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July 2, 2020

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

Dear Chairman Clayton,

We are writing in regard to the SEC's recent Temporary Conditional Exemption (TCE) related to the role of Municipal Advisors (MAs) in certain private placements of municipal securities.[1] As we have communicated on a number of occasions before, we remain opposed to any diminution of the investor protection principles that underlie much of our securities market regulation . The TCE will permit Municipal Advisors with no regulatory duty to investors other than the avoidance of fraud to place securities with sometimes unsophisticated investors such as small community banks. This undermines the integrity of our market and subjects MAs to different obligations than other industry participants while performing the same function.

We note your testimony last week before the House Financial Services Committee Subcommittee on Investor Protection, Entrepreneurship, and Capital Markets,[2] where you responded to a Subcommittee member's questions on the TCE. Three of your statements stand out as particularly troubling.

First, you characterized the TCE as "very narrow."[3] That is simply not true. The TCE states "the aggregate principal amount of the Direct Placement may not exceed $20 million." Twenty million may sound like a small deal size in comparison to issuance in the taxable fixed income markets. But as you know, the average new issue transaction size in the municipal market is much smaller than in other sectors of the capital markets, just $37 million for long term issues in 2019.[4] Based on 2019 issuance patters, the $20 million threshold would make approximately 72 percent of new municipal issues subject to the TCE, a very significant portion of the market.[5] This is not a "very narrow" Exemption.

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[1] Securities and Exchange Commission, "Order Granting a Temporary 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," Release No. 34-89074, June 16, 2020.
[2] House of Representatives, Committee on Financial Services, Subcommittee on Investor Protection, Entrepreneurship, and Capital Markets, "Hybrid Hearing - Capital Markets and Emergency Lending in the COVID-19 Era," June 25, 2020, https://financialservices.house.gov/calendar/eventsingle.aspx?EventID=406615.
[3] Sarah Wynn, "SEC temporary relief for MAs process is unfounded, lawmaker says," *The Bond Buyer*, June 25, 2020, https://www.bondbuyer.com/news/sec-temporary-relief-for-mas-process-is-unfounded-lawmaker-says.
[4] *The Bond Buyer*, "A Decade of Bond Finance," https://www.bondbuyer.com/broker/bond-buyer-data.
[5] There were 13,646 municipal new issues of notes and bonds in 2019 with 9,794 $20 million or less. Source: Refinitiv SDC Platinum database.

Second, you stated at the hearing “It would be my expectation that if this were done on anything like a permanent basis, or in any broader scope, that there would be an opportunity for notice.”[6] You also stated “I would expect the activity during this period would be something that would be considered, again through any kind of notice and open rulemaking, if this were going to be extended, expanded or the like.”[7] These statements raise some very serious concerns about the TCE. Under what conditions would the SEC consider making the TCE permanent? What market activity would drive the SEC to extend or expand the TCE? The Order announcing the TCE describes the reason for the Exemption: “In order to facilitate more timely and efficient access to bank financing alternatives by municipal issuers during this historic COVID-19-related market disruption.” The COVID-19 crisis clearly will not last forever. Once the virus threat has receded, why would the SEC need to continue the TCE? What “broader scope” would the SEC consider as the December 31 expiration of the TCE approaches?

Third, the TCE requires MAs who use it to report certain transaction information to the SEC. At last week’s hearing you discussed the prospect of making those data public. You stated “I don’t want to commit here to making it public. But I will commit to considering whether it should be made public.”[8] There is no reason for the SEC to hide the data on the use of the TCE. We urge you in the interest of transparency to release deal information reported under the Exemption, particularly if there is to be consideration of expanding or extending the TCE.

Your statement at the hearing and the language of the Commission’s Order raise broader issues about the justification for the TCE. The TCE states “municipal issuers have faced challenges accessing the primary market.” This was true for a relatively short period in March. Since then the municipal market has recovered. Looking at the yield for 10-year securities, yields began to spike on around March 10 as the market digested news of the pandemic. The market’s reaction peaked on March 23. Around that time, market volatility was such that some issuers chose not to price new issue securities.

The market has recovered since then. As you can see from the chart below, high-grade 10-year yields in the municipal market are now where they were before the virus crisis started, and this is true across the yield curve. Issuers are pricing new public issues every week. Issuance in April and May of 2020 were approximately the same volumes as last year, and issuance in June was 25 percent higher than last year.[9] Economists at the Federal Reserve Bank of New York recently stated in regard to the municipal market “For AAA and AA securities, yields have returned to their pre-pandemic levels and are now near all-time lows. Yields on lower-rated securities (BBB and to a lesser extent A) are still somewhat higher than pre-pandemic levels, though they have been steadily declining.”[10] The Fed also noted that

