

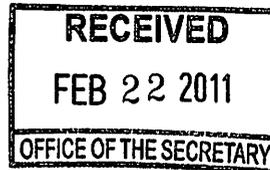
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February 18, 2011



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

RE: File Number S7-45-10; Exchange Act Release Number 34-63576 (December 20, 2010.)

Dear Ms. Murphy,

Parsons Brinckerhoff Inc. ("PB") is grateful for the opportunity to comment on proposed Rules 15Bal-1 through 15Bal-7 (collectively, the "Proposed Rule") regarding the registration of municipal advisors, pursuant to the request for comments in the Securities and Exchange Commission's (the "Commission") Exchange Act Release Number 34-63576 (December 20, 2010) (the "Proposing Release"). This letter responds specifically to the Commission's request for comments regarding 1) whether there is a need to expand the engineering exclusion beyond "engineers providing engineering advice", 2) the appropriate interpretation of "engineering advice", and 3) activities "inextricably linked to..." and "incidental to the provision of engineering advice" (the "Engineering Exemption").

PB develops infrastructure around the world, and its subsidiary, PB Americas, Inc., provides a broad range of engineering and related services to state, regional and local governments throughout the United States. These services include planning, design, construction/program management and operations for highways, bridges, transit, railroad, port/waterway and airport facilities, as well as water and power services.

We are greatly concerned by the narrow parameters of the Commission's proposed interpretation of the Engineering Exemption. As presently set forth in the Proposing Release, the Proposed Rule



captures essential engineering activities that do not provide advice or guidance regarding the selection or timing of municipal products or the issuance of municipal securities.

### Background

The Commission's September 1, 2010, Exchange Act Release Number 34-62824 (the "Interim Temporary Release") adopting Rule 15Ba2-6T (the "Interim Temporary Rule") under the Securities Exchange Act of 1934 ("the Act"), included a request for comments. Due to what we believe was a collective lack of awareness of the applicability and impact of the Interim Temporary Rule on engineering firms, that request was met with only one response from the engineering community<sup>1</sup>.

The Proposing Release provided further discussion of the Engineering Exemption and National Association of Energy Service Companies ("NAESCO") comments and requested comments on the Proposed Rule and the Engineering Exemption, to be received on or before February 22, 2011.

Specifically, the Commission asked for comment on the following questions: 1) "Should the Commission expand the exclusion from the definition of "municipal advisor" beyond engineers providing engineering advice?" 2) "How should the Commission interpret the term "engineering advice"?" 3) "Are there activities that are "incidental to the provision of engineering advice" or "inextricably linked to engineering advice" that can only reasonably be performed by an engineer that might otherwise constitute advice with respect to the issuance of municipal securities or municipal financial products?"

### Concerns and Comments Regarding the Engineering Exemption

To provide context for our responses below we wish to set forth specific concerns and considerations regarding the Engineering Exemption and the Commission's proposed explanation of what does and does not constitute municipal advisory activity.

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<sup>1</sup> A letter was submitted on October 13, 2010, on behalf of the National Association of Energy Service Companies ("NAESCO").



*The Exclusion of “Cash-Flow Modeling” from the Engineering Exemption is Too Broad.*

In the Proposing Release, the Commission’s discussion of the Engineering Exemption includes the following:

The exclusions from the definition of "municipal advisor" included by Congress in Section 1513(e)(4) of the Exchange Act were limited. With respect to engineers, the exclusion applies to engineers providing "engineering advice." For example, costing out engineering alternatives would not subject an engineer to registration as a municipal advisor because such activity would be considered engineering advice. The exclusion does not include circumstances in which the engineer is engaging in municipal advisory activities, including cash-flow modeling or the provision of information and education relating to municipal financial products or the issuance of municipal securities, even if those activities are incidental to the provision of engineering advice.

The Commission’s specific exclusion of cash-flow modeling from the Engineering Exemption fails to take into account a critical distinction in the meaning of the term “cash-flow modeling” as it is used by the engineering community.

Cash-flow modeling in the engineering context typically yields either (i) a cost-loaded design and construction schedule or (ii) a record-keeping cash-flow analysis that facilitates periodic reporting of design and construction services budgets and costs during project implementation.

