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SEC Grants Temporary Conditional Exemption for MAs.

Follows BDA Recommendations to Vastly Narrow Scope

Chairman Jay Clayton today announced that the Commission has issued an emergency order providing a "temporary conditional exemption" allowing Municipal Advisors to engage in certain small private placement activities without registering as broker dealers. The relief will expire on December 31, 2020.

****BDA SEC advocacy can be viewed here**

The temporary order can be viewed here
The BDA analysis of the temporary order can be viewed here

While it's been clear from day one the SEC wanted to grant relief to sought by PFM and NAMA, the BDA – with direct engagement from members – through 10 separate meetings at the SEC and 4 comment letters to the SEC was instrumental in this relief being very limited and temporary. We're unhappy the SEC moved ahead at all and we will continue working with the SEC and others to ensure it doesn't become permanent. This however is a much better outcome than has been expected from the start of this process.

Below is an outline of the Order:

The order states "In order to facilitate more timely and efficient access to bank financing alternatives by municipal issuers during this historic COVID-19-related market disruption, we are issuing this Order granting an emergency, temporary conditional exemption permitting registered municipal advisors to solicit a defined set of banks, wholly-owned subsidiaries of banks, and credit unions in connection with certain direct placements of municipal securities by their municipal issuer clients."

Today's emergency order imposes certain conditions on the relief provided.

These include:

- The investor or lender must be a bank or credit union;
- The maximum deal size is $20 million;
- Private placements only, no public offerings.

In addition, the investor or lender—the "Qualified Provider" in the parlance of the order—must make certain representations to the MA, including:

- That the firm is a bona fide "Qualified Provider";
- That the QP is capable of evaluating the risks of the transaction;
- That the QP is not purchasing the bonds with the intention of redistribution; and
- The QP will not transfer the bonds within one year of closing the transaction.

In addition, the order specifies the following additional restrictions:

- The minimum denomination for bonds place under the order is $100,000; and
- During the first year after closing the QP may sell the bonds only to another QP.

The order also imposes record-keeping and reporting rules for MAs relying on the exemption and specifies a December 31, 2020 expiration.

While the order is disappointing, we are encouraged that it applies to a narrow slice of transactions and that the restrictions imposed by the SEC track closely the restrictions BDA recommended in our advocacy with the SEC related to the 2019 draft Exemptive Order over the last 15 months. We continue to work with SEC commissioners and staff on issues related to bank placements and the 2019 draft EO.

Bond Dealers of America

June 16, 2020

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