

**COMMENT ON SEC 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; File No. S7-16-19**

DIXWORKS LLC is a single member firm established in March of 2001 serving small and medium-sized issuers in the State of Connecticut, many which might not otherwise have access to the capital markets on account of their small size, no previous credit, or small or infrequent borrowing needs. The most readily available credit source for these small issuers is the bank loan. These are plain vanilla credits that are booked as commercial loans and placed in the bank's loan portfolio never to see the light of day until maturity. DIXWORKS' loan documents specifically state that the loan may not be marketed in any form that might constitute a municipal security.

1. Has the Commission appropriately identified the activities in which a registered municipal advisor would be able to engage when representing a municipal entity or obligated person in connection with direct placements pursuant to the exemption?

RESPONSE

Yes

2. Should any of the identified activities proposed to be included be eliminated or modified?

RESPONSE

I believe the Commission has adequately identified those transactions that would be relevant to a small Municipal Advisor's ("MA") activities regarding direct placement of small loans.

3. Has the Commission appropriately defined Qualified Provider? If not, what would be a more appropriate definition and why?

RESPONSE

Yes

4. Should the definition of Qualified Provider be edited to add "credit unions"? If so, please explain.

## RESPONSE

In the interest of broadening the market for municipal credits, adding credit unions to the definition of Qualified Provider would be appropriate.

5. Does the definition of Qualified Provider, together with the required conditions, provide adequate assurance that the potential investors included in such definition will be sufficiently able to evaluate the creditworthiness of the Municipal Issuer and the relevant terms of the direct placement offering, among other things? If not, please explain.

## RESPONSE

The Qualified Providers as defined provide credit to a variety of borrowers all of which are subject to credit review and the standards of the lender. An MA would provide sufficient documentation (audits, budgets, capital improvement plans, etc.) for consideration of the proposed credit. In addition, a proposed credit may also carry a credit rating from one or more of the nationally recognized statistical rating agencies.

6. Should the Commission limit the exemption to direct placements of a specific size threshold—e.g., limited by aggregate principal amount or by Municipal Issuers with a limited aggregate amount of municipal securities outstanding? If so, why and how should the Commission define such thresholds?

## RESPONSE

Most municipal issuers are subject to a state mandated legal limit to the amount and type of debt they may assume. These limits reflect the local attitude towards reasonable debt burdens. I see no useful purpose in the Commission's adding restrictions to such limits.

7. Should the exemption for municipal advisors with respect to direct placements be conditioned on municipal advisors being precluded from engaging in solicitation activities on behalf of their Municipal Issuer clients? If so, which activities and why? Please explain.

#### RESPONSE

I am unclear as to exactly what manner of solicitation is being referred to. It would be reasonable for an MA to approach more than one potential lender to negotiate and determine the best rates and terms for its client. Many of these loans are bid competitively which would not involve a “solicitation” as such.

8. Has the Commission appropriately defined the conditions that should apply to the proposed exemption? Please explain.

#### RESPONSE

I take no issue with the various certifications and conditions as proposed. They seem reasonable and not burdensome to any party.

9. Should any of the proposed conditions be eliminated or modified? Please explain.

#### RESPONSE

I take no issue with the various certifications and conditions as proposed. They seem reasonable and not burdensome to any party.

10. Are there other or different conditions that should apply to the proposed exemption? Please explain.

#### RESPONSE

I take no issue with the various certifications and conditions as proposed. They seem reasonable and not burdensome to any party.

11. Are there any specific written disclosures to Qualified Providers that should be required, beyond those that are a condition of the proposed exemption? For example, should the municipal advisor be required to provide a written disclosure to the Qualified Provider that it may elect to engage a registered broker or other intermediary for the transaction? Please explain.

## RESPONSE

In the interest of promoting the fairest and most efficient transaction, such a disclosure by an independent MA would not be unwarranted. In the case of a broker/dealer (“b/d”) MA, it could result in the b/d MA being barred from underwriting the proposed transaction, but it would not inhibit a direct placement with a lender other than the b/d.

12. Should the exemption be expanded to include transactions in which multiple Qualified Providers purchase portions of the entire municipal securities offering directly from the Municipal Issuer? What are the relevant issues for the Commission to consider in determining whether such an expansion is necessary or appropriate in the public interest, and consistent with the protection of investors? For example, would the participation of multiple purchasers necessitate additional or different conditions or present heightened investor protection concerns? Please explain.

