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NAMA
NATIONAL ASSOCIATION OF MUNICIPAL ADVISORS

December 9, 2019

Secretary, Securities and Exchange Commission
100 F 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

Via E-Mail

Ladies and Gentlemen:

First River Advisory L.L.C. (First River Advisory) is an independent municipal advisor (MA) which is not affiliated with any securities broker-dealer. First River Advisory is a small firm, with only two Municipal Advisor Representatives.

First River Advisory specializes in fashioning capital financing and debt management solutions for hospitals and other health care organizations. Most of our clients have been Obligated Persons rather than Municipal Entities. Also, most are smaller organizations and/or exhibit weak credit quality. Because access to capital is frequently an issue, these are the sorts of clients which would benefit the most from this exemptive order.

First River Advisory is highly supportive of the Commission's proposed exemptive order which would allow registered MAs to participate in direct purchases by banks and other institutional investors of Municipal Securities issued by or on behalf of its clients. The framework and limitations are generally acceptable to us. We believe that this exemption would promote our ability to carry out our statutory responsibilities, and enable us to represent our clients even more vigorously.

We offer the following comments for the Commission's consideration. We have not responded to some of the questions posed by the Commission because either they do not apply to our practice or we are indifferent.

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.

In general, yes. Using today's common parlance, having this exemptive order would enable us MAs to "do our jobs." We MAs' Municipal Issuer clients would have the benefit of knowledgeable MAs on their sides. A broker-dealer serving as placement agent would not have the same fiduciary duty.

Broker-dealers contend that investors are better protected by their involvement. We beg to differ. When First River Advisory has served as MA in connection with negotiated public offerings of Municipal Securities, we have had to require (by inclusion among the scope of services specified in requests for proposals) that broker-dealers serving as underwriters personally conduct *bona-fide* due diligence processes and not delegate them to underwriters' counsels. We would fully expect Qualified Providers to capably conduct their own due diligence.

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

No. The proposed framework achieves a good balance between enabling us MAs to "do our jobs" and protecting Qualified Providers (who, by their definition, would not seem to need much protection).

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

Yes. We believe that the Commission's using a standard "tried-and-true" definition is highly appropriate in this case.

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

No comment.

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.

The condition that MAs disclose to Qualified Providers that they are representing the interests of Municipal Issuers is fully consistent with our statutory duty. Therefore, we do not perceive this condition as an issue at all.

The condition that Qualified Providers represent that they are capable of evaluating transactions and their risks is acceptable as well. We have observed that "big boy/girl" letters customarily delivered by Qualified Providers in these sorts of transactions already contain certifications of this nature. We suggest that the Commission consider adding a certification that Qualified Providers have financial resources to withstand losses be added in situations where Municipal Issuers do not meet certain credit quality standards such as lack of investment-grade ratings on the Municipal Securities to be purchased directly or on parity debt instruments.

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?

Hospitals are capital-intensive, so their debt issuances tend to be larger than other Municipal Issuers. Further, as individual stand-along hospitals continue to coalesce into large systems, the principal amounts of their debt issuances will become even greater. If a direct purchase by a Qualified Provider of Municipal Securities were to represents the optimal solution for a Municipal Issuer, any limitation on the principal amount could be a deterrent or increase the cost.

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.

MAs should not be precluded from all solicitation activities. Authorization to solicit Qualified Providers would be quite sufficient to enable us to arrange a direct purchase of our clients' Municipal Securities. We have absolutely no interest, nor are we qualified, to solicit any other type of investor.

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

Yes. We would be able to represent our Municipal Issuer clients very effectively even with these conditions.

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

No. The proposed conditions as written would not constrain our ability to represent our Municipal Issuer clients very effectively.

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

Not so much an additional condition, but we recommend to the Commission that we MAs be authorized to apply for CUSIP numbers (as specified in MSRB Rule G-34) if requested by the Qualified Provider. While banks typically prefer avoiding CUSIP numbers, other institutional investors usually prefer that they be assigned.

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 would have no objection to disclosing to Qualified Providers that they may elect to engage a placement agent or some other intermediary. However, we would insist on maintaining the latitude to point out to them that doing so would represent an additional cost which could put them at competitive disadvantage to Qualified Providers which would not impose such a requirement.

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 believe that the requirement of a single Qualified Provider is unnecessarily limiting. We recommend that the Commission permit direct purchases by "one or more related or affiliated

Qualified Providers." We have observed cases where issues of Municipal Securities are purchased directly by, say, a bank and its affiliated non-bank finance company, or by a high-yield fund and a state fund in the same mutual fund family. All of the related purchasers would still have to be Qualified Purchasers.

In some cases, a direct purchaser can provide a better deal to the Municipal Issuer if it were to divide its purchase among "one or more related or affiliated Qualified Providers" as noted above. To implement this benefit, the "entire issuance of Municipal Securities" would need to be split into two or more series. We urge the Commission to permit the direct purchase of one or more series of Municipal Securities linked by a common plan of financing, using the same standard that tax attorneys apply to determine if multiple series of Municipal Securities are a "single issue for tax purposes."

Having the flexibility to have multiple Qualified Providers directly purchase Municipal Securities would be important to those Municipal Issuers which maintain a regular "bank group" among which credit facilities are commonly divided. Over-doing competition among members of a bank group could threaten its stability and produce other disadvantages to the Municipal Issuer.

> *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?*
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> No comment.
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> *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 strongly urge the Commission to apply the exemption to Obligated Persons. We believe that no distinctions would be in order – Obligated Persons should not be treated any differently than Municipal Entities. Certainly both types of Municipal Issuers should be entitled to the same disclosure standards. Consistent with our "parity" orientation, we recommend to the Commission that MAs be required to apply the full fiduciary duty standard (both duty of care and duty of loyalty)

to their Obligated Person clients when representing them in connection with direct purchases of Municipal Securities. First River Advisory routinely applies this standard to Obligated Person clients by adding applicable provisions to our agreements.

> *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.*

Short answer, no. Requiring MAs to register as brokers defeats the purpose of this proposed exemptive order. On many levels, if it would have made sense for MAs to register as brokers for this purpose, many more would have already done so.

> *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.*

No comment.

> *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.*

No comment.

We appreciate the opportunity to deliver these comments.

Cordially,