

**MEMO# 24976**

February 18, 2011

## **ICI Draft Letter on SEC Municipal Advisor Registration Proposal**

[24976]

February 18, 2011

TO: 529 PLAN ADVISORY COMMITTEE No. 2-11  
BANK, TRUST AND RECORDKEEPER ADVISORY COMMITTEE No. 13-11  
BROKER/DEALER ADVISORY COMMITTEE No. 11-11  
CLOSED-END INVESTMENT COMPANY COMMITTEE No. 11-11  
COMPLIANCE ADVISORY COMMITTEE No. 3-11  
FIXED-INCOME ADVISORY COMMITTEE No. 23-11  
INVESTMENT ADVISERS COMMITTEE No. 2-11  
MUNICIPAL SECURITIES ADVISORY COMMITTEE No. 12-11  
PENSION COMMITTEE No. 5-11  
SEC RULES COMMITTEE No. 17-11  
SMALL FUNDS COMMITTEE No. 10-11 RE: ICI DRAFT LETTER ON SEC MUNICIPAL ADVISOR REGISTRATION PROPOSAL

As we previously informed you, the Securities and Exchange Commission has proposed rules pursuant to Section 975 of the Dodd-Frank Act to establish a permanent registration regime with the Commission for municipal advisors and to impose certain record-keeping requirements on such municipal advisors. [\[1\]](#) Municipal advisors would be defined to include investment advisers providing services other than investment advisory services under the Investment Advisers Act of 1940 (“Advisers Act”). ICI has prepared a draft comment letter that is attached and summarized below.

### **Draft Letter**

The draft letter supports the policy reasons for regulating advisers to municipal entities but recommends that the Commission narrow the scope of the municipal advisor regulatory regime to more closely align the final rules with the statutory language of Section 975 of the Dodd-Frank Act and prevent wasteful replication of regulatory regimes. The letter explains that advisers are already subject to stringent and comprehensive regulation under the Advisers Act, including pay-to-play rules; regulation as a municipal advisor is therefore unnecessary. The letter specifically recommends that the Commission narrow its proposed

interpretation of “investment strategies” to track the language in the Dodd-Frank Act that (1) limits the requirement to trace assets to the proceeds of municipal securities and (2) does not include “pools of assets.”

The draft letter recommends that the Commission interpret the exclusion for registered investment advisers from the definition of “municipal advisor” to apply to all registered investment advisers, not just those that are providing investment advice, as is consistent with the plain language in the Dodd-Frank Act. It also recommends that the Commission expand its reading of the exclusion from the municipal advisor definition for broker-dealers to ensure that activities that are already regulated by a pay-to-play rule are not subject to yet another regulatory regime. In addition, the letter recommends that the Commission provide that individuals who are appointed members of municipal entity governing bodies be excluded from the definition of “municipal advisor,” regardless of whether they are compensated.

The draft letter takes the opportunity to raise concerns with the definition of “solicitation” as used by the Commission in the proposed rules and in its recently proposed amendments to the Commission’s pay-to-play rule. It references ICI’s January 24, 2011 letter on this issue and urges the Commission to reconsider its proposed requirement for affiliated solicitors to register as municipal advisors. [\[2\]](#)

Heather L. Traeger  
Associate Counsel

#### [Attachment](#)

#### **endnotes**

[\[1\]](#) See ICI Memorandum [24823](#) (December 30, 2010) and Securities Exchange Act Release No. 63576 (December 20, 2010), available at <http://www.sec.gov/rules/proposed/2010/34-63576.pdf>.

[\[2\]](#) See ICI Memorandum [24911](#) (January 27, 2011).