

PERAC

COMMONWEALTH OF MASSACHUSETTS | PUBLIC EMPLOYEE RETIREMENT ADMINISTRATION COMMISSION

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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 (Proposed rule regarding municipal advisors)

Dear Ms. Murphy:

In accordance with the Commission's request for comments relative to the Registration of Municipal Advisors [Release No. 34-63576; File No. S7-45-10] the Public Employee Retirement Administration Commission (PERAC) submits this statement. PERAC is responsible for the oversight of the 105 public pension systems in Massachusetts and in that capacity has serious concerns regarding the breadth of the registration requirement embodied in the Commission's proposal.

Specifically, PERAC is responding to the solicitation for comment on page 51 of the release which states:

“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 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’?”

We believe that the exclusion is too narrow and as a result the definition of “municipal entity” is too broad and, as presently drafted, result in mandating registration by individual members of retirement boards that are the consumers rather than the purveyors of investment advice. Such a result cannot possibly have been the intent of Congress in adopting the legislation that the Commission is implementing.

In Massachusetts public pension systems are managed by a board of five members. Although two members are elected by employees and retirees who are system participants, the other three members may be brought within the registration requirements of the proposed regulations due to the method of their selection. One member is the city auditor, town accountant or other officers with similar



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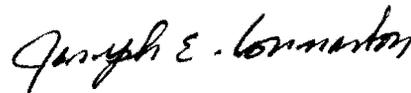
responsibilities and duties who serves ex – officio. However, in many instances the individual is appointed to office by the Mayor or Board of Selectman and is not ex – officio “by virtue of holding elective office.” A second member of the Board is appointed directly by the Mayor or Selectman and again in most, if not all cases, does not hold elective office. Finally, a third member is selected by the other four members and does not hold elective office. Thus under the existing draft 3 of the 5 members of the public pension boards in Massachusetts would be required to register. Other retirement entities in the state such as county, regional and district boards are structured in a similar manner as municipal boards.

The Commission justifies the inclusion of “appointed members” as registrants “...because employees and elected members are accountable to the municipal entity for their actions. In addition, the Commission 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 municipal entity.” This justification makes no distinction between a board such as a retirement board whose members are trustees owing a fiduciary duty to the retirement system members and those elected to entities by direct vote of the general population. Under Massachusetts law, as well as the common law of trusts, retirement board members owe a fiduciary duty to the employees, retirees and other beneficiaries of the retirement system and actions related to enforcement or violations of that fiduciary duty can be initiated by any such employee, retiree or beneficiary. PERAC believes that this allays the fears of the Commission with respect to accountability of retirement board members.

In order to avoid this unintended consequence, PERAC recommends that retirement board members be excluded from the definitions of “municipal entity” and “municipal advisor” unless registration would be otherwise required because of the members activities outside his or her duties as a board member. Such an exclusion would exempt from registration those who do not offer advice or solicit business from municipal entities while insuring that those serving on boards who do so in other contexts are registered.

Thank you for your consideration of this matter and if you have any questions or comments please contact me.

Sincerely,



Joseph E. Connarton
Executive Director

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