



Energy Solutions

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Via Email rule-comments@sec.gov

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

**Re: Securities Exchange Act Release Number 34-63576; Registration of Municipal
Advisors**

Dear Ms. Murphy,

Chevron Energy Solutions, a division of Chevron U.S.A., Inc. ("Chevron ES"), submits this letter in response to the request for comments from the Securities and Exchange Commission (the "Commission") on Exchange Act Release Number 34-36576 (December 20, 2010) with respect to proposed Rules 15Ba1-1 through 15Ba1-7, and related forms under the Securities Exchange Act of 1934 (the "Exchange Act") (the "Proposed Rules" or "Proposing Release"), concerning the registration of "municipal advisors." Chevron ES is a member of the National Association of Energy Service Companies ("NAESCO") and fully endorses the comments submitted by NAESCO (the "NAESCO Letter"). We write to underscore several points about the Proposed Rules.

As the energy services division of Chevron U.S.A., Inc., a wholly owned subsidiary of Chevron Corporation, Chevron ES designs, engineers and implements a broad range of energy conservation, energy efficiency and renewable energy projects throughout the United States. Chevron ES's customers include state and local governments as well as federal government agencies, educational institutions and private industry.

When Congress passed Section 15B(e)(4) of the Exchange Act as part of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the "Dodd-Frank Act"),¹ it specifically exempted "engineers providing engineering services" from the statutory definition of "municipal advisor."² However, the

¹ Pub. L. No. 111-203 (2010).

² Exchange Act Section 15B(e)(4)(C).

manner in which the Commission is construing Proposed Rule 15B1-1(d)(v), as described in the Proposing Release, would effectively nullify the clear intent of Congress in carving out the engineering exclusion by making it impossible for engineering service companies to perform functions in the real world that are inherent to engineering activities. The Commission should recognize that engineering services and advice necessarily includes: (1) providing education and information about financing options for clean energy projects, (2) preparing feasibility studies that address costs, cash flows, financing alternatives and other relevant financial information about clean energy projects, and (3) making unpaid introductions to potential financing sources for clean energy projects. These services are inextricably linked to engineering projects and should be exempt from the definition of “municipal advisor” as “engineering services.” The Commission should not defeat congressional intent by interpreting the definition of “municipal advisor” with extraordinary breadth, and at the same time interpreting the “engineering services” exemption with extreme and unjustified narrowness.

Chevron ES, like many energy services companies, provides prospective customers with a great deal of general informational and educational material about potential energy services projects, including information about financing options for such projects. Potential customers need this information to make intelligent decisions about whether and how to proceed with an energy services project. As the Commission has long recognized, requiring registration of an advisor providing generalized education and information would have the perverse effect of discouraging that general educational process. As explained in the NAESCO Letter, the world of energy services is complex, both in terms of the many types of projects that may be undertaken, and the various government and utility financial incentive programs available to assist in the implementation of those projects - both of which evolve and change rapidly over time.³ Often, energy services companies have the most current market knowledge, and may be the initial source of information for many municipal entities with regard to a variety of funding options, or the sole source of information about such programs and incentives created with municipal entities as the intended beneficiaries. Chevron ES typically provides this information during one-on-one meetings with potential energy services customers, where it is simply impossible to disentangle information about engineering (the different technologies and processes available to save energy) from the cost of that engineering, the savings that engineering can provide, and the options for financing that engineering.

