

Texas Public Finance Authority

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February 17, 2011

By Electronic Mail

Ms. Mary L. Schapiro, Chair
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090

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

Re: S.E.C. Release No. 34-63576 (the Release): File No. S7-45-10 (Dec. 20, 2010)

Dear Chair Schapiro and Secretary Murphy:

The Texas Public Finance Authority Charter School Finance Corporation (the Corporation) submits these comments in response to the Notice of Proposed Rule for the Registration for Municipal Advisors issued by the Securities and Exchange Commission (SEC or Commission) on December 20, 2010. The proposed rules 15Ba1 to 15Ba7 (the "Rule") interpret provisions of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the Dodd-Frank Act). Through its amendments to the Securities Exchange Act of 1934 (the Exchange Act) in part, the Dodd-Frank Act is intended to promote financial stability in the United States and improve accountability and transparency in the financial system.

In the Release accompanying proposed Rule 15Ba1-1, the SEC asserts that Dodd-Frank Act amendments to Section 15B(a)(1) of the Exchange Act make it unlawful for a municipal advisor to provide advice to or on behalf of a municipal entity or obligated person with respect to the issuance of municipal securities, unless the municipal advisor is registered with the Commission. See Release, p. 18. and p. 29 n. 102. Although "advice" is not defined in the Rule, in its ordinary use it means "a recommendation regarding a decision or course of action." Merriam-

Ms. Mary L. Schapiro, Chair
Ms. Elizabeth M. Murphy, Secretary
February 17, 2011
Page 2

Webster Online 2010; retrieved Feb. 16, 2010 <http://www.merriam-webster.com/dictionary/advice>.

The SEC finds that appointed board members of a municipal entity fall within the definition of “municipal advisor” but that elected board members do not because elected board members are accountable to the municipal entity while “appointed board members are not directly accountable to the citizens of the municipal entity.” Release, p. 41.

The Corporation respectfully disagrees with the Commission’s rationale for treating appointed board members differently from elected board members of municipal entities. If the goal of the Rule is to protect municipal entities and obligated persons from unscrupulous municipal advisors, then the distinction between elected board members of a municipal entity and appointed board members on the basis that their accountability to the entity they serve is not achieved through the same route is misplaced. See Release, p. 41.

Regardless of the method by which a board member is placed into office, state and local laws hold board members accountable to the entity they serve. Board members of a non-profit corporation are accountable for their actions through their duty to act in good faith, with ordinary care, and in a manner the director reasonably believes to be in the best interest of the corporation. Further, members who fail to act in accord with their legal duty are subject to civil liability.

The benefit of increased accountability for municipal advisors is to provide further protection to those entities whose decisions are made in reliance upon municipal advisors’ recommendations. Individual board members, regardless of whether they were appointed or elected to office, when acting within the scope of their role on the board are decision makers, not advisors.

The Corporation is a non-profit corporation organized under the laws of the state of Texas (the State). BUS. ORG. CODE ch. 22. It is authorized to issue debt and lend the proceeds to open enrollment charter schools for the purpose of financing educational facilities. TEX. EDUC. CODE §53.351. When performing this function, the Corporation is a “municipal entity” and the open enrollment charter schools are “obligated persons.” The Corporation also provides credit enhancement grants to open enrollment charter schools through a grant program under the U.S. Department of Education. Under the SEC interpretation of an obligated person, the Corporation is both a municipal entity and an obligated person in those instances in which the Corporation provides a credit enhancement grant and issues debt for a charter school borrower. See Release, p. 24.

When the governing board of a charter holder submits an application for a credit enhancement grant, the Corporation’s individual board members collectively consider the application and determine whether the Corporation will award the grant. Much of the information in the application is provided by consultants retained by the charter holder. The Corporation evaluates the financial status of the charter holder, the proposed financing to be supported by the grant, the rating of the proposed securities, and like information offered in support of the application. On

Ms. Mary L. Schapiro, Chair
Ms. Elizabeth M. Murphy, Secretary
February 17, 2011
Page 3

the basis of the application and the recommendations of assigned staff, the board votes to decide whether the Corporation will provide the credit enhancement grant.

When a qualified charter school submits a request for financing, the Corporation's individual board members collectively consider the advice of consultants, and using that advice decides whether to approve the issuance of debt based upon the recommended financing structure, the loan documents, and the covenants of the obligated charter school. It is the fact that the Corporation decides to participate in the municipal securities market based upon information provided by third-parties that makes the Corporation the type of entity needing the regulatory protection that the Rule offers through the enhanced accountability measures. Release p. 24, note 91. Municipal entities are excluded from the definition of municipal advisor because municipal entities rely on the advice of municipal advisors, and that is the same reason that it is appropriate to exclude a municipal entity's board members along with its employees.

All board members of the Corporation are citizen volunteers who serve because of their interest in their community and in the development of appropriate educational facilities available to Texas school children. These citizen volunteers are not likely to willingly continue serving as board members if their service subjects them to the proposed Rule requirements for municipal advisors. The arduous SEC registration and disclosure requirements and the heightened fiduciary obligations imposed on the appointed board members of a municipal entity offer no discernable benefit to the entity that outweighs the likely cost.

Accordingly, the Corporation respectfully requests that the SEC reconsider its proposed rule and conclude that appointed board members of a municipal entity acting within the scope of their responsibilities to that entity fall within the "municipal entity" exclusion of "municipal advisor" definition.

Respectfully Submitted,



Susan K. Durso
General Counsel of the
Texas Public Finance Authority on behalf of the
Texas Public Finance Authority Charter School Finance Corporation

cc: TPFACSFC Board Members
Dwight Burns, TPFA Executive Director