

February 22, 2011

Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549-1090
Attention: Elizabeth M. Murphy, Secretary

Re: Municipal Advisors (File No. S7-45-10)

Hampton Roads Sanitation District (the "District") is submitting this letter in response to the request for comments on the proposed rule, as published in SEC Release No. 34-63576 available at <http://www.sec.gov/rules/proposed/2010/34-63576.pdf> (the "Proposed Rule") under the Dodd-Frank Wall Street Reform and Consumer Protection Act (the "Dodd-Frank Act"). The Dodd-Frank Act, among other things, requires "municipal advisors" to register with the Securities and Exchange Commission ("SEC"). The Proposed Rule includes, among other things, a far-reaching interpretation of activity that constitutes the business of being a municipal advisor. The principal objective of this letter is to suggest a clarification of the definition of "municipal advisor" so that it does not apply to the District's governing commission or to its counsel.

The District. The District was created in 1940 by the Virginia General Assembly as a political subdivision of the Commonwealth of Virginia and was established as a governmental instrumentality to provide for the public health and welfare. Chapter 66, Acts of the Assembly of 1960 (as amended, the "Enabling Act"), validated and confirmed prior legislation creating the District and repealed earlier acts of the Virginia General Assembly enacted with respect to the District.

The District was created for the specific purpose of abating pollution in the Hampton Roads area of Virginia through the interception of existing wastewater outfalls, the construction of wastewater treatment facilities and the installation of interceptors throughout the service area. The District is a separate legal entity from the various cities, counties and military establishments within the District.

Governing Body. The District operates under the direction of its governing body, the Hampton Roads Sanitation District Commission (the "Commission"), comprised of eight members appointed by the Governor of the Commonwealth of Virginia for staggered terms of four years. Members of the Commission may be reappointed without limitation and may be suspended or removed by the Governor at his pleasure. The Commission annually elects one of its members as Chairman and another as Vice Chairman. Under the Enabling Act, the eight members of the Commission must be residents of the cities and counties of the District as follows: one member from each of the cities of Chesapeake, Hampton, Newport News, Norfolk, Portsmouth and Virginia Beach; one member from the City of Suffolk or Isle of Wight County; and one member from the City of Williamsburg or Poquoson, or Gloucester, James City, King William, King and Queen, Mathews, Middlesex, or York County or the Town of Urbanna.

Management. The District's administration is overseen by its General Manager, supported by five directors and their staffs. The District's finances are overseen by its Chief Financial Officer. The District had 768 employees as of June 30, 2010. The District receives advice on its legal affairs from its General Counsel, which is a firm of attorneys who are not employees of the District.

Projects. The District provides service to more than 1.675 million residents encompassing an area of approximately 3,100 square miles. The District's geographical boundaries include the following Virginia localities:

City of Chesapeake	Gloucester County
City of Hampton	Isle of Wight County
City of Newport News	James City County
City of Norfolk	King and Queen County
City of Poquoson	King William County
City of Portsmouth	Mathews County
City of Suffolk	Middlesex County
City of Virginia Beach	York County
City of Williamsburg	

The District's Wastewater System consists of nine major treatment plants, four smaller plants and its interceptor system consisting of 81 major pumping stations and approximately 483 miles of interceptors. The interceptors, which are gravity and force mains, convey wastewater from the point of delivery by municipalities, industry and other users of the Wastewater System to the District's treatment plants. In addition to the major facilities described above, the District operates four additional small wastewater treatment plants.

A substantial portion of the District's Wastewater System was financed through the issuance of municipal bonds. As of February 15, 2011, the District had approximately \$557 million of bonds outstanding. The District expects to issue additional municipal bonds in the future to reduce its costs through refunding or to finance additional projects for its Wastewater System. The District's ten-year capital improvement program includes approximately \$1.1 billion in interceptor system, treatment plant and other facility improvements over the ten fiscal years ending June 30, 2020, and the District expects to finance a significant portion of such improvements with municipal bonds.

District's Office. The District's main offices are located at 1436 Air Rail Avenue, Virginia Beach, Virginia 23455, Phone (757) 460-2261.

District is a "Municipal Entity." Under Section 15B(e)(8) of the Securities Exchange Act of 1934, as amended (the "Securities Exchange Act"), a "municipal entity" includes "any State, political subdivision of a state or municipal corporate instrumentality of a State, including . . . (C) any other issuer of municipal securities."

HRSD issues municipal securities,¹ and, accordingly, is a “municipal entity.”

Each of the District’s Commissioners and counsel may be a “municipal advisor.” Absent Dodd-Frank and the Proposed Rule interpreting its provisions, it would never have occurred to the District that its Commissioners would be “municipal advisors.” The Dodd-Frank definition of “municipal advisor” as

a person (who is not a municipal entity or an employee of a municipal entity) that— (i) 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. . . .”²

would not create an issue for the District or its Commissioners absent the indication in the Proposed Rule that suggests that appointed members of a municipal entity’s governing body are municipal advisors if and to the extent that they provide “advice to or on behalf of” the District as to “municipal derivatives, guaranteed investment contracts, and investment strategies or the issuance of municipal securities, including advice with respect to the municipal financial products or the issuance of municipal securities.”

