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February 22, 2011

Ms. Elizabeth M. Murphy, Secretary
U.S. Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090

Re: File No. S7-45-10; Release No. 34-63576
Registration of Municipal Advisors

Dear Ms. Murphy:

Fidelity Investments ("Fidelity")[1] appreciates the opportunity to comment on the Securities and Exchange Commission's proposed rule on the registration of municipal advisors (the "Proposed Rule").[2] The Proposed Rule is promulgated under Section 975 of the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank"), which amended Section 15B of the Securities and Exchange Act of 1934 (the "Exchange Act") to require municipal advisors that provide advice to or on behalf of a municipal entity or obligated person with respect to municipal financial products or the issuance of municipal securities, or that undertake a solicitation of a municipal entity or obligated person, to register with the Securities and Exchange Commission (the "SEC" or "Commission") effective October 1, 2010, with certain exceptions.[3] Dodd-Frank also expanded the jurisdiction of the Municipal Securities Rulemaking Board (the "MSRB") to cover municipal advisors, who would be obligated to register with the MSRB.

The Proposed Rule, which would replace a more limited interim final temporary rule,[4] would create a permanent registration regime for municipal advisor entities and individuals and impose certain record-keeping requirements on such entities. As a result, numerous businesses and individuals would be subject to an extensive new set of compliance obligations.

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[1] Fidelity Investments is one of the world's largest providers of financial services, with assets under administration of more than $3.5 trillion, including managed assets of $1.6 trillion. The firm is a leading provider of investment management, retirement planning, portfolio guidance, brokerage, benefits outsourcing and many other financial products and services to more than 20 million individuals and institutions, as well as through 5,000 financial intermediary firms.

[2] Registration of Municipal Advisors, 76 Fed. Reg. 824 (Jan. 6, 2011), available at http://sec.gov/rules/proposed/2010/34-63576fr.pdf.

[3] *See* Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank"), Pub. L. No. 111-203, §975, 124 Stat. 1376, 1468 (amending the Securities Exchange Act (the "Exchange Act") Section 15B).

[4] *See* Temporary Registration of Municipal Advisors, 75 Fed. Reg. 54465 (Sep. 1, 2010), available at http://sec.gov/rules/interim/2010/34-62824fr.pdf.

Fidelity recognizes the significant work undertaken by the SEC staff in preparing the Proposed Rule and appreciates that Dodd-Frank requires the Commission to meet its extensive rulemaking responsibilities in a short period of time. However, Fidelity is concerned that the Proposed Rule is overly broad and therefore unnecessarily subjects a wide range of individuals and entities to municipal advisor registration and to MSRB regulations, many of which have yet to be issued.

I. Introduction

Fidelity generally agrees with and supports the comments and suggestions submitted to the Commission by the Securities Industry and Financial Markets Association ("SIFMA") in its February 22, 2011 letter on the Proposed Rule. In particular, we support SIFMA's recommendation that the Commission exclude from the municipal advisor registration requirement persons that solicit municipal entities on behalf of affiliates and, instead, we believe these persons should be deemed "covered associates" under Rule 206(4)-5 promulgated under the Investment Advisers Act of 1940 (the "Advisers Act"). We address this specific issue below, but also write separately to emphasize our view that the SEC should address pay to play issues with respect to affiliated solicitors through amendment of Rule 206(4)-5, rather than through the Proposed Rule. We also reiterate our concerns expressed in our 1999 and 2009 letters, given that difficult aspects of Rule 206(4)-5 continue to confront Fidelity and the financial services industry as the deadline for implementation approaches.[5]

II. The Commission Should Exclude from the Municipal Advisor Registration Requirement Persons Who Solicit on Behalf of Affiliated Entities and These Persons Should be Deemed "Covered Associates" Under Rule 206(4)-5 Instead

The Proposed Rule exempts from the requirement of registration as a municipal advisor persons that solicit municipal entities on behalf of affiliates.[6] Thus, the mandatory registration regime in the Proposed Rule is consistent with the terms of the Exchange Act, as amended by Section 975 of Dodd-Frank, which clearly indicate that Congress intended to regulate only third-party solicitors under the municipal advisor regime.

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[5] *See* Fidelity Investments Comment Letters on File No. S7-19-99 dated Nov. 1, 1999, available at http://www.sec.gov/rules/proposed/s71999/locke1.htm, and on Release No. IA-2910, File No. S7-18-09 dated Oct. 7, 2009, available at http://sec.gov/comments/s7-18-09/s71809-237.pdf ("Fidelity 1999 and 2009 Comment Letters").

[6] When defining the phrase "solicitation of a municipal entity or obligated person", Section 15B, as amended by Section 975 of Dodd-Frank, provides that such phrase does not include solicitations made by a person "on behalf of a broker, dealer, municipal securities dealer, municipal advisor, or investment adviser . . . that does not control, is not controlled by, or is not under common control with the person undertaking such solicitation." Exchange Act § 15B(e)(9), 15 U.S.C. § 78a, 198.

However, the SEC also suggests that entities may "voluntarily" register as municipal advisors, and goes on to note that as a condition to being paid as solicitors by their affiliates, affiliated entities serving as solicitors *must* register as municipal advisors pursuant to the SEC's recently proposed amendments to Rule 206(4)-5 relating to pay to play practices.[7] In other words, the voluntary registration is hardly voluntary at all in many cases; instead it is a necessary condition for any affiliate that receives payment for one's services as a solicitor under Rule 206(4)-5. Naturally, once an affiliated solicitor "voluntarily" registers as a municipal advisor, it then becomes subject to the full range of MSRB regulatory requirements. Therefore, the SEC's purported voluntary registration approach undermines Congressional intent to exclude these affiliated parties from regulation and subjects them to an additional regulatory scheme.

