



December 5, 2019

Secretary, Securities and Exchange Commission
100F Street NE,
Washington, DC 20549-1090

Re: File Number S7-16-19 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

Dear Secretary:

Thank you for inviting Piper Jaffray to submit this comment letter in response to the SEC's proposed order.¹ Piper Jaffray & Co. is a leading middle market investment bank headquartered in Minneapolis, Minnesota. We have a substantial and unique background in the subject matter of this letter because we are and have been for some time a market leader as a placement agent for municipal securities and as a municipal advisor, completing over 1,000 transactions as a placement agent in the past eight years as well as being involved in many placement transactions as a municipal advisor.

Since the demand for and benefits of private placements became more prevalent around 2011, we have completed more municipal private placements (according to Thompson) as a placement agent than any other broker dealer and have an extensive knowledge of the placement business and how to successfully complete placements for our clients. For the reasons discussed below, Piper Jaffray has serious objections to the proposed order. While we do not recommend proceeding with the proposed order in any form, we have also offered suggestions as to how the proposed order should be amended if the SEC determines it will proceed with this proposed order in some form.

General

In the proposed order, the SEC recognized that direct placements by municipal entities have been in use 'since 2009' and that demand has 'grown substantially over the past several years'. We agree that placements are used frequently in the municipal market, and in reacting to this usage, our in-house legal and compliance professionals early on advised our municipal advisors not to conduct activity that would make us a placement agent. Even though Piper Jaffray is a registered broker dealer, if deemed a placement agent while serving as a municipal advisor, we would be in violation of MSRB Rule G-23. This advice was based on the same factual and legal analysis described in the proposed order and based on SEC and court guidance as to what a security is and is not and what an entity can and cannot do without being deemed a placement agent. While there is some ambiguity in the guidance, it appears clear that an entity that conducts a broad solicitation of investors on a securities transaction would be deemed a placement agent.

¹ SEC Release No. 34-87204 (Oct. 2, 2019) 84 FR 54062 (Oct. 9, 2019).

Mindful of the rules in this area, we restricted the activities of our municipal advisors, specifically limiting our ability to conduct a broad solicitation of potential investors, at a cost to the firm in client relationships and profitability – while a number of municipal advisors were openly disregarding settled law and regulatory guidance by conducting placement agent activities including broad solicitations of potential investors (without being registered as a broker dealer) and creating placement agent platforms, with no push back from enforcement agencies. Now these same advisors are asking for permission to do what they have already done improperly for years, while others have carefully crafted compliance procedures to curtail this activity in accordance with regulatory guidance at a cost to their business. There are even a few smaller municipal advisory firms whose primary business model is built around nothing other than providing placement services to their advisory clients. We believe that regardless of what proposal is approved by the SEC, there needs to be an enforcement review relative to placement agent activity that has been conducted by certain municipal advisor firms who have clearly crossed the lines of established law and guidance.

Overview of the Market for Private Placements

We have heard statements by those advocating to allow municipal advisors to conduct placement agent activity that the placement market is a very limited marketplace that primarily consists of large bank purchasers who do not need investor protections and that private placement transactions are generally for simple and straightforward credits. These characterizations of the municipal private placement market are not true.

The market for private placements is very diverse and used by many different types of issuers and investors, for many different transaction types. Market participants can be large or small governmental entities, non-profit entities of all types (including health care systems, private colleges, senior living providers and others), special governmental districts such as community facility districts and for-profit entities who are issuing municipal securities under various private activity exemptions. The credit profiles of these transactions range from tax-secured general obligation bonds issued by governmental borrowers that are parity to existing highly rated debt to very complex assessment bonds, project finance bonds, and revenue bonds for private entities (non-profit and for profit) of a wide variety of sizes and credit complexity. The investors can be the very largest Wall Street banks but also include very small community banks, broker dealer entities, insurance companies, mutual funds, hedge funds and other types of investors. Piper Jaffray alone has completed placement transactions with more than 200 different investors.

