

December 9, 2019

The Honorable Jay Clayton
Chairman
US Securities and Exchange Commission
100 F St NE
Washington DC 20549

Dear Chairman Clayton,

Our firms write collectively in opposition to the SEC's recently released "Notice of Proposed Exemptive Order Granting a Conditional Exemption from the Broker Registration Requirements of Section 15(a) of the Securities Exchange Act of 1934 for Certain Activities of Registered Municipal Advisors" ("Proposed Order") (Release No. 34-87204; File No. S7-16-19). The Proposed Order represents a dangerous and fundamental shift in SEC investor protection rules, and we urge the Commission to abandon the proposal.

The Proposed Order would permit Municipal Advisors ("MA") without registering as Broker-Dealers ("BDs") to solicit (i) a bank, savings and loan association, insurance company, or registered investment company; or (ii) an investment adviser registered with the Commission or with a state; or (iii) any other institution with total assets of at least \$50 million in the context of a private placement of municipal securities. While the Proposed Order would impose some limitations on the scope of transactions covered, it would permit MAs to solicit nearly any institutional investor on nearly any municipal private placement purchased by a single investor. This represents a watershed change in SEC investor protection policy.

Since the 1930s the SEC has built a robust set of rules focused on investor protection, including institutional investors. If the Proposed Order is finalized as proposed, the longstanding regulatory protections would go out the window. MAs bear a fiduciary duty to their municipal issuer clients. But they bear no obligations to investors other than to deal fairly and not commit fraud. By incentivizing MAs to drive a greater portion of municipal issuance to the private market, the Proposed Order would create new and thorny conflicts of interest between MAs and their issuer clients. MSRB Rule G-42, which governs MA activity, does not provide sufficient regulation of this conflict.

Specifically, transactions in which a MA also played the role of placement agent on a transaction would fall outside the following investor protection provisions:

- ☐ Institutional suitability and "Know Your Customer" duties to ensure that investments are suitable for investors;

- ☐ Due diligence duties to ensure that dealers reasonably investigate information provided to investors;
- ☐ Sales practice duties that ensure that dealers interact with investors in a fair and transparent manner;
- ☐ Communication standards that ensure that dealers deliver appropriate communications to investors;
- ☐ Fair commission and pricing standards that ensure that dealers charge appropriate compensation and undertake reasonable efforts to ensure the fairness of pricing of transactions; and
- ☐ Dealer-specific antifraud and disclosure standards.

Most important, the Proposed Order is a solution in search of a problem. There has been no articulation from the Commission of why this change is needed or what the policy benefit of such change would produce. Municipal private placements are already an active market. Last year municipal issuers sold nearly \$19 billion in private placements and in 2017 sold more than \$40 billion. The private placement new issue market is operating well and is not in need of “relief.”

In short, the Proposed Order is a risky departure from many decades of policy designed to ensure that investors are not taken advantage of. Many of the institutions that buy municipal private placements are smaller regional or community banks that depend on SEC rules to ensure they are protected in their investment decisions. We urge you not to abandon your institutional investor protection regime in the municipal private placement market.

In the event you or your staff need any follow up, please contact Mike Nicholas, CEO of the Bond Dealers of America at mnicholas@bdamerica.org or 202-204-7901.

Sincerely,

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