

Re: File Number S7-45-10

I am writing to comment on the exclusions from the definition of “municipal advisor” as proposed in Release 34-63576 concerning registration of municipal advisors. Two issues are of concern. First, I am concerned that, as written, the draft rule would impair long-standing practices by local governments which enlist the participation of citizen volunteers to provide advice on a range of finance related matters. Second, the draft rule creates a double standard by exempting elected but not appointed members of the governing body of a municipal entity.

In submitting these comments, I am focusing on: (1) the activities of individuals who provide advice to governmental entities in the areas specifically identified as constituting municipal advisory services, (2) the statement that “...unless excluded...” all such persons are subject to registration and (3) the scope and nature of governmental units considered to be municipal entities.

Volunteers- The rule establishes its regulatory scope by focusing on specific types of advisory activity, principally debt and funds management. The Commission has stated that the propose rule will apply:

”...to every person, including every natural person, who provides the type of advice described in the definition of ‘municipal advisor’- whether that person is an organized entity, sole proprietor, employee of a municipal advisory firm, **or otherwise...**” (emphasis added).

In each of the examples listed below, the issue of municipal debt and investments (products and strategies) typically falls within the scope of each type of volunteer groups offering advice to municipal entities.

- *Investment advice*- Many local governments call upon volunteers with finance experience to assist in activities such as investment policies, eligible investments and investment strategy based upon market conditions.
- *Budget review*- Here volunteers help to prioritize programs and spending activity. Very often the advice given includes the use of borrowing instruments (for both budget cash flow and capital asset purposes). These committees can also provide investment advice as described above.
- *Capital improvement programs*- Local governments considering substantial investment in capital assets often convene a citizen’s advisory panel of volunteers to assist in preparing a final menu of projects. This work often includes providing a recommendation on the use of debt instruments to include the method of borrowing, e. g. general obligation bonds versus lease-purchase.

In each of the above instances, the committee or task force is created by the governing body and typically would present a final report for further consideration by employees and/or the governing body. In almost every case, some form of subsequent action by the governing body is required as a condition of implementation of any recommendation. As such, the work of these volunteers relates to a framework but does not always involve the execution of the recommendations. For example, an investment advisory committee might suggest the types or duration of investment vehicles, but would not participate in the actual selection or purchase of specific investment instruments.

These activities provide a valuable link between the elected governing body and their constituents. They also benefit the local government by making available, through citizen volunteers, expertise within a community not otherwise found within employee ranks. Many governments simply consider it “good government” to enroll citizens directly in the process used to formulate finance related initiatives. The geographic proximity of local governments to their constituents creates opportunities for participation that is somewhat unique to this class of government.

As drafted, the rule would appear to clearly exempt employees and elected officials. However, the plain language of the rule would require citizen volunteers to register as municipal advisors due to the nature of their advice and the entity receiving it. This volunteer resource and participation is beneficial to governmental organizations and should not be impaired. The rule has the curious consequence of forcing a government to pay compensation to a regulated entity instead of receiving the benefit of advice from citizen who volunteer their time and expertise.

One standard for exempting such persons could require: (1) residency within the boundaries of the municipal entity, (2) a prohibition against compensation to volunteers and (3) the inability of the volunteer body to directly implement debt or investment strategies or recommendations.

Implementation of this advice would be by the elected or appointed governing body of the municipal entity or employees acting pursuant to their job related duties.

I offer this comment both as a covered municipal advisor (K0321),but also as an elected official serving on my city council. Local governments benefit from the active involvement of their citizenry in a wide range of topics, with finance often being a necessary and central consideration of the citizen’s task force deliberations. In many cases, state or local ethics law and regulations prevent the government and the volunteer from engaging in practices that would unfairly benefit or reward the volunteer.

Appointed Governing Bodies- I would note that in Colorado, and undoubtedly other states, members of a governing body for a municipal entity are not always elected, but instead appointed. In most situations board members of an entity, such as an urban renewal authority, are appointed by an elected governing body of the political subdivision with the power to create such authorities. In one instance, a certain type of water district in Colorado, board members are appointed by the district court. These authorities often engage in debt issuance and investment of funds on the guidance or advice of their appointed members of the governing body. These finance activities, which are a central focus of municipal advisors, might require board members to register as municipal advisors under the rule as drafted.

The assumption that elected officials and employees are uniquely accountable to the public is unfair to persons serving on these governing bodies. I think this would also be challenged by many members of the public on general grounds. In many respects, the role and duty of the appointed board members of a municipal entity are very similar. They are granted financial management powers and responsibilities and share a common form of fiduciary responsibility. The final rule should provide specific exclusion from registration for appointed members of a municipal entity as is provided for elected officials and employees.

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