



**Indianapolis Airport Authority**

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February 22, 2011

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

Re: SEC Proposed Rule (File #S7-45-10)

Dear Secretary Murphy:

I serve as the Executive Director/CEO of the Indianapolis Airport Authority (the "IAA"), which operates the Indianapolis International Airport along with five (5) smaller airports in the Indianapolis metropolitan area (collectively, the "Airport System").

We recently learned about the SEC's proposed Rules 15Ba1-1 to 15Ba7-1 (collectively, the "Rule"), and we are deeply concerned about this Rule's effect on our Airport System. Accordingly, we respectfully request that the SEC further revise its interpretation of the phrase "municipal advisor" to specifically exclude *appointed* board members.

All of our board members are appointed by various government entities located in and around the Indianapolis metropolitan area. After reviewing this Rule, there is no reason to treat appointed board members differently than elected board members or employees of the municipal entity. Treating them differently, as now proposed in the Rule, will have a negative effect on the operation and development of our Airport System, as it will reduce our pool of citizen volunteers willing to devote their time, effort and expertise to, and for the benefit of, our Airport System.

Under the Dodd-Frank Wall Street Reform & Consumer Protection Act (the "Act"), the SEC may promulgate rules to administer Section 975 of Title IX of the Act. This Act requires municipal advisors to register with the SEC, and defines them as follows:

"[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 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 undertake a solicitation of a municipal entity."

In its Release No. 34-63576 (the "Release"), the SEC further discussed the meaning and scope of the phrase "municipal advisor", where it limited the phrase "employee of a municipal entity" set forth in the Act to include "a person serving as an elected member of the governing body." The SEC also excluded *ex officio* members who hold elective office. However, the SEC decided not to exclude *appointed* board members of a municipal entity.

In reviewing the Release, it appears the SEC believes that the foregoing is an appropriate outcome because "employees and elected members are accountable to the municipal entity for their actions", while "appointed members, unlike elected officials and elected *ex officio* members, are not directly accountable for their performance to the citizens of the municipality." We disagree with the SEC's conclusion in this regard.

First, our board of directors, with appointed members, functions in the same way as a board with elected members. For example, our board engages in the same type of policymaking, reviewing and approving recommendations of the management team, and guiding our Airport System in the performance and satisfaction of all applicable legal requirements. Board members are not advisors or consultants in that they are responsible for making final decisions on behalf of the municipal entity. Also, our board members take the same oath, and are subject to liability for fraud or malfeasance.

In contrast, in looking at typical "municipal advisors" such as financial or swap advisors, they have minimal legal or ethical duties to the municipal entity or the citizens of the municipal entity. Their objective is to receive compensation in return for providing a service. Even when compensation is not immediate or expressly sought, it is fair to conclude that they seek clients for the purpose of profit making and providing expert advice. While their services are critical to municipal entities, their motivations and their relationship to the municipal entity cannot be compared to a citizen volunteer who is an *appointed* board member of such entity.

Appointed board members, who are largely citizen volunteers, tend to have strong ties to the community in which they serve and are just as accountable to the citizens they serve as employees and elected officials serving on boards. These appointed board members are firmly rooted in their communities; indeed, they are typically community leaders. They are typically appointed by the governor, mayors, county commission, or city council. They serve limited terms, with many serving at the pleasure of the elected sponsoring unit. To the extent they serve fixed terms, they are subject to a vote of the elected sponsoring unit for reappointment.

With respect to our Airport System, there are significant protections already in place, such as: (1) each board member must annually complete and file a detailed Economic Statement of Interest Form with the City of Indianapolis, which they must sign under penalties of perjury; (2) each board member is subject at all times to our Ethics and Conflict of Interest Policies; (3) the State of Indiana has existing "sunshine" laws for public records and public meetings, which

provide for open and transparent decision-making by our board and its committees, in full and open view of the general public, all of which is recorded in publicly-available “minutes” of those meetings; (4) our Airport System has a Board Finance & Audit Committee, which operates under a detailed and extensive “charter” from a governance standpoint; and (5) various additional legal protections against misconduct, bribery, self-dealing, and profiteering. In other words, there are protections in place and “accountability” for appointed board members.

We also note that our citizen volunteers assume significant risks when they are appointed as board members of our Airport System. Serving on our board is a highly visible position in the Indianapolis metropolitan community, and our board members have a heightened risk of being sued as they are decision-makers for an institution that serves the general public. Indeed, just being named in a lawsuit, frivolous or otherwise, imposes a personal burden on appointed board members.

In addition, as leaders in our community with reputations at stake, our appointed board members are at risk of having their reputations impugned for reasons outside of their control. Unlike employees of municipal entities or a large number of elected officials, these costs are not offset by compensation – our appointed board members are volunteers. In many ways, citizen volunteers who serve as *appointed* board members actually assume *far more risk* than employees of municipal entities or compensated elected officials. Accordingly, in certain respects, they are more accountable.

We believe that the SEC’s existing interpretation of the Rule will impose a burden on municipal entities, while the benefits of this action are unclear. Municipal entities like our Airport System rely on the expertise, community leadership and civic responsibility of appointed board members. Many are leaders in their professions and provide invaluable information and insight to the municipal entities they serve.

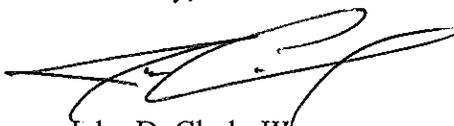
Valuable talent will be lost because prospective board members will not want to subject themselves to these additional SEC regulations. Even those prospective board members who would otherwise provide the required information, may, however, refuse, for various reasons, to be subject to the oversight and regulations of the Rule. The extent to which this Rule will dissuade talented leaders from serving on appointed boards is unknown; however, for municipal entities that rely on volunteers, the risk of depleting the pool of talented citizens far outweighs whatever the benefit may be of requiring appointed board members to register with the SEC.

For the foregoing reasons, our Airport System respectfully requests that the SEC further revise its interpretation of the phrase “employee of a municipal entity” to specifically include *appointed* board members. All our board members perform the function of policymaking and decision-making, and should be treated as such. Indeed, we believe that appointed board members are, in many ways, more accountable than municipal employees and compensated elected officials. Lastly, if unchanged, we believe that our Airport System will be negatively and

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adversely impacted by this Rule, as it will tend to deplete, and have a chilling effect on, the pool of talented civic volunteers willing to serve on our board.

Sincerely,

A handwritten signature in black ink, appearing to read "John D. Clark, III". The signature is fluid and cursive, with a long horizontal stroke at the end.

John D. Clark, III  
Executive Director/CEO  
Indianapolis Airport Authority