

MEMO# 24821

December 30, 2010

SEC Issues Registration Requirements for Municipal Advisors

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TO: FIXED-INCOME ADVISORY COMMITTEE No. 39-10
INVESTMENT ADVISERS COMMITTEE No. 3-10
MUNICIPAL SECURITIES ADVISORY COMMITTEE No. 56-10
SEC RULES COMMITTEE No. 71-10 RE: SEC ISSUES REGISTRATION REQUIREMENTS FOR MUNICIPAL ADVISORS

The Securities and Exchange Commission has proposed rules pursuant to Section 975 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (“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 as: (1) financial advisors, including, but not limited to, registered broker-dealers that provide advice to municipal entities with respect to their issuance of municipal securities and their use of municipal financial products; (2) investment advisers that advise municipal pension funds and other municipal entities on the investment of assets held by or on behalf of municipal entities (subject to certain exclusions); and (3) third-party marketers and solicitors. The proposal is summarized below.

Comments on the SEC proposal are due 45 days after it is published in the Federal Register. We will hold a conference call on Thursday, January 6, at 2:00 p.m. Eastern time to discuss the SEC proposal and possible ICI comments. If you plan to participate on the call, please contact Ruth Tadesse by email at rtadesse@ici.org or by phone at 202-326-5836 to receive the dial-in information. If you are unable to participate on the call but have views to offer, please contact Heather Traeger at htraeger@ici.org prior to the call.

I. Definition of “Municipal Advisor”

The proposal would define a “municipal advisor” as a person, who is not a municipal entity or an employee of a municipal entity, that (1) provides advice to or on behalf of a municipal entity or obligated person with respect to municipal financial products or the issuance of municipal securities, or (2) undertakes a solicitation of a municipal entity. The definition of “municipal entity” would include public pension funds, local government investment pools and other state and local governmental entities or funds, as well as participant-directed investment programs or plans such as 529, 403(b) and 457 plans. Thus, any person that provides advice with respect to assets held by or on behalf of a municipal entity must register as a municipal advisor unless it is covered by one of the exclusions from the proposed rules. To the extent a person is providing advice to a pooled investment vehicle in which a municipal entity has invested assets along with other investors that are not municipal entities, the pooled investment vehicle would not be considered assets “held by or on behalf of a municipal entity” and, therefore, the person providing advice to the pooled investment vehicle would not have to register as a municipal advisor.

A. Definition of “Solicitation”

Under the proposal, the term “solicitation” would mean, among other things, a direct or indirect communication with a municipal entity or obligated person made by a person, for direct or indirect compensation, on behalf of an investment adviser [\[2\]](#) for the purpose of obtaining or retaining an engagement for or in connection with providing investment advisory services. Pursuant to this definition, any third-party solicitor that seeks business on behalf of an investment adviser from a municipal entity would be required to register as a municipal advisor. Persons soliciting business on behalf of affiliated entities would not fall within the definition of municipal advisor.

B. Exclusion for Registered Investment Advisers

The definition of municipal advisor would exclude any investment adviser registered under the Investment Advisers Act of 1940 (“Advisers Act”), or person associated with such investment adviser, who is providing investment advice. If a registered adviser or associated person engages in any municipal advisory activities that would not be investment advice subject to the Investment Advisers Act, it would have to register as a municipal advisor. [\[3\]](#) In the Release, the Commission provides two examples of activity that would require registration. First, a registered investment adviser that provides advice with respect to how a municipal entity should structure or issue municipal securities would be required to register as a municipal advisor. Second, a registered investment adviser that solicits a municipal entity on behalf of a municipal advisor would have to register as a municipal advisor.

C. Employees of a Municipal Entity

The proposal provides that the term “municipal advisor” excludes employees of a municipal entity. The term would not exclude appointed members of a governing body of a municipal entity that are not elected ex officio members, such as a person serving as a board member, county commissioner or city councilman. These “unpaid volunteers” would be classified as municipal advisors subject to registration.

II. Registration of Municipal Advisors

Under the proposal, municipal advisors would have to submit electronically an application

for registration with the Commission. [4] The Commission would have to grant registration or institute proceedings to deny registration within 45 days of the filing of an application. The application would require municipal advisors to submit more detailed information than is currently required under the temporary rules and certify that they have met or will meet the qualifications and regulatory obligations required of them. In particular, the proposed rule would require:

- A municipal advisory firm to submit a Form MA to register;
- An individual municipal advisor to submit a Form MA-I to register;
- A municipal advisory firm or individual municipal advisor to submit a Form MA-W to withdraw from registration; and
- A non-resident municipal advisory firm (and any non-resident general partner or managing agent of a municipal advisory firm) to submit a Form MA-NR in order to appoint an agent for service of process.

According to the Release, the forms are modeled after Form ADV (Part I). They would require municipal advisors to provide identifying and contact information, information about the form of their organization, their business, their associated persons and their control persons, and to disclose the municipal advisory activities in which they engage. Municipal advisors also would be required to provide disciplinary history information comparable to the information that the SEC obtains from registered broker-dealers and investment advisers. Individual municipal advisors would be required to amend the form whenever any of the required information becomes inaccurate in any way; and municipal advisory firms would be required to amend the form annually, and whenever identifying and contact information or disciplinary information becomes inaccurate.

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endnotes

[1] See Securities Exchange Act Release No. 63576 (December 20, 2010) (“Release”), available at <http://www.sec.gov/rules/proposed/2010/34-63576.pdf>. On September 1, 2010, the Commission adopted an interim final temporary rule for registration of municipal advisors that became effective October 1, 2010. This proposal would replace the temporary rule in its entirety.

[2] The solicitation would need to be made on behalf of an investment adviser that does not control, is not controlled by, or is not under common control with the person undertaking the solicitation.

[3] The Commission would interpret “advice” to include any activity that constitutes “advice” subject to the Advisers Act.

[4] The proposal would permit certain persons to voluntarily register as municipal advisors.

should not be considered a substitute for, legal advice.