



February 14, 2011

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

Re: Comments on File S7-45-10
Proposed Regulations: Registration of Municipal Advisors

Dear Ms. Murphy:

The Washington Metropolitan Area Transit Authority (WMATA) is an Interstate Compact agency and instrumentality of the State of Maryland, Commonwealth of Virginia, and District of Columbia created with the consent of the U.S. Congress in Public Law 89-774, 80 Stat. 1324, as amended. WMATA provides bus and rapid rail mass transportation and complementary paratransit in the Washington, D.C. metropolitan area.

We offer comments on three areas of your proposed regulation: 1) the decision to treat appointed Board members as municipal advisors, 2) the necessity for banking institutions who provide sweep accounts or other overnight transactions to register as municipal advisors, and 3) the necessity for banks and trust companies who are providing custodial services only to register as municipal advisors. For the reasons described in greater detail below, WMATA suggests that the Securities and Exchange Commission (the Commission) revise its proposed regulations to exclude these entities from the registration and related recordkeeping requirements.

Appointed Governing Board Members Should Not Be Required to Register As Municipal Advisors.

Section 975(e)(4) of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) defines a "municipal advisor" as a person who is not the entity or an employee of a municipal entity who ". . .

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provides advice to or on behalf of a municipal entity or obligated person” regarding financial products or municipal securities or solicits a municipal entity to enter into purchase agreements for such financial products or securities. In furtherance of that description, the statute expressly exempts underwriters, registered investment advisers, registered commodities trading advisors, attorneys providing traditional legal services, and engineers providing engineering advice. Dodd-Frank Act § 975(e)(4)(C). The Commission further proposes to exempt accountants consenting to the use of accountant prepared or audited financial statements (January 6, 2011 Federal Register at 83) and elected members of the governing body of the municipal entity (Id. at 834 and 837).

The exclusions come from three basic pools: those who are already regulated and for which registration as a municipal advisor is duplicative, those who are not providing financial advice as such, and those who are the elected leaders of the municipal entity. Excluded from this group (and, therefore, targeted for registration) are appointed leaders of municipal entities. The Commission justifies this requirement because appointed leaders “are not directly accountable for their performance to the citizens”. Id. at 834.

This dichotomy between elected and appointed members of governing boards of municipal entities is not logical. First of all, neither group is advising the entity on financial transactions. They are the entity. All governmental bodies can act only through their governing bodies. Since there is no advice being given, there should be no need to register as an advisor.

Next, appointed members are responsible to the governing bodies that have appointed them, who in turn are responsible to the citizens for those appointment decisions. In the case of WMATA, these people include the Governor of the State of Maryland (acting with the consent of the State Senate); the Mayor of the District of Columbia; the Council of the District of Columbia; the County Executives of Montgomery County and Prince George’s County, Maryland; the Northern Virginia Transportation Commission¹; and the Administrator of the United States General Services Administration. These individuals exercise great care in deciding

¹ A Virginia governmental body composed of elected officials from Northern Virginia and charged with funding transportation projects.

whom to appoint to the WMATA Board of Directors. They could be held accountable in general elections for their appointments to the WMATA Board.

Thirdly, these people are as accountable to the entity itself as are elected members. In each case, they represent the entity and receive direct public input into the performance of their duties.

The appointed governing member structure is not unique to WMATA. Similar structures are in place for the Port Authority of New York and New Jersey, SEPTA (Philadelphia), New Jersey Transit, MBTA (Boston), and Chicago among other transit properties. Appointed Boards exist for a variety of independent public authorities covering housing, economic development, etc. It seems unbelievable that the appointing officials would not remove their appointees if suitable fiduciary care was not taken. Thus, the Commission's concerns appear unfounded, especially in light of its willingness to exempt similar Board members whose sole difference is that they obtain their Board seats by election instead of appointment.

On a more practical basis, a failure to exempt appointed Board members could cripple those entities as qualified people could refuse to serve because of the additional burdens, cost and legal exposure. WMATA Board members receive little if any compensation. It would be hard to convince people to take on the reporting obligations and registration requirements for what is truly a volunteer position. They commit a substantial amount of personal time and to force them to add to that time will reduce the number of qualified people willing to serve. Such a result would be contrary to the best interests of the entity. The Commission has not demonstrated that this burdensome requirement is necessary to rectify a current failing.

For these reasons, WMATA respectfully suggests that the Commission exempt appointed members of Boards of municipal entities from having to become municipal advisors.

Registration of Banking Institutions Who Provide Sweep Accounts to Municipal Entities Should Not Be Required to Register As Municipal Advisors.

The Commission also proposes to require banking institutions who offer investment vehicles for short-term excess cash amounts to municipal entities and negotiate the terms of such vehicles to register as municipal advisors. The regulations use as examples of "short-term" overnight or other periodic sweep accounts. This suggestion also will have the result of damaging the municipal entity rather than helping it.

It is a basic principle of good money management not to leave funds uninvested even overnight or over a weekend. As most municipal entities are constantly in need of additional money, they hew to this basic principle. At WMATA, we invest funds from the various bank accounts overnight and other short periods of time based on cash flow needs. To have banks become municipal advisors because they offer these services would likely result in those banks either offering only the "retail" rate (the same as offered to individuals) or choosing not to offer the sweep product at all to municipal entities.

WMATA distinguishes this situation from those banks that offer money market mutual funds or other exempt securities. These securities are truly investment products and not mere parking spaces for excess cash. Thus, a municipal advisor requirement may be more worthy of consideration, although the fact that they are exempt securities certainly should have a bearing on whether to require that status.

Banks and Trust Companies Serving As Custodians or Trustees for Municipal Entities Should Not Be Required to Be Municipal Advisors.

Banks and trust companies serve municipal entities in two ways which should not be covered by the municipal advisor regulations: as bond fund trustees and as pension plan trustees. A common requirement of municipal bonds is the creation of a fund held by an independent trustee. There may or may not be a concurrent requirement to invest the proceeds contained in that account and, in any event, a set list of permitted investments will be provided to the Trustee. WMATA makes its semi-annual debt service payment to the Trustee a few days before the payment is due and the Trustee distributes the funds to the bondholders on the payment date. There is no investment at issue so the additional time and expense does not add any protection to the municipal entity but it will add extra cost.

Similarly, custodial banks for government pension plans should not be required to register as municipal advisors. The custodial bank holds the assets, complies with the buy/sell decisions of approved investment managers and disburses pension checks and approved expenses on a set schedule. Their role is ministerial and compensation for custodial services is small. Other subsidiaries may do discretionary investing and for those subsidiaries, there may be some merit to the registration requirement. For the banks and trust companies whose principal purpose is to manage pension assets, there is no value to any additional registration. The only result will be an increase in fees charged to the governmental pension plans to cover the registration and recordkeeping expenses. Instead of helping the municipal entity, this portion of the proposed regulation will harm it.

In summary, WMATA respectfully requests that the Commission rethink its position to require appointed board members, banks offering sweep accounts, and banks and trust companies performing fiduciary services for municipal entities and pension plans to register as municipal advisors. These groups of entities should be excluded from the municipal advisor regulations.

Sincerely,



Carol B. O'Keeffe
General Counsel
WMATA