

February 22, 2011

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

Re: File Number S7-45-10  
Registration of Municipal Advisors

Dear Ms. Murphy:

Fieldman, Rolapp & Associates (FRA or the firm) appreciates the opportunity to provide comments to the Securities and Exchange Commission (the SEC) related to the registration of and rules for Municipal Advisors.

FRA is a California based firm headquartered in Irvine in Orange County. The firm has twenty employees of whom fourteen fulfill roles consistent with our understanding of the definition of a Municipal Advisor. Remaining staff provides administrative support. The firm is structured as a California Corporation with ownership through an Employee Stock Option Program. Ownership is concentrated with, but not limited to, senior staff with firm longevity. FRA represents municipal and non-profit entities primarily in California. Due to FRA's location and the population density of the region the typical client may be larger and more sophisticated than issuers in other locations. Historically the firm has annual revenues greater than \$ 1 Million but less than \$ 7 Million.

Like most other independent Municipal Advisors, FRA has a much different business model than some other participants in the municipal finance industry. The firm does not buy, sell or trade bonds and never has custody of bond proceeds, issuer monies or other assets. Under multiple official definitions the firm is a small business. The firm is essentially a consulting firm; selling its time and expertise to public agencies and non profits that have analyzed public finance processes and have determined that they desire and value independent third party advice.

This letter will focus and comment on a specific section of the proposed rules. However we also wish to address some provisions on a general level.

- We request and recommend that the recordkeeping requirements be modified to eliminate the need to retain all written communications, and that other recordkeeping requirements be clarified.
- We do not see the need for any requirement that independent parties review or audit Municipal Advisors. SEC review and certification by the regulated firms will be sufficient to provide feedback on firm practices.

*There is no substitute for experience.*

- We request that the SEC consider that one of the few explicit directions of the Dodd-Frank Act was “not to impose a regulatory burden on small municipal advisors that is not necessary or appropriate in the public interest.....”
- We request that the SEC consider a threshold lower than the current \$ 7 Million in annual revenues and consider meaningful relief to small firms. A \$1 Million threshold is suggested.
- We also request that the SEC carefully consider the financial impact related to the aggregate costs of combined SEC and Municipal Securities Rulemaking Board regulatory efforts on all municipal advisors. Most firms, regardless of revenue amount, are small businesses with insufficient margins to bear excessive regulatory burden. The protection of small firms afforded by the Dodd-Frank Act should not be overlooked or short changed.
- We hold that activities, tasks undertaken, services provided or scope of work determine if municipal advisory services are being provided. Advice to a municipal entity or obligated party on “structure, timing, terms and other similar matters”...is the same set of activities regardless of the orientation or corporate structure of the firm providing the service. We reject the idea that underwriters can advise on municipal securities without becoming a municipal advisor with a fiduciary duty.
- Appointed board members should generally be excluded from the definition of municipal advisor.

This section provides answers to questions found on page 146 of the SEC release related to brochures modeled from Form ADV. It is my understanding that such a brochure is not contemplated to be required within the proposed regulations but that comment is requested:

- Such a form would likely have limited benefit or use to municipal entities and obligated parties. Many municipal entities select municipal advisors through a process that includes a Request for Proposal or Request for Qualifications. These documents are developed by the entity seeking professional services and ask specific, issuer focused questions of the respondents. Questions, asked from the client’s perspective, typically cover firm experience, qualifications, potential conflicts, proposed fees and general background. Failure to respond to all questions is likely grounds for disqualification. Questions asked are likely similar to those within a possible ADV form for municipal advisors but have the advantage of being specific to that entity and its unique circumstances.
- Alternatively in selecting an advisor a municipal entity is likely dealing with a fairly small pool of potential advisors. Even in a large state such as California a municipality may have a total pool of five to ten advisors to draw upon. Views of reputation and quality are shared through professional organizations and personal networks.
- When marketing most municipal advisors attempt to provide very specific and focused information to the potential client. General background is not useful to the client or productive for the advisor. Effective marketing likely calls for a detailed analysis of the

municipal entities financial and debt circumstances. It is much more than providing a generic brochure with broad overview information. We know of no municipal advisor that has significant reliance on a general brochure or any municipal entity that should rely on such a brochure for the preponderance of its decision to select a municipal advisor.

- The business plans of municipal advisors and investment advisors is very dissimilar. Municipal advisors generally market to a small target group with much preparation for marketing calls. Marketing is not on a retail scale. Investment advisers cast a much wider net in marketing and are typically not as specific or as focused or as reliant on an individual client. Use of a brochure similar in content to that of investment advisers is not appropriate for a municipal advisor.
- Selection and contract adoption of a municipal advisor assignment is typically subject to public review and approval during an open meeting by a governing board of elected officials. Proposals and contracts submitted may be publically available. Typically a staff report recommending the advisors hiring and providing rationale is provided to the governing board and public in advance of the public meeting. These processes are significantly different than the hiring of an investment advisor by an individual.
- Information potentially to be included in such a brochure is possibly duplicative of information provided within other required documents such as Form MA and Appendix "A" of Municipal Securities Rulemaking Board's (MSRB) draft Rule G-36.
- Per the SEC release (page 155) FINRA estimates "637,000 individuals registered as representatives of broker-dealers and/or investment advisers" and 11,888 investment advisory firms. This compares to approximately 1,000 firms registered as investment advisors with the SEC and approximately 600 registered with the MSRB. There will be far fewer registered municipal advisors and it seems that the difference in scale should allow flexibility.
- Cost to provide such a brochure will vary and cannot be quantified. However, due to the limit of the effectiveness and benefit of such a brochure, any cost seems needless.

We believe that requiring brochures modeled off of Form ADV for municipal advisors is not warranted. Based on the information provided above, we believe that utilizing such a brochure would not benefit municipal issuers, the public or investors.

Thank you for this opportunity to provide comment.

FIELDMAN, ROLAPP & ASSOCIATES



Thomas DeMars  
Managing Principal