



February 22, 2011

Submitted electronically
Elizabeth M. Murphy, Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, D.C. 20549-1090

**RE: Registration of Municipal Advisors
Proposed rules 15Ba1-1 through 15Ba1-7
File Number S7-45-10**

Dear Ms. Murphy:

Vanguard¹ appreciates the opportunity to comment on the rules proposed by the Securities and Exchange Commission to regulate the registration of municipal advisors.² We agree with the Commission that it is important to establish a permanent registration regime for previously unregistered municipal advisors. A permanent registration regime will give municipal entities and obligated persons³ access to critical information regarding previously unregistered entities with which they may do business. While we support the goal of creating a permanent registration regime, we are concerned that the Commission's proposal may unnecessarily expand the application of the registration requirement beyond what was originally intended by Congress in the amendments to Section 15B of the Securities Exchange Act of 1934 (the "Exchange Act").

Section 975 of the Dodd-Frank Act ("Section 975") amended the Exchange Act to make it unlawful for municipal advisors to provide advice to municipal entities with respect to municipal financial products or the issuance of municipal securities unless the municipal advisor is registered under the Exchange Act.⁴ As the legislative history indicates, and as the Commission has recognized, the amendment was primarily aimed at registering *unregulated* persons that render advice with respect to municipal financial products and the issuance of municipal securities.⁵ Accordingly, Congress excluded a

¹ The Vanguard Group, Inc. ("Vanguard") offers more than 170 U.S. mutual funds with total assets of over \$1.5 trillion.

² *Registration of Municipal Advisors*, Securities Exchange Act Release No. 63576 (December 20, 2010) ("*Municipal Advisor Release*").

³ Defined as a person who is committed by contract or other arrangement to support the payment of all or part of the obligations on the municipal securities to be sold in an offering of municipal securities. See Securities Exchange Act of 1934, 15 U.S.C. § 78o-4(e)(10) (2010).

⁴ See Securities Exchange Act of 1934, 15 U.S.C. § 78o-4(a)(1)(B) (2010).

⁵ *See Enhancing Investor Protection and the Regulation of Securities Markets—Part II: Hearing Before the S. Comm. on Banking, Housing, and Urban Affairs*, 111th Cong. 71 (2009) (statement of Ronald Stack,

series of regulated entities from the definition of “municipal advisor” set forth in the Exchange Act, including “*any* investment adviser registered under the Investment Advisers Act of 1940”⁶ Notably, Section 975 contained no qualifying or limiting language regarding the scope of the exemption from municipal advisory registration granted to registered investment advisers.

When the Commission set forth its interpretation of the scope of the registered investment adviser exemption, the SEC stated that “[a] registered investment adviser . . . must register with the Commission as a municipal advisor if the adviser . . . *engages in any municipal advisory activities that would not be investment advice subject to the Investment Advisers Act.*”⁷ The italicized language limits the scope of the investment adviser exemption in a manner that was not intended by Congress. Similarly, the definition of “municipal advisor” set forth in the Commission’s proposed rule 15Ba1-1(d)(2)(ii) also contains language that exceeds the scope of the amended Exchange Act. According to the proposal, a registered investment adviser will be required to register as a municipal advisor if the adviser “engages in municipal advisory activities other than providing investment advice that would subject such adviser or person associated with such adviser to the Investment Advisers Act of 1940.”⁸

The Commission’s proposal unduly restricts the exemption from municipal advisory registration granted by Congress to registered investment advisers, and interjects ambiguity into a firm’s determination of whether it is required to comply with the new registration regime. This ambiguity is compounded by the lack of a definition of what constitutes the rendering of “investment advice” that would exempt a registered investment adviser from complying with the new requirement. The expansion of the new registration requirement in this manner is unwarranted, as registered investment advisers are already subject to the fiduciary duties and comprehensive registration and disclosure requirements mandated by the Investment Advisers Act of 1940. As drafted, the Commission’s proposal may subject registered investment advisers to duplicative and overlapping regulation.

Chair, Municipal Securities Rulemaking Board (“MSRB”)) (“[S]ome of the problems . . . that [the MSRB has] encountered are that there are many participants in [the municipal securities] market who right now are *unregulated*: financial advisors, swap advisors, investment advisors. *They are not registered with the SEC, and we have no power to regulate them.*”) (emphasis added); *Id.* at 175-76; *Id.* at 178-79 (“Firms that offer . . . investment advice to issuers are *not*, for the most part, regulated. . . . At a minimum, given the investment advice they provide to clients, these firms should be registered as investment advisors with the SEC.”) (emphasis added). The Commission, itself, has recognized that the purpose of the amendment was to regulate municipal advisors, “a category of persons previously unregulated.” *Temporary Registration of Municipal Advisors*, Securities Exchange Act Release No. 62824, p. 9, n. 22 (September 1, 2010) (“*Interim final temporary rule release*”).

⁶ 15 U.S.C. § 78o-4(e)(4)(C) (emphasis added).

⁷ *Municipal Advisor Release*, p. 34 (emphasis added).

⁸ *Id.*, p. 216.

Accordingly, Vanguard respectfully requests that the Commission clarify the proposal with the following amendments:

- The proposed rule should be amended to conform to the definition of “municipal advisor” promulgated by Congress in Section 975.⁹
- The Commission should clearly construe the exception from municipal advisory registration afforded to registered investment advisers. The SEC should state in any adopting release that a registered investment adviser would not be a municipal advisor when it advises a municipal entity about municipal financial products or the issuance of municipal securities.
- As part of any adopting release, the Commission should include a non-exclusive interpretation to identify a key circumstance when a registered investment adviser will be deemed to be rendering “investment advice” for the purposes of relying on the exemption. Specifically, the Commission should find that any advice provided by a registered investment adviser pursuant to a written agreement with a municipal entity to whom the adviser owes a fiduciary duty as an investment adviser constitutes the rendering of investment advice, thereby exempting such adviser from registration under the new rule.

Finally, we note that the proposed rule will require appointed board members of municipal entities to register as municipal advisors if they advise on the issuance of municipal securities.¹⁰ We agree with numerous other commenters that this could lead existing board members to resign and may affect the ability of issuers to find replacement volunteers with the requisite knowledge and experience. As a manager of over \$85 billion in municipal bond assets on behalf of mutual fund investors, Vanguard believes that this loss of expertise and institutional knowledge at issuers would be an unfortunate and unnecessary outcome of this rulemaking.

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⁹ See 15 U.S.C. § 78o-4(e)(4)(C).

¹⁰ See *Municipal Advisor Release*, p. 40.

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Vanguard appreciates the opportunity to provide these comments on the Commission's proposal to regulate the registration of municipal advisors. Please do not hesitate to contact me or James Creel, Associate Counsel at (610) 669-1219 if you have any questions or require additional information.

Sincerely,

/s/ Heidi Stam

Heidi Stam
Managing Director and
General Counsel

cc: The Honorable Mary L. Schapiro
The Honorable Kathleen L. Casey
The Honorable Elisse B. Walter
The Honorable Luis A. Aguilar
The Honorable Troy A. Paredes

Martha Haines, Assistant Director and Chief,
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