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February 17, 2011

Elizabeth M. Murphy
Secretary
Securities and Exchange Commission
100 F Street, NE.,
Washington, DC
20549-1090

Re: File No. S7-45-10

Ladies and Gentlemen,

This letter is submitted by Nossaman LLP on behalf of several of our public sector clients, in response to the request of the Securities and Exchange Commission (the "Commission") for comments on proposed permanent rules 15Ba1-1 through 15Ba1-7 ("the Rules") designed to give effect to provisions of Title IX of the Dodd-Frank Act that, among other things, would establish a permanent registration regime with the Commission for municipal advisors and would impose certain record-keeping requirements on such advisors.

We support the Commission's effort to implement a registration system permitting municipal advisors to satisfy the registration requirement imposed by the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank Act"); however we also believe that the definition of "Municipal Advisor," which as contemplated in the Rules would include appointed members of a governing body of a municipal entity that are not elected ex officio members, is broader than necessary and may possibly curtail the quality of services available to municipal entities.

Employee Exclusion Overly Narrow

The definition of "municipal advisor" excludes persons who are municipal entities or "employees of a municipal entity." Comments on the precursor to the Rules noted that this definition would not automatically exclude a person who serves on the governing body of a municipal entity, such as a board member, a county commissioner or city councilman. The commenter stated that because such persons are not technically "employees" of the municipal entity (but rather are "unpaid volunteers"), these persons would not fall within the exclusion from the definition of "municipal advisor" for "employees of a municipal entity" and, therefore, may have to register as municipal advisors. The commenter suggested, and our clients support, modifying the definition of "municipal advisor" to clearly exclude a person serving as an appointed or elected member of the governing body of a municipal entity.



Our clients have significant concerns regarding the Commission's proposed Rules relating to registration of "municipal advisors." In the commentary accompanying the proposed Rules, the Commission agreed with the suggestion that board members should be exempted, but limited the exclusion to *elected* board members. While the Commission proposes allowing an exemption for appointed board members that serve in an ex officio capacity due to their position as elected officials, the Commission expressed concern over including unelected appointees within the scope of the exclusion. The Commission reasoned that these appointees would not be "directly accountable for their performance to the citizens of the municipal entity."¹

Under the proposed Rules, directors or trustees of municipal entities may be required individually to register with the SEC and the Municipal Securities Rulemaking Board ("MSRB") and to comply with various recordkeeping and inspection rules. While there may be arguments that could be made that the proposed Rules would not require municipal entity directors or trustees to register as Municipal Advisors, we believe that these individuals who devote themselves to public service on a municipal entity board deserve clear guidance. The municipal entity community appears virtually unanimous in its opposition to the proposed Rules, reflecting various considerations, particularly the anticipated difficulty in obtaining qualified citizens to serve at the government's request on boards where such service may entail reporting and other obligations and expose the members to risks of noncompliance with the Rules.

State Laws Already Address and Extensively Regulate Appointee Board Member Responsibility and Accountability

Among the concerns the new Rules are proposed to address are the reliance by municipal authorities on "external advisors" and the perceived gaps in oversight within existing regulatory structures. The Commission notes in its commentary that, prior to the Dodd-Frank Act:

- Municipal advisors had traditionally been exempt from regulation to the extent they limited their advisory activities to advising municipal issuers as to the structuring of their financings; and
- Dealers who also act as municipal advisors were subject to regulation, but those regulations applied primarily to their business as dealers rather than their activities as municipal financial advisors.²

But these problems were related specifically to dealers and external advisors. States have been much more aggressive in regulating the actions of public officials, both elected and appointed, through conflict of interest and ethics laws. For example, California's Political Reform Act ("CAPRA") extensively regulates the actions of public agency officials, particularly targeting those in a position to manage public investments.

¹ SEC, *Registration of Municipal Advisors*, 76 Fed. Reg. 824 at 834 (Jan. 6, 2011) available at: <http://www.sec.gov/rules/proposed/2010/34-63576fr.pdf>

² 76 Fed. Reg. at 827.



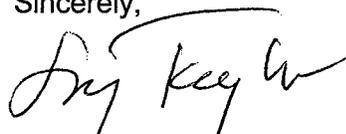
Under CAPRA, public officials³ must disclose assets and income which may be affected by their official actions, and may be disqualified from acting to avoid conflicts of interest.⁴ They are forbidden from using their positions to influence governmental decisions in which they have a financial interest.⁵ Each public agency is required to develop conflict of interest policies, which must specifically list the offices and officials that “manage public investments.” In the interest of transparency and accountability, these lists must to be posted to each agency’s website in an identifiable and accessible manner.⁶

Appointees Should Be Exempt

Appointees serving on the governing body of a municipal entity should be excluded from the proposed Rules’ definition of “municipal advisor,” regardless of whether they were elected to such office, serve as ex officio members, or were appointed without election. Requiring these officials to register will increase the costs states and local governments must bear, reduce the number of qualified individuals willing to volunteer for such duties, and may reduce the quality of services available to municipal entities. States already extensively regulate the activities of public officials and enforce accountability through reporting measures similar to those contemplated by the Rules. We urge you to reconsider your suggested treatment of appointed members of a municipal entity’s governing body, to allow them the same exemption provided to elected officials.

We would be glad to discuss any of these suggestions with any member of the Commission staff.

Sincerely,



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³ Cal. Gov’t Code §§ 82048, 87103, and 87105 (2010).

⁴ Cal. Gov’t Code § 81002(c) (2010).

⁵ Cal. Gov’t Code § 87100 (2010).

⁶ Cal. Gov’t Code § 87314 (2010).