



## COASTAL WATER AUTHORITY

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February 21, 2011

Ms. 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

Dear Ms. Murphy:

This letter is in response to the request for comments in Release Number 34-63576 (File Number S7-45-10) related to proposed rules for the registration of municipal advisors (the "Proposed Rules").

The Coastal Water Authority ("CWA") is a conservation and reclamation district and political subdivision in the State of Texas. CWA is governed by a board of directors composed of seven appointed members. We write to express our concern over the provisions of the release that apply to the registration of appointed board members as municipal advisors. Specifically, we urge the Securities and Exchange Commission (the "SEC" or the "Commission") to take the following action:

1. Issue guidance that 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;"
2. Issue a no action letter clarifying that appointed board members are not required to register as municipal advisors under the interim final temporary rule, Exchange Act Rule 15Ba2-6T; and
3. 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."

### **Exemption for Appointed Board Members**

Under the Proposed Rules, the Commission 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.’” 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.” 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.”

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. For example, the members of CWA’s board of directors are appointed pursuant to the authority granted in CWA’s enabling act, Article 8280-355, Vernon's Texas Civil Statutes, as amended. CWA’s seven board members serve staggered two-year terms. Four of the board members are appointed by the Mayor of the City of Houston with the consent and approval of the city council of the City of Houston and three of the board members are appointed by the Governor of the State of Texas. The board members may be replaced at any time.

Direct accountability for performance to citizens of the municipal entity is a narrow indicia of accountability. Certainly its absence does not equate with an absence of accountability among appointed officials. Rather, appointment of individuals to boards by elected officials is imbedded in the very concept of representative government as it exists at both federal and state levels. Appointed board members are generally community leaders and volunteers who are appointed because of their strong ties to the communities in which they serve. In addition to their direct accountability to the elected officials who appointed them, the relationships of these leaders with their communities ensure accountability.

Additionally, the members of CWA’s board of directors are already subject to a comprehensive system of laws designed to ensure transparency and accountability in the activities of local governmental officials. Examples of these laws include CWA’s enabling act, which establishes the powers and duties of its board members, and Chapters 171 and 176 of the Texas Local Government Code, which require the disclosure of potential conflicts of interest and the recusal of board members from board action in which they have a substantial interest. CWA, its board members, and their activities and records are also subject to Texas’ robust open government laws, including the Open Meetings Act, Chapter 551, Texas Government Code, and the Public Information Act, Chapter 552, Texas Government Code, which ensure that the activities of the board are open for public review and inspection.

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 political subdivisions 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 board members who serve for little or no compensation. There are real economic costs to requiring the registration of appointed board members. These include the annual registration fees and the costs of obtaining legal advice in order to ensure continuing compliance with the regulations. In addition to such economic costs, the lack of clear guidance from the Commission combined with the threat of civil and criminal penalties stand as further barriers before those who would otherwise be willing to serve their communities. CWA and the communities it serves rely upon the expertise and leadership of citizen volunteers. The burden imposed by the Commission’s current interpretation would have a chilling effect on citizens’ willingness to serve on the CWA board of directors.

We suggest the better approach for the Commission is to interpret any person elected or appointed to a municipal entity, governing body or advisory board under state or local law as embodying the “municipal entity,” as such entities act through their elected or appointed boards. In the alternative, we would suggest that the Commission interpret a 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.” Neither interpretation would impede any remedial purpose of Dodd-Frank identified by Congress or the Commission as necessary among appointed members of municipal entity boards.

### **Issuance of a No Action Letter**

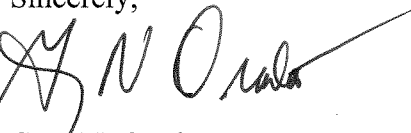
In the wake of SEC Release Number 34-63576, there has been significant confusion among members of the public as to whether, under the analysis presented in the Commission’s release, appointed board members would be required to register under the interim temporary final rule, which has been in effect since October 1, 2010. While we understand that the Commission has indicated in conversations with individual entities that such registration is not required, no official statement from the Commission has been forthcoming. We would urge the Commission to issue definitive public guidance that the interim final temporary rules do not require members of the boards of municipal entities to register as municipal advisors unless, for

some reason other than their service on their board, they meet the definition of municipal advisor. Without such clear guidance accessible to all, the direct, unqualified language used by the Commission in its proposing release – “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’” – will continue to cast a cloud over board meetings and appointed board member participation, impeding the functioning of local governments and creating unnecessary costs as governments struggle to conduct their affairs and avoid potential violations of law.

### **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 local governmental entity does not provide financial advice, but rather receives advice on municipal financial products and the issuance of municipal securities from investment professionals in carrying out his or her statutory duties. 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 or statutory duty – might be construed as “providing advice,” thus triggering a requirement to register with the Commission and the MSRB.

As discussed above, the better approach is to exempt appointed board members from the definition of “municipal advisor” by interpreting the “municipal entity” or “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,  
  
Gary N. Oradat, P.E.  
Executive Director  
Coastal Water Authority