



The Honorable Jay Clayton
Chairman
U.S. Securities and Exchange Commission
100 F Street NE
Washington, D.C. 20549

February 13, 2020

Re: Notice of 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, File No. S7-16-19 (“Proposed Exemptive Order”)

Dear Chairman Clayton:

This serves as a follow-up to the American Securities Association’s¹ (ASA) comment letter dated December 6, 2019 regarding the Securities and Exchange Commission’s (SEC) October 2019 proposed exemptive order (“Proposal”) for municipal advisors. In our December letter, ASA expressed its strong opposition to every facet of the proposal, from process to substance.

The ASA would like to highlight an additional concern regarding the Proposal and its impact on the municipal market and investors. One justification for a municipal advisor exemption under the Proposal is that the antifraud provisions of the Exchange Act would apply equally to registered municipal advisors and brokers. The SEC states in the Proposal that “these are important safeguards that operate as a constraint on the conduct of registered municipal advisors...”

However, attaching the SEC’s antifraud authority means little if the entities it applies to are not required to be adequately capitalized or, in the case of certain municipal advisors, not capitalized at all. There will be little recourse for investors defrauded by a municipal advisor if there is no capital to protect investors from the advisor’s fraudulent activities in the municipal market. Unlike broker-dealers, exempted municipal advisors would not be subject to the robust net capital and other regulatory requirements that are the hallmarks of the broker-dealer regulatory regime.

¹ The ASA is a trade association that represents the retail and institutional capital markets interests of regional financial services firms who provide Main Street businesses with access to capital and advise hardworking Americans how to create and preserve wealth. The ASA’s mission is to promote trust and confidence among investors, facilitate capital formation, and support efficient and competitively balanced capital markets. This mission advances financial independence, stimulates job creation, and increases prosperity. The ASA has a geographically diverse membership base that spans the Heartland, Southwest, Southeast, Atlantic, and Pacific Northwest regions of the United States.



To be clear, the Proposal picks winners and losers and then allows the winners to operate in the market at a cost advantage. Of course, costs for issuers will be lower if municipal advisors can conduct business without being required to hold any capital. But what happens when things go wrong, as they inevitably do? Who will investors seek recourse from if their municipal advisors declare bankruptcy, and how will the SEC explain to Congress that deregulating the municipal securities market to favor undercapitalized advisors over highly regulated broker-dealers was in the public interest?

In addition, while the threat of private litigation and enforcement actions brought under the Exchanges Act's antifraud provisions may deter some wrongful activity, it will have limited effect. There is no substitute for robust regulatory examinations and compliance programs designed to detect, and hopefully prevent, harm to investors from fraudulent schemes.

These issues are important, and they just compound the reasons this ill-advised effort by the SEC to subvert the process set forth in the Administrative Procedures Act and create a new regulatory framework that favors one class of market participant over another needs to end. Rather than providing justification, the Commission's own arguments regarding antifraud authority support the swift rejection of this Proposal.

Sincerely,

Christopher A. Iacovella

Christopher A. Iacovella
Chief Executive Officer
American Securities Association