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February 22, 2011

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

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

Dear Ms. Murphy:

The following comments regarding the U.S. Securities and Exchange Commission's ("SEC") Notice of Proposed Rulemaking – Registration of Municipal Advisors, are submitted on behalf of the Independent Bankers Association of Texas ("IBAT"). IBAT is a trade association representing approximately 500 community banks domiciled in Texas. Most of IBAT's member banks are family owned or closely held and several are publicly traded.

This letter urges the SEC to consider three main issues regarding the application of the municipal advisor registration requirements to banks. First, Congress did not intend for the registration requirement established by Section 975 of the Dodd-Frank Act to cover the provision of traditional products and services, and therefore, the SEC should exempt banks from the registration requirement by expressly excluding them from the definition of "municipal advisor." Alternatively, the SEC should revise the municipal advisor Rule to provide further clarity on exactly what traditional banking products and services would, and would not, trigger the registration requirement, and IBAT strongly encourages the SEC to exempt the traditional banking products and services discussed in this letter from triggering the municipal advisor registration requirement. Finally, we strongly urge the SEC to look at this rulemaking in the context of the cumulative rulemaking and regulatory changes that all banks are facing under the Dodd-Frank Act, and consider that the regulatory benefits obtained by having banks register as municipal advisors are minimal at best given how many other regulators already oversee all these banking activities.

Background

Section 975 of Title IX of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the "Dodd-Frank Act") amended Section 15B of the Securities Exchange Act of 1934 (as amended) (the "Exchange Act") to, among other things, make it unlawful for "municipal advisors" to provide

certain "advice" or solicit municipal entities or certain other persons without first registering with the SEC. The Dodd-Frank Act requires municipal advisors (as defined in Section 15B(e)(4) of the Exchange Act, as amended by the Dodd-Frank Act) to register with the SEC effective October 1, 2010. To enable municipal advisors to temporarily satisfy this requirements, the SEC adopted an interim final temporary rule and form, Exchange Act Rule 15Ba2-6T and Form MA-T (both effective October 1, 2010) (the "Temporary Final Rule").

The SEC is now proposing new rules 15Ba1-1 through 15Ba1-7 under the Exchange Act (the "Proposed Rule") and has solicited input and commentary on the Proposed Rule.

Until the passage of the Dodd-Frank Act, the activities of municipal advisors were largely unregulated and municipal advisors were generally not required to register with the SEC, nor any other federal, state or self-governing entity with respect to their municipal advisory activities. A lack of a formal regulatory and registration regime for municipal advisors may have contributed to unwise, and in some cases even abusive, practices by certain entities doing business with municipal entities. However, IBAT is concerned that the proposed Rule (similar to the Temporary Final Rule it would replace), if interpreted broadly, could result in many community banks in Texas, as well as thousands of community banks across the country, being required to register as "municipal advisors" with the SEC and the Municipal Securities Rulemaking Board (the "MSRB"). This registration with the MSRB would be in addition to the close regulation and supervision that these banks are already subject to under state and federal banking laws and regulations.

Section 945 of the Dodd-Frank Act requires registration of any company or individual that gives "advice" to a municipal entity on, among other things, investment strategies defined as plans or programs for the investment of the proceeds of municipal securities that are not brokerage of municipal escrow investments. "Advice" is not defined under the statute (nor in the Proposed Rule). "Municipal entity" as defined under Exchange Act Section 15B(e)(8) can generally apply to any entity owned or operated by state or local government. Examples would include public hospitals, municipal airports, public pension programs, local government investment pools, etc.

The SEC is proposing a registration scheme that expands coverage beyond the term "proceeds" in the statute, meaning that anyone providing advice to a municipal entity regarding any of its funds, whether or not from "proceeds" of municipal securities, would require registration. The MSRB will also require fee-based registration, education requirements, rules of conduct and fiduciary duties. Both the SEC and MSRB would require registration not only by the bank itself, but also by individual employees giving "advice," and would subject registrants to potential examination and other reporting requirements.

Texas community banks provide important services and play a critical role in many communities across the state. Such banks provide deposit, investment and loan products to local consumers and businesses, stimulating economic activity in their local communities. Community banks also frequently serve as the primary providers of traditional banking products and services to state, local government and municipal entities in the areas they serve, providing products and services such as demand deposits; certificates of deposit; treasury and cash management services; trust and investment products; loans; and letters of credit. There are often longstanding and integral relationships between community banks and the municipal entities that they serve. In the long and historic tradition of community banks providing such products and services to state, local government and municipal entities, instances of abusive practices by community banks against such municipal entities are

incredibly rare. This is due in part to the community banks being closely supervised by various federal and state banking regulators and examiners.