Instead of the approach to affiliated solicitor registration under the Proposed Rule, Fidelity supports SIFMA's suggestions and strongly believes the Commission should amend Rule 206(4)-5 to include affiliated entities that solicit on behalf of investment advisers (and their employees engaged in solicitation activities) as "covered associates" of the adviser and exclude these affiliated entities from the ban on compensating placement agents under that Rule. This approach would accomplish the Commission's goal of ensuring that affiliated solicitors are covered by pay to play rules, without imposing the full range of municipal advisor rules on a group that Congress clearly intended to exclude from coverage. An additional benefit of this approach would be that advisers and their affiliates would be subject to the same set of federal pay to play standards, administered and interpreted by the same federal regulator, rather than a separate set of rules established and interpreted by the SEC and the MSRB.

In this regard, Fidelity notes that investment advisers currently grapple with a myriad of non-uniform state and local laws regarding pay to play practices that impose difficult compliance burdens. The addition of yet another set of rules on top of federal pay to play requirements will further complicate the complex, overlapping compliance burdens as investment advisers attempt to reconcile and comply with sundry regulations. There is no logical policy reason for the Commission to force these entities to register as municipal advisors when the Commission's concerns about pay to play coverage can be addressed easily in a straightforward manner through an amendment to Rule 206(4)-5 itself.

III. Fidelity Continues To Believe The Applicability of Rule 206(4)-5 Should Be Narrowed to Exclude Mutual Funds

Like others in the investment advisory industry, Fidelity has begun the process of implementing the compliance programs required under Rule 206(4)-5. As we

[7] Registration of Municipal Advisors Release at n. 104. *See also* Rules Implementing Amendments to the Investment Advisers Act of 1940, 75 Fed. Reg. 77052 (Dec. 10, 2010), available at http://sec.gov/rules/proposed/2010/ia-3110fr.pdf.

anticipated, and as discussed in our 2009 and 1999 comment letters addressing the Commission's pay to play rule proposals,[8] we face significant challenges in designing and implementing effective processes, due in part to the complexity and vagueness of Rule 206(4)-5.

As currently adopted, Rule 206(4)-5 covers situations in which a government client invests its assets in a mutual fund. The Commission's attempt to alleviate the burdens by limiting Rule 206(4)-5's application only to mutual funds *in which government plans invest*, rather than to all mutual funds, is no relief at all where mutual funds are widely available to government plans on investment platforms offered by record keepers.

As the Commission has acknowledged, a mutual fund's adviser often has no way of knowing its current or potential investors, including government clients.[9] For example, distribution arrangements are common where an adviser's mutual funds are sold through unaffiliated third-party brokerage intermediaries who independently solicit and service mutual fund business for their institutional customers, including plans and programs of government clients. In these cases, the adviser to the fund has *no knowledge* of the underlying shareholder and therefore can not determine -- without assistance from an intermediary -- when a government client has purchased shares in order to comply with the record keeping requirements of Rule 206(4)-5. These practical difficulties are compounded with fund-of-funds and sub-advisory arrangements, as these structures further limit an adviser's ability to monitor the identity of particular investors. In light of these concerns, Fidelity continues to believe that Rule 206(4)-5 should be narrowed to exclude mutual funds entirely.

IV. Fidelity Continues To Believe That Graduated Sanctions Should Apply Instead of a Two Year Ban On Compensation

As the enormity of the task of educating our employees concerning compliance requirements and determining who is a covered associate has unfolded, it has become clear that the danger of inadvertent violations of Rule 206(4)-5 are real. One of the strengths of our industry is its highly mobile workforce, with free movement of employees within and between companies. This constantly evolving workforce creates even greater challenges for companies and employees, particularly when coupled with the two year lookback provision under Rule 206(4)-5. Fidelity believes more strongly than ever that, while a two year ban on receipt of compensation may be appropriate in certain egregious instances, an automatic ban should not follow from a prohibited contribution where the contribution may have been small and the violation inadvertent. For such violations we continue to urge the Commission to consider adopting a series of graduated

[8] *See* Fidelity 1999 and 2009 Comment Letters.
[9] *See* Political Contributions by Certain Investment Advisers, Release No. IA-2910; File No. S7-18-09 (Aug. 7, 2009), available at http://sec.gov/rules/proposed/2009/ia-2910fr.pdf, at 39857.

sanctions that take into account all salient facts and circumstances, including whether the adviser has appropriate policies and procedures in this area.

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Fidelity reiterates its recognition of the thoughtful approach taken by the Commission as it addresses difficult and complex issues with respect to both the Proposed Rule and Rule 206(4)-5. We urge the SEC to consider our recommendations before moving forward with this Proposed Rule or finalizing the amendments to Rule 206(4)-5.

We appreciate the opportunity to comment on the Proposed Rule. Fidelity would be pleased to provide any further information or respond to any questions that the Commission or the staff may have.

Sincerely,

cc: The Honorable Mary L. Schapiro, Chairman
The Honorable Kathleen L. Casey, Commissioner
The Honorable Elisse B. Walter, Commissioner
The Honorable Luis A. Aguilar, Commissioner
The Honorable Troy A. Paredes, Commissioner

Eileen Rominger, Director
Robert E. Plaze, Associate Director
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