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February 22, 2011

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

RE: File No. S7-45-10; SEC Proposed Rule 34-63576

Dear Ms. Murphy:

This Office represents the City of San José and its related entities. We are writing to express our comments to the definition of "municipal advisor" under SEC Proposed Rule 34-63576, which is to implement provisions of the Dodd-Frank Wall Street Reform and Consumer Act (the "Dodd-Frank Act"). We anticipate that additional comments will be submitted by the boards for both of the City's pension plans.

Under the Dodd-Frank Act, a municipal advisor provides advice to a state or municipal entity, including public pension funds, as to the issuance of municipal securities, swap transactions and/or investment strategies. The Dodd Frank Act excludes municipal entities and municipal employees from the municipal advisor definition. This exclusion makes sense as a municipal entity, acting through its governing bodies or its employees, cannot serve as an advisor to itself.

The SEC's proposed rule correctly exempts from the municipal advisor definition municipal employees and elected officials serving on a governing board either by election or appointment by virtue of their elected office. However, it would require appointed members of a governing board to register with the SEC and meet various regulatory requirements set forth by both the SEC and the MSRB, including registration requirements and fees, federal fiduciary standards, federal securities law liabilities, and federal financial disclosure standards.

The SEC's proposal to include appointed members of governing boards in the definition of the municipal advisor is inconsistent with the Dodd-Frank Act's exclusion of "municipal entities," as the Act does not expressly limit municipal entities to municipal employees and elected officials. Accordingly, we urge the SEC to exclude all governing body members, whether appointed or elected from the municipal advisor definition. If Congress had intended for appointed members

of governing bodies to be included within the municipal financial advisor definition, it would have made this point clear in the statute.

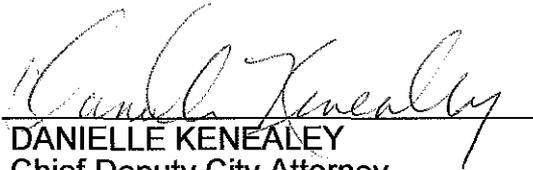
Further, we ask that the proposed rule be clarified so that the exclusion of municipal employees applies to municipal employees whose duties include providing services to a municipal entity who is not his or her employer. Under California law, a municipal entity may enter into an agreement with one or more municipal entities in order to form a joint powers authority ("JPA"). The resulting JPA may issue municipal securities for a variety of authorized purposes, including the financing of public improvements. Frequently, the JPA has no employees, but instead, the employees of one or more of its members act as staff to the JPA. As the persons providing these services are doing so in their capacity as municipal employees of one of the members, they should also be excluded from the municipal advisor definition.

Thank you for the opportunity to comment on the SEC's Proposed Rule 34-63576.

Very truly yours,

RICHARD DOYLE, City Attorney

By:


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