The General Manager, Chief Financial Officer and other senior managers of the District are employees of the District and, therefore, presumptively exempt from being deemed a “municipal advisor.” On the other hand, the Commissioners are not employees of the District and, under Section 5 of the Enabling Act, receive no salary from the District for their service. The District’s General Counsel and bond counsel are not employees of the District and apparently are exempt only if they exercise restraint and limit any advice they provide to legal advice (however defined) and not their observations, prejudices and opinions about the “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.”

Policy. The District is best served if its Commissioners and counsel may speak freely with respect to all matters before the Commission, including issues relating to the issuance of municipal securities and the use of financial products.

Understandably, the District’s Commissioners may feel constrained by concerns that they cannot give advice with respect to financial matters before the Commission without subjecting themselves to the registration requirements applicable to “municipal advisors.” Since the Commissioners are selected for their knowledge about the wastewater industry including financial matters, it would be unfortunate,

¹ Securities Exchange Act, Section 3(a)(29). “Municipal securities” are “... obligations of, ... a State or any political subdivision thereof. . . .”

² Securities Exchange Act, Section 15B(e)(4).

for example, for a potential Commissioner to decline appointment for fear that he or she will have to register as a municipal advisor if he or she were to express informed opinions as to financial matters before the District, exhort the District to take or not take related actions and thereby make an optimum contribution to the deliberations of the District. In addition, to present the District's Commissioners with a choice between registering as municipal advisors or withholding their advice is either a federal test for a public office of a political subdivision of a state or a limit on the Commissioners' lawful discharge of their public duties—in either case a substantial interference with a core function of the District's fundamental governmental activity and contrary to the principles of federalism embedded in the federal constitution.

The District has the benefit of long-serving General Counsel and bond counsel. The Dodd-Frank Act and the Proposed Rule exempt advice given by attorneys only to the extent that it is “of a traditional legal nature.” Attorneys who give advice that does not meet the exception in the rule must register as advisors or face civil or criminal sanctions. The vagueness of the standard (what exactly is advice of a traditional legal nature?) is unconstitutional because it “fails to give a person of ordinary intelligence fair notice that his contemplated conduct is forbidden by the statute”. *Papachristou v. City of Jacksonville*, 405 U.S. 156, 162 (1972) (voiding conviction under statute prohibiting “prowl by auto”). The District will be the poorer if its counsel must restrain their advice to purely legal matters and withhold their informed opinions with respect to financial matters.

In Practice. For each of its major financings, the District has historically retained an independent financial advisor to provide its advice as to bond issue structures, market timing, rating agency presentations and bond pricing. On its major financings and projects, the District also retains independent consultants to advise the Commission. For example, in connection with the financing of its capital improvement program for 2009 and 2010 for which the District, in November 2009, issued municipal securities, the District employed its General Counsel, bond counsel, environmental regulatory counsel, a financial advisor, and a consulting engineering firm. Each, within its sphere of expertise, provided to the District written legal opinions, feasibility and beneficial use reports, and/or advice with respect to pricing of the municipal securities, investments of the proceeds of the municipal securities, and the like.

The District objects to the provisions of the Proposed Rule that would make its counsel a municipal advisor if he or she were to cross an ambiguous, fine line and express a view that could be considered by the SEC something other than legal advice or its consulting engineers municipal advisors because they were to suggest an avenue of financing better calculated to obtain a desired result. In the District's experience, the roles of counsel, financial advisor, and consulting engineer are not neatly compartmentalized. While each primarily provides the District with the service consistent with its title, the District benefits from suggestions from its counsel and engineers that may fairly be characterized as financial advice. Indeed, legal advice is thoroughly informed by, and essentially inseparable from, financial considerations and advice. To the extent that the Proposed Rule would discourage our advisors from extending these suggestions, the Proposed Rule is counter productive, misguided and likely an unconstitutional interference in the workings of a political subdivision of a sovereign state.

The District's Commission receives presentations from these advisors in connection with each District bond issue and the District's managers and staff quiz and challenge the advice they receive from these advisors.

In these circumstances where the District has retained independent professionals to provide their advice as to the District's bond issue, the District requests that the SEC clarify the definition of municipal advisor to exclude (i) the District's Commissioners, and (ii) the District's General Counsel and other outside counsel.

Not every financial matter or bond issue that comes before the District's Commission comes with an independent advisor in tow. The District frequently issues long term notes to agencies of the Commonwealth of Virginia, such as the Virginia Resources Authority, to finance certain District wastewater facilities. In these cases, the District's General Manager and Chief Financial Officer take responsibility for advising the Commission on such issues, structure the issues, and negotiate their sale. In these cases, too, the District's Commission and its counsel question various facets of the proposed financing and express their opinions as to its merits, whether it should be endorsed by the Commission or not. The District maintains that even in the absence of an independent financial advisor, the Commissioners and the District's counsel are not acting as municipal advisors in the discharge their duties.

The District appreciates the opportunity to express its views on the Proposed Rule. Please feel free to call the undersigned with any questions.

HAMPTON ROADS SANITATION DISTRICT

By: _____


Edward G. Henifin
General Manager

By: _____


Steven G. de Mik
Director of Finance