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VIA E-MAIL TO: RULE-COMMENTS@SEC.GOV

U.S. Securities and Exchange Commission
100F Street, N.E.
Washington, DC 20549-1090
Attention: Elizabeth M. Murphy, Secretary

Re: Release No. 34-63576- Registration of Municipal Advisors

Ladies and Gentlemen:

This letter is submitted to provide comment on the impact of the referenced proposed rule on banks providing credit to municipal entities or conduit borrowers as part of their ordinary banking services. The Commission should exercise its regulatory authority to exempt these activities. To the extent that the SEC may view such actions as creating a municipal advisor relationship between the bank and the municipal entity or obligated person, the Commission should include a safe harbor rule clarifying when registration is not required.

In the referenced release the Commission asked: *Should the Commission exclude from the definition of a "municipal advisor" banks providing advice to a municipal entity or obligated person concerning transactions that involve a "deposit," as defined in Section 3(l) of the Federal Deposit Insurance Act at an "insured depository institution," as defined in Section 3(c)(2) of the Federal Deposit Insurance Act, such as insured checking and savings accounts and certificates of deposit? Should the Commission exclude from the definition of a "municipal advisor" banks that respond to requests for proposals ("RFPs") from municipal entities regarding other investment products offered by the banking entity, such as money market mutual funds or other exempt securities? Should the Commission exclude from the definition of "municipal advisor" a bank that provides to a municipal entity a listing of the options available from the bank for the short-term investment of excess cash (for example, interest-bearing bank accounts and overnight or other periodic investment sweeps) and negotiates the terms of an investment with the municipal entity? Should the Commission exclude from the definition of "municipal advisor" a bank that provides to a municipal entity the terms upon which the bank would purchase for the bank's own account (to be held to maturity) securities issued by the*

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municipal entity, such as bond anticipation notes, tax anticipation notes, or revenue anticipation notes?

The Act defines a “municipal advisor” as one 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 municipal financial products or issues...” Deposits and customary banking services as described above should not be considered “municipal financial products,” responses to RFP’s should not be considered “advice with respect to municipal financial products or the issuance of municipal securities” and loans to municipal entities and obligated persons by banks should not be treated as “municipal securities.”

Deposits and customary banking services should not be considered “municipal financial products. Municipal entities and obligated persons do not require special protection from banks with respect to transactions that are customarily provided by banks to other customers and are already subject to State and Federal regulation. Any regulation of such transactions should be handled by regulations of general application through such agencies. This would include for example, customary deposit transactions, money market funds, cash management services, certificates of deposit, credit facilities, and loans. A bank that bids on the purchase of a single security issued by a municipal entity should be seen as making a loan to the municipal entity rather than engaging in a municipal security transaction. No public offering of securities is involved in such matters. There is no public interest at stake other than the same interests that currently provide the basis for general regulation of banking activities, and no investor protection is required since the only parties to these matters are the municipal entity, the bank and in some instances the obligated person. Requiring banks to register as municipal advisors in order to offer customary banking services to municipal entities will limit access to and raise costs for basic banking services to municipal entities. Banks will not want to incur the administrative burdens of registration if their loan volume or other banking services for their municipal customers will be small.

Deposit products offered by a bank in connection with a loan to a municipal entity or conduit borrower should not require the bank to be a registered municipal advisor. Such loans are often made to provide construction financing. In a typical construction loan funds are advanced as needed. However, in order to ensure that interest on a loan will be exempt from income taxes it is generally necessary to draw the full amount of the loan on the date of issue and invest the proceeds until they are needed. These investments are often made in deposit accounts at the bank making the loan. It should not be necessary for a bank lender to register as a municipal advisor in order to invest such funds until they are needed for the project.

Responses to RFP’s should not be considered advice with respect to municipal financial products or the issuance of municipal securities. The Commission should not include a response to an RFP as an action that creates a municipal advisor relationship. Municipal entities issue such RFP’s with the assistance of their own financial advisors. An RFP is by its nature a

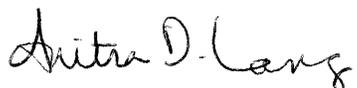
competitive process. Parties responding to an RFP are required to respond in an honest manner. It is common for an RFP to ask the respondents to provide their suggestions as to optimum structures and investment strategies or financial products. A response to such questions in the context of a competitive process should not require a party to register as a municipal advisor nor should it be deemed to create a fiduciary obligation to the issuer.

Banks responding to RFPs from municipal entities for investment services or loans should expressly be excluded for these reasons as well as the reasons cited in the prior section of this letter. An RFP requesting bids on customary banking services and the provision of such services by the selected bank should not be covered by these regulations. The regulation of such activities should be handled by regulations of general application to such customary banking services, whether delivered to private companies, individuals or municipal entities.

Loans to municipal entities and obligated persons by banks should not be treated as municipal securities for the purposes of this rule. Many smaller municipal entities rely on their local bankers for their financing needs. Such issuers are not able to effectively access the public markets due to the high transactional costs. These smaller entities typically place their debt with a bank rather than seeking financing in the capital markets, and all parties consider the transaction to be a loan. These loans are typically structured using the familiar elements of a bond financing where the interest is to be tax exempt, and in many instances the debt is bank qualified under Section 265(b)(3) of the Internal Revenue Code. It is common for municipal entities to issue RFP's to get bids for such loans, with the assistance of their own financial advisors. Respondents to the RFP compete to offer the best terms for the loan. All of these elements work together to deliver a low cost loan to the municipal entity. If banks providing such services must register as municipal advisors and become fiduciary agents to their borrowers, the cost of providing the service will have to increase, and the number of banks willing to provide loans under such circumstances will decrease.

The SEC has authority to adopt rules to exempt municipal advisors from any provision of this section or the rules or regulations thereunder if it finds that, "such exemption is consistent with the public interest, the protection of investors, and the purposes of this section." The Commission should exercise that authority by exempting banks providing customary banking services, such as loans and depository products, and by clarifying that a response to a competitive solicitation such as an RFP is not "advice with respect to municipal financial products or the issuance of municipal securities."

Sincerely,



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