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Ms. Elizabeth M. Murphy
Secretary
Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549-1090

Re: File Number S7–45–10

Dear Ms. Murphy:

Venable LLP welcomes this opportunity to submit comments to the Securities and Exchange Commission ("SEC") on behalf of one of our clients, a bank with assets in excess of $10 billion ("Bank"), in response to the SEC's proposed rule regarding Registration of Municipal Advisors that was published in the *Federal Register* on January 6, 2011 (pages 824 – 969).

Our client believes that the rule as proposed is unduly broad in scope, is inconsistent with Congressional intent regarding municipal advisor registration, and exceeds the requirements established in Section 975 of the *Dodd-Frank Wall Street Reform and Consumer Protection Act* ("*Dodd Frank Act*") and believes that the rule, if adopted as proposed, will significantly limit the availability of banking products to municipal entities.

In the *Federal Register* notice, the SEC includes a series of questions related to specific activities pursued by FDIC-insured depository institutions (national banks, state banks, and savings associations) which include activities related to insured deposits, financial institution responses to requests for proposals by municipal entities relating to banking products and services, short term investment options such as sweep and overnight account products, investments by financial institutions in bonds issued by municipalities, and trust related services provided by a bank to a municipality such as trust investment services and custodial services including those activities for which banks are specifically exempted from SEC investment advisor registration. Our client believes that although not specifically requested, the approach contained in the SEC's proposed rule would also potentially include loans and letters of credit issued by banks to municipalities.

Our client believes that in none of these situations is the bank acting as an "advisor" as it is not providing "advice" to the municipality, and notes that while the term "advice" is not defined in the statute, common use of the term in no manner extends to a financial institution responding to a municipal entity's request for proposal or request for available terms of a bank's products. The bank in this situation is simply suggesting the product terms the bank will make

available to the municipal entity. The bank is not advising or encouraging the municipal entity to accept or not accept nor is it suggesting a counter-proposal. Should the municipality require advice regarding the prudence of entering into a contract with a depository institution, the municipality's best course of action would be to seek appropriate third party counsel who, as suggested by the *Dodd Frank Act*, should be registered.

Our client believes that if the rule is adopted as proposed, the negative impacts will include increased regulatory burden and oversight of banks offering these products and services to municipalities thereby increasing the costs incurred by banks and passed through to municipalities. In addition, the Bank believes that if the rule were adopted as proposed it will also likely reduce the availability of such products to municipal entities as a number of banks may simply cease serving municipal customers – a potentially significant problem for all municipalities but particularly problematic in rural communities with only a limited number of local banks with which to do business, and perhaps none if the rule is adopted. Should banks cease offering products and services to municipalities, economics would also suggest the costs of those products could increase. Importantly, this will not only impact municipal governments themselves but will extend to entities associated with or managed by municipalities such as public school systems, municipal hospitals, municipal airports, and public pensions.

Our client concedes that the SEC's proposal would potentially have merit if insured financial institutions were not otherwise subject to an established and extensive federally regulatory system (including safety and soundness, compliance, and trust) which includes the oversight of the types of products and services contemplated by the SEC. In short, it is difficult to perceive that, if adopted, the public interest benefit stemming from such a broad scope would be commensurate with the negative impact to financial institutions and municipalities. It is impossible to identify any material benefit or the objectives to be achieved by the SEC with this expanded oversight. In addition to the existing regulatory system, municipalities have the opportunity for redress via the court system and regulatory agencies should they believe they have been damaged in some manner by a financial institution.

Our client is also concerned that the scope proposed by the SEC will subject financial institution employees serving municipal customers or otherwise serving municipalities in a volunteer manner, whether on behalf of the financial institution or not, to SEC registration requirements. Establishing an employee registration process will further increase the costs associated with products offered to municipal entities, and notably will not produce more meaningful product information to the municipality. Requiring an employee to be registered

simply to provide a municipal entity with deposit or loan rates and maturities or to offer a deposit or a sweep account to a municipality offers no value and is completely counterproductive.

For all of the reasons set forth above, our client strongly encourages the SEC to exempt insured depository institutions from the scope of the proposed rule.

Thank you for your consideration of this very important recommendation; please do not hesitate to contact me if you have any questions or would like additional information.

Sincerely,

William J. Donovan