



CABINET FOR ECONOMIC DEVELOPMENT

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

Re: File Number S7-45-10

Dear Ms. Murphy:

Thank you for the opportunity to submit comments on behalf of the Kentucky Economic Development Finance Authority (the "Authority") regarding Proposed Rule 15Ba1-1 (the "Proposed Rule"). After carefully reviewing the Proposed Rule, the Authority respectfully requests that the Commission revise the definition of "municipal advisor" to exclude individuals who are appointed to boards or committees of governmental entities that issue bonds and other public securities.

The Authority is a public body corporate and politic, and an agency, instrumentality and political subdivision of the Commonwealth of Kentucky. Created by statute, the Authority exists to promote economic development within the Commonwealth by, in part, issuing bonds and other securities as a conduit issuer.

The Authority is governed by a seven member board. Six of the board members are appointed by the board of the Kentucky Economic Development Partnership, the entity which governs the Commonwealth's Cabinet for Economic Development. The six appointed board members are required by statute to be citizens of the Commonwealth and must have expertise and experience in the financial industry. The appointed board members serve in staggered three-year terms and may be reappointed to additional terms. Each member is entitled to \$100 compensation for each regular board meeting attended and to reimbursement for necessary expenses incurred in the performance of his or her duties. The Secretary of the Commonwealth's Finance and Administration Cabinet fills the seventh seat on the board in an *ex officio* capacity.

As currently drafted, the Proposed Rule would subject the Authority's six appointed board members to registration and regulation, but would exempt its *ex officio* board member from both. The Authority believes that its appointed board members should also be exempt from the Proposed Rule's definition of "municipal advisor."

There are several reasons for the Authority's position. First, the Authority's appointed board members are directly accountable to the citizens they serve. The Commission's position that appointed board members lack accountability lacks factual substantiation. For example, Kentucky law requires the Authority to comply with the Commonwealth's open meeting laws. Members of the press regularly attend the Authority's board meetings. In addition, the Authority's appointed board members are leaders in their communities, and as such, are regularly engaged in forums where citizens have the opportunities to voice concerns regarding the Authority's activities.

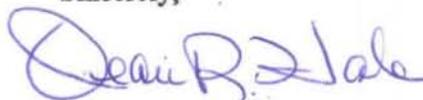
Second, it is practically impossible to distinguish between the Authority as a governmental entity and the individuals who serve on its board. The actions of the board are the actions of the Authority. Despite that, the Commission seeks to classify the appointed board members as municipal advisors. This incongruous approach has the effect of deeming board members to be providing investment advice to themselves when considering applications for conduit financings.

Third, it is our expectation that the Authority's appointed board members, who are all volunteers, will be unwilling to accept the additional and unwarranted liability and exposure that would result if they are required to register under the Proposed Rule. The Proposed Rule may very well have the consequence of causing the Authority to cease participating in conduit financings, thus causing the citizens of the Commonwealth to lose a vital tool for economic development. In the alternative, the appointed members may resign. If that should occur, the Authority believes it would become difficult, if not impossible, to find replacement board members.

In response to these concerns, the Commission may argue that the Authority's board members are municipal advisors only to the extent they provide financial advice. The problem with this approach is that the definition of financial advice under the Proposed Rule is so broad that it potentially includes the Authority's adoption of a resolution authorizing a bond issuance if at the related meeting board members ask questions regarding the "structure, timing [or] terms" of the bond issue. If the Proposed Rule is adopted, it will discourage rather than encourage discussion among board members. By creating the Authority with a multi-member governing body, the Kentucky legislature evidenced its belief that decisions regarding whether bonds should be issued for economic development purposes should be vested in a collaborative decision-making process involving a broad cross-section of civic leaders from across the state. In order for that process to be effective, board members need to consider and discuss proposed transactions freely, something that will not occur if board members believe such participation will cause them to be in violation of federal law.

For the foregoing reasons, the Authority urges the Commission to reconsider the approach taken towards appointed board members in the Proposed Rule. We recommend that the Commission provide for a specific exclusion from the definition of "municipal advisor" for all board members of municipal and other governmental entities.

Sincerely,



Jean R. Hale
Chairman