



Arizona Department of Transportation

Office of the Director

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February 15, 2011

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

Re: File Number S7-45-10
Comment to 17 CFR Parts 240 and 249 – Registration of Municipal Advisors

Dear Ms. Murphy:

On behalf of the Arizona Transportation Board (“ATB”) and the Arizona Department of Transportation (“ADOT”), we submit the following comments on the proposed rules (the “Proposed Rules”) related to the Dodd-Frank Wall Street Reform and Consumer Protection Act issued on December 20, 2010. In particular, we disagree with the Commission’s opinion “. . . 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.”

It is difficult for us to ascertain any basis for the Commission’s opinion. Neither the Dodd-Frank legislation, nor the legislative history, gives any suggestion that Congress intended for the SEC to mandate the registration of appointed Board Members of Municipal Entities. Likewise, the suggestion that the SEC is authorized to require such registration, and further, is qualified to perform the regulation of advice that *may* be given by an appointed member, appears to be a substantial usurpation of the state law that already governs the duties and responsibilities of appointed members to municipal entities.

We also do not find the Commission’s argument compelling, for several reasons.

First, in the case of the ATB, the seven members are citizen volunteers, who are appointed by the Governor of Arizona. Persons interested in serving apply through the Governor’s Office of Boards and Commissions, which conducts criminal background checks on all potential appointees. ATB members are appointed to represent the various transportation districts throughout the state, and must be confirmed by the Arizona State Senate.^{1, 2} Upon confirmation, appointees must sign an oath of office, swearing to support the US and Arizona constitutions, and the laws of Arizona.³ Compensation for ATB members may not exceed \$30 per day.⁴ Further, all appointed members are subject to the State’s conflict of

¹ Arizona Revised Statutes (“ARS”) §28-302.C.

² ARS §38-211.

³ ARS §38-231.

⁴ ARS §38-611.D.

interest laws.⁵ The powers and duties of the ATB are limited to those granted in statute.⁶ Finally, appointed members may be impeached from office for high crimes, misdemeanors or malfeasance in office.⁷

Second, the statutory qualifications for appointment to the ATB do not include financial experience, as the Proposed Rules suggest is required. Because such a requirement would vastly limit the pool of qualified and willing candidates to serve on the ATB, only those who are already qualified and registered could practicably serve. The effect would be to put those the Proposed Rules seek to regulate further in charge of municipal financing decisions.

Third, as a practical matter, the involvement of ATB members in ADOT financings does not rise to the level of persons actively engaged as “municipal advisors.” In addition to statutory requirements and limitations, the ATB has an established Debt Policy which requires 1) judicious utilization of its authority to issue debt to accelerate the construction of critically needed projects on the state transportation system; 2) maintaining debt service coverage ratios that ensure the fiscal integrity of the financing programs; and 3) maintaining the highest bond ratings possible consistent with coverage.

Within the context of the applicable statutes and the Debt Policy, the ATB approves the structure of a financing, the bond resolution and other necessary documents, and then delegates authority to ADOT’s professional staff to develop and execute the specific details of the transaction within the limitations of the bond resolution. The ATB members are not involved in the development of the transaction or the decisions made by ADOT staff and advisors related to the financing. Therefore, it is difficult to claim the ATB’s role is advisory.

Fourth, we are concerned that requiring an appointed ATB member to register with the SEC if he/she does provide advice will 1) open the ATB deliberative process to regulatory audit and inspection, and 2) chill the deliberative process for fear of invoking the registration requirement.

Fifth, it seems illogical that an appointed board member would also be an advisor to the same board on which he/she serves.

Sixth, the Proposed Rules would also impose expense without any discernible benefit. The fees proposed by the Commission will not be born by the appointed, citizen volunteers, but rather the public bodies, the budgets of which are already dramatically strained. For the ATB, the fees would be a minimum of \$3,500 annually, which would only be fraction of the cost the Proposed Rules would impose on all Arizona state and local municipal issuers. One need not look any further than the title to Dodd-Frank – namely a Wall Street reform and consumer protection act. Requiring appointed board members for municipal entities to register and be subjected to the regulatory burden and authority of the SEC is neither Wall Street reform nor consumer protection. We do not agree that appointed members should

⁵ ARS 38-503.

⁶ ARS, Title 28, various chapters.

⁷ ARS 38-311.

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Secretary, Securities and Exchange Commission
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be included in the definition of "municipal advisor," and respectfully request that the reform and consumer protection called for in Dodd-Frank be limited to those persons and entities that are in the business of performing advisory services.

Sincerely,



John Halikowski
Director
Arizona Department of Transportation



William Feldmeier
Chairman
Arizona Transportation Board

cc: The Honorable Janice K. Brewer, Governor
The Honorable John McCain, US Senator
The Honorable Jon Kyl, US Senator
The Honorable Paul R. Gosar, US Representative, District 1
The Honorable Trent Franks, US Representative, District 2
The Honorable Ben Quayle US Representative, District 3
The Honorable Ed Pastor, US Representative, District 4
The Honorable David Schweikert, US Representative, District 5
The Honorable Jeff Flake, US Representative, District 6
The Honorable Raul M. Grijalva, US Representative, District 7
The Honorable Gabrielle Giffords, US Representative, District 8