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February 18, 2011

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

Re: Registration of Municipal Advisors; Release No. 34-63576**;** File Number S7-45-10

Dear Ms. Murphy:

The Independent Community Bankers of America[1] (ICBA) welcomes the opportunity to comment on the U.S. Securities and Exchange Commission's (the "SEC") proposed rules regarding the registration of municipal advisors.

**Background**

Section 975 of Title IX of the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank Act") amended Section 15B of the Securities Exchange Act of 1934, as amended (the "Exchange Act") to, among other things, make it unlawful for "municipal advisors" to provide certain "advice" or solicit municipal entities or certain other persons without registering with the SEC. Specifically, the Dodd-Frank Act required municipal advisors, as defined Section 15B(e)(4)(a) of the Exchange Act as amended by the Dodd-Frank Act, to register with the SEC effective October 1, 2010. To enable municipal advisors to temporarily satisfy this requirement, the SEC adopted an interim final temporary rule and form, Exchange Act rule 15Ba2-6T and Form MA-T, effective October 1, 2010 (the "Temporary Final Rule"). The SEC is now proposing new rules 15Ba1-1 through 15Ba1-7 under the Exchange Act (the "Proposed Rule").

[1] The Independent Community Bankers of America represents nearly 5,000 community banks of all sizes and charter types throughout the United States and is dedicated exclusively to representing the interests of the community banking industry and the communities and customers we serve. ICBA aggregates the power of its members to provide a voice for community banking interests in Washington, resources to enhance community bank education and marketability, and profitability options to help community banks compete in an ever changing marketplace.

With nearly 5,000 members, representing more than 20,000 locations nationwide and employing nearly 300,000 Americans, ICBA members hold $1 trillion in assets, $800 billion in deposits, and $700 billion in loans to consumers, small businesses and the agricultural community. For more information, visit ICBA's website at www.icba.org.

Throughout the financial regulatory reform process, ICBA has supported strong reforms that hold accountable Wall Street and systemically dangerous financial firms and unregulated entities whose risky behaviors led to the financial crisis. ICBA acknowledges that, until the passage of the Dodd-Frank Act, the activities of municipal advisors were largely unregulated and municipal advisors were generally not required to register with the SEC or any other federal, state or self-regulatory entity with respect to their municipal advisory activities. ICBA also acknowledges that the lack of a registration regime may have contributed to abusive practices by certain entities doing business with municipalities. However, we are concerned that the Proposed Rule, like the Temporary Final Rule before it, if interpreted broadly, could result in thousands of community banks being required to register as municipal advisors with the SEC and the Municipal Securities Rulemaking Board (the "MSRB"), even though these banks are already closely supervised by state and federal banking regulators.

**ICBA's Comments**

Community banks serve as the economic lifeblood of many communities throughout the United States, providing the loan, deposit and investment products to consumers and businesses that drive economic growth in their local communities. In fact, community banks frequently serve as the primary providers of traditional banking products and services, such as demand deposits, certificates of deposit, cash management services, trust and investment products, loans and letters of credit, to municipalities in and around their local communities and are significant investors in municipal securities. Indeed, the bonds between community banks and municipal entities run deep. Despite the decades long tradition of community banks providing traditional banking products and services to municipal entities, the history of abusive practices by community banks against such municipalities is virtually nonexistent due in large part because the activities of community banks are already supervised closely by federal and state banking regulators.

ICBA does not believe that the provision of traditional banking products and services by banks to municipal entities as discussed above falls within the definition of municipal advisor as set forth in the Proposed Rule. However, ICBA is concerned that the Proposed Rule and the Temporary Final Rule, if interpreted broadly, could require thousands of community banks and their employees to register with the SEC and the MSRB for doing nothing more than offering traditional bank products and services to municipal customers. Accordingly, ICBA urges the SEC to use its broad authority to exempt banks from registration under the Proposed Rule and Temporary Final Rule.

