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*VIA EMAIL:* [rulecomments@sec.gov](mailto:rulecomments@sec.gov)  
Elizabeth M. Murphy, Secretary  
Securities and Exchange Commission  
100 F Street, NE.  
Washington, DC 20549-1090

February 21, 2011

Re: File Number S7-45-10  
SEC Proposal to Require Officers of Governmental Entities  
to register as "Municipal Advisors"

Dear Chairman Schapiro and Members of the Commission:

I am writing to comment on the definition of "municipal advisor" as proposed in Release 34-63576 (the "Rules") concerning registration of municipal advisors. The definition as contained in the Dodd-Frank Act is:

A person (who is not a municipal entity or an employee of a municipal entity) (i) that *provides advice to or on behalf of* a municipal entity (Emphasis added).

The Commission in its discussion of the Rules excludes from the definition of "municipal advisor" both elected members of a municipal entity's governing board and its employees but concludes that appointed members of a governing authority are not excluded from the definition of "municipal advisor".

The Commission opines that elected officials are accountable to the municipal entity but appointed members are not directly accountable for their performance. The Commission's argument overlooks the fact that elected officials are elected for a term, and during that term are not subject to accountability to the municipal entity but rather only the electorate and then only at the conclusion of their term. Appointed members are usually appointed for a term, some are appointed to serve at the will of the appointing

body or official, and most appointed officials can be removed for cause. Generally, elected officials cannot be removed except upon conviction of a crime or by recall petition. Accordingly, elected members are actually less accountable during their terms than appointed members.

In response to the question of whether appointed officials of an entity were intended to be included within the definition of “municipal employee” the Commission responded:

. . .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.” [Footnote omitted.]

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

Presumably, the subject legislation was actually intending to regulate any person who provides advice to municipal entities. The members of a governing authority are in essence the governing authority itself, as a municipal entity is a fictional entity which can only act through its members whether those members were chosen by election or appointed. Accordingly, all members of any governing authority of a municipal entity should be excluded because they are in fact the municipal entity which is expressly excluded by the language “. . . which is not a municipal entity . . .”.

Further, in its common usage advice is given or provided to third parties. Municipal entities do not advise themselves but rather seek advice from experts. Members of governing authorities do not advise the municipal entity rather they act for it by receiving advice, drawing conclusions from such advice received from third parties and then making determinations based upon their conclusions drawn from the advice of third persons.

Throughout the United States many local municipal entities are governed by a board the members of which are appointed as opposed to being elected. State, county (parish) and local governments depend upon the individuals of their communities to help facilitate and run their governments through serving as volunteer, appointed members. These volunteers form the bulwark of American democracy and the foundation of our volunteer spirit. Tens of thousands of community volunteers give their time to enable their local governments to plan, to zone, to invest and to run various facets of local government operations. Some are true volunteers and others receive stipends. For example, in the state of Louisiana there are at least 450 state entities that are governed by boards the members of which are appointed. This does not include local and county (parish) entities.

The Commission’s position quoted above creates two problems:

- It would require thousands of community spirited volunteers to spend money and to subject themselves to federal regulatory controls, exposing them to potential liability.
- It would create ambiguity over the issues of whether appointed governing authority members and “officers” are included within the definition of “municipal employee” and therefore excluded from the term “municipal advisor.”

Members of governing authorities who hold positions of trust within a state or local governmental entity subject themselves to state and local ethics laws and common law responsibilities that include potential penalties for misfeasance or malfeasance. Each of these controls meet the Commission’s stated intent of protecting the public by providing significant and sufficient state and local deterrents to misconduct that another layer of protection does not enhance. Seeking guidance on federal regulatory issues expands the costs to local governments and the complexity of those regulations deters volunteer service. Further, opening volunteer members to potential penalties, registration requirements and fees will further deter people from service.

One can expect that the inclusion of appointed members of governing authorities within the term “municipal advisor” and the resulting requirement of registration, payment of fees and exposure to personal liability will result in mass resignations from boards of municipal entities the members of which are appointed. This could have a seriously detrimental effect on the operation of state and local government.

When Congress exempted the municipal entity and its employees from the definition of “municipal advisor,” I believe it did so with the express intent to include all of the entity’s governing authority members, whether elected or appointed, officers and employees within that exemption. To do otherwise creates the anomalous result that the proposed regulation requires when it seeks to bring into the concept of “advice” those discussions by board members on investment objectives when those discussions involve decision-making debates by issuers and, in the case of boards of pension trustees, investors. Requiring registration for those who participate in discussions, draw conclusions, and make determinations chills informed analysis and debate – exactly the opposite result the Commission should be seeking. The Commission is mistakenly failing to recognize that the members of governing bodies and other state and local officials are the personnel that operate the municipal entities. They seek advice from third party expert advisors. True “municipal advisors” serve those officials by providing expert advice. It confuses the issue to suggest that those officials—the intended beneficiaries of municipal advisor regulation—somehow are “municipal advisors” themselves. In short, the proposed regulations turn on its head the concept of “advice” and transform decision makers of entities who should be receiving advice into “advisors”.

The cost to local governments and officials to comply with this regulation will be extensive and comes at the worst time for local governments. Local governments will be required to pay the cost for registering municipal advisors who serve the local

government in a volunteer capacity and for those who are its officials. In addition, local governments will need to hire counsel with expertise in dealing with the SEC to be sure that these officials 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. Further, the Rules increase the need for boards of municipal entities to carry executive officers liability insurance and the cost of that insurance would increase because of the increased exposure.

I am also concerned that by requiring attorneys for the government entity to register if they stray beyond pure legal advice that the Commission will be chilling some of the most effective advice that a lawyer can provide. Attorneys often challenge the analysis of experts and other advisors to their clients and if that challenge strays beyond the purely legal, then those same lawyers may be fearful to fully and ably represent their clients. The Commission should consider carefully if chilling a lawyer's advice to a client serves the interests it seeks to protect.

I ask respectfully that you consider expanding the exclusion for local government officials, including among them, appointed board members and other elected and appointed officials that may advise "municipal entities," from the requirement to register as "municipal advisors" by including them within the definition of "municipal employee."

I propose that the following language of the proposed regulations be changed as indicated below. Underlined language indicates language added:

1. Substitute for the existing definition of Municipal Advisor found at Section 240.15ba1-1 Definitions, the following language:

(d)(1) Municipal Advisor shall mean a person (who is not a municipal entity, an elected or appointed member of the governing authority of a municipal entity whether an officer or not, or an employee of a municipal entity) (i) that provides advice to or on behalf of a municipal entity or obligated person 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 concerning such financial products or issues, or (ii) that undertakes a solicitation of a municipal entity.

2. Amend sub-part (d)(2) so as to exclude from the term "municipal advisor" members of the governing authority of a municipal entity by adding a new subpart to be denominated (d)(2)(i) and renumbering the original language commencing with the number (d)(2)(ii). Said new sub-part (d)(2)(i) should read as follows:

(i) The members of the governing authority of a municipal entity, whether elected or appointed and whether an officer or not.

Your consideration of the above comments will be appreciated.

Sincerely,



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Alan C. Arnold  
Member, Board of Liquidation of the  
City of New Orleans

cc: Congressional Delegation