



February 17, 2011

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

Re: SEC File Number S7-45-10

The Fort Worth Employees' Retirement Fund ("Fund") submits these comments in response to Release No. 34-63576 (hereinafter the "Release") which proposes the adoption of rules 15Ba1-1 to 15Ba1-7 and new forms MA, MA-I, MA-W, and MA-NR under the Securities Exchange Act (hereinafter the "Proposed Rules"). The main purpose of this submission is to give the SEC a look into the potential detrimental impact these Proposed Rules will have on the Board of Trustees for the Fund ("Board"). The Fund will then give its specific recommendations to certain issues specified in the Proposed Rules where the SEC requested comments on those issues.

### **Summary of Comments**

The Proposed Rules by the SEC that impose a broad reaching definition of "municipal advisor" under the Securities Exchange Act ("Act") will likely result in the loss of valuable citizens who have been appointed to the Fund's Board. Under the expanded definition of "municipal advisor," five of the appointed volunteers to the Fund's Board will now have to register with the SEC. This means that these citizens, who donate their personal time to the Fund, will now have to fill out a multi-page form that discloses their address, phone number, past residence history, employment history, and other personal information that will be on public display on the SEC's website. This is in addition to the fact that these volunteer citizens are already subject to the highest legal standard that can be imposed by law, the fiduciary standard. Needless to say, these valuable volunteers will probably forego serving on the Fund's Board, where they do not receive any compensation, in lieu of having to register with the SEC and the exposure of having their personal information accessible on a public website.

More importantly, it is not clear why these individuals need to register and be subject to the scrutiny of the SEC. These citizen Board members do not work for the investment firms or managers that register with the SEC, except for one who is the general counsel to a hedge fund of funds. Nor do these Board members act in any advisory capacity to the Fund, other than offering the occasional comment on certain investments. Instead, these Board members monitor and make decisions on the Fund's investments in a diversified portfolio by relying on the advice and direction of its investment advisors, who are registered with the SEC, and the Fund's staff. No one Board member directs the investments and all investment decisions are made on a vote of the Board. Therefore, since requiring certain board members to register with the SEC really serves no purpose, the Fund recommends that the SEC simply modify the definition of municipal advisors to exclude all board members, appointed or elected. In the alternative, the Fund would propose that the SEC clarify what constitutes "advice" and that board member activities, such as voting or the occasional expression of viewpoints on investments, do not constitute "advice" under the Act.

### **Composition of the Fort Worth Employees' Retirement Fund Board of Trustees**

The Fund is a retirement fund of approximately 1.75 billion dollars in assets and provides retirement benefits to all employees of the City of Fort Worth ("City"). It is administered by a Board of Trustees comprised of thirteen members. Five of the Board members are employees of the City and will

not be required to register under the express definition of “municipal advisor” in the Act. Three of the Board members are retired City employees that are elected from the Fund’s membership for their particular group, but are not elected members of the governing body of the City, i.e., they are not city council members. It appears that they do not have to register under the Act. The remaining five board members are appointed by a majority vote of the City Council and are citizens of the City. These five Board members are appointed because they have some type of business or finance background; however, some board members are appointed not because of an investment background, but due to their experience in other business areas, i.e., communications or planning. All of the Board members are volunteers and do not receive any compensation for their time spent on the Board or on Board-related activities. All of the Board members are subject to a state-mandated fiduciary duty to the members of the Fund and with respect to the investments of the Fund. The Board is not involved in the issuance of any municipal securities and only makes investment decisions based on the recommendations of the Fund’s investment advisors and staff. The Board’s investment advisors are registered with the SEC.

### **The Problems Caused by SEC Registration of Certain Board Members**

Due to the vague and broad definition of “municipal advisor” under the Proposed Rules and the SEC’s interpretation of that definition, however, five of these individuals will now be required to register with the SEC due to their volunteer activity with the City. These volunteers will have to fill out a multi-page form that requires them to disclose their personal address, phone number, email address, past employment information, past residences, social security number, and criminal and civil proceedings relating to any investment activities and then have that information submitted on a public website, except for their social security number. Even though some of this information is already supplied by the Board members to the City and the Fund, the Board member can elect to keep most of this information confidential under the Texas Public Information Act. The Board member would not have that option if they were required to register with the SEC.

