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December 18, 2002

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Mr. Jonathan G. Katz, Secretary  
U.S. Securities and Exchange Commission  
450 Fifth Street, N.W.  
Washington, D.C. 20549-0609

Re: Implementation of Standards of Professional Conduct for Attorneys  
File Number 33-8150

Dear Mr. Katz:

On behalf of the National Association of Bond Lawyers ("NABL"), we file these comments regarding the Commission's Release Nos. 33-8150; 34-46868; IC-25829; (the "Proposing Release") pertaining to the implementation of standards of professional conduct for attorneys. The comments are being submitted on behalf of the NABL Committee on Securities Law and Disclosure. We appreciate the opportunity to express our views with respect to this important development in the securities industry.

NABL was organized in 1979 for the purposes of educating its members and others in the law relating to state and municipal bonds and other obligations, providing a forum for the exchange of ideas as to law and practice, improving the state of the art in the field, providing advice and comment at the federal, state and local levels with respect to legislation, regulations, rulings and other actions, or proposals therefore, affecting state and municipal obligations, and providing advice and comment with regard to state and municipal obligations in proceedings before courts and administrative bodies through briefs and memoranda as a friend of the court or agency.

Over 3,000 attorneys and paralegals are members of NABL representing members from all 50 states, the District of Columbia and Puerto Rico. NABL conducts an extensive series of seminars and workshops throughout the year and is active in the publication of materials on professional standards and conduct (in addition to course books for the seminars), including the *Model Bond Opinion*

(1997 Edition), the *Model Letter of Underwriters' Counsel* (1999 Edition), and *The Function and Professional Responsibilities of Bond Counsel* (1995 Second Edition), and has co-sponsored the project first published in 1987, revised in 1994, as *Disclosure Roles of Counsel in State and Local Government Securities Offerings*.

NABL recognizes the responsibility of the Commission under Section 307 of the Sarbanes-Oxley Act of 2002 (the "Act") to draft a rule that would establish standards of professional conduct for attorneys who appear and practice before the Commission on behalf of issuers, as defined by the rule contained in the Proposing Release (the "Proposed Rule"). It is clear from Section I of the Proposing Release that the standards of conduct for attorneys will be applied to all attorneys who appear and practice before the Commission in the representation of these issuers. Certain provisions of the Proposed Rule, however, create questions about its breadth and application.

The Proposing Release provides that the rule will apply to attorneys appearing and practicing before the Commission in any way in the representation of an "issuer." As defined in Section 205.2 (g) of the Proposed Rule, the term "issuer" means "an issuer (as defined in Section 3 of the Securities Exchange Act of 1934 (the "1934 Act"), the securities of which are registered under Section 12 of the 1934 Act, or that is required to file reports under Section 15 (d) of that Act, or that files or has filed a registration statement that has not yet become effective under the Securities Act of 1933 (the "1933 Act"), and that it has not withdrawn."

Section 205.2 (a) of the Proposed Rule provides:

(a) Appearing and practicing before the Commission includes, but is not limited to, an attorney's:

(1) Transacting any business with the Commission, including communication with Commissioners, the Commission, or its staff;

(2) Representing any party to, or the subject of, or a witness in a Commission administrative proceeding;

(3) Representing any person in connection with any Commission investigation, inquiry, information request, or subpoena;

(4) Preparing, or participating in the process of preparing, any statement, opinion, or other writing which the attorney has reason to believe will be filed with or incorporated into any registration statement, notification, application, report, communication or other document filed with or submitted to the Commissioners, the Commission, or its staff; or

(5) Advising any party that:

(i) A statement, opinion, or other writing need not or should not be filed with or incorporated into any registration statement, notification, application, report, communication or other document filed with or submitted to the Commissioners, the Commission, or its staff; or

(ii) The party is not obligated to submit or file a registration statement, notification, application, report, communication or other document with the Commission or its staff.

Generally, members of our organization are involved in the issuance of securities described in Section 3 of the 1933 Act that are exempt from the registration provisions of the 1933 Act and the reporting provisions of the 1934 Act. In almost all cases, the securities are issued by entities that are neither registrants under the 1933 Act nor reporting parties under the 1934 Act.

