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Elizabeth Murphy
Associate Director
Division of Corporation Finance
U.S. Securities and Exchange Commission
100 F Street, N.E.
Washington, DC 20549-3628

Re: In the Matter of Central States Capital Markets

Dear Ms. Murphy:

This letter is submitted on behalf of my client Central States Capital Markets, LLC (“CSCM” or the “Firm”). CSCM has been engaged in settlement discussions with the staff of the Division of Enforcement concerning the resolution of an administrative proceeding that would result in the issuance of an order directing the Firm to cease and desist from committing or causing future violations of Section 17(a) of the Exchange Act and Rule 17a-8 thereunder. CSCM is prepared to settle the proceeding, and if accepted that Settlement will result in an order pursuant to Sections 15(b) and 21C of the Securities Exchange Act of 1934 and Section 203(e) of the Investment Advisers Act of 1940 (the “Order”). That Order will impose sanctions on the Firm, including but not limited to an undertaking to engage an independent compliance consultant and to implement the recommendations of that consultant. Further, the Order would result in disqualification from relying on the exemptions available under Regulation D. We are requesting a waiver from that disqualification in the event that the SEC issues the disqualifying order. *See* 17 C.F.R. §§ 230.506(d)(2)(ii).

If not relieved of the disqualification, the Firm would be precluded from involvement with offerings under Regulation D. Although it has participated in only one such offering since 2013, it is possible that CSCM’s customers may determine to proceed on that basis in the future, and in that event CSCM would be unable to assist them. Such a consequence would be harsh and disproportionate, given that the Order arises from conduct that occurred more than five-years ago, during the period between December 21, 2012 and March 13, 2013, and that did not involve the Firm’s core underwriting activities. Rather, the conduct involved a failure to file suspicious activity reports and to accurately document the procedures set forth in the Firm’s customer identification program.

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The Commission has the authority to waive disqualification upon a showing of good cause that it is not necessary under the circumstances. Such a showing is demonstrated below. Accordingly, the Firm requests a waiver of any disqualifications from relying on exemptions under Regulation D that would be a consequence of the entry of the Order.

CSCM and its Business

While CSCM was formed as a separate entity in 2011, its predecessor organizations date back to approximately 1963. With approximately 25 employees working in three different offices (located in Prairie Village Kansas; Wichita Kansas; and Des Moines Iowa) CSCM operates as a full-service broker/dealer providing investment and advisory services to its customers. Among other services, CSCM's investment group provides portfolio analysis, portfolio management and cash management. Its customers, currently numbering approximately 1,500, include individuals, pension and profit sharing plans, not-for-profits, municipalities, insurance companies, trusts, estates, charitable organizations, and corporations.

In addition to its advisory services, one of CSCM's core business activities is to act as underwriter to small municipalities and counties located around the Midwest. Those issuers rely on CSCM to finance projects such as schools, hospitals, nursing homes, public utilities (water, sewer and electrical), and other projects in the public interest. For example, in the month of April 2018 alone, CSCM underwrote the following municipal bond offerings:

<u>Date</u>	<u>Issuer</u>	<u>Amount</u>
4/2/18	Hermantown, MN	\$2,035,000
4/3/18	Kay Co. ISD 71, OK	\$9,865,000
4/3/18	Creston, IA	\$5,000,000
4/4/18	ISD #592, MN	\$2,805,000
4/4/18	Centralia, KS	\$460,000
4/9/18	College CSD, IA	\$9,995,000

These bond issues financed schools, a community college, and the operations of smaller towns in the Midwest. Absent the waiver requested by this application, to the extent that future issuers wished to proceed under Regulation D, CSCM would be unable to provide such services to them.

Background of the Investigation

The Firm, as noted above, has engaged in settlement discussions with the Staff of the Division of Enforcement regarding the above-captioned administrative proceeding. As a result of those discussions, the Firm is prepared to submit an Offer of Settlement pursuant to which the Firm will consent to the issuance of the Order. On the basis of the Order and Offer of Settlement, the Commission would find that the Firm failed to: (1) file suspicious activity reports ("SARs") during the time period between December 21, 2012 and March 13, 2013, when it knew, suspected, or had reason to suspect that certain transactions were conducted in order to

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hide or disguise funds derived from illegal activity or had no apparent lawful purpose; and (2) accurately document the procedures set forth in its customer identification program (“CIP”).

The Order would find that CSCM failed to file SARs in connection with a series of transactions in accounts at CSCM owned by Scott Tucker. In a period of under three-month months, between December 21, 2012 and March 13, 2013, those accounts received 18 wire transfers, totaling over \$40 million, from external accounts held by certain tribal corporations. The Order would find that CSCM knew, suspected, or had reason to suspect, that the funds involved in those wires derived from a “rent-a-tribe” scheme in which Scott Tucker used the tribal corporations to mask his involvement in a multi-million-dollar payday lending business in possible violation of state and federal laws.

