



NORTH CAROLINA

OFFICE OF THE TREASURER

JANET COWELL, TREASURER

February 17, 2011

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

Re: File Number S7-45-10

This letter is in response to proposed Rule 15B(a)(1) of the Securities and Exchange Commission regarding a permanent registration regime with the Securities and Exchange Commission (the "Commission") for municipal advisors and record keeping requirements on such advisors. In particular, this letter is in response to the interpretation of the Commission set forth in Release Number 34-63576, (the "Release"), and the request of the Commission for comments thereon.

I. Background.

The undersigned is the State Treasurer of the State of North Carolina, elected to such office by a vote of the people of the State of North Carolina. As State Treasurer, the undersigned is also the head of the Department of State Treasurer, a constitutional and statutorily-created office within the executive branch of the State of North Carolina. Customarily, the Department of State Treasurer has played the lead role in executing most bond issues and other financings by the State. In addition, the State Treasurer is the Chairman of the North Carolina Local Government Commission (the "LGC"), a statutorily-created commission of the State that is responsible for oversight of almost all local government bond issues and other financings and many bond issues and other financings by State agencies and departments.

In addition to the views of the Department of State Treasurer, the views set forth in this letter have been endorsed and are supported by:

- North Carolina Local Government Commission.
- North Carolina Housing Finance Agency, a State agency empowered by law to issue bonds to provide financing of housing for persons of low and moderate income within the State.

- The Board of Governors of the University of North Carolina, the governing body of the 16-campus State University system, empowered by law to issue revenue bonds to finance improvements on the campuses of the University.
- North Carolina Medical Care Commission, a State commission empowered by law to issue bonds to provide financing of private healthcare facilities within the State.
- The North Carolina Capital Facilities Finance Agency, a State agency empowered by law to issue bonds to finance improvements for private colleges and universities within the State and certain other types of projects.
- North Carolina Municipal Power Agency No. 1 and North Carolina Eastern Municipal Power Agency, joint agencies created by municipalities located within the State and empowered by law to issue bonds to finance the cost of power generating and other facilities used by such municipalities in providing public power.
- North Carolina State Ports Authority, a State agency empowered by law to operate the State ports and issue bonds to finance the costs of port facilities within the State.
- North Carolina State Education Assistance Authority, a State agency empowered by law to issue revenue bonds to finance costs of higher education for North Carolinians and students enrolled in higher education institutions in the State.
- Raleigh-Durham Airport Authority, a public instrumentality and agency created to own and operate an airport to serve the Triangle Region of North Carolina and empowered to issue bonds for such purpose.
- Piedmont Triad Airport Authority, a public instrumentality and agency created to own and operate an airport serving the Piedmont Triad area of the State and empowered to issue bonds for such purpose.

The governing bodies of each of the entities endorsing and supporting the comments set forth herein are composed of members who were not elected to the governing body by the voters, with the exception of certain members of the LGC who are elected officials serving in an *ex officio* capacity. Such non-voter elected members of governing bodies assume their positions through a variety of processes established by North Carolina law, including appointment by an elected official (such as the Governor), election by a governing board comprised of elected officials (such as a City Council or Board of County Commissioners), *ex officio* membership based on appointment by public officials to other positions within State or local government and membership by election by persons holding appointive office.

II. Members of governing bodies of municipal entities, whether elected or appointed, should not be treated as “municipal advisors”.

In the Release, the Commission sets forth the proposed rule for registration of municipal advisors pursuant to the requirements of the Dodd-Frank Act, together with the Commission’s interpretive commentary regarding, among other things, what entities should properly be excluded from these requirements.

Dodd-Frank defines a “municipal advisor” expansively, including not only those entities playing the role of what is commonly referred to in municipal bond transactions as the “financial advisor,” but also including others that provide advice “with respect to the structure, timing, terms and other similar matters” concerning a municipal bond issue. While the definition is clearly designed to cover a universe larger than a formal “financial advisor” for a bond issue, it is also apparent that not every person covered by this broad definition was to be covered by the new requirements for municipal advisors.¹

The definition of “municipal advisor” provides that such term means a person “who is not a municipal entity or an employee of a municipal entity” performing certain activities. Apparently, a commentator requested clarification from the Commission that the definition also excluded members of the governing board of the municipal entity in question. In the Release, the Commission took the view that the term “employees of a municipal entity” should include any person serving as an elected member of the governing body of the municipal entity within its meaning, but the term excludes appointed members of the governing body.

I wish to express our disagreement with this interpretation.

