



February 22, 2011

VIA E-MAIL

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

RE: Registration of Municipal Advisors, Release No. 34-63576; File No. S7-45-10

Dear Ms. Murphy:

Ricondo & Associates, Inc. (R&A) is submitting this letter in response to the Securities and Exchange Commission's (the Commission) request for comments regarding its proposed rule for the registration of municipal advisors as it pertains to engineering companies. Specifically, the Commission posed the following questions:

Should the Commission expand the exclusion from the definition of "municipal advisor" beyond engineers providing engineering advice? If so, why and how should such exclusion be expanded? If not, why not? How should the Commission interpret the term "engineering advice"? Are there activities that are "incidental to the provision of engineering advice" or "inextricably linked to engineering advice" that can only reasonably be performed by an engineer that might otherwise constitute advice with respect to the issuance of municipal securities or municipal financial products? As discussed above, the Commission does not interpret the exclusion of engineers providing engineering advice to 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. Is this an appropriate interpretation? Please explain. (SEC Proposed Rule, Page 50).

R&A is a full-service aviation consulting firm specializing in airport physical and financial planning in support of airport owners and operators, airlines, and federal and state agencies. Since its founding in 1989, R&A has been dedicated to solving the challenging problems facing the airport and airline industries. The company is owned and operated by its senior officers and has no other business interest except airport and aviation planning.

Specifically, R&A provides its clients with a variety of planning services including, but not limited to: airfield analysis and planning, airspace analysis and planning, air service forecasting and development, environmental services, regulatory assistance, sustainability services, terminal and facilities planning, and airport business and financial planning services. Our financial planning services support the firm's other disciplines in serving our airport clients, preparing capital planning and affordability evaluations, preparing Federal Aviation Administration (FAA) grant applications,



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passenger facility charge planning and implementation, preparing and reviewing airline rates and charges, assisting in negotiations with the airlines regarding airport use and lease agreements, conducting benefit-cost analyses, and developing airport master plans. Also, R&A is often retained by clients to prepare an independent airport consultant report for inclusion in the offering document for an airport revenue transaction to provide an impartial, third party evaluation of the entity's ability to repay its debt for the benefit of the rating agencies, credit analysts, potential investors, and the underwriter. R&A does not offer financial advisory services regarding the timing, structure or terms of a municipal bond transaction, nor does the firm offer advice regarding "municipal financial products."

In the proposed rule, the SEC states that:

With respect to engineers, the exclusion (from the definition of municipal advisor) 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. (SEC Proposed Rule, page 39).

R&A does not believe that the airport planning and financial services provided by our firm meet the definition of "municipal advisor," and thus firms such as ours should not be subject to registration as a municipal advisor. As stated in the proposed rule, Section 15B(e)(4)(A) of the Exchange Act, as amended by the Dodd-Frank Act, defines the term "municipal advisor" to mean:

a person (who is not a municipal entity or an employee of a municipal entity) (i) that 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, including advice with respect to the structure, timing, terms, and other similar matters concerning such financial products or issues, or (ii) that undertakes a solicitation of a municipal entity. (SEC Proposed Rule Page 19)



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In many activities that our firm undertakes on behalf of our clients, including, but not limited to, the preparation of master plans, applications for FAA grants, benefit-cost analyses, and applications for the implementation and use of passenger facility charges, a cash flow analysis is an integral part of the process and in many instances is required by the FAA or other regulatory body to demonstrate the need and affordability of a particular capital project or program. As such, our cash flow analyses serve to measure the affordability of each element of a capital program to allow a client to make decisions that best match its available resources to meet the demands placed on its physical infrastructure; they do not provide advice on how an entity should undertake the ultimate financing of any part or all of a particular capital program.