In certain conduit transactions so exempt under Section 3 of the 1933 Act, the securities are issued for the benefit of entities which are “issuers” within the meaning of the Proposed Rule. Typical examples would include financings for airport facilities, solid waste facilities and manufacturing facilities. Similarly, the underwriter in either a traditional or conduit municipal financing, so exempt under Section 3 of the 1933 Act, is often either a registrant or a reporting party, and therefore meets the broad definition of an “issuer” within the meaning of the Proposed Rule. Issuing municipal securities so exempt customarily involves, except as discussed below, no business or communication with the Commission, involves no participation in any way with Commission processes, and requires no filings with the Commission. It is customary in our practice area for both the bond counsel and the counsel responsible for the preparation of the offering statement (who may be the governmental entity’s disclosure counsel or the underwriter’s counsel) to deliver a legal opinion confirming that the securities being issued are exempt from registration under the 1933 Act by reason of the exemption contained in Section 3 of that Act.

Under the language of Section 205.2 (a)(5) of the Proposed Rule, the rendering of the customary “exempt securities” opinion by underwriter’s counsel even in a traditional municipal financing and by other counsel in such a conduit municipal financing could be construed to be an action that brings the attorney’s conduct within the meaning of the Proposed Rule. NABL believes that this is inconsistent with the language contained in Section V of the Proposing Release, which provides in part as follows:

“An attorney ordinarily does not appear and practice before the Commission if his or her representation of an issuer involves no business or communication with the Commission, no participation in any way in a Commission process, and no assistance in the preparation of at least a portion of a document filed with or submitted to the Commission.”

We do not believe that participating as counsel to any party in a transaction involving an exempt security under Section 3 of the 1933 Act or an exempt transaction under Section 4 of the 1933 Act should be defined to be appearing and practicing before the Commission. It

is anomalous that the Proposed Rule could implicate the practices of attorneys regarding exempt securities or transactions, merely because they advise a party that such exemption is applicable and no other provisions of the 1933 Act or 1934 Act would apply (other than the anti-fraud provisions which, of course, apply in all cases).

If Section (a)(5) remains in the Proposed Rule, NABL requests that language be added to subparagraph (5) to clarify that “advising any party” does not relate to advice to a party involved in the issuance of securities described in Section 3 of the 1933 Act or transaction described in Section 4 of the 1933 Act. An insertion of the parenthetical phrase “(other than advising any party involved in the issuance of securities described in Section 3 of the Securities Act of 1933 or any transaction described in Section 4 of the 1933 Act)” after the language “(5) Advising any party” at the beginning of subparagraph (a)(5) would clarify the application of the Proposed Rule in this area. This revision would yield a result consistent with the current federal securities law provisions which exempt the issuers of securities described in Section 3 of the 1933 Act and Section 3(a)(4) of the 1934 Act and transactions described in Section 4 of the 1933 Act from the application of the registration and reporting provisions of those Acts, the policy issues behind such exemptions and the commentary of the Proposing Release.

The language contained in Section 205.2(a)(1) of the definition appearing and practicing before the Commission may also cause an unintended result. While earlier in our letter we stated that issuing municipal securities generally involves no communication with the Commission, on occasion attorneys representing an “issuer” within the meaning of the Proposed Rule do discuss issues with Commission staff related to the exemptions under the 1933 or 1934 Act. We believe this open communication is beneficial to both the attorneys involved and the Commission. The communication between our members and Commission staff has been openly encouraged by Commission staff. The language contained in Section 205.2(a)(1) could cause such communication with the Commission or its staff to constitute appearing and practicing before the Commission if the communication is between staff and an attorney representing an underwriter or the beneficiary of conduit financing if such party is a registrant or a reporting party. Such parties may be considered “issuers” under Section 205.2(g).

Again, we believe that the communications related to a topic concerning the issuance of a security described in Section 3 or 4 of the 1933 Act should not cause counsel to be subject to the Proposed Rule.

Whether subsection (a)(5) is completely removed, or the language in (a)(1) and (a)(5) is modified to make the applicability of the Proposed Rule clear, attorneys in the municipal securities practice area will continue to be subject to the anti-fraud provisions of the federal securities laws. Of course, if attorneys in the municipal practice area were involved in activities described in Section 205.2 (a) (2) through (4) of the Proposed Rule, such attorneys’ conduct would be subject to the Proposed Rule as a result of their direct involvement in the Commission proceedings, investigation or processes.

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We hope these comments are helpful. We appreciate the opportunity to comment on the Proposing Release, and we look forward to further discussion of these important issues with the Commission and Staff.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Kenneth Artin". The signature is written in a cursive style with a long horizontal flourish extending to the right.

Kenneth Artin, Chairman  
National Association of Bond Lawyers  
Securities Law and Disclosure Committee

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