rule 2210. These draft amendments include enhancements to the MSRB's fair-dealing provisions, updates to municipal fund security product advertisements and harmonization of the definition of "form letter." In addition, the Proposal creates new Draft Rule G-40 to address advertising requirements specifically for Municipal Advisors.

II. DISCUSSION

As a registered broker-dealer, WFA largely supports the draft amendments to MSRB Rule G-21 and believes that harmonization with FINRA Rule 2210 creates a more consistent regulatory regime within the industry. We believe the MSRB should also consider expanding the proposal to allow the use of testimonials in municipal securities advertisements. Additionally, we reference FINRA Regulatory Notice 17-06 Communications with the Public - FINRA Requests Comments on Proposed Amendments to Rules Governing Communications with the Public³ ("FINRA's Current Proposal"), where FINRA proposes to amend Rule 2210 to adopt an exception to allow the use of projected performance. We support FINRA's proposal and request the MSRB to extend harmonization in this Proposal to include FINRA's exception to allow limited performance projections.

A. The MSRB Should Adopt FINRA Rule 2210 Requirements Regarding Testimonials or Should Mirror SEC Relief.

The draft amendments to Rule G-21 prohibit dealers from using testimonials in advertisements stating that they could potentially mislead senior investors. As a firm that has led the industry in efforts to protect and inform senior investors of potential harm, financial and/or otherwise, WFA fully supports the MSRB's objective to protect senior investors. However, protecting senior investors is a regulatory goal not limited to the municipal market.

FINRA Rule 2210(d)(6) allows the use of testimonials in advertisements and provides associated disclosures designed to be meaningful to all investors, including senior investors and vulnerable adults. WFA includes testimonials within our advertising in accordance with FINRA Rule 2210(d)(6), and believes the required disclosures provide investors with context for the

³ Regulatory Notice 17-06, Communications with the Public – FINRA Requests Comments on Proposed Amendments to Rules Governing Communications with the Public (February 2017).
http://www.finra.org/sites/default/files/notice_doc_file_ref/Regulatory-Notice-17-06.pdf

testimonials. Rankings and testimonials appear regularly in advertising and the public therefore expects to read how others feel about a particular security. We strongly believe that having consistency across all securities, including municipal securities, in regards to the use of testimonials is essential in providing regulatory uniformity within the industry and we encourage the MSRB to follow suit in adopting similar provisions.

Furthermore, the SEC published Guidance Update (“Guidance”) dated March 2014 where it provided guidance in regards to the use of testimonials for investment advisers.⁴ In the Guidance, the SEC seeks to assist firms in applying Rule 206(4) of the Investment Advisers Act of 1940 and Rule 206(4)-1(a)(1) to their use of social media. The Guidance essentially provides relief in certain circumstances where the use of testimonials would not implicate the concern underlying the testimonial rule, which is that “the testimonial may give rise to a fraudulent or deceptive implication or mistaken reference.” WFA supports the relief granted by the SEC and believes the MSRB should extend such relief as it relates to municipal securities should the MSRB not adopt FINRA Rule 2210 regarding the use of testimonials.

B. The MSRB Should Adopt the Proposed Exception That Would Allow the Use of Projected Performance.

WFA believes an additional opportunity for harmonization exists related to FINRA’s Current Proposal to include an exception to Rule 2210’s prohibition on projecting performance. The proposed amendment will allow firms to better inform investors about the recommended investment strategies, including the underlying assumptions upon which those recommendations are based. WFA notes that this exception will especially benefit those investors that may only have access to this information through investment advisors. This will help provide a “more level playing field” by allowing performance projections similar to those available for clients of investment advisors. To this point, WFA believes the MSRB should ensure the FINRA proposed exception is included in their harmonization efforts.

III. CONCLUSION

WFA appreciates the opportunity to provide feedback to the MSRB on the draft amendments to the MSRB’s advertising rules and commends the Board on its harmonization efforts. For the reasons stated above, WFA believes additional harmonization of the Proposal with other industry rules will ultimately benefit investors through increased consistency in the communications they receive.

⁴ SEC IM Guidance Update (March 2014), available at: <https://www.sec.gov/investment/im-guidance-2014-04.pdf>.

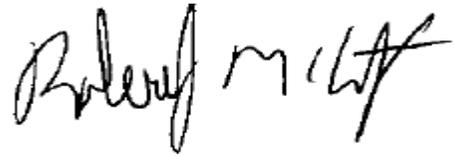
Ronald W. Smith

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If you would like to further discuss this issue, please contact me at (314) 242-3193 or robert.j.mccarthy@wellsfargoadvisors.com.

Sincerely,

A handwritten signature in black ink, appearing to read "Robert J. McCarthy". The signature is written in a cursive, somewhat stylized font.

Robert J. McCarthy

Director of Regulatory Policy