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February 22, 2011

VIA ELECTRONIC MAIL

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

RE: File Number S7-45-10 – Registration of Municipal Advisors

Dear Ms. Murphy:

The Bond Dealers of America ("BDA") is pleased to offer comments on SEC Release No. 34-63576 (Dec. 20, 2010) (the "Release"). The Release relates to proposed regulations (the "Proposed Regulations") regarding the registration of municipal advisors. The BDA is the trade association exclusively focused on U.S. fixed income markets and represents bond dealers who are headquartered in cities all over the country and who do business in dozens of states coast to coast. Some of our members are municipal advisors in addition to being broker-dealers.

One of the key financial reforms of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the "Dodd-Frank Act") was to amend Section 15B of the Securities Exchange Act of 1934 (the "Exchange Act") to make it unlawful for municipal advisors to provide advice to, or solicit, municipal entities or obligated persons without registering with the SEC. The Dodd-Frank Act also for the first time imposed an express fiduciary duty on municipal advisors in respect of the municipal entities. The Proposed Regulations have the potential to dramatically alter the services offered to municipalities and how certain market participants interact with municipalities.

First, the Proposed Regulations may impact brokers, dealers and municipal securities dealers ("Dealers") because they do not clearly delineate when Dealers are excluded from the definition of "municipal advisor" when they serve as an underwriter for an issuance of bonds by a municipal entity or obligated person. The Proposed Regulations seek to clarify that an underwriter is not excluded from the definition of

"municipal advisor" if it acts in a capacity other than as an underwriter. The potential that a Dealer will run afoul of this limitation is a great concern. As the Release states, "…a broker-dealer advising a municipal entity with respect to the investment of bond proceeds or the advisability of a municipal derivative, would be a municipal advisor with respect to those activities." After the Dodd-Frank Act became law, many Dealers noted the ambiguity surrounding the circumstances under which underwriters could become "municipal advisors" and expressed concern about such ambiguity. Rather than settle this concern, the Proposed Regulations exacerbate the concern by further confusing which traditional activities of underwriters fall within or oustide of the definition of "municipal advisor."

We believe that it will be difficult for underwriters to develop clear guidelines to prevent them from being "municipal advisors" under the Proposed Regulations for three reasons. First, neither the Dodd-Frank Act nor the Proposed Regulations define the term "advice." Underwriters typically provide municipal entities and obligated persons with structuring analyses and recommendations that may constitute "advice" under the Dodd-Frank Act and Dealers will have no formal guidance in determining which of their activities constitute advice until the SEC or courts provide that guidance. Second, the SEC clarified in the Release that an underwriter can be a "municipal advisor" even if it does not receive separate compensation for the advice and even if the underwriter were not separately retained to act in an advisory capacity making the distinction even more difficult. Finally, the SEC defines an "underwriter" as it is defined in Section 2(a)(11) of the Securities Act of 1933, which, in essence, is a person who purchases a security with the view to distribute it. This traditional definition can be construed as a narrow definition because it describes only one of the aspects of the traditional relationship between an underwriter and a municipal entity or obligated person. Underwriters provide a variety of other services to municipal entities and obligated persons such as structuring analyses and recommendations and the Proposed Regulations cast confusion on whether much of the traditional role of the underwriter falls outside that capacity.

Ambiguity around whether underwriters are municipal advisors can cause major problems for underwriters. If the SEC later determines that an undewriter provided advice to a municipal entity outside of its capacity as underwriter and thus was a municipal advisor, the underwriter will have owed a fiduciary duty to that municipal entity. Since underwriters act for their own account for and as principals rather than as fiduciaries, being recharacterized as a municipal advisor after the fact can subtantially alter the legal framework that the underwriter thought it was operating within. Second, underwriters who are recharecterized as municipal advisors may also have violated the registration requirements of the Dodd-Frank Act unless they have previously registered as municipal advisors.

Under the Proposed Rules, a municipal advisor includes a person that provides advice regarding an investment of a municipal entity's funds, regardless of the source of those funds. The Dodd-Frank Act, however, defines a municipal advisor in a more limited manner as a person who provides advice with respect to "municipal financial products." Section 15B(e)(5) provides that the term "municipal financial product" means "municipal derivatives, guaranteed investment contracts, and investment strategies."

