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February 21, 2011

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

Re: File Number S7-45-10. SEC proposal to require officers of governmental entities to register as municipal advisors" Release 34-63576

Dear Secretary Murphy and Members of the Commission;

I am writing to comment on the Securities and Exchange Commission's definition of "municipal advisor" as it applies to Texas economic development corporations. The Securities and Exchange Commission (the "Commission") has issued proposed rules regarding implementation of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the "Act") that require municipal advisors to register with the Commission and the Municipal Securities Rulemaking Board (the "MSRB"). I am writing to comment on the exclusions from the definition of "municipal advisor" as proposed in Release 34-63576 (the "Release") concerning registration of municipal advisors. I urge the Commission to exempt appointed local government officials from the definition of "municipal advisor".

In the Release, the term "municipal advisor" is defined as a person (who is not a municipal entity or an employee of a municipal entity) that provides advice to or on behalf of a municipal entity or obligated person with respect to municipal financial products or the issuance of municipal securities, including advice with respect to the structure, timing, terms, and other similar matters concerning such financial products or issues. In response to the question of whether appointed officials of the entity were intended to be included within the definition of "municipal employee" the Release states:

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."

The Release states that the Commission's interpretation was "appropriate because employees and elected members are accountable to the municipal entity for their actions." The Commission concluded it "is concerned that appointed members, unlike elected officials and elected *ex officio* members, are not directly accountable for their performance to the citizens of the municipality." For the reasons set forth below, the Commission's failure to exclude "appointed members" of a governing body from the definition of "municipal advisor" will negatively affect local governments by discouraging service on appointed boards.

I am limiting my comments to a narrow scope, namely, Texas economic development corporations to demonstrate that some appointed boards are accountable to their cities and its citizens. The Commission should reconsider its position “that appointed members, unlike elected officials and elected ex officio members, are not directly accountable for their performance to the citizens of the municipality.” This position represents an overbroad conclusion that is unsubstantiated and untenable under law.

The failure to exclude “appointed members” of a governing body from the definition of “municipal advisor” will negatively affect local governments by discouraging service on appointed Texas economic development corporation boards. It is imprudent for the Commission to broadly conclude “that appointed members, unlike elected officials and elected ex officio members, are not directly accountable for their performance to the citizens of the municipality.”

Overview of Texas economic development corporations

There are more than 550 economic development corporations existing in Texas. Many are located in smaller, rural municipalities. These corporations are the legal entities with the statutory authority to spend economic development sales tax dollars in the municipalities in which they were created. Under Texas law, the governing bodies of economic development corporations consist of an appointed board of directors. The corporations are created by the governing body of the city, and are governed by a board of directors appointed by the city council. Corporations are typically referred to either as “4A” or “4B” depending on the type of economic development sales tax uses approved by local voters.¹

The sales tax for economic development has been one of the most popular and effective tools used by Texas municipalities to promote economic development. The tax was created by the Legislature

¹ 4A and 4B refer to sections of the Texas Development Corporation Act of 1979, Tex. Loc. Gov’t Code Ann., Ch. 501-507 (Vernon 2009) (formerly codified at Tex. Rev. Civ. Stat. Ann. art. 5190.6 (Vernon 2007)). Eligible projects for 4A corporations include land, buildings, equipment, facilities, improvements, and expenditures related to: manufacturing, industrial, research & development; recycling, small warehouse and corporate headquarter facilities, and distribution centers; closed or realigned military bases; job training for primary jobs and commercial/retail; business airport facilities and port-related facilities; clean-up of contaminated project sites; infrastructure assistance to retail or commercial projects; business-related sewer utilities and site improvements; beach remediation in Gulf of Mexico communities required or suitable to promote or develop new or expanded business enterprises; projects designed to attract new military missions, prevent the closure of existing missions, and redevelop a closed or realigned military base; general airport facilities for communities located 25 miles from US/Mexico border. See Tex. Loc. Gov’t Code Ann., Ch. 501, 505.

