



February 22, 2011

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

David A. Stawick
Secretary
Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street NW
Washington, DC 20581

**Re: Proposed Regulations on Registration of Municipal Advisors, Exchange Act Release
No. 63576/File Number S7-45-10**

Dear Ms. Murphy and Mr. Stawick:

The State of Wisconsin Investment Board (SWIB), an independent agency of the State of Wisconsin, is the ninth largest public pension plan in the United States. We manage over \$79 billion in assets on behalf of more than 566,000 beneficiaries in the Wisconsin Retirement System, a public pension fund. SWIB is also responsible for investing other state trusts and funds, as well as a fund in that includes a local government investment pool. SWIB's governing board is composed of nine members, most of whom, by statute, are appointed by the Governor and confirmed by the State Senate.

On December 20, 2010, the Securities and Exchange Commission (SEC) issued proposed permanent rules requiring municipal advisors to register with the agency. The proposed rules define "municipal advisors" to include "appointed members of a governing body of a municipal entity that are not elected ex-officio members." "Municipal entities," under the Securities Exchange Act of 1934 § 15B(e)(8), include any plan, program, or pool of assets sponsored or established by the State including "public pension funds, local government investment pools and other State and local governmental entities or funds." Thus, SWIB and the funds it manages are municipal entities.

We are responding to the Commission's invitation to comment on the Commission's current proposal to exclude from the definition of "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 they are *ex officio* members by virtue of holding an elective office. The Commission asks if this distinction is appropriate

SWIB strongly believes that the extension of the definition of "municipal advisor" in 15 U.S.C. §78o-4(e)(4)(A), and thereby the registration requirements, to appointed members of boards governing public pension funds or other state funds and local investment pools is not appropriate. We do not believe it was intended by Congress; it will have a chilling effect on the willingness of citizens to serve as members of governing boards; and it will not add any additional protections to beneficiaries of the public funds. We respectfully urge the SEC to treat all governing bodies of municipal entities and all individuals elected or appointed to serve on their governing boards, as part and parcel of the "municipal entity" for the purposes of 15 U.S.C. §78o-4(e)(4)(A).

First, excepting governing board members from the municipal entity itself seems contrary to Congress' intent. Section 975 of the Dodd-Frank Act 15 U.S.C. §78o-4(a)(1)(B) provides:

It shall be unlawful for a municipal advisor **to provide 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 **to undertake a solicitation of a municipal entity** or obligated person, unless the municipal advisor is registered in accordance with this subsection. (Emphasis added)

In addition, section 975 of the Dodd-Frank Act added 15 U.S.C. §78o-4(c)(1) provides:

No broker, dealer, or municipal securities dealer shall make use of the mails or any means or instrumentality of interstate commerce to effect any transaction in, or to induce or attempt to induce the purchase or sale of, any municipal security, and no broker, dealer, municipal securities dealer, or municipal advisor shall make use of the mails or any means or instrumentality of interstate commerce **to provide advice to or on behalf of a municipal entity** or obligated person with respect to municipal financial products, the issuance of municipal securities, or **to undertake a solicitation of a municipal entity** or obligated person, in contravention of any rule of the Board. A municipal advisor and any person associated with such municipal advisor **shall be deemed to have a fiduciary duty to any municipal entity** for whom such municipal advisor acts as a municipal advisor, and no municipal advisor may engage in any act, practice, or course of business which is not consistent with a municipal advisor's fiduciary duty or that is in contravention of any rule of the Board. (Emphasis added)

If the governing body of a municipal entity is not part and parcel of the "municipal entity" for the purposes of these provisions, then any third party providing advice to the governing body or soliciting the governing body would not be subject to these provisions. Plainly that was not Congress' intent. Given that, there is no basis for believing that the governing body of a municipal entity is excluded from the term "municipal entity" as used in 15 USC §78o-4(e)(4)(A).

Second, SWIB Trustees do not provide investment advice to a pool of assets. Instead, they seek and receive advice from consultants and investment advisors. The SWIB trustees set the policies for SWIB's investments: they establish an asset allocation and set investment guidelines and policies; however, they do not provide advice to the managed funds. SWIB's investment staff make the specific investment decisions on how to manage the pension funds, but that is not "advice" either. The Commission has recognized that employees do not provide advice by excluding them from the definition of "municipal advisor."

Third, requiring appointed members of the governing body to register as municipal advisors and subjecting them to the oversight of the Securities and Exchange Commission would not provide any additional protection on behalf of the trust funds or their beneficiaries. The Commission commented that appointed trustees are not accountable and need oversight. This observation overlooks that fact that members of the governing bodies of public pension funds have a fiduciary duty to act solely in the interest of the funds they manage and the beneficiaries of those funds. This fiduciary duty is imposed by governing state and municipal law (in Wisconsin, see Wis. Stat. sec. 25.15) and the common law of trusts. Fiduciary responsibility requires that the governing board members act for no other purpose, including their own. A breach of the fiduciary duty carries significant personal liability for a board member. In addition, in Wisconsin, the statutes require that all SWIB Trustees report all financial transactions quarterly and potential conflicts of interest to the State Government Accountability Board. Thus, appointed members do have accountability.

Finally, SWIB trustees receive minimal compensation (a maximum of \$50 per day for meeting attendance). They volunteer a substantial time and expertise in service to the public pension fund. Our fear is that municipal advisor registration requirements, when added to the financial reporting requirements imposed by the State of Wisconsin, will discourage qualified individuals from serving as board members. That may leave board positions to be filled by individuals who have a political or personal agenda.

We believe that all trustees for investment pools, whether pension, local government pools, other state and local funds or defined contribution plans, should be exempt from registration as municipal advisors. Municipal advisor registration does not provide any appreciable benefit not already provided by the fiduciary responsibility that is imposed on board members by law.

We appreciate the opportunity to comment on this Proposed Rule. Please feel free to call either Jane Hamblen at 608.266.8824 or myself at 608.266.9451 if you have any questions or would like to discuss our comments further.

Very truly yours,


Keith Bozarth
Executive Director