



ALABAMA HOUSING FINANCE AUTHORITY

February 1, 2011



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

Re: File Number S7-45-10

Dear Ms. Murphy:

This letter is submitted in response to the notice of proposed Rule 15Ba1 through 15Ba7 of the Securities and Exchange Commission (the "Commission").

The Alabama Housing Finance Authority

Alabama Housing Finance Authority ("AHFA") is a public corporation and instrumentality of the State of Alabama (the "State") created on July 25, 1980, under Alabama Code 24-1A-1 *et seq.*, as amended (the "Enabling Act"). AHFA administers a number of federal and state programs to provide safe, sanitary and affordable housing to qualified residents of the State of Alabama. One of AHFA's purposes is to issue tax-exempt bonds to provide financing for its single-family mortgage loan program or to provide financing for affordable multifamily housing projects, both of which provide housing for families of low and moderate income.

All powers of the AHFA are vested in a fifteen-member board of directors (the "Board") that is required by its enabling statute to include:

- Seven members appointed by the Governor, one from each State congressional district.
- One member appointed by the Governor from the State at large.
- Two members appointed by the Lieutenant Governor.
- Two members appointed by the Speaker of the House of Representatives.
- The State Director of Finance of the State of Alabama (*Ex Officio*).
- The State Superintendent of Banks (*Ex Officio*).
- The State Treasurer (*Ex Officio*).

With respect to the Board members appointed by the Governor, the Enabling Act requires that at the time of their appointment:

- Two Board members be engaged in the business of home building.
- Two Board members be licensed real estate brokers not in the business of home building.
- One Board member be engaged in the business of lending money on the security of residential mortgages or be an officer or employee of a mortgage lender.
- One Board member be an elected commissioner of a county.
- One Board member be an elected mayor of a municipality.

The Board is designed by statute to ensure that its members possess experience relevant to affordable housing. The Board members are appointed for seven-year staggered terms, so that only one or two

Come on home, Alabama.

directors are eligible for appointment each year. The appointed members of the Board serve without salary, and the *ex officio* members receive no salary over and above the salary for their elected office.

Comments to Proposed Regulations

The proposed regulations are promulgated under Section 975 of Title IX of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the “Dodd-Frank Act”), which amended Section 15B of the Exchange Act of 1934 (as amended, the “Exchange Act”) to require that “municipal advisors” register with the Commission by providing extensive personal and professional information and to comply with certain regulatory requirements. The definition of “municipal advisors” used in the proposed regulations includes persons serving as appointed directors of municipal boards and public corporations. For the reasons set forth below, this definition is excessively broad, is unnecessarily burdensome on public corporations such as AHFA, and will produce results contrary to the goals of the Dodd-Frank Act.

The Proposed Regulations Appear Beyond Congress’s Intended Scope of Authority. The proposed regulations are promulgated under Section 15B(e)(4)(A) of the Exchange Act, as amended by the Dodd-Frank Act, which defines the term “municipal advisor” to exclude any person who is “a municipal entity or an employee of a municipal entity. . .” Because those who serve as appointed or elected members of the governing body of a municipal entity are technically not the municipal entity itself or *an employee* of the municipal entity, the proposed regulations suggest that Congress intended to include appointed or elected board members as “municipal advisors” for purposes of the Commission’s registration requirements. The Commission’s analysis, however, determines that only *appointed* members of municipal entities should be required to register as municipal advisors because *elected* members, whether elected directly or appointed *ex officio* by virtue of elected office, are already sufficiently accountable to the public citizens of the municipality. AHFA respectfully submits that the Commission’s analysis is not appropriate in this context. Notably, none of the discussion in the Introduction to the proposed regulations, including that relating to “Municipal Advisors,” refers to persons serving the function of appointed members of a municipal entity. In summarizing the Dodd-Frank Act’s definition of “municipal advisor,” the Introduction refers to three categories of persons: “financial advisors” that provide advice to municipal entities relating to the issuance of municipal securities, “investment advisers” that advise municipal entities concerning investment of public funds, and “third-party marketers and solicitors.” The members of the Board make decisions in these areas for the AHFA, but no member of the Board provides “advice” to AHFA other than evaluating information received from outside professionals (such as the three types of advisers referenced in the Introduction) within the scope of their duties as Board members. The members of the Board simply do not perform the types of functions for AHFA that Congress intended to address when it passed the Dodd-Frank Act.

