



*All Things Financial.*

February 18, 2011

Ms. Elizabeth Murphy  
Secretary, Securities & Exchange Commission  
100 F Street NE  
Washington, DC 20549-1090

Adella M. Heard  
Senior Vice President & Assistant General Counsel

Re: Registration of Municipal Advisors - Proposed Rules 15Ba1-1 to 15Ba1-7; File No. S7-45-10 (the "Municipal Advisor Rule")

Dear Ms. Murphy:

First Tennessee Bank National Association ("First Tennessee") appreciates the opportunity to comment on the Municipal Advisor Rule. First Tennessee is a wholly owned subsidiary of First Horizon National Corporation ("FHN") a financial services holding company with over \$24 billion in assets as of year-end 2010. First Tennessee's primary business lines are its regional banking business and FTN Financial which provides financial products for the investment and banking community.

Our organization supports regulatory reform to address abuses in the financial system, especially where such abuses have occurred due to unregulated or unsupervised activities or entities. We also appreciate the need to give appropriate consideration to categories of customers which may be subject to abuse. However, we believe that the Municipal Advisor Rule is overly broad in that it would impose new obligations on banks when providing traditional lending and deposit products and services. We also believe that clarification of when "advice" is provided to a municipal entity is critical in order for regional banks to continue to offer products and services to municipalities.

Traditional Banking Products and Services Should Be Excluded from the Definition of "Investment Strategies" and "Municipal Financial Products". Banks routinely make available to municipalities depository and cash management services. These include sweep accounts, escrow accounts, custody accounts, certificates of deposit, zero balance accounts, and other cash management services. These products and services are also provided to institutional and commercial banking customers.

From a regulatory standpoint, cash management products and services fall into two categories. They are generally either deposit accounts insured by the FDIC (up to \$250,000); or are bank activities that the SEC has exempted from the definitions of "broker" under Section 3(a)(4)(B) of the Securities Exchange Act of 1934 (the "1934 Act"). We believe that the SEC should specifically exclude from the definition of "investment strategies" products and services in these categories.

First Tennessee Bank National Association  
165 Madison Avenue, 3rd Floor  
Memphis, TN 38103  
Phone: (901) 523-4781  
Fax: (901) 523-4248  
amheard@ftb.com

Deposit products are not securities and are not subject to the regulatory oversight of the Securities Act of 1933 or the 1934 Act. Funds held in deposit accounts are not subject to investment risks. Other cash management services such as sweep accounts or custody or escrow arrangements may be offered by a bank without the bank registering as a broker under the 1934 Act. We interpret the Commission's exclusion of these activities under Section 3(a)(4)(B) as an indication that the nature of these types of services and thus the current regulation of these services do not require the additional protections of the 1934 Act. The nature of these types of products or services does not change when offered to or utilized by municipalities as compared to other bank clients. Therefore, we urge the Commission to clarify that these products are not "municipal financial products" by excluding them from the definition of "investment strategies" under the Municipal Advisor Rule.

Definition of "Investment Strategies" We urge the Commission to re-examine the definition of "investment strategies" in the Municipal Advisor Rule. We believe that the definition of "investment strategies" should be limited to investments involving the proceeds of municipal securities as set forth in §15(B)(e)(3)<sup>1</sup> of the Act. The Commission has indicated in the Municipal Advisor Rule that use of the word "includes" means "without limitation" as to the source or types of funds of a municipality that are considered "investment strategies". However, we believe the meaning of "include" is intended to avoid limiting the meaning of "plans or programs" not expanding the meaning of "investment of proceeds of municipal securities". By focusing on bond proceeds, the Municipal Advisor Rule would identify funds which are unique to municipalities as opposed to other institutional customers of the bank. Imposing a fiduciary standard for advice concerning investment of those funds helps ensure that proceeds are available as needed and are used in accordance with the purposes and representation made in connection with the issuance of such securities. However, in the case of general operating funds and/or funds from other sources, we believe that a bank or broker should be able to provide the same products and services to municipalities under the same standards applicable to other institutional customers.

