

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

A BILL

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,*

3 **SECTION 1. DEFINITION OF MUNICIPAL ADVISOR.**

4 Section 15B(e)(4) of the Securities Exchange Act of
5 1934 is amended to read as follows:

6 “(4) the term ‘municipal advisor’—

7 “(A) means a person (who is not a munic-
8 ipal entity or an employee of a municipal enti-
9 ty) that—

1 “(i) is formally engaged, in writing
2 and for compensation, by a municipal enti-
3 ty to provide advice to a municipal entity
4 with respect to municipal financial prod-
5 ucts or the issuance of municipal securi-
6 ties, including advice with respect to the
7 structure, timing, terms, and other similar
8 matters concerning such financial products
9 or issues; or

10 “(ii) undertakes a solicitation of a
11 municipal entity for such purpose;

12 “(B) includes financial advisors, guaran-
13 teed investment contract brokers, third-party
14 marketers, placement agents, solicitors, finders,
15 and swap advisors, if such persons are de-
16 scribed in either of clauses (i) or (ii) of sub-
17 paragraph (A); and

18 “(C) does not include—

19 “(i) any broker, dealer, or municipal
20 securities dealer (or person associated with
21 such broker, dealer or municipal securities
22 dealer);

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

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

3 “(iii) any commodity trading advisor,
4 swap dealer, major swap participant, fu-
5 tures commission merchant or introducing
6 broker registered under the Commodity
7 Exchange Act (or person associated with a
8 commodity trading advisor, swap dealer,
9 major swap participant, futures commis-
10 sion merchant or introducing broker) who
11 is providing advice related to, engaging in,
12 or arranging any swap;

13 “(iv) any security-based swap dealer
14 or major security-based swap participant
15 registered under the Securities Exchange
16 Act of 1934 (or any person associated with
17 a security-based swap dealer or major se-
18 curity-based swap participant) who is pro-
19 viding advice related to, engaging in, or ar-
20 ranging any security-based swap;

21 “(v) any attorney offering legal advice
22 or providing services that are of a tradi-
23 tional legal nature;

24 “(vi) any engineer providing engineer-
25 ing advice;

1 “(vii) any financial institution or per-
2 son associated with a financial institution;

3 or

4 “(viii) any elected or appointed mem-
5 ber of a governing body of a municipal en-
6 tity, with respect to such member’s role on
7 the governing body;”.

8 **SEC. 2. DEFINITION OF INVESTMENT STRATEGIES.**

9 Section 15B(e)(3) of the Securities Exchange Act of
10 1934 is amended to read as follows:

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

12 “(A) means plans or programs for the in-
13 vestment of the proceeds of municipal securities
14 (but not other public funds) that are not munic-
15 ipal derivatives or guaranteed investment con-
16 tracts, and the recommendation of and broker-
17 age of municipal escrow investments, where,
18 with respect to the municipal advisor offering
19 such plans, programs, or recommendations,
20 such proceeds of municipal securities and mu-
21 nicipal escrow investments—

22 “(i) are known to the municipal advi-
23 sor to be comprised of funds or invest-
24 ments maintained in a segregated account
25 that is exclusively for the purpose of main-

1 taining such proceeds or escrow invest-
2 ment; or

3 “(ii) have been identified to the mu-
4 nicipal advisor, in writing, as funds or in-
5 vestments that constitute the proceeds of
6 municipal securities or municipal escrow
7 investments; and

8 “(B) does not include—

9 “(i) merely acting as a broker or prin-
10 cipal with respect to the purchase or sale
11 of a security or other instrument;

12 “(ii) providing a list of, or price
13 quotations for, investment options or secu-
14 rities or other instruments which may be
15 available for purchase or investment or
16 which satisfy investment criteria specified
17 by a municipal entity;

18 “(iii) acting as a custodian;

19 “(iv) providing generalized informa-
20 tion concerning investments which are not
21 tailored to the specific investment objec-
22 tives of the municipal entity; or

23 “(v) providing advice with respect to
24 matters other than the investment of funds
25 or financial products;”.

1 **SEC. 3. DEFINITION OF SOLICITATION OF A MUNICIPAL EN-**
2 **TITY.**

3 Section 15B(e)(9) of the Securities Exchange Act of
4 1934 is amended by inserting before the semicolon the fol-
5 lowing “, but where communications on behalf of a fund
6 or other collective investment vehicle shall not be deemed
7 to be on behalf of any investment adviser that advises or
8 manages such fund or investment vehicle”.

9 **SEC. 4. ELIMINATION OF FEDERAL FIDUCIARY STANDARD**
10 **FOR MUNICIPAL ADVISORS.**

11 Section 15B(e)(1) of the Securities Exchange Act of
12 1934 is amended by striking the second sentence and in-
13 serting the following:

14 “No municipal advisor may engage in any act, prac-
15 tice, or course of business that is in contravention of
16 any rule of the Board. In issuing regulations to
17 carry out this paragraph, the Board shall—

18 “(A) limit the duties of municipal advisors
19 in relation to municipal entities to those specific
20 activities involving such municipal entity de-
21 scribed under the definition of municipal advi-
22 sor in subsection (e)(4);

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

1 “(C) not prohibit principal transactions by
2 municipal advisors.”.

○