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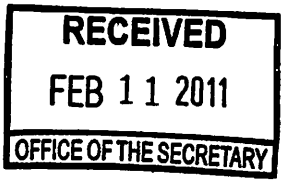
February 10, 2011

Securities and Exchange Commission
Attention: Elizabeth M. Murphy, Secretary
100 F St NE
Washington, DC 20549
(202) 551-6000




Re: File No. S7-45-10

Dear Commissioners:

The Commission has caused to be published in the Federal Register Release 34-63576 ("Release") proposing new Rule 15Ba-1 et seq. ("Proposed Rule") intended to give effect to Section 975 of the Dodd-Frank Act ("Act").

PFM Asset Management is one of the largest investment advisors in the United States specializing in the investment of funds of state and local governments and non-profit enterprises performing government-type functions such as healthcare and education. As of December 31, 2010, PFM Asset Management had approximately $40 billion of such assets under management. PFM Asset Management is the investment advisor for individual governments and authorities, and registered and exempt investment companies, including local government investment pools ("LGIPs").

PFM Asset Management has an aggregate of more than 30 years experience serving the investment management needs of the public service community. In addition to the management of short term cash resources through individually managed accounts and through the LGIPs, PFM Asset Management invests bond proceeds for its clients. We manage debt and equity funds for municipal and ERISA retirement and OPEB plans, and we offer services to our municipal clients in regard to interest rate swaps, which we have believed that we are obligated to consider as securities.

PFM Asset Management is registered as an investment advisor under the Investment Advisers Act of 1940. Its subsidiary PFM Fund Distributors, Inc. is registered as a broker under the Securities Exchange Act and performs only the function of distributor, in many cases without direct compensation from the issuer, of interests in the pooled vehicles for which PFM Asset Management serves as investment advisor/administrator.

PFM Asset Management will limit its comments to those elements of the Proposed Rule, as interpreted by the Release, which directly impact on our practice. We pause only to note that it is clear that the Commission's proposed plan to require the separate registration of every individual who is engaged in a municipal advisory activity lacks support in the Congressional action and is an unnecessary departure from the heretofore successful scheme of regulating individuals through their registrant employer. Others doubtless will urge more fully that the Commission has gone beyond the statute's authority or contemplation in this innovation, which places greater strain on resources which the Commission urgently claims already are inadequate.

In our view, the Commission goes astray in the Proposed Rule (a) when it qualifies the exemption for registered investment advisors from the definition of municipal advisors and (b) when it imposes an unduly restrictive interpretation of the words "investment advice" with respect to the definitional exemption for associated persons of an investment advisor.

We begin with the words of the statute which, at least for the life of agency law until now, have been enough. Section 15B(e)(4)(c) of the '34 Act, as amended by the Dodd-Frank Act, creates 5 classes of persons who are exempt from the definition of municipal advisor. All of the exemptions refer to a particular status of federal registration or licensure under state law. When the Congress wished to narrow the exemption beyond the status created by registration, the Congress knew exactly how to do so. The Act states, for example, that the consequences of being a municipal advisor do not attach to a registered broker if it is "serving as an underwriter". Attorneys - - if they are "offering legal advice or providing services that are of a traditional legal nature" - - are statutorily exempted. As a further example, registration with the Commission is not required of engineers if they are "providing engineering advice".

But in the same paragraph of the statute, Congress declared that the term municipal advisor "does not include" any entity "registered under the Investment Advisers Act of 1940" and, continuing after a comma," or persons associated with such investment advisor who are providing investment advice" (emphasis added). The grammar of the investment-advisor clause is clear that the registered entity is exempt absolutely from the imposition of Section 15B. The treatment of the registered investment advisor's associated persons is separated by a comma, phrased in the disjunctive and described in the plural, not the singular. There is no ambiguity here.

We will address momentarily the Commission's attempt in the Release to narrow the exemption of an investment advisor's associated persons, but as to the registered advisor itself (whether an individual sole proprietor or a business entity), the exemption, unlike that extended to other professionals, is unqualified by the nature of the investment advisor's activities. That is not only what the statute says, but it makes sense. The registered advisor is subject to the same (greater, actually) panoply of Commission regulations for the protection of its clients - - including the observance of a fiduciary duty, which is heralded as the capstone of the Act - - as the rules for municipal advisors; the investment adviser is subject to comparable Commission scrutiny of the background and the conduct of its associated persons; and the Commission already has a regular and effective system of field examinations of compliance by investment advisors. The Commission cites no evidence for its proposition that there is a Congressional mandate to limit the scope of the investment advisor exemption by way of any conduct, but what is manifestly unsupported is the Commission's claim that a registered investment advisor is exempt only with respect to the activities which compel registration under Title II of the '40 Act.