The Proposed Regulations Create Potential Conflicts of Interest Between the AHFA and its Board. AHFA has the ability to act only through its Board. The Board *is* the AHFA, both practically and as a matter of law, and arguably, to the extent the definition of “municipal entity” in the Exchange Act, as amended by the Dodd-Frank Act, applies to AHFA, the members of the Board *are* the “municipal entity.” The Board is responsible for making decisions in the best interests of AHFA based in part on advice received from outside professionals, including financial advisors. The proposed regulations would impose the liabilities of outside financial advisors on AHFA’s directors who are the recipients, not the providers, of that advice. It is illogical and ultimately unworkable to require directors to register as advisers to themselves. By requiring directors to consider their personal liability as a “municipal advisor” as part of each decision, the proposed regulations force appointed directors to inject self-interest into each decision they face relating to municipal securities, rather than being in a position to evaluate the advice

they receive from outside municipal advisors from an objective standpoint based solely on their legal duties to AHFA as Board members and what is best for the citizens of Alabama.

The Proposed Regulations Impose Different Duties Among Board Members Without Basis. The proposed regulations would require the *appointed* members of the Board to register as “municipal advisors” but would not require registration by those who are *ex officio* members by virtue of elected office. All members of the Board have the same legal responsibilities to AHFA under the Enabling Act. There is no rational basis on which to require *appointed* members to comply with the registration, personal disclosure and reporting requirements in the proposed regulations when *elected* members are not required to do so. This discrepancy, too, may produce divisions of opinion among the Board for reasons wholly unrelated to what is best for AHFA and the citizens of Alabama.

Appointed Board Members are Fully Accountable Without Additional Regulations. The proposed regulations suggest that registration as “municipal advisors” is necessary because appointed board members are not “directly accountable for their performance to the citizens of the municipal entity.” Three¹ of the fifteen Board members are, in fact, elected officials already directly accountable to the electorate. The remaining twelve members are fully accountable for their actions on the Board under current State law:

1. All members of the Board “may be impeached or removed from office in the same manner and on the same grounds as provided in Section 175 of the Constitution of Alabama and the general laws of the state relating to the impeachment and removal of public officers.” Ala. Code § 24-1A-4(a).
2. No Board member may solicit or receive anything of value for the purpose of influencing official action. Ala. Code § 36-25-7(a).
3. No Board member is permitted to use his or her official position for personal gain or for personal gain for any family member. Ala. Code § 36-25-5(a).
4. No Board member and no business with which the Board member is associated may enter into any contract payable in whole or in part from state, county or municipal funds unless awarded by competitive bid and a copy is provided to the State ethics commission. Ala. Code § 36-25-11.

These existing laws, among others, provide all necessary tools to ensure accountability for appointed board members, and the proposed regulations would impose significant burdens on the Board members without achieving any material benefit. Furthermore, accountability of Board members to state and local officials is far more appropriate and efficient than attempted nationwide regulation of appointed Board members by the Commission.

The Proposed Regulations Jeopardize the Independence of Appointed Boards. AHFA is very proud of its Board and the broad experience and competence that Board members bring to the organization. The Board’s expertise is due in large part to the Enabling Act’s requirements that appointed members must be selected based upon qualifications relating to AHFA’s affordable housing activities. It

¹ One of the *ex officio* members of the Board is an elected official, and two of the appointed members of the Board are required to be elected officials of a city and county, respectively. Ala. Code. § 24-1A-4(a).

is also due to the Board's ability to focus exclusively on what is best for the AHFA from an independent and objective perspective. AHFA has significant concerns that the proposed regulations will diminish the ability of the Board and its future members to continue to provide the independent and unselfish service that has been the Board's hallmark since AHFA's inception. There are two primary reasons:

