

112TH CONGRESS
2D SESSION

H. R. 2827

IN THE SENATE OF THE UNITED STATES

SEPTEMBER 20, 2012

Received; read twice and referred to the Committee on Banking, Housing, and
Urban Affairs

AN ACT

To amend the Securities Exchange Act of 1934 to clarify provisions relating to the regulation of municipal advisors, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

1 **SECTION 1. REGISTRATION OF MUNICIPAL SECURITIES**
2 **DEALERS.**

3 Section 15B(a)(1)(B) of the Securities Exchange Act
4 of 1934 (15 U.S.C. 78o-4(a)(1)(B)) is amended by strik-
5 ing “or on behalf of”.

6 **SEC. 2. MUNICIPAL SECURITIES RULEMAKING BOARD;**
7 **RULES AND REGULATIONS.**

8 Section 15B(b)(2)(L) of the Securities Exchange Act
9 of 1934 (15 U.S.C. 78o-4(b)(2)(L)) is amended—

10 (1) in clause (iii), by striking “and” at the end;

11 (2) in clause (iv), by striking the period and in-
12 sserting “; and”; and

13 (3) by adding at the end the following:

14 “(v) not regulate as a municipal advi-
15 sor the activities of a person referred to in
16 subparagraph (C) of subsection (e)(4), to
17 the extent that such activities are de-
18 scribed under such subparagraph.”.

19 **SEC. 3. DISCIPLINE OF MUNICIPAL SECURITIES DEALERS;**
20 **CENSURE; SUSPENSION OR REVOCATION OF**
21 **REGISTRATION.**

22 (a) IN GENERAL.—Section 15B(c)(1) of the Securi-
23 ties Exchange Act of 1934 (15 U.S.C. 78o-4(c)(1)) is
24 amended to read as follows:

25 “(1) No broker, dealer, or municipal securities
26 dealer shall make use of the mails or any means or

1 instrumentality of interstate commerce to effect any
2 transaction in, or to induce or attempt to induce the
3 purchase or sale of, any municipal security, and no
4 broker, dealer, municipal securities dealer, or munic-
5 ipal advisor shall make use of the mails or any
6 means or instrumentality of interstate commerce to
7 provide advice to or on behalf of a municipal entity
8 or obligated person with respect to municipal finan-
9 cial products, the issuance of municipal securities, or
10 to undertake a solicitation of a municipal entity or
11 obligated person, in contravention of any rule of the
12 Board. A municipal advisor, when acting pursuant
13 to an engagement described in subsection
14 (e)(4)(A)(i), and any person associated with such
15 municipal advisor, shall be deemed to have a fidu-
16 ciary duty with respect to such engagement to any
17 municipal entity for whom such municipal advisor
18 acts as a municipal advisor, and no municipal advi-
19 sor may engage in any act, practice, or course of
20 business which is not consistent with such municipal
21 advisor's fiduciary duty or that is in contravention
22 of any rule of the Board. In issuing regulations to
23 carry out the previous sentence and subsection
24 (b)(2)(L)(i), the Board shall—

1 “(A) require that a municipal advisor act
2 in accordance with its fiduciary duty to its mu-
3 nicipal entity clients, but only in connection
4 with those specific activities involving such mu-
5 nicipal entity client described under subsection
6 (e)(4)(A)(i) (and not excluded under subsection
7 (e)(4)(C));

8 “(B) specify when such duties begin and
9 terminate in relation to such activities; and

10 “(C) not prohibit principal transactions by
11 municipal advisors or the receipt of compensa-
12 tion based on commissions or other standard
13 compensation in relation to the purchase or sale
14 of a security or other instrument (including de-
15 posit or foreign exchange), except that the
16 Board—

17 “(i) may issue rules requiring a mu-
18 nicipal advisor to only engage in such
19 transactions or receive such compensation
20 in a manner that is consistent with the
21 municipal advisor’s fiduciary duty; and

22 “(ii) may prohibit a municipal advisor
23 that has been engaged to provide advice
24 with respect to an underwritten offering of

1 securities from concurrently acting as an
2 underwriter of such offering.”.

