



DEVAL L. PATRICK  
GOVERNOR

TIMOTHY P. MURRAY  
LT. GOVERNOR

JEFFREY B. MULLAN  
SECRETARY & CEO



February 22, 2011

Ms. Elizabeth M. Murphy  
Secretary  
Securities and Exchange Commission  
100 F Street, NE  
Washington, D.C. 20549-0690

**Re: File Number S7-45-10; Release No. 34-63576  
Registration of Municipal Advisors**

Dear Ms. Murphy:

I write on behalf of the Massachusetts Department of Transportation ("MassDOT") in response to Release No. 34-63576, dated December 20, 2010 (the "Release"), pursuant to which the Securities and Exchange Commission (the "Commission" or "SEC") has requested comments to proposed Rules 15Ba1-1 through 15Ba1-7, regarding requirements for the registration of municipal advisors with the Commission under the Dodd-Frank Act. MassDOT opposes the proposal to exclude from the definition of "municipal advisor" elected members of a municipal governing body, but to include most appointed members.

MassDOT, created pursuant to Chapter 25 of the Massachusetts Acts of 2009, "An Act Modernizing the Transportation Systems of the Commonwealth of Massachusetts" (as amended to date, the "Enabling Act"), is a body politic and corporate and a public instrumentality of The Commonwealth of Massachusetts (the "Commonwealth" or "Massachusetts"). MassDOT is a merger of the former Executive Office of Transportation and Public Works with the Massachusetts Turnpike Authority, the Massachusetts Highway Department, the Registry of Motor Vehicles, the Massachusetts Aeronautics Commission, and the Tobin Bridge, formerly owned and operated by the Massachusetts Port Authority. In addition, the Massachusetts Bay Transportation Authority and Regional Transit Authorities are subject to oversight by MassDOT.

MassDOT is governed by a five member board (the "Board"), appointed by the Governor. Members of the Board serve four-year terms, initially staggered, and are eligible for reappointment. Board members are not compensated for their service to MassDOT.

Proposed Rule 15Ba1-1 (the "Proposed Rule, as described in the Release, would exclude from the definition of a "municipal advisor" elected members of a governing body of a municipal entity, but to include appointed members of a municipal entity's governing body, unless such appointed members serve as ex officio members of the governing body by virtue of holding elective office. As a result of this application of the Proposed Rule, appointed members of a municipal entity's governing body (other than elected officials serving ex officio) would be subject to the registration requirements of the Dodd-Frank Act. As discussed herein, these distinctions are not appropriate and we request that the Commission exclude all governing body members from the definition of "municipal advisor."

The term "municipal advisor," as defined in the Proposed Rule, means, in part, "a person (who is not a municipal entity or an employee of a municipal entity) that (i) 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 . . . ; or (ii) undertakes a solicitation of a municipal entity". In the Release, however, the Commission indicates that appointed members of a governing body who are not elected *ex officio* should be included in the definition of "municipal advisor." The Commission thus assumes that all non-excluded appointed members must *provide* advice to their municipal entity with respect to municipal financial products or the issuance of securities. MassDOT believes that the Commission's assumption about the role played by many appointed members of municipal boards.

Board members of MassDOT are not "municipal advisors." They may receive, evaluate, discuss and respond to advice in the course of their consideration of transactions, but they are not "advisors" even if they consider or offer their own knowledge and expertise in voting or debating questions relating to the issuance of bonds or otherwise acting within the scope of their duties as board members. We feel strongly that the definition in the Proposed Rule is far broader than is necessary to accomplish the objectives of the Dodd-Frank Act.

The Commission apparently justifies treating appointed Board members differently because it seems to believe that employees and elected members are accountable to the municipal entity they serve for their actions but "appointed members, unlike elected officials and elected *ex officio* members, are not directly accountable for their performance to the citizens of the municipal entity." MassDOT respectfully disagrees with the Commission's rationale for this disparate treatment because appointed Board members are, in fact, accountable. Though not elected, appointed members are generally subject to removal for cause by the governing official or body that appointed them. In addition to these specific forms of responsibility and accountability, issuing entities and their Board members are subject to the public scrutiny created under law in almost all states concerning freedom of information, public meeting requirements, press coverage, legislative review and numerous other public sector requirements to which private sector municipal advisors are not subject.

If the Proposed Rule is not clarified and appointed members of a governing body that are not *ex officio* members by virtue of holding an elective office are required to register as "municipal advisors", then all of the Board members of MassDOT would be subject to registration. Including appointed board members in the definition of "municipal advisor" is inconsistent with the role our Board and similar boards play as the issuer of debt.

For the reasons stated herein, MassDOT respectfully requests and recommends that all members of municipal entities, elected or appointed, be expressly exempted from the Dodd-Frank Act's registration requirements for municipal advisors.

Very truly yours,

Monica E. Conyngham  
General Counsel

Arthur D. Shea  
Chief Financial Officer