

Fire and Police Pension Fund  
San Antonio

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February 22, 2011

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

Re: SEC Release No. 34-63576  
File No. S7-45-10

Ladies and Gentlemen:

The Board of Trustees of the Fire and Police Pension Fund, San Antonio (the "Board" or "Pension Fund") is pleased with the opportunity to submit its comments to the Securities and Exchange Commission ("Commission") in connection with Release No. 34-63576 (hereinafter the "Release") which proposes the adoption of rules 15Bal-1 to 15Bal-7 (17 CFR 240.15Bal-1 to 240.15Bal-7).

The principal focus of these comments concerns the Commission's proposal and related queries under the second full bulleted item of page 51 of the Release. In that connection, we respectfully urge the Commission not to adopt a proposal which would include under the definition of "municipal entity" those "elected members of a governing body of a municipal entity," yet exclude those "appointed members of a municipal entity's governing body unless such appointed members are *ex officio* members of the governing body by virtue of holding an elected office."

For the reasons outlined below, we respectfully submit that the Commission's proposed distinctions among elected, appointed and *ex officio* members of a governing body of a "municipal entity" (e.g., a board of trustees of a public pension plan) are artificial and inappropriate, and would be highly disruptive of the fiduciary governance and management of public pension funds as "municipal entities" under the proposed rule. Rather, we respectfully urge that the Commission affirmatively and expressly include all those members - elected, appointed and *ex officio* -- who serve on such governing bodies, as coming within the definition of "municipal entity", and that they not otherwise be deemed "municipal advisors" by virtue of their membership and service on the governing bodies of such public pension funds in accordance with applicable state law.

**Background and Discussion:**

The Fire and Police Pension Fund, San Antonio is authorized, created and regulated under Texas statute for the purpose of providing retirement and survivor benefits to City of San Antonio firemen, policemen, retirees and their beneficiaries (Art. 6243o VATS). The Texas Legislature has vested the fiduciary management and control of the Pension Fund in a Board of Trustees as its governing body. Pursuant to statutory authority, the Board of Trustees is authorized and directed to establish rules and bylaws to administer the plan. This statute governing the Pension Fund may not be modified except by enactment of the Texas Legislature.

The Board of Trustees is charged with a duty of loyalty to act solely in the interests of the members and beneficiaries of the Pension Fund for the exclusive purpose of providing those benefits stated under the pension plan. The assets of the Pension Fund are held and managed in trust by the Board of Trustees and exclusively dedicated to funding those benefits promised under the pension plan. Fund assets are the product of aggregated employee member contributions, City contributions, and investment portfolio earnings. Pension Fund assets are not municipal or state monies. Rather, these funds may only be used for the payment of benefits to pension participants and beneficiaries in accordance with the terms of the plan, and for the payment of those operating and administrative expenses of the Pension Fund. The sole purpose of the Board of Trustees is to administer, manage and control the Pension Fund as its governing body. All the members of the Board of Trustees are volunteers. None are compensated for their voluntary service on the Board.

The composition of the Board, and qualifications of its nine (9) individual trustee members, are set forth by statute. Three (3) trustees are appointed to the Board by the City of San Antonio; two (2) police trustees are elected by plurality vote and secret ballot of the participating employee members of the police division of the Pension Fund; two (2) firemen trustees are elected by plurality vote and secret ballot of the participating employee members of the fire division of the Pension Fund; and one (1) trustee each representing retired firefighters and policemen elected by this membership. The Chairman and Vice-Chairman of the Board are elected by majority vote of the members of the Board in public meeting.

Regardless of their origin by appointment or election to the Board, all the trustees of the Board as the governing body of the Pension Fund are individually required under its Principles of Fiduciary Conduct and Governance to maintain their independence and objectivity by avoiding conflicts of interest, in fact and appearance, and are expressly prohibited from harboring or showing favoritism or partiality to any person, institution or group that could be regarded as affecting that individual and collective duty of loyalty owed to the members and beneficiaries of the Pension Fund.

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The authority and responsibility of the members of the Board are collective and joint. All the serving trustees of the Board have an equal voice and vote in the discharge of their management and fiduciary responsibilities as a board of the whole. Only the Board acting as a collective entity, and not any member in his or her individual capacity, has management authority over the Pension Fund.

The boards of trustees of virtually all public pension plans today are authorized and directed by state statute to engage such outside expert investment consultants, investment managers, and other registered investment advisors as necessary and prudent to advise and assist in the investment and allocation of fund assets, the selection and evaluation of investment managers, the development of investment portfolio strategy, and otherwise make themselves available to advise the board in the prudent discharge of its fiduciary responsibilities under state law. Typical of public pension plans elsewhere, our Board is expressly authorized and encouraged by Texas state statute and the Texas Pension Review Board to engage outside expert advisors and consultants to help develop and implement sound actuarial practices and investment strategies for the management, funding and investment of the Pension Fund. In this regard, the volunteer Board of Trustees is indisputably the "advisee" client of those expert advisors it selects for counsel and guidance in the fiduciary management of the Pension Fund.

Based on our reading of the presently proposed rules of the Commission under the Release regarding the definitions of "municipal entity" and "municipal advisor", the Board finds it problematic and highly counter-intuitive that individual trustees of the Board under the proposal would, by definition, be individually deemed "municipal advisors" to themselves by virtue of sitting on the Board of the Pension Fund as a "municipal entity". Again, the Board is the "advisee" of the investment advisor relationship. And all its advisors are "outside advisors". None sit on the Board. The role of the Board members as independent fiduciaries is to bring their best and disinterested judgment and experience to bear on those advices received, to ask the right questions, and to make prudent, fiduciarily-governed decisions solely in the interest of the members and beneficiaries of the Pension Fund. Board members are not individual "advisors". They are collectively the "deciders".

The Commission's proposal to deem as "municipal advisors" many, if not all, members of a public pension board of trustees, and require each to register themselves as such with the SEC and Municipal Securities Rulemaking Board will unavoidably present an apparent conflict of interest contrary to applicable state law, and contrary to that fiduciary duty of loyalty and independence owed to the members and beneficiaries of a Pension Fund. As a practical matter, the result of the Committee's imposition of "municipal advisor" status may make it problematic if not impossible to impanel a Board of Trustees of the Pension Fund as required by state law.

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**In Conclusion:**

We respectfully submit that the unintended consequence of the subject proposal under the Release would cause most, if not all, of the individual members of a public pension fund's board of trustees to be excluded from the definition of "municipal entity", and thereby deemed non-exempt "municipal advisors" to their own board. This inherently disqualifying conflict would eviscerate the fiduciary integrity and governance of most of the nation's state and local pension funds as contrary to applicable state law, contrary to public policy and contrary to the Congressional intent of the Dodd-Frank Act to strengthen this nation's financial system.

We therefore most sincerely urge that the Commission's rules provide that those boards of trustees and public pension plans authorized, established and governed under state law, be expressly included in the definition of "municipal entity". Further, that all their individual member trustees -- regardless whether elected, appointed or *ex officio* -- likewise be included within the definition of "municipal entity" and otherwise not deemed "municipal advisors" by virtue of their service on such boards of trustees.

Again, thank you for inviting our views on the proposal and permitting the opportunity to comment.

Very truly yours,

FIRE AND POLICE PENSION FUND,  
SAN ANTONIO

By: 

WARREN SCHOTT,  
Executive Director