



Public Power Agency

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February 18, 2011

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

Re: Comment Letter on Release No. 34-63576;
File No. S7-45-10

Dear Ms. Murphy:

The M-S-R Public Power Agency appreciates this opportunity to comment on the proposed rule relating to registration by municipal advisors with the Securities and Exchange Commission (the "Commission").

The proposed rule, required by the Dodd-Frank Wall Street Reform and Consumer Protection Act (the "Dodd-Frank Act"), would supplant a temporary rule the Commission adopted in September 2010. Because the Dodd-Frank Act required that these advisors register by Oct. 1, 2010, the Commission adopted its earlier temporary rule on an interim basis so that advisors could fulfill the Act's mandates.

Municipal advisors provide advice to state and local governments and other borrowers involved in the issuance of municipal securities or with respect to the investment of governmental monies. Municipal advisors also solicit business from a state or local government for a third party. Subject to certain exemptions, the definition of municipal advisor under the Dodd-Frank Act includes financial advisors, guaranteed investment contract brokers, third-party marketers, placement agents, solicitors, finders and certain swap advisors that provide municipal advisory services.

The M-S-R Public Power Agency supports the proposed rule change. However, the M-S-R Public Power Agency strongly believes that the Commission's interpretation of who should be considered a "municipal advisor" is overly broad.

Section 975 of the Dodd-Frank Act defines the term "municipal advisor" to mean "a person (who is not a municipal entity or as employees of a municipal entity) that (i) 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) undertakes a solicitation of a municipal entity." The Dodd-Frank Act excludes from the

definition of municipal advisor “a municipal entity” and “employees of a municipal entity” but does not define what constitutes “employees.”

I. Board Members

The Commission has stated that it:

“... believes that the exclusion from the definition of a ‘municipal advisor’ for ‘employees of a municipal entity’ should include any person serving as an elected member of the governing body of the municipal entity to the extent that person is acting within the scope of his or her role as an elected member of the governing body of the municipal entity. ‘Employees of a municipal entity’ should also include appointed members of a governing body to the extent such appointed members are ex officio members of the governing body by virtue of holding an elective office. 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 believes that this interpretation is appropriate because employees and elected members are accountable to the municipal entity for their actions. In addition, 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.”

This approach reflects a fundamental misunderstanding of the role of a governing body of an issuer of municipal securities. Members of a governing body do not provide advice of any kind to the issuer: they exercise the statutory powers of the issuer in accordance with State law and the issuer's governing documents. They make decisions as to the structure of, and authorize the issuance of, municipal securities and, in connection therewith, are sometimes the recipients of advice from third parties. In that process they discuss, deliberate and vote, but they do not provide advice. Since they do not provide advice, they do not fall under the statutory definition under the Dodd-Frank Act, and to subject them to the obligations imposed on municipal advisors by regulation would represent an unprecedented overreaching by the Commission that will impose a substantial burden on municipal issuers – precisely the entities that Congress was seeking to protect under these provisions of the Dodd-Frank Act.

The M-S-R Public Power Agency is a public entity, without taxing power, created pursuant to the provisions of California law governing the joint exercise of powers, being California Government Code Sections 6500-6599.5, inclusive, as amended (the “Act”), and a Joint Exercise of Powers Agreement (the “Joint Powers Agreement”), first made as of April 29, 1980 and amended and restated as of November 17, 1982, as amended by Amendment Number 1 to the Amended and Restated Joint Powers Agreement, dated June 26, 1990 and Amendment Number 2 to the Amended and Restated Joint Powers Agreement, dated January 27, 2006,

among the Modesto Irrigation District (“Modesto” or the “District”), an irrigation district in the State of California, the City of Santa Clara (“Santa Clara”), a charter city and municipal corporation in the State of California, and the City of Redding (“Redding”), a general law city and municipal corporation in the State of California. Modesto, Santa Clara and Redding are hereinafter referred to as the “Members.”