3 (b) TECHNICAL CORRECTION.—

4 (1) IN GENERAL.—Section 975(c)(5) of the
5 Dodd-Frank Wall Street Reform and Consumer Pro-
6 tection Act is amended to read as follows:

7 “(5) in paragraph (4), by inserting ‘or munic-
8 ipal advisor’ after ‘municipal securities dealer’ each
9 place that term appears;”.

10 (2) EFFECTIVE DATE.—The amendment made
11 by paragraph (1) shall take effect on the date of the
12 enactment of the Dodd-Frank Wall Street Reform
13 and Consumer Protection Act, as if included in such
14 Act.

15 **SEC. 4. DEFINITION OF INVESTMENT STRATEGIES.**

16 Section 15B(e)(3) of the Securities Exchange Act of
17 1934 (15 U.S.C. 78o-4(e)(3)) is amended to read as fol-
18 lows:

19 “(3) the term ‘investment strategies’—

20 “(A) means plans or programs for the in-
21 vestment of the direct proceeds of municipal se-
22 curities (but not other public funds) that are
23 not municipal derivatives or guaranteed invest-
24 ment contracts, and the recommendation of and
25 brokerage of municipal escrow investments,

1 where, with respect to the municipal advisor of-
2 fering such plans, programs, or recommenda-
3 tions, such proceeds of municipal securities and
4 municipal escrow investments—

5 “(i) are known or should be known to
6 the municipal advisor to be comprised of
7 funds or investments maintained in a seg-
8 regated account that is exclusively for the
9 purpose of maintaining such proceeds or
10 escrow investment; or

11 “(ii) have been identified to the mu-
12 nicipal advisor, in writing, as funds or in-
13 vestments that constitute the proceeds of
14 municipal securities or municipal escrow
15 investments; and

16 “(B) does not include—

17 “(i) merely acting as a broker or prin-
18 cipal with respect to the purchase or sale
19 of a security or other instrument (includ-
20 ing deposit or foreign exchange);

21 “(ii) providing a list of, or price
22 quotations for, investment options or secu-
23 rities or other instruments which may be
24 available for purchase or investment or

1 which satisfy investment criteria specified
2 by a municipal entity;

3 “(iii) acting as a custodian;

4 “(iv) providing generalized informa-
5 tion concerning investments which are not
6 tailored to the specific investment objec-
7 tives of the municipal entity; or

8 “(v) providing advice with respect to
9 matters other than the investment of funds
10 or financial products;”.

11 **SEC. 5. DEFINITION OF MUNICIPAL ADVISOR.**

12 Section 15B(e)(4) of the Securities Exchange Act of
13 1934 (15 U.S.C. 78o-4(e)(4)) is amended to read as fol-
14 lows:

15 “(4) the term ‘municipal advisor’—

16 “(A) means a person (who is not a munic-
17 ipal entity or obligated person, or an employee
18 of a municipal entity or obligated person)
19 that—

20 “(i) is engaged, for compensation, by
21 a municipal entity or obligated person to
22 provide advice to a municipal entity or ob-
23 ligated person with respect to municipal fi-
24 nancial products or the issuance of munic-
25 ipal securities, including advice with re-

1 spect to the structure, timing, terms, and
2 other similar matters concerning such fi-
3 nancial products or issues; or

4 “(ii) undertakes a solicitation of a
5 municipal entity;

6 “(B) includes financial advisors, guaran-
7 teed investment contract brokers, third-party
8 marketers, placement agents, solicitors, finders,
9 and swap advisors, if such persons are de-
10 scribed in either of clauses (i) or (ii) of sub-
11 paragraph (A) and are not excluded under sub-
12 paragraph (C); and

13 “(C) does not include, solely as a result of
14 their performing the following activities—

15 “(i) any broker, dealer, or municipal
16 securities dealer registered with the Com-
17 mission, to the extent that such broker,
18 dealer, or municipal securities dealer is
19 serving or is seeking to serve as an under-
20 writer, placement agent, remarketing
21 agent, dealer-manager, or in a similar ca-
22 pacity, or is providing advice related to or
23 in connection with any such activities and
24 not for separate compensation, or any per-

