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

Re: SEC File Number S7-45-10
Release Number 34-63576
Comments on Proposed Rule regarding Registration of Municipal Advisors

Ladies and Gentlemen:

This letter is in response to the request for comments in Release Number 34-63576 (File Number S7-45-10)¹ related to proposed rules for the registration of municipal advisors (the "Proposed Rules"). We represent certain governmental entities, including public pension plans,² and urge that guidance be issued that:

1. Eliminates the distinction between elected and appointed board members of a municipal entity so that both elected and appointed board members are exempt from the definition of "municipal advisor"; and
2. If appointed board members are not fully exempt from the definition of "municipal advisor," provide clear rules for determining when a board member is "providing advice" for purposes of the registration requirement and clarify that normal activities of a board member are not considered to be "providing advice."

¹ 76 F.R. 824 (Jan. 6, 2011).

² The comments included in this letter are with respect to these particular entities. We point out that other state and local government entities, including other clients of our firm, may present characteristics important to this rulemaking not articulated in this letter.

Exemption for Appointed Board Members

Under the Proposed Rules, the Securities and Exchange Commission (the “Commission” or the “SEC”) would interpret the term “municipal advisor” as including non *ex officio* appointed members of a governing body and not exempt as “employees of a municipal entity.” Specifically, the Commission states: “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 ‘municipal advisor.’”³ The Commission offers a two-step explanation for its belief. First, it states “this interpretation is appropriate because employees and elected members are accountable to the municipal entity for their actions.”⁴ Second, it adds: “the Commission is concerned that appointed members, unlike elected officials and elected *ex officio* members, are not directly accountable for their performance to the citizens of the municipal entity.”⁵

We respectfully submit that in looking to accountability as the determinative distinction between elected and appointed board members, the Commission overlooks the many different ways appointed officials may be and are held accountable under state law. Board members are appointed under statutory frameworks by various state or local government officials exercising the executive, legislative or other powers provided under the state constitution. Such frameworks provide the means for removal as well as appointment, and identify the obligations and limitations that apply during tenure. For example, unlike financial advisors and third-party marketers who are indentified in the statute as “municipal advisors” required to register, appointed board members of public pension plans are typically subject to:

- Fiduciary duties⁶
- Ethics and conflicts of interest rules⁷
- Financial reporting requirements⁸
- Open meetings laws⁹
- Appointment subject to advice and consent of a legislative body¹⁰
- Removal from office for failure to meet certain duties¹¹

³ 76 F.R. at 834.

⁴ *Id.*

⁵ *Id.*

⁶ *See, e.g.*, Section 802.203 of Texas Government Code.

⁷ *See, e.g.*, Chapter 572, Subchapter C of Texas Government Code.

⁸ *See, e.g.*, Chapter 572, Subchapter B of Texas Government Code.

⁹ *See, e.g.*, Chapter 551 of Texas Government Code.

¹⁰ *See, e.g.*, Section 845.002 of Texas Government Code.

¹¹ *See, e.g.*, Section 572.058 of Texas Government Code.

Direct accountability for performance to citizens of the municipal entity is likewise a narrow indicia of accountability. Certainly its absence does not equate with an absence of accountability among appointed officials. Rather, appointment of individuals to authorities, boards, and commissions by elected officials is imbedded in the very concept of representative government as it exists at both federal and state levels.

Exempting elected board members and not exempting appointed board members from the definition of “municipal advisor” seems to ignore the laws and rules among the states that have long been in place for appointed board members and potentially undermines the authority of state and local government in this area. The Commission has identified nothing in Dodd-Frank or elsewhere which either authorizes or justifies the intrusion into the authority of a state to manage its own affairs that would result from the Commission’s proposed interpretation.

Further, requiring registration of appointed board members of public pension plans not only seems at odds with the fundamental intent of the statute – which is aimed at advisors from whom board members *receive* advice – but also imposes an unnecessary burden on these board members who typically serve without compensation.

We suggest the better approach for the Commission is to interpret any person elected to, appointed to, or employed by a municipal entity, governing body, or advisory board under state or local law as “employees of a municipal entity.” Such an interpretation would not impede any remedial purpose of Dodd-Frank identified by Congress or the Commission as necessary among appointed members of municipal entity boards.

Clarification of Rules if Registration is Required

Under Section 15B of the Securities Exchange Act of 1934, one of the statutory elements of the definition of “municipal advisor” is that an individual “provide advice” to a municipal entity. Typically, a board member of a public pension plan does not *provide* financial advice, but rather *receives* advice from investment professionals to carry out his or her fiduciary duty. However, because of the very broad definitions in the Proposed Rules relating to the definition of “municipal advisor,” it is unclear when the normal activities of a board member – for example, questions and discussion relating to advice *received* or regarding financial issues for which the board member has a fiduciary duty – might be construed as “providing advice,” thus triggering a requirement to register with the SEC.

As discussed above, the better approach is to exempt appointed board members from the definition of “municipal advisor” by interpreting “employees of a municipal entity” to include any person elected to, appointed to, or employed by a municipal entity, governing body, or advisory board under state or local law. If, however, appointed board members of a municipal entity are not fully exempt from the definition of “municipal advisor,” additional

guidance should be provided to clarify that the normal activities of a board member do not constitute “providing advice” for purposes of the municipal advisor registration requirement and to define the more unusual activities or circumstances that would give rise to “providing advice.”

Sincerely,

A handwritten signature in black ink that reads "Ronald F. Bradshaw". The signature is written in a cursive style with a large, stylized 'R' and 'B'.

Ronald F. Bradshaw