

## ICI VIEWPOINTS

February 24, 2011

# SEC Proposal on Municipal Advisor Registration Could Create Unnecessary Regulatory Burden

This week, we wrote [a letter](#) to the SEC to air our concern that its [proposed registration regime](#) for “municipal advisors” is too broad and will subject many well-regulated entities and individuals, including advisers to funds, to duplicative regulatory requirements.

Some background on this proposal: until 2010, financial advisers to state and local governments were not generally required to register in that capacity with the SEC. The July 2010 [Dodd-Frank Wall Street Reform and Consumer Protection Act](#), however, sets up that requirement, which the SEC’s proposal aims to implement.

ICI recognizes and supports the policy reasons underlying this regulation, which include helping the SEC with oversight and making it easier for municipal entities to work with municipal advisors. However, we think this proposal goes too far in several respects.

One of our concerns is the proposal’s definition of “municipal advisor.” Under the Dodd-Frank Act, “municipal advisors” excludes “any investment adviser registered under the Investment Advisers Act of 1940, or persons who are associated with such investment advisers who are providing investment advice.” As we read it, that exclusion applies to all registered investment advisers.

The SEC’s proposal, however, interprets Dodd-Frank’s municipal advisor exclusion to mean just those registered investment advisers who provide investment advice with regards to securities. In our letter, we note that many registered investment advisers advise clients on asset classes other than securities—currencies, real estate, futures, forward contracts, and others. Those advisers would not qualify for the exclusion and thus would have to register with the SEC as municipal advisors, despite the fact that they are already regulated by the SEC under the Investment Advisers Act.

We’re also concerned that this proposal, read in conjunction with the SEC’s “pay-to-play” rule, effectively prohibits an affiliate from soliciting government business for compensation on behalf of its affiliated investment adviser unless that affiliate is registered as a municipal advisor. Here again, requiring affiliates to register would re-write the statutory intent plainly set forth in the Dodd-Frank Act. For more on this point, see our [comment letter to the SEC last month](#).

- Read ICI's [letter](#) on the SEC's Municipal Advisor Registration Proposal.
- Find other comments on the SEC's proposal at the [SEC's website](#).
- Visit ICI's resource center on [financial services regulatory reform](#).
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