Exchange Act Section 15B(e)(3) provides that "the term 'investment strategies' includes plans or programs for the investment of the proceeds of municipal securities that are not municipal derivatives, guaranteed investment contracts, and the recommendation of and brokerage of municipal escrow investments." Under the Proposed Regulations it appears that the definition of municipal financial product has been significantly expanded so that any person who gives advice with respect to any plans, programs or pools of assets that invest any funds of a municipality must register as a municipal advisor. In other words, the definition has been expanded beyond investments of bond proceeds, municipal derivatives, and guaranteed investment contracts. We do not believe that this is is appropriate given the language of the Dodd-Frank Act. The rules should be narrowed so that they are consistent with the language of the Dodd-Frank Act.

Because the Proposed Regulations do not define the term advice, they also could result in those who sell or offer to sell investments to municipalities being considered advisors. The BDA believes that this interpretation would go far beyond anything that Congress intended. These are clearly counterparties who are already subject to SEC rules and regulations that protect investors and they should be exempted from the definition of municipal advisor.

As with Dealers, volunteer and appointed members of the boards of a municipal entity would be subject to considerable doubt as to when their discussions and activities would result in "advice" under the Dodd-Frank Act without guidance regarding what the term "advice" means. In their current form, the Proposed Regulations only elected and *ex officio* board members are excluded from the definition of "municipal advisor" - appointed or volunteer board members of a municipal entity are not. In making this distinction, the SEC incorrectly assumes that the board of a municipal entity is separate and distinguishable from the municipal entity itself but to then create a distinction between elected and appointed or volunteer members and to hold them to different standards is troubling. Further, the SEC improperly intrudes on the internal affairs of the States and their political subdivisions by attempting to establish a federal registration obligation and federal standards for members of municipal boards.

All members of the board of a municipal entity must be able to openly express their views on matters being considered by the board, including the issuance of municipal securities or the investment of funds, without federal interference with the manner in which States designate board members (whether through elections, appointments or volunteer service) or with the rights, duties and obligations of these officials and without being concerned that such discussions could later be deemed to be "advice" subjecting them to registration and regulation as a municipal advisor. Apointed board members could find themselves charged with violating municipal advisor provisions of the Dodd-Frank Act long after they provided the alleged advice and when circumstances have since developed that retroactively call the appropriateness of the advice into question. Further, to require volunteer board members to comply with registration requirements, including registration expenses, as well as federal fiduciary standards and federal securities law liability will have the unintended effect of discouraging the participation of members who voluntarily contribute their expertise to assisting municipalities.

A more precise definition of what constitutes "advice" would assist appointed board members as well as other market participants such as Dealers in understanding when their activities would subject them to registration as a municipal advisor and they would be subject to a fiduciary duty. Without further clarification of the scope of what constitutes "advice", there will be a chilling effect on the willingness or ability of appointed board members, as well as Dealers and other municipal market participants, to render any advice to or interact with municipal entities.

As a more fundamental matter, the BDA believes that Congress enacted the system for registration and regulation of municipal advisors because there was a significant element of the financial industry that was not regulated. The SEC's principal goal in its proposed regulations should be to bring that element under regulation. It should not be to extend to already regulated elements of the industry additional regulation and registration requirements, much less the uncertainty that accompanies ambiguous regulations, such as these proposed here. Doing so not only is a burden on broker-dealers, but also drains scarce SEC resources, and does so without a significant increase in the benefit to municipal entities. Besides existing regulations governing broker dealers, under other provisions of Dodd-Frank the SEC is moving toward imposing a fiduciary duty on them. Therefore, the BDA believes that the SEC should closely examine providing expanding exemptions to the definition of municipal advisor for broker-dealers beyond underwriting. We propose that a broker-dealer that clearly identifies itself as not acting as an advisor be exempted from the definition of municipal advisor

Thank you for the opportunity to present our views on the Proposed Regulations.

Sincerely,

Mike Nicholas
Chief Executive Officer