Furthermore, most of the activities that we assist clients with are long term in nature, with horizons as long as 30-years. Many times, the projects identified in a master plan or similar exercise are conceptual in nature and only acted upon as demand warrants. While such a plan may identify a need for a client to borrow funds at some point in time, as airport capital programs are inherently capital intensive, our analyses do not incorporate a comprehensive plan of finance (including timing, structure or terms of a potential bond issue), but rather assume a very simple mortgage-style amortization schedule (30-year level debt service) in order to provide the client with an order of magnitude view of how its capital related decisions affect the financial performance of the overall entity. It is only once an airport sponsor has decided to implement a specific part of a plan that the need for financing arises, at which time the airport sponsor obtains the services of other professionals, including financial advisors and underwriters, to develop a comprehensive plan of finance and establish the parameters of a specific bond issue or other means of financing.

As noted by other commentators, including the National Association of Energy Service Companies¹ and the American Council of Engineering Companies², cash-flow analyses of this type play an integral role in the planning services provided by R&A and by firms that provide similar services to municipal clients across the country. However, the issuance of municipal bonds, if that should occur at all, as a client implements a capital program is incidental to the work R&A (and similar firms) provides, and is undertaken by a municipal entity only after a fully integrated plan of finance is developed with the advice and counsel of its financial advisor, underwriter and bond counsel. Thus R&A agrees with the other commentators that firms providing cash-flow and similar financial analyses performed in association with planning and engineering services, such as the development

¹ Letter of Amy Natterson Kroll and W. Hardy Callcott of Bingham McCutchen LLP on behalf of the National Association of Energy Service Companies to the Securities and Exchange Commission in regard to the Temporary Registration of Municipal Advisors, Release No. 34-62824; File No. S7-19-10, dated October 13, 2010 (the "Bingham Letter" at note 108, page 32 of the Proposed Rule) (Bingham Letter)

² Letter of David A. Raymond, President and CEO, American Council of Engineering Companies to Ms. Elizabeth M. Murphy, Secretary, Securities and Exchange Commission regarding File Number S7-45-10 (Registration of Municipal Advisors), dated February 18, 2011. (ACEC Letter)



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of airport master or similar long-term capital plans, or applications to the FAA or other regulatory agencies, should not be subject to registration as a municipal advisor.

R&A and similar firms are often retained by a municipal entity to prepare a report of an independent consultant (commonly referred to as “feasibility studies”) for inclusion in an offering statement for a bond transaction to provide an impartial, third party evaluation of the entity’s ability to repay its debt for the benefit of the rating agencies, credit analysts, potential investors, and the underwriter. R&A believes that firms that prepare independent consultant reports for inclusion in an offering statement should not be subject to registration as a municipal advisor, as such reports do not provide the issuer with advice with respect to the structure, timing, terms, and other similar matters concerning a specific transaction. Those activities are undertaken by an issuer in consultation with their financial advisor, underwriter, or bond counsel who offers specific expertise with respect to municipal financial products and the development of a comprehensive plan of finance for a capital program. It is this comprehensive plan of finance, the details of which are provided by an issuer’s financial advisor and/or underwriter, that is the subject of our independent analysis. Furthermore, our independent airport reports clearly source all bond and debt service related figures and projections back to the issuer or the issuer’s financial advisor and/or underwriter.

As the Commission notes in footnote 138 of the proposed rule, citing the MSRB:

A “feasibility study” is a report detailing the economic practicality of and the need for a proposed capital program. It frequently analyzes demand for the product or service being sold and forecasts financial statements or other operating statistics. The feasibility study may include a user or other rate analysis to provide an estimate of revenues that will be generated for the purpose of substantiating that debt service can be met from pledged revenues. In addition, the feasibility study may provide details of the physical, operating, economic or engineering aspects of the proposed project, including estimates of construction costs, completion dates and drawdown schedules. (SEC Proposed Rule, page 40)

A “Report of The Independent Airport Consultant” is typically included as an appendix in the official statement for a proposed issuance of airport revenue bonds. The report is intended to provide an analysis of an obligor’s ability to repay the bonds being offered from a source independent of the issuer to a broad audience that not only consists of the members of the financing team including the issuer, financial advisor and the underwriter, but outside entities such as the bond rating agencies, other credit analysts, and potential investors in the proposed issue.

