



## Finance Department

### Office of the Director

3rd Floor, City Hall  
414 East 12th Street  
Kansas City, Missouri 64106

(816) 513-1173  
Fax: (816) 513-1174

February 17, 2011

Via Electronic Mail: [rule-comments@sec.gov](mailto:rule-comments@sec.gov)

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

Re: File Number S7-45-10  
Kansas City, Missouri ("City") Comments on the  
Proposed Rules Regarding Municipal Advisors

Dear Ms. Murphy:

In conjunction with the Dodd-Frank Wall Street Reform and Consumer Protection Act, the Securities and Exchange Commission ("SEC") recently published proposed rules 15Ba1-1 through 15Ba1-7 ("Proposed Rules") regarding "municipal advisors". We have been advised by the City's bond lawyers and financial advisor that the Proposed Rules, if adopted, would subject appointed board members of municipal entities to:

- 1) Register as a financial advisor with the SEC.
- 2) Comply with Municipal Securities Rulemaking Boards ("MSRB") rules and regulations which are not yet promulgated, but may provide for
  - a) standards of training, competence and such other qualifications for municipal advisors;
  - b) the periodic examination, continuing education requirements and professional standards of municipal advisors;
  - c) payment by each municipal advisor to the MSRB of fees and charges; and
  - d) Regulations designed to prevent acts that are inconsistent with a municipal advisor's fiduciary duty.
- 3) Perform fiduciary duty with respect to any municipal entity for which such individual acts as a municipal advisor.
- 4) Comply with additional federal fraud regulations.

It is my understanding that the SEC is accepting comments on the Proposed Rules and the purpose of this letter is to provide comments on behalf of the City. Under various Missouri statutes ("State Statutes"), several public authorities and boards (collectively referred to herein as "Municipal Entities") were created and organized to assist municipalities in the State, such as the City, by acting as conduit issuers on bonds that are issued to promote urban renewal and to finance

economic development in the region. As in the past, we anticipate that the City will seek such assistance in issuing bonds in the future.

The Municipal Entities are composed of local citizens appointed by either State or local officials. The City opines that directors, commissioners and/or members serving Municipal Entities should be excluded from the Proposed Rules for the following reasons:

- 1) Registration will place an undue burden on volunteer citizens and local government entities because of the registration fees and the cost of engaging counsel to ensure compliance to SEC Rules.
- 2) A director's, commissioner's and/or member's duty is not to provide financial advice but to guide and ensure that the organization is meeting its constitutional and statutory obligations. Persons serving in such a capacity themselves receive advice from outside entities, such as, professional financial or swap advisors. They are decision makers and in a sense serve as an extension of the local municipality or agency. They are not acting in any professional advisory capacity.
- 3) Municipalities rely on the assistance provided by directors, commissioners and/or members. The Proposed Rules could cause potential board members to reconsider volunteering for fear of exposure to liabilities such as SEC sanctions, fines, and/or criminal penalties.
- 4) In the State of Missouri, some conduit issuer directors are subject to Chapter 351, the General Business and Corporations Law, so they have a fiduciary obligation to the corporation. All City appointees to conduit issuers are subject to the Code of Ordinances of the City, which provides:

**Sec. 2-1012. Responsibilities of public office.**

Public officials and employees are agents of public purpose and hold office for the benefit of the public. They are bound to uphold the Constitution of the United States and the constitution of this state and to carry out impartially the laws of the nation, state and municipality, and thus to foster respect for all government. They are bound to observe in their official acts the highest standards of morality and to discharge faithfully the duties of their office, regardless of personal considerations, recognizing that the public interest must be their primary concern. Their conduct in both their official and private affairs should be above reproach.

**Sec. 2-1013. Dedicated service required.**

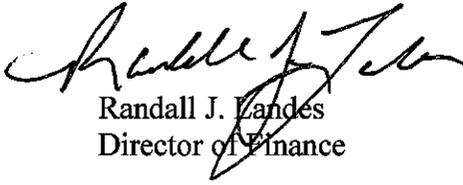
(a) All officials and employees of the municipality should be loyal to the objectives expressed by the electorate and the programs developed to attain those objectives. Appointive officials and employees should adhere to the rules of work and performance established as the standard for their positions by the appropriate authority.

(b) Officials and employees should not exceed their authority or breach the law or ask others to do so, and they should work in full cooperation with other public officials and employees unless prohibited from so doing by law or by officially recognized confidential nature of their work.

In addition, a City appointee as director to a conduit issuer must take an oath or affirmation stating that he/she "will support the constitution and laws of the United States and of the State of Missouri, will observe the provisions of this Charter and ordinances of Kansas City, and will faithfully discharge the duties of the office." Charter Section 1206. Missouri statutes under which various conduit issuers are authorized, as well as the articles of incorporation and bylaws under which they operate, have provisions relating to the conduct of board members. Therefore, additional regulatory oversight is not necessary.

For these reasons, the City is respectfully requesting that the SEC reverse its position and exempt the directors, commissioners and/or members of Municipal Entities from the Proposed Rules.

Sincerely,



Randall J. Landes  
Director of Finance

cc: Troy M. Schulte, Interim City Manager