Almost all of the private placements that we have completed and seen in the market would be characterized by our attorneys (and outside attorneys who we have consulted) as securities rather than as loans under securities laws. This characterization is supported by the fact that most of these transactions utilize standard bond documents drafted by bond attorneys that have the same types of small denominations and transferability features as bond transactions which makes these transactions easily broken into smaller pieces for secondary market distribution. While there is some ambiguity about when a transaction would be considered a loan rather than a security, we have been advised to consider the vast majority of our transactions as securities. The primary exceptions are when documents are drafted by lender's counsel and utilize more standard loan terms without transferability features or the

ability to break the issue into smaller denominations.

While some private placements utilize formal offering documents (or placement memorandums), most placements are presented to investors using a summary of terms along with supporting documents such as financial statements or other relevant documents. The complexity and details of these documents vary significantly based on the type of transaction and complexity of the credit features of the issue.

While we typically solicit a broad group of investors directly with transaction materials to identify private placement investors for a particular transaction, some others (including many of the municipal advisors who solicit investors on placement transactions) do so by sending out a term sheet on the transaction in the form of a request for proposals to a broad list of private placement purchasers. The amount of follow up conversation with investors, additional information provided and negotiation of terms can vary broadly based on the complexity of the transaction.

As a placement agent, when we complete a transaction, we follow the MSRB rules that require a filing under G-32, require a determination of whether a CUSIP number needs to be obtained under G-34 and potentially require trade reporting under G-14.

Overview of Concerns Regarding the SEC's Proposal

We are concerned about the ramifications of the SEC's proposed exemptive order and are surprised that the SEC even considered issuing an exemptive order for this activity. This order goes against the regulatory direction that the SEC itself created when it issued its Municipal Advisor Rule which created a clear separation between a municipal advisor's role and activities and those of an underwriter or placement agent.² If this exemptive order is issued, it seems to us that the Municipal Advisor definition would clearly need to be re-examined in order to assure a consistent approach for advisors and broker dealers who would both be approaching issuers to provide essentially the same service.

In our view, this exemptive order creates authority for a marketplace to develop in private placements with no investor protections, no disclosure or due diligence requirements and without adherence to many other rules and requirements (such as anti-money laundering review). These requirements for placement agents have been put in place to create a marketplace that is fair and devoid of fraud and bad actors.

While it is being argued that issuers will be afforded more options that might save on issuance costs by not being required to hire a separate placement agent, this exemptive order would not be beneficial to issuers. The order would encourage municipal advisors to provide advice that is potentially conflicted around placements. It would create an environment where issuers would be told by their advisors that the advisor will handle any placement activity and issuers would never hear from other firms who may have more experience, be more qualified and have broader investor connections and relationships.

We believe that the SEC needs to consider that the genesis of this proposal is not

² See Section 15B(e)(4) of the Securities Exchange Act of 1934; SEC Release No. 34-70462 (Sep. 30, 2013).

really about helping issuers or a service required to meet a fiduciary duty of an advisor. Rather, this request is really motivated by a goal of certain municipal advisors who are not broker dealers to expand into a new product line and create an additional revenue source. As noted above, many of these firms have already made this product expansion and are already acting as placement agents and are now looking for permission to do what they are already doing.

Investors are Not Well Served by the Proposed Order

Allowing municipal advisors to directly solicit investors as a placement agent while having none of the broker dealer requirements relative to investor and market protections is a bad idea, does not serve investors well and is likely to create negative market consequences. Placement agents have explicit due diligence requirements under long standing SEC rules as well as requirements regarding disclosure of relevant credit information. Broker dealers have many other requirements related to placement agent activities including requirements to know their investor customers, conduct suitability assessments and complete anti-money laundering reviews. Investors who are being solicited by a third party with a potential investment opportunity (particularly for a complex credit) need to have comfort that the entity soliciting them has done an appropriate level of due diligence and is accurately describing the transaction and its key credit features regardless of whether they are receiving a formal offering document or a summary of terms and supporting information.

