

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



RE: File Number S7-45-10  
Comments to Release Number 34-63576  
Registration of Municipal Advisors

February 22, 2011

Dear Ms. Murphy:

I am pleased to submit on behalf of HNTB Holdings Ltd (“HNTB”) this comment letter on the Securities and Exchange Commission’s proposed rules on the registration of municipal advisors.

1. Overview

HNTB is an employee-owned infrastructure firm serving federal, state, municipal and private clients. Professionals nationwide provide planning, design, program management and construction management services.

HNTB believes that the definition of “municipal advisor” in the proposed rules on municipal adviser registration is not consistent with the definition contemplated by Section 975 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (“Dodd-Frank”) in that the rules, as interpreted by the Commission, fail to provide a meaningful exemption for engineers providing engineering advice. Accordingly, we respectfully request that the final rules implementing Section 975 include a broader, more well-defined exemption for engineers providing engineering advice that will exempt from the municipal advisor regulations the planning and engineering activities in which HNTB and many similar engineering firms engage.

In support of our comments on the proposed rules, we incorporate by reference the comments set forth in the letter submitted by the American Council of Engineering Companies which is attached to this letter as Exhibit A. We also have reviewed the letter submitted by Parsons Brinckerhoff, Inc. (the “PB Letter”) and concur with the assertions set forth in the letter. We also have discussed the proposed rules with certain of our municipal clients. These clients indicate that they (as recipients of our planning and engineering services) view our services differently than the services provided by traditional municipal advisors. Further, our clients are concerned that if the exemption for engineers providing engineering advice is not broadened to apply to all of the planning and engineering services we provide to them, then they will encounter unnecessarily increased difficulty, costs and time delays in obtaining such services.

2. The Proposing Release Wrongly Characterizes Activities Intrinsic to Engineering as Municipal Advisory Activities

Dodd-Frank categorically excludes “engineers providing engineering advice” from its definition of “municipal advisors.” The proposed rules define “municipal advisor” by referring to the

Dodd-Frank definition and exempting “[a]ny engineer, unless the engineer engages in municipal advisory activities other than providing engineering advice.” Proposed Rule 15Ba1-1(d)(2)(v). “Municipal advisory activities” are defined in the proposed rules as “providing 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 solicitation of a municipal entity or obligated person.” Proposed Rule 15Ba1-1(e).

“Engineering advice” is not separately defined in the proposed rules. The proposing release, however, includes commentary concerning the types of activities that would constitute engineering advice within the meaning of the rules. The proposing release states that “costing out engineering alternatives” would constitute engineering advice but, in contrast, the exclusion for engineering advice would not cover “circumstances in which the engineer is engaging in municipal advisory activities, including cash-flow modeling or the provision of information and education relating to municipal financial products or the issuance of municipal securities, even if those activities are incidental to the provision of engineering advice.” The proposing release further indicates that “the [engineering] exclusion [would] not include circumstances in which the engineer is preparing feasibility studies concerning municipal financial products or the issuance of municipal securities that include analysis beyond the engineering aspects of the project.” Release No. 34-63576, text at nn. 133-138.

The conception of engineering advice expressed in the proposing release does not reflect engineering as it is practiced today, particularly in the context of infrastructure projects, and excludes many activities that are intrinsic to the profession of engineering. If the final rules do not broaden the exemption for engineering advice, many engineers will be unnecessarily caught up in the municipal advisor regulatory regime, at significant cost and inconvenience to them and municipal clients, or will artificially constrain their practice of engineering to avoid coming under the rules.

We specifically object to the proposed rules’ characterization of some financial planning and management functions frequently performed by engineers as municipal advisory activities. These functions, described further below, do not constitute the provision of advice on municipal financial products or the issuance of municipal securities within the meaning of Dodd-Frank. Under the proposing release, however, such functions would be deemed municipal advisory functions. Services provided by us and other engineering firms may involve the provision of information and education, feasibility analysis and cash-flow modeling, but these activities are functions of program management and project or program budgeting, which are engineering activities, not, in the terminology of Dodd-Frank, advising on municipal financial products or the issuance of municipal securities.

