



NATIONAL ASSOCIATION OF STATE RETIREMENT ADMINISTRATORS  
NATIONAL COUNCIL ON TEACHER RETIREMENT

February 22, 2011

**VIA ELECTRONIC MAIL**

Elizabeth M. Murphy, Secretary  
Securities and Exchange Commission  
100 F Street, NE  
Washington, D.C. 20549

Re: SEC File Number S7-45-10

Dear Madame Secretary:

Please accept the following comments from the National Association of State Retirement Administrators (NASRA) and the National Council on Teacher Retirement (NCTR) in connection with the U.S. Securities and Exchange Commission (hereinafter referred to as “the Commission”) Release No. 34-63576, which proposes the adoption of rules 15Ba1-1 to 15Ba1-7 [17 CFR 240.15Ba1-1 to 240.15Ba1-7] (hereinafter referred to as the “Proposed Rules”) pursuant to provisions of the Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. No. 111-203, 124 Stat. 1376 (hereinafter referred to as the “Dodd-Frank Act”). Specifically, our comments are in response to the second full bulleted item on page 51 of said Release.

NASRA’s members are the directors of the nation's state, territorial, and largest statewide public retirement systems. NCTR represents state, territorial and local pension systems to which teachers belong. Together, our members hold more than \$2 trillion in assets and provide pension and other benefits to more than two-thirds of all state and local government employees.

NASRA and NCTR urge the Commission not to adopt its proposal to treat appointed members of the governing body of a municipal entity (other than elected officials serving on that body in an ex officio capacity) as excluded from the definition of “municipal entity” for the purposes of the definition of “municipal advisor” in 15 U.S.C. §78o-4(e)(4)(A). Specifically, we believe that all trustees of state and local government retirement systems (whether elected or appointed, and hereinafter referred to as “public pension trustees”), as members of a governing body of a plan, program, or pool of assets sponsored or established by the State, political subdivision, or municipal corporate instrumentality or any agency, authority, or instrumentality thereof, are, per se, a part of that municipal entity, and, as such, are therefore expressly excluded from the definition of a “municipal advisor.”

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### **Public Pension Trustees are not Municipal Advisers**

At the outset, we want to underscore that the role of public pension trustees is to oversee the assets and administration of their retirement systems. Accordingly, they seek investment advisors, and make decisions as to their hiring. They then obtain investment advice from these registered investment advisors, and subsequently consider and adopt investment guidelines and policies by which assets are invested.

Specific investment decisions are then generally made by money managers; public pension trustees do not provide investment advice to the money managers they hire. Public pension trustees do not issue municipal securities. They do not provide risk management, asset allocation, financial planning or cash management services to other municipal entities, nor do they help state and local governments find and evaluate other advisors.

Finally, public pension trustees do not provide advice to other municipal entities concerning investment strategies, or to their fellow trustees. Nor do public pension trustees provide investment advice to participants in self-directed accounts.

Therefore, as a threshold matter, public pension trustees, in their capacity as members of the governing body of a public pension plan, are not, by definition, “municipal advisors.”

### **Public Pension Trustees are Part of the Public Pension Plan, not Advisors to it**

Furthermore, as members of the governing body of a state or local retirement system, public pension trustees are part and parcel of the plan that they govern. Indeed, the public pension plan, as with any other municipal entity, must act through its governing body, which of necessity consists of individuals. In addition, public pension plan boards of trustees act collectively, and no individual member of such governing body, insofar as s/he is a member, has any power or authority to act apart from the collective workings of that governing body. Finally, public pension trustees generally have equal authority to participate in the actions and decisions of their boards (governing bodies) and typically no individual trustee can direct the actions of another trustee.

Accordingly, the governing body of a municipal entity such as a public pension plan is, and must be, viewed as indivisible from that entity for the purposes of these Proposed Rules, and therefore explicitly exempt from the definition of “municipal advisor” in the Dodd-Frank Act. To hold otherwise would mean that any third party who provides advice within the meaning of the Dodd-Frank Act to the governing body of a municipal entity with respect to bonds, swaps, or any other specified municipal financial products, would NOT be required to register as a municipal advisor with the SEC. Such third party would also NOT be subject to the other municipal advisor provisions of the Dodd-Frank Act, such as the imposition of a fiduciary duty to the municipal

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entity, since the Dodd-Frank Act 's prohibitions refer to soliciting or providing advice to a "municipal entity." For example, see 15 U.S.C. §78o-4(a)(1)(B) and 15 U.S.C. §78o-4(c)(1).

### **All Public Pension Trustees are Already Subject to Strict Accountability Standards**

Both state and Federal law contains numerous protections to ensure that all public pension trustees, whether elected or appointed, are directly accountable for their performance. State protections include:

- State open meetings laws
- State public records requirements
- State laws governing conflicts of interest and fiduciary responsibility
- Regulation by state agencies or legislative bodies that oversee retirement matters
- Provisions of the pension plans themselves

In addition, Federal law also contains important accountability standards that apply to all public pension trustees:

- The requirement that all activities must be for the "exclusive benefit" of participants and beneficiaries in the pension system
- The prohibited transaction rules against transactions with plan sponsors

Accordingly, public pension trustees are already held to strict accountability standards. Whether elected or appointed, they owe identical fiduciary duties to all of the membership and beneficiaries of the retirement system. Potentially imposing additional fiduciary standards on certain trustees could create confusion and conflicts that would not serve to improve public accountability. Creating burdensome and costly registration requirements would also serve to discourage service on public pension boards, which could diminish rather than enhance the quality of these governing bodies.

Therefore, NCTR and NASRA believe that the Commission should treat all governing bodies of municipal entities and all individuals elected or appointed to serve on their governing boards, as part of the "municipal entity" for the purposes of 15 U.S.C. §78o-4(e)(4)(A).

Respectfully submitted,



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National Association of State Retirement  
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