



STATE OF WASHINGTON
STATE INVESTMENT BOARD

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February 18, 2011

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

Re: **SEC Release No. 34-63576; File No. S7-45-10**

Dear Ms. Murphy:

I am the executive director of the Washington State Investment Board (WSIB) and write in response to the invitation in this Release. Specifically, I wish to express the WSIB's concern about the scope of the "municipal entity" and "municipal employee" exclusions in the proposed municipal advisor rule. See SEC Release No. 34-63576, pp. 40-41, 51.

By way of background, the WSIB invests approximately \$76.7 billion for 39 public employee benefit plans and other public trust funds.¹ Its governing body consists of 10 voting members and five non-voting members. RCW 43.33A.020.² The voting Board members are trustees of the investment funds and are responsible for making the investment decisions. RCW 43.33A.030. In making those decisions, they are advised by the five non-voting Board members, the WSIB's professional investment staff, and investment advisors under contract to the WSIB. This governance structure has been in place since 1981 when the WSIB was created.

Our experience with a diverse, volunteer investment Board provides us with a useful perspective for the purpose of this letter. The voting members include three *ex officio* members: the State Treasurer and the appointed heads of the departments of Labor and Industries and Retirement Systems; two legislators who are appointed by the leadership of the state House and Senate; and, five representatives of the state's retirement plans who are appointed by various elected officials.

The investment expertise of the voting members varies widely so to provide additional knowledge in that area our statute allows the voting members to select five non-voting members who are "considered experienced and qualified in the field of investments." Typically, the non-voting members are successful investors who view their board participation as a civic duty or an

¹ It appears to us that as a state agency investor of public pension and trust funds, the WSIB would meet the definition of "municipal entity" in the proposed rule.

² Statutes governing the WSIB are in RCW 43.33A (<http://apps.leg.wa.gov/rcw/default.aspx?cite=43.33A>).

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opportunity to “give back” to the community. Board members are essentially volunteers. Each is paid \$50 per meeting and receives no other compensation for their time. All Board members are fiduciaries with respect to the funds under their control and are subject to various state laws and WSIB policies designed to ensure ethical conduct and prohibit conflicts of interest.³

Turning to the proposed rule, we find the discussion in the Release of the “municipal entity” and “employee of a municipal entity” exclusions troubling for several reasons.

First, we believe that in the context of making investment decisions, our voting Board members do not “provide advice” to the WSIB as that term is used in 15 U.S.C. § 78o-4. Government agencies act through their governing bodies and executive staff. Our voting members comprise the WSIB’s governing body, have the legal authority to make investment decisions, and do, in fact, make those decisions for the WSIB. Although the Board members receive investment advice from various sources and discuss issues, in no meaningful sense do the voting members “provide advice” to the WSIB or any governmental entity. Thus it is our view that the Commission should make clear in the final rule that all members of a municipal entity’s governing body are considered part of the municipal entity for the purposes of municipal advisor registration or that such people do not “provide advice” to a municipal entity in the ordinary course of investing the entity’s funds.

Second, if this issue cannot be addressed as we suggest above, the distinction that the Commission has drawn between elected governing body members and appointed members (pp. 40-41) is arbitrary and illogical. The stated reason for the distinction is that elected *ex officio* members of the entity’s governing body and its employees are perceived as more “accountable” to the electorate than appointed members of the governing body. Our governance structure and experience leads us to believe that this reasoning is flawed.

As previously noted, the WSIB has three *ex officio* members. One of these, the State Treasurer, is elected on a state-wide ballot. The other two – the directors of the Department of Retirement Systems and the Department of Labor and Industries – are cabinet agency heads appointed by the Governor, who, in turn, is elected on a state-wide ballot. The two agency directors are on the Board because their agencies administer large funds invested by the WSIB. These two *ex officio* members are directly responsible to the Governor, who is directly accountable to the citizens. The members are also responsible to the state Legislature, which monitors the WSIB’s investment performance. Interposing the Governor between the citizenry and these *ex officio* members has not apparently made them any less accountable to the citizens of the state for their actions as Board members.

³ We limit our comments on the concept of political accountability to address the specific concerns and reasoning of the commission. WSIB members are also accountable under the state law. They are subject to state ethics laws governing state officers and required to disclose their financial holdings. *See* RCW 42.52 (<http://apps.leg.wa.gov/rcw/default.aspx?cite=42.52>). They are also subject to a detailed conflicts of interest policy. *See* WSIB Policy No. 2.00.100 (http://www.sib.wa.gov/information/pdfs/policies/2_00_100.pdf).

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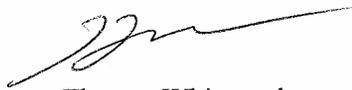
Additionally, the WSIB's other seven voting members are appointed by elected officials. Two are elected legislators appointed by legislative leadership. The remaining five are appointed by the Governor or the Superintendent of Public Instruction (also a statewide elected office) and selected from groups interested in the investment of various retirement funds. Each of these appointments is confirmed by the state Senate. Each of these appointed members is directly accountable to the elected state official. Again, all of our Board members are directly or indirectly accountable to the citizens and their constituencies and we have noticed no difference in political accountability attributable to the manner in which the members reached the Board.

Similarly, the Commission's view that appointed members of an entity's governing body are less accountable than the entity's employees is inconsistent with our governance structure and experience. The Board members are the public face of the WSIB. State law requires that their meetings be held and all decisions made in public.⁴ Moreover, our Board hires its executive director and other employees and the legal authority flows through the Board to the staff. Given this structure, it is difficult to understand how one of our Board members could be viewed as less accountable to the public than an employee who reports to the Board. In any event, the Commission's perception that there is a difference in accountability between elected Board members and employees on one hand and appointed Board members on the other is inaccurate based on our experience.

Based on the discussion of anticipated paperwork associated with the proposed rule, our Board members do not appear to be the type of people targeted for regulation. It would be unfortunate if these proposed rules are written to require volunteer investment board members, such as ours, to register as municipal advisors. The prospect of additional paperwork, federal oversight, and potential liability will discourage candidates and it will become much more difficult, if not impossible, to locate qualified people to fill the appointed positions. That would be regrettable because our existing governance structure has well served the state and our beneficiaries and federal regulation would seem to offer little additional protection to the public.

Thank you for the opportunity to comment.

Sincerely,



Theresa Whitmarsh
Executive Director

⁴ RCW 42.30 (<http://apps.leg.wa.gov/rcw/default.aspx?cite=42.30>).