A. *Information and Education In Conjunction With Engineering Advice Are Not Municipal Advisory Activities.* The proposing release suggests that engineering firms that provide any information or education relating to municipal financial products or the issuance of municipal securities would be deemed municipal advisors and therefore subject to the rules. This is not the view of the engineering profession, our firm or our clients. To the contrary, providing information or education relating to debt options generally, but not to specific financial products or securities, is an intrinsic part of the transportation planning and engineering services we offer and should not be deemed to be municipal advisory activities. For example, in the context of developing new projects, municipal entities may ask our design engineer or transportation planner how a new project fits in the owner’s overall capital program. It is common to discuss funding and financing options in relation to the owner’s capital program, but we do not design, sell or underwrite municipal financial products or securities. Municipal entities invariably engage a separate financial consultant or similar third party to provide such services at a point in time much closer to the actual offering and sale of any financial products or securities. The

proposing release's suggestion that municipal entities would rely on engineering firms for education concerning municipal financial products or the issuance of municipal securities does not reflect the typical relationship between engineers and their clients. The types of informational or educational communications we might provide concerning funding and financing options should not, therefore, be treated as municipal advisory activities.

B. *Feasibility Studies In Conjunction With Engineering Are Not Municipal Advisory Activities.* Although the proposing release cites as an example of municipal advisory activities "feasibility studies concerning municipal financial products or the issuance of municipal securities that include analysis beyond the engineering aspects of the project," such studies in fact are routinely performed by transportation planners and engineers as part of their professional responsibility to inform clients of the funding required for major capital improvement projects. Our Decision Analytics Group, for example, performs feasibility studies, but the feasibility studies are different in kind from those performed by true municipal advisors and are not relied upon by the purchasers of municipal securities. The majority of our work occurs very early in the life of a project when the project is merely an idea and financial feasibility has not been considered until we are engaged. At most, a sketch level or intermediate traffic and revenue study (a "T&R study") has been performed and we can provide very rough estimates of capital expenditure ("CapEx") costs. Our client may use the high-level financial feasibility information we provide to decide how it wishes to pursue or further develop the project.

We do not perform any work once a project has progressed beyond the stages described above. At that point, our clients would engage separate legal counsel and a separate financial advisor and underwriter to evaluate and structure a potential financing. In sum, although we perform feasibility studies in the circumstances described above, these activities are functions of program management, planning and budgeting, which are planning and engineering activities, not, in the terminology of Dodd-Frank, advising on municipal financial products or the issuance of municipal securities.

C. *Cash-Flow Modeling In Conjunction With Engineering Is Not Municipal Advisory Activities.* The proposing release suggests that "cash-flow modeling" does not constitute engineering advice. To the contrary, as discussed in the PB Letter, cash-flow modeling is inextricably linked to the provision of planning and engineering advice and program management. Specifically, municipal entities may engage engineering firms to manage all of the functions involved in delivering a single or multiple projects under one program management role. This multi-disciplinary engagement involves managing cost and schedule, including cash-flow management of revenues and expenditures as related to managing a multi-year capital program. The budgeting, reporting and cash flow modeling that these projects require to manage the implementation of a design and construction project are core engineering services and are far removed from advising on municipal financial products or the issuance of municipal securities.

D. *Federal Programs Require Financial Plans As Part of the Engineering Process.* In response to the requirements of various Federal agencies, planners and engineers engage in financial planning in connection with project development for municipalities, and such financial planning should not constitute municipal advisory activities. The Federal Highway Administration ("FHWA"), for example, requires the development of a financial plan early on in a project's development as an integrated component of planning, environmental documentation and engineering. FHWA defines the financial plan as a comprehensive document that reflects the project's cost estimate and revenue structure and provides a reasonable assurance that there will be sufficient financial resources available to implement and complete the project as planned. Because the FHWA projects are engineering projects, we may serve as design firm or program manager and as such are necessarily involved in the preliminary stages of financial planning for the projects. The Federal Transit Administration ("FTA") similarly requires financial planning as part of its major rail transit funding program. In particular, in conjunction with the

