

**THE INDUSTRIAL DEVELOPMENT AUTHORITY
OF THE CITY OF PHOENIX, ARIZONA**

February 18, 2011

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

RE: File Number S7-45-10
(SEC Proposed Rules regarding Registration of Municipal Advisors)

Dear Ms. Murphy:

I am submitting this letter on behalf of the Industrial Development Authority of the City of Phoenix, Arizona (the "Authority") as its Executive Director in response to the request by the U.S. Securities and Exchange Commission (the "Commission") for comments on Release No. 34-63576 (the "Release"), and proposed rules which would implement Section 15B of the Securities Exchange Act of 1934, as amended (the "Proposed Rules").

INTRODUCTION

The Authority applauds the efforts of the Commission to ensure that persons who provide advice to municipal entities with respect to municipal financial products or the issuance of municipal securities are adequately registered and regulated. However, as described in this letter, the Proposed Rules create significant practical concerns for the Authority. The members of our board of directors are appointed by the Phoenix City Council so they are not elected or *ex officio* members as described in the Proposed Rules. Thus, to the extent that the members of our board of directors provide advice to the Authority with respect to municipal financial products or the issuance of municipal securities, they will be deemed to be municipal advisors and be required to register with the Commission and the Municipal Securities Rulemaking Board.

BACKGROUND

The Authority is an industrial development authority formed pursuant to Arizona law (see A.R.S. § 35-701, et. seq. (the "Enabling Statute")). The City Council of the City of Phoenix (the "City Council") approved the formation of the Authority, and in accordance with the Enabling Statute, the Authority was formed as an Arizona non-profit corporation. The Authority is a political subdivision of the State of Arizona and has the governmental powers proscribed by the Enabling Statute. These powers include the ability to issue municipal securities and to invest the proceeds for the purpose of carrying out its powers. In addition, the Authority has the powers, duties and obligations provided in the Arizona statute governing non-profit corporations.

The Authority is managed by and its powers are vested in a board of directors (the "Board"). The members of the Board are elected by the City Council and serve at the pleasure of the City Council. The Enabling Statute prohibits officers or employees of the City of Phoenix from serving on the Board. The members of the Board are subject to Arizona law with respect to the disclosure of conflicts of interest. All meetings of the Board at which a quorum is present are subject to Arizona's open meeting law. The law requires that all meetings be open to the public so all business conducted is subject to public review and scrutiny. Finally, the members of the Board are subject to fiduciary duty, conflicts of interest and other corporate director obligations imposed by Arizona's non-profit corporation law.

Currently there are nine members of the Board that serve in staggered terms of six years each. The practice of the City Council has been to elect experienced local business leaders and professionals to the Board because these individuals, through their service on the Board, provide invaluable feedback regarding community issues. In addition, because the members of the Board serve without compensation, we believe they view their service as a way to give back to the community in the same way that many elected officials view their service.

COMMENTS

As an initial matter, we do not believe that official Board action to approve the issuance of municipal securities and other actions of the Authority constitute "advice" as that term is used in Section 15B of the Securities Exchange Act of 1934, as amended. However, we recognize a fine line between "advice" and the kind of discussion and analysis that is encouraged of Board members. Thus, the Proposed Rules in their current form are likely to have the adverse affect of chilling thoughtful discussion and analysis by the Board members regarding the issues before them. Discussion, questions and analysis from Board members regarding the structure of a bond financing or Authority investments are, apart from being required to exercise appropriate fiduciary duties, crucial to the decision making process and should be encouraged. In addition, because Board meetings are open to the public this kind of discussion is critical to transparency and public accountability. We respectfully submit that for these reasons alone, our Board members as well as all members of a governing body of a similar municipal entity, whether appointed or elected, should be excluded from the definition of a "municipal advisor." In addition, as discussed below, we believe there are other compelling reasons to exclude our Board members and all members of the governing bodies of other municipal entities from the definition of a "municipal advisor."

In the Release, the Commission states that:

"...the exclusion from the definition of a "municipal advisor" for "employees of a municipal entity" should include any person serving as an elected member of the governing body of the municipal entity to the extent that person is acting within the scope of his or her role as an elected member of the governing body of the municipal entity. "Employees of a municipal entity" should also include appointed members of a governing body to the extent such appointed members are ex officio members of the governing body by virtue of holding an elective office. 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."

The rationale for this distinction is that employees of a municipal entity and elected and ex officio members of its governing body are directly accountable for their performance to the municipal entity and/or the citizens of the municipal entity. Appointed members are not accountable. The Commission, in its request for comments, has asked whether the distinction between elected members of the governing body of a municipal entity and appointed members that are not ex officio members of the governing body by virtue of holding an elective office is appropriate. We believe that this distinction is inappropriate for the following reasons:

First, if Board members are not specifically excluded from the definition of a “municipal advisor” many of our current Board members would likely resign. In addition, it would be extremely difficult for the City Council to find replacements and at the same time maintain the independence and diversity of our current Board. It is hard to contemplate why a citizen would submit to the burden of registration and expanded civil and criminal liability solely to accept appointment as a member of our Board. In fact, the only citizens who would likely accept appointment to our Board would be individuals who, by virtue of their profession, are familiar with similar Commission registration requirements and who (or whose employers) are able to shoulder the financial burden of registration. While these individuals are valuable members of our community, we fear that in many instances, they would have significant conflicts of interest with respect to the issuance of municipal securities and Authority investments—the same conflicts of interest that the Commission seeks to minimize or eliminate by requiring registration.

Second, members of our Board are no less accountable to the public than elected and ex officio members of the governing bodies of other municipal entities. As discussed previously, our Board members serve at the pleasure of the City Council and are accountable to the City Council for their actions and, like elected officials, are subject to the same conflict of interest provisions of the Arizona statutes. In addition because of Arizona’s open meeting laws, our Board members are accountable to the public. Finally, our Board members are required by Arizona non-profit corporation law to exercise fiduciary duties in the exercise of their duties.

Third, voluntary service on boards and commissions, including our Board, is a key component of civic duty and state and local governance. In fact, in our State there are hundreds of appointed boards and commissions, including boards of charter schools, boards of other industrial development authorities and irrigation and water conversation boards, just to name a few. Because of the broad and sweeping nature of terms like “municipal entity”, “obligated person” and “municipal financial products” contained in Section 15B of the Securities Exchange Act of 1934, as amended and the Proposed Rules, most, if not all, of the members of these boards and commissions may be subject to the Commission’s onerous registration requirements. These registration requirements will have a crippling effect on the operation of state and local governments and will discourage the kind of public service and civic responsibility that should be encouraged of all citizens. These costs far outweigh the benefit, if any, of addressing the direct accountability issue (which we believe is not an issue), by mandating registration.

CONCLUSION

The Authority respectfully requests and recommends that the Commission revise the Proposed Rules to exclude our Board members and other appointed volunteer members of municipal boards and commissions from the definition of a “municipal advisor.” In the alternative, if the Commission is not willing to make this revision, then we respectfully request that the Commission provide clear guidance on what constitutes “advice” for purposes of Section 15B of the Securities Exchange Act of 1934, as amended and the Proposed Rules, specifically that “advice” does not include official board and commission action to

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approve the issuance of municipal securities and to approve other matters relating to municipal financial products.

Sincerely,



Mr. Juan Salgado
Executive Director

c: Board of Directors, The Industrial Development Authority
of the City of Phoenix, Arizona