



INDIANAPOLIS LOCAL PUBLIC IMPROVEMENT BOND BANK

February 22, 2011

Gregory A. Ballard
Mayor

Deron S. Kintner
*Executive Director/
General Counsel*

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

Board

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Re: Comments of the Executive Director of The Indianapolis Local Public Improvement Bond Bank regarding Securities and Exchange Commission Release No. 34-63576, File No. S7-45-10 Registration of Municipal Advisors

Dear Ms. Murphy:

I, Deron S. Kintner, Executive Director of The Indianapolis Local Public Improvement Bond Bank (the "Bond Bank"), am submitting this letter on behalf of the Bond Bank in response to the Securities and Exchange Commission ("SEC" or "Commission") Release No. 34-63576, dated December 20, 2010 (the "Release"). The Release requests comments on Rules 15Ba1-1 through 15Ba1-7 (collectively, the "Proposed Rules") proposed to be issued by the Commission pursuant to Section 975 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the "Act") to implement permanent requirements for the registration of municipal advisors with the Commission and to exempt certain persons and activities from such registration.

I acknowledge the difficulties experienced by all parties to the world's financial markets in recent years and appreciate the difficult task the Commission faced in preparing rules and regulations to implement the Act. However, I believe that certain provisions of the Proposed Rules will unduly hinder municipal entities, without providing additional benefits.

The provisions of the Act were intended to provide additional protection, not only to investors in the municipal debt markets, but also to the municipal entities themselves (and their constituents, citizens and taxpayers) relative to the issuance of municipal debt and the investment of public funds. We believe the Act intends to provide for a regulatory framework for those persons and entities who are in the business of advising municipal entities. We also believe that the Act was not intended to regulate non-commercial interactions with a municipal entity, and most certainly, not intended to limit the ability of individuals to interact with, or to provide service to, their local governments by contributing their time, talents and expertise.

Further, although we realize that the consequences of failing to follow the SEC's regulatory scheme have not yet been fully detailed, we believe that, since the Act is intended to provide protections for municipal entities in their debt and investment capacities, it should not be construed or applied to impose material burdens on municipal entities, nor to open the door for liability to municipal entities for dealings with unregistered advisors.

I am concerned that the broad definition of "municipal advisors" contained in the Proposed Rules will serve to impair the willingness of citizens to serve on governmental boards, commissions, authorities etc., including the Bond Bank, and lessen the effectiveness, creativity and efficiency of governmental entities by limiting access to information. The comments below will address more specific concerns with the Proposed Rules.

Overview of the Bond Bank

The Bond Bank is a separate body corporate and politic established pursuant to Indiana law to develop infrastructure, promote education and tourism and assist with economic development by buying and selling securities of entities such as the Waterworks District of the City of Indianapolis, the Indianapolis Public Transportation Corporation (Indygo), the Health and Hospital Corporation of Marion County, the Indianapolis Airport Authority, and others (each, a "Qualified Entity"). The Board of Directors of the Bond Bank (the "Board") is comprised of five members appointed by the Mayor of the City of Indianapolis (the "City"). Board members are uncompensated, but are entitled to certain reimbursements for expenses incurred. The Board appoints an Executive Director to manage and direct the affairs, activities and employees of the Bond Bank.

The purposes of the Bond Bank include rendering services to Qualified Entities in connection with a public or private sale of its securities, including advisory and other services, to fix the terms and conditions of the purchase of securities from the Qualified Entity and to enter into agreements with Qualified Entities relating to the purchase of the entity's securities. The Bond Bank funds the purchase of the Qualified Entity's securities by publicly issuing bonds of the Bond Bank that are payable from payments made to the Bond Bank by the Qualified Entity on its underlying bonds. Indeed, the Bond Bank was created to serve as advisor and facilitator to the Qualified Entities with whom it works, to make it more efficient for local municipal entities to access the financial markets and to save municipal resources by providing economies of scale. The Bond Bank is frequently in the municipal market and can provide the benefit of its experience to the Qualified Entities, who are in the market less frequently.

Commission's Requests for Comments

The Commission requested comments on numerous points in the Proposed Rules. In the discussion that follows, I specifically address questions posed by the Commission in the Release.

Definition of "Municipal Advisor"; Exclusions from the Definition of "Municipal Advisor".

The scope of the definition of "municipal advisor" is too broad and the exclusions from the definition are too unclear. The rules should be applicable only to persons who are engaged in

the business of providing "municipal advisory activities", and should not apply to citizens, taxpayers, board members of municipal entities (whether elected or appointed) who are involved in the political, community or public processes on a volunteer or non-commercial basis. In addition, the rules should not apply to tangential or insubstantial activities otherwise included in the definition of "municipal advisory activities".