Eligible projects for 4B corporations include everything authorized for 4A corporations, including retail and commercial projects with the same restrictions; water supply facilities; projects that improve a community’s quality of life, including parks, professional and amateur sport and athletic facilities, tourism and entertainment facilities, affordable housing, and other improvements or expenditures that promote new or expanded business activity that create or retain primary jobs; projects designed to attract new military missions, prevent the closure of existing missions, and redevelop a closed or realigned military base; direct incentives for retail development in communities. See Tex. Loc. Gov’t Code Ann., Ch. 505.

in 1989 to give smaller Texas communities the financial resources to build effective economic development programs and offer financial incentives to attract businesses. Before the sales tax may be levied, it must be approved by a majority vote at an election held in accordance with Texas and federal law. More than 558 Texas cities have levied a local economic development sales tax, with over half of such cities having a population of less than 5,000 residents. The cities that have adopted this tax have collected an aggregate of more than 370 million dollars annually which are legally dedicated to local economic development. Obviously, the economic development sales tax is of major importance for cities in attracting and retaining businesses and jobs.²

Economic development corporations are accountable to their cities and citizens

The Commission's position regarding the lack of accountability of appointed members of governing bodies is not supported in the case of appointed directors of Texas economic development corporations. Under Texas law, the directors of economic development corporations are accountable to the municipal entities and citizens for their actions. The board of directors is subject to both the Texas Open Meetings Act³ and the Texas Public Information Act⁴. The directors of economic development corporations are appointed by a majority vote of the city council at an open meeting held in accordance with Texas law. The directors are appointed to a term not to exceed six years. All meetings of the board must be held within the City limits and be open to the public; failure to comply with the Texas Open Meetings Act subjects the directors to civil and criminal liability. At all times, the city retains access to the books and records of the economic development corporation. Additionally, the powers of the economic development corporations are subject at all times to the control of the city's governing body. The directors of economic development corporations are citizen volunteers and pursuant to state law, they serve without compensation. In many instances, the directors of an economic development corporation are required reside within the City limits. State law also limits the number of directors who are also city officers or employees.

A city, acting through its governing body, retains significant control over its economic development corporations by virtue of its statutory mandate to approve all expenditure and programs of the economic development corporation. The city's governing body must also annually review financial statements of the corporation. Additionally, the powers of the corporation are, at all times, subject to the control of the governing body which retains authority to alter the structure, organization, programs, or activities of the corporation at any time.

Economic development corporations are also required to make annual filings with the Texas Comptroller's Office. The annual report must be submitted by February 1 of each year and must include the following:

1. a statement of the corporation's primary economic development objectives;

² See Economic Development Handbook, Office of the Attorney General of Texas (2008),

³ See Texas Government Code, Chapter 551. The Texas Open Meetings Act provides the public with a right of access to the meetings of a large number of government bodies at the state and local level. The law entitles the public to notice of these meetings, requires governmental bodies to record minutes of their meetings and to make them available to the public for inspection and copying, and allows a court to invalidate the past actions of a governmental body taken in violation of the law.

⁴ See Texas Government Code, Chapter 552. The Texas Public Information Act gives the public the right to access public records of government bodies at all levels in Texas, without having to declare the purpose in doing so.

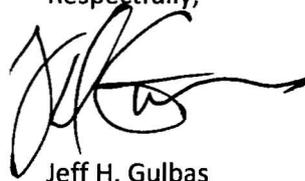
2. statement of the corporation's total revenues for the preceding fiscal year;
3. a statement of the corporation's total expenditures for the preceding fiscal year;
4. a statement of the corporation's total expenditures during the preceding fiscal year regarding administration, personnel, marketing or promotion, direct business incentives, job training, debt service, capital costs, affordable housing, and payments to taxing units;
5. A list of the corporation's capital assets, including land and buildings (for example, industrial parks, recreation and sports facilities, etc.)

Failure to file the required report or to include all the required information allows the Comptroller to impose administrative penalties against the corporation.

Appointed board members of economic development corporations are citizen volunteers, and they possess strong ties to the community in which they serve and are as accountable to the citizens they serve as employees and elected officials. These citizens are firmly rooted in their communities and are community leaders. They also bear legal responsibility for the actions of the economic development corporation, not unlike an elected body such as the governing body of the city that created the economic development corporation.

The Commission's interpretation will impose a heavy burden on municipalities and the benefits of the proposed rule are unclear. If the Commission "is concerned that appointed members ... are not directly accountable for their performance to the citizens of the municipality", requiring registration with the Commission and the MSRB does not address nor alleviate that concern. To require appointed board members to register as municipal advisors solely because they are appointed members is counter intuitive to the objectives of the Act. Valuable community participation in governance will be lost because board members will not want to subject themselves to the additional costs, burdens and scrutiny of the Commission and the MSRB. The risk of jeopardizing the availability of talented citizens to serve their communities far outweighs the benefits, if any, of requiring appointed board members to register with the Commission and the MSRB. I respectfully urge the Commission to reconsider the position announced in the Release, and treat appointed members of boards as excluded from the definition of municipal advisor.

Respectfully,

A handwritten signature in black ink, appearing to read 'J. Gulbas', with a long horizontal flourish extending to the right.

Jeff H. Gulbas