The SEC made clear the need for appropriate due diligence and disclosure on a municipal placement transaction in its complaint filed relative to the Rhode Island Commerce Corporation 38 Studios transaction. It would be completely counter to the SEC's views and actions on that transaction to allow municipal advisors to broadly solicit investors on placement transactions with only the requirement to inform the investor that the advisor exclusively represents the issuer. The SEC's proposed order would allow municipal advisors to solicit broadly to small investors (\$50 MM in assets is a very small entity that typically has very limited expertise in municipal securities), with no requirement to conduct due diligence, no requirement to do any customer review around suitability or money laundering, and with no rules or requirements around what is being disclosed. This approach combined with the wide level of complexity of different issues being offered is almost certain to create problems and problem transactions for investors. In addition, there is nothing preventing these placement transactions with no initial diligence review, initial disclosure requirements or no continuing disclosure requirements from being sold in the secondary market.

The argument that municipal advisors have a fair dealing obligation relative to investors and a duty of care to issuers even with an optional contractual duty to undertake disclosure assistance to an issuer is not a sufficient replacement for the explicit duties to investors required of broker dealers serving as placement agents. We do not think that whatever duties there are under federal securities laws related to information prepared by a municipal advisor provide the same protection to investors as the affirmative due diligence obligation of a placement agent, who has to vet the instrument being sold in its totality, not just the limited documents accompanying the sale. Under the proposed order, there is no obligation for municipal advisors to know or do any review of the investors with whom they interact.

We believe investors need to have some level of comfort that an entity soliciting them with a placement opportunity has conducted a reasonable diligence process and that investors can rely on the accuracy and completeness of the information they are being provided regardless of whether a formal offering document has been prepared. Our experience is that many potential placement investors, including those with well over \$50 million in assets, do not have extensive knowledge of complex municipal transactions and do not necessarily know what to ask or look for. While some placement investors use purchaser's counsel, this tends to be the exception rather than the rule. Many smaller purchasers may not have the proper systems, analytical ability or due diligence procedures to protect themselves from entities that are providing only minimal information and have no obligation to the investor. Broker dealers must conduct a suitability analysis regardless of the size or sophistication of the investor. Municipal advisors under the proposed order will have no such obligation.

The SEC suggests that investor protection can be addressed by a simple boilerplate one sentence statement to be provided by the advisor to the purchaser. Yet MSRB and FINRA suitability rules require far more of a registered broker dealer placement agent, even for highly sophisticated purchasers. It would be quite bizarre if a municipal advisor must obtain a single written statement from the investors while a broker dealer performing the same activity must assess the suitability of the transaction for at least one customer; assess customer specific suitability under G-48 or obtain an affirmative written SMMP certification with three specific acknowledgments; satisfy itself respecting potential money laundering; verify the exceptions created under SEC Rule 15c2-12(d); file a notice to EMMA under MSRB Rule G-32; report the trade and obtain a CUSIP in some cases among other requirements. The conditions proposed by the proposed order are not 'consistent with the established framework for the institutional investor exception' as the proposed order suggests.

The proposed order creates a potential gap in secondary market information. Investors in other public debt of the issuer, assuming the issuer has not entered into a new continuing disclosure undertaking after the compliance date of the recent SEC Rule 15c2-12 amendments³, might never be made aware of the issuers' new placement obligations if a municipal advisor took the place of a broker dealer placement agent. Issuers with outstanding public debt would have an avenue to completely avoid disclosure of new placement activity on the advice of their municipal advisors, counter to the intent of the recent amendments to SEC Rule 15c2-12.

Further, dually registered broker dealers would now have an incentive to switch all their placement agent business into this low cost, non-regulated (with respect to investors) model, since they no longer have diligence, gatekeeping and suitability liability to purchasers while acting in this capacity.

Issuers are More Vulnerable with the Proposed Order

We are concerned that issuers would not be well served by this exemptive order either. Because no placement agent would have a legal duty to perform due diligence and suitability, issuers would be more vulnerable to anti-fraud claims by purchasers under state and federal law. As noted above, many placement issues that are completed are for highly complex transaction types and for complex credits. Without a placement agent that has duties to investors, issuers would directly bear greater risks of investor claims of fraud or lack of

³ See 17 CFR Section 240.15c2-12(b)(5)(i)(C)(15) and (16); SEC Release No. 34-83885 (Aug. 20, 2018).

disclosure.