Furthermore, the relationship between the bank and the local governmental unit is stringently covered by state law. For example, before a depositary contract is created, the municipality must comply with chapter 105 of the Texas Local Government Code, providing notice (essentially a request for proposal) to potential depositaries. The contract itself for deposit of funds and for investments is subject to specific statutory provisions and oversight. Funds that are not fully insured by the FDIC must be collateralized in accordance with the Texas Public Funds Collateral Act, Chapter 2257 of the Texas Government Code. In short, significant safeguards and requirements are spelled out in state law. While we have cited explicitly to Texas law, similar types of safeguards exist in the laws of other states.

Banks Should Be Specifically Exempted From Application Of The SEC Municipal Advisor Registration Rule

IBAT does not believe that the provision of traditional banking products and services by banks to municipal entities falls within the definition of "municipal advisor" set forth in the Proposed Rule. IBAT is extremely concerned that the Proposed Rule, if interpreted broadly, could require many, if not hundreds, of community banks within the state of Texas, and their employees, to register with the SEC/MSRB for doing nothing more than offering traditional bank products and services to municipal entity customers. Accordingly, IBAT urges the SEC to use its broad authority to create an outright exemption for banks and bank employees from registration under the Proposed Rule (and the Temporary Final Rule as well).

Upon examination it appears that the basic framework of the municipal advisor registration process under that entities who engage in "municipal advisor activities," and whose activities are otherwise unregulated, and who provide advice regarding municipal enitity financial products, must register and be subject to supervisions by the SEC/MSRB. Section 15B(e)(4)(A) of the Exchange Act, as amended by the Dodd-Frank Act, defines "municipal advisor" to mean "a person (who is not a municipal entity or an employee of a municipal entity) that (i) provides advice to or on behalf of a municipal entity or obligated person with respect to municipal financial products or the issuance of municipal securities, including advice with respect to the structure, timing, terms and other similar matters concerning such financial products or issues, or (ii) that undertakes a solicitation of a municipal entity." 15 U.S.C. 78o-4(e)(4). The SEC acknowledges in the Proposed Rule that the statutory definition of "municipal advisor" is broad and includes persons that traditionally have not been considered to be municipal entity financial advisors.

Specifically, the definition of "municipal advisor" as currently drafted in the Proposed Rule includes "financial advisors, guaranteed investment contract brokers, third-party marketers, placement agents, solicitors, finders, and swap advisors" that engage in municipal advisory activities. These persons are included in the definition of municipal advisor if they provide advice to or on behalf of a municipal entity, or obligated person, with respect to municipal financial products or the issuance of municipal securities (including advice with respect to the structure, timing, terms and other similar matters concerning such financial products or issues) or undertake a solicitation of a municipal entity or obligated person.

Although not explicitly stated in the Proposed Rule, such entities presumably are included within the definition of "municipal advisor" because their activities were largely unregulated, and therefore

registration, along with supervision and examination by the SEC/MSRB, is necessary to ensure that public funds are adequately protected.

Consistent with the approach of capturing formerly unregulated individuals, the definition of "municipal advisor" explicitly excludes "(1) a broker, dealer or municipal securities dealer serving as an underwriter" (parties regulated by the SEC and FINRA), and (2) any investment adviser registered under the Investment Advisers Act of 1940 and "any commodity trading advisor registered under the Commodity Exchange Act." The logic of the exclusions above is fairly clear; all of these individuals/organizations are already subject to extensive supervision, regulation and examination by the SEC, FINRA and the Commodities Futures Trading Commission (depending upon their activities).

Other entities, such as attorneys offering legal advice or providing services, or engineers providing engineering services and advice, are excluded from the definition of "municipal advisor" for a different reason. The services that these professionals provide do not involve advice regarding a "municipal financial product."

The SEC, in the Proposed Rule, also seeks to exclude from the definition of "municipal advisor" professionals such as accountants preparing or auditing financial statements, or issuing letters for underwriters for or on behalf of a municipal entity or obligated person. These types of services, while financial in nature, do not constitute financial "advice."

The SEC should also note that provision of traditional banking products and services do not constitute either unregulated activities, nor do they constitute the provision of "advice" regarding municipal financial products. Therefore, banks that provide these services should be excluded from the definition of "municipal advisor."

