



THE METROPOLITAN WATER DISTRICT  
OF SOUTHERN CALIFORNIA

February 18, 2011

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

Ladies and Gentlemen:

**Re: Comments on Securities and Exchange Commission Release No. 34-63576;  
File No. S7-45-10**

The undersigned Chairman of the Board of Directors, Chairman of the Finance and Insurance Committee, General Manager, Interim Chief Financial Officer and General Counsel of The Metropolitan Water District of Southern California ("Metropolitan") provide the following comments on proposed Rule 15Ba1-1 and the discussion of the proposed Rule in SEC Release No. 34-63576 (the "Release").

Metropolitan is a metropolitan water district created in 1928 under authority of the Metropolitan Water District Act (California Statutes 1927, Chapter 429, as reenacted in 1969 as Chapter 209, as amended; California Water Code – Appendix Section 109 (the "MWD Act"). Metropolitan's primary purpose is to provide a supplemental supply of water for domestic and municipal uses at wholesale rates to its 26 member public agencies (14 cities, 11 municipal water districts, and one county water authority), which collectively serve the residents and businesses of more than 300 cities and numerous unincorporated communities. Metropolitan is governed by a 37-member board of directors (the "Board"), who are appointed by the member agencies and serve without compensation from Metropolitan. As a political subdivision of the State of California and issuer of municipal securities, Metropolitan is a "municipal entity" as defined in Section 15B(e)(8) of the Securities Exchange Act of 1934 (the "Exchange Act").

1. A municipal entity's governing body is included in the municipal entity exemption. In analyzing whether governing bodies of municipal entities are excluded from the definition of "municipal advisor," the Release misses a key point. The governing body is included in the exemption for the municipal entity itself.

"Municipal advisor" is defined in Section 15B(e)(4) of the Exchange Act as "a person (*who is not a municipal entity* or an employee of a municipal entity)" that provides advice to a municipal entity with respect to municipal financial products or the issuance of municipal securities. The governing body is a municipal entity's legislative body and the means by which a municipal entity exercises its powers and performs its duties. Under

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the MWD Act, “All powers, privileges and duties vested in or imposed upon any [metropolitan water] district shall be exercised and performed by and through a board of directors.” (MWD Act, Section 50) Decisions approved by more than fifty percent of the votes cast by Board members, or other percentage necessary to carry the particular order, resolution or ordinance adopted by the Board (see MWD Act, section 57) are the decisions of Metropolitan as a municipal entity.<sup>1</sup>

When Congress exempted a municipal entity from the definition of municipal advisor it exempted the governing body that exercises its decision-making powers. Board members, when acting within the scope of their duties as members of the governing body, act as and for Metropolitan, a municipal entity. Thus they are *not* municipal advisors.

2. No distinction between elected and appointed Board members. Alternatively, all members of a municipal entity’s governing body, whether elected or appointed, should be exempted from the definition of “municipal advisor.” The proposal in the Release that “employees of a municipal entity” should include elected members of the governing body of a municipal entity but not appointed members of the governing body is not supportable. California law makes no distinction between elected and appointed members of a governing body of a municipal entity when determining their immunity from liability for official acts. The California Government Claims Act (the “Claims Act”) provides the same immunities for members of locally appointed boards and commissions and locally appointed advisory bodies that it provides for elected city councils, mayors, members of boards of supervisors, school boards and other governing bodies and elected advisory boards.<sup>2</sup>

Further, in providing public employees immunity from liability for their acts and omissions,<sup>3</sup> the Claims Act defines “employee” as “an officer, judicial officer . . .,

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<sup>1</sup> Among other powers and duties specified in the MWD Act, “the board may provide for the issuance and sale of revenue bonds . . . upon such terms and conditions as the board may deem necessary, convenient or desirable” and may pledge water revenues or other funds to secure repayment of the bonds. (MWD Act section 237)

Metropolitan’s Board, like the governing bodies of other California local agencies, is authorized to invest “moneys in a sinking fund or moneys in its treasury not required for the immediate needs of the local agency . . . or any portion of the moneys that it deems wise or expedient” as provided in California Government Code section 53601.

<sup>2</sup> “Members of city councils, mayors, members of boards of supervisors, members of school boards, members of governing boards of other local public entities, members of *locally appointed* boards and commissions, and members of *locally appointed or elected* advisory bodies are not vicariously liable for injuries caused by the act or omission of the public entity or advisory body. Nothing in this section exonerates an official from liability for injury caused by that individual’s own wrongful conduct.” California Government Code, Section 820.9.

<sup>3</sup> The California Government Claims Act limits liability of public employees for injuries resulting from their acts or omissions in the exercise of the discretion vested in them (California Government Code, Section 820.2); their acts or omissions, exercising due care, in the execution or enforcement of any law (California Government Code, Section 820.4); their acts in good faith, under the apparent authority of an enactment that is unconstitutional, invalid or inapplicable (California Government Code, Section 820.6); and for injuries caused by the act or omission of another person (California Government Code, Section 820.8).

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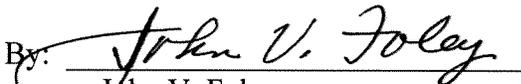
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“employee, or servant, whether or not compensated...” (California Government Code, Section 810.2) Metropolitan’s appointed, uncompensated Board members are “servants” of Metropolitan for purposes of this definition and entitled to the same protections as its employees under the Claims Act.<sup>4</sup>

Treating appointed board members as “municipal advisors” would be burdensome, as recognized in many comments submitted to the Commission, and is unlikely to provide additional protections to investors. The rationale in the Release that appointed members are not directly accountable to the citizens of the municipal entity is not correct with respect to Metropolitan’s directors. Board members are appointed by the governing boards of the member public agencies that they represent, and may serve at the pleasure of the appointing agency or for a specified term, as determined by the appointing agency. (MWD Act, Section 54) And all Metropolitan directors are subject to recall by the voters in their respective appointing agencies.<sup>5</sup>

The Commission should recognize that members of municipal entity governing bodies are not “municipal advisors” because they are the decision-making element of the municipal entity, not advisors to it. Alternatively, the Commission should include appointed board members with elected ones within the exemption for municipal employees.

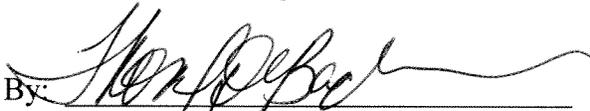
Sincerely,

By:   
John V. Foley  
Chairman

By:   
Aaron A. Grünfeld  
Chair, Finance & Insurance Committee

By:   
Jeffrey Kightlinger  
General Manager

By:   
Karen L. Tachiki  
General Counsel

By:   
Thomas E. DeBacker  
Interim Chief Financial Officer

<sup>4</sup> Opinion of Deputy General Counsel Fred Vendig dated April 21, 1975; memorandum from General Counsel to Board of Directors dated May 27, 1981.

<sup>5</sup> Section 60 of the MWD Act states: “Every member of the board of a district formed pursuant to this act shall be subject to recall by the voters of the public agency from which such member is appointed in accordance with the recall provisions applicable to such public agency.”