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April 20, 2006

Paul L. Shechtman
Chairman
New York State Temporary Commission on Lobbying
Two Empire State Plaza
18th Floor
Albany, NY 12223

Dear Chairman Shechtman:

Amendments to New York State's lobbying law (the "Lobbying Law amendments") enacted last year generally apply many regulations already imposed on traditional lobbying to "lobbyists" involved in government procurement. Under the Lobbying Law amendments, lobbyist reporting obligations generally extend to employees of banks and securities firms that solicit certain bond underwriting business from state and local governments and government agencies in New York. However, the bond issuance and underwriting process, as well as the process of procuring firms for bond underwriting services, are significantly different from traditional lobbying and application of the existing reporting structure presents a number of unique challenges in applying the Lobbying Law amendments. These issues are important because fundamentally, the bond issuance and underwriting process is designed to minimize financing costs for states and localities. Any misapplication of the Lobbying Law to the bond issuance and underwriting process could have the effect of imposing millions of dollars of financing costs on New York taxpayers. We respectfully submit this letter requesting interpretive guidance from the New York State Temporary Commission on Lobbying (the "Commission") on several issues related to applying the Lobbying Law amendments to bond issuance and underwriting and asset management. The Bond Market Association, with offices in New York, Washington, D.C. and London, represents securities firms, banks and asset managers that underwrite, trade, sell and invest in debt securities and other financial products globally.

1. Clarify the definition of "determination of need."

The Lobbying Law amendments require reporting of certain communications with staff of a government or government agency undertaking a procurement, including the procurement of bond underwriting or asset management services, during the "restricted period." The restricted period begins when the government has either issued a Request for Proposals (RFP) or has expressed a "determination of need" for a service and ends when a contract for services has been executed. During the restricted period, companies

or others offering services may communicate only with a "designated contact" of the government or agency.

We believe an overly strict interpretation of the definition of "determination of need" could substantively limit communications between a bond underwriter and officials of state or local governments or agencies in New York outside of services already contracted for. Virtually all governments and agencies with bond issuance authority ("issuers") arguably have a "need" at some time in the future for services offered by banks and securities firms that act as bond underwriters ("underwriters"). Under such a broad interpretation, almost any communication at any time between issuers and underwriters could be deemed to be lobbying under the Lobbying Law amendments.

We request that the Commission provide interpretive guidance to the effect that "determination of need" is established only once an issuer has determined and communicated that it plans to undertake a specific and identifiable financial transaction.

2. Clarify that the procurement process ends with a decision of an award, not the execution of a contract.

The procurement process starts with the issuance of an RFP and ends with the execution of a contract for services. Unfortunately, this regime could regulate banks and securities firms working with states and localities to structure and execute bond transactions even after a firm has been chosen and the selection process has effectively ended.

In the procurement of bond underwriting and related services, the selection of a winning firm generally does not culminate with the execution of a contract. In fact, a bond purchase agreement ("BPA"), the legal contract between an underwriter and an issuer, may not come for months or even years after the selection process is completed. However, under the Lobbying Law amendments, during the period between the selection of the underwriter and the execution of the BPA, the underwriter's discussion with its client to structure a deal that has already been awarded could be considered to be lobbying. This would seriously infringe on required interaction associated with bond transactions.

Typically, the selection of an underwriter is followed by an extended period of communication between the staff of the bank or securities firm and the staff of the state or local government during which financing ideas are presented and discussed. This communication, which virtually always involves numerous individuals on both sides of the transaction, is necessary to ensure that the financial structure of the bond issue meets all the needs of the issuer and that taxpayers receive the lowest possible cost of capital. This interaction is unrelated to the procurement process because it takes place after the RFP process is completed and after the underwriter is chosen. Indeed, issuers often select underwriters without any firm commitment as to when or even if bonds will actually be issued. In some cases, underwriters are selected but a bond issue never closes because the issuer's needs change, the issue never receives proper legal approval, or because of other factors. Underwriters are generally compensated only upon the closing of a new

issue, so if no bonds are sold, no compensation is paid to the underwriter that "won" the RFP process.

The Bond Market Association requests that the Commission address this issue by providing market participants with interpretive guidance specifying that the procurement process ends upon an action by the state or local government or agency that indicates the selection of an underwriter or asset manager, even if that selection is not immediately accompanied by the execution of a bond purchase agreement or other contract. We believe that this interpretation is consistent with the intent and scope of last year's legislation since it would fully maintain the lobbying period during the time RFP responses are reviewed until the selection process is completed. Moreover, in the case of the selection of a "pool" of underwriters—multiple firms engaged to provide services with regard to one or more bond issue—that this interpretation with regard to the end of the procurement process applies to all members of a pool.

