



City of Phoenix
FINANCE DEPARTMENT

February 18, 2011

Elizabeth M. Murphy, Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090

RE: File Number S7-45-10 (SEC Proposed Rules regarding municipal advisors)

Dear Ms. Murphy:

We are submitting this letter as the Finance Director and City Attorney of the City of Phoenix, Arizona (the "City") in response to the request by the Securities and Exchange Commission (the "Commission") for comments on Release No. 34-6376 (the "Release"), and proposed rules which would implement Section 15B of the Securities Exchange Act of 1934, as amended (the "Proposed Rules").

OVERVIEW

While the City supports the Commission's effort to assure that persons who provide financial advice to the City or its related nonprofit financing arms do so in the best interest of the public, the City has some practical concerns with the Proposed Rules.

The registration requirements under the Proposed Rules are far reaching. Under the Proposed Rules, any appointed member of a municipal board or commission, who is not an elected official or employee of a municipal entity, that invests governmental funds, provides advice regarding investments or develops policies for investing municipal monies -- including monies from the general fund, retirement fund, deferred compensation plan funds, healthcare trust funds and other self insurance trust funds -- will be deemed to be a "municipal advisor" under the Proposed Rules and be required to register as a municipal advisor with the Commission and the Municipal Securities Rulemaking Board (MSRB).

PRACTICAL CONCERNS

The Release states that one of the primary reasons why appointed board and commission members should be required to register is that appointees are not directly accountable for their performance to the citizens of the municipal entity. While direct accountability is a laudable goal, the Release does not provide any support regarding how the Proposed Rules and the interpretations contained in the Release achieve the goals that the Commission desires from direct accountability. Consequently, the Release does not demonstrate that the benefits to be achieved by the Proposed Rules and proposed interpretations outweigh the potential costs

(e.g., inability to attract or retain volunteers to staff boards and commissions). The boards of directors of the City's nonprofit bond issuing corporations already have a fiduciary obligation to their respective corporations and are subject to the conflict of interest provisions of the Arizona statutes.

Volunteer citizen participation on municipal boards and commissions is an essential part of City operations. In fact, Arizona Revised Statutes, Section 11-981, requires that trust funds held for healthcare, long term disability and other self insurance must be administered by a board that is primarily made up of volunteers. Moreover, related nonprofit financing arms of the City also are typically governed by volunteer boards. These nonprofit entities are responsible for issuing industrial development bonds, excise tax revenue bonds, utility revenue bonds and other special revenue bonds, which in most cases, could not be issued directly by the City.

The Commission, in its request for comments on the Proposed Rules, has asked why volunteers should be treated differently from other board members. The question suggests that providing an exemption for appointed volunteer members of municipal boards and commissions would provide these volunteers with a status not accorded other board or commission members. City boards and commissions are typically comprised solely of City employees and unpaid volunteers appointed by the City Council. As a practical matter, since City employees are exempt from the registration requirements, the Proposed Rules actually cause appointed and volunteer members on the City boards and commissions to be treated differently than other board members (i.e., employees). Voluntary members, typically experienced local business leaders and professionals, serve as a sounding board regarding City issues. Various City boards and commissions provide demonstrable evidence to the credit rating agencies that the City is following its debt and investment policies and its mandate to invest its operating and capital funds with preservation of principal as the primary objective.

The Proposed Rules in their current form are likely to have the adverse affect of limiting discussions by appointed members of municipal boards and commissions regarding the issues before them. However, the City believes that questions from appointed board members regarding the structure of a bond financing or City investments are key to the decision making process and should be encouraged. Given the forgoing, the implementation of the Proposed Rules actually may lead to less public accountability.

Finally, it is difficult to contemplate any reason why a citizen would submit himself/herself to the burden of registration solely to volunteer as a member of a City board or commission. The burden of registration is enormous. It subjects the registrant to regulation by both the Commission and the MSRB, and expanded civil and criminal liability. It also requires in-depth personal and financial disclosure that is available to the public, training and education, and extensive recordkeeping; all at the expense of the volunteer.

Given the foregoing, implementation of the Proposed Rules, without providing an exemption for appointed volunteers, would jeopardize City operations because the City will likely be unable to retain and recruit sufficient volunteer members.

Ms. Elizabeth M. Murphy
February 9, 2011
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RECOMMENDATION

The City respectfully requests and recommends that the Commission revise the Proposed Rules to exempt appointed volunteer members of municipal boards and commissions from the definition of "municipal advisor."

Sincerely,

A handwritten signature in black ink that reads "Jeff DeWitt". The signature is written in a cursive style with a large, prominent "J" and "D".

Jeff DeWitt
Finance Director

A handwritten signature in blue ink that reads "Gary Verburg". The signature is written in a cursive style with a large, prominent "G" and "V".

Gary Verburg
City Attorney