

**Comments on Proposed Rules on Registration of Municipal Advisors  
File No. S7-45-10  
Submitted to the Securities and Exchange Commission  
UFS Bancorp  
February 22, 2011**

UFS Bancorp (“UFS”) is a bank holding company that is the parent to UniBank for Savings (“UniBank”) and UniBank Fiscal Advisory Services, Inc. (“UFASI”). UniBank is a mutual savings bank, headquartered in Whitinsville, Massachusetts. With assets of approximately \$1 billion, UniBank provides retail and commercial banking services with a focus on central Massachusetts. UniBank also has a government banking department that provides depository, cash management, and lending services to local governments. The government banking department, which opened in 1997, is one of the largest providers of banking services to municipalities in Massachusetts with approximately 325 municipal customers. The department’s staff is not large, however, consisting of 16 positions, sales and administrative.

UFASI, which opened in 1999, provides advice and assistance to local governments in the issuance and management of debt in Massachusetts and surrounding states. UFASI advised on the issuance of approximately \$387 million par amount of local government long-term bonds in 45 transactions in calendar 2010. (UFASI’s average transaction size was approximately \$8.6 million.) Over the life of the firm, UFASI has advised on the issuance of more than \$10 billion par amount of local government debt. As such, UFASI is an active participant in its marketplace, but not the largest. The firm consists of six professionals and two support staff – not a large operation by any means.

The Securities and Exchange Commission (“SEC”) has proposed rules 15Ba1-1 through 15Ba1-7 (the “Proposed Rules”) as part of the implementation of the Dodd-Frank Act (“Dodd-Frank”) that would require registration of “municipal advisors.” The Proposed Rules also would place recordkeeping and other requirements on municipal advisors. UFASI clearly fits the definition of “municipal advisor” – and we expect that UFASI’s business will be affected by Dodd-Frank and the Proposed Rules in ways profound and small. There is a question about the applicability of the Proposed Rules to UniBank’s government banking operations.

Our comments on the Proposed Rules focus on two areas: the applicability of the Proposed Rules to UniBank’s government banking department and the compliance burden placed on both UniBank and UFASI by the Proposed Rules.

**Applicability of the Proposed Rules to the UniBank Government Banking Department**

Dodd-Frank provides that individuals and firms providing advice to municipalities “with respect to municipal financial products or the issuance of municipal securities” must register with the SEC. The Proposed Rules are a significant step in the implementation of the regulation called for by Dodd-Frank. Clearly, UFASI fits within the definition of firms intended to be regulated under the Proposed Rules. However, we would argue that UniBank’s government banking operations should not be within the purview of the Proposed Rules.

It is clear from reading the Proposed Rules, particularly the proposed rule 15Ba1-1, that the SEC takes a broad view of the definition of “municipal financial products” and therefore “municipal advisors.” The SEC takes the position that the term “municipal financial product” includes “municipal derivatives, guaranteed investment contracts, and investment strategies.” The SEC further takes the position that the definition of investment strategies “includes, without limitation, the investment of the proceeds of municipal securities.” The SEC goes beyond this to assert that “the Commission does not believe it was Congress’s intent to limit the requirement to register as a municipal advisor only to those persons that provide advice with respect to plans and programs for the investment of proceeds from municipal securities.”

In its discussion of the Proposed Rules, the SEC asks “should the Commission 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(1) of the Federal Deposit Insurance Act at an ‘insured depository institution’, as defined in Section 3(c)(2) of the Federal Deposit Insurance Act, such as insured checking and savings accounts and certificates of deposit?” We believe that without such a clear exclusion spelled out in the Rule as finally adopted, UniBank’s government banking operations and employees could become subject to its provisions. We believe that the SEC should adopt such an exclusion.

