

Subject: File No. File No. S7-19-10
From: Joy A. Howard
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In my capacity as an independent financial advisor, I am writing to set forth my comments relating to the interim final temporary rule for registration of municipal advisors.

Under the Dodd-Frank Wall Street Reform and Consumer Protection Act (the “Act”) the definition of “Municipal Advisor” excludes any individual who is a municipal entity or an employee of a municipal entity, “a broker, dealer, or municipal securities dealer serving as an underwriter (as defined in section 2(a)(11) of the Securities Act of 1933) (15 U.S.C. 77b(a)(11)), any investment adviser registered under the Investment Advisers Act of 1940, or persons associated with such investment advisers who are providing investment advice, any commodity trading advisor registered under the Commodity Exchange Act or persons associated with a commodity trading advisor who are providing advice related to swaps, attorneys offering legal advice or providing services that are of a traditional legal nature, or engineers providing engineering advice.”

It is my understanding that any individual, other than those specifically excluded above, that “provides advice to or on behalf of a municipal entity or obligated person with respect to municipal financial products or the issuance of municipal securities, including advice with respect to the structure, timing, terms, and other similar matters concerning such financial products or issues” (herein defined as “Municipal Securities Advisory Services”) will be deemed to be a “Municipal Advisor” and subject to registration regardless of whether such services are “free” or “voluntary.”

Many individuals that do not consider themselves to be Municipal Advisors routinely provide Municipal Securities Advisory Services, including, for example: Certified Public Accountants that provide advice on bond issues, which is beyond their traditional accounting and auditing function; municipal vehicle and equipment suppliers that arrange financing for their clients; and urban planners that advise on bonding terms as part of Tax Increment Financing District plans or other similar economic development projects. In each of these examples, the individuals clearly meet the definition of “Municipal Advisor” under the Act and should be subject to registration. Since some of these Municipal Advisors may not be aware of the requirements of the Act, I am recommending that the SEC establish an outreach program through associations and boards such as the Governmental Accounting Standards Boards, American Planning Association and the Council of Development Finance Agencies.

In addition, individuals that offer “free” or “voluntary” Municipal Securities Advisory Services should not be exempt from registration. Congress has determined that any person who provides Municipal Securities Advisory Services is required to register and act in a fiduciary capacity to issuers regardless of the compensation received for those services. The services being rendered are the trigger for registration and the corresponding fiduciary duty, not the title of the relationship, the terms of the contract, or the compensation received. Although such individuals may suggest that these services are “free,” most of these individuals will ultimately be compensated for their Municipal Securities Advisory Services as part of their “traditional”

services and fee arrangements. Such individuals should not be permitted to avoid registration and fiduciary responsibilities.

The Act was adopted, in part, to protect issuers from obtaining advice from unqualified individuals. For example, it may be financially advantageous in the short-term to accept advice from a “voluntary” source; however, the long-term consequences of receiving inadequate advice from an unqualified “volunteer” outweigh any short-term advantages. Under the Act, registered Municipal Advisors will have continuing education requirements and will be required to pass tests to ensure a certain level of competency. Consequently, individuals that “volunteer” should not be exempt from registration.

As noted in the comment letter from Kutak Rock, municipal brokers and dealers often provide informal, non-contractual and non-compensated advice to issuers and are often subsequently selected as the underwriter when bonds are issued. As noted hereinbefore, under the “Act” municipal brokers and dealers are by definition “Municipal Advisors” unless the municipal broker or dealer is serving as an underwriter (as defined in section 2(a)(11) of the Securities Act of 1933). Municipal brokers and dealers should not be permitted to escape classification as “Municipal Advisors” by offering “free” services. If an exception is created for municipal brokers and dealers offering “free” services, such individuals will be permitted to disguise their roles in municipal transactions and to circumvent the registration and fiduciary requirements of the Act.

Finally, I would like to thank the Securities and Exchange Commission for establishing a straightforward “plain English” approach to registration.

In conclusion, I support the current interim final temporary rule for registration and encourage the Securities and Exchange Commission to reject exemptions not already delineated by Congress. Additional exemptions would allow individuals to circumvent the registration process and avoid their fiduciary duty by offering “free” or “voluntary” Municipal Securities Advisory Services.