1 son associated with such a broker, dealer,
2 or municipal securities dealer;

3 “(ii) an investment adviser registered
4 under the Investment Advisers Act of 1940
5 (15 U.S.C. 80b–1 et seq.) or with any
6 State or territory of the United States that
7 is providing investment advice (whether or
8 not of a type that would subject a person
9 to registration under such Act), or any
10 person associated with such an investment
11 adviser;

12 “(iii) any person registered under the
13 Commodity Exchange Act (7 U.S.C. 1 et
14 seq.) or this Act in relation to such per-
15 son’s activities with respect to swaps or se-
16 curity-based swaps that is providing advice
17 related to swaps or security-based swaps,
18 or providing advice that is related to or in
19 connection with any such activities and not
20 for separate compensation, or any person
21 associated with such person;

22 “(iv) a financial institution engaging
23 in any of the activities referred to in clause
24 (i), (ii), or (iii) pursuant to an exemption
25 from registration, acting as a dealer or

1 principal with respect to deposits, foreign
2 exchange, or identified banking products
3 (as defined in paragraphs (1) through (5)
4 of section 206(a) of the Gramm-Leach-Bliley
5 Act (15 U.S.C. 78c(a))), providing
6 other traditional banking or trust services
7 otherwise subject to a fiduciary duty under
8 State or Federal law, providing administra-
9 tive or operational services or support, or
10 providing advice that is related to or in
11 connection with any such activities and not
12 for separate compensation;

13 “(v) any person subject to regulation
14 by a State insurance regulator providing
15 insurance products or services or providing
16 advice that is related to or in connection
17 with any such activities and not for sepa-
18 rate compensation;

19 “(vi) an accountant (or person associ-
20 ated with such accountant) providing cus-
21 tomary and usual accounting services, in-
22 cluding any attestation or audit service or
23 issuing letters for underwriters for a mu-
24 nicipal entity or providing advice that is
25 related to or in connection with any such

1 activities and not for separate compensa-
2 tion;

3 “(vii) any attorney offering legal ad-
4 vice or providing services that are of a tra-
5 ditional legal nature;

6 “(viii) an engineer providing engineer-
7 ing advice; or

8 “(ix) any elected or appointed member
9 of a governing body of a municipal entity
10 or obligated person, with respect to such
11 member’s role on the governing body;”.

12 **SEC. 6. DEFINITION OF SOLICITATION OF A MUNICIPAL EN-**
13 **TITY OR OBLIGATED PERSON.**

14 Section 15B(e)(9) of the Securities Exchange Act of
15 1934 (15 U.S.C. 78o–4(e)(9)) is amended by striking “or
16 on behalf of a municipal entity; and” and inserting the
17 following: “a municipal entity, but communications on be-
18 half of a fund or other collective investment vehicle shall
19 not be deemed to be on behalf of any investment adviser
20 that advises or manages such fund or investment vehicle;”.

21 **SEC. 7. DEFINITION OF MUNICIPAL DERIVATIVE.**

22 Section 15B(e) of the Securities Exchange Act of
23 1934 (15 U.S.C. 78o–4(e)) is amended—

24 (1) in paragraph (10), by striking the period on
25 the end and inserting a semicolon; and

1 (2) by adding at the end the following:

2 “(11) the term ‘municipal derivative’ means a
3 swap or security-based swap in which a municipal
4 entity is a counterparty; and”.

5 **SEC. 8. DEFINITION OF ON BEHALF OF.**

6 Section 15B(e) of the Securities Exchange Act of
7 1934 (15 U.S.C. 78o-4(e)), as amended by section 7, is
8 further amended by adding at the end the following:

9 “(12) the term to provide advice ‘on behalf of
10 a municipal entity or obligated person’ means to
11 provide advice to a person that is known to be en-
12 gaged by a municipal entity or obligated person to
13 provide services to such municipal entity or obligated
14 person in connection with the issuance of municipal
15 securities.”.

Passed the House of Representatives September 19,
2012.

Attest:

KAREN L. HAAS,

Clerk.