



PENNSYLVANIA STATE ASSOCIATION OF TOWNSHIP SUPERVISORS

February 22, 2011

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

**RE: Dodd/Frank Consumer Protection Amendments to the Securities and Exchange Law (Reference File #: S7-45-10) (Reference Comments to Proposed Rule 15 Ba 1-1)**

Dear Secretary Murphy:

The Pennsylvania State Association of Township Supervisors (PSATS) respectfully offers the following comments to proposed rule 15 Ba 1-1, which is currently being considered by the Commission in the course of implementing the Dodd/Frank amendments to the Securities and Exchange Act.

PSATS is a statutorily authorized association comprised of Pennsylvania municipal government entities, all of which are instrumentalities of the Commonwealth of Pennsylvania. The functions, powers, and limitations of Pennsylvania townships are defined and governed by statute and consist of general governmental duties. Governing authority in townships lies with elected supervisors, but many of the functions of township government are carried out by volunteers and appointed officials. We respectfully assert that the inclusion of non-compensated and appointed individuals in the definition of municipal advisor will work a substantial hardship on township governments and the assisting citizens upon which they depend without furthering the purposes of the act. Accordingly, we respectfully submit the following comments and supporting reasons;

1. Appointed and non-compensated public officials.
  - a. Persons who are non-compensated, or nominally compensated, or whose compensation is neither directly nor indirectly affected by their actions or advice with respect to a municipal entity, should be excluded from the definition of "municipal advisor".
  - b. Appointed officials should not be distinguished from elected officials and public employees, and should be excluded from the definition of "municipal advisor".
    - i. Particularly so, if the entity receiving advice and the entity to which the individual is an appointed member are identical.
    - ii. Particularly so, if the individual's appointment is demonstrably unrelated to the advice given, and is demonstrably not a circumvention of the purposes of the statute.
  - c. A vote, or the expression of position on a matter to be voted on, by any appointed, or other, official should not constitute advice within the meaning of the statute or Rule.

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2. Supporting reasons:

- a. The public responsibilities and accountability of appointed public officials, and their exposure to public scrutiny and governance are all substantially like, and are indistinguishable from, that of public employees and elected officials. Therefore, the same rationale by which those classes are excluded from the definition of municipal advisor should apply to appointed officials.
- b. Required registration and filing by appointed municipal officials and non-compensated persons will not serve the purposes of the Act because such persons ordinarily are not normally engaged in the financial professions and services to which the Act is targeted. They have no personal interest or benefit, direct or indirect, in the outcome of the transactions upon which they advise their municipal entities. Moreover, they render advice solely on the basis of their appointed office, and not under the mantle or pretext of any supposed outside expertise or professional qualification. Accordingly, to require registrations and filings by such persons will only increase the burden and expense of municipal public service without appreciably adding to the public's protection or to regulators' knowledge about municipal advisors, and without improving appointees' competencies, or discovering their inadequacies.
- c. By imposing federal registration and filing requirements upon local appointed officials and non-compensated persons, the Commission would be creating an additional impediment and disincentive to local public service.
- d. The stated notion that, "any advisor who provides 'free' service will be compensated at some point for this service" is patently unfounded. Assuredly, non-compensated and appointed township officials are not compensated for the particular advice they render without running afoul of multiple laws and legal principles already in place.
- e. The filing requirement, if extended to non-compensated persons, would catch up myriad local volunteers and speakers of opinion whose actions bear absolutely no relevance to the purposes of the Act. Such a requirement is certain to result in wholesale inadvertent violations by thousands of local volunteers, unaware that their public service, or interest in local affairs, subjected them to a federal registration obligation.

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- f. If the concern of this aspect of the Rule is to encompass persons who, seeking personal gain, render advice under a false flag of volunteerism, then a Rule affirmatively requiring registration by advisors who are compensated directly or indirectly, or whose occupations involve financial services, would pursue the Act's goals far more accurately, efficiently and fairly than the over-broad scope of the present proposal.

In addition to the foregoing comments, please allow PSATS to register its endorsement and adoption of the comments to this subject matter submitted by the Pennsylvania Local Government Investment Trust (PLGIT), a Pennsylvania non-profit organization which serves municipal government as a repository of municipalities' public funds. A copy of the PLGIT letter, dated February 18, is attached.

Thank you for the opportunity to comment upon the proposed Rules. We trust our comments will be fairly considered. If there is any additional clarification or other assistance we can provide, please contact us.

Sincerely,



David M. Sanko  
Executive Director

DMS:mev

Enclosure



February 18, 2011

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

Re: File Number S7-45-10

Dear Ms. Murphy:

Thank you for the opportunity to comment on the Securities and Exchange Commission's (the "SEC") proposed rule requiring "municipal advisors" to register with the SEC (Release No. 34-63576, the "Proposed Rule"). 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, effective October 1, 2010, to, among other things, require "municipal advisors" to register with the SEC.

Section 3 of Act No. 180 of the General Assembly of the Commonwealth of Pennsylvania (the "Commonwealth") approved January 12, 1972, as "[a]n Act relating to intergovernmental cooperation" (the "Intergovernmental Cooperation Act") provides that: "two or more municipalities in this Commonwealth may jointly cooperate, or any municipality or municipalities may jointly cooperate with any municipality or municipalities located in any other state, in the exercise or in the performance of their respective governmental functions, powers or responsibilities. For the purpose of carrying the provisions of this act into effect the municipalities cooperating shall enter into such joint agreements as may be deemed appropriate for such purposes." The Pennsylvania Local Government Investment Trust (the "Trust") was established pursuant to the Intergovernmental Cooperation Act. The Trust is organized under the sponsorship of seven associations: Pennsylvania State Association of Boroughs, Pennsylvania League of Cities and Municipalities, Pennsylvania State Association of Township Commissioners, Pennsylvania State Association of Township Supervisors, Pennsylvania Municipal Authorities Association, Pennsylvania Association of School Administrators, and County Commissioners Association of the Commonwealth to provide Pennsylvania local governments with a convenient method of pooling their cash for temporary investment. The Trust consists of a series of professionally managed investment portfolios available to its "Participants" which consist of boroughs, townships, incorporated towns, school districts, certain cities, counties, municipal authorities, and other governments in the Commonwealth. The Trust also sponsors programs offering direct investments to such local governments.

