

AMENDMENT IN THE NATURE OF A SUBSTITUTE TO
H.R. 2827
OFFERED BY MR. DOLD OF ILLINOIS

Strike all after the enacting clause and insert the following:

1 SEC. 1. REGISTRATION OF MUNICIPAL SECURITIES DEAL-
2 ERS.

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 serting “; 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.”.

1 **SEC. 3. DISCIPLINE OF MUNICIPAL SECURITIES DEALERS;**
2 **CENSURE; SUSPENSION OR REVOCATION OF**
3 **REGISTRATION.**

4 Section 15B(c)(1) of the Securities Exchange Act of
5 1934 (15 U.S.C. 78o-4(c)(1)) is amended to read as fol-
6 lows:

7 “(1) No broker, dealer, or municipal securities
8 dealer shall make use of the mails or any means or
9 instrumentality of interstate commerce to effect any
10 transaction in, or to induce or attempt to induce the
11 purchase or sale of, any municipal security, and no
12 broker, dealer, municipal securities dealer, or munic-
13 ipal advisor shall make use of the mails or any
14 means or instrumentality of interstate commerce to
15 provide advice to or on behalf of a municipal entity
16 or obligated person with respect to municipal finan-
17 cial products, the issuance of municipal securities, or
18 to undertake a solicitation of a municipal entity or
19 obligated person, in contravention of any rule of the
20 Board. A municipal advisor, when acting pursuant
21 to an engagement described in subsection
22 (e)(4)(A)(i), and any person associated with such
23 municipal advisor, shall be deemed to have a fidu-
24 ciary duty with respect to such engagement to any
25 municipal entity for whom such municipal advisor
26 acts as a municipal advisor, and no municipal advi-

1 sor may engage in any act, practice, or course of
2 business which is not consistent with such municipal
3 advisor's fiduciary duty or that is in contravention
4 of any rule of the Board. In issuing regulations to
5 carry out the previous sentence and subsection
6 (b)(2)(L)(i), the Board shall—

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

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

16 “(C) not prohibit principal transactions by
17 municipal advisors or the receipt of compensa-
18 tion based on commissions or other standard
19 compensation in relation to the purchase or sale
20 of a security or other instrument (including de-
21 posit or foreign exchange), except that the
22 Board—

23 “(i) may issue rules requiring a mu-
24 nicipal advisor to only engage in such
25 transactions or receive such compensation

1 in a manner that is consistent with the
2 municipal advisor's fiduciary duty; and
3 “(ii) may prohibit a municipal advisor
4 that has been engaged to provide advice
5 with respect to an underwritten offering of
6 securities from concurrently acting as an
7 underwriter of such offering.”; and

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

9 Section 15B(e)(3) of the Securities Exchange Act of
10 1934 (15 U.S.C. 78o-4(e)(3)) is amended to read as fol-
11 lows:

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

13 “(A) means plans or programs for the in-
14 vestment of the direct proceeds of municipal se-
15 curities (but not other public funds) that are
16 not municipal derivatives or guaranteed invest-
17 ment contracts, and the recommendation of and
18 brokerage of municipal escrow investments,
19 where, with respect to the municipal advisor of-
20 fering such plans, programs, or recommenda-
21 tions, such proceeds of municipal securities and
22 municipal escrow investments—

23 “(i) are known or should be known to
24 the municipal advisor to be comprised of
25 funds or investments maintained in a seg-

1 regated account that is exclusively for the
2 purpose of maintaining such proceeds or
3 escrow investment; or

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

9 “(B) does not include—

10 “(i) merely acting as a broker or prin-
11 cipal with respect to the purchase or sale
12 of a security or other instrument (includ-
13 ing deposit or foreign exchange);

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

20 “(iii) acting as a custodian;

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

1 “(v) providing advice with respect to
2 matters other than the investment of funds
3 or financial products;”.

4 **SECTION 5. DEFINITION OF MUNICIPAL ADVISOR.**

5 Section 15B(e)(4) of the Securities Exchange Act of
6 1934 (15 U.S.C. 78o-4(e)(4)) is amended to read as fol-
7 lows:

8 “(4) the term ‘municipal advisor’—

9 “(A) means a person (who is not a munic-
10 ipal entity or obligated person, or an employee
11 of a municipal entity or obligated person)
12 that—

13 “(i) is engaged, in writing and for
14 compensation, by a municipal entity or ob-
15 ligated person to provide advice to a mu-
16 nicipal entity or obligated person with re-
17 spect to municipal financial products or
18 the issuance of municipal securities, in-
19 cluding advice with respect to the struc-
20 ture, timing, terms, and other similar mat-
21 ters concerning such financial products or
22 issues; or

23 “(ii) undertakes a solicitation of a
24 municipal entity;

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

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

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

22 “(ii) an investment adviser registered
23 under the Investment Advisers Act of 1940
24 (15 U.S.C. 80b-1 et seq.) or with any
25 State or territory of the United States that

1 is providing investment advice (whether or
2 not of a type that would subject a person
3 to registration under such Act), or any
4 person associated with such an investment
5 adviser;

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

16 “(iv) a financial institution engaging
17 in any of the activities referred to in clause
18 (i), (ii), or (iii) pursuant to an exemption
19 from registration, acting as a dealer or
20 principal with respect to deposits, foreign
21 exchange, or identified banking products
22 (as defined in paragraphs (1) through (5)
23 of section 206(a) of the Gramm-Leach-Bliley
24 Act (15 U.S.C. 78c(a))), providing
25 other traditional banking or trust services

1 otherwise subject to a fiduciary duty under
2 State or Federal law, providing administra-
3 tive or operational services or support, or
4 providing advice that is related to or in
5 connection with any such activities and not
6 for separate compensation;

7 “(v) any person subject to regulation
8 by a State insurance regulator providing
9 insurance products or services or providing
10 advice that is related to or in connection
11 with any such activities and not for sepa-
12 rate compensation;

13 “(vi) an accountant (or person associ-
14 ated with such accountant) providing cus-
15 tomary and usual accounting services, in-
16 cluding any attestation or audit service or
17 issuing letters for underwriters for a mu-
18 nicipal entity or providing advice that is
19 related to or in connection with any such
20 activities and not for separate compensa-
21 tion;

22 “(vii) any attorney offering legal ad-
23 vice or providing services that are of a tra-
24 ditional legal nature;

1 “(viii) an engineer providing engineer-
2 ing advice; or
3 “(ix) any elected or appointed member
4 of a governing body of a municipal entity
5 or obligated person, with respect to such
6 member’s role on the governing body;”.

7 **SEC. 6. DEFINITION OF SOLICITATION OF A MUNICIPAL EN-**
8 **TITY OR OBLIGATED PERSON.**

9 Section 15B(e)(9) of the Securities Exchange Act of
10 1934 (15 U.S.C. 78o-4(e)(9)) is amended by striking “or
11 on behalf of a municipal entity; and” and inserting the
12 following: “a municipal entity, but communications on be-
13 half of a fund or other collective investment vehicle shall
14 not be deemed to be on behalf of any investment adviser
15 that advises or manages such fund or investment vehicle;”.

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

17 Section 15B(e) of the Securities Exchange Act of
18 1934 (15 U.S.C. 78o-4(e)) is amended—

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

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

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

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

2 Section 15B(e) of the Securities Exchange Act of
3 1934 (15 U.S.C. 78o-4(e)), as amended by section 7, is
4 further amended by adding at the end the following:

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

