

LAW OFFICES

**BOYLE, PECHARICH, CLINE,  
WHITTINGTON & STALLINGS, P.L.L.C.**

ROBERT S. PECHARICH  
BARRY B. CLINE\*  
WILLIAM R. WHITTINGTON  
JOHN C. STALLINGS  
DONALD C. ZAVALA, JR  
G. EUGENE NEIL  
JONATHAN A. MILLET

125 NORTH GRANITE STREET  
PRESCOTT ARIZONA 86301-3001  
TELEPHONE: (928) 445-0122  
FAX NO.: (928) 445-8021

JAMES P. BOYLE, JR. (1913 - 2003)  
JOHN S. REGAN (1952 - 2002)

\*CERTIFIED TRUST AND  
ESTATE LAW SPECIALIST,  
ARIZONA BOARD OF LEGAL  
SPECIALIZATION

Email: [bcline@bpcws.com](mailto:bcline@bpcws.com)

February 18, 2011

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

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

Re: Comments to Proposed Rule Regarding Registration of  
Municipal Advisors, SEC Release No. 34-63576; File No. S7-45-10

Dear Ms. Murphy:

I am writing on behalf of The Industrial Development Authority of the County of Yavapai (hereinafter "Authority") in response to the above-referenced Release (the "Release"), which invites comments on rules proposed ("Proposed Rules") by the Securities and Exchange Commission (the "SEC") that require "municipal advisors" (as defined in the Proposed Rules) to register with the SEC.

As discussed below, the Authority has significant concerns with several aspects of the Proposed Rules.

The Authority is a non-profit corporation, designated as a political subdivision of the State of Arizona. The Authority was created pursuant to The Industrial Development Financing Act, Title 35, Chapter 5, Articles 1-5, Arizona Revised Statutes (the "Act"). Its primary purpose is to issue private activity bonds and other debt instruments to provide funds for the financing or refinancing of the costs of the acquisition, construction, improvement or equipping of projects, as defined in the Act.

The Authority is governed by a Board of Directors (the "Board") who are appointed by the Board of Supervisors of Yavapai County, Arizona. The Authority does not employ any staff to carry out its functions and contracts with independent third parties to do so. The Authority does not have any substantial assets or properties. The members of the Board serve without compensation, except for reimbursement of out-of-pocket expenses.

The appointed members of the Authority's Board have diverse backgrounds. Historically, the Board has included men and women from various walks of life. Once appointed, a Board member is required to uphold the Constitution and laws of the State of Arizona. These laws include conflicts of interest and ethics laws governing members of the Board. As a public official, each Board member owes a fiduciary duty to the Authority and must comply with Arizona laws concerning conflicts of interest, gifts and public meetings.

In order to achieve its purposes, the Authority is empowered, among other things, to issue bonds and other forms of indebtedness, as determined by the Board.

During the Board's meetings, all of which are required to be open to the public under Arizona's open meeting laws, each Board member is encouraged to participate in the discussion regarding the issuance of bonds or other financial-related agreements, or the investment strategy of the Authority. During board meetings, Board members customarily ask questions of representatives of the proposed borrower, make comments, express their opinions, discuss proposed actions and vote on whether or not to authorize issuance of bonds and other matters before the Board. These are all part of the customary but in depth deliberative process of the Authority's Board.

The SEC's Proposed Rules regarding the registration of municipal advisors excludes elected board members of a municipal entity from the definition of "municipal advisor", but *not appointed* board members. In light of the close similarity in duties and treatment of elected and appointed public officials under the laws of Arizona as described above and, we believe, under the laws of many other states, the Authority does not believe that different treatment of elected and appointed board members under the SEC's Proposed Rules is justified.

Therefore, the Authority requests the SEC to modify the Proposed Rules to *expressly exclude* from the definition of "municipal advisor" *all* members of the governing body of a municipal entity, whether elected or appointed.

The SEC's Proposed Rules do not include any definition of what constitutes "advice" or "providing advice." They also lack what we believe are essential elements in determining what is a "municipal advisor." These missing elements are that for an individual to be considered a "municipal advisor": (1) that individual must be acting in some professional capacity and holding him or herself out to the public as having special expertise in the area on which he or she is providing advice; and (2) there must be some reasonable basis for the municipal entity to expect that the individual is acting in a professional capacity with the knowledge, experience and competence to provide the advice given. Omitting these key elements from the Proposed Rules' definition of "municipal advisor" will make *anyone* who offers an opinion or view ("advice") on financing matters to a municipal entity subject

to registration with the SEC, including not only appointed board members but also members of the general public who file written comments or make oral comments at Board meetings.