We are concerned that issuers will always hire their long-standing municipal advisor for placement activity whether or not the advisor is qualified or is the best qualified entity. Issuers will be told by their advisors that the advisor can handle this activity and the issuer does not need to consider a separate placement agent. Issuers will not be advised or allowed to compare the qualifications of their advisor to provide this activity with those of others including broker dealers who might have significantly more experience in providing placement agent services. Issuers will be told that adding a separate placement agent will result in additional costs but the advisor will likely charge additional fees for providing this activity.

We know that this is what will happen and is how municipal advisors will act in connection with placement activity because it is what is already happening. Those municipal advisors who have already crossed the line into providing placement agent services are very protective of this activity as it relates to their clients. Our firm has been told by a number of different municipal advisory firms that we are not allowed to approach their issuer clients to talk about placement activity because that is a service that they are already providing. We are told this with an explicit or implied threat that we will be “black-listed” from that firm’s clients if we solicit placement agent services. This conflict of interest for issuer’s municipal advisors around placement agent activities does not add to issuer choices and does not serve issuers well.

Piper Jaffray, like a number of other broker dealer placement agents, has a ‘private placement desk’ that is charged with staying in constant contact with placement investors and lenders and has very broad investor relationships. We have found that this approach of direct outreach to a broad investor base by dedicated personnel and this commitment to the placement business creates better results for issuer clients. This contrasts with the approach of most municipal advisory firms (and that of a number of other broker dealers) who simply try to maintain a list of investors and send out an “RFP” for proposals from investors. While this more simplified approach may work well on more straightforward transactions, it does not usually create the best result for an issuer on more complex transactions. We know from experience that issuers working with municipal advisors who conduct placement agent activities will never hear about and understand the difference between approaches, experience and qualifications because their advisor will not provide this information. At the same time, if municipal advisors were to use the exemptive order to create placement desks and broadly market more complex transactions, then all of the concerns that we raise above about investor protections are brought to the forefront.

The Regulatory Regime for Placements Works Under Current Law and Rules

The market for placements as it relates to municipal advisors and placement agents is not broken and there is no urgent need for changing it. As a practical matter, many placements are completed in the market without the need for a placement agent who is soliciting investors because issuers are working with either local banks who they already know or are working with banks who have approached them with proposals. Municipal advisors are able to work on these transactions and assist issuer clients without crossing over into placement agent activities. We have worked on many transactions as a municipal advisor that fall into this

category, particularly for smaller issuers.

For those transactions where an issuer requires or would benefit from a broader solicitation of investors, we believe that the placement agent should be required to be a broker dealer. We do not believe that the addition of a placement agent adds significantly to the issuance costs to the issuer. In fact, we believe issuers often pay a higher cost in terms of interest rate and restrictive covenants without the use of a broker dealer who can make a broad investor solicitation. The separation of duties between a municipal advisor who advises the issuer and a broker dealer placement agent who broadly solicits investors provides appropriate protections for both issuers and investors and does not unduly complicate placement transactions. This approach is being used successfully already on many transactions.

Suggestions on How the SEC Could Change its Proposal

While, for all of the reasons stated above, we strongly recommend that the SEC does not proceed with this proposed exemptive order in any form, we have the following thoughts on how the order should be limited and conditioned if the SEC does decide to proceed. These limitations would not eliminate but would meaningfully reduce the concerns that we have laid out above.

