



Vermont Educational & Health Buildings Financing Agency

BOARD OF DIRECTORS

James Potvin, Chair
Dawn D. Bugbee, Vice Chair
Ed T. Ogorzalek, Treasurer
Steve Gurin, Secretary

Neal E. Robinson
Stuart W. Weppler
Kenneth Gibbons
Sandy Predom
Kenneth Linsley

Ex-Officio Members

Robert Hofmann
Secretary of Human Services

Armando Vilaseca
Commissioner of Education

Beth Pearce
State Treasurer

Jeb Spaulding
Secretary of Administration

BOND COUNSEL

Sidley & Austin
New York, NY

FINANCIAL ADVISOR

Public Financial Management
Boston, MA

GENERAL COUNSEL

Deppman & Foley
Middlebury, VT

ADMINISTRATION

Robert W. Giroux
Executive Director

February 22, 2011

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

Re: Registration of Municipal Advisors (File No. S7-45-10)

Dear Ms. Murphy:

This letter is submitted on behalf of Vermont Educational and Health Buildings Financing Agency (“VEHBFA”) in response to your request for comments on the proposed rule published in SEC Release No. 34-63576 (the “Proposed Rule”) under The Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (the “Dodd-Frank Act”). The Proposed Rule includes an expansive definition of the term “municipal advisor.” While VEHBFA expresses no opinion with respect to universe of persons captured by such definition, it is deeply concerned with the narrow interpretation of the exclusion to such definition for “employees of a municipal entity.” In particular, VEHBFA feels strongly that appointed members of governing body should be specifically excused from the registration requirements of the Proposed Rule. In addition, VEHBFA feels as strongly that any representative (whether or not a board member) of any potential borrower appearing before VEHBFA’s board in connection with an issuance of municipal securities for the benefit of such borrower should likewise be specifically excused from the registration requirements of the Proposed Rule.

Background

VEHBFA was established by the State of Vermont in 1966 to assist private, independent colleges and universities, private secondary and primary schools, not-for-profit healthcare institutions and other non-profit corporations secure financing for capital projects¹. Under its Enabling Act, VEHBFA is a body corporate and politic constituting a public instrumentality of the State of Vermont. Under the terms of the Proposed Rule, VEHBFA would constitute a “municipal entity.”

¹ 16 V.S.A. §§ 3851-3862 (as amended, referred to herein as the “Enabling Act”).

VEHBFA is able to accomplish its statutory mission by borrowing at tax-exempt rates and loaning to proceeds of such tax-exempt bonds to eligible institutions. VEHBFA's bonds are traditionally secured by loan agreements between VEHBFA and the borrowing institution. Each such institution is an "obligated person" for purposes of Section 15B(e)(10) of the Securities Exchange Act of 1934, as amended, and Rule 15c2-12 of the Securities and Exchange Commission (the "Commission") promulgated thereunder. Pursuant to its Enabling Act, VEHBFA must, in connection with its authorization of the issuance of such bonds, certify to the Governor that each such borrowing institution will be able to repay the loan on a timely basis.² Partially in response to this statutory requirement and to ensure the financial integrity of VEHBFA, VEHBFA has retained and continues to retain an independent financial advisory firm to undertake a credit analysis of each borrower and to assist in other elements of each transaction. This credit analysis is provided to the Board of VEHBFA (the "Board") prior to its taking action on any given transaction.

Under the Enabling Act, the Board consists of the Commissioner of Education of the State of Vermont, the State Treasurer, the Secretary of the Agency of Human Services, and the Secretary of the Agency of Administration of the State, all *ex officio*, seven members appointed by the Governor of the State, with the advice and consent of the Senate, for terms of six years, and two members appointed by the members appointed by the Governor for terms of two years. Of the *ex officio* members, only the State Treasurer is popularly elected by the voters of the State of Vermont. The day-to-day operations of VEHBFA are managed by an Executive Director.

Members receive no compensation for their service on the Board aside from reimbursement of travel expenses and a small *per diem*. Nevertheless, its appointed Members, who represent a broad cross-section of Vermont's business and finance communities, are absolutely integral to its ability to serve its statutory purpose.

Position on Proposed Rule

VEHBFA feels the Commission erred by trying to distinguish among appointed members and elected members. The Members of the Board are inquisitive, unafraid to ask potential borrowers difficult questions about the feasibility of a particular financing or the advisability of a particular project. Given the ambiguities buried in the broad definition of the term "municipal advisor," each Member of the Board will have to be cognizant of the narrow, yet blurry, line separating "municipal advisory activities" from all other Board functions. This cannot have anything other than a chilling effect on the deliberations of the Board when it considers an application from a potential borrower, limiting the free exchange of opinion.

Nor is blanket registration of each Member of the Board a palatable result. The mere threat of registration as a municipal advisor could serve to limit the universe, and potentially the quality, of people willing to serve on a volunteer board. Furthermore, the financial cost to VEHBFA of registration of its Members will ultimately increase the cost to the end-user, the borrowers.

Moreover, in the case of VEHBFA, the threat the Proposed Rule seeks to protect against has already been addressed. As noted, VEHBFA retains an independent financial advisory firm, already registered with the

² 16 V.S.A. § 3856(a).

Commission as such, which is charged with assisting the Board with all elements of each financing it undertakes, including the critical credit analysis.

VEHBFA also feels the Commission similarly erred by trying to distinguish among appointed members and elected members of its potential borrowers who, from time to time, appear, along with other borrower representatives, before the Board in presenting their request for Board approval of particular bond issues for the borrowers' benefit. Questions are asked of such board members and other information is elicited from them in order for the Board to obtain a complete picture of the bond issue then under consideration. The same ambiguities that face Board members as described above also face borrower board members when making presentations to the Board in connection with a potential borrowing through VEHBFA for the borrower's benefit.

Anything other than a full discussion of all aspects of any bond issuance by VEHBFA with its potential borrowers, including their board members, will prevent the Board from fulfilling their statutory task of certifying to the Governor that each such borrowing institution will be able to repay its loan on a timely basis.

Aside from the obvious interference with the carrying out of VEHBFA's statutory functions that the Proposed Rule will engender [and the unconstitutionality of such interference], the Proposed Rule has the effect of standing on its head in the case of the definition of "municipal advisor" the legislative mandate that the Congress imposed on the Commission in delegating to it the promulgation of necessary rules to carry out implementation of various aspects of the Dodd-Frank Act. Both members of the VEHBFA Board and the respective borrower boards are meant to be both legally and in layman's terms the recipients of "advice" in connection with the issuance of municipal securities, since in the case of VEHBFA, it is the issuer of the municipal securities, and in the case of each borrower, it is the beneficiary of such issuance and is charged, as the obligated person, with repaying the debt securities in question that VEHBFA proposes to issue for its benefit. In no sense should either be deemed to be an "advisor" faced with the task of registering with the Commission and the possible criminal penalties for noncompliance with the Proposed Rule that accompany it.

VEHBFA appreciates the opportunity to express its views on the Proposed Rule. Please feel free to call the undersigned with any questions.

VERMONT EDUCATIONAL AND HEALTH BUILDINGS
FINANCING AGENCY

By: 
James E. Potvin
Chair


Robert W. Giroux
Executive Director