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[6] Wynn.
[7] House Financial Services Committee Subcommittee on Investor Protection, Entrepreneurship, and Capital Markets, “Hybrid Hearing - Capital Markets and Emergency Lending in the COVID-19 Era,” hearing Webcast, https://www.youtube.com/watch? &v=BmGVXkpFnDw.
[8] *Ibid.*
[9] *The Bond Buyer.*
[10] Marco Cipriani, Andrew Haughwout, Ben Hyman, Anna Kovner, Gabriele La Spada, Matthew Lieber, and Shawn Nee, “Municipal Debt Markets and the COVID-19 Pandemic,” Federal Reserve Bank of New York, June 29, 2020, https://libertystreeteconomics.newyorkfed.org/2020/06/municipal-debt-markets-and-the-covid-19-pandemic.html.

municipal bond mutual fund outflows, which were near historic monthly highs in March, have turned positive again.[11]

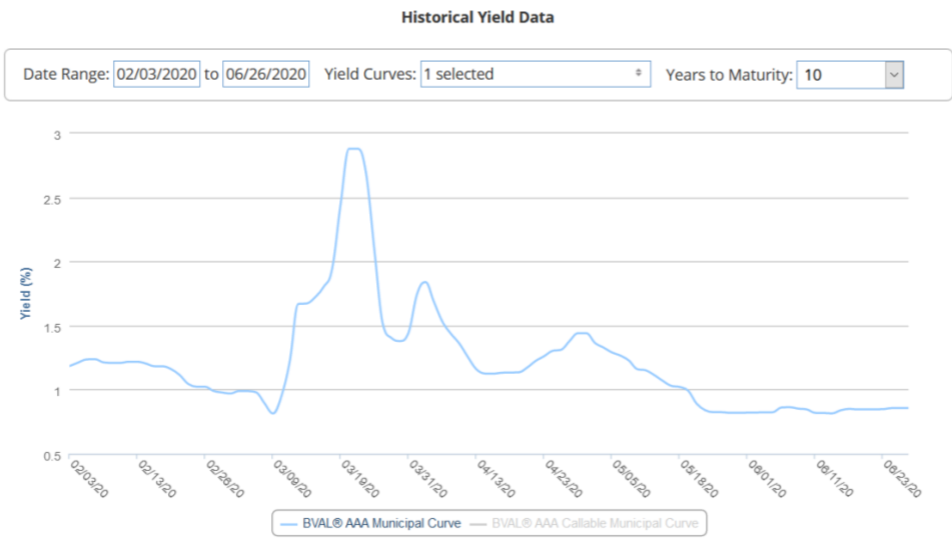

Figure 1. Bloomberg BVAL 10-year yield, March 2, 2020-June 26, 2020.[12]

If the purpose of the TCE is to address market conditions that prevailed in March 2020, that is no longer necessary. As we have asked many times in our conversations with the SEC about the role of MAs in private placements, where is the evidence that market access for municipal issuers was inhibited under the rules that existed before the TCE? How is the TCE justified if there is no such evidence?

To be sure, state and local governments have and will continue to experience significant fiscal stress as a result of the virus and the economic shutdown. The crisis will continue to shrink government revenue and increase expenses. But these problems will not be solved or even mitigated by the TCE. Market access and borrowing terms are simply not constraining new issues in the current environment. Permitting MAs to solicit bank investors is not a substitute for hundreds of billions in lost revenue.

We are pleased that the TCE is much narrower in scope than the Proposed Exemptive Order related to MAs in private placements which the SEC released last year.[13] It is encouraging that the SEC chose to incorporate in the TCE some of the narrowing provisions we suggested in relation to last year's proposal. By setting the maximum deal size at $20 million, however, you have produced an exemption that will cover nearly three quarters of the market. Further, regardless of how narrow the exemption is, it does

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[11] *Ibid.*

[12] Municipal Securities Rulemaking Board Electronic Municipal Market Access, "Yield Curves and Indices BVAL® — AAA Municipal Curves," https://emma.msrb.org/ToolsAndResources/BloombergYieldCurve.

[13] Securities and Exchange Commission, "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," Release No. 34-87204, October 2, 2019.

not change the fact that there has been no reasonable justification for adopting an exemption that relieves MAs from a carefully crafted regulatory regime.

We urge you to repeal the TCE. As we have stated before, permitting MAs to conduct broker dealer activity is dangerous. By pushing more deals to the private market, it undercuts the vital investor protections of the securities laws and reduces market transparency—only public deals are subject to primary and secondary market issuer disclosures. It is unnecessary in the current market environment. If it continues in place, the TCE will bring together combinations of unsophisticated issuers, unsophisticated lenders, and under-regulated, inexperienced, unaccountable, non-dealer MAs. This is a dangerous recipe.

Short of repeal, unless market conditions deteriorate drastically, the TCE should be permitted to expire after December 31.

As always, we are pleased to address any questions you may have.

Sincerely,

Michael Nicholas
Chief Executive Officer
Bond Dealers of America

CC:

The Honorable Hester M. Peirce, Commissioner, U.S. Securities and Exchange Commission

The Honorable Elad L. Roisman, Commissioner, U.S. Securities and Exchange Commission

The Honorable Allison Herren Lee, Commissioner, U.S. Securities and Exchange Commission