

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 International Bank of Commerce ("IBC"). IBC is a state chartered bank, headquartered in Laredo, Texas. It is the largest Hispanic owned bank in the continental United States. IBC has 278 facilities and 440 ATMs in service in 107 communities in Texas and Oklahoma. It actively seeks public fund deposits from the local governments in many of those communities.

This letter urges the SEC to either amend the regulation to simply exempt federally insured banks or to exempt traditional bank products. In support for that position, IBC would make the following assertions. 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, IBC 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 banks are facing under the Dodd-Frank Act. We would suggest that the incremental 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

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. 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). This lack of clarity gives the impression that simply explaining to a city finance officer the extent of FDIC insurance on a municipality's account could trigger the registration requirement.

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.

IBC branches 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 IBC and the municipal entities that we serve. We are proud that we can do so in a cost effective manner with a high level of personal service to our communities.

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

IBC 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. IBC is extremely concerned that the Proposed Rule, if interpreted broadly, could require our bank to register with the SEC/MSRB for doing nothing more than offering traditional bank products and services to municipal entity customers. Accordingly, IBC 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,” whose activities are otherwise unregulated, and who provide advice regarding municipal entity financial products, must register and be subject to supervisions by the SEC/MSRB. 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).

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.” We believe that the services that we provide to municipalities similarly do not constitute the sort of financial advice that should trigger registration.

Furthermore, the products and services that we offer are highly regulated. As noted above, IBC, for example, is routinely examined by numerous agencies. Its financial statements are audited, and its financial information is readily available to any customer. The deposit accounts are subject to both state and federal regulatory schemes. The relationship with the municipality is subject to the Texas Local Government Code, and the uninsured portion of deposits is secured by adequate collateral as prescribed by state law. This oversight serves to protect the interests of municipal entity customers. In short, 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 regarding 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. 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 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.

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 us 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. In order to operate in a prudent and fiscally sound manner, we may need to pass on these added costs and expenses to our municipal entity customers.

Finally, IBC 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. This would come at a time when community banks like IBC 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 they are coming under the scrutiny of a new regulatory entity, the Consumer Financial Protection Bureau (the “CFPB”). Requiring banks to also register as municipal advisors with the SEC/MSRB would result in the IBC system being supervised and examined by a fifth separate regulator. It is unclear what additional regulatory benefits would be achieved by such a requirement. However, it is very clear that the additional cost would be significant.

Conclusion

IBC 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, IBC 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 like IBC 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 by specifically excluding traditional bank products 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,

Dennis E. Nixon
President and Chairman