Subject: File Number S7-45-10
From: Joy A. Howard
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In my capacity as an independent financial advisor and proprietor of WM Financial Strategies, I am writing to set forth my comments relating to the Securities and Exchange Commission's Release No. 34-63576 (the "Release") which describes the proposed rules for the permanent registration regime and record-keeping requirements for Municipal Advisors.

Background

Under the Dodd-Frank Wall Street Reform and Consumer Protection Act (the "Act") a Municipal Advisor is defined as "a person 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 referred to as "Municipal Advisory Services").[1]

The definition of "Municipal Advisor" excludes any individual who is an employee of a municipal entity. Other individuals participating in municipal securities transactions are either Municipal Advisors or excluded because the services they provide are not Municipal Advisory Services. These exclusions include "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."[2]

The Act grants registration authority to the Securities and Exchange Commission (the "Commission") and regulatory authority to the Municipal Securities Rulemaking Board (the "MSRB") and sets forth that the MSRB may "not impose a regulatory burden on small municipal advisors that is not necessary or appropriate in the public interest and for the protection of investors, municipal entities, and obligated persons, provided that there is robust protection of investors against fraud."[3] The Commission refers to small Municipal Advisors as "small entities."

[1] §15B(e)(4)(C) of the Securities Exchange Act of 1934 (the "Exchange Act")
[2] §15B(e)(4)(C) of the Exchange Act.
[3] §15B(b)(2)(L)(iv) of the Exchange Act.

Comment: Further guidance and clarification should be provided to the definition of the term Municipal Advisor with respect to broker-dealers.

The definition of "underwriter" as defined in Section 2(a)(11) of the Securities Act of 1933 does not include "a person 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." It is unclear what services can be provided by an underwriter and, consequently, I respectfully request the Commission to clarify what services (e.g. information and ideas regarding the structure and timing of an issue) can be offered by a broker-dealer without being included in the definition of Municipal Advisor and the corresponding fiduciary standard.

In addition, regardless of the type of services the Commission determines can be provided, it is unclear what trigger event would create an underwriting relationship as opposed to a municipal advisory relationship. To clarify this ambiguity, and to prevent confusion among municipal entities as to the nature of the services being provided, broker-dealers that intend to serve as a municipal entity's underwriter should be required to enter into a written agreement or letter of understanding, prior to providing any services, that (i) defines their role and (ii) indicates that the broker-dealer is not serving in a fiduciary capacity but rather in an arms length commercial transaction. Without such clarifications, municipal issuers may **assume** that there is no distinction between the services provided by a Municipal Advisor and those provided by an underwriter and are likely to assume that an underwriter is their advisor and representing their best interests. Further clarification will enhance the Commission's goal of promoting increased transparency in the municipal securities market and benefit municipal issuers in making informed decisions.

Comment: Further guidance and clarification should be provided regarding the term Municipal Advisor with respect to individuals that are not broker-dealers, CPAs, engineers or attorneys.

It is my understanding that any individual that provides Municipal Advisory Services, unless specifically exempted from the Act, will be deemed to be a Municipal Advisor with respect to the registration, fiduciary duty and other regulatory requirements of the Act.

Many individuals that are not specifically excluded from the Act, and that are not generally considered to be Municipal Advisors, routinely provide Municipal Advisory Services. These individuals include, for example, municipal vehicle and equipment suppliers that arrange financing for their clients and urban planning consultants that advise on bonding terms as part of land use plans, tax increment financing plans or other similar economic development project plans. Guidance should be provided to reinforce, if not clarify, that except for exempt municipal employees and elected officials, any individual that provides Municipal Advisory Services must be registered as a Municipal Advisor.

Comment: The Commission is proposing to exclude from the definition of "municipal advisor" elected members of a governing body, but to include appointed members of a governing body. The Commission has asked whether these distinctions are appropriate.

It is my understanding that an appointed official would **not** be considered a Municipal Advisor unless the official provides Municipal Advisory Services. The Commission should clarify that deliberations and policy making by appointed officials do not constitute Municipal Advisory Services.

In addition, WM Financial Strategies would support an exclusion for appointed officials provided that neither the appointed individual nor their employer obtain a financial benefit, directly or indirectly, from advice relating to the issuance and sale of securities or the investment of funds. By prohibiting appointed individuals and their firms from obtaining a financial benefit from the issuance and sale of securities or the investment of funds, the Commission could ensure that municipal entities remain able to recruit capable individuals while at the same time ensuring that appointed officials are providing objective advice. Consequently, banning appointed officials from benefiting financially, directly or indirectly, from the issuance of securities or investment of funds may be a viable alternative to registration.

Comment: The definition of a solicitation should be further clarified.

Neither the Act nor the Release clarifies when a recommendation becomes a solicitation.