- The exemptive order should make clear that any municipal advisor who solicits investors on a municipal securities transaction must be registered as a broker dealer unless they meet the exceptions and conditions below. It should be made clear that solicitation includes direct calling of potential investors and the sending to investors of transaction information, including sending these materials in the form of an RFP.
- The exemptive order should only allow municipal advisors to solicit placement activity in which the purchaser (or Qualified Provider) is a bank, subject to the further restrictions below.
- The exemptive order should allow municipal advisors to solicit any bank (of any size) only for placements of tax-secured general obligation bond issues of municipal entities (which are mostly stronger credits and are simpler transaction structures).
- The exemptive order should allow municipal advisors to solicit only banks with over \$10 billion of assets (a group of the largest banks who are frequent purchasers of placements) to be a purchaser of placements for non-general obligation bond issues of municipal entities (which are more complex and potentially much riskier credits).
- The exemptive order should not provide any exemption from broker dealer registration for municipal advisors working on transactions with conduit issuers and with non-municipal obligors. These are clearly more complex credits and function more like corporate credits and should be treated the same as corporate placement issues from a regulatory standpoint relative to broker dealer registration.
- The exemptive order should require any municipal advisor who solicits placement business to provide the investor with a written disclosure statement. This statement should inform the investor of the various protections that a broker dealer placement agent provides to the investor that are not provided by a municipal advisor, including disclosure that a municipal advisor does not have an obligation

to conduct a suitability review and does not have any statutory obligation to conduct due diligence or provide full and complete disclosure on the transaction. This disclosure statement should also inform the investor that it has the right to require that a broker dealer placement agent with disclosure and due diligence obligations to the investor be included in the transaction. A copy of this disclosure statement to the investor should also be required to be sent to the advisor's issuer client.

- The exemptive order should require an additional disclosure statement to the municipal issuer client that the municipal advisor, by serving as a placement agent and soliciting investors is creating the potential for a conflict of interest. This statement should also inform the issuer that it may want to consider hiring a broker dealer placement agent who has no limitations on its ability to solicit investors and has responsibilities to investors that certain investors may want or require. The exemptive order should proscribe that an advisor may not tell an issuer that the services of a placement agent are redundant, or discourage issuers from using a placement agent.
- The exemptive order can clarify that a municipal advisor can work with an issuer on a placement transaction without becoming a placement agent if the advisor does not solicit investors (typically when the issuer is working with banks or other investors who the issuer already has a relationship with or with investors who have approached the issuer without being solicited).
- In addition to the exemptive order, the SEC should assure that other rule changes are made that would require that advisors report transactions to EMMA if no broker dealer placement agent is involved.

We believe that these limitations to the exemptive order would create the most appropriate balance between allowing issuers and municipal advisors to have some flexibility to operate without a broker dealer placement agent on more straightforward types of transactions while still maintaining the broker dealer regulatory regime with its investor protections for investors who should have those protections and for transactions of more complexity where those protections are more important for both investors and issuers.

With regard to why we are recommending that banks be treated differently from other investors, we see banks as having somewhat different structures and credit approaches than other investors. More so than other investors, banks are both lenders as well as purchasers of securities and they typically have well defined credit review processes. More so than other investors, banks are more likely to purchase private placements with the expectation of holding to maturity rather than trading the issue in the secondary market.

With regard to smaller banks, our experience demonstrates to us that most do not have significant experience in understanding the wide swath of different types of municipal issues and credits that are sold in the market. As a result, we believe that all except the larger banks (over \$10 billion in assets) should have investor protections when purchasing a placement from an entity that is soliciting them who is not part of the broker dealer regulatory scheme. These smaller banks have the ability to work directly with an issuer that they are familiar with on any municipal issue but should not be solicited by a municipal advisor with no regulatory obligations to them other than for general obligation credits.

Summary & Conclusion

For the various reasons stated above, we believe that the SEC should not proceed to issue its proposed exemptive order to allow municipal advisors to conduct placement agent activities. If the SEC does decide to proceed with some form of exemptive order, we believe that they should limit the order to the activities that we have suggested above.

If the SEC does proceed with an exemptive order in any form, there will be a need to re-examine a number of regulatory rules to assure a consistent approach to placement services between municipal advisors and placement agents. This would include potential re-examination and changes in MSRB Rules G-34, G-32 and G-23. It would likely also include a review of the SEC's municipal advisor definition and rule.

