



Public Employee Retirement System of Idaho

HELPING YOU BUILD A SECURE RETIREMENT

February 16, 2011

VIA EMAIL

Ms. Elizabeth Murphy
Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, D.C. 20549

RE: SEC Release No. 34-63576; Municipal Advisors

Governor C. L. "Butch" Otter
Retirement Board
Jody B. Olson, Chairman
Jeff Cilek
William W. Deal
Joy Fisher
J. Kirk Sullivan
Executive Director
Donald D. Drum

Dear Ms. Murphy:

The Public Employee Retirement System of Idaho (PERSI) appreciates the opportunity to submit comments in connection with SEC Release No. 34-63576 (the Release), specifically with regard to proposed rules regarding registration requirements applicable to municipal advisors.

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Equal Opportunity Employer

PERSI is a statutorily created government retirement plan, representing over 67,000 active public employees and over 700 public employers, including state agencies, boards and commissions, school districts and numerous cities, counties and other political subdivisions. PERSI is managed by a five-member Board of trustees (PERSI Board), appointed by the Governor of the state of Idaho, subject to confirmation by the Idaho Senate. Two PERSI Board members are required to be active members of the system, with at least ten years of credited service and the other three PERSI Board members are citizen members. The PERSI Board meets monthly and PERSI Board members are paid the nominal fee of \$50.00/meeting, plus actual expenses associated with travel. Of the current PERSI Board, four have full-time jobs and one is semi-retired.

Related to the SEC released referenced above, the Commission has interpreted the term "municipal advisors" and other terms used in Section 15B(e)(4)(A) of the Exchange Act in a way that would require non-elected individuals serving on public boards to register, while not requiring such registration for elected or ex officio board members or for municipal entity employees. PERSI respectfully submits that the distinction between elected and unelected board members is not appropriate and that board members of public funds should not be required to register as municipal advisors. PERSI also submits that the exemption for employees would benefit from clarification.

Comment 1

The Release indicates that appointed members of a governing body (not elected or ex officio) are not exempted because only employees and elected members are directly accountable for their actions. Respectfully, PERSI submits that such interpretation ignores existing duties and laws applicable to appointed board members. The PERSI statutes (title 59, chapter 13 of the Idaho Code) impose both fiduciary and other obligations on Board members, such as legislative reporting, annual actuarial valuation requirements and funding level requirements (through amortization periods). In addition, the PERSI Board is subject to Idaho's ethics laws, including the ethics in government act, Idaho Code § 59-701 through Idaho Code § 59-705 (governing conflicts of interests), prohibitions against contracts with public officers, Idaho Code § 59-201 through Idaho Code § 59-210 and the bribery and corrupt influences act, Idaho Code § 18-1351 through Idaho Code § 18-1362. The PERSI Board meets monthly. Those meetings are open to the public and are subject to Idaho's open meeting laws, Idaho Code § 67-2340 through Idaho Code § 67-2347. PERSI is subject to Idaho's public records laws, Idaho Code § 9-337 through Idaho Code § 9-349A.

Comment 2

The PERSI Board members, as authorized by Idaho law, have delegated investment decisions to investment managers, who must be registered with the SEC and who are governed by the Idaho Uniform Prudent Investor Act. The Board members receive professional advice in making decisions about hiring and firing those investment managers, which decisions are made pursuant to pre-established investment guidelines. Accordingly, PERSI submits that the PERSI Board members are not *providing advice* to the municipal entity (which, it appears would mean that the Board is providing advice to the Board). Rather, the Board *receives advice* from registered investment advisors and other professionals. Further, PERSI submits that to the extent that a Board member votes on a particular issue that has financial aspects, and explains his reasons for his vote, that Board member is not advising the entity, but is doing his statutorily mandated duty as a Board member. Further, that member's status under federal securities laws should not depend on whether or not he votes simply by a yes or no vote, without comment, and that such a distinction could discourage members from discussion of matters, possibly undermining their fiduciary obligations.

Comment 3

As noted above, PERSI Board members already are subject to fiduciary and state legal requirements. Imposing another layer of requirements could deter well-qualified persons from agreeing to serve based on the existing requirements associated with the registration and based on unknown requirements that might be imposed in the future. Further, to the extent that PERSI staff and consultants are called upon to assist Board members in this regard, it would impose additional administrative and legal burdens that we do not believe, given the concerns above, would directly benefit the fund and its beneficiaries.

Comment 4

There is an exemption for employees from the definition of municipal advisor for employees. As noted above, two of PERSI's board members are active members and are current employees of the state of Idaho. As employees of the state, albeit not employees

of the fund, PERSI submits that the accountability discussed above exists. However, the Release does not give PERSI confidence on the issue of whether these members would be

exempt from registration. If, in fact, these two Board members are covered by the exemption, the result is a Board where 2 members do not have to register and 3 do. Further, by statute, PERSI board members are “employees” of the State for purposes of participation in PERSI by virtue of their compensated participation on a statutorily created Board. Again, it is unclear whether this employee status would fit into the exemption.

Thank you for the opportunity to submit these comments. PERSI is happy to answer any questions you might have.

Sincerely,

A handwritten signature in black ink, appearing to read "Don Drum", with a large, stylized initial "D" and a long horizontal stroke extending to the right.

Don Drum
Executive Director

cc: PERSI Board