Richard Li
[redacted]

December 9, 2019

Secretary
Securities and Exchange Commission
100 F St NE
Washington, DC 20549-1090

Re: File Number S7-16-19

Dear Secretary,

I would like to provide comments on the SEC's proposed exemptive order granting a conditional exemption from the broker registration requirements for certain activities of Registered Municipal Advisors (MA).

The SEC proposes to grant an exception for placements with a Qualified Provider, and other requirements. The MA seeks clarification to avoid crossing the line into Broker Dealer (BD) activities. I can appreciate the MA's desire to ensure they are in compliance with SEC Rules and Regulations. I believe the bright line can be the distinction between a loan and security. The SEC could provide a No Action Letter that is: 1) Limited to this purpose (when does an MA need to be registered as a BD); and 2) Conditions, when if met, the obligation would be considered a Loan, and not a Security.

Has the Commission appropriately defined Qualified Provider? If not, what would be a more appropriate definition and why?

I feel the definition of "Qualified Provider" is too broad. As mentioned on page 6, the direct placement of municipal securities has increased "… as the **involvement of commercial banks** [emphasis added] in the municipal capital markets has increased …". I feel the definition should be limited to (i) as proposed, and not include (ii) and (iii). The definition would capture those most involved in direct placements. If future conditions warrant, the SEC could expand the definition to include (ii) or (iii), but I see no need for the expanded definition at this time.

The last part of the definition of Qualified Provider says: "The proposed exemption thus would not be available in transactions involving retail investors, including public offerings of municipal securities." A direct placement of a loan should be directly with the investor, and not through an RIA intermediary. By allowing RIA's, you increase the risk of the financing being placed with a "retail investor" the RIA represents. I do not see how allowing an RIA is any more beneficial that dealing directly with the investor. At least then we would know that it is not a retail person.

An institution with $50,000,000 of assets also has the potential for abuse. On September 12, 2019, the Wall Street Journal published an article entitled "When Wall Street Flips Municipal Bonds, Towns and Schools Pay the Price." A Broker Dealer could be an institution with $50,000,000 of assets, and purchases the entire financing with the intent to resale to non-retail investors (or even retail, since there is no restriction on them) at a profit. This is a disguised underwriting, so why not structure the deal that way in the first place?

It would be helpful if the requestor could provide examples where it would be helpful to have the ability to place with RIA or $50,000,000+ institutions not covered in (i).

Should any of the identified activities proposed to be included be eliminated or modified? Please explain.

The proposed relief includes a requirement that the financing be all placed with one Qualified Provider. First of all, the deal may be large enough that a syndicate of banks purchases the financing. Is that one Qualified Provider (the lead), or more than one (the syndicate)? Second, the issue is not how many investors, but soliciting enough investors to get a competitive rate, and making sure those investors are qualified to evaluate the risks without a broker-dealer intermediary.

Should any of the proposed conditions be eliminated or modified? Please explain.

There is a fine line between Direct Placement and Private Placement. In a Direct Placement with Banks, there is little, if any, business relationship with the MA and the Bank. In a Private Placement, the Placement Agent has incentive to maintain business relationships with their investors in order to sell future deals. This would create a conflict of interest for the MA that could not be adequately addressed by merely disclosing it (how do you get a low rate for the issuer, and a high rate for the investor?). If you want to reach a broader investor audience, then a BD should be engaged to be the Placement Agent. The BD would be in the business of maintaining the investor relationships, and then the MA could serve without conflict.

Limiting the relief to Qualified Providers in (i), without the restrictions of number of investors, would provide enough of a relief from the BD registration requirements for a majority of the direct placement transactions. Anything more that soliciting banks, it could be argued that, the Municipal Entity is better served with a Private Placement financing that engages a separate BD.

Are there other or different conditions that should apply to the proposed exemption? Please explain.

GFOA's Best Practices recommends that the ME engage an MA whenever a BD is used. The MA is there to represent the best interests of, and has a fiduciary obligation to, the ME. A BD is desirable in any transaction from Private Placement to Public Offering. One of the main benefits of the BD (or multiple BDs on a single transaction) is that they have ongoing contacts with investors. The ME is conflicted in managing relationships with both Investors and Issuing clients. One could argue that the BD has more loyalty to the Investor since the BD has more transactions with the Investor than it does with the ME. Nowhere is that conflict more evident than in Pricing. One of the MA's major functions is to look after the ME's interest in that conflict.

If the SEC resolved the Loan vs Security issue, that would be sufficient to provide the Guidance being requested. I understand that there are complex banking regulations regarding Loan vs Security, and it could be that the Guidance (on loan vs security) be limited to MA BD registration purposes, and not for any other purpose (banks using it for regulatory purposes).

Proposed Guidance:

1) Qualified Provider is: Banks, Savings and Loan Associations, Credit Unions, and other entities that typically provide unsecured loans. [type (i) entities]

2) No Offering Document is produced for the transaction. The providing of financial statements, term sheets, and other similar type information shall not be considered an Offering Document.
3) No CUSIP is obtained for the financing.
4) DTC's book-entry system is not used, nor will the ME agree to the financing being covered under a blanket issuer letter of representation (ME shall not request that the financing be made eligible for deposit).
5) The Qualified Provider certifies that: 1) it considers the financing to be a Loan for regulatory purposes; 2) it understands that [firm] is acting as an MA in soliciting loan providers and has a fiduciary obligation to the ME, and not to the Qualified Provider.

The proposed guidance mostly follows the analysis banks use to determine whether a financing is a loan or security. It seems appropriate to allow the MA to use the same objective factors as a safe harbor. The proposed guidance does not fully resolves our concern of when does a Direct Placement become a Private Placement. By limiting the type of transactions to loans with bank type players, it does limit the potential for a transaction that is more appropriate for the Private Placement market, where a BD should be engaged separate from the MA.

Richard Li