If the SEC proceeds with this exemptive order, it is creating a blurring of the lines between municipal advisor activity and broker dealer activity and opening the door to a variety of questions about the distinction between these two different roles. From a practical matter, this exemptive order would encourage (and potentially require from a competitive standpoint) many broker dealers, including ourselves, to perform placement activities by engaging with issuers more often as a municipal advisor rather than as a placement agent. The SEC should think seriously about whether this is the direction they want for the municipal market.

We appreciate the opportunity to offer our comments and would be happy to discuss our thoughts in more detail at any time.

Sincerely,



Frank Fairman
Managing Director
Head of Public Finance



Rebecca Lawrence
Managing Director
Associate General Counsel
Public Finance & Fixed Income

Appendix A – Responses to Specific Questions Asked in the Request for Comment

II. Responses to specific questions.

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? Please explain.

As noted above, we believe that the exemptive order creates significant concerns and issues and, at a minimum, should be significantly restricted as we have described above.

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

We believe that broad solicitation of investors by municipal advisors and the potential for creation of placement businesses and desks by municipal advisors is an authority that should not be granted. We do not have a concern with municipal advisors interacting and negotiating with potential private placement investors on behalf of their issuer clients but solicitation of investors with no regulatory responsibilities to those investors should not be allowed or be very limited.

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

As we have noted above, the SEC's definition of Qualified Providers as any entity (other than an individual) with assets of \$50 MM or more is far too broad and includes tiny institutions that have very limited experience and knowledge of municipal securities. Trying to assure that these small investors are qualified by the use of an affirmative statement on the investor's expertise that would be buried in an investor letter provides little comfort that the investor truly understands the transaction.

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

No, for the reasons discussed above. Credit unions are not significant purchasers of placements and municipal bonds and are typically smaller entities with less particularized expertise on the nuances of various municipal credits. Of the many placements that we have completed as placement agent, a credit union has never been the investor.

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.

No, for the reasons discussed above. We do not believe that investors, other than the largest investors who have specific municipal expertise and credit analysts, will understand the ramifications of receiving an investor representation letter that discloses that the municipal advisor is not representing them and that the investor is capable of evaluating the risks of the transaction. As a practical matter, any investor who pushes back and asks for a broker dealer placement agent to be added to the transaction will either be required to pay the fees of that placement agent or will be told that their proposal for purchase will not be accepted.

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?

As noted above, we believe that if the Proposed Order is approved in some form, only banks having minimum asset size of \$10 billion should be allowed to purchase placements where a municipal advisor is soliciting investors and acting as the placement agent. (We did describe a possible exception for general obligation bonds that would allow smaller banks to be purchasers of these obligations as well).

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.

We believe that solicitation of investors is the key element of the legal analysis of when an entity is acting as a placement agent. We believe that municipal advisors should not be allowed to solicit investors on placements. We do believe that municipal advisors being involved on behalf of their issuer client in negotiation of terms directly with an investor (who has not been solicited by the municipal advisor) or receiving transaction based compensation does not constitute placement agent activity and should be allowed. It would be helpful if the SEC would help clarify both of these points as guidance to what a municipal advisor can do in connection with a private placement without becoming a placement agent.

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

No, as described in our comments above.

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

Yes, in the manner that we have described above.

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

If the SEC moves forward with an exemptive order, we have described above the proposed conditions that we believe should be required.

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.

We believe that a municipal advisor should be required to provide a written disclosure statement to Qualified Providers that it may elect to engage a registered broker dealer. This disclosure statement should describe the various key items that a municipal provider is not required to do to protect the investor, including a suitability review, a legal obligation to conduct complete due diligence, and a statutory requirement to provide full and complete disclosure.

We also believe that the municipal advisor should be required to provide a disclosure statement to its issuer client that states that serving as a placement agent creates the potential for a conflict of interest if the advisor becomes involved in the solicitation of investors and that the issuer may want to consider the use of a broker dealer as a placement agent who has additional duties to investors that investors may require.

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.

We do not believe that the exemption should be allowed for transactions with multiple investors. As a practical matter, most placement transactions involve a single investor. Allowing multiple investors only puts greater emphasis on the concerns that we have raised about allowing an exemption at all.

