

I am writing this letter as Assistant Finance Director of the City of Huntsville, TX. Upon careful review of the SEC's proposed Rules 15Ba1 to 15Ba7 (the "Rule"), City of Huntsville 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 elective office.

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."

The City of Huntsville 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 their staff. A board's function is to guide an organization in order 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 municipal 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.

In contrast, advisors such as financial and swap advisors have minimal legal or ethical duties to the municipal entity or the citizens of the municipal entity. Their objective is to receive compensation in return for providing a service. Even when compensation is not immediate or expressly sought, it is fair to conclude that they seek clients for the purpose of profit making and providing expert advice. Their services are critical to municipal entities, both large and small, yet their motivations and their

relationship to the municipal entity cannot be compared to a citizen volunteer who is an appointed board member.

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 typically appointed by the governor, county commission or city council. They serve limited terms with many such members serving at the pleasure of the elected sponsoring unit. To the extent they serve fixed terms, they are subject to a vote of the elected sponsoring unit for reappointment. The municipal entity's meetings are subject to state open meeting laws.

Citizen volunteers assume great risks when they are appointed board members. They have a heightened risk of being sued as they are decision-makers for institutions that serve the public. While immunity may protect some appointed board members, immunity may not protect all. Moreover, just being named in a suit imposes a personal burden on appointed board members. Moreover, as leaders in the community with reputations at stake, appointed board members are at risk of having their reputations impugned for reasons outside of their control. Unlike employees of municipal entities or a large number of elected officials, these costs are not offset by compensation. In many ways, citizen volunteers who serve as appointed board members assume far more risk than employees of municipal entities or compensated elected officials. Accordingly, in important facets, they are more accountable.

The SEC's interpretation will impose a heavy burden on municipalities when the benefits are unclear. Municipal entities rely on the expertise, community leadership and civic responsibility of appointed board members. From large airports to state universities, citizen participation on boards is essential to operating important institutions. Volunteer citizens provide an important third view to policymaking. Many are leaders in their professions and provide invaluable information and insight to the municipal entities they serve. Finally, because these volunteers are rooted in their communities, they validate institutions to the citizens they serve as they reflect the composition of the citizenry.

Valuable talent will be lost because prospective board members will not want to subject themselves to the additional regulations of the SEC and the heightened fiduciary duty the Rule imposes. Even those prospective board members who would otherwise provide the required information, will, however, refuse to be subject to the oversight and regulations of the Rule. 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.

Thus, ***City of Huntsville requests that the SEC revise its interpretation of the term "employee of a municipal entity" to include appointed board members.*** All board members perform the function of policymaking and decision-making and should be treated as such. Appointed board members are, in many ways, more accountable than municipal employees and compensated elected officials. Moreover, municipal entities will pay a high price for the Rule as it will deplete the pool of talented civic volunteers willing to serve on boards.

Your consideration of this request is greatly appreciated.

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