

# Securities and Exchange Commission (SEC) Comforts Appointed Board Members of Municipal Issuers on Valentine's Day

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On February 14, 2013, SEC Chairman Elisse Walter at long last indicated, in testimony for the Senate Banking Committee, that the SEC's final regulations regarding "municipal advisors" will "address ,,, the need for an exception" to the definition of "municipal advisor" for appointed board members of municipal securities issuers. This acknowledgment came more than two years after the firestorm ignited by the SEC's suggestion in proposed regulations issued December 20, 2010 <http://www.mintz.com/newsletter/2011/Advisories/0841-0111-NAT-PF/web.htm> that appointed board members of issuers of municipal securities were or might be required to register as "municipal advisors." That suggestion provoked a substantial share of the over 1,000 comment letters received by the SEC on the proposed regulations.

The SEC's final regulations have not yet been issued and the phrasing of the exception remains to be seen. However, Chairman Walter's testimony is consistent with the conclusion long since reached by most municipal market participants that the SEC's interpretation of the Dodd-Frank legislation as requiring or potentially requiring registration as municipal advisors by non-elected board members who provide input relating to issuance of municipal securities in the course of their board duties was an overreach that would not be implemented. For board members appointed to municipal bond issuers or to issuers of state-sponsored Section 529 program municipal fund securities, Chairman Walter's pronouncement is as close to a valentine as the SEC dispenses.

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