



February 22, 2011

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

Re: File S7-45-10

Dear Secretary Murphy:

The Massachusetts Bankers Association, which represents 190 commercial, cooperative and savings banks and federal savings and loan associations in Massachusetts and New England, from the largest to the smallest, appreciates the opportunity to provide comments on the proposed rulemaking issued by the Securities and Exchange Commission (SEC) to establish a permanent registration system for municipal advisors under Section 975 of the Dodd-Frank Act (DFA).

Section 975 creates a system of dual registration with the Commission and the Municipal Securities Rulemaking Board (MSRB) 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 as well as be subject to SEC examination.

Massachusetts has a very healthy and competitive banking environment with many banks and other financial institutions competing aggressively for municipal and other public deposits. More than 115 local banks accept public deposits, although more than half of those banks serve their local communities primarily with basic bank deposit services. Many other Massachusetts banks provide a broad range of banking services to municipalities including: deposit, cash management, lockbox, short-term lending and other products and services. A small number also offer fiscal advisory services and as such are already covered by existing MSRB regulations.

The intent of Section 975, confirmed by members of the House Financial Services Committee, was to establish a regulatory scheme for persons providing advice to municipalities with respect to municipal derivatives, guaranteed investment contracts, investment strategies or the issuance of municipal securities, who were not regulated by any state or federal regulatory body. We believe the SEC has significantly expanded the definition of "investment strategies" to include 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. We also note the term "advice" is not defined in the statute or proposed regulation: a major issue with unintended consequences for a banking industry which is already over regulated.

We are also concerned with how the Commission plans to interpret the definition of "municipal advisor." The DFA defines a municipal advisor as any entity that provides advice to a municipal entity with respect to municipal financial products or the issuance of municipal securities. Further, the DFA defines "municipal financial products" to include plans or programs for the investment of the proceeds of municipal securities that are not municipal derivatives or GICs or municipal investments. This point is critical. As we understand the Commission's proposal, it would require registration if advice is given about funds "held by or on behalf of a municipal entity." This would move this proposal far beyond the intent of the legislative language.

If the SEC initial interpretation remains in any final regulation, traditional bank products and services such as deposit accounts, cash management products and loans to municipalities would force over 100 local Massachusetts banks to register as municipal advisors and add a new layer of regulation on bank products for which there is no meaningful public benefit. This duplicate and costly set of regulations will ultimately force a number of banks with modest levels of public deposits to seriously rethink their willingness to accept and service these deposits. Eventually, the number of local banks offering government banking services will decline, harming especially smaller local governments, libraries and limited purpose commissions.

Many bank employees serve as volunteers offering their financial expertise for the benefit of their communities ranging from selectmen and city councilors to local finance committees, development commissions, planning boards, etc. In very small communities, local bankers may be the only source of much-needed financial expertise for municipal officials. If these volunteers were to be required to register as individuals with the Commission and the MSRB, bankers have already told us that they and many well-qualified volunteers would be discouraged from subjecting themselves to these requirements.

Recommended Alternatives:

- The Commission should explicitly state that neither Section 975 nor its implementing regulation is intended to cover traditional bank products and services.
- The Commission should extend the exemption for registered investment advisers to banks that are exempt from Investment Adviser Act registration.

Finally, we strongly believe that this proposal conflicts with President Obama's initiative to reduce regulation that impedes economic growth and job creation and deserves to be withdrawn.

Thank you for considering our views on this important matter.

Sincerely,

David E. Floreen
Senior Vice President
Government Affairs and Trust Services