environmental documentation and preliminary engineering for the FTA's New Starts financial capacity rating, the FTA requires evaluation of the proposed share of total project costs from sources other than 49 U.S.C §5309 New Starts, including federal formula and flexible funds, the local match required by federal law, and any additional capital funding; the stability and reliability of the proposed capital financing plan; and the ability of the sponsoring agency to fund operations and maintenance of the entire transit system (including existing service) as planned, once the project is built. These activities are integrated with and inseparable from the planning and engineering aspects of this FTA program. Although these activities mandated by the FTA and the FHWA are intrinsically connected with the planning and engineering advisory roles for these projects, the activities may be deemed municipal advisory activities under the proposed rules. To remedy this, the final rules should categorically exempt the financial planning activities required by the FTA, the FHWA and other Federal agencies and similar financial planning activities as planning and engineering advice.

E. *The Engineering Exemption Should Be As Broad As The Attorney Exemption.* Broadening the definition of non-municipal advisor engineering advice to include the provision of information and education, feasibility studies and cash-flow modeling, such as those described above, in conjunction with engineering services would be consistent with the proposed rules' treatment of Dodd-Frank's exemption for "attorneys offering legal advice or providing services that are of a traditional legal nature." The proposing release indicates that attorneys providing "advice . . . with respect to the structure, timing, terms and other similar matters concerning municipal financial products or the issuance of municipal securities" or "comparing the structures, terms or associated costs of issuance of different types of securities or financial instruments" would not be deemed to be municipal advisors because the Commission interprets to be services of a traditional legal nature "if such advice is provided within a lawyer-client relationship specifically related to such products *in conjunction with related legal advice.*" Release No. 34-63576, text at n. 132 (emphasis added). The proposing release thus does not require an attorney's advice on the timing and costs and similar matters concerning municipal financial products to be legal advice itself to qualify for this exemption, so long as it is provided "in conjunction with" related legal advice. In contrast, the proposing release does not extend the engineering exemption to specified information and educational activities of engineers "even if those activities are incidental to the provision of engineering advice." *Id.*, text at n. 138. Since Dodd-Frank phrases the attorney exemption in no broader terms than the engineering exemption, we do not believe that there is a basis for the proposed rules' more favorable treatment of attorneys. Instead, the provision of information and education, feasibility studies and cash-flow modeling such as those described above, if provided in conjunction with engineering services, should be similarly exempt from the definition of municipal advisory activities.

3. If The Final Rules Characterize Engineering Services As Municipal Advisory Activities, Engineering Firms Should Come Under The Rules Only To The Extent They Engage In Such Services

If the final rules are not modified as we have requested above, we respectfully submit that they should be modified to lessen the regulatory burden on engineering firms that provide municipal advisory activities only incidentally to their core business of engineering. Specifically, we believe that the unnecessary regulatory burden represented by the proposed rules could be lessened if the final rules expressly permit engineering firms not to register directly as municipal advisors if their individual employees who provide municipal advisory activities register independently as municipal advisors. Alternatively, a similar reduction in inefficiencies could be achieved if the final rules expressly permit engineering firms not to register directly as municipal advisors if their individual employees who provide municipal advisory activities are employed by an affiliated entity of the engineering firm, rather than directly by the engineering firm. The final rules also would be improved by indicating explicitly that engineering firms would not be required to register as municipal advisors if they contract with, but do not

directly employ, individuals providing municipal advisory activities. We believe that requiring the engineering firm itself to register in these circumstances would impose an unnecessary regulatory burden. Registration would be unnecessary because (i) the individual employees, affiliated entity or contractor would not be involved in core municipal advisory functions such as advising on the structure, timing, terms and other similar matters concerning financial products or issues and (ii) the engineering firm itself would not be providing any type of municipal advisory activities and would be one step further removed from such core municipal advisory functions.

Lastly, if the final rules are not modified as we have requested above, we believe that it would be appropriate to permit those individuals and firms providing non-core municipal advisory activities incidental to engineering advice to comply with a less burdensome regulatory regime than the regime applied to other types of municipal advisors. A less burdensome regulatory regime would be appropriate to reflect the lower degree of involvement of such individuals and firms with municipal securities. The regime could entail short-form filings or less frequent filings, fewer record-keeping requirements and carve-outs from future rules of the Municipal Securities Rulemaking Board, and apply to those deemed municipal advisors who provided municipal advisory activities only incidentally to their core activities (such as engineering), at a de minimis level or indirectly through intermediaries.