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?

There are no limitations relative to the ability to resell most placement transactions in the secondary market. As we have noted above, when banks are the investors, it is typically less likely that the transaction will be resold within a short timeframe. Certain private placement investors do purchase these transactions with the specific intent of reselling them into the

secondary market at a profit either in their current form or in a restructured form.

We believe that the potential for secondary market reselling is an important reason not to approve the exemptive order. The exemptive order creates the potential for secondary market selling without any restriction of transactions (including complex and lower quality credits) that have no initial disclosure requirements, where no party has any initial due diligence obligation, and where there are no on-going secondary market disclosure requirements.

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.

We believe that the exemption should not apply to transactions involving obligated persons that are not municipal entities. Obligated persons include a wide variety of types of entities including non-profit and for-profit entities. Many obligated person entities are complex and lower grade credits. These entities are typically more like corporate entities than they are like municipal entities (and, in fact, sometimes are be corporate entities). Our assumption is that the SEC is not proposing to extend an exemptive order providing relief from broker dealer registration on corporate transactions and as a result we do not believe that an order to provide relief on municipal conduit transactions where the borrower is a corporate entity or is a similar type of entity is appropriate.

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.

Unless the SEC wants to go back on the regulatory regime that creates separate roles and rules for municipal advisors who represent issuers from broker dealers who provide underwriting and placement agent services, we believe that only broker dealer entities should be allowed to solicit investors to assure that investors are appropriately protected and to assure a fair marketplace. Municipal advisors are welcome to register as broker dealers (and, in fact, many broker dealers do provide municipal advisory services as registered municipal advisors). However, broker dealer registration still does not allow an entity serving as a municipal advisor to also serve as a placement agent to municipal issuers. If this is a desired result, that would require a different discussion on changes to SEC and MSRB rules.

From a practical standpoint, municipal advisors (particularly those who are not broker dealers) have created a specific business model around contrasting their role from that of a broker dealer who also works with investors. We are not sure why the SEC would be concerned about the competitive impact on municipal advisors of not permitting them to become placement agents. Non-broker dealer advisors have the option to register as broker dealers and to provide placement services separate from the advisory services. Broker dealers who work as municipal advisors are not able to serve as placement agents currently for their advisory clients.

The only cost impact that we see is the cost to those municipal advisors (including both dealers and non-dealers) who are already serving as placement agents in violation of existing law and rules.

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.

As we have stated in several places in our comment letter, the practical implication is that a broker dealer has specific obligations when serving as a placement agent that a municipal advisor does not have. These obligations include a suitability assessment of the investor, a due diligence requirement, a statutory requirement to provide full and complete disclosure, a requirement for an anti-money laundering review and various reporting requirements for transactions.

These requirements may somehow seem less important when a municipal advisor is soliciting one of the largest banks relative to a high credit quality, simple transaction structure like a general obligation bond. These requirements become much more important when smaller investors with less credit resources are being approached on complex transactions like a start-up development district or a stand-alone senior living project with occupancy problems and little cash or a small rural hospital that is losing money. Many placement transactions are being done for these more complex credits. Investors in these transactions (on the initial sale or in the secondary market) deserve the investor protections of the broker dealer regulatory regime.

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

The proposed exemptive order would create a competitive advantage for municipal advisors who would be able to vertically integrate their business to add placement agent services. You would see municipal advisors work to build their placement capabilities and to create

placement desks. You would also see more broker dealers, particularly those in the middle market, pursue more advisory relationships as they would likely convert most of the placement agent business they currently conduct to an advisory model.

Smaller municipal issuers would not be impacted meaningfully one way or the other. As a practical matter, smaller municipal issuers already have strong access to capital at a reasonable cost as well as choices between different service providers including both underwriters and advisors. The argument that smaller municipal issuers would somehow have better access to capital or would be able to have lower financing costs is used by proponents of the exemptive order, but as a firm that works with many smaller issuers, we do not believe this argument holds water.