In view of the fact that the Commission in the Release treats the exemption for a registered investment advisor and for its employees as a single inquiry, the Commission necessarily proposes that under Rule 15Ba1-1(d)(2)(ii) an individual employee of a registered advisor would be exempt from municipal advisor registration only to the extent that the individual is performing an activity which would require his or her employer's registration under the Advisers Act. We repeat that the statute does not say that. Under the Dodd-Frank Act, to the extent an individual employee of a registered investment advisor claims exemption, it is available to him or her if he or she is providing "investment advice". By comparison, under the Advisers Act, the conduct which compels registration is "engag[ing] in the business of advising others * * * as to the value of securities or as to the advisability of investing in, purchasing or selling securities." The error in the conclusion drawn by the Commission in the Release is evident in the fact that it creates silly distinctions and fails to recognize the investment needs of municipal entities. Under the Commission's view, an investment advisor's employee who invests his municipal client's funds in a money market fund would be exempt from municipal advisor registration because the investment medium is "securities", but an employee who places the client's funds in a bank deposit account or certificate of deposit would be required to be registered as a municipal advisor or face criminal penalties. As the Commission would have it, an investment advisor's employee who advises municipal clients on investments in a broad range of federal agency securities would be exempt from municipal advisor



registration, while another employee (like his employer) would be required to register as a municipal advisor if the sole advisory business were limited to United States treasury securities and therefore was outside of the definition of investment advisor under Section 202(a)(11)(E) of the Advisers Act. An investment advisor employee who crafts an escrow account of eligible securities for a municipal client's defeasance escrow is free of municipal advisor registration, but if the employee adds a forward sale contract to the escrow package providing for future delivery of the same kind of securities to account for inefficiencies resulting from the varying maturities of investments, the Commission would have the employee (and employer) be registered as a municipal advisor.

The foregoing is only a sampling of the inexplicable distinctions created by the Commission's evident unfamiliarity with the scope of a municipal government's need for "investment advice" - - the words of the statute. It is necessary, we believe, for the Commission Staff, before further regulations are published, to learn what investment advisors do for local governments. The Congress understood that investment advisors were highly regulated professionals and created a flat exemption for registered advisors. A full inquiry by the Commission Staff would reveal that the legitimate "investment" (the words of the statute) requirements of local governments are not limited to defined securities, but to needs such as investment arbitrage advice (which may indicate the deposit of money to the Treasury with no yield at all [SLGS]) and the full panoply of techniques for creating efficient escrow accounts and the use of interest rate hedging strategies through the services of a registered investment advisor. The Rule proposed by the Commission not only manipulates the statute by ignoring its language, but it does so in pursuit of an apparently simplistic solution that does not even have the advantage of consistency.

As a final observation, we would be remiss in failing to add our voice to the unanimous professional recognition that the Commission proposes a regulation that stands the Act on its head by compelling the regulation of non-elected managers of what the Act defines as "municipal entities". PFM Asset Management's investment advisory practice focuses significantly on investment management of LGIPs. Our own practice as investment advisor to many significant LGIPs is surely exempt from the definition of municipal advisor (while, as noted above, under the Proposed Rule, our professionals incur an unfortunate risk if they employ various bank investments, for example). However, as to the universally volunteer directors of the LGIPs, on whom the thousands of municipal government participants in those Funds rely for stewardship of their investible monies, the Commission appears determined

that each one of these civic-minded, part-time soldiers of government register with the federal government and submit to its current and unknowable future regulations.

To be sure, we do not intend to say that the directors of LGIPs would never be exempt from municipal advisor registration even under the dragnet which the Commission proposes. In very many instances, the directors of the LGIPs are elected annually by the investors in the Fund. These directors thus are, in the Commission's words, "directly accountable for their performance to the citizens of the municipal entity" and must be deemed to be exempt from registration (as "employees" of the municipal entity).

The election of LGIP governance may be factually true in most instances, and the facts may be different as to other LGIPs in other instances, but in either case, the facts are the answer to the wrong question. The relevant question is whether the Congress knew the difference between the managers of a municipal entity and the service providers to the municipal entity - - which the Congress surely did - - and whether there is any evidence that the Congress directed that they be treated the same - - for which there is none. It is the Commission that has turned the advised into the advisors.

Very truly yours,

Marty Margolis
President

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