In developing such a report, R&A and similar firms conduct their own independent review of the proposed project and the economic base of the issuer and develop their own assumptions regarding the future demand for the project and the ability of the issuer to generate the revenues to support the



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repayment of debt service. In developing the analysis, R&A and similar firms rely upon information provided by others, including the issuer for financial and activity data and the issuer's financial advisor, underwriter and bond counsel in terms of the timing, structure and terms of the proposed transaction. Based on this information, and our assumptions regarding the future demand for the project, R&A and similar firms then develop an independent forecast of activity and financial performance, from which we base our opinion as to the ability of the issuer to repay the proposed bonds. In fact, R&A has not offered services to clients regarding the structure, timing and terms of a transaction as it believes such services would inherently conflict with providing issuers and investors an independent analysis of a proposed transaction. It is also for this reason that, while R&A and other firms providing an "Independent Report of the Airport Consultant" may be paid from the proceeds of a bond issue, our compensation is not contingent on the closing of a transaction and the issuer remains liable for payment of work billed and invoiced should a proposed transaction be cancelled after a "notice to proceed" has been issued.

The importance of a Report of an Independent Airport Consultant, and other similar reports, can be seen by comments made by the National Federation of Municipal Analysts (NFMA), in their recently released "White Paper on Expert Work Products."³ In the paper, the NFMA notes that "although credit analysts remain responsible for their own analyses, Expert Work Products (EWP) frequently serve as the starting point in an assessment of a project's financial feasibility. The existence of an EWP as part of a bond issue may result in significant investor reliance upon Experts and their EWPs." The NFMA further states that, "given the importance of maintaining the high quality of disclosure in municipal offerings, the NFMA believes that Expert Work Products presented in or incorporated into disclosure documents should conform to a 'prudent investor' standard for appropriate investor and analyst reliance and uniformity of disclosure." To the extent that the investment community relies on the opinions expressed in Report of an Independent Airport Consultant or similar reports as being an independent, third-party analysis of a transaction, R&A believes the Commission risks diminishing the value of such reports should they become viewed as simply a mouthpiece of the issuer and financing team based on the registration requirements and the incumbent fiduciary duty placed on a municipal advisor under the proposed rule.

R&A notes that the definition of a "feasibility study" cited by the Commission in no way indicates that a feasibility study provides advice to the issuer regarding the terms of a transaction including the timing, structure and terms of a proposed bond issue. Furthermore, as noted by other commentators⁴, the Commission itself states in the temporary rule regarding the registration of municipal advisors that the provision regarding the inclusion feasibility studies in the registration requirements was not

³ National Federation of Municipal Analysts, *White Paper on Expert Work Products*, draft released for comment December 21, 2010 and available at: <http://data.memberclicks.com/site/nfma/WP.ewp.draft.12.10.pdf>.

⁴ See the The Bingham Letter



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derived from the Dodd-Frank Act, but rather was included as a means for the Commission to gather information.

As a firm that prepares independent consultant reports for airport operators planning to issue airport bonds, R&A understands the Commission's interest in making sure that municipal bond market operates in an open and fair manner. R&A also appreciates the opportunity to comment on the proposed rule and to offer the Commission insight regarding how such registration may affect our firm, and similar firms, and the services we provide. R&A believes, as has been stated by other commentators, that cash-flow modeling plays an integral role in the planning services we provide our clients that is incidental to the issuance of municipal bonds and thus should not be subject to registration as a municipal advisor. Furthermore, R&A takes the position that the independent reports that firms such as ours develop for inclusion in the official statement for a bond issue play a distinct role in a municipal bond transaction and differ substantially from the role of an "advisor" the Commission seeks to regulate. As other commentators have noted, there will not be a regulatory gap should the providers of such reports be exempt from registration, as a municipal issuer is served by financial advisors who are subject to registration and have a fiduciary duty to their clients. Furthermore, R&A is of the opinion that the proposed requirement that the providers of such reports owe a fiduciary duty to the issuer would reduce our independence and thus the value of our reports to the investing public.

Sincerely,

RICONDO & ASSOCIATES, INC.

Ramon Ricondo,
President