

## [Committee Print]

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[Showing H.R. 2827 as reported by the Subcommittee on Capital Markets and Government Sponsored Enterprises on August 1, 2012]

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112TH CONGRESS  
2D 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.

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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.

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:

1 “(4) the term ‘municipal advisor’—

2 “(A) means a person (who is not a munic-  
3 ipal entity or obligated person or an employee  
4 of a municipal entity or obligated person)  
5 that—

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

15 “(ii) undertakes a solicitation of a  
16 municipal entity for such purpose;

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

23 “(C) does not include—

24 “(i) any broker, dealer, or municipal  
25 securities dealer (or person associated with

1 such broker, dealer or municipal securities  
2 dealer);

3 “(ii) any investment adviser registered  
4 under the Investment Advisers Act of 1940  
5 or with a State or territory of the United  
6 States (or person associated with such an  
7 investment adviser);

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

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

1           “(v) any attorney offering legal advice  
2           or providing services that are of a tradi-  
3           tional legal nature;

4           “(vi) any engineer providing engineer-  
5           ing advice;

6           “(vii) any financial institution or per-  
7           son associated with a financial institution;  
8           or

9           “(viii) any elected or appointed mem-  
10          ber of a governing body of a municipal en-  
11          tity or obligated person, with respect to  
12          such member’s role on the governing  
13          body;”.

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

15          Section 15B(e)(3) of the Securities Exchange Act of  
16 1934 is amended to read as follows:

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

18           “(A) means plans or programs for the in-  
19           vestment of the proceeds of municipal securities  
20           (but not other public funds) that are not munic-  
21           ipal derivatives or guaranteed investment con-  
22           tracts, and the recommendation of and broker-  
23           age of municipal escrow investments, where,  
24           with respect to the municipal advisor offering  
25           such plans, programs, or recommendations,

1           such proceeds of municipal securities and mu-  
2           nicipal escrow investments—

3                   “(i) are known to the municipal advi-  
4                   sor to be comprised of funds or invest-  
5                   ments maintained in a segregated account  
6                   that is exclusively for the purpose of main-  
7                   taining such proceeds or escrow invest-  
8                   ment; or

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

14                 “(B) does not include—

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

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

24                   “(iii) acting as a custodian;

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

5                   “(v) providing advice with respect to  
6                   matters other than the investment of funds  
7                   or financial products;”.

8   **SEC. 3. DEFINITION OF SOLICITATION OF A MUNICIPAL EN-**  
9                   **TITY.**

10           Section 15B(e)(9) of the Securities Exchange Act of  
11 1934 is amended by inserting before the semicolon the fol-  
12 lowing “, but where communications on behalf of a fund  
13 or other collective investment vehicle shall not be deemed  
14 to be on behalf of any investment adviser that advises or  
15 manages such fund or investment vehicle”.

16   **SEC. 4. ELIMINATION OF FEDERAL FIDUCIARY STANDARD**  
17                   **FOR MUNICIPAL ADVISORS.**

18           Section 15B(e)(1) of the Securities Exchange Act of  
19 1934 is amended by striking the second sentence and in-  
20 serting the following:

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

1           “(A) limit the duties of municipal advisors  
2           in relation to municipal entities to those specific  
3           activities involving such municipal entity de-  
4           scribed under the definition of municipal advi-  
5           sor in subsection (e)(4);

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

8           “(C) not prohibit principal transactions by  
9           municipal advisors.”.