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113TH CONGRESS
1ST SESSION

H. R. 797

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

FEBRUARY 15, 2013

Mr. STIVERS (for himself, Ms. MOORE, and Mr. PEARCE) 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. SHORT TITLE.

This Act may be cited as the ''Municipal Advisor Oversight Improvement Act of 2013''.

SEC. 2. REGISTRATION OF MUNICIPAL SECURITIES DEALERS.

Section 15B(a)(1)(B) of the Securities Exchange Act of 1934 (15 U.S.C. 78o–4(a)(1)(B)) is amended by striking ''or on behalf of''.

SEC. 3. MUNICIPAL SECURITIES RULEMAKING BOARD; RULES AND REGULATIONS.

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

(1) in clause (iii), by striking ''and'' at the end;

(2) in clause (iv), by striking the period and inserting ''; and''; and

(3) by adding at the end the following:

''(v) not regulate as a municipal advisor the activities of a person referred to in subparagraph (C) of subsection (e)(4), to the extent that such activities are described under such subparagraph.''.

SEC. 4. DISCIPLINE OF MUNICIPAL SECURITIES DEALERS; CENSURE; SUSPENSION OR REVOCATION OF REGISTRATION.

(a) IN GENERAL.—Section 15B(c)(1) of the Securities Exchange Act of 1934 (15 U.S.C. 78o–4(c)(1)) is amended to read as follows:

''(1) No broker, dealer, or municipal securities dealer shall make use of the mails or any means or instrumentality of interstate commerce to effect any transaction in, or to induce or attempt to induce the purchase or sale of, any municipal security, and no broker, dealer, municipal securities dealer, or municipal advisor shall make use of the mails or any means or instrumentality of interstate commerce to provide advice to or on behalf of a municipal entity or obligated person with respect to municipal financial products, the issuance of municipal securities, or to undertake a solicitation of a municipal entity or obligated person, in contravention of any rule of the Board. A municipal advisor, when acting pursuant to an engagement described in subsection (e)(4)(A)(i), and any person associated with such municipal advisor, shall be deemed to have a fiduciary duty with respect to such engagement to any municipal entity for whom such municipal advisor acts as a municipal advisor, and no municipal advisor may engage in any act, practice, or course of business which is not consistent with such municipal advisor's fiduciary duty or that is in contravention of any rule of the Board. In issuing regulations to carry out the previous sentence and subsection (b)(2)(L)(i), the Board shall—

"(A) require that a municipal advisor act in accordance with its fiduciary duty to its municipal entity clients, but only in connection with those specific activities involving such municipal entity client described under subsection (e)(4)(A)(i) (and not excluded under subsection (e)(4)(C));

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

"(C) not prohibit principal transactions by municipal advisors or the receipt of compensation based on commissions or other standard compensation in relation to the purchase or sale of a security or other instrument (including deposit or foreign exchange), except that the Board—

"(i) may issue rules requiring a municipal advisor to only engage in such transactions or receive such compensation in a manner that is consistent with the municipal advisor's fiduciary duty; and

"(ii) may prohibit a municipal advisor that has been engaged to provide advice with respect to an underwritten offering of securities from concurrently acting as an underwriter of such offering.".

(b) TECHNICAL CORRECTION.—

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

''(5) in paragraph (4), by inserting 'or municipal advisor' after 'municipal securities dealer' each place that term appears;''.

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

SEC. 5. DEFINITION OF INVESTMENT STRATEGIES.

Section 15B(e)(3) of the Securities Exchange Act of 1934 (15 U.S.C. 78o–4(e)(3)) is amended to read as follows:

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

''(A) means plans or programs for the investment of the direct 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 or should be known to the municipal advisor to be comprised of funds or investments maintained in a segregated account that is exclusively for the purpose of maintaining 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 (including deposit or foreign exchange);

"(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. 6. DEFINITION OF MUNICIPAL ADVISOR.

Section 15B(e)(4) of the Securities Exchange Act of 1934 (15 U.S.C. 78o–4(e)(4)) is amended to read as follows:

"(4) the term 'municipal advisor'—

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

"(i) is engaged, for compensation, by a municipal entity or obligated person to provide advice to a municipal entity or obligated person 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;

"(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 are not excluded under subparagraph (C); and

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

"(i) any broker, dealer, or municipal securities dealer registered with the Commission, to the extent that such broker, dealer, or municipal securities dealer is serving or is seeking to serve as an underwriter, placement agent, remarketing agent, dealer-manager, or in a similar capacity, or is providing advice related to or in connection with any such activities and not for separate compensation, or any person associated with such a broker, dealer, or municipal securities dealer;

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

"(iii) any person registered under the Commodity Exchange Act (7 U.S.C. 1 et seq.) or this Act in relation to such person's activities with respect to swaps or security-based swaps that is providing advice related to swaps or security-based swaps, or providing advice that is related to or in connection with any such activities and not for separate compensation, or any person associated with such person;

"(iv) a financial institution engaging in any of the activities referred to in clause (i), (ii), or (iii) pursuant to an exemption from registration, acting as a dealer or principal with respect to deposits, foreign exchange, or identified banking products (as defined in paragraphs (1) through (5) of section 206(a) of the Gramm-Leach-Bliley Act (15 U.S.C. 78c(a))), providing other traditional banking or trust services otherwise subject to a fiduciary duty under State or Federal law, providing administrative or operational services or support, or providing advice that is related to or in connection with any such activities and not for separate compensation;

"(v) any person subject to regulation by a State insurance regulator providing insurance products or services or providing advice that is related to or in connection with any such activities and not for separate compensation;

"(vi) an accountant (or person associated with such accountant) providing customary and usual accounting services, including any attestation or audit service or issuing letters for underwriters for a municipal entity or providing advice that is related to or in connection with any such activities and not for separate compensation;

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

"(viii) an engineer providing engineering advice; or "(ix) any elected or appointed member of a governing body of a municipal entity or obligated person, with respect to such member's role on the governing body;".

SEC. 7. DEFINITION OF SOLICITATION OF A MUNICIPAL ENTITY OR OBLIGATED PERSON.

Section 15B(e)(9) of the Securities Exchange Act of 1934 (15 U.S.C. 78o–4(e)(9)) is amended by striking "or on behalf of a municipal entity; and" and inserting the following: "a municipal entity, but 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. 8. DEFINITION OF MUNICIPAL DERIVATIVE.

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

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

(2) by adding at the end the following:

"(11) the term 'municipal derivative' means a swap or security-based swap in which a municipal entity is a counterparty; and".

SEC. 9. DEFINITION OF ON BEHALF OF.

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

"(12) the term to provide advice 'on behalf of a municipal entity or obligated person' means to provide advice to a person that is known to be engaged by a municipal entity or obligated person to provide services to such municipal entity or obligated person in connection with the issuance of municipal securities.".

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