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December 9, 2019

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Ms. Vanessa Countryman
Secretary
U.S. Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549

Re: File No. S7-16-19, Notification of Proposed Exemptive Order

Sent electronically to rule-comments@sec.gov

Dear Ms. Countryman:

The following comments are submitted to the Securities and Exchange Commission ("SEC" or the "Commission") by the National Association of Bond Lawyers (NABL) relating to the proposal for exemptive relief published October 2, 2019 contained in Federal Register Release No 34-87204; File No. S7-16-19 (the "Proposed Release"). In the Proposed Release the SEC proposes to grant exemptive relief, subject to certain conditions, to permit municipal advisors registered with the Commission under Section 15B of the Exchange Act of 1934 (the "Exchange Act") to engage in certain limited activities in connection with the direct placement of municipal securities without registering as a broker under Section 15 of the Exchange Act. The comments were prepared by an ad hoc subcommittee of the NABL Securities Law and Disclosure Committee (comprising those individuals listed on Exhibit A) and have been approved by the NABL Board of Directors.

NABL appreciates the Commission's intent to provide clarification with respect to the application of current rules and regulations to the direct placement of municipal securities by issuers. As the Commission considers the Proposed Release and the comments the Commission will receive from broker-dealers, municipal advisors, issuers, and others, NABL respectfully provides the following comments and observations:

1. The proposed exemption would permit registered municipal advisors to solicit investors so long as (1) those investors meet the definition of "Qualified Provider" and (2) the solicitation is in connection only with a potential direct placement of an entire issuance of municipal securities with a single Qualified Provider by the registered municipal advisor's issuer client. NABL observes that "entire issuance" is not defined in the Proposed Release. Failure to define "entire issuance" could lead to confusion as an issuer may seek to issue multiple series of obligations on the same date or within a particular time period. Under federal tax law, two or more series of bonds sold not less than 15 days apart, pursuant to a common plan of finance, and payable from the same source of funds, are treated as a single issue for federal income tax purposes. (See Treas. Reg. 1.150-1). Would two or more series of bonds that are expected to be treated as a single issue for federal income tax purposes need to be placed with a single Qualified Provider?

There are also instances where two or more series of bonds sold on the same date are not treated as a single issue for tax purposes. Such bonds may have the same source of repayment but different attributes (e.g., federally tax-exempt and taxable), or in some other cases, the multiple series may have similar attributes but different sources of repayment.

How should a municipal advisor treat such multiple series of obligations sold/priced on the same date? Does the difference in source of repayment or attributes affect the analysis? NABL encourages the Commission to clarify what an “entire issuance” means for purposes of the proposed exemption and that such clarification be based upon the actual debt obligations offered to the Qualified Provider by means of a single direct placement.

2. Related to the above, the proposed exemption would require an entire issuance to be placed with “a single Qualified Provider.” It is common for lenders to participate with another lender or lenders to submit an offer to purchase an entire issuance of municipal securities. Sometimes these participant lenders are identified in the lead lender’s proposal, and other times they are not. Additionally, lenders typically retain the right to grant participations to affiliates or other lenders after the issuance of the debt without notice to or the consent of the issuer. Typically, only the lead lender is a party to any of the documents and is the sole registered owner of the debt instrument. Was the requirement in the proposed exemption that the entire issuance be placed with a single Qualified Provider intended to exclude such traditional participations?

3. In Question 13 of the Proposed Release, the Commission asks whether the type of direct placement contemplated by the Proposed Release is typically resold into the secondary market. In our experience, resale of such direct placements into the secondary market is not common. It is common in direct placements of municipal securities for the issuer to obtain a certificate of the Qualified Provider that represents, among other things, that the obligations are being purchased for its own account and investment and that the Qualified Provider has the present intent of holding the obligations until maturity. That being said, it is not uncommon for the purchasing entity to transfer the obligations to an affiliate or subsidiary and to further retain the right to transfer the debt in the future to a qualified institutional buyer or accredited investor. Depending on the Commission’s final exemptive relief, perhaps this transfer provision would be revised to refer to “Qualified Provider.”

We appreciate the Commission’s efforts to address confusion in the marketplace related to the solicitation of proposals for the direct placement of municipal securities and we hope the Commission finds NABL’s comments useful. If NABL can provide further assistance, please do not hesitate to contact Jessica Giroux, Director of Governmental Affairs in our Washington, DC office at [REDACTED] or at [REDACTED].

Sincerely,



Richard J Moore
President, National Association of Bond Lawyers

APPENDIX A
NABL SECURITIES LAW AND DISCLOSURE COMMITTEE AD HOC
SUBCOMMITTEE MEMBERS
RELEASE NO. 34-87204; FILE NO. S7-16-19

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