



February 22, 2011

Via electronic mail to: rule-comments@sec.gov

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

Re: **File No. S7-45-10** (Securities and Exchange Commission Release
No. 34-63576, Registration of Municipal Advisors)

Dear Ms. Murphy:

This letter provides comments submitted to the Securities and Exchange Commission (the "Commission") by the Port Authority of the City of Saint Paul (the "Port Authority") in relation to SEC Release No. 34-63576, dated December 20, 2010 (the "Release"). The Release requests comments on the Commission's proposed Rules 15Ba1-1 through 15Ba1-7, to be established pursuant to the Dodd-Frank Wall Street Reform and Consumer Protection Act (the "Act"), which contains requirements for the registration of municipal advisors with the Commission.

The Port Authority appreciates the opportunity to respond to the Commission's request for comments on proposed Rule 15Ba1-1 (the "Proposed Rule"). The Port Authority's concern and comments relate specifically to the commission's proposal, described in the Release, to 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 municipal entity's governing body (other than elected officials serving ex officio) would be subject to the registration requirements of the Act. In its request for comments, the Commission asks commenters to address whether these distinctions are appropriate. As discussed in this letter, the Port Authority takes the position that these distinctions are not appropriate and requests that the commission exclude all municipal governing body members—elected or appointed—from the definition of "municipal advisor".

Port Authority Background and Governance

The Minnesota Legislature established the Saint Paul Port Authority in 1932 (the "Act") to manage commodities transportation on the Mississippi River. In 1957, the Legislature expanded the Port Authority's powers to redevelop inland. Today the Port Authority has 21 business centers – including four river terminals – throughout Saint Paul.

Over its nearly 80-year history, the Port Authority has redeveloped more than two square miles of Saint Paul into productive and prosperous jobs centers. That's 3½ times the size of downtown Saint Paul.

For their part, private businesses have invested nearly \$200 million in Saint Paul neighborhoods since 1995 as a result of Port Authority redevelopment projects. Today our projects generate more than \$33 million a year in real estate and personal property tax revenue.

To be sure, the Port Authority is a redeveloper of land, but its projects provide good-paying jobs throughout the city. In 2010, Port Authority construction projects employed 924 people throughout Saint Paul with an ultimate goal of improving the economic environment in Saint Paul.

The Port Authority is governed by a seven-member board. All board members are appointed by the elected Mayor of the City of Saint Paul: two are required to be elected members of the Saint Paul City Council. The Port Authority board addresses a broad range of financial, operational, human resource and policy issues, and Minnesota law does not require that board members possess special expertise in any one area—finance or otherwise. Thus, the makeup of the Port Authority board reflects the interests and priorities of the City, and board members' backgrounds vary. At any time, the Port Authority board may consist of business leaders, policy consultants, and labor leaders.

Accountability

The Commission's discussion in the Release suggests that accountability is a concern underlying its belief that appointed governing body members should not be excluded from the "municipal advisor" definition. The Commission's discussion does not explain why paid employees, who are expressly exempt from registration, face a level of accountability that is materially different from that of a volunteer board appointee. Indeed, an unscrupulous or underperforming employee may lose his or her job; and an unscrupulous or underperforming governing body appointee faces a similar outcome: removal from office by the source of the appointment.

Any appointee is, by definition, appointed by some individual or group. A governing body appointment is typically the responsibility (usually set forth by statute) of an elected official or body that has some direct policy interest in, or shared jurisdiction with, the entity to which the appointee is appointed, as described in the previous discussion of the Port Authority's background and governance structure. That appointment power is commonly accompanied by the power of removal for cause. This is the case for members of the Port Authority board and most other appointed governmental boards under Minnesota law. The Commission also expresses concern that, unlike elected officials, appointees are not directly accountable to the electorate. This ignores a fundamental principle of our representative democracy, whereby elected officials are accountable to the voters for the performance and integrity of their appointees.

Practical Problems

The Proposed Rule, as currently interpreted by the Commission in the Release, would have a chilling effect on citizen participation in government. The registration regime, if applied to governing body appointees, would undoubtedly severely limit the pool of talented and engaged individuals willing to serve. The Proposed Rule also has implications beyond the registration requirement. The Act directs the Municipal Securities Rulemaking Board (the "MSRB") to "propose and adopt rules to effect the purposes of [the Securities Exchange Act of 1934, as amended by the Act] with respect to . . . advice provided to or on behalf of municipal entities or obligated persons by . . . municipal advisors Although the MSRB has not issued any new qualifications-related rules for municipal advisors, MSRB qualification standards typically involve extensive testing on topics such as municipal securities rules, financial regulations, tax issues and general finance and economic concepts. State authorities, local economic development corporations, downtown development authorities and other entities with finance power, including the Port Authority, are populated by a diverse group of individuals, ranging from active professionals to engaged retirees. The prospect of Commission regulation and MSRB testing and qualification requirements coming to bear on these individuals would serve as a deterrent for potential appointees to a board.

Moreover, subjecting governing body appointees to registration may create uncertainty about the liability exposure such appointees face in the course of their voluntary board duties. In addition to having a dulling effect on the ability to obtain volunteer board members, this could lead to an unnecessary increase in the costs of insurance for municipal entities.

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Conclusion

Subjecting municipal governing body appointees to the registration regime under the Act would:

- Do little to fulfill the policy objectives of the Act and the Proposed Rule
- Discourage voluntary participation in government
- Impose uncertainty, confusion, and significant expense upon public bodies.
- Potentially expose volunteers to liability beyond the existing conflicts and challenges that volunteers currently experience.

Therefore, the Port Authority requests and recommends that all members of municipal governing bodies, elected or appointed, be expressly exempted from the act's registration requirement.

Thank you again for the opportunity to provide our comments.

Sincerely,



Louis F. Jambois
President

cc. Senator Amy Klobuchar
Senator Al Franken
Representative Betty McCollum