In summary, the rules as proposed would impose a wasteful and unnecessary regulatory regime on transportation planners and engineers who have almost no involvement in municipal financial products or securities. Transportation planners and engineers no more constitute municipal advisors than do attorneys, who likely provide more detailed advice and information concerning municipal financial products or the issuance of municipal securities, yet are exempt. Engineering companies provide no financial intermediary role in the design, pricing, underwriting or sale of municipal securities and are not compensated on the basis of the issuance of such securities. The rules as proposed would create waste and inefficiency by unnecessarily requiring thousands of engineers and engineering firms to register and comply with heightened fiduciary duties and record keeping requirements or to distort their businesses and professional activities to avoid coming within the scope of the rules, including by being forced to discontinue providing valuable services and assistance to their municipal clients. For these reasons, we respectfully request that the scope of the exemption for engineering advice be broadened as described above, or that the regulatory burden be lessened as applied to engineers and engineering firms.

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I would be happy to discuss any questions that the staff may have regarding the above comments. Please call me at (212) 594-9717 if you have any questions.

Sincerely,

A handwritten signature in black ink that reads "Paul Yarossi". The signature is written in a cursive, flowing style.

Paul A. Yarossi  
President  
HNTB Holdings Ltd

**Exhibit A**



DAVID A. RAYMOND  
PRESIDENT & CEO

February 18, 2011

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

Re: File Number S7-45-10

Dear Ms. Murphy:

On behalf of the American Council of Engineering Companies (ACEC) – the national voice of America’s engineering industry – I appreciate the opportunity to provide our comments on the Securities and Exchange Commission’s proposed rule on the registration of municipal advisors pursuant to Section 975 of the Dodd-Frank Wall Street Reform and Consumer Protection Act.

ACEC members – numbering more than 5,000 firms representing hundreds of thousands of engineers and other specialists throughout the country – are engaged in a wide range of engineering works that propel the nation’s economy, and enhance and safeguard America’s quality of life. Many of our member firms work with municipal clients and could potentially be affected by the proposed rule.

As you know, Section 975 of the Act requiring “municipal advisors” to register with the Securities and Exchange Commission (SEC) and the Municipal Securities Rulemaking Board (MSRB) includes an exemption for “engineers providing engineering advice.”

The proposed rule expands on this exemption by stating:

*As discussed above and below, the exclusions from the definition of “municipal advisor” included by Congress in Section 15B(e)(4) of the Exchange Act were limited. With respect to engineers, the exclusion applies to engineers providing “engineering advice.” For example, costing out engineering alternatives would not subject an engineer to registration as a municipal advisor because such activity would be considered engineering advice. The exclusion does not include circumstances in which the engineer is engaging in municipal advisory activities, including cash-flow modeling or the provision of information and education relating to municipal financial products or the issuance of municipal securities, even if those activities are incidental to the provision of engineering advice. In addition, the exclusion does not include circumstances in which the engineer is preparing feasibility studies concerning municipal financial products or the issuance of municipal securities that include analysis beyond the engineering aspects*

*of the project and, therefore, an engineer preparing such studies would be subject to registration as a municipal advisor.*

ACEC believes that this understanding of the engineering exemption is too narrow and does not reflect congressional intent in specifying the need for an engineering exemption from the definition of municipal advisor. We are particularly concerned about the specific exclusion of cash-flow modeling from the engineering exemption, and the reference to feasibility studies.

Cash-flow modeling is a fundamental engineering activity and generally manifests as either a cost-loaded schedule provided to a client or a record-keeping cash-flow analysis typically occurring during project implementation. Engineers develop “Consulting Engineer’s Reports” and “Consulting Engineer’s Certificates” as part of official statements required by bond covenants and ordinances. These reports and certificates address such issues as estimated costs of proposed projects. There is a significant difference between this kind of basic financial analysis and guidance that provides recommendations on the issuance of particular types of financial products, such as municipal securities.