UniBank already operates in a heavily regulated environment. The bank is regulated at the federal level by the Federal Deposit Insurance Corporation and at the state level by the Massachusetts Division of Banking. Depositors enjoy protection of deposits to the full \$250,000 provided by the FDIC. They have the additional protection provided by the Massachusetts Depositors Insurance Fund, which insures all deposits in member banks.

UniBank’s government banking customers receive services from a group that includes sales and support staff. Members of the sales staff are not registered investment advisors. As such, they are limited to discussing only UniBank’s heavily regulated products. UniBank’s competition includes funds that do not enjoy FDIC or other bank insurance protection. These funds include the Massachusetts Municipal Depository Trust (MMDT). Making UniBank subject to the Rule as finally adopted would add costs to the bank’s operations that would render the bank less able to compete with MMDT and similar funds. We do not believe that the reduction in competition serves the public interest insofar as UniBank and similar banks are already heavily regulated.

### **Compliance Burden Placed on UniBank and UFASI by the Proposed Rules**

In the Proposed Rules, the SEC recognizes that compliance with regulations imposes economic costs on firms and individuals. The question is whether that cost is justified by the intent of Dodd-Frank and more generally service of the public interest.

The proposed rule 15Ba1-7 imposes recordkeeping and compliance requirements on municipal advisors. All correspondence and other documents related to the rendering of advice to municipal entities would be required to be retained for five years, the first two of which are to be in an “accessible” location. The SEC estimates that the time expenditure required to comply with this

rule and with the other Proposed Rules is more than 180 hours per year per firm. This is nearly ten percent of a full-time person's time.

Based on the volume of documents that UFASI generates already, we believe that the estimate of 180 hours per year is optimistic – particularly for the initial effort required to make compliance possible. It also does not include the cost of storage, whether physical or electronic. UFASI is a small firm in terms of number of employees. 180 hours represents more than one percent of all of the annual person-hours represented by the firm – and we believe that the time expenditure would be greater than this.

The hours and cost of storage proposed to be required by rule 15Ba1-7 are real economic costs. This is particularly true for municipal advisors, like UFASI, that are not broker-dealers. UFASI operates in a marketplace where its chief competitor, FirstSouthwest, is both a municipal advisor and a broker-dealer. FirstSouthwest already has an extensive compliance infrastructure. Its costs of achieving compliance with the Proposed Rules will be less than those of non broker-dealers like UFASI. This rule, then, has the effect of providing a competitive advantage in the Massachusetts municipal marketplace to firms like FirstSouthwest.

Even in marketplaces where advisors are mostly non broker-dealers, the Proposed Rules will have economic costs. These will either come out of the bottom lines of firms or be passed along to municipal clients in the form of fee increases. Either the industry will have fewer competitors or prices to consumers will rise. Either way, municipal clients will be disadvantaged by this element of the rule.

Does the public interest benefit from this reduction in competition? We do not believe so. The SEC notes – and we emphatically agree that – “the additional costs associated with registration may impact those municipal advisors that are not already registered as either investment advisors or broker-dealers to a greater degree than they would impact municipal advisors that have previously registered under another regulatory regime. To the extent that municipal advisors that have not previously registered provide greater positive value to their advisees, their disproportionate exit from the market, compared to municipal advisors that have previously registered under another regulatory regime, would negatively impact the value of advice provided to municipal entities.” We would only add that even if firms do not exit the market, the value of their advice will be reduced by their need to increase fees charged to municipal clients.

## **Conclusion**

Firms like UniBank and UFASI have been providing financial services to municipal governments efficiently and ethically for many years. We believe that UniBank and UFASI are typical of the firms that serve smaller units of government in this country. We understand that Dodd-Frank has given the SEC and the Municipal Securities Rulemaking Board (“MSRB”) a mandate to increase regulation of the financial industry. We hope that the SEC will give strong consideration to minimizing the fixing of something that largely isn't broken. And we hope that the SEC will take account of fairness in the marketplace and of minimizing the impact of its rules on the public – by minimizing the costs of compliance to local governments.