

Re: File Number S7-45-10

SEC proposal to require officers of governmental entities to register as “municipal advisors” Release 34-63576

Dear Chairman Schapiro and Members of the Commission,

Thank you very much for the opportunity to comment on the SEC’s proposed rule requiring municipal advisors to register with the SEC. The Texas Municipal League (TML) is a non-profit association of Texas cities organized in 1913. Its purpose is to serve the needs and represent the interests of Texas cities. More than 1,100 cities, with populations ranging from fewer than 100 to more than 2,000,000, are members of TML.

I am writing to comment on the SEC’s proposal to include appointed officers serving cities and city entities in the definition of “municipal advisor.” The Commission’s proposal overreaches, misunderstands basic principles of local government law, and will have a negative effect on local government budgets and their operations.

In discussing the definition of “municipal employee,” and in response to the question of whether appointed officials of a local government entity were intended to be included within the definition of “municipal employee,” the proposal responds:

“ . . .The Commission does not believe that appointed members of a governing body of a municipal entity that are not elected *ex officio* members should be excluded from the definition of a “municipal advisor.” [*Footnote omitted.*]

Municipal Advisors. 76 Fed. Reg. 834 January 6, 2011.

In Texas, cities depend upon the members of their communities to help facilitate and run their governments through varying volunteer activities. Community volunteers give their time, expertise and common sense to enable their local governments to plan, zone, invest, and to run many facets of local government.

Many of these volunteers hold appointed offices on city boards and commissions, including economic development corporations (EDCs) created by the city. These individuals are not considered city employees, and also are not elected. Thus, the position quoted above creates the problem of requiring thousands of civic-minded volunteers to spend money on registration and to subject themselves to federal regulatory controls, which would expose them to heightened liability.

Individuals who currently hold these positions in Texas cities subject themselves to state and local ethics laws and common law responsibilities that include potential penalties for malfeasance. Each of these controls meet the Commission’s stated intent of protecting the public by providing a significant deterrent to misconduct that another layer of protection does not enhance. The current definition of “municipal advisor” expands the costs to Texas cities and EDCs, and the complexity of those regulations deters volunteer service.

Requiring registration for volunteer board members and directors who discuss how to best invest public funds chills informed analysis and debate - exactly the opposite result the SEC should be seeking. The SEC is mistakenly failing to recognize that members of governing bodies and other local boards actually operate the municipal entities. The “municipal advisors” serve those officials. It confuses the issue to suggest that those officials—the very intended beneficiaries of municipal advisor regulation—somehow are “municipal advisors” themselves. In short, the proposed regulations turn on its head the concept of “advice” and transform decision makers of entities who should be receiving advice into “advisors.”

The cost to both city entities and officers of the city to comply with these new regulations will be extensive and comes at the worst time for Texas cities. Texas cities, EDCs, or the volunteer officers themselves will be required to pay the cost for under the proposed changes. In addition, the local entity will likely need to hire counsel with expertise in dealing with the SEC to be sure that these officials are properly trained and advised in the intricacies of securities law.

Again, we greatly appreciate the opportunity to comment. I ask respectfully that you consider expanding the definition of “municipal employee” to include appointed officials that volunteer on city boards and EDCs.

Sincerely,

Bill Longley
Legal Counsel