

February 22, 2011

VIA ELECTRONIC DELIVERY

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

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

Dear Ms. Murphy:

TIAA-CREF Individual & Institutional Services, LLC (“TC Services”) submits this letter in response to the solicitation of comments by the Securities and Exchange Commission (“Commission”) regarding the recently proposed regulations requiring registration of municipal advisors.¹

Specifically, TC Services requests that the Commission clarify that an otherwise registered broker-dealer will not be required to register separately with the Commission as a municipal securities adviser simply because the broker-dealer also provides retirement planning advice to individual participants within a governmental sponsored defined contribution retirement plan such as a plan contemplated by Section 403(b) of the Internal Revenue Code (so called “403b plans”).

A. Description of TC Services.

TC Services is registered with the Commission as a broker-dealer under the Securities Exchange Act of 1934, as amended (“Exchange Act”) and is a member of the Financial Industry Regulatory Authority (“FINRA”). TC Services is wholly owned by Teachers Insurance and Annuity Association of America (“TIAA”). TC Services and TIAA are members of the TIAA-CREF group of companies, which for over 90 years has helped people in the academic, research, medical and cultural fields plan for and live through retirement. TIAA-CREF presently serves over 3.7 million individuals at over 15,000 institutions.

¹ Securities Exchange Act Release No. 34-63576 (December 20, 2010) (“Proposal Release”).

The overwhelming majority of TC Services’s clients are participants within employer sponsored retirement plans that TIAA helps administer—including governmental 403(b) plans. In response to plan participant requests, TC Services offers an incidental broker-dealer advice service which provides participants with point-in-time, non-discretionary advice regarding their plan account balance. TC Services provides this advice in compliance with Department of Labor Advisory Opinion 2001-09A (also known as the “SunAmerica Opinion”).²

The requirements of the SunAmerica Opinion protect the customers of TC Services. It requires TC Services to hire an independent financial expert to serve as the source of the investment advice. TC Services cannot change or affect the advice and must compensate the financial expert without regard to the type or brand of products recommended. In other words, the advice cannot be skewed in favor of TC Services’s affiliated products. TC Services makes this independent, objective advice available to its individual participant customers without charge.

This incidental investment advice provided by TC Services has been well received by both plan participants and plan sponsors. The service has been adopted for use by over 70% of the TIAA-CREF asset base. TC Services has observed that it helps participants improve their chances of funding an appropriate retirement balance, increases their savings rate and improves their diversification. By way of example, participants who implement the advice on average increase their portfolio’s diversification from three asset classes to nine.

For the following reasons, TC Services believes Congress did not intend this type of individual retirement planning advice to trigger registration as a municipal securities adviser and asks that the Commission agree as much through either clarification within the adopting release or through the exercise of the specific exemptive relief granted to the Commission by Congress.³

B. Advice to Individual Retirement Plan Participants Should Not Trigger Registration Under the Proposed Rule.

Section 15B(e)(4)(A) of the Exchange Act as amended by the Dodd-Frank Act defines the term “municipal adviser” in relevant part as one that provides advice to or on behalf of a municipal entity concerning municipal financial products.⁴ The release specifically requests public comment on whether the Commission’s interpretation of “municipal entity” and related terms as they relate to public pension plans requires clarification.⁵ We believe it does.

²Department of Labor Advisory Opinion 2001-09A (Dec. 14, 2001).

³15 U.S.C. 78o-4(a)(4).

⁴15 U.S.C. 78o-4(a)(2).

⁵Proposal Release, supra note 1, at 42-43.

We believe clarification is necessary to confirm that a broker-dealer's provision of investment advice to an individual participant in the context of a 403(b) plan or similar defined contribution governmental retirement plan such as a 457 plan does not trigger registration as a municipal adviser for the broker-dealer under the proposed rule. To conclude otherwise does not further the intentions of Section 15B as amended by the Dodd-Frank Act, namely to strengthen oversight of the municipal securities markets and broaden current municipal securities market protections to cover previously unregulated market participants.⁶

By way of background, TIAA enters into retirement plan record keeping agreements with interested municipal entities to help them administer their participant directed retirement plans. As part of this relationship, the municipal entity may request TIAA make available to the retirement plan participants, the municipal entities' employees, advice as to how best allocate and invest their individual contributions among the plan's investment menu, generally a mix of annuities and mutual funds.

