



March 3, 2020

Chairman Jay Clayton
Commissioner Hester Peirce
Commissioner Elad Roisman
Commissioner Allison Herren Lee

Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549

Dear Chairman Clayton and Commissioners Peirce, Roisman and Lee:

We appreciate the time that you and your staff gave us to discuss the *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*.

As we noted in these meetings and in our December 9, 2019 comment letter, the proposed order allows for municipal advisors to provide municipal advisory services to their clients without concern that such services would be considered dealer activity. The exemptive relief also protects municipal entities in transactions as the municipal advisor's ("MA") fiduciary duty would be the cornerstone of any advice and recommendations provided about the type of transaction and the components thereof.

The Exemptive Order, as proposed, would not dilute investor protections that are currently in place. As we discussed in our letter and in our meetings with you, there are appropriate safeguards in place to ensure that qualified investors have access to the information they need in order to make an investment decision. Fair dealing rules that apply today would apply in any instance where a municipal entity client uses a MA in a financing, including those covered by the proposed Exemptive Order. NAMA supports having MAs make written disclosures to qualified investors that the MA is only serving in a capacity to advise the municipal entity client and that the qualified investor may wish to hire a broker-dealer for its own benefit. Exhibit A displays NAMA's responses to investor protection items from our December 2019 letter.

We know that concerns have been expressed that transactions covered by the Exemptive Order could pose a problem if indeed these investments were to end up in the portfolios of retail investors. We expressed in our meetings and would like to emphasize now in writing that we support appropriate efforts that would deter or eliminate the possibility of these transactions being purchased by retail investors either in the primary or secondary markets. This would include eliminating Registered Investment Advisors within the qualified investor definition.

We would welcome the opportunity to answer any questions you may have about these or any other issues related to the proposed Exemptive Order.

Sincerely,

A handwritten signature in black ink, reading "Susan Gaffney". The signature is written in a cursive style with a long, sweeping tail on the final letter.

Susan Gaffney

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

Selected NAMA responses to SEC Release Number 34-87204; File Number S7-16-19 related to investor protections and the proposed exemptive order (December 9, 2019).

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.

NAMA believes that the definition of Qualified Provider together with the required conditions provide appropriate protections to the narrow class of potential investors that could be solicited for this type of transaction. The Qualified Provider representations required by the Proposed Order are consistent with the representations used by brokers in their dealings with direct placement investors. In addition, the Proposed Order does not harm the ability of potential investors to evaluate the creditworthiness of the Municipal Issuer. It allows the Qualified Provider the same access to information currently provided when a placement agent is involved, and the investor is required to acknowledge that it has made its directly with a Municipal Issuer and their municipal advisor would not be in a worse position. General antifraud provisions apply to the issuer and the municipal advisor, and the municipal advisor is subject to Rules G-17 and G-42 which require complete and accurate information be provided to investors.

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.

NAMA supports the MA written disclosure requirements in the Proposed Order. We also do not object to additional disclosures that the Qualified Provider may elect to require or engage a registered broker or other intermediary for the transaction.

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?

In the experience of our members, resales of direct purchases in the secondary market are not common. While we must assume that resales occur, our members do not see this on a regular basis. The responsibility of the MA under the Proposed Order and to the Municipal Issuer client is to place the financing as a primary transaction. However, if the Commission believes that there may be concerns with secondary market trading, those issues could be dealt with within the MSRB rulemaking framework and covered under the secondary market trading and selling of securities, to the extent not already fully addressed. It is important to note that the Proposed Order does not exempt the particular security being purchased by the Qualified Provider from the securities laws, nor does it exempt the participants in any future sale of such security from the securities laws where the availability of adequate information about the security is required if it is going to be traded. In addition, the recent changes to Rule 15c2-12 will ensure that information regarding direct purchase transactions covered by the Proposed Order will also be available if the Municipal Issuer also issues debt in the public markets. Finally, as noted above, a Qualified Provider is not precluded from requesting any and all information it needs to make an investment decision. For these reasons, there is no loss of market transparency created by the Proposed Order and no special investor protections concerns raised that are not already addressed by the Proposed Order.