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24TH DISTRICT, TEXAS

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March 11, 2011

The Honorable Mary Schapiro
Chairman
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549

Dear Chairman Schapiro,

The Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111-203, Section 975 (hereafter Section 975) establishes a system of dual regulation with the Securities and Exchange Commission (SEC) and the Municipal Securities Rulemaking Board (MSRB) for previously unregulated municipal advisors. As Vice Chairman of the Subcommittee on Financial Institutions and Consumer Credit on the House Financial Services Committee, I am keenly focused on the impact of new rules and regulations being promulgated as a result of the Dodd-Frank Act (DFA), particularly as new rules relate to existing law. Although I did not support DFA, I do support Section 975 of the DFA, which amends Section 15B of the Securities and Exchange Act of 1934 (Exchange Act) to require covered municipal advisors to comply with rules of fair dealing, participate in ongoing educational requirements, and establishes a fiduciary duty to their municipal entity clients.

Section 975 was referenced only briefly as the 47th footnote in written testimony you submitted to the U.S. Senate Committee on Banking, Housing, and Urban Affairs for the recent hearing entitled "Oversight of Dodd-Frank Implementation: A Progress Report by the Regulators at the Half-Year Mark." After hearing a significant number of concerns about the proposed rule, File Number S7-45-10 – Registration of Municipal Advisors, (hereafter the Proposed Rule), my staff and I have reviewed the Proposed Rule, and I believe it is worthy of more discussion than a footnote.

I am concerned that several aspects of the Proposed Rule extend far beyond the original Congressional intent of Section 975. Based on the Proposed Rule's interpretation of the definition of "investment strategies," the SEC appears to be claiming jurisdiction over all sources of municipal funding, regardless of whether the funds are proceeds of municipal securities. In addition, the overly broad definition of "municipal advisor," which includes individuals who are appointed to serve on "municipal entities," would require the SEC to collect and maintain

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extensive personal and professional information on thousands of civic minded citizens who answer the call to serve their communities.

In particular, I have questions about the overly broad interpretation of "investment strategies" to include any funds "held" by a municipal entity. This definition would appear to encompass any funds held on behalf of a municipality, even if the funds are not proceeds from the issuance of municipal securities. Under this interpretation, a wide array of traditional banking activities would trigger the registration requirements and be subject oversight by the SEC, despite the fact that banks are already heavily regulated. According to the American Bankers Association (ABA) and bankers in my district, the Proposed Rule would force many banks to reconsider whether to maintain long-term banking relationships with "municipal entities" because they will not be able to comply with this new regulatory burden. To the extent that banks are able to comply with the Proposed Rule, the cost of their services will necessarily rise to cover the cost of compliance.

I also have concerns about the definition of "municipal advisor," which the Proposed Rule interprets to include individuals who are appointed to serve on various governing bodies of "municipal entities." As outlined in the attached comment letter from the State of Texas, my home state has approximately 400 boards, commissions, authorities and committees with over 3,000 appointed members who would be required to register as "municipal advisors." I find it very cumbersome that the SEC would seek to impose this burdensome new compliance regime on ordinary citizens who choose to serve their community when called upon by state or local elected officials.

Most importantly, I am disturbed by the SEC's failure to give proper attention to the direct and implied Congressional intent of Section 975. The Proposed Rule reaches beyond the specific statutory language to establish new authority to regulate banks and collect extensive personal information on ordinary Americans. Congress has already determined in the Gramm-Leach-Bliley Act that traditional bank activities and services are so extensively regulated by bank regulators that regulation by the SEC as brokers is not necessary. This determination is codified in Section 3(a)(4)(B)(i)-(x) of the Exchange Act and implemented by Regulation R. In fact, the term "bank" does not appear in the Interim Final Temporary Rule 15Ba2-6T. Under the Proposed Rule, these traditional banking activities are summarily included within the definition of "investment strategies" simply because the proceeds of municipal securities may be commingled with other municipal funds. On page 831 of Federal Register Vol. 76, No. 4, the Proposed Rule enters uncharted territory with the following claim:

"Municipal entities utilizing the services of advisors with respect to plans, programs or pools of assets that invest funds are subject to the same risks regardless of whether those funds are the proceeds of municipal securities. The Commission does not have any evidence that the competency of advisors or quality of advice needed by municipal entities with respect to the proceeds of municipal securities and municipal escrow investments is any different than with respect to the investment of other public funds – which may exceed the amount of proceeds of municipal securities or municipal escrow accounts."

In summary, with these concerns in mind, I urge you and the SEC to reconsider your interpretation of Section 975 to reflect the actual Congressional intent of this important provision.

I thank you for your attention to the issues raised in this letter. Should you have any questions regarding this correspondence, please feel free to contact me or my Legislative Director, Scott Cunningham, at 202.225.6605 or scott.cunningham@mail.house.gov.

Sincerely,



Kenny Marchant
Member of Congress



U.S. Congressman

KENNY MARCHANT

Representing the 24th District of Texas

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Fax Cover Sheet

Date: MAR - 11 - 2011

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Subject: _____

Pages: 4 (including cover sheet)

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Comments: _____

