WISCONSIN BANKERS ASSOCIATION

February 21, 2011

VIA EMAIL
Ms. Elizabeth M. Murphy, Secretary
Securities and Exchange Commission
100 F Street, NE.,
Washington, DC 20549-1090
File Number S7-45-10
rule-comments@sec.gov

RE: Proposed Rule on Registration of Municipal Advisors, File Number S7-45-10

Dear Ms. Murphy:

The Wisconsin Bankers Association (WBA) is the largest financial institution trade association in Wisconsin, representing approximately 300 state and nationally chartered banks, savings and loan associations, and savings banks located in communities throughout the state. WBA appreciates the opportunity to comment on the Securities and Exchange Commission's (SEC's) proposed rule on the registration of municipal advisors. For the reasons stated below, WBA believes that banks, trust companies and bank holding companies should be exempt from registration as a municipal advisor under this rule.

SEC's Proposal Goes Beyond Intent of Dodd-Frank Act

WBA recognizes that the proposal is a direct result of a congressional mandate set forth in Section 975 of the Dodd-Frank Act (DFA), which amended Section 15B of the Securities Exchange Act of 1934. Section 975 of the Dodd-Frank Act imposes the requirement of registration for any company or individual that gives *advice* (a term not defined by statute or in the proposal) to a "municipal entity" with respect to "municipal financial products or the issuance of municipal securities." Among other things, Section 975 of DFA expressly links registration to the provision of advice about the *proceeds* of municipal securities. However, the SEC's proposal would require registration if advice is given about "funds *held by or on behalf of* (emphasis added) a municipal entity." Eliminating the requirement that registration is linked to advice about "proceeds" is inconsistent with the intent of DFA and unnecessarily overreaching.

The effect of this change in SEC's proposal from the language in DFA is to broaden the scope of activities and products covered under the registration requirements. WBA believes it could include, among other things, basic banking activities such as bank deposits, cash management tools and other traditional bank products. Again, this is unnecessarily overreaching and would cause the SEC to become a regulator over already heavily regulated banks, trust companies and bank holding companies. Such additional scrutiny upon currently regulated entities offering traditional banking services is unwarranted. At minimum, SEC should modify the proposal to clearly exclude the offering of traditional banking services and products from the definition of "municipal financial products."

4721 South Biltmore Lane
Madison, WI 53718

P. O. Box 8880
Madison, WI 53708-8880

608-441-1200
Fax 608-661-9381

www.wisbank.com

SEC's Proposal Should Exempt Banks, Trust Companies and Bank Holding Companies From the Definition of Municipal Advisor

Since the DFA exempts registered investment advisors from the definition of a "municipal advisor," and most banks are exempt from registration as a registered investment adviser (RIA) under the Investment Advisers Act, WBA believes it is reasonable to also exempt financial institutions that offer traditional banking services from the definition of "municipal advisor." As a result, WBA urges SEC to change its proposal to exempt from the definition of "municipal advisor" those banks, trust companies and bank holding companies that are also exempt from registration as an RIA.

If SEC does not make this change, banks, trust companies and bank holding companies would find themselves regulated by yet another entity, SEC or FINRA, as mandated by DFA. In addition, since there is no "separately identifiable department of a bank" to be examined as there is for municipal securities dealers that are banks, the SEC or FINRA could come in and examine the institution directly if municipal advisory services, as that is broadly defined, are conducted in a bank. This is an untenable result and one not reasonably substantiated in the law.

The focus of this legislation within DFA is to reach unregulated municipal advisors. Banks, trust companies and bank holding companies are *not* unregulated and do *not* offer "municipal financial products" or services that are clearly the focus of the law and this proposed rule. The most common relationship these financial institutions have with their municipal customers is to provide deposit, lending, cash management, trust and other traditional banking services. Such activities range from opening and servicing of FDIC-insured deposit accounts, executing general obligation or short-term (tax anticipation) borrowings, and issuing letters of credit to support municipal bond offerings, to other advisory activities provided pursuant to the existing bank exemption from the Investment Advisers Act. Additional, unnecessary regulation of these activities, when conducted by these financial institutions, is unwarranted.

If SEC will not provide a general exemption for banks, trust companies and bank holding companies from the definition of "municipal advisor," then at minimum, SEC must establish a de minimis threshold size below which banks, trust companies and bank holding companies would not have to register. WBA suggests that threshold be set at $10 billion, consistent with other provisions within DFA.

Conclusion

WBA strongly believes a complete exemption for banks, trust companies and bank holding companies under this proposal is necessary given the fact that they are already heavily regulated, generally only offer traditional banking products and services, and are not the focus of the underlying legislation. WBA appreciates the opportunity to comment on SEC's proposal.

Sincerely,

Kurt R. Bauer
President/CEO