



February 11, 2011

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

File Number S7-45-10

Dear Ms. Murphy:

I am writing this letter as President of the Trinity River Authority ("Authority"), a political subdivision of the State of Texas whose purpose is specified by the Legislature as Conservation and Reclamation District created to develop and manage the water resources of the Trinity River Basin. The Trinity River Authority is governed by a 25 member board of directors appointed by the Governor of Texas and confirmed by the Texas Senate. Each board member serves without compensation. Their service on the Board is strictly volunteer. After careful review of the SEC's proposed Rules 15Ba1 to 15Ba7 (the "Rule"), Authority requests that the SEC revise its interpretation of the definition of the term "municipal advisor" to exclude appointed board members. Appointed board members should be categorized no differently than elected board members and employees of a municipal entity. Requiring citizen volunteers to submit to SEC reporting and be subjected to a heightened fiduciary obligation would have the unintended consequence of depleting the pool of citizen volunteers who expend their time and expertise as policymakers.

The SEC is charged with promulgating rules to administer Section 975 of Title IX of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the "Dodd-Frank Act") which amended Section 15B of the Securities Exchange Act of 1934. The Dodd-Frank Act requires municipal advisors register with the SEC, effective October 1, 2010. The Dodd-Frank Act defines municipal advisor to mean:

a person (who is not a municipal entity or an employee of a municipal entity) (i) that provides advice to or on behalf of a municipal entity or obligated person with respect to municipal financial products or the issuance of municipal securities, including advice with respect to the structure, timing, terms, and other similar matters concerning such financial products or issues, or (ii) that undertakes a solicitation of a municipal entity.

In Release No. 34-63576 (the "Release"), the SEC provided further clarification on the term "municipal advisor." In response to comments urging the SEC to exclude persons serving as an appointed or elected member of a municipal entity, the SEC limited the otherwise broad language of the Dodd-Frank Act to interpret the term "employee of a municipal entity" to include "a person serving as an elected member of the governing body." The SEC further broadened the exclusion to include ex officio members who hold office.

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The SEC does not conclude, however, that appointed board members should be excluded from the definition of municipal advisor. The Release provided that the SEC's interpretation was "appropriate because employees and elected members are accountable to the municipal entity for their actions." The SEC concluded it "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 municipality." To the contrary, the TRA Board of Directors is accountable to the Texas Governor, the Texas Legislature and numerous federal and state regulatory bodies.

The Authority respectfully disagrees with the SEC's rationale for treating appointed board members differently from municipal employees and elected board members. A more reasonable and effective interpretation would distinguish between consultation and solicitation and policymaking. Board members, appointed or elected, perform the function of policymaking and approving certain decisions of management. A board's function is to guide an organization to meet its constitutional and statutory objectives. Board members are not advisors or consultants in that they are responsible for making final decisions on behalf of the entity. The duty of every board member to respective state constitutions and statutes does not discriminate based on employment or election. Each board member takes the same oath and, just as important, is subject to liability for fraud and subject to suit for malfeasance.

Appointed board members, who are largely citizen volunteers, have strong ties to the community in which they serve and are just as accountable to the citizens they serve as employees and elected officials. These citizens are firmly rooted in their communities and are typically community leaders. They are appointed by the governor and they serve limited terms. The Authority's Board of Directors is subject to and accountable to the Texas Legislature. The Authority's meetings are subject to state open meeting laws.

The SEC's interpretation will impose a heavy burden on the Authority when the benefits are unclear. The Authority relies on the expertise, community leadership and civic responsibility of appointed board members. Volunteer citizens provide an important third view to policymaking. Many are leaders in their professions and provide invaluable information and insight to the entities they serve.

Valuable talent will be lost because prospective board members will not want to subject themselves to the additional regulations of the SEC and the fiduciary duty the Rule imposes. The extent to which the Rule will dissuade talented people from serving on boards cannot be measured. However, for states and municipalities that rely on volunteers, the risk of depleting the pool of talented citizens far outweighs the benefit of requiring appointed board members to register with the SEC.

The Authority requests that the SEC revise its interpretation of the term "employee of a municipal entity" to include appointed board members.

Sincerely,



LINDA D. TIMMERMAN, Ed.D.
President, Board of Directors

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