

December 9, 2019



Ms. Vanessa Countryman, Secretary
US Securities and Exchange Commission
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Re: Notice of 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, File No. S7-16-19

Dear Ms. Countryman:

D.A. Davidson & Co. (“D.A. Davidson”) appreciates the opportunity to provide comments on the SEC’s “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” (the “proposed relief”).

D.A. Davidson is registered as a broker dealer and municipal advisor and actively participates in the municipal markets as an underwriter or municipal advisor and we maintain an active trading desk that provides liquidity to the municipal markets. D.A. Davidson has reviewed and is generally supportive of the comment letters filed by SIFMA, BDA and ASA with respect to this matter and we incorporate those by reference. However, we believe this proposed relief will fundamentally change the municipal marketplace by permitting an unregistered broker dealer to engage in activities requiring registration. We offer the following:

Investor Protection

As the SEC is well aware, municipal advisors, and specifically non-dealer affiliated municipal advisors were generally unregulated until the passage of Section 975 of Title IX of the Dodd-Frank Wall Street Reform and Consumer Protection Act (“Dodd Frank”). Dodd Frank required the SEC to promulgate rules regarding who must register as a municipal advisor and empowered the SEC and MSRB to engage in rulemaking regarding municipal advisor activities. In contrast, broker dealers have been regulated for several decades and it has been clear that in order to engage in private placement activities you must be registered as a broker-dealer under the Securities Exchange Act of 1934 (“Exchange Act”).

This proposed relief without the proper governing construct opens the entire municipal securities industry to unnecessary market and reputational risk. Broker-dealers are subject to a long-standing and comprehensive regulatory regime that includes suitability requirements and “know your customer” obligations, the maintenance of minimum capital requirements, fair commission and pricing standards, proper custody of customer assets, as well as rules governing sales practices and communications with investors. All of these rules and regulations have been adopted over the years in order to establish

minimum standards of conduct in furtherance of investor protection. This proposed relief does not appear to require non-dealer municipal advisors to operate under any similar regulatory regime.

Furthermore, as a broker dealer we are subject to routine examinations by the SEC and FINRA. For example, our firm is routinely the subject of an annual FINRA financial and operations examination, an annual municipal securities examination and a bi-annual sales practice examination; whereas a non-dealer municipal advisor is subject to an examination by the SEC approximately every 7 years. These frequent examinations have helped the industry to mature and achieve certain best practices, to identify and remedy areas that are in need of improvement and to engage in discussions with examination staff on rulemaking initiatives.

Additionally, the proposed relief defines “Qualified Provider” to include “investment adviser...or any other institution with total assets of at least \$50 million.” We believe that this definition increases the likelihood that a municipal private placement could end up ultimately in the hands of retail investors and or be re-sold in a secondary market transaction with little or no investor protections afforded to that product or transaction.

There has always existed and continues to grow, a concern about liquidity within the municipal market. Municipal Advisors do not provide liquidity to the market. In addition, statistics show broker dealers are reducing their risk positions within the non-placement market. Maintaining a reliable, efficient market for investors to make investment decisions is at the core of investor protection, and liquidity is a key component.

Disclosure and Dissemination – SEC Rule 15c2-12 and MSRB Rule G-32

As the SEC made clear from the MCDC Initiative, there were concerns regarding municipal issuer disclosures not being kept current. The industry as a whole, has made significant progress to educate municipal issuers on appropriate, adequate and timely disclosure practices. In addition, underwriters have improved their due diligence process and documentation of an issuer’s compliance with their disclosure obligations. The MSRB and FINRA published three separate Notices¹ discussing a broker dealer’s role in these types of transactions and their obligations under various laws, rules and regulations, depending on the type of transaction. While many of the private placements are exempt from 15c2-12 notice filing, broker dealers may not be exempt from filing a Form G-32 and likewise, when a private placement refunds outstanding general obligation bonds, broker dealers have been conditioned to search for or request an issuer file material event notice.

The proposed relief would alleviate some of if not all of the conditioning the market has experienced, because a broker dealer (procedurally acting as an underwriter) is not involved in the transaction. In addition, your proposed relief does not appear to require non-dealer MAs to perform any of these

¹ The following Notices are referenced here: MSRB Notice 2011-52 – Potential Applicability of MSRB Rules to Certain “Direct Purchases” and “Bank Loans”, FINRA Regulatory Notice 16-10 Direct Purchases and Bank Loans as Alternatives to Public Financing in Municipal Securities Market, AND MSRB Regulatory Notice 2016-12 Direct Purchases and Bank Loans as Alternatives to Public Financing in the Municipal Securities Market.

functions on placements. As such, how will the market become aware of these placements and how will investors be able to assess the financial viability of an issuer without such disclosures?

As a result of the point explained above, disclosure events and required items are more likely to be missed and investors of related Issuer securities may not have access to the placement information.

This has the potential to incur a significant “tail-wind” regarding the recent amendment requiring notice of “Incurrence of financial obligation of the obligated person...” since the requirement to perform this due diligence impacts underwriters of primary issuances of municipal securities – and not municipal advisors. How can an underwriter or even a trading desk be expected to perform adequate due diligence when such matters are not of public record?

Savings to Issuers

The SEC nor the municipal advisor community has provided any analysis supporting the idea that the proposed relief will result in cost savings to issuers. More specifically, this is because municipal advisors are not required to provide compensation disclosure to any party but the issuer client, for which they presumably would have an agreement. Currently, broker dealers provide compensation disclosure to both the issuer and purchaser in private placements and public offerings. Unless municipal advisors are required to publically disclose all fees earned, no true comparative data can be generated to support the claim the proposed relief will achieve cost savings for issuers.

Continue to enhance the regulatory regime for Municipal Advisors

While the proposal is exemptive in nature, we believe the proposal fundamentally changes the market and urge the SEC to conduct an economic impact study to assess the true impact and benefit to issuers as well the market. Also, if the SEC determines to move forward with its proposal, we believe this is the right opportunity to properly and equally enhance its regulatory presence in the municipal advisory space.

If you have additional questions or comments, please contact me.

Respectfully,

Marc Dispense
President, Fixed Income Capital Markets