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

Re: **File Number S7-45-10**  
Comments on SEC interpretation of exemption for municipal  
entities and employees of municipal entities

Ladies and Gentlemen:

The City of Chicago (the "City") submits these comments in response to Release No. 34-63576 (the "Release"), in which the Securities and Exchange Commission (the "Commission") solicited comments on its proposed rules in connection with provisions of Title IX of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (the "Dodd-Frank Act") that require the Commission to establish a permanent registration system for municipal advisors. In particular, this letter comments on the Commission's proposed interpretation of the exemption for "a municipal entity or an employee of a municipal entity" that is included in the definition of "municipal advisor" under Section 975(e) of the Dodd-Frank Act.

As the following discusses in greater detail, we respectfully request that the Commission clarify that: 1) the exemption for "a municipal entity or an employee of a municipal entity" encompasses both elected and appointed officers of a municipal entity; and 2) the exemption applies when a municipal entity is acting as a conduit issuer and the officers and employees of the municipal entity are acting on behalf of the municipal entity in connection with the issuance of such municipal entity's conduit bonds.

#### 1. Elected and Appointed Officers of a Municipal Entity

Section 975(e) of the Dodd-Frank Act amended Section 15B of the Securities Exchange Act of 1934<sup>1</sup> (the "Exchange Act") to include a definition of the term "municipal advisor", which states in relevant part:

The term 'municipal advisor' means a person (who is not a municipal entity or an employee of a municipal entity) that...

<sup>1</sup> 15 U.S.C. 78a *et seq.*



As this first part of the definition establishes, Congress unequivocally exempted both municipal entities and their employees.

In its Release, however, the Commission makes a troubling distinction between those members of a municipal entity that are elected and those that are appointed:

The Commission does not believe that appointed members of a governing body of a municipal entity that are not elected *ex officio* members should be excluded from the definition of a 'municipal advisor.'

We hope that, in making this distinction, the Commission does not intend to exclude from the exemption for municipal entities and their employees the many officers of local government that may be appointed, rather than elected, to positions of trust, such as, for the City, the comptroller and the chief financial officer. We believe that distinguishing between elected and appointed officers for purposes of this exemption would be an unfair and convoluted reading of the clear Congressional mandate to exempt municipal entities and their employees from the definition of "municipal advisor."

The Commission appears to justify its distinction between elected and appointed officers by noting that:

The Commission believes that this interpretation is appropriate because employees and elected members are accountable to the municipal entity for their actions...the Commission is concerned that appointed members, unlike elected officials and elected *ex officio* members, are not directly accountable for their performance to the citizens of the municipal entity.<sup>2</sup>

Thus, it appears the Commission is establishing a criterion of accountability in connection with the exemption for municipal entities and their employees. We are not aware of any statutory basis for establishing such a criterion. Moreover, we believe that to enforce legislation that targets "municipal advisors" against the very persons who comprise municipal entities would be an absurd result that Congress did not intend. Appointed officers, just like elected officers, are part of the municipal entity. They are responsible for policy and decision-making on behalf of the municipal entity. Such a role embodies the internal functioning and governance of a municipal entity; therefore, it follows that persons in this role should not be viewed in the same light as third-party advisors under Section 15B. To find otherwise would create the anomalous result of using legislation aimed at those who provide advice, to also regulate, in the same exact manner, those who seek such advice.

Furthermore, the distinction the Commission makes in the accountability of elected versus appointed members is misleading. Just as elected officers, appointed officers are subject to oversight, disciplinary action, and termination and removal from their municipal position. At the City, for example, the comptroller and the chief financial

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<sup>2</sup> See Release, p. 41.

officer, both of which are appointed, are subject to a number of local rules, not to mention state and federal laws, which make them directly accountable to the City.<sup>3</sup>

Through this oversight by the municipal entity, appointed officers are even more accountable to the taxpayers than regular municipal employees. This is because appointed officers, such as the City's comptroller, are not only accountable for their own actions, but those of employees under their control. For example, the Municipal Code of Chicago (the "Municipal Code") provides that:

The comptroller, the treasurer, and the director of revenue shall be held responsible for the fidelity of any person appointed by each such officer, respectively, who shall have the custody of public money, and the appointing officer may in his discretion remove any such employee for cause.<sup>4</sup>

As evidenced by this excerpt from the Municipal Code, at the City, the comptroller, although appointed by the mayor (with the consent and advice of the City Council), is held accountable in more ways and to a greater extent than most municipal employees. Notably, for purposes of this provision of the Municipal Code, the City's comptroller and the City's treasurer are treated exactly the same, even though the treasurer is elected, and the comptroller is appointed.

We request that the Commission clarify that the exemption for "a municipal entity or an employee of a municipal entity" encompasses both the elected and appointed officers of a municipal entity.

## **2. The Municipal Entity as a Conduit Issuer**

In the conduit bond context, a municipal entity acts as a conduit for a private entity that borrows money through the issuance of bonds by the municipal entity. In this context, the municipal entity, although not the ultimate obligor, still assumes certain legal responsibilities under various federal tax laws and otherwise. As a result, the municipal entity, through its officers and employees, may develop and implement policies in connection with the issuance of its conduit bonds. Municipal officers and employees work with the conduit borrowers to ensure that these policies are understood and followed.

For example, the City has a policy of requiring conduit borrowers to bid out their guaranteed investment contracts and interest rate derivatives. This is done primarily to help ensure compliance with applicable arbitrage regulations.

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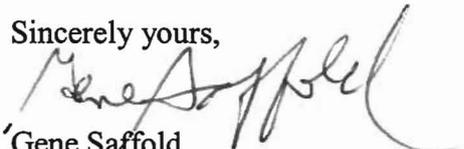
<sup>3</sup> At the local level, such appointed officers are subject to oversight by several municipal offices, including but not limited to, the City's Mayor, the City's Office of Inspector General, and the City's Office of Compliance. See Municipal Code of Chicago at 2-4-010 *et seq.*, 2-56-010 *et seq.*, and 2-26-020 *et seq.*

<sup>4</sup> See Municipal Code of Chicago at 2-32-090.

As these activities are wholly within the scope of a municipal entity acting as a bond issuer, and the officers and employees of the municipal entity are dealing with the conduit borrower to further the policies of the municipal entity, we believe that the exemption for municipal entities and the officers and employees of municipal entities should continue to apply in the context of conduit bond transactions.

We request that the Commission clarify that in the context of conduit bond transactions, the activities of a municipal entity and the officers and employees of the municipal entity continue to remain exempt from the definition of municipal advisor under Section 15B of the Exchange Act to the extent the municipal entity and the officers and employees of the municipal entity are implementing municipal policies in connection with those transactions.

Sincerely yours,



Gene Saffold  
Chief Financial Officer