

BLUE VALLEY RECREATION

1986 - 2011

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

RE: File No. S7-45-10; SEC Proposed Rule 34-63576

Dear Ms. Murphy:

We are writing to oppose the SEC's proposed Rule 34-63576, and most specifically, to oppose the definition of "municipal financial advisor" as proposed. We oppose the broad reach of the proposed rule as overly burdensome and highly detrimental to bodies such as Blue Valley Recreation Commission ("BVRC").

Kansas statute created the BVRC which provides recreation, wellness and other activities to approximately 105,000 residents of the Blue Valley School District, from infants, through youth and older adults. These programs include gymnastics, theater, baseball, basketball, dance and a wide array of other activities from self-defense training to water aerobics, crafts and more. BVRC is governed by VOLUNTEER commissioners, appointed by the School District. The proposed rule would apply to the commissioners and greatly impact the ability to recruit and retain those volunteer commissioners and/or patron liaisons. That could ultimately destroy BVRC and like agencies.

Moreover, the stated goal does not apply in the case of BVRC. The stated reason for the proposed rule says: non-elected, appointed members of boards that have discretion over municipal securities issuance are not sufficiently accountable to the public. Nothing could be further from the truth. Multiple Kansas statutes govern the investments in which BVRC places its money. First, by statute, BVRC can only invest in insured, safe vehicles, such as Certificates of Deposit, repurchase agreements, and the like. Second, those investments are almost all guaranteed. Third, hired staff and outside financial consultants evaluate and provide advice with regard to those investments. Fourth, members of the community serve as patron liaisons on committees, which evaluate and oversee those investments. Fifth, the annual budget and investments are published and subject to citizen review, including the right to file a protest petition and schedule an election. Finally, the School District supervises and certifies the BVRC budget (including investments) annually. Clearly, the stated problem (lack of existing oversight) is untrue. Indeed, there exist multiple layers of oversight under existing state law.

The proposed rule does not make sense when applied in the context of the BVRC. A municipal financial advisor provides advice to a state or municipal entity, including public pension funds, as to the issuance of municipal securities, swap transactions and/or investment strategies. We oppose the proposed rule to consider appointed members of state and local government governing bodies as municipal financial advisors. The commissioners of BVRC cannot serve as an advisor to themselves. Instead, the Commissioners serve to provide overall direction, like a board of directors, but do not in fact provide financial advice to themselves, even though they are involved as an overseer of decisions regarding investments. Instead, the staff of BVRC (not the commissioners) provides financial advice to BVRC, which then implements those decisions, within the confines of statutory limitations. The oversight by the commissioners appears to be considered advice under the proposed rule. If that is the case, those unpaid, volunteer commissioners become exposed to liability and regulations through testing, licensing and

*{Client Files/LJW/C10457/000/01054597.DOCX; 1} **Enriching Lives, Strengthening a Spirit of Community***

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substantial annual fees. That kind of regulation would greatly inhibit the desire of those who want to serve and better their community. Why would anyone undertake those risks, responsibilities and costs? Effectively, this regulation could put BVRC and similar entities out of business.

The SEC's proposed rule correctly exempts elected members, elected ex-officio, and employees of a municipal entity's governing board from the definition; however, under the proposed rule, non-elected (appointed) members of a governing board would have to register with the SEC and meet various regulatory requirements set forth by both the SEC and the MSRB, including registration requirements and fees, federal fiduciary standards, federal securities law liabilities, and federal financial disclosure standards. These requirements impose undue and unreasonable burdens upon volunteers.

We urge the SEC to exclude all governing body members and the employees of appointed bodies, including those who serve across jurisdictional boundaries, from the municipal advisor definition. We urge the necessity of this exclusion with special force for those who are volunteer and/or unpaid members. The proposed regulation chills the ability of anyone to help their community, and would result in great harm to our community. To the extent that this liability could be insured, the high cost would negatively impact the functioning of the BVRC and like organizations. The testing and licensing requirements impose undue and unnecessary burdens and expense on those who wish to volunteer and provide service to their community.

Appointed members of our Commission are citizen volunteers who are interested in making the best Parks and Recreation facilities and programming available to all of our citizens. Many of us have a special expertise that the Blue Valley School District Board of Education thought was critical to the effective functioning of our Commission when we were appointed. If federal regulations are imposed on the appointed members of our Commission and Advisory Committees, many of our current and future volunteers will seek a different form of public service and we will lose their valuable insight.

As a Recreation Commission established under Kansas State Statute (K.S.A. 12-1922 et.seq.), our seven-member Commission, and each of our three Advisory Committees, are required to conduct all of our meetings in accordance with the Kansas Open Meetings Act (K.S.A. 75-4317 through 75-4320a). Every financial security issued, every bank account opened, every dollar of public funds invested, and every budget or mill levy adopted are currently regulated by State law (K.S.A. 12-1774; K.S.A. 12-1675-et.seq.; K.S.A. 9-1401 et.seq; K.S.A. 75-1122). Our citizens have the right to file a protest petition to call for a vote on any proposed mill levy or budget (K.S.A. 12-1927) and can even challenge the very existence of the Commission at any time. It is our belief that moving forward with this proposed rule would constitute an unnecessary and unfortunate attempt to pre-empt State law. The old saying says "If it ain't broke, don't fix it." That saying applies here.

Further, we believe that if Congress had intended for appointed members of governing bodies to be included within the municipal financial advisor definition, it would have made this point clear in the statute. By excluding all governing body members and the employees of appointed bodies from the municipal advisor definition, we can be assured of retaining the expertise our Commission needs to make important decisions for our constituents.

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Thank you for the opportunity to comment on the SEC's Proposed Rule 34-63576.

Sincerely,

Louis J. Wade, Esq.
Commission Chair

Colleen Browne
Commissioner

Kim Galbraith
Commission Vice-Chair

Rufus Nye
Commissioner

Cindy McAlister
Commission Secretary

Don Stebbins
Commissioner

Brendan O'Grady
Commissioner

Cc:

Congressman Kevin Yoder, Kansas 3rd District, U.S. House of Representatives

Senator Jerry Moran, U.S. Senate, Kansas

Senator Pat Roberts, U.S. Senate, Kansas

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