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December 9, 2019

Ms. Vanessa Countryman, Secretary  
U.S. Securities and Exchange Commission  
100 F Street, N.E.  
Washington, D.C. 20549

Re: File No. S7-16-19  
Notification of Proposed Exemptive Order

Dear Ms. Countryman:

The Government Finance Officers Associations (“GFOA”) appreciates the opportunity to comment on the proposed exemptive order granting a conditional exemption from the broker registration requirements section of 15(a) of the Securities Exchange Act of 1934 for certain activities of registered municipal advisors. The GFOA represents over 21,000 members across the United States, many of whom issue private placements and enter into bank loans. Our members regularly engage municipal advisors and placement agents and therefore are very interested in the SEC’s current proposed exemptive order. The GFOA has long maintained a suite of best practices describing the responsibilities of professionals that occupy this space<sup>1</sup>.

Overall, GFOA supports the objective of this proposal. As it is currently written, the exemptive order does not preclude an issuer from choosing to engage a placement agent for professional services and would allow a Municipal Advisor (“MA”) to assist issuer clients in various transactions. Additionally, the exemptive order would allow professionals representing different clients of the transaction to co-exist on a transaction for any given private placement. In essence, it allows issuers to have the choice of representation and consultation in a private placement transaction.

GFOA would like to point out that we anticipate this regulatory flexibility to result in a fair amount of restructuring of regulatory matters, all of which are likely to create some confusion among municipal issuers. We ask that the SEC work with market participants, including issuers specifically, to ensure the effectiveness of these policy matters toward implementation. The GFOA has a strong track record of providing quick and continuous updates to our best practices and resources and would do the same to address any guidance or best practice needed on this matter.

We would like to identify a few key areas that are of some concern that will help provide some clarification and issuer protection as the regulatory framework develops.

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<sup>1</sup> See “[MA Rule Resource Center](#)” “[MA Rule Primer \(2016\)](#)” and “[GFOA Issue Brief: SEC Municipal Advisor Rule](#)”

## FIDUCIARY DUTY OF THE MUNICIPAL ADVISOR

Through the establishment of the Municipal Advisor Rule, GFOA worked with the MSRB and the SEC to ensure knowledgeable and professional representation for the issuer, representing the issuer through an effective and established fiduciary duty<sup>2</sup>. Likewise, GFOA's best practices articulate the benefits of the MA's federal fiduciary duty as clear and intended representation to the issuer, which is different than the role of an underwriter (and in turn placement agent)<sup>3</sup>. Currently due to regulatory ambiguity, there are some situations, even with bank loan financings, where the MA cannot fully serve their issuer client. We support allowing MAs to more fully provide municipal advisory services without hesitation when it comes to private placements and bank loans. While representing issuers' best interests, MAs can assist with determining the scope of investors that are well suited for an issuer's financing, as well as work with the issuer throughout the financing. These are key attributes of MA representation that protects issuers.

## QUALIFIED PROVIDER

On the definition of qualified provider, further definition of "single investor" and "entire issuance" among other terms should be provided in the order. There may be instances where an issuer, especially from a larger jurisdiction, may want to place their debt – or enter into bank loans – with different maturities or with multiple parties but under the same issuance or transaction. Therefore, clarity about whether entire issuance means all bonds of a single tranche sold on the same date, or if it can include multiple tranches in the same transaction, would be helpful. Further, knowing if multiple banks would be allowed under the "single investor" definition should be clarified in the order.

To include "credit unions" as a Qualified Provider would create the potential to benefit some issuers by including more potential investors. MA representation on a private placement transaction include a suitability standard that could lead to the provision of optimal guidance – especially to a smaller/infrequent issuer on direct placements. Recommended transactions could include investors such as a commercial bank, credit union, and other Qualified Providers as in many cases, the MA may have an excellent knowledge of both what is happening locally, as well as nationally in terms of types of financing instruments and industry practices as well as local lending options or norms.

## MA SCOPE OF SERVICES

As with any engagement, the issuer does and should be able to determine the services that it expects from its MA. These responsibilities always carry with them a fiduciary duty whether that is to

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<sup>2</sup> GFOA Best Practice "[Selecting and Managing Municipal Advisors](#)" maintains that: *issuers select municipal advisor prior to the undertaking of a debt financing unless the issuer has sufficient in-house expertise and access to current bond market information. In so doing, the issuer retains control of the contract*

<sup>3</sup> GFOA Best Practice "[Selecting and Managing Underwriters for Negotiated Bond Sales](#)" recommends that issuers: *must keep in mind that the roles of the underwriter and the municipal advisor are separate, adversarial roles and cannot be provided by the same party. There is no federal law establishing an underwriter's fiduciary responsibility to the issuer. Whereas, a municipal advisor represents only the issuer and the Dodd Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) establishes that municipal advisors have a fiduciary responsibility to the issuer*

determine whether a direct placement is the right option for an entity, and that the conditions of the contract/engagement are in the best interest of that entity.

Under the exemptive order the MA would also be able to solicit investors on behalf of their client which would allow the MA to seek investors that the issuer may wish to attract and should be sought to partake in a RFP process. There should not be barriers to having a MA serve in this role, similar to what they do for many issuers in a negotiated sale, or as defined in the scope of services between the issuer and the MA. This order would therefore better allow for an issuer to determine and control whether they wish to use a MA, a placement agent or both in a transaction.

Additionally, the SEC asks if this proposal should apply to the conduit issuer. GFOA represents a wide variety of conduit issuers and we believe that the benefit of this proposal should apply to the conduit issuer as well.

We are encouraged that many other commenters share these observations and recommendations regarding the expanded role of the Municipal Advisors. In addition, we would like to reiterate the importance of choice to all issuers of all sizes. This proposal has provided the opportunity to learn how large and small issuers employ municipal advisors and placement agents – we would encourage the SEC to consider the unique utility of each to each municipal issuer across the country. Choice and flexibility are always valued and used effectively by issuers. We are happy to provide any additional information you may require. Thank you again for the opportunity to comment.

Sincerely,

A handwritten signature in black ink that reads "Emily S. Brock". The signature is written in a cursive, flowing style.

Emily Swenson Brock  
Director, Federal Liaison Center