If the SEC fails to define “advice” in its final Rule and leaves the meaning of what constitutes “advice” up to the interpretation of thousands of members of governing bodies of municipal issuers and hundreds of municipal issuer’s legal counsel, this will result in needless uncertainty, varying interpretations and significant burdens for municipal issuers and their appointed board members.

The Authority therefore further requests that the SEC provide specific guidance in its final Rule concerning what constitutes “providing advice” by adding a requirement that the “advice” must be provided in a professional capacity by a person holding him or herself out to have special knowledge and expertise in municipal financial matters where there is an expectation and a likelihood that the advice will be relied upon by the municipal entity in making financial decisions.

The SEC should also provide a clear and unconditional statement in the final Rules that the statements and other activities of board members (whether elected or appointed) of municipal entities made or taken in the course of performing their duties as a board member does *not* constitute “providing advice” as a “municipal advisor” which requires prior registration by the board member with the SEC.

Without such modifications and guidance, the SEC’s Proposed Rules will have significant adverse effects on our Board and the efforts of our Board members to make prudent financial decisions for the Authority. As written, the Proposed Rules will have a material and negative impact on the customary in depth deliberative process of our Board by inhibiting its members from expressing their views on matters relating to municipal bond issues and municipal financial products out of fear of subjecting themselves to the potential risk and expense of an SEC investigation over whether their comments constituted “advice” requiring prior registration with the SEC as a “municipal advisor”. The Proposed Rules will also make it more difficult for the Board of Supervisors of Yavapai County to find individuals with financial knowledge and backgrounds and other helpful experience who are willing to serve on our Board if doing so will require them to register with the SEC as a “municipal advisor.” The Proposed Rules will deprive the Authority – and the citizens its serves --- of the discussion and deliberation by experienced Board members, which are necessary for the Board to make prudent financial decisions.

The Dodd-Frank Act provision that led to the SEC’s Proposed Rules was intended to protect municipal entities. The Authority strongly believes that municipal entities, such as the Authority, do not need to be protected from their own Board members, whether appointed or elected. In the case of the Authority, and we believe this is the case for most governing bodies of municipal issuers, its governing Board is the legislative or policy

decision maker for the Authority. The members the Authority's governing Board are the *recipients* of the financial advice, not the *providers* of such advice. Moreover, nothing in the Dodd-Frank Act indicates Congress intended the SEC to require registration by appointed members of governing boards of municipal entities before these members could engage in discussions and deliberations with their Board colleagues and perform the duties for which they were appointed.

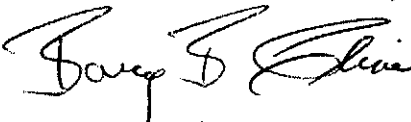
To summarize, for the foregoing reasons, the Authority respectfully requests that the SEC specifically modify its Proposed Rules as follows:

1. Exclude from the definition of "municipal advisor" *all* board members of a municipal entity, whether elected or appointed.
2. Provide clear and unambiguous guidance concerning what it means to "provide advice" by requiring that the advice must be provided in a professional capacity by a person holding himself or herself out to the municipal issuer as having special knowledge and expertise in municipal financial matters and where there is reasonable expectation the advice will be relied upon by a municipal issuer in making decisions concerning issuance of bonds.
3. Provide clear and unambiguous guidance that the statements and activities of members of governing bodies of municipal entities, which are made or taken in the course of performing their duties as board members, do *not* constitute "providing advice" to a municipal entity requiring prior registration by the board member with the SEC.

If you have any questions concerning these comments or desire any additional information regarding the Authority, please contact the undersigned.

Respectfully submitted,

BOYLE, PECHARICH, CLINE,  
WHITTINGTON & STALLINGS, P.L.L.C.

By:   
Barry B. Cline

Ms. Elizabeth M. Murphy, Secretary  
February 18, 2010  
Page 5

cc: Mrs. Mary E. Baker, Director  
Mrs. Connie Sue Clas, Director  
Mr. Ethan J. Edwards, Director  
Mr. Michael R. Flannery, Director  
Mr. William E. Jackson, Jr., Director  
Mr. Frederick E. Lindquist, Director  
Mr. Norman A. Perry, Director  
Ms. Mary C. Taylor, Director

Board of Supervisors of Yavapai County, Arizona

The Honorable John McCain

The Honorable Jon Kyle

The Honorable Paul A. Gosar

The Honorable Jeff Flake