



"We're housing Utah"

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Grant S. Whitaker
President & CEO

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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:

Thank you for the opportunity to comment on the definition of "municipal advisor" as proposed by the Securities and Exchange Commission ("SEC") in Release No. 34-63576 (the "Release"). In the Release the SEC is proposing new rules to implement the provisions of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the "Dodd-Frank Act") relating to the registration of municipal advisors. The definition of "municipal advisor" in the Dodd-Frank Act expressly excludes "a municipal entity or an employee of a municipal entity." In the Release, the SEC chose to apply the employee exclusion to regular employees of a municipal entity and to elected members of a governing body of a municipal entity but not to appointed members of a governing board of a municipal entity. Utah Housing Corporation ("UHC") is very concerned with the SEC's position for the reasons set forth herein.

UHC is a body corporate and politic of the state of Utah created by statute. UHC's governing board is composed of nine trustees. Of these nine trustees, three are ex officio trustees and six are public trustees appointed by the governor of Utah. Only one of the ex officio trustees is elected and the other two ex officio trustees are appointed by the governor. The appointment of all non-elected trustees must receive consent of the Utah senate. Trustees receive no compensation for their service as board members other than a per diem and travel expense reimbursement in amounts set by statute, but paid only to the public trustees. Under the proposed rules, all but one of UHC's trustees would be required to register as a municipal advisor. UHC respectfully disagrees with the proposed rules and believes that all members of a governing board should be excluded from the definition of municipal advisor.

Proposed Rules Extend Beyond Congressional Intent. The Dodd-Frank Act provides in part that a municipal advisor includes, among other persons, financial advisors, guaranteed investment contract brokers, third-party marketers, placement agents, solicitors, finders, and swap advisors that, among other things, provide advice to or on behalf of a municipal entity or obligated person with respect to municipal financial products or the issuance of municipal securities. While UHC trustees make decisions as members of its governing board, they do not provide "advice" to UHC as outside professionals. As board members they receive advice from

municipal advisors to help them in their decision making process. By statute, UHC's public board members must represent housing industries including real estate sales, home building and mortgage lending, and the public-at-large, none of which require background in municipal finance.

Appointed Board Members are Accountable. In the Release the SEC cites as one of its concerns that appointed members, unlike elected members and elected ex officio members, are not directly accountable for their performance to the citizens of the municipal entity. This is clearly not the case in Utah. Utah laws provide for transparency and create accountability for appointed members. Utah law requires UHC to conduct its meetings as open and public meetings, and requires its records to be open to the public. As indicated above, all but one of UHC trustees are appointed by the governor and approved by the state's senate and are directly accountable to the governor for their actions as UHC trustees. Appointed UHC trustees may be removed from office by the governor, and the public members may be removed for cause by an affirmative vote of any six trustees. We believe strongly that the governor and the Utah legislature are in a better position to evaluate the credentials and performance of UHC trustees than the SEC. Further, the elected officials that appoint such members are accountable for their appointments and the actions of their appointees to the citizens of Utah.

Chilling Effect on Volunteers. The proposed rules will likely have a chilling effect on the ability of the state of Utah to find qualified individuals willing to serve on UHC's board. Volunteers will be reluctant to serve if they are subject to SEC registration and regulation with the potential additional liabilities that will flow therefrom. Reducing the pool of qualified volunteers to serve on UHC's board would impair its ability to provide affordable housing for the people of the state of Utah and fulfill its statutory purposes.

Trustees are an Essential Component of UHC. Finally, UHC is not authorized to take action with respect to municipal financial products or the issuance of municipal securities without board approval. The makeup of UHC's board was established specifically to make certain there is representation of housing industries and the public, and that it not be a political board. In fact UHC's governing board is an essential component of UHC with transparency and public accountability, and as such, all board trustees should be excluded from the definition of municipal advisor as either a municipal entity or an employee of a municipal entity.

In conclusion, for the reasons set forth above, UHC respectfully requests that the SEC modify the proposed rule to also exclude appointed board members from the definition of municipal advisor. Please contact me if you wish to discuss this further.

Sincerely,

UTAH HOUSING CORPORATION

By: 

Grant S. Whitaker, President & CEO