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FINANCIAL SERVICES
CONSUMER PROTECTION AND FINANCIAL INSTITUTIONS
DIVERSITY AND INCLUSION
HOUSING, COMMUNITY DEVELOPMENT, AND INSURANCE

Congress of the United States
House of Representatives
Washington, DC 20515–4208

February 19, 2020

The Honorable Jay Clayton
Chairman
Securities and Exchange Commission
100 F St NE
Washington, DC 20549-1090

Dear Chairman Clayton:

I am writing to express my concerns related to the SEC's Proposed Exemptive Order (File No. S7-16-19) which would permit a registered municipal advisor to solicit and engage in the direct placement of municipal securities with certain institutional investors and receive transaction-based compensation for such activities, without registering as a broker dealer.

My key concern is that this proposal would erode the critical investor protections that the broker dealer registration regime was designed to provide, such as dealer due diligence and fair pricing. Furthermore, under this proposal, investment advisor purchasers of these private placement securities would be able to allocate these securities to retail accounts without appropriate disclosures and transparency. It would also allow resale or transfers of these private placement securities to be made without restrictions, unlike the corporate market.

The MSRB and the SEC have been working to improve transparency in the municipal markets for years, but this proposal would reduce transparency in these municipal securities. Under current rules, municipal advisors placing these securities would not be required to make transaction disclosure as only broker dealers are currently required to provide transaction disclosure. Additionally, allowing municipal advisors to engage in placement activity without broker dealer registration could effectively eliminate the protections of Rule 15c2-12, which is the regulatory vehicle for issuer annual financial information and material event notices. This proposed exemption rolls back current protections and undermines this ongoing effort to improve transparency for retail investors. I understand that the MSRB will need to amend thirteen of its rules in order to accommodate the numerous ramifications of this proposal.

This proposal also appears to create a serious and unmanageable conflict of interest. If a municipal advisor is permitted to act as a placement agent as contemplated by this proposal, they will have a "salesman's stake" in the transaction and have an incentive to recommend structures to fit the exemption. This dual role for a municipal advisor puts the advisor at odds with its fiduciary duty in a way that disclosure could not cure.

Finally, I am concerned about the process related to this Proposed Exemptive Order, which contains no discussion about any investor benefit or benefit for the public interest. I believe it would be more appropriate to consider this proposal through the Administrative Procedure Act of 1946 (APA). Utilizing the APA process would, among other things, require the Commission to conduct a cost-benefit analysis related to this proposal, for the benefit of market participants and the public.

I urge the Commission to withdraw this proposal. If the Commission deems it necessary to act, it should do so by proposing a formal rule change, subject to the under the APA process. Thank you for your consideration of my views.

Sincerely,

David Kustoff

David Kustoff
Member of Congress