Section 15B(e)(4)(A) of the Exchange Act, as amended by the Dodd-Frank Act, defines the term "municipal advisor" to mean "a person (who is not a municipal entity or an employee of a municipal entity) (i) that provides advice to or on behalf of a municipal entity or obligated person with respect to municipal financial products or the issuance of municipal securities, including advice with respect to the structure, timing, terms, and other similar matters concerning such financial products or issues, or (ii) that undertakes a solicitation of a municipal entity." In the Proposed Rule, the SEC acknowledges that

the statutory definition of a municipal advisor is broad and includes persons that traditionally have not been considered to be municipal financial advisors. Specifically, the definition of a municipal advisor includes "financial advisors, guaranteed investment contract brokers, third-party marketers, placement agents, solicitors, finders, and swap advisors" that engage in municipal advisory activities. These persons are included in the definition of municipal advisor if they provide advice to or on behalf of a municipal entity or obligated person with respect to municipal financial products or the issuance of municipal securities (including advice with respect to the structure, timing, terms and other similar matters concerning such financial products or issues) or undertake a solicitation of a municipal entity or obligated person (i.e., "municipal advisory activities"). Although not explicitly stated in the Proposed Rule, such entities presumably are included within the definition of municipal advisor because their "municipal advisor activities" were largely unregulated and registration, and the resulting supervision and examination by the SEC and the MSRB, was therefore necessary to ensure that public funds were protected. Consistent with this approach, the definition of municipal advisor explicitly excludes (1) "a broker, dealer, or municipal securities dealer serving as an underwriter" because they are regulated by the SEC and FINRA and (2) any investment adviser registered under the Investment Advisers Act of 1940 and "any commodity trading advisor registered under the Commodity Exchange Act, because they are already the subject of extensive supervision and regulation by the SEC or the Commodities Futures Trading Commission. Other entities, such as attorneys offering legal advice or providing services that are of a traditional legal nature (and not financial in nature) and engineers providing engineering (and not financial) advice are also excluded from the definition of municipal advisor because their services do not involve advice regarding a municipal financial product. Likewise, in the Proposed Rule, the SEC proposes to exclude from the definition of a municipal advisor accountants preparing financial statements, auditing financial statements, or issuing letters for underwriters for, or on behalf of, a municipal entity or obligated person because these services, while financial in nature, do not constitute advice.

The basic framework of the new registration regime therefore is that entities whose "municipal advisor activities" are unregulated and involve the provision of advice regarding municipal financial products must register and become supervised by the SEC and MSRB. The provision of traditional banking products and services by banks does not meet either of these criteria. Far from being unregulated, it is well established that banks, and the provision of traditional banking products and services to municipal entities, are the subject of extensive supervision and regulation by federal and state banking regulators. The extensive regulation and examination of banks serve to effectively protect the interests of bank customers, including municipal customers. Banks, as heavily regulated entities, are simply not the types of entities that Congress intended to capture within the new registration regime. Accordingly, the SEC should use the broad exemptive authority granted to it under Section 15 of the Exchange Act to exclude banks from the definition of "municipal advisor" and thereby exempt banks from the new registration regime.

If the SEC is unwilling to grant banks a blanket exclusion from the definition of municipal advisor, it should exclude banks from such definition at least to the extent that they are merely providing traditional banking products and services to municipal customers. Specifically, as suggested in the Proposed Rule, the SEC should exclude from the definition of a "municipal advisor" banks providing advice to a municipal entity or obligated person concerning transactions that involve a "deposit," as defined in Section 3(l) of the Federal Deposit Insurance Act at an "insured depository institution," as defined in Section 3(c)(2) of the Federal Deposit Insurance Act, including all insured checking and savings accounts and certificates of deposit. Deposit accounts are the most basic form of traditional banking products and do not warrant registration. The SEC should also exclude from the definition of a "municipal advisor" (1) banks that respond to requests for proposals ("RFPs") from municipal entities regarding other investment products offered by the banking entity, such as money market mutual funds or other exempt securities and (2) banks that provide to a municipal entity a listing of the options available from the bank for the short-term investment of excess cash (for example, interest-bearing bank accounts and overnight or other periodic investment sweeps) and negotiates the terms of an investment with the municipal entity. These types of products merely are extension of more traditional deposit products, such as savings accounts, checking accounts and CDs, and do not constitute "advice" under any reasonably accepted definition of the term. Moreover, as set forth in detail above, the provision of these products and services by banks is already heavily regulated by federal and state banking regulators.

ICBA also urges the SEC to expand the scope of the traditional banking products exclusion from the definition of municipal advisor to expressly exclude the extension of credit, whether through loans, letters of credit or otherwise, by banks to municipal customers. While such extensions of credit are arguably not covered by the Proposed Rule because they do not involve the investment of "proceeds" of the sale of municipal securities, the SEC should make it explicitly clear that extending credit to municipal customers will not trigger registration. Again, we note that such extensions of credit by banks are activities that are already heavily regulated by federal and state banking laws and regulations.