Banks are not unregulated but rather are subject to extensive supervision, regulation and examination by federal and state banking regulators. Regular "safety and soundness" examinations are conducted by the primary regulator, which is the Comptroller of the Currency for national banks or the Texas Department of Banking plus either the FDIC or the Federal Reserve Bank of Dallas for state chartered banks. Such oversight serves to protect the interests of all bank customers, including municipal entity customers. Banks, as entities that are heavily regulated and subject to ongoing monitoring and supervision, are not the types of entities Congress intended to cover with the new municipal advisor registration requirements. Therefore, the SEC should use its broad authority granted under Section 15 of the Exchange Act to exclude banks from the definition of "municipal advisor" and thereby exempt banks from the new registration requirements of the Proposed Rule (and the Temporary Final Rule).

If The SEC Will Not Specifically Exempt Banks Outright, Then Banks Should Be Exempted From The Municipal Advisor Rule To The Extent They Are Providing Traditional Banking Products and Services Only

Exclude Banks Providing Deposit Account Services From The Definition Of "Municipal Advisor"

As suggested in the Proposed Rule, the SEC should exclude from the definition of "municipal advisor" banks providing advice to a municipal entity or obligated person concerning transactions that involve a "deposit," as defined in Section 3(l) of the FDIC Insurance Act, including all insured checking and savings accounts and certificates of deposit. Deposit accounts are the most basic form of traditional banking products and do not warrant a separate registration requirement to add a second, in some cases third, layer of oversight on top of federal and state banking regulation of such products.

Exclude Banks Providing Investment Products Such As Money Market Funds or Other Exempt Securities to Municipal Entity Customers From The Definition of "Municipal Advisor"

The SEC should also exclude from "municipal advisor" banks that respond to Requests For Proposals ("RFPs") from municipal entities regarding other investment products offered by the banking entity, such as money market funds or other exempt securities. Banks that (1) provide to a municipal entity a listing of the options available from the bank for the short-term investment of excess cash (such as interest-bearing bank accounts, overnight or other periodic investment sweep arrangements), and (2) negotiate the terms of an investment with the municipal entities should be excluded from the definition of "municipal advisor." These types of products are merely an extension of more traditional deposit products, such as savings accounts, checking accounts and certificates of deposit, and do not constitute "advice" under any reasonable definition of the term. Provision of these products and services by banks is already heavily regulated by federal and state banking agencies.

Expand The Traditional Banking Products Exclusion From The Definition Of "Municipal Advisor" To Expressly Exclude The Extension of Credit

IBAT also urges the SEC to also expand the definition and scope of traditional banking products that are excluded from the definition of "municipal advisor" activities to specifically and expressly exclude the extension of credit through loans, letters or credit, or otherwise, by banks to municipal entity customers. While it is arguably the case that such extensions of credit are not covered under the Proposed Rule because such activities do not involve the investment of "proceeds" of the sale of municipal securities, IBAT requests that the SEC make it clear in the Rule that extending credit to municipal entity customers will not trigger the required municipal advisor registration. Such extensions of credit are banking activities that are also already heavily regulated by federal and state banking laws and regulations.

Expand The Traditional Banking Products Exclusion From The Definition Of "Municipal Advisor" To Expressly Exclude Bank's Own Purchase Of Securities Issued By The Municipal Entity, Such As Bonds.

As suggested in the Proposed Rule, the SEC should also exclude from the definition of "municipal advisor" a bank that provides to a municipal entity customer the terms upon which that bank would purchase, for the bank's own account (to be held to maturity), securities issued by the municipal entity customer, such as a bond. Such activities do not involve safeguarding of public funds at all, but rather involve the purchase of an investment product by a bank, with the bank standing in the shoes of any similarly situated purchaser. Further, requiring registration merely to be a *purchaser* of an investment product would raise the cost of such investments for banks, and could have the effect of making the terms of purchase less favorable to the issuing municipal entity.

Expand The Traditional Banking Products Exclusion From The Definition Of "Municipal Advisor" To Expressly Exclude Banks And Trust Companies That Direct Or Execute Purchases And Sales Of Securities Or Other Instruments For Funds In A Trust Account Or Other Fiduciary Account.

IBAT also respectfully requests that the SEC exclude from the definition of "municipal advisor" banks and trust companies that direct or execute the purchases and sales of securities or other instruments with respect to funds in a trust account or other fiduciary account according to predetermined investment guidelines or criteria. This would include such activities on a discretionary basis, and

banks and trust companies that provide other fiduciary services to municipal entities, such as acting as trustees with respect to government pension plans and other similar capacities.

