

December 9, 2013

John Cross
Director, Office of Municipal Securities
Securities and Exchange Commission
100 F Street N.E.
Washington, DC 20549-7010

RE: Final Municipal Advisor Rule (Release No. 34-70462)

Dear Mr. Cross:

Thank you for meeting with BDA members December 4, 2013. I understand the meeting included a thoughtful and productive discussion of potential clarifications of the Municipal Advisor Rule. BDA members and I commend you for working so rapidly to develop needed clarifications, as many firms have done what is possible to study compliance without the benefit of the clarifications and are awaiting their publication. In that regard, I would like to reiterate the request posed in our letter of November 8 for a delay in the effective date for the Rule until 90 days following the publication of the FAQs. This would allow time for well-conceived and thorough compliance procedures across many professionals and functions firm wide.

Additionally, we wanted to follow up with you on a few items that were discussed in the meeting regarding advice, the underwriting exception, and RFPs.

Underwriter exception. We very much appreciate the approach to the underwriter exception under which an underwriter can be engaged on a preliminary, nonbinding basis through something like a letter of intent. As we discussed, we believe that it is appropriate to permit an issuer to execute this type of preliminary engagement with more than one underwriter even where the issuer does not expect that each of those entities would actually serve as the underwriter. This approach promotes competition and would enable an issuer to engage in detailed discussions with two or three firms to determine which of those firms to choose as its underwriter. We suggest limiting the number of firms that can qualify under this preliminary engagement exception to three firms (plus any firms that the issuer reasonably expects to hire as an underwriter). If an issuer wishes to receive advice from more than three firms, the RFP exception provides a method to do so.

RFP exception. We understand that you would like to establish a minimum for circulation of RFPs at three firms. We are concerned that for some proposals, there will not be three firms interested in responding and therefore, suggest you provide some flexibility regarding the requirement that an issuer hear back from three firms. We also hope that you will clarify that different forms of RFPs, ranging from requests for formal written responses as well as less formal invitations to multiple firms to present ideas, would qualify for this exception. Finally, we request clarification that the posting of an RFP to an issuer's website would satisfy any

requirements for broadness of distribution of an RFP.

Fiduciary duty. As referenced in our previous letter, we discourage including in this guidance a prohibition on becoming a municipal advisor and then serving as an underwriter on that same transaction due to concerns about the violation of the fiduciary duty. We believe there should be careful consideration, discussion, and an opportunity for comments on the consistency of this approach with the approach in other fiduciary relationships that permit fiduciaries to manage conflicts through written disclosures and informed consents. If included in your guidance, we understand the prohibition would be clearly limited to the particular issue for which a firm has become a municipal advisor and not construed more broadly to include other transactions or services, and would appreciate clarity on this point.

Thank you again for the opportunity to submit questions and suggestions, meet with you and your staff on a number of occasions, and engage in a continuing, productive dialogue regarding this rule.

Sincerely,

A handwritten signature in blue ink, appearing to read "M. Nicholas", is centered on the page.

Michael Nicholas
Chief Executive Officer