



NASAA

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*Via Electronic Submission to <http://www.sec.gov/cgi-bin/ruling-comments>*

March 15, 2011

Ms. Elizabeth Murphy  
Secretary  
United States Securities and Exchange Commission  
100 F Street, NE  
Washington, DC 20549-1090

**Re: Permanent Rule for Registration of Municipal Advisors**  
SEC File Number S7-45-10  
Release No. 34-63576

Dear Ms. Murphy:

The North American Securities Administrators Association, Inc. (“NASAA”)<sup>1</sup> appreciates the opportunity to comment on the SEC’s above referenced permanent rule regarding registration of municipal advisors pursuant to the authority of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank) Section 975.

There are three basic points pushed forward by Dodd-Frank, Section 975: (1) registration for “municipal advisors;” (2) a fiduciary duty for municipal advisors; and (3) anti-fraud jurisdiction over municipal advisors. Fiduciary duty is a topic addressed in many sections of Dodd-Frank. As noted in our comment letter on the SEC’s study required by Section 913 of

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<sup>1</sup> NASAA is the association of all state, provincial, and territorial securities regulators in North America. Its membership consists of the securities regulators in the 50 states, the District of Columbia, Puerto Rico, the U.S. Virgin Islands, Canada, and Mexico. Their core mission is protecting investors from fraud and abuse in the offer and sale of securities. Organized in 1919, NASAA is the oldest international organization devoted to investor protection.

Dodd-Frank, NASAA supports a strong and broad based fiduciary duty to be applied throughout the securities industry. We are delighted that Section 975 calls for a fiduciary duty to be applied to “municipal advisors.”

NASAA would like to take the opportunity to specifically comment on three issues in the Release: (1) the exemption of municipal employees from the definition of “municipal advisor;” (2) the inclusion of state-registered investment advisers within the exemption from the definition of “municipal advisor;” and (3) publishing “municipal advisor” filings on the CRD/IARD database.

NASAA believes that registration for “municipal advisors” is appropriate and will bring much needed sunshine to conflicts of interest and compensation arrangements that may be present in the market. Notwithstanding, there remain questions of which persons will be considered “employees of a municipal entity” under Section 15B(e)(4)(a) of the Securities Exchange Act, and therefore exempt from the new registration regime. The Release clarifies that the term “employees of a municipal entity” should include elected members of a governing body of a “municipal entity” as well as *ex officio* members who sit on a board by virtue of holding a certain elected office. Many parties commenting on the proposal however state that the distinction between registering elected officials of municipalities and not registering appointed officials is artificial. Many commenting parties go further and recommend that appointed, non-elected, and elected *ex officio* members of municipal governing boards be excluded from the definition of “municipal advisor.” Based on the volume of comments received on this point and the necessity of a fine balance between state and federal law, NASAA trusts that the definition and exemptions pertaining to “municipal advisor” will be reconsidered by the SEC.

The SEC has requested comment regarding whether state registered investment advisers should be exempt from the definition of a “municipal advisor” under circumstances similar to an exemption created for federal advisers. Proposed rule 15Ba1-1(d)(2)(ii) would exempt from the definition of “municipal advisor” those federally registered investment advisers, and their associated persons, unless the investment advisers or their associated person engage in municipal advisory activities other than providing investment advice that would subject such adviser or associated person to the Investment Advisers Act of 1940. Under the rule, a federal investment adviser that provides investment advice to a municipality, but does not provide advice to the municipality on how to structure or issue municipal securities would not be required to register as a “municipal advisor.” Under the proposed rule, no similar exemption would apply to a state-registered investment adviser.

NASAA believes that the exemption for federally registered investment advisers and their associated persons from the definition of “municipal advisor” in proposed rule 15Ba1-1(d)(2)(ii) should also apply to state-registered investment advisers and their associated persons. Requiring a state-registered investment adviser to register as a “municipal advisor” when the adviser only provides investment advice to a municipality, but does not also act as “municipal

adviser” may be burdensome to these firms. Additionally, applying the exemption for both state and federally registered investment advisers and their associated persons promotes uniformity and parity of treatment for these advisers.

The Release further notes that the Form MA and Form MA-I will be made public and filed electronically with the SEC. The SEC is considering whether to these forms should be filed similar to the Form BD and Form ADV, which are currently filed electronically through the Central Registration Depository (“CRD”) and the Investment Adviser Registration Depository (“IARD”), both operated by FINRA. The SEC is also considering whether to use the Electronic Data Gathering, Analysis, and Retrieval System (“EDGAR”), or some other system. NASAA recommends that the filings be made through the CRD and IARD systems or other similar system which would be connected to CRD and IARD. Just as there is often overlap between persons and firms who submit their filings on CRD and IARD because they are both broker-dealers, their agents, investment advisers and their representatives, NASAA expects there to be overlap with persons making filings as “municipal advisors.” The CRD and IARD systems allow regulators to easily find filings for firms and individuals, as well as cross reference between the CRD and IARD systems.

Please do not hesitate to contact the undersigned regarding this matter.

Sincerely,

/s/Rex A. Staples

Rex A. Staples  
General Counsel  
NASAA