Prior to opening brokerage accounts in 2012 for Scott Tucker, Blaine Tucker (Scott Tucker’s brother) (together the “Tuckers”), and certain tribal corporations, the Order would find that CSCM was aware that Scott Tucker had been convicted of fraud many years earlier, in 1991, that news reports from as early as 2011 alleged that Scott Tucker was using these tribal corporations to hide his ownership and control of the payday lending business, and that the U.S. Federal Trade Commission (“FTC”) had filed a lawsuit against Scott Tucker and the tribal corporations alleging, among other things, that Scott Tucker was the true beneficiary of the payday lending business.

The Order would find that, approximately 9 months after the initial Tribal accounts were opened, the tribal corporations began transferring funds from accounts outside of CSCM to Scott Tucker’s personal Central States account in even dollar amounts. The transfers occurred over a period of less than three months and totaled over \$40 million. Notwithstanding the suspicious nature of these transfers and the previous allegations concerning Scott Tucker, the Order would find, Central States did not file a SAR.

The Order also would find that CSCM failed to comply with its written anti-money laundering (“AML”) policies and procedures, which required, among other things, that it verify the authority of business representatives to act on behalf of the customer. Although CSCM treated the Tuckers as the authorized representatives of the tribal corporations, and Tucker informed CSCM that he acted as consultant to the tribal corporation, CSCM did not obtain written verification that Scott Tucker was actually authorized to represent the tribal corporations. CSCM therefore failed to follow its CIP, and, as a consequence, failed to accurately document its CIP and to maintain records in accordance with its recordkeeping obligations.

Under the Order, CSCM would be: (a) ordered to cease and desist from committing or causing any violations and any future violations of Section 17(a) of the Exchange Act and Rule 17a-8 thereunder; (b) censured; and (c) ordered to comply with the undertaking to retain an independent consultant not unacceptable to the Staff (the “Independent Consultant”) to review its CIP and AML compliance program under Section 17(a) of the Exchange Act and Rule 17a-8 thereunder. The Independent Consultant is required to submit a report to the Firm and the Staff (the “Report”), and the Firm is required to adopt and implement all recommendations of the

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Independent Consultant unless the Firm proposes alternatives and the Independent Consultant agrees that such alternatives are acceptable. Within 30 days after issuance of the Independent Consultant's Report or a written determination by the Independent Consultant regarding alternative procedures (if any), CSCM must provide the Staff a written implementation report detailing its adoption and implementation of the Independent Consultant's recommendations. For a period of two years following CSCM's implementation of the recommendations, the Independent Consultant is required to monitor and review CSCM's compliance with the recommendations and submit written reports to the Staff every six months.

Discussion

Absent the waiver requested by this application, CSCM would be unable to participate in offerings under Regulation D, a disqualification that could impact its core businesses of underwriting. The conduct that gave rise to the Order, which took place over five years ago and spanned less than three months, did not involve the purchase or sale of securities, and instead arose from the Firm's AML program. CSCM has taken multiple steps to enhance that AML program, and the individual primarily responsible for monitoring the transactions at issue is no longer associated with the Firm. Accordingly, we respectfully request that the waiver be granted.

1. The Violations in the Order do not Arise out of the Offering or Sale of Securities

The conduct addressed in the Order does not arise out of the offering and sale of securities. Rather, as discussed above, the conduct relates to the Firm's failure to: (a) file SARs regarding 18 wire transfers that occurred in a period of under three-month months, between December 21, 2012 and March 13, 2013; and (b) obtain written verification that Scott Tucker was authorized to represent the tribal corporations.

2. The Conduct does not Involve a Criminal Conviction or a Scienter Based Violation involving the Offer and Sale of Securities

CSCM has not suffered a criminal conviction for the conduct involved in the Order. While it has been negotiating a deferred prosecution agreement with the United States Attorney's Office for the Southern District of New York, even such an agreement would not amount to a criminal conviction. To the contrary, the agreement if finalized would require CSCM to consent to the filing of an information, but that information would be dismissed with prejudice after the passage of two years so long as CSCM complies with its obligations under the agreement. Thus, CSCM neither has nor expects to have a criminal conviction because of the conduct at issue here.

Further, the Exchange Act Section 17(a) violation contemplated by the Order is not *scienter* based. Although the Order states that CSCM's violation was "willful," it clarifies that "[a] willful violation of the securities laws means merely that the person charged with the duty knows what he is doing.' There is no requirement that the actor 'also be aware that he is

violating one of the Rules or Acts.” Accordingly, this violation does not contemplate a finding of *scienter*.