More importantly, however, the Board member becomes subject to federal regulation and penalties that the person was not previously subject to in this volunteer capacity. This is in addition to the fiduciary liability the Board member is already subject to under Texas law. Needless to say, one of the Fund’s Board members has already indicated that he will resign his current position and is sure that the other volunteer citizens will also follow suit if they have to register with the SEC. It will also be difficult to fill these positions once the volunteers realize they have to register with the SEC and be subjected to federal regulation if they hold that appointed position, especially since all the other volunteer Board positions with the City do not have any federal registration requirements. As expected, the potential inability to fill these important Board positions will severely impact the operation of the Fund.

On the other hand, it is not clear why the SEC needs these individuals to register. As already stated, the Board does not issue municipal securities and is not involved in rendering advice or recommendations for issuing municipal securities, which has been the historical focus of the Act. Moreover, the Board does not render advice on the use or investments on any proceeds of municipal securities. Instead, the Board monitors and makes decisions on the Fund’s investments in a diversified portfolio by relying on the advice of its investment advisors (who are already registered with the SEC) and staff in making its investment decisions. Occasionally a Board member will make a suggestion about an investment or give his or her opinion on an investment manager if that person was part of a due diligence trip, but no single Board member directs any investment and all investments are voted on by the full membership of the Board. Therefore, it is not clear what purpose would be achieved by the SEC by requiring certain Board members to register with the SEC.

The SEC, in its Proposed Rules, indicates that it is concerned that appointed members are not directly accountable for their performance to the citizens of the municipal entity, and ergo, these members should become subject to a federal standard of scrutiny. These concerns clearly ignore the fact that all Board members, elected or appointed, have to answer to the Fund’s membership under a heightened fiduciary standard of care. It also ignores the fact that these individuals do not act in any investment

capacity that truly warrants registration and regulation by the SEC. For these reasons, when the potential harm to the Fund that these Board members may be lost because of this registration requirement is weighed against the fact that oversight by the SEC is not warranted in this situation, equity clearly favors exempting Board members from registering with the SEC. As a result, the Fund request that the SEC modify the Proposed Rules to exclude all Board members, elected or appointed, from registering as municipal advisors under the proposed rules.

### **Reponses to Requests for Comments**

In the Proposed Rules, the SEC requested comments on specific issues. The Fund offers the following comments on these specific listed issues:

- In light of our understanding of Congressional objectives and intent, are the Commission's interpretations under the definition of "municipal advisor" and related terms, and the exclusions from the definition of "municipal advisor" appropriate?  
Should any of these interpretations be modified or clarified in any way?
- The Commission is proposing to exclude from the definition of "municipal entity" elected members of a governing body of a municipal entity, but to include appointed members of a municipal entity's governing body unless such appointed members are ex officio members of the governing body by virtue of holding an elective office. Are these distinctions appropriate? Please explain. Are there other persons associated with a municipal entity who might not be "employees" of a municipal entity that the Commission should exclude from the definition of a "municipal advisor"?

As discussed above, the expansive and vague interpretation of "municipal advisor" captures volunteer Board members who do not routinely offer investment advice to the Fund. It is unclear why these persons need to register when they already rely and act on advice rendered by investment advisors who are registered with the SEC. Therefore, the Fund recommends that the SEC simply modify the definition of municipal advisors to exclude all board members, appointed or elected. In the alternative, the Fund would propose that the SEC clarify what constitutes "advice" and that board member activities, such as voting or the occasional expression of viewpoints on investments, do not constitute "advice" under the Act.

Please note that these are the opinions of the Fund's General Counsel and not necessarily of the Fund's Board. These comments could not be submitted for Board approval in an open meeting prior to the February 22, 2011, comment deadline.

Please let me know if you have any questions or need any additional information from the Fund. I can be reached at (817)632-8900.

Respectfully submitted,



Doreen E. McGookey  
General Counsel

c: Board of Trustees, Fort Worth Employees' Retirement Fund  
Ruth Ryerson, Executive Director/CIO