FPPA

FIRE AND POLICE PENSION ASSOCIATION OF COLORADO

Dan M. Slack
Chief Executive Officer

February 17, 2011

Elizabeth M. Murphy, Secretary
Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549

Re: SEC File Number S7-45-10
Release No. 34-63576

Dear Commissioners:

The Fire and Police Pension Association of Colorado (FPPA) is pleased to submit its comments to the Securities and Exchange Commission (the "Commission") in connection with Release No. 34-63576 (hereinafter the "Release") which proposes the adoption of rules 15Ba1-1 to 15Ba1-7 [17 CFR 240.15Ba1-1 to 240.15Ba1-7](hereinafter the "Proposed Rules").

Background Regarding the FPPA and its Board of Directors

FPPA is an independent political subdivision of the State of Colorado which administers both statewide and local pension, disability, and deferred compensation plans for public safety employees of local governments throughout the State of Colorado. The FPPA Board of Directors (FPPA Board or the Board) serves as the trustee for statewide plans. FPPA also provides administration, including the investment of funds and payment of benefits, for affiliated plans that have a local board of trustees.

The FPPA Board has nine members. The Board members are volunteers, serving without compensation, and are all appointed to four-year terms by the Governor of Colorado (one retiree member position on the board is for a single six-year term). Appointments must be confirmed by the Colorado Senate. The Board typically meets 10 times per year for 4-6 hours, holds one longer planning retreat, and conducts 2 half-day training seminars. Board members are uncompensated, but do receive reimbursement for mileage to the meetings and travel expenses if incurred. Most board members serve for more than one term. An FPPA board member may

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be removed for cause by the Governor. The Governor's only involvement in the Board is to appoint the members of the Board. FPPA is independent of the executive branch of state government.

Each Board position has certain requirements for appointment. Two members represent Colorado municipal (meaning city or town) employers. One member is an elected official or manager of a special district who has volunteer firefighters. One member is a full-time paid firefighter. One member is a full-time paid police officer. One member is either a retired firefighter or police officer. Three members are appointed from the state's business and financial community - one with experience in investments, one with experience in insurance disability claims, and one with experience in personnel or corporate administration. None of the Board members are employees of FPPA (this statement is made with reservation as to whether they might ultimately be deemed as such under any relevant provisions of the Dodd-Frank Act). Four Board members are employees of local governments which have participants in plans offered by FPPA. One current Board member is an employee of the State, although such employment is not required for her position. Two Board members from the financial community work for employers who are registered investment advisors or registered municipal advisors (although such registration is not required by state law in order to hold the Board positions). One member is a retired public safety officer. One member is retired from the private sector (as an aerospace engineer) and was an elected fire district board member at the time of his initial appointment to the FPPA Board, although now he is no longer an elected official.

The FPPA Board acts as a fiduciary for all plans it administers, including statewide and local plans. Its actions are authorized and regulated by state law including, with regard to investments, Colorado's Uniform Prudent Investor Act. It is a public governmental body subject to the Colorado Public Records Act and the Colorado Open Meeting Act. Legislative oversight of the FPPA is provided by the Pension Reform Commission, which is a committee of Senators and House members from the Legislature. FPPA is required to conduct an annual audit of its comprehensive financial statements and provide the audit to the legislature and to the State Auditor. FPPA is subject to additional operational/investment audits by the State Auditor. Members of the Board and employees of FPPA are also subject to State statutory conflict of interest restrictions and disclosure requirements. As a fiduciary of the plans, the FPPA Board has adopted additional restrictions and disclosure requirements as part of its governance manual as a best practice.

The Board appoints a Chief Executive Officer, who is responsible for the day-to-day management of FPPA. The CEO appoints a General Counsel, the Chief Investment Officer, the Chief Operations Officer, and the Chief Benefits Officer. The Board retains a general investment consultant and specialist investment consultants. The Board hires investment managers within different asset classes to manage allocations of the investment funds.

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The FPPA Board does not make discrete tactical decisions to invest in any particular security. The Board sets and annually reviews the asset allocation for the funds it invests. The Board adopts a Master Statement of Investment Policy, based on the asset allocation. The Board makes macro-level decisions to hire and fire professional money managers, based on the established investment policies.

The Board is required to conduct periodic actuarial studies for each plan it administers. The Board periodically conducts experience studies to gauge the success of its asset allocations, its investment decisions, and the actuarial performance of plans it administers. The Board periodically engages outside counsel to provide additional legal advice on investments, tax code compliance and securities litigation matters. The Board is also responsible for the establishment of a budget and approving expenses of the plans.

The FPPA Board acts collectively and no individual member of the Board has any power or authority to act apart from the collective workings of the Board. The Board members have equal authority to participate in the actions and decisions and no individual member can tell the other members of the body what to do. Diversity of backgrounds on the Board is certainly one of FPPA's strengths. While each Board member has met certain position-specific criteria to obtain the appointment, FPPA emphasizes that individual members do not "represent" particular groups such as beneficiaries or employers – but rather are fiduciaries to the plan.

Comments on the Proposed Rules

In reviewing the Proposed Rules, the FPPA Board's primary concern is that there is a fundamental misunderstanding of the individual Board member's role as a member of the Board of Directors. As the description of the duties of the board set forth above shows, in their role as board members the board members do not "provide advice to or on behalf of a municipal entity" or to anyone. The board members receive much advice in many forms from many places, including registered investment advisors. Put quite simply, the board members are "advisees", not "advisors".

Dodd-Frank and the Proposed Rules do recognize certain exceptions to the registration requirements that frankly are too narrow to clearly cover all of the FPPA Board members. The first issue creating some confusion is the fact even some of the board members who are employees of local governments with employees participate in plans administered by FPPA do not clearly fall with within the exemptions from registration because they are not employees of FPPA, an independent political subdivision of the State. Secondly, board members who may have previously qualified for an exemption based on employment or as an elected official, may not continue to do so due to retirement.

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Finally, even if the first two concerns are addressed, FPPA believes that all pension board members should be treated equally and that no registration should be required for any Board member. There are several bases for this belief. Registration of individual pension board members does not serve a purpose under the Dodd-Frank Act. The majority of questions on the Municipal Advisor Registration form are not relevant to an individual pension board member. Pension board members are already heavily regulated by state, local and federal laws. Pension board members are not providing advice. As demonstrated in FPPA's case, pension board members are accountable to the legislature, the members, the employers, and can face claims for breach of fiduciary duty. Registration and regulation of pension board members by the SEC would have a chilling effect on recruiting efforts for competent and qualified board members. Practically speaking, pension funds would be required to provide assistance and advice to board members seeking registration and compliance with SEC regulations. It is increasingly difficult to find a volunteer willing to make the commitment to service that is required for pension board members. Registration would require further personal disclosure and exposure on a national level which some desirable potential board members would find objectionable. These issues would be exacerbated by a system that requires some, but not all, board members to register although all members have the same authority and responsibilities. In FPPA's case, all board members are appointed through the same process.

FPPA urges the Securities and Exchange Commission to modify its Proposed Rules to exempt appointed board members of pension funds such as FPPA from registration as municipal advisors.

Sincerely,

Dan M Slack

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Chief Executive Officer

c: Municipal Securities Rulemaking Board