Consider, for example, the following:

If a municipal entity asks a bond attorney, underwriter, or other market participant to recommend a Municipal Advisor, may the individual do so without being considered a solicitor? If a bond attorney, underwriter, or other market participant, without being asked, recommends the engagement of a Municipal Advisor, is the individual a solicitor? If a bond attorney or other market participant, without being asked, recommends the engagement of an underwriter, is the individual a solicitor? Is the determination of solicitation based on whether the individual receives compensation from the Municipal Advisor or underwriter? Is a solicitation based on whether their will be a reciprocal recommendation by the Municipal Advisor or underwriter to engage the third party for other municipal transactions (i.e. quid pro quo)?

Comment: To further assist the Commission in understanding fee arrangements, that are appropriate for Municipal Advisors, set forth below is a brief description of certain fee arrangements.

In the Release, the Commission indicated that information regarding compensation arrangements is to be included in Form MA in order to provide the Commission with a clearer understanding of the business structure of registered Municipal Advisors. The Commission also noted that information about compensation arrangements would

identify possible conflicts of interest that the Municipal Advisor may have with its clients. Form MA requires that a check mark be placed in front of six compensation options without any further description. I respectfully request the Commission to refrain from utilizing this limited information in making a determination as to the existence of conflicts of interest with respect to compensation. A more comprehensive analysis of compensation arrangements and the rationale for such fees should be considered prior to making any determination as to the appropriateness of a particular fee arrangement.

By way of example, set forth below is a narrative description of WM Financial Strategies' fees. I believe these fees are appropriate and consistent with the fiduciary duty of Municipal Advisors.

WM Financial Strategies establishes fee arrangements that we believe are in the best interests of our clients based on the specific transaction under consideration. Depending on the transaction, the fee may be based on an hourly rate or a fixed fee (i) that is contingent upon the completion of a transaction or project, (ii) that is non-contingent, or (iii) that has both a non-contingent and a contingent component. Prior to commencement of services we review the scope of the transaction and services to be provided and thereafter set forth the fee arrangement in writing.

WM Financial Strategies is often engaged to provide services after a determination has already been made by the municipality to issue securities to finance a specific capital project (e.g. voters have approved a specific amount of general obligation bonds). For these municipal securities issues we generally charge a fixed fee that is contingent upon the completion of the transaction. Many of our clients are small issuers with limited budgets that plan to pay costs of issuance, including financial advisory fees, from the proceeds of the securities. When capital funding is required, municipal issuers rely on the expertise of their financial advisor to develop marketable bond structures and to actively locate broker-dealers willing to underwrite the issue.

WM Financial Strategies also charges contingent fees for refunding transactions. The feasibility of these transactions is dependent upon market conditions. For these transactions, as part of an authorizing resolution or contract, we pre-define the level of savings to be derived (e.g. 3% of present value savings or other generally accepted feasibility criteria). This arrangement insures that the transaction will be terminated if pre-determined savings will not be realized.

Contingent fee arrangements benefit municipalities by insuring that governmental funds will not be drawn upon for payment of fees if the transaction is not completed. In addition to serving the needs of our clients, contingent fees are consistent with the typical contingent fee arrangements utilized by attorneys, including, in the context of municipal issuances, bond attorneys and some municipal attorneys.[4] As with Municipal Advisors

[4] We are of the understanding that this practice is consistent throughout the United States in all jurisdictions that have adopted Rule 1.5 of the Model Rules of Professional Conduct, which governs permissible attorney's fees and states, *inter alia*, that a "fee may be contingent on the outcome of the matter for which the service is rendered, except in a matter in which a contingent fee is prohibited," which is limited to "any fee in a domestic relations matter" or a "fee for representing a defendant in a criminal case."

who owe fiduciary duties to their municipal issuer clients, attorneys owe a similar fiduciary duty to their clients. Neither group is impaired in their ability to uphold their fiduciary duty by the structure of their fee arrangement because such fee arrangements, in and of themselves, do not create a conflict of interest.

We typically charge a fixed fee, with all or a portion of the fee being non-contingent, or charge an hourly non-contingent fee for projects that require a significant amount of planning or feasibility analysis and that potentially may be terminated as a result of our analysis or recommendations.

In each of the situations mentioned above, the fee is intended to provide the most appropriate option for our clients.

The Municipal Advisor's fiduciary duty will govern whether the particular fee arrangement is appropriate. Stated differently, there is no assurance that any particular fee structure will prevent abuse by an unscrupulous individual that does not adhere to their fiduciary duty. For example, requiring services to be provided on a non-contingent hourly basis could encourage less savory business practices, such as artificially inflating billable hours, unnecessarily delaying projects in order to accumulate more billable hours, or burdening issuers with unnecessary meetings or conference calls to increase the number of billable hours. Alternatively, a fixed non-contingent fee could encourage an unscrupulous advisor to terminate a difficult transaction and receive full compensation rather than exploring other potentially more time consuming structural alternatives.

Regardless of the type of fee arrangement, the imposed fiduciary duty should prevail in preventing improprieties. Therefore, the Commission should not regulate any fee structures that do not, in and of themselves, create conflicts of interest.