Banks Should Be Treated Equally With Registered Investment Advisers Under The Municipal Advisor Rule

Banks have long been exempted from registration under the Investment Advisers Act of 1940 because such activities undertaken by banks are closely supervised by federal and state banking regulators. As mentioned above, while the Proposed Rule excludes investment advisers registered under the Investment Advisers Act from the definition of "municipal advisor," in essence exempting them from registration under the Proposed Rule, there is no similar exemption provided for banks that provide identical services to those of registered investment advisers. Even if the SEC were to determine that investment advisory services do not constitute traditional banking products and services excluded from registration under the Proposed Rule, the SEC should at least exclude banks providing investment advisory services from the definition of "municipal advisor" to make them equal to registered investment advisers providing the same services under a separate, but substantially equivalent, regulatory regime.

Potential Consequences Of Failing To Exclude Banks And/Or Traditional Banking Products And Services From Municipal Advisor Registration

The failure to either exempt banks outright, or to exempt the provision of traditional banking products and services, from the municipal advisor Rule may lead to significant and unintended consequences. First, the registration requirement will cause community banks to incur additional significant costs and expenses (both in real dollars and employee time), to comply with the rules and regulations promulgated by the SEC and MSRB. Community banks will most likely pass on added costs and expenses to their municipal entity customers. Added costs and an even more increased regulatory burden may make many community banks reluctant to offer a full range of traditional banking services or extending credit to their municipal entity customers, which could lead to municipal entities having to seek traditional banking services they need from outside local communities, and potentially from larger banks, to obtain these products. Thus, a small municipality in far West Texas may need to travel a hundred miles to find a large bank to serve its deposit account needs. Municipal entities may not be able to obtain all the traditional banking products and services they need on favorable terms (i.e. no bargaining power with larger banks), or indeed may not be able to obtain such products and services at all.

Finally, IBAT notes that banks of all sizes, throughout the country, would face yet another new regulatory burden if they or their traditional banking activities are not exempted from this municipal advisor Rule. And this would come at a time when community banks are facing unprecedented regulatory costs, burdens and expenses due to financial reform set forth in other provisions of the Dodd-Frank Act. Banks can hardly afford to become regulated by yet another new entity as their current regulatory regime is being radically altered by changes to their traditional banking regulations as dictated by additional provisions of the Dodd-Frank Act, as well as coming under the scrutiny of a new regulatory entity, the Consumer Financial Protection Bureau (the "CFPB"). Most banks and their holding companies have been historically regulated by two or three separate banking regulators. The new CFPB will add a third or fourth regulator. Requiring banks to also register as municipal advisors with the SEC/MSRB would result in banks being supervised and examined by a fourth, and in some cases, fifth separate regulator.

Obviously such a scenario exposes banks to a substantial risk of both duplicative, and possibly conflicting, regulation as a result of also being subject to registration with the SEC/MSRB in addition to the laundry list of other regulators they are already subject to. Requiring community banks to register as municipal advisors merely for providing traditional banking products and services they have already been providing to municipal entity customers for decades (and without any history of abuse) would only serve to add to an already significant regulatory and compliance burden at a time when community banks can least afford it. And it is unclear what additional regulatory benefits would be achieved by such a requirement.

Conclusion

IBAT does generally support the SEC proposal to require the registration of municipal advisors who are currently unregulated. However, for the reasons stated in this letter, IBAT believes that application of the Proposed Rule (and the Temporary Final Rule) to banks and traditional banking products could result in many community banks in Texas being required to register as municipal advisors with the SEC/MSRB for doing nothing different than what they do today, and for doing nothing more than offering traditional banking products and services to municipal customers.

Congress did not intend for the registration requirement established by Section 975 of the Dodd-Frank Act to cover the provision of traditional products and services, and therefore, the SEC should exempt banks from registration under the Proposed Rule (and Temporary Final Rule) by expressly excluding them from the definition of "municipal advisor." Alternatively, the SEC should revise the Rule to provide further clarity on exactly what traditional banking products and services would, and would not, trigger the registration requirement. And, as stated above, IBAT believes that many traditional banking products and services should be specifically excluded from triggering the municipal advisor registration requirement. Finally, we strongly urge the SEC to look at this rulemaking in the context of the cumulative rulemaking and regulatory changes that all banks are facing as the Dodd-Frank Act continues to be implemented, and consider that the regulatory benefits in requiring banks to register as municipal advisors is minimal at best given how many other regulators oversee banking activities.

Thank you for this opportunity to comment.

Respectfully Submitted,

Karen Neeley
General Counsel