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February 7, 2011

US Securities and Exchange Commission  
SEC Compliant Center  
100 F Street NE  
Washington, D.C. 20549-0213

SECURITIES AND EXCHANGE  
COMMISSION

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OFFICE OF INVESTOR  
EDUCATION AND ADVOCACY

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

This letter is in response to the SEC opportunity to comment on the registration of “Municipal Advisors”, in particular trustees of public retirement systems.

**Background:**

The California State Association of County Retirement Systems, (SACRS) is a 57-year-old association consisting of the public employee retirement systems in twenty counties whose systems were created under the California County Employees Retirement Law (CERL). The SACRS member systems assets total approximately \$80 billion and provide benefits to over 400,000 county employees and retirees. These systems have been providing benefits to their members and their beneficiaries for over 65 years.

Under the CERL, the Retirement Board that acts as the system’s governing body typically is composed of nine members: the county treasurer ex officio, two members elected by the general members, one member elected by the safety members, one retired member elected by the retired members, and four members appointed by the Board of Supervisors. These appointed members are required to be qualified electors of the county who are not to be connected with the county government in any capacity, except one may be a County Supervisor. All board members, except for the County Treasurer, serve three-year terms that are staggered. The County Treasurer’s term runs concurrent with the County Treasurer’s four-year term of office. This diverse board composition is so crucial to the governing balance of our Retirement Boards that it is written into the State.

Constitution cannot be changed without a vote of the people. And under that same Constitutional article, each board member, however named, owes an absolute fiduciary obligation to the system, its members and their beneficiaries.

*Continued*

## **SEC Registration Proposal With Regard to Trustees:**

From page 41 of the Commission Release No. 34-63576, "Registration of Municipal Advisors", we have learned that:

- 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.
- From this we interpret that the SEC views a public pension fund as a "municipal entity" and non-elected, non-employee members of the pension board as "Municipal Advisors".

## **Impact on CERL Board of Retirement:**

This interpretation would single out three or four independent board trustees who are appointed by the elected officials of the county plan sponsor, and require them to register as Municipal Advisors with the SEC. The other six trustees, who perform the very same duties, would not be affected by this SEC requirement.

## **Concerns:**

CERL statutes require that the appointed members of our retirement boards be qualified electors of the county. The elected Board of Supervisors, the plan's sponsor, selects the individuals to serve in the appointed positions for limited three-year terms. As qualified "electors", they are not only voters but also local taxpayers. For the SEC to treat these appointees as being advisors to, rather than members of, the governing body of the retirement system would run counter to their Constitutional designations. Are they any less responsible trustees than the elected members who are also recipients of the benefits? The ultimate stakeholder in public pensions is the taxpayer.

To segregate appointed trustees from elected trustees would do a great disservice to all people who view themselves as fiduciaries. All trustees are accountable to and responsible to the beneficiaries of the pension. At a time when our plan sponsors are struggling to find highly qualified, independent professionals and other capable individuals to serve in these largely uncompensated positions, public policy should encourage, not discourage, their voluntary public service.

## **Discussion:**

SACRS believes that there are significant differences between regulated investment advisers and broker-dealers who undertake the solicitation of a municipal entity and sworn trustees who have a fiduciary responsibility to steward the trust funds of the municipal entity. The former seek to sell products to pension boards. The latter has a responsibility to select, monitor and, if necessary, terminate advisers and brokers that fail to perform in the best interests of the pension fund and its membership.

Appointed pension trustees are not advisers, brokers, placement agents or solicitors engaged in marketing investment products.

As a pension trustee, an individual holds or manages investment assets for the benefit of another. The trustee is legally obligated to make all trust-related decisions with the beneficiaries' sole interests in mind. Appointed trustees are answerable not only to the elected officials who appoint them, but to the thousands of members they serve.

The trustee as a fiduciary is an individual holding assets for another party, often with the legal authority and duty to make decisions regarding matters on behalf of the other party. Public sector trustees have a "duty of loyalty" parallel to that found under ERISA 404(a)(1), which obligates them to refrain from using their position to further their own interests rather than the interests of the members. The nature of this duty of loyalty is not necessarily a factor for broker-dealers. Robust California "conflict of interest" laws, bearing both civil and criminal penalties for violations, effectively prevent trustees from acting in their own personal financial interest.

Similar and parallel to corporate plans under ERISA, 404 (a)(1)(c), public pension plan trustees have a "duty of diversification" within the limits as set forth in the California Constitution and the statutes of the public entity. As fiduciaries, trustees with investment responsibilities must diversify investments on the plan so as to maximize return and minimize losses. Regulated investment managers and broker-dealers have no such duty of diversification.

SEC has selected the term "municipal advisor". We do not believe that the term "advisor" is an appropriate definition for the individual who performs pension trustee responsibilities. Trustees are not "advisors" to a pension fund's board, they are the board. A trustee is the ultimate party legally responsible for the overall integrity of the pension fund.

We have seen some resistance from investment advisers and broker-dealers to be considered as "fiduciaries". There is no such resistance from pension trustees. Whether appointed, elected or ex officio, all trustees are sworn fiduciaries and as such are already clearly subject to potential fiduciary liability claims. We believe these exposures are uniquely different and exceed what may be contemplated by the proposed SEC definition of "municipal advisor".

#### **Conclusion and Request for Reconsideration:**

As fiduciaries, the Constitutional and statutory responsibilities for appointed trustees of a public sector pension plan are no different than those of elected trustees.

We respectfully submit that applying the obligations of a "Municipal Advisor" to those who serve as appointed trustees is inappropriate for the functions they perform, and would have a chilling effect on the plan sponsor's ability to attract qualified electors to serve in these positions. We ask that you reconsider and clarify the proposed regulations to recognize this critical distinction.

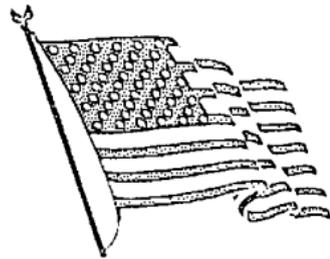
Thank you for the opportunity to comment on this very important matter.

Sincerely,



Robert Palmer

SACRS Executive Director



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