

## **MEMORANDUM**

To: File No. S7-45-10

From: Jennifer B. McHugh

Date: February 21, 2012

Re: Section 975 of the Dodd-Frank Wall Street Reform Act of 2010 and “Municipal Advisor”

On February 17, 2012, Robert Cook, Director of the Division of Trading and Markets, and Jennifer McHugh, Senior Advisor to the Chairman, met with representatives of SIFMA. See the attached list of SIFMA representatives.

The SIFMA representatives discussed the impact of the SEC’s proposal on municipal advisor registration, focusing in particular on the statutory underwriter exception. The SIFMA representatives also discussed their view that section 975 was intended to apply to previously unregulated municipal advisors. The SIFMA representatives provided a one-page summary of their views on municipal advisor regulation (see attached) and a list of related SIFMA comment letters (also attached).

	First & Last Name	Title	Organization
	Ken Gibbs	President of Municipal Securities Group	Jefferies & Company
	Ben Juergens	Executive Director	Morgan Stanley
	David Stephens	Managing Director	Bank of America Merrill Lynch
	Robert Colby	Partner	Davis Polk
	Leslie Norwood	Managing Director & Co-Head Municipal Division	SIFMA
	Ken Bentsen	EVP, Public Policy and Advocacy	SIFMA
	Matt McGinley	Managing Director	SIFMA
	Michael Decker	Managing Director & Co-Head Municipal Division	SIFMA
	<b>VIA Audio Conference</b>		
	Richard Kolman	Managing Director	U.S. Bank
	Ryan Gilliam	Vice President and Assistant General Counsel	Goldman Sachs
	Ranada Ferguson	Managing Director	Nomura Securities
	Matthew Leavitt	Vice President	Goldman Sachs
	Lanny Schwartz	Partner	Davis Polk
	David Cohen	Managing Director & Associate General Counsel	SIFMA



## RELATED SIFMA COMMENT LETTERS

TOPIC	DATE	AVAILABLE AT
<b>SEC Interim Temporary Rule on Registration of Municipal Advisors</b>	November 15, 2010	<a href="http://www.sec.gov/comments/s7-19-10/s71910-10.pdf">http://www.sec.gov/comments/s7-19-10/s71910-10.pdf</a>
<b>SEC Municipal Advisor Permanent Registration Proposal</b>	February 22, 2011	<a href="http://sec.gov/comments/s7-45-10/s74510-587.pdf">http://sec.gov/comments/s7-45-10/s74510-587.pdf</a>
<b>SEC Municipal Advisor Permanent Registration Proposal (Pay-to-Play)</b>	February 25, 2011	<a href="http://www.sec.gov/comments/s7-45-10/s74510-657.pdf">http://www.sec.gov/comments/s7-45-10/s74510-657.pdf</a>
<b>MSRB Proposed Rule G 36 Regarding Fiduciary Duties of a Municipal Advisor (MSRB Request for Comment)</b>	April 11, 2011	<a href="http://msrb.org/Rules-and-Interpretations/Regulatory-Notices/2011/~media/Files/RFC/2011/2011-14/SIFMA.ashx">http://msrb.org/Rules-and-Interpretations/Regulatory-Notices/2011/~media/Files/RFC/2011/2011-14/SIFMA.ashx</a>
<b>MSRB Proposed Interpretation of Rule G 17 With Respect to Municipal Advisors (MSRB Request for Comment)</b>	April 11, 2011	<a href="http://msrb.org/Rules-and-Interpretations/Regulatory-Notices/2011/~media/Files/RFC/2011/2011-13/SIFMA.ashx">http://msrb.org/Rules-and-Interpretations/Regulatory-Notices/2011/~media/Files/RFC/2011/2011-13/SIFMA.ashx</a>
<b>MSRB Proposed Interpretation of Rule G 17 With Respect to Underwriters of Municipal Securities (MSRB Request for Comment)</b>	April 11, 2011	<a href="http://msrb.org/Rules-and-Interpretations/Regulatory-Notices/2011/~media/Files/RFC/2011/2011-12/SIFMA.ashx">http://msrb.org/Rules-and-Interpretations/Regulatory-Notices/2011/~media/Files/RFC/2011/2011-12/SIFMA.ashx</a>
<b>MSRB Proposed Interpretation of Rule G 17 With Respect to Underwriters of Municipal Securities (Initial MSRB Rule Filing)</b>	September 30, 2011	<a href="http://sec.gov/comments/sr-msrb-2011-09/msrb201109-4.pdf">http://sec.gov/comments/sr-msrb-2011-09/msrb201109-4.pdf</a>
<b>MSRB Proposed Interpretation of Rule G 17 With Respect to Underwriters of Municipal Securities (Amendment 2 to MSRB Rule Filing)</b>	November 30, 2011	<a href="http://sec.gov/comments/sr-msrb-2011-09/msrb201109-10.pdf">http://sec.gov/comments/sr-msrb-2011-09/msrb201109-10.pdf</a>
<b>SEC Order Instituting Proceedings to Determine Whether to Disapprove Proposed Interpretation to G 17, as Amended</b>	January 27, 2012	<a href="http://www.sec.gov/comments/sr-msrb-2011-09/msrb201109-18.pdf">http://www.sec.gov/comments/sr-msrb-2011-09/msrb201109-18.pdf</a>



