

February 4, 2011

Comments Submitted by the Maine Municipal Bond Bank, Maine Health and Higher Educational Facilities Authority and Maine Governmental Facilities Authority

IN RE:

SEC Release # 34-63576

File Number: S7-45-10

RIN: 3235AK86

Registration of Municipal Advisors

The following comments are submitted to the Securities and Exchange Commission in regard to File Number S7-45-10 on behalf of the Maine Municipal Bond Bank (MMBB), Maine Health and Higher Educational Facilities Authority (MHHEFA) and Maine Governmental Facilities Authority (MGFA), each being instrumentalities of the State of Maine created by an Act of the Legislature, carrying out statutorily defined essential public purposes as an issuer of debt on behalf of local governmental units in the State, non-profit providers of health care and educational services or non-general obligation debt issued to fund projects undertaken by the three branches of State government, operating under the direction of Boards of Commissioners created by statute each of which contains public members appointed by the Governor and ex-officio members appointed by virtue of office. MMBB and MHHEFA have been carrying out their statutory responsibilities and issuing bonds to accomplish those purposes since 1972 and MGFA has been accomplishing its duties since 1987.

The noted instrumentalities wish to state their opposition to the rather stunning assertion and proposal stated by the SEC as part of the Commission's proposed rule S7-45-10. The assertion in that proposed rule is that the SEC, as a regulatory agency, under the language of the Dodd/Frank statute, or any other federal law, has the right to reach directly into the day to day activities of state instrumentalities, created under State statute and undertaking essential governmental functions for a state. The proposal is that by asserting this unfounded regulatory

authority the SEC may require volunteer Board members of instrumentalities, appointed by a State's Governor as authorized in State statute, to register as Municipal Advisors because the State entity on which they serve issues bonds which are not subject to registration by the SEC.

OVER-REACH - There is no language in the Dodd/Frank legislation, nor anything during two years of hearings and testimony in Congress preceding the passage of the legislation, which directs or suggests that the Commission should attempt to regulate Board members of issuing state entities as Municipal Advisors. While the legislation gives the Commission rather broad latitude in the rule making processes associated with the Dodd/Frank legislation, the language concerning governmental issuers in the bill is more concerned with exempting governmental issuers from the terms of the legislation than anything else. The proposal to assert regulatory control of Board members of issuing state level entities far exceeds the scope of the Dodd/Frank legislation.

For example, under the SEC's proposed rule, if the Commission were for any reason to deny the ability to register as a Municipal Advisor to a non-ex-officio Board member, this action would result in the direct denial of a State Governor's ability to appoint members, pursuant to State statute, to Boards or Commissions. There is no basis in federal regulatory law for a regulatory agency to be able to deny a Governor the right and ability to appoint members to Boards and Commissions within his jurisdiction and it requires an almost Kirkegaardian leap to find footing in the Dodd/Frank legislation that grants such a power to the SEC. In effect, the proposed rule would "federalize" governing bodies of state and local government.

ASSERTED RATIONALE - In its discussion of its assertion that it can require public members of the Board of issuing entities to register as Municipal Advisors, the Commission says that such registration is justified because, "appointed members, unlike elected officials and elected ex-officio members, are not directly accountable for their performance to the citizens of the municipal entity". Setting aside the problems with this statement concerning the fact that many state level instrumentalities by their very nature in law have no citizens and that many ex-officio members of State boards and commissions are officials appointed by Governors as heads of State Departments as opposed to being elected, the notion that members of Boards and Commissions

of issuing entities are not accountable in numerous ways to various constituencies and third parties or under various state statutes is simply incorrect.

In Maine, the suggestion that appointed commissioners are not accountable for their performance is simply incorrect as a matter of law. Each enabling statute provides that any appointed commissioner may be removed by the Governor for cause following a public hearing. Appointed commissioners have a fiduciary and public duty to the organization on which they serve and must execute a surety bond and subscribe to an oath to perform the duties of office faithfully. Commissioners of issuing entities are in most cases subject to general conflict of interest statutes that exist in Maine and almost all states in the country.

Specific enabling laws for different organizations often go even further. For example, in the case of MMBB, no commissioner may participate in any decision on any bank contract if the commissioner has a direct or indirect pecuniary interest in the contract either directly or through a relevant entity. The Bond Bank, by state statute, is prohibited from entering into the commercial banking business, being a Trust Company or being or constituting a dealer in securities within the meaning of or subject to any securities law, securities exchange law or securities dealer laws of the United States. While not likely, it is potentially arguable that the adoption of the Commission's rule as proposed would place MMBB in violation of its own enabling act even though the proposed action applies to individual Board members and not the MMBB as an entity.

In addition to all these specific forms of responsibility and accountability, issuing entities and their Board members are subject to the public scrutiny created under law in almost all states concerning freedom of information, public meeting requirements, public press coverage, Legislative review and numerous other public sector requirements that private sector Municipal Advisors are not subject to. Saying that individual members of State organizations who are appointed as public board members are not responsible to anyone is very much akin to saying that individual Commissioners of the SEC are not directly accountable for their actions.

CHILLING IMPACT - To require individual, public members of State bond issuing entities to register as Municipal Advisors will have a chilling affect on a State's ability to find members of the public accomplished and knowledgeable in areas critical to governmental decision making willing to take on what is, for all intents and purposes, volunteer work. With the continuing, often inappropriate, increasing demand on professional and personal time in the American culture, finding qualified individuals willing to take on the duties of a member of a Board or Commission, even if that Board only meets once a month becomes more difficult each day. To say to a potential Board member that they will have to meet at least once each month, receive little or no remuneration, and oh, by the way, in addition to being responsible and liable under state statutes and the Internal Revenue Service Code as it applies to tax exempt bonds and the SEC and Municipal Securities Rule Making Board for disclosure on the bonds your organization sells, you will have to fill out a bunch of forms, disclose a passel of personal information, and have someone pay a large fee on your behalf to register you with the SEC as a Municipal Advisor so you can serve on the Board. This is not an inducement to public participation, but rather a strong disincentive.

Even if the proposal in the Municipal Advisor rule to require public members of State issuing entities to register with the Commission as Municipal Advisors were reasonable and within the scope of the statute under which it is being proposed, it is still unnecessary and duplicative. Existing federal and state law provides more than adequate coverage of the actions of Board members appointed from the public to serve on bond issuing entities. MMBB, MHHEFA, and MGFA respectfully request that this portion of the proposed SEC rule on Municipal Advisors be removed.

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