The M-S-R Public Power Agency finances the M-S-R Public Power Agency’s large capital program through the issuance of revenue bond debt. The Act and Joint Powers Agreement authorize M-S-R Public Power Agency to issue revenue bonds and notes to finance, acquire, construct and maintain any project, including generation plants and transmission systems, for the purpose of providing electric energy for public or private uses.

The M-S-R Public Power Agency is administered by a Commission consisting of three Commissioners. The governing bodies of the Members¹ appoint one Commissioner each. Each Commissioner serves at the pleasure of such governing body. Each Member’s governing body may appoint one or more alternate Commissioners to serve during the absence of its Commissioner. The Commission holds regular meetings and annually elects a President and Vice President². Therefore, none of the members of the Commission are elected to the board, and those members who are ex officio hold their positions on the Commission by virtue of holding positions to which they were appointed.

If the Commission adopts final rules defining municipal advisors to include unelected board members, all of the M-S-R Public Power Agency’s Commissioners and alternate Commissioners would be “municipal advisors”, even though they do not provide advice to the M-S-R Public Power Agency.

Even assuming, for the sake of argument, that Board members do render advice to the entity they govern, regulation of board members by the Commission and the Municipal Securities Rulemaking Board (“MSRB”) would constitute an unnecessary and improper interference with California State law, which imposes fiduciary, financial disclosure, conflict of interest and other obligations on members of the boards of directors of authorities such as the M-S-R Public Power Agency.

In addition, the inclusion of board members in the definition of municipal advisors would make it difficult for the M-S-R Public Power Agency to fill its M-S_R Public Power Agency Commissioner seats. Municipal advisors are not only required to make special

¹ The governing body of Modesto is an elected Board of Directors consisting of five members.
The governing body of Santa Clara is an elected City Council consisting of a Mayor and six City Council Members.
The governing body of Redding is an elected City Council consisting of five City Council Members.

² As a public entity and as public officials, the M-S-R Public Power Agency and its Commissioners and alternate Commissioners are subject to and comply with California’s open meeting laws, public records act, conflict of interest laws and other such laws applicable to local government.

reports and personal financial disclosures, but they must also fulfill specialized educational and training requirements rendering unlikely that Member staff or officers would be willing to serve on the M-S-R Public Power Agency Commission.

The Commission should, for the purpose of the Dodd-Frank Act, expressly exempt all directors of a municipal entity, whether they are elected, ex officio or appointed, from the definition of municipal advisor.

II. Employees

The M-S-R Public Power Agency uses the services of employees of the Members to sit on standing committees of the Agency and to fulfill the duties of offices such as Treasurer and Controller. Modesto also provides accounting and administrative services to M-S-R Public Power Agency. These arrangements have permitted the M-S-R Public Power Agency to finance its capital program efficiently, utilizing a relatively small number of experienced employees who have developed considerable expertise in finance and the issues that arise in connection with M-S-R Public Power Agency financings. Employees of the Members seconded to M-S-R Public Power Agency should have the same exemption when they perform services for the M-S-R Public Power Agency as when the Member employees are acting within the scope of their Member employment responsibilities providing services for the benefit of the Member. Municipal employees although not typically directly elected, work for directly elected officials and are accountable to those officials and the public. Employees of the Members and the M-S-R Public Power Agency are subject to M-S-R Public Power Agency's Conflict of Interest Code as adopted by the California Fair Political Practices Commission and the M-S-R Public Power Agency, including both bonding and annual financial disclosure requirements. The Commission should make it clear in its final rule that employees of a municipal entity who perform services for a legally distinct but related municipal entity are not "municipal advisors."

We very much appreciate the opportunity to provide the foregoing comments in response to the Commission's proposed rule. Should you have any questions or desire clarification concerning the matters addressed in this letter, please do not hesitate to contact Martin R. Hopper, General Manager, at 408-307-0512.

Sincerely,



Martin R. Hopper
General Manager

cc: Steven C. Gross, Esq.
Richard I Hiscocks, Esq.