

# BDA Bond Dealers of America

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February 22, 2011

## VIA ELECTRONIC MAIL

David A. Stawick  
Secretary  
Commodity Futures Trading Commission  
Three Lafayette Centre  
1155 21st Street, NW.  
Washington, DC 20581

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

**RE: CFTC RIN 3038–AD06 Definitions, SEC File Number S7-39-10 and CFTC RIN 3038–AD25**

Dear Mr. Stawick and Ms. Murphy:

The Bond Dealers of America (“BDA”) is pleased to offer comments on CFTC RIN 3038–AD06 and RIN 3038–AD25 and SEC Release No. 34-63452 (the “Releases”). The Releases relate to proposed regulations (the “Proposed Regulations”) regarding the Further Definition of “Swap Dealer,” “Security-Based Swap Dealer,” “Major Swap Participant,” “Major Security-Based Swap Participant” and “Eligible Contract Participant” issued jointly by the CFTC and the SEC, and to Business Conduct Standards for Swap Dealers and Major Swap Participants With Counterparties, especially with regard to “special entities”, which include state and local governments. The BDA is the trade association exclusively focused on U.S. fixed income markets and represents bond dealers who are headquartered in cities all over the country and who do business in dozens of states coast to coast. Many of the BDA’s members are also municipal advisors.

As a fundamental matter, Congress enacted the system for registration and regulation of swaps because there was a significant element of the financial industry that

was not regulated. The CFTC's and the SEC's principal goal in their proposed regulations should be to regulate these previously unregulated entities and to coordinate regulation of existing registered entities. The Dodd-Frank Act substantially changes several aspects of financial regulation. In addition to making changes to the regulation of swap dealers who act as advisors to special entities, including state and local governments (essentially requiring a fiduciary duty of them), it establishes regulation of municipal advisors (including requiring a fiduciary duty of those advisors). The former would be regulated by the CFTC and the latter would be regulated by the SEC. Given the broad definition of municipal advisor, especially as proposed by the SEC, a swap advisor would be included in the definition of municipal advisor. Thus, without coordination between the CFTC and the SEC, an advisor would be subject to two regulatory regimes and answer to two regulatory authorities for the same activities. Doing so would not only be a burden on municipal advisors, but also would drain scarce CFTC and SEC resources, without an increase in the benefit to the special entities. Therefore, the BDA believes that the CFTC should exempt from the definition of swap dealers who act as advisors to special entities those dealers that the SEC defines and regulates as municipal advisors.

The BDA is also concerned, like many other commenters, about the burden that the CFTC proposed business conduct regulations would place on swap dealers and major swap participants, but we wanted to focus our comments on the point made above.

Thank you for the opportunity to present our views on the Proposed Regulations.

Sincerely,



Mike Nicholas  
Chief Executive Officer