3. Individuals Responsible for the Misconduct

At the time of the 2012-13 conduct described in the Order, the Firm principally relied upon an outside consultant for its day-to-day AML responsibilities. Among other things, the consultant reviewed transaction reports generated by CSCM’s clearing firm and made judgments as to whether transactions were suspicious or otherwise required the filing of a SAR. While that consultant had over 25 years’ experience in AML work, it is now clear that he did not fully understand the reports he was receiving from the clearing firm and was less vigilant than he should have been. CSCM’s relationship with that consultant ended on or about January 2014, and he no longer has any role with the Firm.

Since that time, as discussed further below, CSCM has hired a full-time compliance officer, who has responsibility for supervising all compliance activities. That employee has a strong compliance background, including serving as a bank examiner for two years for the United States Office of the Comptroller of the Currency. Additionally, the Firm has retained an outside consulting firm that provides technical advice and reviews the Firm’s compliance activities. This, along with the enhancements to CSCM’s AML program described below, provides assurance against a recurrence of the conduct that led to the Order.

4. Duration

The conduct described in the Order took place over 5 years ago and spanned a period of less than three months, between late December 2012 and mid-March 2013. Since that time, as noted above, CSCM has taken multiple steps to strengthen its AML and compliance functions.

Among other things, CSCM has hired a full-time compliance officer. In addition, CSCM has engaged an independent AML consultant for each of the past three years to conduct a thorough examination of the firm’s AML policies and procedures and its implementation of same. Among the consultant’s recommendations (which the Firm has already implemented) were that the Firm:

- (a) Update its AML policies and procedures (completed February 2018)
- (b) Subject the daily AML reports received by CSCM from its clearing firm to closer review (implemented on an ongoing basis)
- (c) Provide additional AML training for all CSCM employees (third party training completed for all associates)

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- (d) Document all decisions whether or not to file a SAR (no such instances have arisen to date)

In addition to these already-implemented remedial steps, as noted above, the Order requires CSCM to engage an Independent Consultant to review its CIP and AML compliance program, and to implement the recommendations made by the Consultant. This will provide further assurance that the Firm's AML program is appropriately monitored and staffed going forward, thereby preventing recurrence of the conduct that led to the Order.

5. *Material Impact of Waiver Denial on the Firm, Its Employees, and its Customers, including Issuers of Municipal Debt Financings*

The denial of a waiver would preclude the Firm from participating in offerings under Regulation D, and thereby could have an impact on the Firm's ability to serve one of its core client groups: municipalities and other small issuers typically neglected by larger investment firms. As noted above, in addition to its advisory services, CSCM acts as underwriter to many small midwestern municipalities and counties seeking to raise funds for public improvements in their communities. Since 2013 the Firm has helped raised over 3.3 billion dollars for such public improvements, although only one of those offerings involved Regulation D.

For example, within the first five months of 2018, CSCM underwrote the following issues for the following purposes:

- \$460,000 – Centralia, Kansas (acquisition, improvement, reconstruction, repair, and extension of the town's municipal electric utility)
- \$1,630,000 – Bucklin, Missouri (re-funding the town's outstanding general obligations debt)
- \$840,000 -- Wabaunsee Improvement District, Kansas (re-funding the town's general obligations debt)

Each of these bond issues are of the locale and size that the issuer might have difficulty raising money absent the commitment of CSCM. These are just representative examples of the types of projects that CSCM has supported, and in 2018 alone, CSCM has underwritten over 96 similar financings.

Absent a waiver, CSCM could be hampered in its ability to participate in such offerings. Although only one of the offerings since 2013 involved Regulation D, to the extent that CSCM's customers determined to proceed on that basis in the future, CSCM would be unable to do so. Such an impact would be harsh and disproportionate, given that the Order arises from conduct that occurred more than five-years ago, and that did not involve the Firm's core underwriting activities. Further, while some issuers would presumably be able to issue their bonds through

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other firms, some clients might not. Certain of CSCM's clients are so small, or so limited in their investment requirements, that they could have difficulty time finding financial firms to handle their business.


6. *Disclosure of Written Description of Order to Investors*

During the time period that the Firm is subject to the Order's requirement to retain a compliance consultant to review its AML policies and procedures, the Firm will furnish (or cause to be furnished) to each purchaser in an exempt offering that would otherwise be subject to disqualification as a result of the Order, a description in writing of the Order, a reasonable time prior to the sale.

CONCLUSION

For the foregoing reasons, CSCM respectfully requests that the Commission, waive the disqualification provisions to the extent they may apply because of entry of the Order.

Respectfully submitted,



Douglas R. Jensen