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Lone Star
★
Investment Pool

February 21, 2011

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

Re: File Number S7-45-10, SEC proposed rule requiring registration of “municipal advisors” [Release No. 34-63576]

Dear Ms. Murphy:

This letter is in response to the Securities and Exchange Commission’s (the “SEC”) request for comments on its proposed rule regarding registration of municipal advisors. On behalf of the Lone Star Investment Pool (the “Pool”), I am submitting the Pool’s opposition to the proposed rule’s definition of municipal advisor which includes appointed board members of municipal entities, and excludes elected members and appointed ex officio members who have also been elected. We recommend that the SEC provide for a specific exclusion from the definition of municipal advisor for all board members of municipal entities.

Section 975 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the “Dodd-Frank Act”) amended Section 15B of the Securities Exchange Act of 1934 (as amended, the “Exchange Act”), effective October 1, 2010, to, among other things, (1) require persons that provide advice to or on behalf of a municipal entity to register with the SEC as a municipal advisor, (2) establish a fiduciary duty between a municipal advisor and a municipal entity for which it is acting as a municipal advisor, and (3) subject municipal advisors to additional anti-fraud provisions. The SEC on December 20, 2010 (Rel. No. 34-63576) released proposed permanent rules (Rules 15Ba1- through -7; collectively, the “Proposed Rule”) to implement Section 975, which would take effect on a date yet to be determined.

The proposed rule notes that the definition of a “municipal entity” includes, but is not limited to, public pension funds, local government investment pools and other state and local governmental entities or funds, as well as participant-directed investment programs or plans such as 529, 403(b), and 457 plans. The Pool is a public funds investment pool created pursuant to the laws of the state of Texas and composed of public entities that jointly invest their funds under the Texas Public Funds Investment Act. The Pool is, by definition, a municipal entity under the Exchange Act.

The SEC's proposed interpretation of the term "municipal advisor" includes appointed board members of municipal entities, while excluding elected members and appointed ex officio members who have also

been elected. In Texas, many municipal entities depend upon appointed board member volunteers who give their time, expertise and common sense to enable municipal entities to plan, invest, and operate. The Pool is no different in that its governing body, the Board of Trustees, consists entirely of volunteers who belong to the constituent members of the Pool. Pursuant to the Pool's bylaws, the Pool's eleven member Board is composed of six elected public school board members, three public school administrators, and two public school business officials; all board members, however, are appointed to the Board and represent the collective interests of the Pool members.

We believe that the SEC's proposal overreaches, misunderstands basic principles of local government law, and will have a negative effect on local government budgets and their operations. Specifically, we believe the SEC is failing to recognize that:

- (1) Board member participation in board decision making is not "advising" the Board or the municipal entity. Unlike the unilateral rendering of advice by a true advisor, a board member is supposed to express his or her point of view, evaluate other viewpoints, be open to changing his/her view based on the discussion among board members, and ultimately take action on behalf of the municipal entity. In short, any definition of "municipal advisor" that includes board members, whether elected or appointed, leads to the odd result that board members are advising themselves.
- (2) The proposal's distinction between the roles of "appointed" and "elected" board members is too narrow and crudely divides them into two categories: elected and appointed. Individuals who currently hold these positions with the Pool are a combination of elected and employee public officials as far as their affiliation with their respective constituent Pool member is concerned. However, they are all appointed to the Pool Board. And they are not ex officio because any number of elected officials, administrators and business officials of public school districts are eligible to serve on the Board, as long as they are affiliated with a Pool member.
- (3) The board members of the Pool being elected or employee public officials of their respective Pool members are already subject to state and local ethics laws and common law fiduciary duties, which include potential liability for malfeasance. These controls meet the SEC's stated intent of protecting the public by providing a significant deterrent to misconduct.
- (4) The SEC's interpretation will impose a heavy burden on municipal entities such as the Pool, while the benefits are unclear. The Pool or the volunteer board members themselves will be required to pay the cost for complying with the SEC's proposed rule.
- (5) Texas municipal entities rely on the expertise, community leadership and civic responsibility of appointed board members. From large airports to small local governments, citizen participation on boards is essential to operating many important Texas institutions. Volunteer citizens play an important role in policymaking - many are leaders in their professions and provide invaluable information and insight to the municipal entities they serve. Valuable talent will be lost because prospective board members will not want to subject themselves to the additional regulations of the SEC. The extent to which the proposed rule will dissuade talented people from serving cannot be measured. However, for municipal entities such as the Pool that rely on volunteers from its constituent members, the

risk of depleting the number of talented and willing volunteers far outweighs the benefit of requiring appointed board members to register with the SEC.

For the foregoing reasons, we urge the SEC to reconsider the approach taken towards board members in the Proposed Release. We recommend that the SEC provide for a specific exclusion from the definition of municipal advisor for all board members of municipal entities. Thank you for your consideration regarding this matter.

Very truly yours,

A handwritten signature in black ink, appearing to read 'R. Blount, Jr.', with a stylized flourish at the end.

Robert Blount, Jr.
Chair