

**ARIZONA CAPITAL FACILITIES FINANCE CORPORATION**  
**P O Box 3119**  
**Tempe, Arizona 85280**

February 22, 2011

*Via E-mail: [rules-comments@sec.gov](mailto:rules-comments@sec.gov)*

Ms. Elizabeth M. Murphy  
Secretary  
United States Securities and Exchange Commission  
100 F. Street, NE  
Washington, DC 20549-0609

Re: Proposed Rules Regarding Registration of Municipal Advisors, SEC Release No. 34-63576; File No. S7-45-10

Dear Ms. Murphy:

The following comments are submitted to the United States Securities and Exchange Commission (the "SEC") on behalf of Arizona Capital Facilities Finance Corporation ("ACFFC") with respect to SEC Release No. 34-63576 (the "Release"). The Release relates to the proposed issuance by the SEC of Rules 15Ba1-1 through 15Ba1-7 (the "Proposed Rules") pursuant to Section 975 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the "Dodd-Frank Act"), which, among other things, would establish permanent registration requirements for municipal advisors (as defined in the Dodd-Frank Act) with the SEC. While we concur with the comments previously submitted by various other affected entities, this matter, and the nature of ACFFC, is such that separate comments are warranted.

ACFFC is an Arizona nonprofit corporation which is the sole member of various limited liability companies which issue project-based revenue obligations on behalf of the Arizona Board of Regents, a board or agency of the State of Arizona ("ABOR"), acting for the use and benefit of Arizona State University ("ASU"). These obligations are issued in accordance with the provisions of Revenue Ruling 63-20 and Revenue Procedure 82-26 and thus the income on them, as with traditional tax-exempt bonds, is exempt from gross income for Federal income tax purposes. Accordingly, ACFFC is a "municipal entity" for purposes of the Proposed Rules and the obligations issued by the various limited liability companies of which ACFFC is the sole member are "municipal securities" within the meaning of Section 3(a)(29) of the Securities Exchange Act of 1934, as amended, and the Proposed Rules.

While the Board of Directors of ACFFC is approved by ABOR in conjunction with each successive financing, and while ABOR has various controls over the actions of the Board of Directors of ACFFC

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with respect to specific financed projects or specific actions with respect to each project, the Board of Directors of ACFFC is in fact self-perpetuating, that is, it elects or re-elects its members independently of ABOR or ASU. Despite this fact, the Board of Directors of ACFFC undertakes no financing projects, issues no obligations or takes any other actions which have not been developed, approved and presented to them for consideration by ABOR on behalf of ASU. While the Board members do receive nominal compensation from ACFFC for their services, they have historically taken the position that they are not employees of ACFFC because they are not actively involved in any operations or day-to-day activities of ACFFC, all of which are undertaken and performed by private contractors pursuant to qualified management agreements.

The Proposed Rules define a "municipal advisor", *inter alia*, as a person (other than a municipal entity or an employee of a municipal entity) who provides advice to or on behalf of a municipal entity with respect to municipal financing products or the issuance of municipal securities, etc. In its discussion of the Proposed Rules, the SEC has indicated that the exclusion of municipal employees of a municipal entity from the definition of "municipal advisor" includes any publicly elected member of the governing body of the municipal entity but does not include an appointed member of the governing body, purportedly on the ground that employees and elected members of the governing body would be accountable to the municipal entity for their actions but appointed members would not.

We respectfully disagree and, for the reasons set forth below, strongly urge the SEC to exclude from the definition of "municipal advisor" all persons serving as directors, officers and employees of a municipal entity, whether elected or appointed, so long as they are acting within the scope of that relationship with the municipal entity.

The members of the Board of Directors of ACFFC do not themselves initiate actions, projects or financings. They receive proposals or requests for actions, projects or financing services from ASU and act upon those proposals or requests in concert with their counterparts at ASU. As such they are acting on behalf of the ASU in undertaking their financing activities. Nor are they compensated in any way in relation to their actions. They receive fixed, nominal director's fees annually which do not vary in relation to the size or the success of, nor are they contingent upon, the financings in which they participate. To treat them as independent advisors whose activities must be regulated and overseen by the SEC is unnecessary.

The SEC suggests that it is seeking to regulate three primary categories of municipal advisors: (1) financial advisors, (2) investment advisors, and (3) third-party marketers and solicitors. The comments to the Proposed Rules describe these groups as "distinct groups of professionals that offer different services and compete in different markets." Clearly, the members of the Board of Directors of ACFFC, while acting in their capacities as such, do not fall into any of these described groups.

The members of the Board of Directors of ACFFC perform a deliberative function, with authority and responsibility for the governance of ACFFC. In connection with their deliberations, the Board reviews and approves financings, budgets, rental fees and other similar matters relating to financed projects. However, as noted above, these activities are undertaken in the context of and are subject to the controls imposed by ABOR and, equally importantly, to their clearly defined fiduciary duties under applicable Arizona law. Accordingly, in their capacity as board members, the board members should be viewed

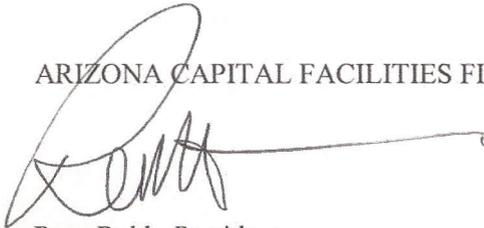
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simply as part of the "municipal entity", similar to employees of the entity, and should not be deemed "municipal advisors" acting at arms-length from a municipal entity.

Furthermore, the registration requirements, including the related expenses, potential securities law liability and bureaucratic "busywork" will almost inevitably result in the resignations of all of the present members of the Board of Directors and will undoubtedly dissuade other private citizens from taking their place. The fact is that the Board members are performing a community service for the benefit of ASU and its students and the citizens of the State of Arizona. If the difficulty of or impediments to that service are increased or made more onerous, it is likely that ACFFC, and all organizations like it, will be unable to continue to exist. Such a result would be severely detrimental to the ability of ASU and such other organizations to fund their capital projects, would serve no public purpose and would erode the ability of ASU and the other public entities in similar circumstances to attract public citizens, and especially public citizens with finance and investment backgrounds, to serve on their boards and commissions.

For the reasons set forth above, we strongly urge the SEC to exclude from the definition of "municipal advisor" all persons serving as directors or officers of organizations performing functions similar to ACFFC, so long as such persons are acting solely within the scope of their duties as such.

ARIZONA CAPITAL FACILITIES FINANCE CORPORATION



Ross Robb, President

cc: Honorable John McCain, Senator  
Honorable Jon Kyl, Senator  
Honorable Jeff Flake, Representative  
Honorable Trent Franks, Representative  
Honorable Gabrielle Giffords, Representative  
Honorable Raul M. Grijalva, Representative  
Honorable Paul Gosar, Representative  
Honorable David Schweikert, Representative  
Honorable Ed Pastor, Representative  
Honorable Ben Quayle, Representative