Consider the following example. The Board has established a policy regarding the types of securities transactions that the Board is willing to pursue. The Board has been considering whether to make certain changes to this long-established policy. The Chairman of the Board contacts an individual that was a member of the Board when the policy was first implemented to inquire about why certain restrictions were added to the policy. Because the former Board member is arguably providing "advice to . . . a municipal entity . . . with respect to municipal financial products or the issuance of municipal securities, including advice with respect to the structure, timing, terms and other similar matters", we read the Proposed Rules as requiring the former Board member to register as a municipal advisor and imposing fiduciary duties on that former board member. Surely, the Commission did not intend this result.

Exclusion of Elected Members of Governing Bodies; No Exclusion for Appointed Members.

I believe this distinction between elected and appointed board members is one of the biggest flaws in the Proposed Rules. Many citizens serve their local governments by volunteering their service on a governing board, commission or authority. If that body is involved in the issuance of municipal securities or the investment of public funds, each of these individuals could be subject to registration as a municipal advisor for providing a valuable, but uncompensated, community service. I understand that not all public servants live up to the standards of their positions. However, requiring registration of public servants as municipal advisors is a completely inefficient way of improving the performance of these individuals. The members of the Board have duties under state law and are accountable to those who appoint them. I fear individuals will be unwilling to serve on boards such as the Bond Bank if such service could lead to classification as a municipal advisor, subject them to registration and prohibit them from making political contributions. Making a distinction between elected and appointed officials is without merit and may disenfranchise the individuals who are most knowledgeable and interested in the affairs of the local government and discourage them from serving on various boards and authorities. I am concerned that the practical effect of the Proposed Rules will be to hinder the Bond Bank's ability to fulfill its functions and increase the costs of doing so.

Solicitation of a Municipal Entity or Obligated Person.

As big and sophisticated as we are in Indianapolis, the reality is that we are a relatively small community. Many businesspeople in our community know one another, attend community events together and socialize together. As currently drafted, the Proposed Rules would arguably apply the municipal advisor registration requirements to any individual in the community who casually introduces me or a member of the Board to an officer of a local bank or another local investment provider. Yes, that introduction may someday lead to a meeting or a call from that individual that may ultimately result in a future engagement, but one could hardly think that such

introductions are what Congress intended to regulate. All businesspeople, including municipal entities, depend on their interactions in the community and must retain the ability to seek and accept guidance from colleagues, trusted advisors and other knowledgeable persons (whether they are board members, staff of other municipal entities, attorneys, accountants, commercial or investment bankers, etc.). The marketplace demands that people be able to rely upon statements and recommendations of others regarding their experiences with particular persons and firms, otherwise they must proceed uninformed. This should be no different as to matters related to the issuance of municipal securities.

Additionally, the Proposed Rules do not provide an exception if the municipal entity requests the information or introduction. If the Bond Bank or one of its qualified entities is exploring a potential undertaking, I may need to solicit information from various professionals regarding the steps to be taken and hurdles to be crossed in such an undertaking and I must be free to solicit advice and recommendations from these individuals, without having to either engage these individuals (and compensate them) or subject them to certain fiduciary duties. It is in the interest of a municipal entity for the professionals we know and trust to introduce us to others we may not know, and to offer recommendations. We are free to accept or reject such information. Our professionals provide us with knowledge regarding their past experiences with other market participants – including their integrity, diligence, reliability, creativity, etc. While the Proposed Rules do not prohibit such interaction, I fear that the registration requirement and the potential imposition of liability will restrict access to such input.

The solicitation rules should only be applicable to persons or firms who are regularly and specifically engaged in the business of soliciting municipal entities or obligated persons on behalf of others. While the Commission noted in the Release that it did not feel that compensation is required to fall under this rule, if all uncompensated introductions or recommendations are covered by the rules, I feel the rules will be going too far.

Exclusion of a Broker, Dealer, or Municipal Securities Dealer Serving as Underwriter.

My staff and I work with a number of market professionals, including broker-dealers and underwriters, in a variety of matters and transactions. I am concerned that the Proposed Rules will create confusion among these underwriters in regard to when an underwriter acts as an underwriter and when the underwriter acts as a municipal advisor, as well as when the underwriting on a particular transaction ends and when financial advisory activities begin. I count on various underwriting firms to provide analysis and thought regarding potential transaction structures before I engage any of them on a particular transaction. Additionally, I rely on an underwriter even after the engagement ends to answer questions and analyze new scenarios without incurring additional fees. I fear that these underwriters will be less willing to advise me without a formal engagement if these rules are applied in those exploratory circumstances and will limit the Bond Bank's flexibility and innovation in working towards our goals

If Congress and the Commission feel that the regulatory regime for investment banks needs to be expanded, I urge the commission to do so in a manner that does not limit an underwriter's willingness to assist municipal entities that are not yet willing to engage their

services and incur the costs that such step entails. I fear that if the Proposed Rules are implemented, these bankers will seek earlier formal engagements for "future" financings before they agree to consult with us, which will work to our detriment.