Without the ability to deliberate the costs, savings and financing options related to a potential energy services project, the discussion about the engineering itself is essentially useless to customers. If the Commission were to hold that an engineering company cannot discuss these financial issues with a potential customer without registering as a municipal advisor, the effect would be that no engineering company could ever operate within the engineering exemption set out in the statute. This result cannot possibly be what Congress intended when it enacted the engineering exemption, and the Commission should not adopt a position that no court could ever hold is consistent with the statute. Rather, the Commission should adopt a simple disclosure standard mandating engineering companies, such as energy services companies, to disclose clearly that they are providing information about engineering, not

³ Many of the potential financial solutions for municipal entities do not involve issuance of municipal securities or purchase of a municipal financial product. These financing solutions include lease-back arrangements and preferred provider or performance contract arrangements. Congress has not given the Commission jurisdiction over advice regarding financial solutions that do not involve issuance of municipal securities or the purchase of a municipal financial product, and the Commission should exclude this advice from any definition of “municipal advisor” status.

financial advice, and that a municipality should engage a separate financial advisor if it requires financial advice. This solution would be easy to implement and would assure that municipalities continue to benefit from detailed and relevant information about engineering options and services, as well as receive independent financial advice from third party advisors.

Even after a prospective energy services customer has passed beyond the general information and education stage to the process of creating a request for proposal (“RFP”) or awarding a contract, such a customer continues to need information about the anticipated costs and savings associated with the project. The Proposing Release, however, would include “feasibility studies” as an activity that would require registration as a municipal advisor. But nothing in Section 15B(e)(4) of the Exchange Act even mentions “feasibility studies,” much less authorizes the Commission to include “feasibility studies” within the definition of “municipal advisor.” Feasibility studies addressing both costs and savings are a necessary part of any substantial energy services project. As discussed in the NAESCO Letter, many states *require* as a matter of state law that RFP responses address the financing of proposed projects and include studies with cash flow modeling not limited to engineering cost alternatives. The Proposing Release distinguishes between “costing out” of engineering projects (which the Commission would consider within the engineering exclusion) and “cash-flow modeling” (which would require registration as a municipal advisor).⁴ Discussing the cost of an engineering project without addressing its financial impact has the potential to render cost information inadequate, however, and perhaps even misleading. Furthermore, even if a municipal entity hires an independent financial advisor, the financial advisor cannot provide cash-flow analysis about a proposed energy services project without input from the energy services company. In fact, the energy services company is in the best position to provide the municipality with cash flow models because it is uniquely familiar with the cost of implementing the technical energy conservation measures, the potential resultant savings, and how such costs and savings might translate into a financeable project. Once again, the Proposing Release would have the effect of interpreting the engineering exemption so narrowly that no engineering company would ever be within it - a result Congress could not have intended. Again, a disclosure standard may be the obvious answer: engineering companies could disclose in any feasibility study that they are providing primarily engineering advice, not financial advice, and that a municipality which requires financial advice should hire a separate financial advisor.

Chevron ES, like many energy services companies, introduces potential customers to funding sources such as brokers, dealers, underwriters and financial advisors. These introductions are important because the customers and potential customers may not be familiar with important funding sources that specialize in financing such proposed projects. Chevron ES does not seek or accept compensation for these introductions. Section 15B(e)(4)(B) of the Exchange Act defines third party marketers and solicitors as “municipal advisors,” as does Proposed Rule 15Ba1-1(e). However, Section 15B(e)(9) of the Exchange Act specifically states that “solicitation” is only covered if the solicitation is for “direct or indirect compensation.” The Proposing Release states that compensation should not factor into the determination of whether an engineering services company must register as a municipal advisor.⁵ But the clear language of Section 15A(e)(9) only covers solicitations for “direct or indirect compensation.” The Commission should follow the plain language of the statute and exclude uncompensated introductions from the definition of “solicitation.”

⁴ Exch. Act Rel. No. 63576 (Dec. 20, 2010) at p.39.

⁵ Exch. Act Rel. No. 63576 (Dec. 20, 2010) at p.33.

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Chevron ES urges the Commission to adopt final rules defining municipal advisor status that give full and fair recognition to Congress' intent when it enacted the engineering exemption. If you would like to discuss the comments in this letter, we would be happy to meet with the Commission or its staff.

Respectfully Submitted,



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a division of Chevron U.S.A. Inc.