



February 3, 2011

SEC Headquarters  
100 F Street, NE  
Washington, DC 20549

RE: File Number S7-45-10  
SEC proposal to require officers of governmental entities to register as  
“municipal advisors” Release 34-63576

Dear Chairman Schapiro and Members of the Commission:

I am writing to comment on the definition of “municipal advisor” as proposed in Release 34-63576. My primary concern is that the definition of “municipal advisor fails to exempt appointed local government officials. The proposal states that, “the Commission does not believe that appointed members of a governing body of a municipal entity that are not elected *ex officio* members should be excluded from the definition of a “municipal advisor.” *Municipal Advisors*. 76 Fed. Reg. 834 January 6, 2011 (Footnote omitted).

In Arkansas, as elsewhere, local governments depend heavily upon the members of their communities to help facilitate and run their city and town governments through numerous volunteer activities. Thousands of community volunteers give unselfishly of their time, expertise and common sense to help their city and town governments to plan, to zone, to invest and to run various facets of local government operations. Some are true volunteers while others receive stipends.

Many of these people hold offices, elective or otherwise, in the local government. Because they are “officers,” they are not employees of the local government, no matter how much they may be paid, as Arkansas law distinguishes between officers and employees.

Thus, the proposed rule creates two problems:

First, it would require thousands of community-minded volunteers to spend money and to subject themselves to federal regulatory controls; moreover it would expose them to potential liability for noncompliance with the registration, training and other requirements. Second, it would create ambiguity over the issue of whether only elected “officers” are included within the definition of “municipal employee.”

For example, it is not entirely clear whether the Commission intends to exclude from its definition of “municipal employee” the many appointed officers of local government who provide advice to their elected leaders and who hold positions such as treasurer, comptroller, manager, etc. These questions must be clarified.

Moreover, persons who hold positions of trust within a state or local government subject themselves to existing federal, state and local ethics laws and common law responsibilities that include potential penalties for misfeasance or malfeasance. Each of these controls meet the Commission's stated intent of protecting the public by providing significant deterrence to misconduct. Another layer of regulation is therefore unnecessary with respect to these individuals. Worse, the need to seek guidance on federal regulatory issues increases costs to local governments, while at the same time deterring volunteer service on account of the complexity, costs, and time commitments of the regulatory registration and training requirements.

Congress exempted municipal entities and its employees from the definition of "municipal advisor." We believe it did so with the express intention of exempting all of the entity's officers and employees, including its volunteer board members. To do otherwise creates the anomalous result of labeling board members as "municipal advisors" when they discuss investment objectives and when those discussions involve decision-making debates by issuers and, in the case of boards of pension trustees, investors. The proposal fails to recognize that members of governing bodies and other local officials are the personnel that operate the municipal entities. The "municipal advisors" serve those officials. It confuses the issue to suggest that those officials—the very intended beneficiaries of municipal advisor regulation—somehow are "municipal advisors" themselves. In short, the proposed regulations turn on its head the concept of "advice" and transform decision makers of entities who should be receiving advice into "advisors." In addition, requiring registration for local officials who participate in those discussions chills informed analysis and debate -- exactly the opposite of the result the SEC should be seeking to encourage.

To be fair, the Commission identifies past instances of misconduct to justify its need to regulate pervasively. Nevertheless, municipal finance statistics suggest that there are far fewer instances of violations and misconduct than in the area of private finance where the Commission already regulates pervasively.

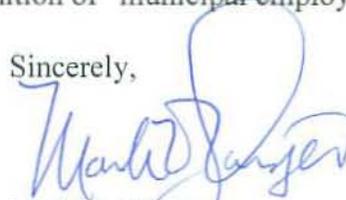
The current economic situation has devastated state and local government budgets, but there are far fewer defaults and municipal bankruptcies than the number of banks taken over by the FDIC. In short, virtually every state and local government subjects itself to a transparency that surpasses that of the Commission's exemplary efforts at transparency through a combination of public information and public meeting laws and extensive reporting through the media to their stakeholders. These are coupled with an accessibility that fosters immediate individual contact with those concerned stakeholders.

The cost to local governments and officials to comply with this regulation will be extensive and comes at the worst time for local governments. Local governments will be required to pay the cost for registering municipal advisors who serve the local government in a volunteer capacity and for those who are its officials. In addition, the local government will need to hire legal counsel with expertise in dealing with the SEC to be sure that these officials are properly trained and advised in the intricacies of securities law.

For each of the foregoing reasons, we respectfully ask the Commission to consider expanding the exclusion for local government officials to include appointed board members

and officials that may advise municipalities from the requirement to register as "municipal advisors" by including them within the definition of "municipal employee."

Sincerely,

A handwritten signature in blue ink, appearing to read "Mark R. Hayes". The signature is stylized and written over the word "Sincerely,".

Mark R. Hayes  
General Counsel

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cc: Congressional Delegation