



Rhode Island Housing
working together to bring you home

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January 14, 2011

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

Re: File Number S7-45-10

Dear Ms. Murphy:

This letter is in response to the notice of proposed Rule 15Ba1 of the Securities and Exchange Commission (the "Commission").

Rhode Island Housing is a public corporation established by the Rhode Island General Assembly, and is the housing finance agency for the state. Rhode Island Housing is concerned that the Commission has interpreted the term "municipal advisor" to include appointed board members of municipal entities, while excluding elected and elected ex officio members. Under such an interpretation, six of Rhode Island Housing's seven commissioners would be required to register with the Commission, notwithstanding the fact that all seven commissioners bear identical fiduciary responsibilities to the agency, and perform the same range of tasks incident to their office.

As a preliminary matter, Rhode Island Housing believes that the Commission's determination that board members of municipal entities act as "municipal advisors" within the meaning of the underlying statute is incorrect. Municipal board members and commissioners do not serve to advise municipal entities with respect to financial products, securities, or other matters; rather their role is to oversee an entity's internal operations and authorize transactions on the recommendations of staff and external advisors. These members are not "advisors" in the commonly understood sense of the word; rather, they are the decision makers. In essence, the governing body and the municipal entity are one and the same, not only for practical, operational purposes, but for formal legal purposes: customarily, boards and commissions sue and are sued, complain, defend and contract in the name of the municipal entity. Any definition of "municipal advisor" that includes a municipal board member or commissioner creates contradiction in which such a member or commissioner is deemed to advise him- or herself. Accordingly, Rhode Island Housing

recommends that the definition of “municipal advisor” explicitly exclude all members of municipal governing bodies, just as municipal entities and their employees are already excluded.

Furthermore, the Commission’s attempt to distinguish between appointed members and elected/elected ex officio members of municipal entities is not well-supported. In its recently issued interpretation of “municipal advisor,” the Commission offered the following rationale for distinguishing between appointed members and elected/elected ex officio members of municipal governing bodies:

The Commission believes that this interpretation is appropriate because employees and elected members are accountable to the municipal entity for their actions. In addition, the Commission 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 municipal entity.

This rationale is not persuasive for three reasons. First, whether a board member serves ex officio, is elected to the board or is appointed does not affect the nature of his or her official responsibilities. In all three situations his or her obligations and responsibilities are identical. If the board of a municipal entity undertakes a particular course of action pursuant to its governing authority, it is reasonable to expect all board members to participate in the exercise regardless of the method of their elevation to the board. Consequently, the Commission draws a distinction without a difference when it interprets the definition of “municipal advisor” to exclude elected and elected ex officio board members, but not their appointed counterparts.

Second, the Commission overlooks the reality that appointed board members are accountable to the municipal entities they govern in the same manner as employees, ex officio members and elected commissioners. By virtue of their membership on a municipal governing board, appointed members are bound by their fiduciary duties to conduct their activities in good faith, with reasonable care, and in the best interests of the municipal entity. The municipal entity would be entitled to take legal action against a board member who failed to observe one or more of these critical duties.

Finally, like elected officials and elected ex officio members, appointed municipal board members are accountable to the electorate. Appointments to municipal boards and commissions by and large require legislative approval. For example, seven commissioners comprise the board of Rhode Island Housing. One commissioner serves ex officio incident to her elected office as General Treasurer. Of the six non-elected commissioners, four are appointed directly by the governor of Rhode Island upon the advice and consent of the Rhode Island Senate, and two serve ex officio incident to gubernatorial appointments to state departmental leadership positions, which appointments are also made upon the advice

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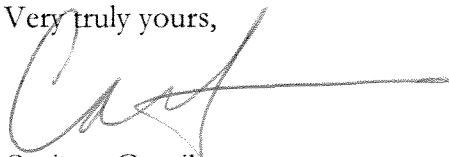
and consent of the Senate. Through these democratically elected officials, appointed members of the Rhode Island Housing board and other similar municipal governing boards are accountable to the general public.

Rhode Island Housing recommends that appointed, elected, and elected ex officio members of municipal governing boards alike be explicitly excluded from the definition of "municipal advisor." Failure to do so would place an unreasonable administrative burden on municipal entities, which rely on volunteer board service, ultimately affecting candidate quality and willingness to serve. Municipal boards with frequent turnover, variable terms or a staggered structure, such as the board of Rhode Island Housing, would encounter special difficulty meeting this regulatory burden, as each change in board constitution would require the submission of one or more new MA-I forms, each approximately thirty pages in length, and associated labor and fee expenditures.

In the event that the Commission elects not to exclude appointed members of municipal governing bodies, we recommend that Form MA-I be substantially revised in order to accommodate applicants who are not paid employees of municipal advisory firms. In its proposed form, entire sections of Form MA-I would not generally apply to appointed members of municipal governing bodies, namely Item 1 Part A (requiring a CRD number); Item 1 Part B ("The Applicant's Municipal Advisory Firm") and Item 4 (requiring inclusion of "the municipal advisory firm noted in Item 1"). Furthermore, for applicants who are uncompensated members of municipal governing bodies, it is unclear how and where to classify volunteer board service and unrelated employment activities in Items 4 and 5.

Thank you for your consideration.

Very truly yours,



Corinne Gentilesco
Assistant Counsel

cc: Richard Godfrey
Michael V. Milito