Exemption for Lending Activities. In addition to cash management services, banks also have traditionally entered into credit transactions with municipalities. These transactions include secured loans, lines of credit, credit cards and letters of credit. Credit transactions may also be structured as the purchase of bonds or notes. Even though credit transactions structured in this manner may involve the "issuance of municipal securities", SEC no-action letters have taken the position that these types of credit transactions, when conducted by a bank as described in such no-action letters, have not been considered activities which must be conducted through a "municipal securities dealer" under Section 15(B) of the 1934 Act. See United Mercantile Bank & Trust Company (December 4, 1986); First Wisconsin National Bank of Sheboygan (August 8, 1987); Industrial Development Bonds (July 11, 1982). We urge the SEC to clarify in its final proposal that engaging in credit transactions involving the issuance of municipal securities that are not required to be conducted through a municipal securities dealer under Section 15(B) of the 1934 Act, would not require a bank to register as a "municipal advisor". We believe it is

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<sup>1</sup> §(15)(b)(e)(3) provides that the term "investment strategies" includes plans or programs for the investment of proceeds of municipal securities that are not municipal derivatives, guaranteed investment contracts, and the recommendation of and brokerage of municipal escrow investments.

inconsistent for these types of transactions to now be subject to additional regulatory oversight when the manner in which these products are offered and the risks associated with such products have not changed since the issuance of such no-action letters.

Clarification of “Advice”. Further clarification is needed with respect to what constitutes “providing advice to a municipal entity”. The SEC has indicated that this may be determined by considering whether the municipal entity has a reasonable expectation that such a relationship is an advisory relationship. We believe that without further clarification, this standard is so broad that any entity which makes municipal financial products available to a municipality could be subject to registration based solely upon perceptions of the municipal entity. Guidance is critical to allow banks that offer products and services to municipalities to manage risks and responsibilities that arise when a bank is deemed to be a “fiduciary”. In addition, such risks are often addressed through pricing and product offerings. Absent further clarification as to what constitutes “advice” for purposes of the Municipal Advisors Rule, product offerings may be limited, and costs to obtain such products and services will likely increase.

We believe the SEC should confirm that certain facts or circumstances evidenced by communications, documentation or the manner of delivery of the municipal financial products do not amount to “advice” absent a specific written agreement between the parties to the contrary. For example, this should apply when a product or service is provided as a result of, or in response to, an RFP process conducted by a municipality. Under these circumstances, the municipality has in the first instance established a seller/buyer relationship. It would then be entirely inconsistent for the municipality to take a position that the bank is serving in an agency capacity on behalf of the municipality, let alone as a fiduciary. Similarly, when a municipality has engaged an independent financial advisor in connection with a proposed transaction, unaffiliated counterparties or potential counterparties to the transaction should not be deemed to be providing advice to the municipality as it has already selected an entity to fulfill that role.

Finally, when a bank or other entity enters into transactions with or provides products to a municipality including providing communications or information which describe the relative requirements and risks associated with the product offering, but without making a particular product recommendation to the municipality, the bank should not be considered providing “advice”. In this scenario, information is provided to the municipality but product selection is determined by the municipality. Under current banking regulations, making products and services available to clients in this manner would not, by itself, impose a fiduciary duty upon the bank. Absent this clarification, the products and services offered to municipalities would be subject to different regulatory standards as the same products and services offered to other institutional clients. We believe that many small or regional financial institutions provide such products and services to municipalities through their existing commercial banking areas. Requiring a bank to register as a municipal advisor to service this client segment may result in many smaller or regional banks discontinuing these services to municipalities.

Recognition of Separately Identifiable Divisions. As noted above, we believe that most traditional banking products or services should not be considered “municipal financial products” under the Municipal Advisor Rule. However, to the extent a bank makes available other products or services which would not be excluded, we urge the Commission to recognize the

ability of a bank to register as a “separately identifiable division”. This would be consistent with the registration scheme for bank municipal securities dealers and bank investment advisors to investment companies. We believe that registration in this manner would result in efficiency for the bank in complying with regulatory requirements and efficiencies in examining a bank’s compliance with such requirements.

Summary. We urge the SEC to refine the Municipal Advisor Rule by exempting the banking activities identified above from the Rule. We also urge the Commission to provide clarification and certainty in understanding what constitutes providing advice to a municipal entity. We believe this approach will ensure that the risk management resources of banks and their regulators are utilized efficiently and that municipal entities will continue to have access to financial products and services within their local communities.

Sincerely,

A handwritten signature in black ink, appearing to read "Adella M. Heard", with a stylized flourish at the end.

Adella M. Heard  
Senior Vice President and  
Assistant General Counsel