



# Massachusetts School Building Authority

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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  
Release No. 34-63576

Dear Secretary Murphy:

The Massachusetts School Building Authority (the “MSBA”) is pleased to submit comments to the Securities and Exchange Commission (the “Commission”) in connection with Release No. 34-63576, which proposes the adoption of Rules 15Ba1-1 to 15Ba1-7 [17 CFR 240.15Ba1-1 to 240.15Ba1-7] (the “Proposed Rules”).

The MSBA is an independent public authority that funds and administers a grant program for cities and towns for public school construction, renovation and repair projects throughout the Commonwealth of Massachusetts. The MSBA has the authority to issue bonds, notes and other evidences of indebtedness. The MSBA is governed by a seven-member Board. Members of the Board include the Massachusetts Treasurer and Receiver General, the Secretary of Administration and Finance, the Commissioner of Education, each *ex officio*, or such persons’ designees, and four members appointed by the State Treasurer, two of whom must have practical experience in educational facilities planning, school building construction, or architecture and school design and two of whom must be persons in the field of education with demonstrated knowledge of the Commonwealth’s curriculum frameworks and other relevant federal and state educational standards. In addition to reviewing and approving construction projects and other program-related matters, the Board authorizes the MSBA’s expenditures and debt issuances.

The MSBA respectfully disagrees with the Commission’s interpretation of the statutory term “municipal advisor” as including appointed members of a governing body of a municipal entity who “provide advice” to the municipal entity regarding municipal financial products or the issuance of municipal securities, and requests that the Commission reconsider such interpretation and clarify that the term “municipal advisor”

*excludes* all board members of a municipal entity, whether elected or appointed. Imposing the reporting and registration requirements that are applicable to “municipal advisors” on appointed Board members may dissuade qualified individuals from serving on the board, and will have a chilling effect on informed analysis and debate among those Board members who do serve but whose civic commitment does not extend to being required to register with the SEC and MSRB. The risk of being deemed an unregistered municipal advisor would undermine the responsibilities shared by all Board members to analyze and question MSBA staff and financial advisors about financial issues. While we support the Commission’s efforts to improve ethics and qualifications of individuals providing financial advice to public entities, subjecting appointed Board members who “provide advice” to the MSBA on municipal financial products or the issuance of municipal securities will only stifle important dialogue among Board members and make it more difficult to attract qualified individuals to serve on the MSBA’s Board.

Moreover, under Massachusetts law, members of the MSBA’s Board of Directors already are covered by public records, open meeting, and conflict of interest laws, making the additional reporting and fiduciary duty requirements applicable to municipal advisors under federal law unnecessary. Each of these laws promotes and reinforces transparency, financial disclosure and accountability. MSBA Board members must comply with the state conflict of interest law, which governs the conduct of public employees and officials and prohibits Board members from participating in deliberations on any action in which they have a financial interest. All MSBA Board meetings are open to the public, and Board documents, correspondence and memoranda are subject to the public records law. Further, appointed members serve two-year terms and are eligible for reappointment. Because the appointed members serve for fixed terms, their performance is subject to a review at least every two years. Like elected Board members and employees, appointed Board members already are accountable for their actions and performance.

The MSBA relies greatly on its appointed members, all of whom are leaders in their respective professions, as they provide invaluable insight and information on the MSBA’s programs and policies. The risk that qualified individuals would be deterred from service on the MSBA Board is particularly acute as MSBA Board members are volunteers and uncompensated. The MSBA understands and appreciates the Commission’s efforts to improve financial stability, accountability and transparency in the financial system; however, making these appointed Board members “municipal advisors” is misguided and will not achieve the intended results.

The MSBA respectfully requests that the SEC alter its interpretation and clarify that appointed Board members are excluded from the definition of “municipal advisor.” Appointed Board members should be treated no differently from elected Board members or employees of a municipal entity, and their service in state government should not be discouraged or inhibited by superfluous and unintended federal regulation.

Sincerely,



Katherine P. Craven  
Executive Director