

January 28, 2020

Submitted Electronically

The Honorable Jay Clayton, Chairman
The Honorable Robert Jackson, Commissioner
The Honorable Allison Lee, Commissioner
The Honorable Hester Pierce, Commissioner
The Honorable Elad Roisman, Commissioner

US Securities and Exchange Commission
100 F St NE
Washington DC 20549

Re: Additional BDA Feedback Regarding Proposed Exemptive Order

Dear Chairman Clayton and Commissioners Jackson, Lee, Pierce, and Roisman,

Thank you for the recent meetings with members and staff of the Bond Dealers of America (BDA) on the topic of the SEC's proposed exemptive order related to an exemption from the broker registration requirements for certain Municipal Advisors (MA) engaged in the private placement of municipal securities.¹ This issue is of vital importance to BDA member firms.

BDA remains opposed to the proposed exemptive order and we continue to urge the Commission to reject the proposal outright. Inspired by our conversations, however, BDA members recently revisited elements of our comment letter filed in December with an eye towards refining some of the criteria and conditions we specified for a scaled down approach to the issues covered in the proposal. As you know, municipal entities are sometimes ineligible under state or local law to borrow in any form other than securities issuance. Even if these issuers want to execute bank loans, they are sometimes required to issue securities, so they may structure their issuance to closely resemble loans. As we discussed, it appears the Commission is interested in an exemptive order which would apply to the private placement of these types of municipal securities that bear many characteristics of bank loans.

With that as our theme, if the SEC moves forward with finalizing the proposed exemptive order, we urge you to include the following conditions for transactions to which the exemptive order would apply.

- The only investors that the MA solicits in connection with the issuance are "banks" as defined in the Securities Exchange Act of 1934;
- The MA is representing a municipal entity, not a conduit borrower or "obligated person," with respect to the private placement;
- The entire private placement is sold to a single solicited bank;
- The MA is not involved in handling funds or securities for either the issuer or the bank;

¹ Securities and Exchange Commission, "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," 84 FR 54062.

- The MA discloses in writing to each solicited bank, which each solicited bank acknowledges in writing, that no broker-dealer is involved in the private placement, that the municipal advisor has not conducted a due diligence investigation on behalf of investors, and that the municipal advisor represents only the issuer and has no duty to the investor other than to deal with it fairly;
- The MA informs the issuer in writing that they may choose to engage the services of a dealer placement agent on the transaction and that a dealer placement agent may have access to a broader network of potential investors;
- The MA may not charge a fee that is in excess of the fee it charges for comparable municipal advisory services where there is a broker-dealer placement agent involved in the private placement; and
- The MA has determined and documents that engaging in placement activities in reliance upon the exemptive order is consistent with its fiduciary duty under the Exchange Act and MSRB Rule G-42.
- The bank investor represents that it intends to review, approve and account for the private placement in the same manner as a commercial bank lending transaction;
- The private placement contains transfer restrictions that prohibit the purchasing bank from selling or transferring the municipal securities part of the private placement to any person other than a transfer of the entire issuance of municipal securities to one single other bank (not intended to restrict the ability of a bank to transfer the security to a trust or similar vehicle for the purpose of re-securitization);
- The bank represents that, at the time of issuance, the bank intends to hold the securities until maturity, redemption, or mandatory tender; and
- The issuer represents that it will provide notice of the transaction to the MSRB's EMMA platform on a timely basis even if the issuer is not subject to amendments to SEC Rule 15c2-12 adopted on October 30, 2018.²

Moreover, it is our understanding that much of the interest in the Proposal is concentrated among smaller issuers. Arguably, smaller issuers have a more difficult time accessing the capital markets and are not "covered" by as many underwriters and MAs. The SEC should consider limiting the scope of the proposal to small issuers or small issues. One definition of small issue that bears consideration is the exemption in SEC Rule 15c2-12 from producing an Official Statement for issues of less than \$1 million.

Also, as you know, the Municipal Securities Rulemaking Board has identified 13 rule changes they will need to make to ensure that MSRB rules conform with the exemptive order.³ If the Commission moves forward with the exemptive order, we urge you to provide an effective date simultaneous with the MSRB finalizing the appropriate conforming rule changes.

We thank you again for your careful consideration of this important issue. We look forward to continuing our conversation.

Sincerely,



Michael Nicholas
Chief Executive Officer
Bond Dealers of America

Cc: Rebecca Olsen, Director Office of Municipal Securities
Brett Redfearn, Director Division of Trading and Markets

² 83 FR 4470

³ Letter from Edward J. Sisk, Municipal Securities Rulemaking Board, to Vanessa Countryman, Securities and Exchange Commission, December 9, 2019.