1. The issuance of bonds is a very important but ultimately minor portion of the Board's overall responsibilities. Certainly each bond issue must comply with applicable law, but appointed members of the Board are not personally familiar with federal securities laws and by necessity must rely on the advice of legal counsel and other professional advisers concerning what disclosure is appropriate under particular circumstances. Requiring directors to participate in a registration and compliance regime governed by unfamiliar laws and designed for financial professionals will work against the goals of the Dodd-Frank Act by increasing (rather than decreasing) the degree to which Board members must rely on outside advisers to ensure compliance with the law. The proposed regulations will align the regulatory responsibilities and potential liabilities of the Board with the regulatory responsibilities and potential liabilities of its outside advisers under laws that give the advisers a significant expertise advantage. As a result, appointed Board members will of necessity find themselves being less "independent" and instead becoming more "dependent" on outside advisers not only for what is best from a financial perspective but also for what is most appropriate from a "municipal advisor" liability perspective. As a practical matter, the proposed regulations will provide outside advisers with an expertise advantage that has the potential for abuse by outside advisers wishing to wield influence over appointed directors. That is not the kind of "independent" Board that AHFA wants to have, and it's not the kind of independence for appointed directors that securities regulations should support.

2. The members of the Board are private citizens from many walks of life who have no expertise in securities laws or municipal securities, although they have expertise and experience in other areas important to AHFA. All appointed members of the Board serve on a voluntary basis with no salary or other compensation. The proposed regulations will require voluntary, appointed board members who receive no salary or other compensation to familiarize themselves with, and to accept liability for violating, specific registration, reporting and compliance responsibilities under federal securities laws that are otherwise completely unknown to them. This is a far different commitment than a general understanding by appointed directors that AHFA cannot engage in any misleading disclosure with respect to municipal securities, that they cannot solicit or accept any type of improper remuneration in connection with a municipal financing (obligations that are understood relatively easily from any walk of life) and that otherwise they can rely on legal counsel with respect to the legality of bond issues. The registration requirements in the proposed regulations may alone discourage many otherwise qualified and willing candidates from agreeing to serve on the Board. As a result, persons with financial incentives tied to AHFA's activities or those already familiar with securities laws and municipal securities will be most willing to serve. Over time, the proposed regulations will transform boards populated by diverse members with expertise in relevant areas into boards populated predominately by financial professionals or those with direct or indirect financial interests in AHFA's activities.

Enforcement of the Proposed Regulations will Defeat their Objectives. Regulations should be structured in a manner that incentivizes compliance and achieves the larger goal of the regulatory scheme. The overall goal of the Commission, insofar as it relates to municipal securities, is to improve the state of disclosure and to minimize the potential for abuses by municipal advisors and other industry

professionals. The proposed regulations cannot be meaningfully enforced without jeopardizing these very objectives. The negative effects on appointed boards listed above will accelerate if the proposed regulations are ever enforced against an appointed board member. These effects do not occur in the financial industry itself, because financial professionals are willing and active participants in the municipal securities markets and possess the licenses and education to understand their regulatory obligations. As soon as a volunteer, appointed, unpaid board member who is a pharmacist, a fireman, an educator or a local mortgage banker is fined or prosecuted for failing to register properly, failing to include certain information in the registration materials or otherwise for failing to comply with the proposed regulations (that is, for anything beyond the kinds of misconduct that appointed directors can generally understand but are confident they will not commit, such as providing misleading disclosure or accepting improper remuneration), the number of resignations from existing directors and the number of qualified candidates who refuse to serve will increase significantly. Regulations are not effective if the result of enforcement is a refusal of qualified voluntary directors to serve essential roles in the industry.

Conclusion

For all the reasons stated in this letter, AHFA recommends that appointed, elected and elected *ex officio* members of municipal governing boards, including public corporations such as AHFA, be explicitly excluded from the definition of "municipal advisor" as currently stated in the proposed regulations.

Thank you for your consideration. If you need additional information, please contact the undersigned by telephone at (334) 244-9200, by mail at 7460 Halcyon Pointe Drive, Suite 200, Montgomery, AL 36117, or by electronic mail at rstrickland@ahfa.com.

Sincerely,

ALABAMA HOUSING FINANCE AUTHORITY

By: 
Robert Strickland, its Executive Director