



American Institute of CPAs
1455 Pennsylvania Avenue, NW
Washington, DC 20004-1081

February 25, 2011

Via Electronic Mail

Ms. Elizabeth M. Murphy
Secretary
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 American Institute of Certified Public Accountants (“AICPA”) is providing these comments on the Securities and Exchange Commission’s (“SEC” or “Commission”) proposed new rules 15Ba1-1 through 15Ba1-7 (“Proposed Rules”) and related forms under the Securities Exchange Act (“Exchange Act”), as published in the above-referenced Release. The AICPA is the national, professional association of CPAs, with over 370,000 members worldwide, including CPAs in business and industry, public practice, government, education, student affiliates and international associates. It sets ethical standards for the profession and U.S. auditing standards for audits of private companies, nonprofit organizations, federal, state, and local governments. It also provides resources and tools to its members that perform governmental audits through the AICPA Governmental Audit Quality Center for the purpose of enhancing governmental audit quality. It is from this diverse perspective that we provide our comments and recommendations.

Overall, we support the Commission’s Proposed Rules as a means to strengthen investor protections in the municipal securities market and believe that the establishment of a permanent registration regime with the Commission for municipal advisors, including the imposition of certain record-keeping requirements, will further the goals of accountability and transparency in the financial system. The new registration requirements make it unlawful for municipal advisors to provide certain advice to, or solicit, municipal entities or certain other persons, without registering with the Commission. A “municipal advisor” is broadly defined to include any accountant, unless the accountant is preparing financial statements, auditing financial statements, or issuing letters for underwriters for, or on behalf of, a municipal entity or obligated person¹. We are concerned that this broad definition of “municipal advisor” will encompass accountants who are performing “customary and usual” services incidental to, or inextricably linked to, the practice of accountancy and whom, we submit, should not be subject to required registration. We also believe that requiring registration for such services was not the intended result of the Dodd-Frank Act.

¹ Proposed Rules 15Ba1-1(2)(vi)

Our comments on the Proposed Rules focus on the SEC's proposed definition of "municipal advisor," and the impact of the proposed accountant's exclusion on accountants. Additionally, our comments address the following questions posed by the Commission in the Release:

The Commission proposes to exclude from the definition of a "municipal advisor" persons preparing financial statements, auditing financial statements, or issuing letters for underwriters for, or on behalf of, a municipal entity or obligated person. Should persons providing these accounting services be excluded from the definition of "municipal advisor"? Are there additional types of services that an accountant provides that should not require the registration of an accountant as a municipal advisor? If so, what additional types of accounting services should qualify an accountant for an exclusion from the definition of "municipal advisor"? Are there activities that are incidental to the provision of accounting services or inextricably linked to accounting services that can only reasonably be performed by an accountant that might otherwise constitute advice with respect to the issuance of municipal securities or municipal financial products?

Services Which Should Qualify an Accountant for an Exclusion from the Definition of Municipal Advisor

In the Release, the Commission notes that it does not believe it is necessary or appropriate to exclude all accountants from the definition of "municipal advisor."² We strongly agree with the SEC's assessment that preparing financial statements, auditing financial statements, or issuing letters for underwriters do not constitute "advice" within the meaning of the Exchange Act Section 15(B)(e)(4)(A)(i) and accordingly, are activities which should be excluded from the definition of municipal advisor. However, we believe that other customary and usual accounting services that an accountant performs do not warrant registration as a municipal advisor. Many of these services are performed under the AICPA's Professional Standards for audits or attestation engagements. In some cases, when required by law, regulation, or contract, the services are also performed under the Government Accountability Office's *Government Auditing Standards*.

A challenge exists in identifying all "traditional accounting services" that the performance of which, we believe, were never intended to trigger registration under Section 975 of the Dodd-Frank Act. The following are examples of services provided to municipal entities that we believe are customary and usual and should not require registration with the SEC.

- Accountants advise municipal entities on the application of generally accepted accounting principles (e.g., advice regarding the proper accounting for a proposed transaction which might be based on factors including structure and terms) or provide certain types of tax advice relating to municipal securities and municipal derivatives (e.g., providing tax advice based on the structure and terms of a proposed transaction).

² Release 34-63576, at 37.

- During the process of issuing municipal securities, governments or other involved parties engage accountants to provide certain needed information. For example, a government or its bond counsel may engage an accountant to review coverage requirements on outstanding bonds. Additionally, they may engage an accountant to verify the calculation of escrow account requirements for advance refunding of bonds. Typically, these kinds of engagements would be performed by the accountant using the AICPA Statements on Standards for Attestation Engagements (SSAEs).
- Accountants are engaged to perform an examination, compilation, or agreed-upon procedures engagement on projections or forecasts using the AICPA SSAEs (i.e., AT section 301).
- Accountants are engaged to perform other types of agreed-upon procedures engagements.
- Compliance audits are also customary and usual services provided to municipal entities (e.g., opinions on compliance with federal, state, or local compliance requirements).

These services are also subject to the AICPA's Professional Standards and to the regulatory authority of a state board of accountancy or a Federal authority. We are not providing the above examples as an exhaustive list of services that should be excluded by the SEC, but rather to illustrate that there are likely many other services beyond the few carved out in the Proposed Rules that should not result in required registration with the SEC.

We recommend the SEC consider for purposes of these Proposed Rules exempting accountants who are performing "customary and usual" services incidental to, or inextricably linked to, the practice of accountancy. Taking such an approach would eliminate the lack of clarity in the Proposed Rules and alleviate the need for the SEC to develop an exhaustive list of specific accountant services that would be excluded from the municipal advisor registration process. Such an exclusion could be something similar to the following:

Accountants that are excluded from the municipal advisor definition are as follows:

Any person that is a certified public accountant, permitted to practice as a certified public accounting firm, or certified or licensed for such purpose by a State or any individual who is employed by or holds an ownership interest with respect to a person described in this subparagraph, when such person is performing or offering to perform—

- 1) *customary and usual accounting activities, including the provision of accounting, tax, advisory, or other services, including audit and attestation services, that are subject to the regulatory authority of a State board of accountancy or a Federal authority; or*
- 2) *other services that are incidental to such customary and usual accounting activities, to the extent that such incidental services are not offered or provided by the person separate and apart from such customary and usual accounting activities.*

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If the SEC declines to accept this recommendation, we request that the SEC expand the list of services covered in the accountant's exclusion to Rule 15Ba1-1, the performance of which by an accountant do not require registration as a municipal advisor. At a minimum, the examples provided above should be included in such an expanded list.

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The AICPA appreciates the opportunity to comment on the Proposed Rules and welcomes the opportunity to serve as a resource to the SEC on these issues. If we can be of further assistance, please contact Mary Foelster, AICPA Director of Governmental Auditing and Accounting, at 202-434-9259 or mfoelster@aicpa.org.

Sincerely,

A handwritten signature in black ink, appearing to read "S Coffey". The signature is fluid and cursive, with a large initial "S" and a long, sweeping underline.

Susan S. Coffey, CPA
Senior Vice President
Member Quality and International Affairs