The operation of the Trust is governed by an eleven-member Board of Trustees (the "Trustees") who must be employees or elected officials of a local government or school district. Trustees are elected at each annual meeting of Participants of the Trust. Nominations for election as Trustee are made by a nominating committee which includes the presidents (or their

designees) of the sponsoring local government associations. In the event of a vacancy in a Trustee position, the remaining Trustees may appoint a qualified person to fill the position.

The Proposed Rule provides that elected members of the governing body of a "municipal entity" who provide advice to the municipal entity with respect to the issuance of municipal securities and municipal financial products would be considered "employees" of the municipal entity, and would not be required to register as municipal advisors; however, appointed members of a municipal entity's governing body who provide similar advice to the municipal entity would not be considered "employees", and thus would be subject to the registration requirement. The Proposed Rule provides that the SEC's interpretation is "appropriate because employees and elected members are accountable to the municipal entity for their actions." The SEC concluded it "is concerned that appointed members . . . are not directly accountable for their performance to the citizens of the municipality."

The Trust respectfully disagrees with the SEC's proposed distinction between "appointed" and "elected" officials. As mentioned above, the operation of the Trust is governed by an eleven-member Board which is composed of individuals who are either employees or elected officials of a local government or school district. The Trustees are elected at each annual meeting of Participants of the Trust. It is unclear from the language in the Proposed Rule whether the Trustees would be considered "elected" officials under the Dodd-Frank Act; the Proposed Rule is silent with respect to the application of the Proposed Rule in the case of an "elected member" or an employee of a municipal entity who is elected by a group of Participants to serve on another "municipal entity's" governing board.

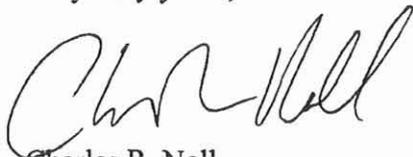
Regardless of whether Trustees are considered "appointed" or "elected", the SEC's rationale for treating appointed board members differently from municipal employees and elected board members is incorrect. Board members, whether appointed or elected, perform the function of policymaking and approving goals of the municipal entity. The Trustees' primary function is to guide the Trust to meet its objectives under the purposes established for the Trust; it is irrelevant whether a member is "appointed" or "elected" because each Trustee has a fiduciary duty to act in the best interest of the Trust and risks exposure for failing to act without a duty of care and a duty of loyalty. Each year, the Trustees comply with the annual filing requirement of the Pennsylvania Ethics Act. As such, the Trustees are subject to common law principles which include potential penalties for a breach of the Trustees' fiduciary duty to the Trust. The Trustees also act in an open forum with all official actions and deliberations of the Trust taking place at meetings that are open to not only the Participants but also to members of the public. The SEC's statement that "appointed" members are "not directly accountable for their performance to the citizens of the municipality" is simply incorrect when it comes to the Trust. Each Trustee is directly accountable to the Participants of the Trust, any additional registration requirements required by the Trustees would be superfluous to what is already required by the Trust.

*Assuming arguendo* that Trustees are "municipal advisors" for purposes of the Dodd-Frank Act, the Trust respectfully requests that the SEC define the word "advice" in the Dodd-Frank Act so that "municipal advisors" know if and when they are subject to the registration requirements of the Dodd-Frank Act. The Trust has broad authority to carry out its functions under the Intergovernmental Cooperation Act, including the ability to enter into contracts and execute all instruments necessary or incidental to the carrying out of its powers. In connection with investment decisions made by the Trust, the Trust engages a nationally recognized investment advisor and fund manager with knowledge and special expertise in local government investment pools to advise the Trust on matters relating to financial products and investments. During the Trustees' meetings, all of which are subject to Pennsylvania open meeting laws (as discussed above), each Trustee is encouraged to participate in discussions regarding the investment strategy of the Trust; Trustees ask questions of outside consultants, discuss proposed actions and vote on various items that govern the operation of the Trust. The Trustees do not provide "advice" as that word was intended under the Dodd-Frank Act. Instead, the Trustees "deliberate" on matters of the Trust. The Trust hires professionals to provide "advice" and the Trustees make an informed decision based on the advice provided. The Trust requests that the SEC define "advice" as information provided in a professional capacity by an individual that has expertise in financial matters where there is an expectation that the information provided will be relied upon by others in making decisions for the "municipal entity". Deliberations of Trustees made or taken in the course of performing their duties as Trustees should not be considered as providing "advice" under the Dodd-Frank Act.

Without a change in the registration requirement of the Proposed Rule there will be a chilling effect on the future of government boards who look for and depend upon civic-minded citizens to participate on these public boards. Board members are volunteers, the Trust depends on the expertise and leadership of the Trustees to guide the Trust; if appointed members are not excluded from the registration requirement, valuable talent will be lost because current and prospective Trustees will either resign or not join the Trust to avoid the registration requirements in the Dodd-Frank Act or the Proposed Rule.

Once again, thank you for allowing the Trust the opportunity to comment on the Proposed Rule. We would urge the SEC to revisit the registration requirement and the definitions of "municipal advisor" and "municipal entity" in the Proposed Rule.

Very truly yours,



Charles R. Noll  
President