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February 22, 2011

File Number 7300400

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

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Dear Ms. Murphy:

SUBJECT: Comments to Proposed Rule Regarding Registration of Municipal Advisors, SEC Release No. 34-63576; File No. S7 – 45 – 10

On behalf of the San Diego Association of Governments (SANDAG), we thank you for this opportunity to comment on the proposed rule implementing Section 975 of Title IX of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act). This section would, among other things, establish a permanent registration process with the Securities and Exchange Commission (Commission) for "municipal advisors" and would impose certain record keeping requirements on such advisors.

The proposed rule broadly defines "municipal advisors" to include appointed members of a governing body of a municipal entity that are not ex officio members. We are concerned that the proposed definition may adversely affect appointed members who serve on the SANDAG Board of Directors, and that the Commission's proposed rule will affect our agency's ability to attract board appointees with sufficient experience to govern municipal entities such as SANDAG.

SANDAG Background

SANDAG is a statutorily created public agency under state law, and under federal law, it serves as the Metropolitan Planning Organization for the San Diego region. SANDAG is governed by a Board of Directors composed of elected mayors, councilmembers, and county supervisors from the region's 19 local jurisdictions. Supplementing these voting members are several advisory (non-voting) representatives from various public agencies.

Under the California state law, the governing bodies of the 19 local jurisdictions determine whether an appointee to SANDAG is qualified to serve, and accountability for their performance exists through the city council or County Board of Supervisors.

The Dodd-Frank Act expressly excludes elected officials from the definition of municipal advisor, as there is no effective difference between the governing body of a government entity acting within the scope of his or her official capacity and the government entity. California has various state laws governing public officials. As a public official, each SANDAG Board member also owes a fiduciary duty to SANDAG and must comply with California laws concerning conflicts of interest, gifts, public meeting and records, financial disclosure, and doing business with one's agency.

San Diego County Regional Transportation Commission

The SANDAG Board of Directors also serves as the San Diego County Regional Transportation Commission, and in this role, Board members are responsible for administration of a local transportation sales tax funding program known as *TransNet*. In order to achieve its purposes, the Regional Transportation Commission is empowered, among other things, to issue bonds and other forms of indebtedness, as determined by the Board. In connection with each bond financing undertaken by the Regional Transportation Commission, the Board engages a recognized independent financial advisor with knowledge and expertise in finance to advise the Board on matters relating to the issuance of municipal bonds and financial products, including interest rate swaps. The role of our SANDAG governing board is to listen to financial advisors, evaluate their advice, and then determine a course of action.

During SANDAG Board meetings, all of which are required to be open to the public under California's open meeting laws, each Board member is encouraged to participate in the discussion regarding the issuance of bonds, entry into swaps, or other financial-related agreements. During Board and committee meetings, Board members customarily ask questions of outside consultants, make comments, express their opinions, discuss proposed actions, and vote on whether or not to authorize issuance of bonds and other matters before the Board. These are all part of the customary in-depth deliberative process of the SANDAG Board of Directors.

Comments on SEC Proposed Rules

Definition of Municipal Advisor – The Commission's proposed rules regarding the registration of municipal advisors excludes elected board members of a municipal entity from the definition of "municipal advisor." However, the proposed rules do not exclude *appointed* board members, such as SANDAG Board members who are elected officials appointed by their governing bodies. In light of the close similarity in duties and treatment of elected and appointed public officials under the laws of California as described above, SANDAG does not believe that different treatment of elected and appointed board members under the Commission's proposed rules is justified.

Therefore, SANDAG requests the Commission to modify the proposed rules to *expressly exclude* from the definition of "municipal advisor" *all* members of the governing body of a municipal entity, whether elected or appointed.

We also feel the proposed rules should include greater clarity for determining when an individual should be considered a "municipal advisor": (1) that individual must be acting in some professional capacity and holding him or herself out to the public as having special expertise in the area on which he or she is providing advice; and (2) there must be some reasonable basis for the municipal entity to expect that the individual is acting in a professional capacity with the knowledge,

experience, and competence to provide the advice given. Including these key elements in the Commission's proposed rules will help strengthen the definition of "municipal advisor," and ensure that anyone who offers an opinion or view ("advice") on financing matters to a municipal entity would not be subject to registration with the SEC.

Definition of Advice/Providing Advice – SANDAG also requests that the Commission include in its proposed rules specific guidance concerning what constitutes "advice" or "providing advice," by adding a requirement that the "advice" must be provided in a professional capacity by a person holding him or herself out to have special knowledge and expertise in municipal financial matters, where there is an expectation and a likelihood that the advice will be relied upon by the municipal entity in making financial decisions.

The Commission also should provide a clear and unconditional statement in the final rules that the statements and other activities of board members (whether elected or appointed) of municipal entities made or taken in the course of performing their duties as a board member does *not* constitute "providing advice" as a "municipal advisor," which requires prior registration by the board member with the SEC.

As written, the proposed rules could have a material and negative impact on the customary in-depth deliberative process of the SANDAG Board by inhibiting Board members from expressing their views on matters relating to municipal bond issues, out of a concern that their comments could constitute "advice" and require registration with SEC as a "municipal advisor." The Commission's proposed rules also could make it more difficult for SANDAG to find individuals with financial knowledge and backgrounds and other helpful experience, who are willing to serve on our Board if doing so will require them to register with the SEC as a "municipal advisor."

In its capacity as the San Diego County Regional Transportation Commission, the SANDAG Board of Directors serves as the governing body and policy decision maker for the Regional Transportation Commission. In that capacity, the Board routinely seeks advice from professional, independent consultants, and the members the SANDAG Board are the *recipients* of the financial advice, not the *providers* of such advice.

Thank you again for this opportunity to respond to the proposed rule on registration of "municipal advisors." If you have any questions concerning these comments or desire any additional information regarding SANDAG or its role as the San Diego County Regional Transportation Commission, please feel free to contact me.

Sincerely,



RENÉE WASMUND
Chief Deputy Executive Director

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