

**Colorado Health
Facilities Authority**

**Colorado Educational
and Cultural Facilities
Authority**

**Colorado Housing and
Finance Authority**

February 18, 2011

Via E-Mail: rule-comments@sec.gov

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

Re: Registration of Municipal Advisors (RIN 3235-AK86) (File Number S7-45-10)

Dear Ms. Murphy:

We are writing on behalf of the Colorado Health Facilities Authority ("**COHFA**"), the Colorado Housing and Finance Authority ("**CHFA**"), and the Colorado Educational and Cultural Facilities Authority ("**CECFA**"). We have also been authorized by the Denver Urban Renewal Authority and the Housing Authority of the City of Aurora to advise you that they join the Authorities in making the comments set forth in this letter.

COHFA, CHFA and CECFA (collectively, the "**Authorities**") were created by the Colorado state law as issuers of bonds to finance healthcare, educational, cultural and housing facilities and other qualified projects and programs serving authorized public purposes. Each Authority is an independent public body corporate and a political subdivision of the State of Colorado (the "**State**"). The powers of each Authority are, by statute, vested in their respective Boards of Directors.

This letter is in response to Release No. 34-63576 (the "**Proposing Release**") in which the Securities and Exchange Commission (the "**Commission**") solicits comments generally on the proposed new rules discussed in the Proposing Release that would require "municipal advisors," as defined in the Proposing Release, to register with the Commission. The proposed rules are being issued pursuant to the provisions of the Dodd-Frank Wall Street Reform and Consumer Protection Act ("**Dodd-Frank**"). In the Proposing Release, the Commission asks, among other things, whether it is appropriate to exclude from the definition of "municipal advisor" 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. The Commission also asks whether employees of obligated persons should be excluded from the definition of "municipal advisor" to the extent they are providing advice to the obligated person, acting in its capacity as an obligated person, in connection with municipal financial

products or the issuance of municipal securities and whether there are types of persons other than employees of obligated persons that should be excluded from the definition of municipal advisor.

As discussed further below, we believe that all members of governing bodies of municipal entities, such as the Authorities, should be excluded from the definition of "municipal advisor." The Authorities, like other municipal entities generally, exercise their legislative functions by and through their governing bodies, in which the powers of the Authorities are vested. The members of the Boards of Directors of the Authorities, other than designated public officials, are appointed by the Governor of the State of Colorado, with the consent of the Colorado Senate. Treating Board members as advisors to the Authorities fails to acknowledge their function as the bodies through which the respective Authorities operate rather than as advisors to the Authorities.

We also believe that it is not appropriate for the Commission, in defining the categories of persons intended to be included and excluded from the term "municipal advisors," to distinguish between elected members of a governing body of a municipal entity and appointed members of a municipal entity's governing body as suggested by the Commission in the Proposing Release. For example, one of the members of CHFA's Board of Directors is, by statute, "a member of the general assembly [Colorado's legislature] appointed jointly by the speaker of the house and the majority leader of the senate to serve for the legislative biennium." The other members of CHFA's Board are no more "advisors" to CHFA than such legislative member, yet under the Proposing Release, they would be treated quite differently in their roles as Board members. Furthermore, the Commission's classification of appointed board members as "municipal advisors" would have a devastating chilling effect on the willingness of volunteers to serve as members of the governing boards of municipal entities such as the Authorities. Our ability to exercise our statutory duties and to fulfill our public purposes is critically dependent on the availability of such volunteer Board members.

Finally, we believe that employees of obligated persons and all board members of obligated persons should be excluded from the definition of "municipal advisor" for essentially the same reasons as employees and board members of municipal entities.

We believe that all board members should be excluded from the definition of "municipal advisor"

The Proposing Release requests comments regarding whether the Commission's interpretations under the definition of "municipal advisor" and related terms, and the exclusions from the definition of "municipal advisor," should be modified or clarified in any way. We believe that the Commission's characterization of board members as "municipal advisors" to the municipal entities for which they serve as board members fundamentally misapprehends the role of board members in the governance and functioning of municipal entities.

