



NORTH CAROLINA

OFFICE OF THE TREASURER

JANET COWELL, TREASURER

February 22, 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.

The General Assembly of the State of North Carolina has established by statute an Investment Advisory Committee ("IAC") to advise the State Treasurer with respect to investments of the Teachers' and State Employees' Retirement System, the Local Government Employees' Retirement System, the Legislative Retirement System, the Firemen's and Rescue Workers' Pension Fund, the Consolidated Judicial Retirement System, and the North Carolina National Guard Pension Fund (hereinafter referred to collectively as the "Retirement Systems"). As stated in the IAC Charter, among other things, the IAC is responsible for advising and assisting the State Treasurer in the following areas: assisting in selection and evaluation of the Chief Investment Officer; self-assessment of the IAC; reviewing and recommending investment policies; reviewing asset allocations; reviewing and commenting on investment manager structure; reviewing and evaluating the selection and monitoring of investment managers; reviewing the performance review of the Retirement Systems; reviewing and evaluating the custodian arrangement; and evaluating the selection of investment consultants.

Under the IAC Charter, IAC members do not owe any fiduciary, trust, or similar obligation in connection with their membership on the IAC other than the duty to act in good faith and as expressly set forth in the IAC Charter and applicable law and policies. In addition to the Charter, the State Treasurer has adopted a Code of Ethics setting forth standards of conduct for members of the IAC. Members of the IAC are required to sign an affirmation pledging to uphold both the letter and the spirit of the Code of Ethics. Meetings of the IAC are held in compliance with North Carolina open meetings law. IAC members serve without compensation (although they do receive reimbursements for out-of-pocket expenses and allowances consistent with those granted to members of other State boards).

Separately, the General Assembly of the State of North Carolina has established by statute the Supplemental Retirement Board of Trustees ("SRBOT"), to administer the Supplemental Retirement Income Plan and the North Carolina Public Employee Deferred Compensation Plan (collectively, the "Supplemental Plans"). Of its nine members, eight are appointed (six by the Governor and two by the General Assembly). The final member of the SRBOT is the State Treasurer, who is the Chairman of the SRBOT and serves *ex officio*. The SRBOT has fiduciary responsibility for the Supplemental Plans; its duties are to manage all aspects of the Supplemental Plans, including the receipt, maintenance, investment and disposition of all Supplemental Plan assets. The appointed members serve without compensation (although they do receive reimbursements for out-of-pocket expenses and allowances consistent with those granted to members of other State boards).

II. Members of statutorily created volunteer advisory boards of municipal entities 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. The Release includes the Commission's interpretive commentary regarding, among other things, which entities should properly be excluded from these requirements. Under the Commission's proposed rule, a "municipal advisor" would include those entities that advise municipal entities on investment strategies and the management of public monies. Dodd-Frank explicitly excludes from such definition (i) municipal entities and (ii) employees of municipal entities.

The Release notes that the Commission is proposing to interpret the exclusion for employees of municipal entities to extend only to elected members of the governing body of the municipal entity, and not to appointed members of the 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 requests comment on whether these distinctions are appropriate and further on whether there are other persons associated with municipal entities who might not be "employees" of the municipal entity that the Commission should exclude from the definition of municipal advisor.

I have responded in a separate letter stating my position that (i) the registration and other requirements imposed by Dodd-Frank on municipal advisors was not intended by Congress to apply to the governing body of a municipal entity, (ii) the distinction between elected and appointed members of the governing body of a municipal entity is not rational, and (iii) requiring

appointed members of governing bodies of municipal entities to comply with the registration, record-keeping and other requirements imposed by the new rules is inconsistent with the legislative objectives of Frank-Dodd.

I write separately here to suggest that members of statutorily created volunteer advisory boards of municipal entities also should be excluded from the definition of "municipal advisor."

Frank-Dodd defines the term "municipal entity" to mean "any State, political subdivision of a State, or municipal corporate instrumentality of a State, including... any agency, authority, or instrumentality of the State, political subdivision, or municipal corporate instrumentality...." Clearly, the Department of State Treasurer is (itself) a municipal entity under this definition. Like many other states, the General Assembly of the State of North Carolina has made a legislative determination that the Department of State Treasurer would benefit from the advice of an independent advisory board. While the IAC in North Carolina has no actual governing authority within the Department of State Treasurer, it does act as a sounding board and filter for the Department, shaping and influencing its decisions and activities. In that respect, the IAC is analogous to a governing board. And just as when a municipal advisor is advising a municipal entity it is advising the individuals on the governing board of such municipal entity, by extension such municipal advisor is also advising the individuals on any advisory board of such municipal entity. Saying that the advisory board members are themselves municipal advisors would be saying that one person could at the same time be both the advisor and advisee. I do not believe Congress intended this result. Rather, it would seem perfectly acceptable for the Commission to take the view that when Congress excluded the municipal entity itself and its employees from the definition of "municipal advisor," it intended that exclusion to cover not only the governing body of that municipal entity, but also any advisory boards of such municipal entity that the state legislature deemed important enough to create by statute.

Such an interpretation would be entirely consistent with the legislative purpose of Dodd-Frank, which was to establish a regime of regulation for members of the financial services industry offering their services to municipal entities. Interpreting Dodd-Frank to require the imposition of this new regulatory regime on statutorily-created volunteer advisory boards such as the IAC would be inconsistent with this legislative objective and could have a devastating impact on such boards. It is unlikely that public-spirited and qualified (but uncompensated) volunteers would agree to register with the Commission and maintain the records required by the regulations, solely in order to serve on the IAC.

I request an interpretation of the legislation which would exclude statutorily created volunteer advisory boards of municipal entities from the definition of "municipal advisors," under the same rationale that governing bodies of municipal entities should be so excluded.

III. Members of the governing body of North Carolina's Supplemental Retirement Board of Trustees should not be treated as "municipal advisors."

As discussed briefly above and in greater detail in my separate letter, I reiterate here my belief that (i) the registration and other requirements imposed by Dodd-Frank on municipal advisors was not intended by Congress to apply to the governing body of a municipal entity,

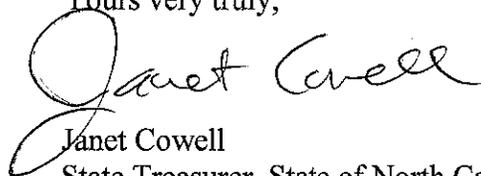
(ii) the distinction between elected and appointed members of the governing body of a municipal entity is not rational, and (iii) requiring appointed members of governing bodies of municipal entities to comply with the registration, record-keeping and other requirements imposed by the new rules is inconsistent with the legislative objectives of Frank-Dodd.

I request an interpretation of the legislation which excludes all members of the governing body of the SRBOT from the definition of "municipal advisors."

IV. 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,

A handwritten signature in cursive script that reads "Janet Cowell". The signature is written in black ink and is positioned above the printed name and title.

Janet Cowell
State Treasurer, State of North Carolina