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112TH CONGRESS
1ST SESSION

H. R. 2827

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

IN THE HOUSE OF REPRESENTATIVES

AUGUST 26, 2011

Mr. DOLD introduced the following bill; which was referred to the Committee on Financial Services

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A BILL

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

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. DEFINITION OF MUNICIPAL ADVISOR.

Section 15B(e)(4) of the Securities Exchange Act of 1934 is amended to read as follows:

''(4) the term 'municipal advisor'—

''(A) means a person (who is not a municipal entity or an employee of a municipal entity) that—

''(i) is formally engaged, in writing and for compensation, by a municipal entity to provide advice to a municipal entity 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; or

''(ii) undertakes a solicitation of a municipal entity for such purpose;

''(B) includes financial advisors, guaranteed investment contract brokers, third-party marketers, placement agents, solicitors, finders, and swap advisors, if such persons are described in either of clauses (i) or (ii) of subparagraph (A); and

''(C) does not include—

''(i) any broker, dealer, or municipal securities dealer (or person associated with such broker, dealer or municipal securities dealer);

''(ii) any investment adviser registered under the Investment Advisers Act of 1940 or with a State or territory of the United

States (or person associated with such an investment adviser);

''(iii) any commodity trading advisor, swap dealer, major swap participant, futures commission merchant or introducing broker registered under the Commodity Exchange Act (or person associated with a commodity trading advisor, swap dealer, major swap participant, futures commission merchant or introducing broker) who is providing advice related to, engaging in, or arranging any swap;

''(iv) any security-based swap dealer or major security-based swap participant registered under the Securities Exchange Act of 1934 (or any person associated with a security-based swap dealer or major security-based swap participant) who is providing advice related to, engaging in, or arranging any security-based swap;

''(v) any attorney offering legal advice or providing services that are of a traditional legal nature;

''(vi) any engineer providing engineering advice;

''(vii) any financial institution or person associated with a financial institution; or

''(viii) any elected or appointed member of a governing body of a municipal entity, with respect to such member's role on the governing body;''.

SEC. 2. DEFINITION OF INVESTMENT STRATEGIES.

Section 15B(e)(3) of the Securities Exchange Act of 1934 is amended to read as follows:

''(3) the term 'investment strategies'—

''(A) means plans or programs for the investment of the proceeds of municipal securities (but not other public funds) that are not municipal derivatives or guaranteed investment contracts, and the recommendation of and brokerage of municipal escrow investments, where, with respect to the municipal advisor offering such plans, programs, or recommendations, such proceeds of municipal securities and municipal escrow investments—

''(i) are known to the municipal advisor to be comprised of funds or investments maintained in a segregated account that is exclusively for the purpose of main-

taining such proceeds or escrow investment; or

''(ii) have been identified to the municipal advisor, in writing, as funds or investments that constitute the proceeds of municipal securities or municipal escrow investments; and

''(B) does not include—

''(i) merely acting as a broker or principal with respect to the purchase or sale of a security or other instrument;

''(ii) providing a list of, or price quotations for, investment options or securities or other instruments which may be available for purchase or investment or which satisfy investment criteria specified by a municipal entity;

''(iii) acting as a custodian;

''(iv) providing generalized information concerning investments which are not tailored to the specific investment objectives of the municipal entity; or

''(v) providing advice with respect to matters other than the investment of funds or financial products;''.

SEC. 3. DEFINITION OF SOLICITATION OF A MUNICIPAL ENTITY.

Section 15B(e)(9) of the Securities Exchange Act of 1934 is amended by inserting before the semicolon the following ", but where communications on behalf of a fund or other collective investment vehicle shall not be deemed to be on behalf of any investment adviser that advises or manages such fund or investment vehicle".

SEC. 4. ELIMINATION OF FEDERAL FIDUCIARY STANDARD FOR MUNICIPAL ADVISORS.

Section 15B(c)(1) of the Securities Exchange Act of 1934 is amended by striking the second sentence and inserting the following:

"No municipal advisor may engage in any act, practice, or course of business that is in contravention of any rule of the Board. In issuing regulations to carry out this paragraph, the Board shall—

"(A) limit the duties of municipal advisors in relation to municipal entities to those specific activities involving such municipal entity described under the definition of municipal advisor in subsection (e)(4);

"(B) specify when such duties begin and terminate in relation to such activities; and

"(C) not prohibit principal transactions by municipal advisors.".

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