The Commission's proposed rules fail to acknowledge that the governing body of a municipal entity is the medium through which a municipal entity conducts its business and exercises its public

powers and functions.¹ A municipal entity may not take action without the approval of the members of its governing body. Without a board and its members, and without the ability of the members of a board to engage in full and open discussion in the exercise of such public powers and functions, a municipal entity would not be able to perform the essential public powers and functions for which it is formed. It would be an unreasonable and overreaching position for the Commission to allow "advice" to encompass the routine and necessary workings of the board of a municipal entity that are undertaken in good faith and in accordance with board members' existing fiduciary duties. All boards should be allowed and encouraged to discuss, debate, analyze, and conduct informed votes on the issuance of municipal securities and the use of municipal financial products, and without a clear safe harbor for these board functions, the Proposing Release brings all board activities into the realm of advice.

Board members are policy makers and they make decisions in reliance on advice received from the staff, consultants and experts engaged by the municipal entity. We believe that they are entitled to rely on such advice as decision-makers and in order to perform their responsibilities as board members. While we commend the Commission's efforts to regulate the financial advisors who hold themselves out as such to municipal entities, we believe that seeking to regulate the very decision-makers who rely on such advice, i.e., the board members themselves, is not appropriate. As the representatives of municipal entities, members of the governing bodies, including appointed members, are the recipients of advice, not advisors themselves, and they should not be considered "municipal advisors" for purposes of the Proposing Release. In our view, the members of our Boards of Directors, as the decision-makers in which the powers of our respective Authorities are vested, should be treated no differently than the Authorities themselves for purposes of the definition of "municipal advisor" in the Proposing Release. They should be excluded from that definition.

We believe that there is no reasonable basis to include appointed members of a municipal entity in the definition of "municipal advisor"

In the Proposing Release, the Commission asks whether it is appropriate to exclude from the definition of "municipal advisor" 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. We believe that the Commission's proposal to treat elected and appointed officials differently is arbitrary and capricious.

¹ In addition, we note that the Commission states in the Proposing Release that:

. . . [T]he statutory definition of "municipal advisor" includes distinct groups of professionals that offer different services and compete in distinct markets. The three principal types of municipal advisors are: (1) financial advisors, including, but not limited to, broker-dealers already registered with the Commission, that provide advice to municipal entities with respect to their issuance of municipal securities and their use of municipal financial products; (2) investment advisers that advise municipal pension funds and other municipal entities on the investment of funds held by or on behalf of municipal entities (subject to certain exclusions from the definition of a "municipal advisor"); and (3) third-party marketers and solicitors.

The Commission's conclusion that appointed board members should be included in the definition of "municipal advisor" is inconsistent with the Commission's views stated above because appointed board members represent municipalities as decision-makers, not as "professionals that offer different services and compete in distinct markets."

No convincing rationale is advanced by the Commission in the Proposing Release for distinguishing between elected and appointed members of governing boards. The Proposing Release states that elected officials are more accountable than appointed officials because they are "directly accountable for their performance to the citizens of the municipal entity." But, as described below, appointed officials are subject to the same rules and obligations under State law as are elected officials and are also accountable for their performance.

State rules of conduct and ethics laws generally apply equally to appointed and elected board members. For example, Colorado state ethics laws, which prohibit board members of municipal entities from engaging in conflicting interest transactions, apply equally to elected and appointed board members. In addition, criminal laws of the State of Colorado also impose ethical obligations on elected and appointed board members. For example, Title 18, Article 8, Part 3 (Bribery and Corrupt Influences) and Title 18, Article 8, Part 4 (Abuse of Public Office) of the Colorado Revised Statutes would cover board members because they expressly apply to any "public servant" defined as "any officer or employee of government, whether elected or appointed" Specifically, the crime of "official misconduct" is committed if a public servant commits an act that is an unauthorized exercise of an official function, refrains "from performing a duty imposed by law," or violates "any statute or lawfully adopted rule or regulation." Moreover, municipal entities with elected and/or appointed board members are subject to the open meetings laws that provide for accountability of such board members to the municipal entities on which boards they serve and to the constituents of such municipal entities.

In addition, any member of the governing board of a municipal entity may generally be removed by the appointing official for misfeasance, malfeasance, willful neglect of duty, or other cause. For example, the CHFA statute provides that "any appointed member of the board may be removed by the governor, and the legislative representative by the speaker of the house and the majority leader of the senate, for malfeasance in office, failure to regularly attend meetings, or for any cause which renders said member incapable of or unfit to discharge the duties of his office." The CECFA statute and the COHFA statute provide the same power to the Governor of the State of Colorado as the CHFA statute. If anything, the appointed members of the governing body of a municipal entity are more directly and quickly accountable to the elected official who appointed them than are elected officials facing election once every two or four years. Further, as the Commission notes, the elected officials who appoint board members are themselves directly accountable to the citizens for their actions, including the making of such appointments.