Although the proposal includes public pension plans⁷ including 403(b)s⁸ as a covered municipal entity, we believe from the context of the proposal that this reference is meant to address situations where a firm or individual is providing advice directly to the pension plan itself as opposed to the underlying plan participants. By way of example, a broker-dealer providing advice to the pension plan investment committee as to mutual funds to make available in a participant directed retirement plan would trigger registration but not incidental advice by a broker-dealer to an individual participant as how to allocate their contributions among the plan's investment options.

While the exclusions from the definition of "municipal advisor" included by Congress in Section 15B(e)(4) of the Exchange Act were limited,⁹ any reasonable interpretation of that intent suggests a covered entity or relationship have at least some connection to the municipal securities market the rule seeks to protect. Advice to an individual does not meet that test; rather, it is an individual retirement planning exercise unrelated to the integrity of the municipal securities market.

Moreover, the clarification we seek is with regards to registered broker-dealers who are already subject to the full panoply of securities regulatory oversight and only with regards to instances involving the provision of intermittent incidental advice to governmental retirement plan participants.

We also believe the Commission's consideration of our comments will help its rulemaking efforts demonstrate consistency with the requirements imposed upon the

⁶Id. at 205.

⁷Id. at 11.

⁸Id. at 22.

⁹15 U.S.C. 78o-4(e)(4)(C).

Commission by the Exchange Act when engaged in rulemaking. Section 3(f) of the Exchange Act requires the Commission whenever it engages in rulemaking and is required to consider or determine whether an action is necessary or appropriate in the public interest to consider in addition to the protection of investors whether the action would promote efficiency, competition and capital formation.¹⁰ Separately, Exchange Act Section 23(a)(2) prohibits the Commission from adopting any rule that would impose a burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act.¹¹

We believe meeting these statutory tests is difficult should the Commission be inclined to consider advice to individual plan participants as a registration trigger. Applying the proposal's requirements to this fact pattern is not necessary to protect the interests of individual investors because broker-dealers already are overseen by both the Commission and FINRA when providing advice to individual investors. For the same reason, registration in this instance is not necessary to help ensure the Commission has information to effectively oversee securities markets, focus its examinations and aid in risk based examination targeting.¹² Including this type of individual retirement planning advice as a registration trigger would impose an unnecessary burden on competition and result in an inefficient outcome, *i.e.*, regulatory duplication. Unnecessary regulatory expense further burdens a broker-dealer's already strained ability to provide low cost or complimentary advice to lower balance investors. The Commission specifically has noted in the proposal that it is sensitive to these types of burdens and costs.¹³

Moreover, the benefits the Commission attributes to the rule proposal and its registration requirements are not applicable to covering this type of individual retirement planning advice.¹⁴ By way of example, the Commission points to the benefits of imposing standardized record keeping upon municipal advisers. The Commission however notes later that these requirements largely would duplicate existing record keeping requirements to which broker-dealers already are subject pursuant to Rules 17a-3 and 17a-4 under the Exchange Act.¹⁵

C. Conclusion.

We believe our comments are consistent with protecting the interests of investors and help the proposal focus more effectively on the types of harms Congress intended when amending section 15B of the Exchange Act. We would welcome the opportunity to

¹⁰15 U.S.C. 78c(f).

¹¹15 U.S.C. 78w(a)(2).

¹²Proposal Release, *supra*, note 1, at 152.

¹³*Id.* at 182.

¹⁴*Id.* at 186.

¹⁵*Id.* at 139.

discuss our comments directly with the staff. You may contact the undersigned at 303.626.4229.

Very truly yours,

Adym W. Rygmyr
Associate General Counsel
TIAA-CREF Individual & Institutional
Services, LLC

cc: Chairman Mary L. Schapiro
Commissioner Kathleen L. Casey
Commissioner Elisse B. Walter
Commissioner Luis A. Aguilar
Commissioner Troy A. Paredes
Eileen Rominger, Director, Division of Investment Management
Robert Cook, Director, Division of Trading & Markets