## RESPONSE

Not sure what the concern is here. A Qualified Provider would be a sophisticated investor as required by the terms of the proposal and not necessarily in need of “protection”. Multiple Qualified Providers on a given loan would require substantially more and individualized legal documentation by Bond Counsel, however, which would generally increase the issuance costs to the borrower.

13. Is the type of direct placement contemplated by this proposed exemptive order typically resold into the secondary market? If so, how often and to what type of investor? Does the possibility of such a resale raise any investor protection concerns? If so, please explain. How should the Commission address those concerns?

## RESPONSE

I can only speak to the bank loans that I have handled over the years which have been made under the restriction that there will be no secondary market transactions that might construe that a municipal security had been issued. A secondary market permission would create a whole new set of considerations as to investor suitability and other concerns that a normal b/d would have to address. If secondary market distribution was to be

permitted, I believe the Commission would need to implement a whole new set of regulations governing same, or, by reference, include existing regulations for b/d's selling municipal securities to individual investors. I see no issue if the loan is participated out to subsequent Qualified Providers.

14. Under the proposed definition of "Municipal Issuers," the exemption would apply to conduit transactions involving obligated persons—i.e., the issuance of municipal securities by a municipal entity to finance a project to be used primarily by a third-party obligated person, such as a non-profit hospital or private university. Are there reasons the exemption should not apply with respect to obligated persons? If so, why not? If the exemption should apply, should the Commission impose additional or different conditions concerning those transactions? Should the exemption be conditioned on additional or different disclosure requirements for transactions involving obligated persons? Please explain.

#### RESPONSE

I personally have not done any financing for an obligated person, but I do not see that there would be any significant difference from a municipal entity transaction so far as a direct placement of a loan is concerned.

15. Should the Commission, instead of granting the conditional exemption, require municipal advisors wishing to solicit Qualified Providers for direct placements on behalf of their Municipal Issuer clients to also register as brokers? For example, would a broker registration requirement provide necessary protections for investors, and if so, what specific protections would result from broker registration with respect to direct placement transactions? What would be the impact of such a requirement on municipal advisors operating in this space, in terms of both cost and competitive considerations? Please explain.

#### RESPONSE

Requiring an MA to register as a b/d would defeat the purpose of the exemption, to wit, allowing the MA to deal directly with the ultimate investor, a Qualified Provider. Once again, I do not see the concern for protection for the investor, a Qualified Provider which, by definition, is a sophisticated investor. I do not believe the exemption contemplates that the MA would seek to contact multiple secondary market investors in the first place. The Dodd-Frank Act specifically stipulates that regulation should not

be excessively burdensome to small Mas such as DIXWORKS LLC, and the costs in time and treasure for the independent MA to register as a b/d would be oppressive.

16. With respect only to direct placement transactions described above, what are the practical implications of the requirements resulting from broker registration, for example those related to any due diligence or other investor protection obligations that are not applicable to municipal advisors? What are the practical implications of the differences between broker obligations and municipal advisors' fair dealing obligations? Please be specific and limit the context of the response to direct placements in which a single institutional investor purchases the entire issuance.

#### RESPONSE

A b/d has no fiduciary duty to the issuer as does the MA. Separating the role of MA from b/d, if the same entity, is to me, an inherent mutually exclusive role and presents an unresolvable conflict of interest. As a fiduciary, the MA is obligated to place the issuer's interest ahead of all other interests. A b/d is not so obliged. I don't see that "fair dealing" is the issue - the role of fiduciary is.

17. Would the proposed exemption have a competitive impact—either positive or negative—on municipal advisors and/or brokers? For example, would this proposed exemption facilitate capital formation for smaller Municipal Issuers? Are the costs of engaging a broker for direct placements burdensome for smaller Municipal Issuers? Please explain.

#### RESPONSE

DIXWORKS LLC has facilitated smaller bank loans by having the issuer make contact and distribute invitations to bid along with disclosure documents such as audits, budgets, and capital plans. As an MA, DIXWORKS LLC has no contact with the Qualified Provider, but a MA fee is charged in accordance with the provisions of the Financial Advisory Agreement then in place. For a larger loan, the hiring of a Placement Agent b/d that would charge anywhere from \$8,500 - \$25,000 is an additional and not insubstantial cost for the issuer. This exemption would alleviate staff time for the issuer, expedite the lending process, and ultimately foster capital formation at less cost.

Thank you for your attention.

Dennis Dix, Jr., Principal

DIXWORKS LLC

241 Avon Mountain Road

Avon, CT 06001-3942

Ph: [REDACTED]

Fax: [REDACTED]

Toll-Free (CT): [REDACTED]

Cell: [REDACTED]

Email: [REDACTED]

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