



## Maryland Bankers Association

*By electronic delivery to [rulecomments@sec.gov](mailto:rulecomments@sec.gov)*

February 22, 2011

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

RE: File Number S7-45-10

Dear Secretary Murphy:

On behalf of the Maryland Bankers Association (MBA) and our member banks, we appreciate the opportunity to comment on the notice of proposed rulemaking issued 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. Our members, large and small, provide a variety of products and services to state and local governments.

It is my understanding that 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. However, Section 975 of the Dodd-Frank Act requires registration of any company or individual that gives "advice" to a municipality. Unfortunately, "advice" was not defined. The proposed registration scheme would expand coverage beyond the statute to include anyone providing advice to a municipality regarding any of its funds. For example, the proposal would expand 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.

This means that traditional bank activities (that are already subject to rigorous regulation and oversight) such as bank deposits, providing cash management products, lending to municipalities directly or through third-parties, issuing letters of credit supporting municipal bond offerings, providing advice to municipal pension plans, or even providing a list of short-term investment options available from the bank, among other things, could trigger compliance.

**Examples of traditional bank activities that could be covered by the proposed Rule include:**

- Bank deposits;
- Lending to municipalities directly or through third-parties for hospitals, airports, etc.;
- Responses to RFPs from municipalities for investment products offered by banks such as money markets funds or exempt securities;
- Providing a list of options available from the bank for short-term investments and negotiating the terms of the investment;
- and more.

Thus, under the proposed Rule, banks would have to register as municipal advisors and add a new layer of regulation on bank products for no meaningful public purpose. One of our community bank members estimated that under the proposed rule, they would have to register about 75 (or 20%) of their employees. This bank



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currently employees about 350 individuals. In addition, many bank employees act as citizen volunteers offering their financial expertise for the benefit of their communities. In very small communities, 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

Thus, FDIC-insured, traditional banks that are already subject to strict oversight and examinations by federal and state regulators would also be open to SEC examinations, even if the bank is not publicly traded. Further, along with the SEC enforcement, banks engaged in covered activities would also be required to comply with Municipal Securities Rulemaking Board (MSRB) requirements for traditional activities and incur significant costs for activities that are already subject to close supervision by bank regulators. This duplicate regulation will raise costs and limit availability of financial services, ultimately harming state and local governments.

### **Negative impacts include:**

- Banks will be forced to incur significant costs to comply with MSRB requirements for traditional activities that are already subject to close supervision by bank regulations;
- Individual bankers and others who provide financial advice to local governments because they serve on municipal boards, commissions, advisory bodies (as appointees or volunteers) could be required to registered as municipal advisors – which will have a chilling effect on a municipal entities ability to attract qualified candidates to serve on their boards;
- Banks that are forced to register to conduct traditional activities will necessarily pass those costs on to municipal customers;
- Local banks may not take municipal deposits if they have to deal with the costs and burden of regulation, thus causing local governments, schools, libraries, etc. to go outside of their communities for bank accounts.

### **MBA urges the Commission to consider the following change to the proposed Rule:**

- Clearly state that neither Section 975 nor its implementing regulation reach traditional bank products and services;
- Extend the exemption for registered investment advisers to banks that are exempt from Investment Adviser Act registration; and
- Exempt from registration appointed members of a municipality's governing board that should be deemed to be "employees" of the municipality.

Please contact me if you have questions or would like to discuss MBA's concerns in greater detail. Thank you for your consideration of MBA's position and for the opportunity to comment on this critical Rule.

Sincerely,

A handwritten signature in black ink, appearing to read 'Kathleen M. Murphy', with a long horizontal flourish extending to the right.

Kathleen M. Murphy  
President & CEO  
Maryland Bankers Association