As suggested in the Proposed Rule, the SEC should also exclude from the definition of "municipal advisor" a bank that provides to a municipal entity the terms upon which the bank would purchase for the bank's own account (to be held to maturity) securities issued by the municipal entity, such as bond. Such activities do not involve the safeguarding of public funds, the central rationale for the new registration regime, but rather involve the purchase of an investment product by a bank. Further, requiring registration under such circumstances would raise the cost of such investments for banks and, if these costs were passed on to the customer, could have the affect making terms less favorable to the issuing municipality.

The SEC should also exclude from the definition of "municipal advisor" banks and trust companies that direct or execute purchases and sales of securities or other instruments with respect to funds in a trust account or other fiduciary account in accordance with

predetermined investment criteria or guidelines, including on a discretionary basis and banks and trust companies that provide other fiduciary services to municipal entities, such as acting as trustees with respect to governmental pension plans and other similar capacities.

Finally, we note that banks have long been exempted from registration under the Investment Advisors Act of 1940 under the rationale that these activities are already closely supervised by federal and state banking regulators. As discussed above, while the Proposed Rule excludes investment advisors registered under the Investment Advisers Act from the definition of the term "municipal advisor" thereby exempting them from registration under the Proposed Rule, no similar exemption is provided for banks that provide identical services to these registered investment advisors. Even if the SEC determines that investment advisory services do not constitute traditional banking products and services that should be excluded from the registration regime, we urge the SEC to exclude banks providing investment advisory services from the definition of municipal advisor in order to restore them to equal footing with registered investment advisors providing the same services under a separate, but substantially equivalent, supervisory regime.

**Other Considerations.** The failure to exempt banks and/or the provision of traditional bank products and services from the new registration regime could result in significant unintended consequences. First, registration will cause community banks to incur significant cost and expense, in both real dollars and employee time, to comply with rules and regulations promulgated by the SEC and/or the MSRB. Under such circumstances, banks will likely pass on these added costs and expenses to their municipal customers. Even more worrisome, the added costs and increased regulatory burden may make many community banks reluctant to offer the full panoply of traditional banking products. If community banks cease offering municipal deposit products and halt the extension of credit to municipal entities, such municipal entities may be forced to go outside their local communities in order to obtain the financial products and services that they need to meet their financial needs and obligations and/or deal with larger banks to obtain these products. Under such circumstances, municipal entities may not be able to obtain the financial products and services that they need on favorable terms or at all.

Finally, we note that banks of all sizes from all regions of the country are already complying with the regulations issued under the Dodd-Frank Act. These proposed rules will therefore have a direct impact on the cumulative regulatory burden and competitiveness of the nation's community banks. Most banks and their holding companies have historically been regulated by two or three banking regulators. For many of these banks, the establishment of the Consumer Financial Protection Board or CFPB will add a third or even fourth regulator. Requiring banks to register as municipal advisors would result in banks being supervised and examined by yet another regulator. Further, because the activities of banks that may be subject to the new municipal advisor registration regime are already supervised by banking regulators, there is substantial risk that banks will be subject to duplicative and possibly conflicting regulation as a result of the Proposed Rule and the Temporary Final Rule. Requiring community banks to

register as municipal advisors, merely for providing traditional banking products and services that they have provided to municipal entities for decades without any history of abuse, would only serve to add to an already significant regulatory and compliance burden at a time when community banks can least afford it.

**Conclusion**

ICBA generally supports the SEC proposal to require the registration of municipal advisors. However, for the reasons discussed in this letter, ICBA believes that the Proposed Rule and the Temporary Final Rule could result in thousands of community banks and their employees being required to register as municipal advisors with the SEC and the MSRB for doing nothing more than offering traditional bank products and services to municipal customers. Because Congress did not intend for the registration regime required by Section 975 of the Dodd-Frank Act to cover the provision of traditional banking products and services, the SEC should exempt banks from registration under the Proposed Rule and the Temporary Final Rule by expressly excluding them from the definition of municipal advisor. Alternatively, the SEC should revise the Proposed Rule and Temporary Final Rule to provide further clarity on exactly what traditional banking products and services would trigger the registration requirement.

ICBA appreciates the opportunity to comment on the SEC's proposed rules regarding the registration of municipal advisors. If you have any questions or need additional information, please do not hesitate to contact me at my email address (Chris.Cole@icba.org) or at 202-659-8111.

Sincerely,
/s/ Christopher Cole

Christopher Cole
Senior Vice President and Senior Regulatory Counsel