3. Clarify that certain communication outside the specific scope of a transaction is not a lobbying.

Issuers procure bond underwriting services for various terms. Some procurements are intended to cover a specified period of time and cover any bond issues during that time. Some specify a designated number of bond issues over any time period. Still others are intended to cover a single issue. In any case, all debt financings undertaken by an issuer are closely interrelated. Issuers cannot achieve optimal financial results if their underwriters are prohibited from communicating with issuer officials regarding bonds outside the scope of a particular procurement. This is the case even when procurement periods overlap.

For example, we are aware of a case where an issuer has selected an underwriter for an individual bond issue. After the selection but before the bonds are sold, the issuer initiates a second RFP process to secure an underwriter for an anticipated second bond issue. In order to achieve optimal results for the issuer with regard to the first bond issue, the underwriter chosen for that issue, who is also responding to the second RFP, absolutely must discuss questions directly related to the second issue with officials of the issuer. Under a strict interpretation of the Lobbying Law amendments, however, such discussions, except with the designated person for the second RFP, are prohibited. The result under such an interpretation would likely be higher financing costs for taxpayers with regard to the first bond issue, because the hands of the underwriter for that issue are tied in communicating with the issuer about a broad spectrum of questions that pertain to both issues.

In order to avoid such unwanted results, we request that the Commission clarify that communication with issuer officials outside the specific scope of a particular procurement are not in violation as long as that communication is necessary to deliver services already procured, even if those conversations relate to additional procurements or determinations of need. We recognize that any attempt to advance the pursuit of the new RFP would require registering as a lobbyist.

4. Confirm that compensation in the form of bonuses is not "contingent" compensation and that bonus compensation to in-house bankers should not be included in compensation disclosure.

The Lobbying Law amendments impose an existing prohibition on "contingent" compensation for traditional lobbying services to procurement lobbying. Contingent compensation is compensation paid and dependent on the decision of a government or agency with regard to a procurement. Moreover, under the Lobbying Law amendments, registered lobbyists in New York, including those involved in procurement lobbying, are required to file periodic statements or reports with the Commission which include reporting compensation associated with lobbying activities.

Employment compensation for the staff of underwriters generally comes in two forms: base salary and annual bonuses. Annual bonuses generally are determined at or near the end of a company's fiscal year and are generally paid after the close of the fiscal year. Bonuses can vary widely from year to year and depend on many factors. These factors include, but are not limited to, the overall profitability of the firm, the profitability of the business unit within the firm to which an individual is assigned, and individual performance and transactions in which the individual was directly involved.

Because annual bonuses paid to individual employees are determined by many factors unrelated to particular procurement decisions, we request that the Commission confirm that bonuses are not contingent compensation and expressly limit the definition of contingent compensation to compensation that is directly contingent on income received from a particular transaction or legislative result. Because annual bonuses are not determined or known until the end of a company's fiscal year and are not paid until the following year and are not tied directly to the success or failure of any particular bond transaction, we request that the Commission confirm that such bonuses in the nature of those paid to the staff of underwriting firms not be included in lobbying compensation reports.

5. Clarify the definition of "designated person."

Under the Lobbying Law amendments enacted last year, during the "restricted period," offerers of services to procuring governments or agencies may communicate only with a "designated person" of the government or agency. In many cases, it may be advantageous to a procuring government or agency to establish more than one individual as a "designated person." This is particularly true in the case of bond transactions, where it would often be in the interest of an issuer to designate multiple staff members with diverse expertise—legal, financial, technical, etc.—to communicate with firms offering services. In this regard, we request that the Commission clarify that more than one individual may be identified as a "designated person."

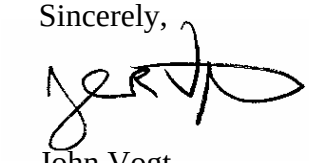
In addition, it is often the case during the procurement process that firms offering services to a government or agency have reason to communicate with clerical, administrative or junior professional staff of procuring government or agencies. In general, these staff have no direct influence on the process of awarding contracts.

However, communication with these staff may significantly smooth the procurement process and may, in some cases, be virtually unavoidable. In that regard, we request that the Commission clarify that during restricted periods, communication with clerical, administrative or junior professional staff with no direct influence on awarding contracts is not a violation.

The Association believes the intention of the New York Lobbying Act was not to complicate the delivery of important services to the state government and New York's many municipalities. The Act was meant to bring transparency to government. The target was a sometimes opaque procurement process that can be abused and contribute to a poor allocation of taxpayer resources. Without clarification from the Lobbying Commission or the legislature that the process of procuring bond underwriting and asset management services—in addition to many other services—should not be affected, the goal of transparent government will not be achieved. Instead, the Lobbying Commission will be overwhelmed with registration and disclosure information that because of its volume may ultimately result in less, not more, transparency.

Thank you for your consideration of our request for interpretive guidance. If we can provide additional information or clarification related to our request, please do not hesitate to contact me.

Sincerely,



John Vogt
Executive Vice President