Based on the above, we believe that there is no justification for the distinction between elected and appointed officials. In our view, appointed officials should be treated the same as elected board members and excluded from the definition of "municipal advisor."

We believe that the Commission's failure to exclude board members from the definition of "municipal advisors" will stifle discourse among board members and discourage potential board volunteers from serving as board members

The Commission's classification of board members as "municipal advisors" will have the very harmful consequences of stifling discourse among board members and discouraging unelected

volunteers from serving as board members of municipal entities. Most appointed board members are volunteers who are appointed by elected officials based on their qualifications and the value they will bring to the public arena. Such appointed board members typically receive only de minimis compensation for their services and generally participate in the governing boards to "give back" to the communities in which they live. The uncertainty regarding the impact of categorizing volunteer board members as "municipal advisors" and the additional civil and criminal liability to which board members qualifying as "municipal advisors" will be subjected will discourage appointed board members from actively discussing financial matters and proposed financial transactions of the municipal entities on whose boards they serve. This would interfere with the proper functioning of these boards and may result in poor and uninformed decision-making. The additional administrative burdens and potential civil and criminal liability associated with qualifying as a "municipal advisor" will make it very difficult, if not impossible, for governors, mayors, city councils and other state and local governing bodies charged with appointing board members to find qualified volunteers willing to serve on boards of municipal public entities. The willingness of qualified volunteer citizens to serve on our Boards is critical to the ability of the Authorities to fulfill our public missions, and we have grave concerns about our ability to attract such people to serve on our Boards if the proposed rule is not changed. We believe that the Commission should appropriately address this concern by excluding all board members from the definition of "municipal advisor."

We believe that employees of obligated persons and all board members of obligated persons should be excluded from the definition of "municipal advisor"

The "employee exception" for municipal entities should also apply to obligated persons. "Obligated Persons" as defined in Rule 15c2-12 include nonprofit corporations which are permitted to access the municipal bond market and borrow funds on a tax-exempt basis through conduit issuers. Similarly to municipal entities, these nonprofits have employees whose day-to-day duties include structuring debt issuance, managing existing debt, investment portfolio, derivative products, etc. They utilize the services of outside financial advisors and other consultants to assist them in performing their job description. There is no difference in this respect between employees of a municipal entity and a non-profit entity.

Consistent with the discussion above regarding governing boards of municipal entities, boards of directors or boards of trustees of non-profit entities are the mediums through which non-profit entities conduct their business and exercise their powers. Board members are policy makers and they make decisions in reliance on advice received from the staff, consultants and experts engaged by the non-profit entity. They are entitled to rely on such advice to perform their responsibilities as board members. Since board members are the recipients of the advice, they should not be considered "municipal advisors" for purposes of the Proposing Release and, therefore, should be excluded from the definition of "municipal advisor."

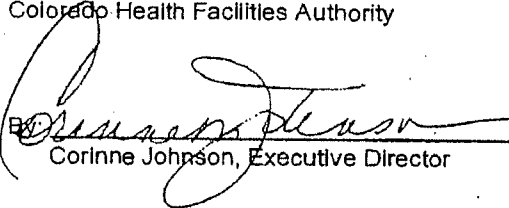
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Ms. Elizabeth M. Murphy, Secretary,
Securities and Exchange Commission,
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We appreciate this opportunity to comment on the Proposing Release and welcome any questions that you may have with respect to this letter.

Sincerely,

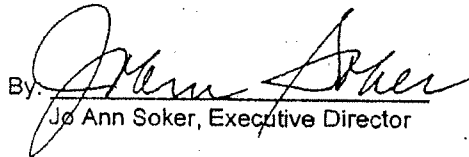
Colorado Health Facilities Authority

By: 
Corinne Johnson, Executive Director

Colorado Housing and Finance Authority

By: 
Cris White, Executive Director

Colorado Educational and Cultural Facilities Authority

By: 
Jo Ann Soker, Executive Director

cc: The Honorable Mark Udall
The Honorable Michael Bennet
The Honorable Diana DeGette
The Honorable Jared Polis
The Honorable Scott R. Tipton
The Honorable Cory Gardner
The Honorable Doug Lamborn
The Honorable Mike Coffman
The Honorable Ed Perlmutter