

# **SpiritBank**

February 17, 2011

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

Reference: File Number S7-45-10

Dear Secretary Murphy:

We appreciate the opportunity to comment on the notice of proposed rulemaking by the Securities and Exchange Commission to establish a permanent registration system for municipal advisors under Section 975 of the Dodd-Frank. Section 975 establishes a system of dual registration with the Commission and the Municipal Securities Rulemaking Board that will require covered municipal advisors to comply with rules of fair dealing, ongoing education requirements, and a fiduciary duty to their municipal entity clients.

SpiritBank is an Oklahoma family-owned community bank that is 95 years old. We provide a variety of products and services to state and local government bodies. For example, we offer deposit and cash management accounts, as well as loans to municipalities.

In addition, many bank employees serve their communities through appointments to or volunteering for local boards and commissions in capacities which may include providing advice with respect to municipal financial products. For instance, one of SpiritBank's employees is an elected official as a City Counselor in his community and is Vice Mayor.

What we provide to the Public Sector are the same FDIC-insured deposit products that we provide to the Private Sector (Public Funds). As Community Banks, we are already in a highly regulated industry. We have an investment arm of our bank, Spirit Financial, that handles any investment needs of our customers, and they are registered and regulated by the SEC.

SpiritBank does not have a trust department and we don't deal in bonds or securities. We do have Public Fund deposits from our local municipal entities. What we offer our Public Sector customers are banking services, regulated by several government agencies already.

**Section 975 was intended to establish a regulatory scheme for unregulated persons providing advice to municipalities with respect to municipal derivatives, guaranteed investment contracts, investment strategies or the issuance of municipal securities.**

**SpiritBank serves communities that are the home to municipalities who share their banking services with other local banks in those communities. None of these community banks provide the services of an MFA (municipal financial advisor) as listed above.**

**The SEC has expanded the definition of “investment strategies” to encompass any funds “held” by a municipal entity, regardless of whether such funds are related to the issuance of municipal securities or investment of bond proceeds. The SEC’s interpretation would cover traditional bank products and services such as deposit accounts, cash management products and loans to municipalities, meaning banks would have to register as municipal advisors and add a new layer of regulation on bank products for no meaningful public purpose. This duplicate regulation will raise costs and limit availability of financial services, ultimately harming state and local governments.**

**Implementation would have a chilling effect on the ability of state and local governments to find volunteers willing to serve on the boards of bond-issuing authorities. In addition to submitting to SEC and MSRB registration, these appointed board members would be subject to fiduciary duties, pay-to-play, and other rules the MSRB plans to implement. Volunteers would find these rules unduly burdensome.**

**Implementation would make municipality banking business less attractive because of the regulatory scrutiny the SEC and MSRB would force on them. This would force many local community banks, like SpiritBank, to decide to not provide banking services to their local municipalities, forcing these local and state entities to look outside of their community for the services they need. Competition would be lessened, creating fewer financial options for the public entity to choose from. In short, implementation of this rule would work in favor of large trust companies who are already regulated by the SEC, to the detriment of the community bank who is not, and who chooses not to bring on additional regulatory burden in order to serve this already under-served public sector.**

**The Commission should state clearly that neither Section 975 nor its implementing regulation reach traditional bank products and services.**

**The Commission should extend the exemption for registered investment advisers to banks that are exempt from Investment Adviser Act registration.**

**As covered in Reg R, the SEC should register the unregulated MFAs, but not the already heavily regulated community banks, like SpiritBank.**

**Appointed members of a municipality's governing board should be deemed to be "employees" of the municipality and thus exempt from registration. Many bank employees act as citizen volunteers offering their financial expertise for the benefit of their communities. In some of the very small communities that SpiritBank serves, local bankers may be the only source of much-needed financial expertise for city or county officials. If these volunteers were to be required to register as individuals with the Commission and the MSRB, many well-qualified volunteers would be discouraged from subjecting themselves to these requirements.**

**Finally, this proposal is in conflict with President Obama's initiative to avoid regulation that impedes economic growth and job creation. This proposal flies in the face of President Obama's initiative to streamline the federal regulatory apparatus, review all existing federal regulation and avoid new regulations that impede innovation, diminish U.S. competitiveness, and restrain job creation and economic expansion – while providing little or no benefit to Americans. That is a perfect description of what this proposal represents: overregulation; overkill; restraining economic growth, and adding another layer of regulation by allowing the SEC to overreach the objective – which was to register and regulate the unregulated MFAs – not the Community Banks who are staggering under new waves of regulatory burdens.**

**Two questions are called for:**

**What are the likely effects on job retention and growth, investment and U.S. economic competitiveness? And is there a smarter, faster, more flexible and less burdensome way of accomplishing the objective? The answers should be obvious. Excessive unnecessary regulation on top of already existing regulation will stifle productivity and reduce economic competitiveness, as the local community banks who truly care about their local municipalities are forced to decide to disengage with them, rather than face the unnecessary regulatory scrutiny. The smarter, faster, more flexible and less burdensome way to get this done? Go back to the original intent. Regulate the unregulated MFAs, who are readily identified by every municipal entity in my state (and it is NOT the community bank)!**

**We hope these views are helpful as you progress with your intention to regulate financial advisors to municipalities that are not currently regulated under existing securities laws. The financial crisis and subsequent economic recession exposed significant risks in financial institutions. To address these issues, regulatory policy must not only focus on risk management solutions, but also weaknesses in regulatory and supervisory approaches. Ultimately, regulatory**

**policy can reduce overall risk while allowing community banks like SpiritBank to serve their communities and take care of the traditional banking needs of their municipal neighbors.**

**Best personal regards,**

A handwritten signature in black ink that reads "Kelley Sanders". The signature is written in a cursive style with a large, sweeping initial "K".

**Kelley Sanders  
Sr. Deposits Officer  
SpiritBank**