For example, using client-provided information on allocation of revenues to fund a particular project, an engineer may identify each line item or component in the project that has a cost associated with it and overlay the anticipated costs over the length of the project schedule to inform the client of the costs of the project over time, not to advise the client on how and by what means to fund it. Such cost estimates and project overviews detailing cash flow requirements and associated project cost tracking, analysis and reporting are essential engineering and project management activities. These project-related activities are inherent to engineering work and clearly distinguishable from the comprehensive professional financial analysis that precedes and provides guidance on the selection and issuance of municipal securities.



Basic cash-flow modeling is inextricably linked to the provision of engineering advice; indeed government clients, including municipal agencies, generally submit Requests for Proposals (“RFP”s) stipulating that they require submission of financial plans, which include cash-flow modeling, as part of an infrastructure project. Further, it is an engineer’s responsibility to inform a client of the funding needs of major capital improvement projects. Engineering often requires advising a client on the necessity (not the means) of interim financing that will bridge the time lapse between the start of construction and the estimate the owner has already provided the engineer on the timing of funds from, for example, the sale of bonds. Engineering firms often provide this information using a cash-flow model addressing the timing of costs over the project’s construction period and the payment requirements for procurement of major equipment related to the project. We respectfully submit that these activities were not the municipal advisory activities contemplated to be regulated by the Act.

The Commission, in its discussion of exemptions, clearly acknowledges that advice comparing the structures, terms, or associated costs of issuance of different types of securities or financial instruments (such as fixed rate bonds or variable rate demand obligations) given by an attorney hired to advise a municipal entity client embarking on a bond offering, would be considered to be services of a traditional legal nature distinguishable from advice which is primarily financial in nature <sup>2</sup>. Similarly, an engineering cost-loaded schedule analysis may incorporate information provided by the client regarding possible funding options and attempt to calculate work and cost schedules incorporating that information. The result is a projected overview of the life of the engineering project that allows the client to anticipate their needs and does not, and should not be deemed to, constitute financial advice.

Clearly, in recognizing the need for an Engineering Exemption from the definition of municipal advisor, Congress understood and acknowledged that engineering projects necessarily involve basic financial analysis beyond merely “costing out alternatives”, but not related to advising on the timing and issuance of municipal securities. In most U.S. undergraduate engineering curricula, engineering economics is a required course. This is not a course in any way related to advising clients on municipal securities, but a subset of economics wherein engineers are taught

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<sup>2</sup> Page 38 of the Proposing Release.



to seek solutions to project-related problems and the economic viability of each potential solution is considered along with the technical aspects. It is a topic on the Fundamentals of Engineering examination, and questions might also be asked on the Principles and Practice of Engineering examination; both are part of the Professional Engineering registration process.

The above examples of requisite engineering economics and “cash-flow” modeling are intrinsic to engineering work and do not provide information or education relating to municipal financial products or the issuance of municipal securities. As such, they should be distinguished from the Commission’s definition of cash-flow modeling and included in the definition of “engineering advice” so that engineering firms and engineers might properly rely on the Engineering Exemption, pursuant to the Congressional intent inherent in providing it.

#### Response to Specific Inquiries of the Proposing Release

With the above discussion in mind, our comments in response to the Commission’s inquiries are set forth below:

*1) Should the Commission expand the exclusion from the definition of “municipal advisor” beyond engineers providing engineering advice?*

If the interpretation of “engineering advice” is properly expanded, as discussed below, the exclusion of “engineers providing engineering advice” should be sufficient to follow through on Congress’ intent in creating the exemption.

If the interpretation of the term “engineering advice” is not to be expanded, we respectfully suggest that the Commission expand the exclusion from the definition of “municipal advisor” beyond engineers providing engineering advice to allow for engineers providing engineering advice and project-specific information which does not include guidance regarding selection or issuance of municipal financial products or municipal securities.

*2) How should the Commission interpret the term “engineering advice”?*

The Commission should interpret the term engineering advice to include cost-loaded schedules and record-keeping cash-flow analysis which does not provide information or advice on either the timing or types of municipal securities a municipal authority may issue, as well as feasibility



studies and financial analysis not primarily concerned with or providing advice regarding municipal securities and financial products.

