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February 18, 2011

VIA ELECTRONIC SUBMISSION

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

Re: File Number S7-45-10 - SEC proposal to require officers of governmental entities to register as "municipal advisors" – Release 34-63576

Dear Chairman Schapiro and Members of the Commission:

The League of Oregon Cities is a voluntary association whose members include all of Oregon's 242 cities. We write today on behalf of these cities to express concern regarding the definition of "municipal advisor" as proposed in Release 34-63576. Specifically, we write to urge the Commission to include within the exemption for municipal employees both elected and appointed municipal officials. As proposed, the Commission will include only elected officials within this exemption and require appointed officials to register and meet the other requirements set forth in the law for municipal advisors. This outcome will have a detrimental effect on many of Oregon's cities, and accordingly, respectfully we urge your reconsideration.

The Commission is currently taking the position that appointed officials differ from elected officials because appointed officials are not directly accountable for their performance to the citizens of a municipal entity. Specifically, in response to the question of whether appointed officials of the entity were intended to be included within the definition of "municipal employee" the proposal responds:

...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 a "municipal advisor."... 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...

"Getting it done for Oregon's cities!"

Municipal Advisors. 76 Fed. Reg. 834 January 6, 2011.

This conclusion misses the point. The law that these regulations implement was enacted to protect municipalities and their officials. It was meant to capture and regulate the activities of those individuals and entities that provide advice to the policy makers who have authority to act on behalf of a municipality. It is simply off base to suggest that the intended beneficiaries of the law somehow are municipal advisors themselves. The proposed regulations transform the policy makers who have authority to act on behalf of the municipality, the very ones who should be receiving advice, into advisors subject to the law. This result directly contradicts the intent of the law and would lead to results against the public interest. As such, the League believes that the Commission should not look at how an individual holds their position, i.e., elected or appointed, but whether they have legal authority to act on behalf of the municipality. Such a test would truly distinguish between those who are a part of the group the law seeks to protect from those that the law seeks to regulate.

An examination of how the proposed rules will affect cities in Oregon will help demonstrate how the Commission's current position misses the point. Cities throughout Oregon rely upon volunteer members of boards and commissions to help conduct many important duties. Many of these boards and commissions engage in official actions that would subject its members to the registration and other requirements of this law if they are not exempted as municipal employees. For example, each city in Oregon is required by state law to create a budget committee made up of private citizens and members of the city council. The budget committee is required to review a proposed city budget, hold public hearings, and make a recommendation to the city council regarding a final budget. City councils in Oregon may not approve a budget, or substantially amend an approved budget, without the approval of the budget committee. As part of this process, many cities in Oregon rely upon the budget committee to deliberate about and provide advice regarding the issuance of bonds on behalf of the city. Under the Commission's proposed rules, the citizen members of these budget committees would qualify as municipal advisors. This is true even though the advice provided regarding bonds is but one small part of the committee's duties. Hence, failure by the Commission to include these members within the definition of municipal employee will either preclude most cities from being able to recruit true citizen volunteers to serve on budget committees or force these committees to refrain from any and all discussions regarding bonds.

Likewise, many cities in Oregon have created urban renewal agencies, which use tax increment financing to encourage economic development in blighted areas throughout the city (these agencies are also known as redevelopment agencies in other jurisdictions). To acquire funds to accomplish these goals, these agencies issue bonds. The governing bodies of many of these agencies are comprised of appointed volunteers who are not elected officials. Again, failure by the Commission to include these appointed officials within the exemption for municipal employees would either force members of city councils to serve as the members of the urban renewal agency boards themselves or forgo the creation of such agencies as it will be nearly impossible to recruit individuals to serve on these governing boards if they are subject to the law's requirements.

In addition to the inability to recruit individuals to serve in these and other volunteer positions, the cost to cities in Oregon to comply with this regulation will be extensive. Any volunteer will expect that the city will pay the cost for registering the volunteer as a municipal advisor. In addition, the city will need to hire counsel with expertise in dealing with the SEC to be sure that these volunteers are properly trained and advised in the intricacies of securities law, without reducing the expense for counsel and various advisors who in the past have handled issues on behalf of the municipal entity. In a time of budget crisis at every level of government, such unfunded mandates are simply unnecessary, especially when the outcome will result in little benefit to cities in Oregon.

For these reasons, the League of Oregon Cities respectfully asks that the Commission include appointed officials within the statutory exclusion for municipal employees.

Thank you for your consideration and the opportunity to comment.

Sincerely,

A handwritten signature in black ink, appearing to read "Chad A. Jacobs". The signature is written in a cursive, flowing style.

Chad A. Jacobs
General Counsel
League of Oregon Cities

