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

RE: File Number S7-45-10

Dear Ms. Murphy:

In response to the notice of proposed rulemaking published in the January 6 Federal Register, the New York Bankers Association is submitting these comments on the registration of municipal advisors. **Our Association urges that the proposed regulation be clarified to apply only to those activities specifically identified by Congress as requiring registration. We also urge that an exemption comparable to that provided broker-dealers and registered investment advisors be provided to commercial banks and thrift institutions chartered by the states or the federal government and subject to federal banking insurance and supervision.** The New York Bankers Association is comprised of the community, regional and money center banks and thrifts doing business in New York State. Our members in aggregate hold assets in excess of \$9 trillion and employ more than 200,000 New Yorkers.

The proposed regulation is intended to implement section 975 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the Act). Section 975 prohibits municipal advisers, as defined, from providing advice on municipal financial products or municipal securities unless they have registered with the Commission. Municipal advisers are defined as persons who provide advice with respect to such financial products and securities “including advice with respect to the structure, timing, terms, and other similar matters concerning such financial products or issues” or who “undertake[s] a solicitation of a municipal entity.” Tellingly, municipal financial products are defined as “municipal derivatives, guaranteed investment contracts, and investment strategies.”

The proposed regulation would require registration of all persons providing advice to or on behalf of a municipal entity with respect to municipal financial products or the issuance of municipal financial products or who solicit a municipal entity. It exempts broker-dealers, investment advisers, attorneys, engineers, accountants and certain other parties. The proposal adopts the definition of municipal financial product contained in section 975 of the Act.

Many banks and thrift institutions provide a range of services to their municipal customers. These services include deposit-taking, cash management, short- and long-

term lending, the purchase of municipal securities and many other types of traditional banking services. In addition, bankers frequently serve their local governments, particularly in smaller communities, in uncompensated or volunteer positions that assist in the financial management of the communities they serve.

As proposed, the regulation would, in many respects, track the language of the statute. However, in doing so, it does not provide adequate guidance for those bankers providing **traditional banking services** to their local communities, leaving them unsure whether to register and with the fear that many of their current activities may be subject to prohibition. In those respect in which the proposal does not track the language of the statute, it could sweep within its purview both officials and activities that appear not to have been intended by Congress. In these regards, therefore, the proposal does both too much and too little.

Our Association urges that the Commission amend its regulation to specifically exclude from the definition of municipal financial products all products and services offered by commercial banks and thrift institutions chartered under State or federal law and subject to federal supervision and regulation. The Commission's proposal already exempts a range of parties not subject to federal supervision from the regulation's purview when they are performing traditional activities. To name only three, attorneys, engineers and accountants are not subject to pervasive federal regulation by virtue of their professions, but only if they engage in certain activities otherwise subject to federal supervision. The Commission's proposal therefore exempts these parties from registration to the extent they do not engage in advising municipalities outside the scope of their traditional professional services. Parties who are subject to pervasive federal regulation – broker-dealers, investment advisors and commodity trading advisors are also exempt from registration unless they engage in certain specifically defined municipal advisory activities.

Far more than these exempt parties, **banks and thrifts are subject to pervasive federal regulation and supervision that includes intense, on-site examination not less than every 18 months (continuously, in the case of larger institutions), responding to frequent supervisory instructions and guidance, recordkeeping and quarterly reporting requirements on all aspects of their operation, and a comprehensive enforcement system that includes civil money penalties, cease-and-desist actions, officer and director removals and prohibitions, potential criminal penalties and, in extreme cases, charter revocation.**

In view of the comprehensive regulatory and supervisory system governing banks and thrifts, we would recommend, therefore, that the Commission adopt an exemption for federally insured banks and thrifts that parallels the exemption it has provided for other federally supervised entities. A comparable exemption should be included for those banks exempt from registration under the Investment Advisors Act (as the proposal does for investment advisors required to be registered under the Act). In this regard, we also believe that the Commission should adhere to the statutory exemption for

investment advisors in section 975 and not limit it to advice for which registration would be required under the Investment Advisors Act.

In addition, we would recommend that the Commission define financial products beyond the mere statutory language to specifically exclude traditional banking services. The Congressional definition in section 975 of the Act contemplates only a narrowly circumscribed sphere of financial products (“municipal derivatives, guaranteed investment contracts, and investment strategies”) that encompasses those products for which available evidence suggests there may have been abuse. None of these products resemble traditional banking services. Deposits, loans, cash management, financial recordkeeping, financial education and many other similar banking services should be explicitly excluded from the definition of financial product.

Finally, we urge that the Commission pull back from its overly expansive interpretations of two terms. The proposal would define “investment strategies” to include plans, programs or pools of assets that invest funds held by or on behalf of a municipal entity. Congress clearly intended a more restrictive result when it defined investment strategies as including only the funds that resulted from the issuance of “municipal securities that are not municipal derivatives, guaranteed investment contracts, and the recommendation of and brokerage of municipal escrow investments.” Unlike the Commission’s proposal, the Congressional definition would not encompass advice on the investment of tax proceeds, fines and penalties, interest earned, and similar funds – an omission clearly intentional. We urge that the Commission follow this clear Congressional intent and limit the applicability of its registration requirement to the proceeds from municipal securities. Any other language could result in banks and thrifts choosing not to serve their local government’s deposit-taking or cash management needs for fear that a teller would inadvertently suggest that a municipal official deposit funds in a CD rather than a NOW account.

The proposal would also exclude from the definition of “municipal employee” exempt from the registration requirements officials who are appointed to municipal entities and advisory bodies. In many municipalities across New York State, ranging in size from the State itself to local governments as varied as New York City and Olean, bankers serve as volunteers on economic development, job-generating and fiscal and financial management commissions, councils and committees designed to assist the State and its municipal entities in advancing their goals. Requiring these volunteer bankers to register as municipal advisors, subject to the fiduciary obligation in the statute and regulation, the recordkeeping and reporting requirements, and public disclosure limitations, would, at the very least, put a chill into the decision-making process with regard to accepting such service. In some instances, it could dissuade potential volunteers and severely reduce the ability of many governmental units to gain access to the financial know-how and economic insights of many members of the banking community. We urge that the Commission expand the definition of “municipal employee” to include all who serve in appointed positions.

We appreciate the opportunity the Commission has provided to comment on its proposal to require the registration of municipal advisors.

Sincerely,

Michael P. Smith