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# United States Senate

WASHINGTON, DC 20510

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CHAIRMAN'S  
CORRESPONDENCE UNIT

May 12, 2011

The Honorable Mary Schapiro  
Chairman  
Securities and Exchange Commission  
100 F Street N.E.,  
Washington, D.C. 20549

Re: Registration of Municipal Advisors; Release No. 34-63576; File Number S7-45-10

Dear Chairman Schapiro:

I write to you regarding the referenced Release by the Securities and Exchange Commission (SEC) that would require "municipal advisors" to register with the SEC. Section 975 of the Dodd-Frank Act states that independent municipal financial advisors must register with the SEC and the Municipal Securities Rulemaking Board (MSRB). The requirements include mandatory registration, adherence to federal fiduciary standards, liability under federal securities laws, and compliance with federal financial disclosure standards. I urge the SEC to reconsider its position on requiring governing board members to register as municipal advisors.

The need for this rule is clear. Municipalities across the country have lost billions of dollars in complicated financial transactions. In one such case, the City of Cleveland was forced to borrow \$130 million to exit a derivative contract with the Swiss bank UBS. The deal's insurer, Ambac, was on the brink of bankruptcy, which would have forced the city into technical default. It cost the city \$17 million to retire the deal in a year when the city's tax revenues declined, and new contracts will increase the city's payments in the long run.

While the Conference report provides little guidance on this issue, the Senate report states that these protections are intended to apply to those who "provide advice to municipal entities on the issuance of municipal securities, the use of municipal derivatives, and investment advice relating to bond proceeds." S. Rep. 111-176, 147-48 (2010). The SEC's proposed rule exempts elected members, elected ex-officio, and employees of a municipal entity's governing board, but includes non-elected, appointed, members of a governing board. This interpretation of municipal financial advisors would include a large number of unintended individuals, including appointed members of governmental and non-profit advisory boards and public pension funds, and would also encompass employees of one jurisdiction who serve on the board or advise another jurisdiction.

Additionally, this raises the question of what it means to give “advice” in this context. Section 15B(e)(4)(A) of the Exchange Act, as amended by the Dodd-Frank Act, defines a “municipal advisor” to mean a person (who is not a municipal employee or an employee of a municipal entity) that provides advice.” However, a governing board does not “provide advice” inasmuch as a government entity can only act through its board, which authorizes and approves proposed decisions. Board members either do not fit the definition of “advisor” in their capacity as board members because they are part of a municipal entity or because they do not provide advice. Registration may be appropriate when a board member acts outside the scope of his or her duties as a member of the governing body. However, it is important to remember that the activities intended to be covered by these rules are riskier financial transactions involving products like securities, bonds, and derivatives.

I am concerned that otherwise qualified board members will refuse to serve on the boards of many important governmental and non-profit boards for fear of both legal and financial liability. Specifically, in Ohio the over 60 Port Authorities would be in jeopardy of shutting down a series of programs intended to finance economic development and job creation within the State. The SEC argues that non-elected board members “unlike election officials and election ex-officio members, are not directly accountable for their performance to the citizens of the municipal entity.” However, this argument fails to recognize that board members are already bound by a number of different legal frameworks. Board members must comply with state not-for-profit corporation law, fiduciary duty laws, IRS rules for tax-exempt organizations, and a multitude of other regulatory regimes.

Therefore, I urge the Commission to adopt an interpretation of “municipal advisors” that clearly excludes appointed board members acting in their board capacities. To do otherwise would fail to consider the best interest of state, county, and non-profit entities and also fail to reflect the intent of Congress. Thank you for considering my views on this important issue.

Sincerely,

A handwritten signature in black ink that reads "Sherrod Brown". The signature is written in a cursive, flowing style.

Sherrod Brown  
United States Senator