First, I do not believe that the registration and other requirements imposed by Dodd-Frank on municipal advisors were ever intended by Congress to apply to the governing body of the municipal entity. The purpose of this provision of Dodd-Frank appears to have been to establish federal regulatory oversight over financial institutions and professionals that are advising the municipal entities, who are acting through their governing bodies. All of the North Carolina entities referred to above act through actions of their governing boards. When a municipal advisor is advising a municipal entity, it is advising the people on the governing board of that entity. Therefore, saying that the governing board members might be a municipal advisor means that one person could at one time be both the advisor and advisee. Clearly, this would not be the result Congress intended. It would seem that it should be perfectly acceptable for the Commission to take the view that when Congress excluded the municipal entity itself and its employees from being a “municipal advisor,” it intended that exclusion to cover the governing body of that municipal entity.

¹Many States have procedures for public hearings and other input on municipal bond issues (such hearings are also often required by federal tax laws). Members of the general public will often offer their advice regarding the structure, timing, terms and even the wisdom of the bond issue during such proceedings (and are encouraged to do so)—yet no one would seriously argue that such activity would make those participants a “municipal advisor” within the meaning of Dodd-Frank. Thus, clearly the Commission must have some room for discretion in determining who should be covered by the requirement.

Second, I do not believe that the distinction drawn between a governing body's elected and appointed members is a rational one. While elected members are directly answerable to their voters, the laws of our State (and, I suspect, the laws of other states) set forth the duties of the members of any such governing body regardless of whether they are elected or appointed. Governing board members, whether elected or appointed, typically must take an oath of office to faithfully execute the constitution and laws of the State, which include laws restricting acting when there is a conflict of interest. Many members of these governing bodies are subject to conflict of interest reporting requirements and a broad base of ethics rules that include continuing education on State ethics laws. Furthermore, all of these bodies are subject to the requirements of our State's open meetings laws, under which members of the press and general public have the absolute right to attend and observe public business taking place, and the State's public records law, under which almost all documents of these agencies (certainly all documents involving bond issues) are subject to inspection by anyone who requests that they be made available. Therefore, although appointed members are not directly answerable to the voters, it is not as if such members are without regulation at the State level. Finally, I note that throughout the federal government, there are numerous bodies (including the Commission) that are governed by persons not elected to their offices by the voters. No one would suggest that these various non-elected officials would fail to faithfully execute the responsibilities of their offices because they are not directly answerable to the voters (or that there are not adequate legal ramifications that can address the failure to do so).

Third, I question whether subjecting appointed members of governing bodies to the registration requirements, record-keeping requirements and other requirements imposed by the new rules would carry out the purpose for which the Dodd-Frank Act intends to regulate. The purpose of the legislation (and the Commission's actions carrying out that legislation) was to set up a regime of regulation for members of the financial services industry offering their services to the municipal entities. Requiring numerous public-spirited (and usually uncompensated) volunteers to register with the Commission, pay the various registration fees, and maintain the records by the regulations does not advance that legislative objective.

II. Members of State appointed commissions, authorities, and other organizations with oversight responsibility for municipal entity borrowings should not be municipal advisors.

In addition to the concerns set forth above regarding whether members of the governing boards of municipal entities should be treated as municipal advisors, there is a particular situation in North Carolina, which may be repeated at some level in other states, that should be expressly excluded from the rule.

Many years ago, the North Carolina Legislature created the LGC as a State-level commission with oversight over most matters of finance for local governments within our State, including the issuance of bonds and other financings. We believe that this State-level regulatory system has served our State well, by providing an independent State-level review of all local government borrowings. Over time, the oversight of the LGC has been extended to many (though not all) State agencies and departments that may incur debt. The findings that the LGC must make in order to approve a bond issue or other financing under its jurisdiction are

established by law (and include requirements of feasibility and suitability, evidence that the entity incurring the debt is conducting its financial affairs responsibly, certain requirements regarding the projects to be financed, and other credit-quality-related findings). The actions the LGC members undertake could be taken as advising the municipal entity regarding its bond issue – the LGC imposes various guidelines and requirements regarding bond issue size, security structures, length of maturities, acceptable ranges of interest rates and other terms of the bond issues it approves on a regular basis.

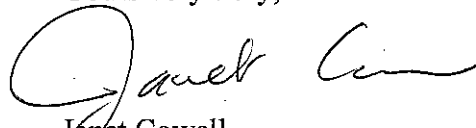
Our office is concerned that the term “municipal advisor” as described in the Release would cover members of the LGC in carrying out their statutory responsibilities. Further, if a change to the SEC’s interpretation as set forth in the Release is made to exclude all members of a governing board from being a municipal advisor, whether elected or appointed, that exclusion would not apply to the LGC members because the LGC, while maintaining supervisory authority over the local government borrowing, is not the governing board of the municipal entity.

We therefore would request a further interpretation to the effect that the definition of “municipal advisor” does not include persons carrying out their duties within a regulatory scheme established pursuant to State law.

III. Conclusion.

Thank you for the opportunity of presenting these views. If you have any questions or seek any clarification on the thoughts set forth in this letter, please feel free to give a call to the undersigned.

Yours very truly,



Janet Cowell
State Treasurer, State of North Carolina