This is a critical distinction because in many cases an analysis of funding requirements is inextricable from the design of an engineering project. Examples include water projects that are financed by rate-payers, transit projects that are financed by fares, and toll roads financed by their users. In each of these cases, design of the project cannot proceed without analyzing its costs and cash flow. In addition, engineers provide guidance to clients on alternative phasing of projects to match available revenues or to maximize the infrastructure given limited resources.

For instance, engineering firms, serving in a consultation capacity to transportation agencies or municipalities, are regularly asked to provide analysis that will help the agency or municipality to assess the need for increased fares or tolls on their transportation network. This analysis generally includes cash flow, and is often paired with analysis of information provided by the client for new or improved capacity on their network. Much of this information is also required by federal agencies in order to receive approval for federal funding of these capital projects.

Another case in which engineers are required by federal agencies or other governmental entities to prepare financial analysis is the preparation of facilities plans for wastewater projects. The U.S. Environmental Protection Agency requires a fiscal impact study to show what the financial impact of the project would be on a typical household or business. This is traditional engineering advice that is only performed by engineers – not brokers, dealers, or investment advisors – and differs from advising a municipal client on the means that could be used to fund such projects. We suggest that this type of traditional engineering advice does not meet the definition of municipal advisor as envisioned by Congress because these services do not concern the structuring of municipal financing. We recommend that the SEC clarify the proposed rule so that the kinds of professional engineering activities outlined here are covered by the engineering exemption from the municipal advisor registration regime.

We also recommend that the SEC clarify the application of the engineering exemption to the preparation of feasibility studies. In addition to the points made above about the interwoven nature of financing with design of many engineering projects, we note that Congress specifically included the preparation of studies in its definition of engineering and architectural services. The Brooks Act (40 USC Sec. 1102), which was enacted in 1972, delineates what constitutes engineering services. This definition is used throughout federal programs. The statute states:

*Sec. 1102. Definitions*

- (2) *Architectural and engineering services.* – *The term “architectural and engineering services” means –*
- (A) *Professional services of an architectural or engineering nature, as defined by state law, if applicable, that are required to be performed or approved by a person licensed, registered, or certified to provide the services described in this paragraph;*
  - (B) *Professional services of an architectural or engineering nature performed by contract that are associated with research, planning, development, design, construction, alteration, or repair of real property; and*
  - (C) *Other professional services of an architectural or engineering nature, or incidental services, which members of the architectural and engineering professions (and individuals in their employ) may logically or justifiably perform, including studies, investigations, surveying and mapping, tests, evaluations, consultations, comprehensive planning, program management, conceptual designs, plans and specifications, value engineering, construction phase services, soils engineering, drawing reviews, preparation of operating and maintenance manuals, and other related services.*

The Brooks Act definition of engineering services suggests that the preparation of feasibility studies would appear to be covered by the engineering exemption included by Congress in the Dodd-Frank Act. There are different types of feasibility studies prepared by engineers. One category is technical feasibility studies that solely examine the technical aspects of a potential project. For example, this type of study might analyze whether a water pipe could deliver certain quantities of water over a specified period of time without breaking. In addition, engineers often prepare alternatives analysis feasibility studies, which incorporate a cost analysis of each alternative but do not discuss funding options. Engineering firms sometimes assist municipalities in their development of feasibility studies, which can include analyzing historical financial performance, working with a coherent set of assumptions regarding future conditions, and evaluating project alternatives. While such studies are used in the client’s own analysis to support spending and funding decisions, they do not provide advice on the issuance of particular financial products in order to fund a project. We recommend that the SEC clarify that the engineering exemption should apply to the types of feasibility studies outlined above.

We would appreciate the opportunity to work with the SEC to refine its interpretation of the engineering exemption to the municipal advisor registration regime so that it more clearly reflects congressional intent and the nature of professional engineering work. Thank you for your consideration.

Sincerely,

A handwritten signature in blue ink, appearing to read "David A. Raymond". The signature is fluid and cursive, with a long horizontal stroke at the end.

David A. Raymond  
President & CEO