



December 31, 2020

-Delivered via electronic mail-

The Honorable Elad Roisman, Acting Chairman
The Honorable Hester M. Peirce, Commissioner
The Honorable Allison Herren Lee, Commissioner
The Honorable Caroline A. Crenshaw, Commissioner
U.S. Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549

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Re: 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

Dear Acting Chairman Roisman,

PFM Financial Advisors LLC ("PFM"), a registered municipal advisor, respectfully submits this letter to encourage and urge you and the U.S. Securities and Exchange Commission (the "Commission" or "SEC") to reassess and adopt a permanent solution to the current regulatory uncertainty that prevents registered municipal advisors ("MAs") from fulfilling their statutory mandate to protect municipal entity issuers ("Municipal Entities"), and to provide clarity and transparency regarding the role of MAs in certain municipal financial transactions. We commended the Commission'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 "Proposal")¹ and, as the need remains, we continue to agree with the Commission that the narrow scope of the Proposal for MAs participating in the direct placements of municipal securities to "Qualified Providers" would not jeopardize or compromise in any

¹ *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*, SEC Rel. No. 34-87204 (Oct. 2, 2019), 84 FR 54062 (Oct. 9, 2019) ("Proposing Release").



way the Commission's effective oversight and enforcement of its broker registration and regulatory requirements in other circumstances.²

Municipal Entities and their MAs made effective use of the method afforded by the Commission's issuance of the Order Granting a Temporary 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 ("Temporary Order") to address potential disruption in the municipal securities markets as a result of the COVID-19 pandemic. Given COVID-19's threat to and disruption on the municipal securities markets, the Commission's action to facilitate more timely and efficient access to bank financing alternatives by Municipal Entities was prudent, expeditious and we believe appropriately limited. Moreover, while reliance of the Temporary Order during the past six months reflected a stronger municipal securities market than originally feared when the Temporary Order was issued, the modest number of issuances in reliance on the Temporary Order during this time directly contradicts concerns raised by certain industry participants and more strenuously by industry association representatives that either the Proposal or the Temporary Order would result in a majority of the negotiated municipal securities offerings in the market being made outside the existing broker-dealer regime. The Temporary Order brought the needed clarity to the ability for MAs to continue to support Municipal Entities' interests through the alternative financing method while not distorting the ability for potential investors to obtain the services of a broker to act on the investor's behalf. There has been and will undoubtedly be differing viewpoints; however, the real-world experiences found employing the limited Temporary Order outline a workable solution.

However, as the expiration of the Temporary Order comes, PFM reiterates the persistent need for continued regulatory coherence and urges the Commission to adopt the relief necessary for MAs to continue to fulfill their statutory mandate to protect Municipal Entities and to take such issuers across the "finish line" to meet their financing needs in the context of private placements or other direct placements ("Direct Placements"). The exemption from broker-dealer registration contemplated in the Proposal ("Exemptive

² As we noted in our comment letter to the Proposing Release, PFM believes that the single Qualified Provider condition contemplated in the Proposal is not consistent with its experience. Indeed, two or more providers are often involved to meet the financing needs of Municipal Entity clients, often at the preference of the Municipal Entity client for risk apportionment and other considerations. See Letter from Leo Karwejna, Chief Compliance Officer, PFM Financial Advisors LLC, to Vanessa Countryman, Secretary, U.S. Securities and Exchange Commission, dated Dec. 9, 2019, available at <https://www.sec.gov/comments/s7-16-19/s71619-6519687-200326.pdf>.



Relief") and demonstrated by measures put into practice under the Temporary Order would continue to enable Municipal Entities, working with their MAs, to obtain the best financing available to better serve their constituents.³

In conclusion, PFM submits that the regulatory clarity sought is consistent with the statutory objective of the MA to serve the interests of Municipal Entities in seeking optimal available financing alternatives and also conforms to the Commission's mission "to protect investors, maintain fair, orderly, and efficient markets, and facilitate capital formation." PFM respectfully requests that the Commission further analyze the relevant direct placement activities and consider Proposal alterations or otherwise ultimately provide the still needed clarity to MAs. In providing the relief contemplated under the Proposal and experienced under the Temporary Order, the Commission can successfully continue to serve the interests of issuers and certain investors, as outlined within each effort, without compromising the respective regulatory regime of the MA or broker-dealer market participants. MAs seek to provide comprehensive services to Municipal Entity clients without the uncertainty as to whether engaging in municipal advisory activities will require broker-dealer registration. Such uncertainty only serves to deny Municipal Entity issuers the full protection contemplated in requiring the registration and regulation of MAs.