## MUNICIPAL ADVISOR REGULATION: INSTITUTIONAL/INVESTMENT BANKING ISSUES SUMMARY<sup>1</sup>

SIFMA supports the goals of the Dodd Frank municipal advisor legislation to create a regulatory scheme for unregulated entities and protect municipal entities. However, in drafting regulations and reviewing MSRB rules to implement this statute, it is critical that the SEC carefully consider the costs and burdens for market participants and the benefits to and impact on municipal issuers.

- **The proposed municipal advisor rules will harm municipal entities.** The proposed municipal advisor rules, as applied to entities that are already regulated, will harm municipal entities without providing meaningful regulatory benefits. Firms may be forced to curtail many services that benefit issuers (including issuer-requested and uncompensated services) due to the rule's expansive interpretations, which exceed the statutory requirements and subject firms to as-of-yet undefined fiduciary obligations and restrictions.
- **Focus on previously unregulated entities.** The legislative purpose behind Section 975 was primarily to regulate the previously unregulated municipal financial advisors. The Commission should refrain from expanding the requirements for regulated dealers and advisors and should give full effect to the statutory exemptions.
- **Define advice.** The Commission should clearly define what constitutes advice, provide a safe harbor similar to that proposed for security-based swap dealers, and provide that a municipal advisory relationship only exists where there is a written contract to provide advice.
- **Rely on statutory definition of investment strategies.** Congress directed a limited definition of "investment strategies," and the Commission should not expand it to all activities touching any municipal assets.
- **Strengthen the statutory underwriter exception.** The Commission should make clear that the statutory underwriter exception covers (i) underwriters' ancillary advice regarding structuring and related issues, (ii) activities of prospective underwriters, and (iii) private placements and remarketing of municipal securities.
- **Clarify appropriately the application of registration requirements to registered investment advisers and solicitation activities for fund vehicles.** The Commission should clarify that (i) the investment adviser exemption applies even if the advice alone would not trigger Advisers Act registration (e.g., advice concerning instruments other than securities) or the advisor is otherwise exempt from registration (e.g., banks), and (ii) solicitation of investment in a fund is not solicitation for the fund's adviser.
- **Limit the paperwork burdens of registration.** The Commission should not require firms that are otherwise registered with the Commission as broker-dealers or investment advisers to complete an entirely separate registration form. Similarly, where a firm registers as a municipal advisor, its employees should not be required to separately register as individuals.
- **MSRB Rule G-17 proposal is premature.** Because the proposed obligations of municipal underwriters significantly overlap with the potential duties of municipal advisors, the MSRB's G-17 underwriter proposal should be deferred until the Commission has acted on its municipal advisor rule, so these may be considered in tandem.

<sup>1</sup> Please note that this summary does not include retail brokerage or banking issues. SIFMA would welcome the opportunity to address these matters separately.