Comment: In connection with the proposed initial and annual review requirement, self-certification is sufficient.

A self-certification requirement is sufficient without a third-party review. The Commission will have access to books and records for review when it determines that a review is appropriate or warranted. While there have been a few highly publicized improprieties among "advisors," I am not aware of any systemic improprieties among independent financial advisors. While isolated violations are always a possibility, the Commission should expect independent financial advisors to adhere to the rules and regulations imposed by the Commission and conduct honest self-certifications and annual reviews. Furthermore, the potential of a review by the Commission will provide a strong incentive for all Municipal Advisors to abide by the Commission's rules and regulations. Any requirement for an accountant or attorney review would be unnecessary and would impose unnecessary costs and burdens on small entity Municipal Advisors.

Comment: A brochure modeled after the brochure required by the Investment Advisers Act is unwarranted and costly and should not be required as further set forth below.

The Commission has asked whether Municipal Advisors should be required to provide a brochure similar to the ADV brochures ("Brochures") that are required under the Investment Advisers Act. The Brochures are unwarranted, would be costly to prepare, and are an unnecessary duplication of materials that will already be available to municipal entities.

The process by which a municipal entity selects its Municipal Advisor has no resemblance to an individual investor selecting an investor advisor. Municipal entities select their advisor for specific projects that require services tailored to that project. First time engagements are generally by way of a request for qualifications or proposal. The selection is subject to approval by the governing body and receives public scrutiny.

It is understandable that the Commission wants to ensure that Municipal entities have access to records relating to disciplinary actions. However, Brochures are unnecessary since disciplinary actions and other information will be readily available through the information included in the registration forms (MA and MA-I). It is my understanding that the Forms MA and MA-I will be made available to the public electronically through EDGAR or another website. Consequently, municipal entities that desire to explore the credentials of a prospective Municipal Advisor could access the registration Forms through the website. Municipalities that are not interested in accessing these forms are unlikely to read a Brochure distributed to them either by mail or electronically. For these municipalities, a brochure is likely to be perceived as another piece of "junk mail" or "spam."

Unlike broker-dealers and investment advisors that may have hundreds of clients, most Municipal Advisors are likely to have a very small number of clients at any given time. It would be a very daunting and expensive endeavor to create Brochures for a small client base only to have the document unread and discarded. It is unlikely that brochures would serve a public purpose and a Brochure requirement would place an unnecessary burden on small entity Municipal Advisors.

A more effective and less costly approach to disclosure may be to require that written proposals include a reference to the URL where the Forms MA and MA-I can be accessed.

Comment: The determination of a small entity Municipal Advisor should be based on a significantly lower threshold than $7 million in annual receipts.

I appreciate the Commission's approach to the determination of small entities which does not rely on complicated or burdensome computations and is subject to self certification. I am, however, concerned that by establishing a threshold of $7 million in annual receipts, the Commission is likely to determine that there are few, if any, rules that would "impose a regulatory burden on small entities." Such a conclusion would likely be true for firms

that have millions of dollars in annual receipts; however, most independent financial advisor firms have significantly lower revenues. WM Financial Strategies is truly a small entity with two advisors. Compared to firms that have $7 million in annual receipts, WM Financial Strategies is a tiny company. Consequently, I am concerned that the use of a $7 million threshold will result in the implementation of rules on small entity Municipal Advisors that do, in fact, impose unnecessary regulatory burdens.

Comment: While each individual rule currently in effect or proposed by the Commission or MSRB does not appear to place unnecessary burdens on small Municipal Advisors, collectively the rules and proposed rules appear to impose regulatory burdens on small entities that may not be necessary or appropriate to the public interest.

Based on the fees already imposed by the MSRB and estimated fees set forth in the Release that may be imposed, I have estimated that the annual costs for Municipal Advisors may be as follows:

MSRB Annual Registration Fee	$500
SEC Annual Registration Fee	Unknown
SEC Form Filing Fees	Unknown
MSRB Transaction Fees	Unknown
Record Keeping **Per Person**	$9,050*
ADV Brochure	$5,000

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** In the Release, the Commission estimated that investment advisors record keeping under Rule 204-2 is 181 hours per advisor annually.[5] The figure above was based on record keeping by "General Clerks" at $50 per hour.[6] If similar rules are imposed on Small Entity Municipal Advisors (many of whom are solo practitioners) that do not typically have "General Clerks," the correct hourly rate should be $170 per hour (a figure frequently used by the Commission in the Release) which would equate to **$30,770** per advisor.[7]*

As noted above, WM Financial Strategies and many other independent financial advisors have annual receipts that are a minute fraction of $7 million. Collectively, the fees above would create a burden on Municipal Advisors that are truly small entities.

[5] Securities Exchange Act Release No. 63576 (December 20, 2010), ("Registration of Municipal Advisors"), at 178.
[6] *Id.* at 202.
[7] *See Id.* at 192, 194-95, and 198-99.