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February 18, 2011

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

Re: File Number S7-45-10

Dear Secretary Murphy:

These comments are filed on behalf of the U.S. port delegation of the American Association of Port Authorities (AAPA). AAPA was founded in 1912 and is an association of some 150 deepwater public port authorities in the United States and Canada, Latin America and the Caribbean. In addition, the association represents nearly 300 sustaining and associate members, firms and individuals with an interest in the seaports of the Western Hemisphere.

We are filing these comments in the above-referenced rulemaking in order to respond to the SEC's request for comments on its proposal to exclude employees and elected members of a governing body of a municipal entity from the definition of a "municipal advisor," but to include appointed members of a governing body of a municipal entity within the definition. **We would ask that the SEC exempt all employees and board members, whether elected or appointed, from the definition of "municipal advisor."**

#### Background

AAPA port members are public entities, divisions or agents of State and local government mandated by law to serve public purposes. We are public agencies charged with the responsibility to develop port facilities and to facilitate domestic and international commerce. U.S. public ports have invested billions of dollars of public funds to meet those responsibilities.

Public ports develop and maintain the shoreside facilities for the intermodal transfer of cargo between ships, barges, trucks and railroads. Ports build and maintain cruise terminals for the growing cruise passenger industry.

In addition to maritime functions, port authority activities may also include jurisdiction over airports, bridges, tunnels, commuter rail systems, inland river or shallow draft barge terminals, industrial parks, Foreign Trade Zones, world trade centers, terminal or short-line railroads, ship repair, shipyards, dredging, marinas and other public recreational facilities. Ports may also undertake community or regional economic development projects beyond those of direct benefit to the port itself.

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Port authorities are typically empowered to exercise the powers of eminent domain, to conduct studies and develop plans, levy facility charges, issue bonds, to sue and be sued, to apply for federal grants, to act as the local public assure for federal navigation projects, to enter into contracts and agreements.

Port authority governing bodies in the United States vary widely in structure. Of 126 U.S. public seaport agencies, AAPA's analysis shows that 77 are appointed, 24 are elected, 4 are indirectly elected, and 21 have no governing bodies whatsoever, though a few of the latter are served by appointive advisory councils. In three instances--two in Florida and one in Louisiana--the county commissioners by law also constitute the port authority board, though in every other respect the port authority or navigation districts are corporately independent of the county governments.

Appointments to port governing boards are frequently made by a governor, mayor, or board of county commissioners. In certain instances, port authority boards are made up of both state and local appointed commissioners.

#### Comments on the Proposed Rule

The notion that an appointed board member is an "advisor" to the municipal entity is incorrect. The board controls and manages the municipal entity, and is its governing body. The board is an essential part of the municipal entity - it does not "advise" the municipal entity but instead makes the final decisions on behalf of the municipal entity. The board is the one that engages municipal advisors on behalf of the municipal entity and it is the client of municipal advisors. As the decision-maker for the municipal entity, the board should not be viewed as its own "advisor."

We disagree with the notion that appointed board members are not accountable to the municipal entity. Board members, whether elected or appointed, have a fiduciary responsibility to act in the best interests of the municipal entity. Also, port authority boards are often the trustee of public trust lands and as such owe a fiduciary duty of loyalty to the people of the state and the city to manage the trust assets in accordance with public trust principles.

We believe that the SEC's interpretation with respect to appointed board members would be unduly burdensome for board members and the municipal entities. If the SEC does not revise its interpretation, it will make it harder for municipal entities to attract board members and make it more costly for municipal entities.

Sincerely,



Kurt J. Nagle  
President & CEO