Sincerely,

Leo Karwejna
Managing Director
Chief Compliance Officer

Cheryl Maddox
Managing Director
General Counsel

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

³ Refer to the *Supplemental Information* provided for discussion of additional practical context and application.



Supplemental Information

Statutory Mandate for Municipal Advisors Necessitates the Exemptive Relief

Section 15B(e)(4)(A) of the Securities Exchange Act of 1934 defines “municipal advisor” to mean a person who “provides advice to or on behalf of a municipal entity or obligated person with respect to municipal financial products or the issuance of municipal securities, including advice with respect to the structure, timing, terms, and other similar matters concerning such financial products or issues.” In adopting the municipal advisor registration rules, the Commission stated that “advice with respect to the issuance of municipal securities’ should be construed broadly from a timing perspective to include advice throughout the life of an issuance of municipal securities, from the pre-issuance planning stage . . . to the repayment stage for those municipal securities.”⁴ The need for regulatory clarity arises because the statutory definition of “municipal advisor,” as supplemented by the Commission’s interpretation of the scope of municipal advisory activities necessary to achieve the goals of MA regulation, expressly contemplates certain functions that – when conducted by intermediaries outside of the realm of registered MAs – appear similar to activities that have historically been considered indicative of broker-dealer activities. However, in the context of MA and Municipal Entity relationships, Municipal Entities look to MAs to perform these services, acting in their fiduciary capacities to look out for the ME’s interests. In addition, the MAs offer extensive and valuable specialized experience assisting Municipal Entities holistically in their financing needs, and the Municipal Entity will want the full advantage of that experience and expertise.

Absent the Exemptive Relief, the uncertainty as to whether MAs should be subject to broker-dealer registration in the conduct of their municipal advisory activities in the context of Direct Placements can result in a chilling effect on a MA’s ability to provide the full range of municipal advisory services that Congress intended and the consequent unintended impairment of financing options available to Municipal Entities. The Exemptive Relief would remove such regulatory uncertainty with respect to MA activities and thus ensure that an MA can provide the complete advice and service to its Municipal Entity clients that Congress expressly sought to provide Municipal Entities, without fear of unwarranted regulatory repercussions.

⁴ *Registration of Municipal Advisors*, SEC Rel. No 34-70462, 78 FR 67468, at 67490 (Nov. 12, 2013).



Broker-Dealer Registration of MAs Would Serve No Regulatory Purpose

The imposition of broker-dealer registration and regulatory requirements on an MA for the performance of municipal advisory activities in the context of Direct Placements will either serve no regulatory purpose or prevent the MA from acting in the best interests of its Municipal Entity clients if the MA is required to also act as a broker-dealer in the same Direct Placement. Given the imposition of a statutory fiduciary duty, an MA, even if also registered as a broker-dealer, could not act as both an MA and a broker-dealer in the same financing transaction given their conflicting obligations. Accordingly, broker-dealer registration of MAs in the conduct of their municipal advisory activities would critically impair their ability to protect Municipal Entity interests. Where Municipal Entities are unable to rely on an MA, who is looking solely to the Municipal Entities' interests, Municipal Entity issuers seeking to meet financing needs are less likely to obtain the best financing options available, thus reducing the efficiency of the municipal financing market.

The Limited Scope of the Proposal Would Preserve Broker-Dealer Regulatory Regime

The Proposal does not contemplate wide-ranging broker-dealer registration relief for MAs participating in Direct Placements. On the contrary, the narrow scope of the Proposal targets only those activities that Congress intended to be performed by MAs for the sole benefit of Municipal Entities. Because of the narrow scope of the request, the Commission's adoption of the Exemptive Relief would not jeopardize or adversely affect in any way the Commission's effective oversight and enforcement of its broker-dealer registration and regulation requirements in other circumstances. Indeed, as noted in the Bond Dealers of America's letter to Chairman Clayton, dated November 23, 2020, there was approximately \$168 billion of municipal securities issued during the period June 16 and September 30, 2020. However, the letter states that "[i]ssuances using the [Temporary Order] represents a tiny fraction of the total." Therefore, the empirical evidence clearly denies certain industry contentions that the adoption of the Exemptive Relief would result in a dramatic shift in how municipal securities are offered and issued.