Exclusion for Persons Preparing Financial Statements, Auditing Financial Statements, or Issuing Letters for Underwriters for, or on Behalf of, a Municipal Entity or Obligated Person.

I agree with the exclusion of the Proposed Rules for accountants performing audit functions, including letters to underwriters etc., but believe the exclusion should be broadened to cover other activities that are incidental to these functions. For example, we engage various accounting firms to provide verification reports showing that the refunding bonds, when combined with the interest earnings on the proceeds of such bonds, are sufficient to make all of the necessary payments on the bonds being refunded. Additionally, the Bond Bank utilizes accountants to verify that the payments to be made by the Qualified Entity are sufficient to make all payments on the corresponding Bond Bank bonds. Each of these tasks is "numbers-centric" and should not subject such accountants to being deemed a municipal advisor. We are concerned that if the Proposed Rules are implemented, our accountants will limit their services to us (to our detriment), in order to avoid any arguments that they are municipal advisors.

Exclusion for Attorneys Offering Legal Advice or Services of a Traditional Legal Nature.

I agree that attorneys offering legal advice should be exempt from the definition of "municipal advisor", however, I believe that excluding only legal advice of a "traditional legal nature" without further explanation of those terms will only cause uncertainties in our attorneys regarding the scope of the exclusion, and thus limit our attorneys' willingness to provide the Bond Bank with assistance. In addition, while seemingly common sense in nature, the requirement that the advice be given to a municipal client causes additional concerns. I fear that implementation of this rule will cause my legal counsel to insist upon an engagement (so that there is a definitive client relationship) before discussing or disclosing a potential issue or otherwise providing their thoughts. Earlier engagements mean higher costs to the Bond Bank.

Attorneys regularly engaged in the municipal markets, in particular, are likely to have significant concerns that providing general advice, thoughts, recommendations, feedback and introductions, when not formally engaged will lead them outside the scope of the exemption and thus into the territory of a municipal advisor. This concern, in turn, will lead them to carefully limit their activities, while simultaneously seeking to increase fees to cover increased risks. Here are few examples of problem situations we foresee:

1. Several attorneys in a typical transaction have no client relationship with a municipal entity for that particular transaction. Nevertheless, underwriter's counsel (as well as other counsel in the transaction) may have valuable ideas and thoughts to contribute regarding timing, structure and terms, etc. Their engagements are with their individual clients, but the service they render as participants in the financing team accrues also to the benefit of the municipal entity. In the normal functioning of a municipal transaction, particularly for a complex financing, all of the attorneys need comfort that their contributions will not be considered municipal advisory services which are outside

the scope of the exemption, just because they are not formally representing the municipal entity.

2. Second, we believe that the exclusion should not be dependent on an actual engagement at the time of discussions on the matter being considered. Planning advice is often sought prior to formal engagements, and the timing of the formal engagement should not determine the rules' applicability. Similarly, it is in our best interest as issuers to be able to get early, good advice, so that we do not inadvertently run afoul of intricate or arcane state or federal tax rules -- of which there are many examples.

3. Third, an integral part of what bond lawyers should do is to keep the issuer abreast of new developments, pending rules, new products. We do not want to penalize lawyers for being proactive in dealing with us.

Other Types of Professional Activities that should be Excluded from the Definition of a 'Municipal Advisor'.

As Executive Director of the Bond Bank, I am charged with coordinating and facilitating the issuance of municipal securities for a number of entities of the City. My job responsibilities include working with other municipal entities in the issuance of municipal securities. I was hired by the Board to perform these duties and my qualifications were examined and approved by the Board at that time. I am evaluated and overseen by the members of the Board. I am also an employee of the Bond Bank, a municipal entity. As an employee, my activities in providing advice and overseeing the Bond Bank are exempted from the definition of "municipal advisor".

Consider, however, another aspect of my job. I am expected to work with other municipal entities, whether a "related entity" or not, assist them with the issuance of municipal securities and otherwise provide advice regarding the issuance of its bonds (which the Bond Bank will ultimately buy). When I provide that advice, however, I am not doing so as an employee of that qualified entity and therefore, I arguably do not qualify for the exemption from being its "municipal advisor". An individual such as myself, employed by one municipal entity to, in part, provide advice to other municipal entities and assist with their issuance of municipal securities should also be exempted from the rule, notwithstanding the fact that such individuals are not employees of the second municipal entity. The Commission should not punish municipal entities for taking steps to provide efficiencies, assistance and expertise to other municipal entities in their jurisdiction by subjecting them to these rules, but should instead applaud the efforts taken to provide for additional expertise in municipal securities transactions.

Sincerely,



Deron S. Kintner, Executive Director of The
Indianapolis Local Public Improvement Bond
Bank