3) *Are there activities that are incidental to the provision of engineering advice or inextricably linked to engineering advice that can only reasonably be performed by an engineer that might otherwise constitute advice with respect to the issuance of municipal securities or municipal financial products?*

As distinguished from the cost-loaded schedules and engineering cash-flow models which do not constitute advice with respect to the issuance of municipal securities or financial products, the following activities, which might otherwise be deemed to constitute such advice, are also both incidental to and inextricably linked to engineering advice, and can only reasonably be performed by an engineer:

- *Rate Studies:* Utility rate studies for municipal water, wastewater or stormwater agencies require engineers to model cash flow and revenue over time to forecast the appropriate amount and timing of rate adjustments to satisfy the agency's financial requirements including operating costs, capital improvements, and debt service. Engineers providing rate studies do not advise clients on issuance or timing of the sale of bonds; that advice is provided solely by the clients' bond counsel and financial advisors.
- *Program Management:* In larger projects in which an engineering firm is hired to undertake the entire universe of program management, the financial aspects of a major program management system are integrally connected to the overall program management system. The financial management and control functions have unique responsibilities that, though inextricably linked to engineering advice, might otherwise constitute advice with respect to the issuance of municipal securities or financial products. These include:
  - Identifying and explaining pertinent information, including an analysis of variations from the planned costs and schedules and bond revenue projections.
  - Using cash drawdown schedules, investment of bond revenues can be recommended until the revenues are needed for project segment cash disbursements.



- Providing financial management reports and schedules for project segment funds to be utilized for program elements as required.

The development of utility rates is solely incidental to engineering work for municipal clients and should be granted consideration for inclusion in the definition of engineering advice and exemption from the definition of “municipal advisor” work to prevent registration and regulation of engineers and engineering activities beyond the scope of Congressional intent. The Project Management activities are inextricably linked to engineering advice and should also be granted consideration for exemption from the definition of “municipal advisor.”

#### Clarification is Needed to Determine Who Must Register

While we believe that the engineering activities discussed herein were not intended to be captured by the Proposed Rule and should fall clearly within the Engineering Exemption, the explanation and discussion have not provided the clarity and certainty which would allow firms to determine whether or not they need to register, and if so, who among their engineering staff would be required to register.

Firms and individuals who fall within the definition of “municipal advisor” will be required to register with the Municipal Securities Rulemaking Board (“MSRB”) and with the Commission. They will be subject to significant additional regulation and fees and will require new record-keeping systems and training, as well as requiring revised insurance coverage. To inform the registration of engineering firms and engineers, the Commission should provide clarification of the Engineering Exemption and the definition of “cash-flow modeling” that would properly allow basic project implementation cost analysis that does not advise or provide information on municipal securities products to remain outside of the scope of the definition of municipal advisory work.

#### Conclusion

We believe that the Proposed Rule, without clarification of the term “cash-flow modeling” and an expansion of the interpretation of “engineering advice”, compromises Congressional intent in specifying the need for an Engineering Exemption. The Proposed Rule as presently set forth may needlessly and unintentionally impede the ability of engineering firms and engineers to inform



their municipal clients regarding the work timeline and attendant cost structure of a given project. The costs and administrative requirements associated with registration as Municipal Advisors and regulation of activities that should not properly fall within the scope that term will be burdensome for the engineering community as a whole and will disproportionately affect small engineering firms. Further, without clarification, the costs of registration of engineers who do not engage in financial advising and the implementation of recordkeeping systems as a precaution to ensure compliance under the Proposed Rule will be borne by the very municipal clients the Act is intended to protect.

Thank you for the opportunity to comment on these matters.

Sincerely,

Parsons Brinckerhoff Inc.

cc: Chairman Mary L. Shapiro  
Commissioner Kathleen L. Casey  
Commissioner Elisse B. Walter  
Commissioner Luis A. Aguilar  
Commissioner Troy A. Parades  
Director Robert Cook, Division of Trading and Markets  
Assistant Director Martha M. Haines, Office of Municipal Securities  
David Sanchez, Office of Municipal Securities