

SPENCER BACHUS, AL, CHAIRMAN

United States House of Representatives
Committee on Financial Services
Washington, DC 20515-6050

BARNEY FRANK, MA, RANKING MEMBER

ES138696

June 15, 2011

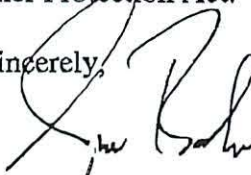
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CHAIRMAN'S
CORRESPONDENCE UNIT

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

Dear Chairman Schapiro:

Please see the attached letter I received from Members of the Indiana Congressional Delegation regarding the U.S. Securities and Exchange Commission's proposed rule to implement Section 975 of the Dodd-Frank Wall Street Reform and Consumer Protection Act.

Sincerely,



SPENCER BACHUS
Chairman

Enclosure

Congress of the United States
Washington, DC 20515

May 27, 2011

The Honorable Tim Johnson; Chairman
The Honorable Richard Shelby; Ranking Member
Senate Banking, Housing and Urban Affairs Committee
Washington, DC 20510

The Honorable Spencer Bachus; Chairman
The Honorable Barney Frank; Ranking Member
House Financial Services Committee
Washington, DC 20515

Dear Chairmen and Ranking Members:

As members of the Indiana Congressional Delegation, we write to bring to your attention the rulemaking currently underway at the Securities and Exchange Commission (SEC) regarding the registration of municipal advisors and the unnecessarily dire impacts the proposed rule will have on energy services companies (ESCOs). We request the Senate Banking and House Financial Services Committees take a closer look at the SEC's proposal and encourage the Commission to follow congressional intent with regard to ESCOs and the legitimate exemption of engineering companies from the definition of municipal advisor.

We recognize the need to police unscrupulous practices in the municipal market. We also recognize there are business relationships with municipalities that do not represent a threat to the municipal market or municipalities, including "engineers providing engineering advice" – for which Congress provided an exemption from the statutory definition of "municipal advisor." However, the SEC's proposed rule subverts congressional intent by placing outside of the statutory exclusion the majority of situations in which ESCOs work with state and local governments to develop and implement energy savings projects.

ESCOs provide prospective customers with a great deal of general information and educational materials about potential energy services projects – including costs, savings and financial options. This information is critical to both the engineers and customers and often is provided during the course of deliberations about the specifics of a project. It simply is impossible to disentangle information about engineering (the different processes and technologies available to save energy) from the cost of that engineering, the savings that engineering can provide and the options for financing that engineering – the two are inherently and inexorably linked and represent a continuum of services.

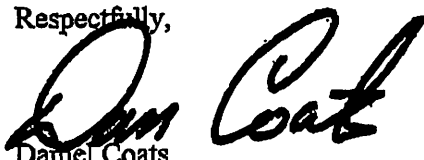
The rule proposed by the SEC recognizes that engineers provide advice as part of engineering services, but so narrowly defines the advice that is exempted under the engineering exclusion as to render essentially useless any conversation between an ESCO and government entity about a potential energy services project. Should the proposed rule maintain its overly narrow interpretation of the engineering exemption, we foresee a severe disruption of energy services projects with government entities (the largest consumers and wasters of energy) and upheaval of the energy services industry – resulting in fewer energy savings projects nationwide.


As a practical matter, companies providing energy services would be regulated by a financial services regulator, with little to no understanding of the predominant engineering activities and services offered by an ESCO. Licensing or similar qualification requirements necessitated by the rule likely will not take into account the limited nature of the municipal advisory activities of ESCOs – creating great difficulty for ESCO employees and engineers in obtaining the required certifications from the financial regulator. The accompanying costs associated with compliance also would be unnecessarily burdensome.

We request the Committees study carefully the SECs proposed rule and encourage the Commission to adopt final rules defining municipal advisor status that recognize congressional intent regarding the engineering exemption, particularly for energy services companies.

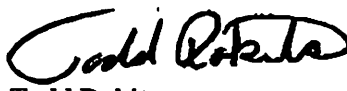
We appreciate your consideration.

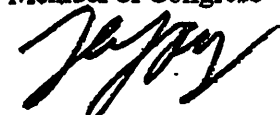
Respectfully,


Daniel Coats
Senator


Dan Burton
Member of Congress


Larry Bucshon
Member of Congress


Todd Rokita
Member of Congress


Todd Young
Member of Congress

cc: Speaker Boehner; Leader Pelosi; Leader Reid; Leader McConnell