



**CALAVERAS  
COUNTY  
WATER  
DISTRICT**

**BUSINESS OFFICE**

423 East St Charles Street  
Post Office Box 840  
San Andreas, California 95249  
(209) 754-3543  
Fax (209) 754-1069

February 22, 2011

Via E-Mail: [rule-comments@sec.gov](mailto:rule-comments@sec.gov)

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

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

Dear Ms. Murphy:

I am writing on behalf of the Calaveras County Water District, hereinafter "District," in response to the referenced Release (the "Release"), which invites comments on rules proposed ("Proposed Rules") by the Securities and Exchange Commission (the "SEC") that require "municipal advisors" (as defined in the Proposed Rules) to register with the SEC.

As discussed below, the District has significant concerns with several aspects of the Proposed Rules.

The District has operated continuously since 1946 under the laws of the State of California as a county water district for the purpose of providing water and wastewater services to the residents of Calaveras County. The District is a political subdivision of the State of California, authorized under Section 31110 of State Water Code, and is not a part of, or under the control of, Calaveras County. The governing body of the District is a five-member Board of Directors (the "Board"), who are elected by the voters of Calaveras County and serve a staggered four-year term and are paid a per-diem for each meeting they attend.

The elected members of the District's Board have diverse backgrounds. Historically, the Board has included members from the District's five service areas. Once elected, a Board member must take an oath of office that requires the member to uphold the Constitution and laws of the State of California. These laws include conflicts of interest and ethics laws governing members of the Board. As a public official, each Board member owes a fiduciary duty to the District and must comply with California laws concerning conflicts of interest, gifts, public meeting and records, financial disclosure and doing business with one's agency.

In order to achieve its purposes, the District 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 District, 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 and investments.

During the Board's 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, or the investment strategy of the District. 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 but in depth deliberative process of the District's Board.

The SEC's Proposed Rules regarding the registration of municipal advisors excludes elected board members of a municipal entity from the definition of "municipal advisor", but not appointed board members. In light of the close similarity in duties and treatment of elected and appointed public officials under the laws of California as described above and, we believe, under the laws of many other states, the District does not believe that different treatment of elected and appointed board members under the SEC's Proposed Rules is justified.

Therefore, the District requests the SEC 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.

The SEC's Proposed Rules do not include any definition of what constitutes "advice" or "providing advice." They also lack what we believe are essential elements in determining what is a "municipal advisor." These missing elements are that for an individual to 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. Omitting these key elements from the Proposed Rules' definition of "municipal advisor" will make anyone who offers an opinion or view ("advice") on financing matters to a municipal entity subject to registration with the SEC, including not only appointed board members but also members of the general public who file written comments or make oral comments at Board meetings.

If the SEC fails to define “advice” in its final Rule and leaves the meaning of what constitutes “advice” up to the interpretation of thousands of members of governing bodies of municipal issuers and hundreds of municipal issuer’s legal counsel, this will result in needless uncertainty, varying interpretations and significant burdens for municipal issuers and their elected board members.

The District therefore further requests that the SEC provide specific guidance in its final Rule concerning what constitutes “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 SEC should also 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 will **not** constitute “providing advice” as a “municipal advisor” which requires prior registration by the board member with the SEC.

Without such modifications and guidance, the SEC’s Proposed Rules will have significant adverse effects on our Board and the efforts of our Board members to make prudent financial decisions for the District. As written, the Proposed Rules will have a material and negative impact on the customary in depth deliberative process of our Board by inhibiting its members from expressing their views on matters relating to municipal bond issues and municipal financial products out of fear of subjecting themselves to the potential risk and expense of an SEC investigation over whether their comments constituted “advice” requiring prior registration with SEC as a “municipal advisor”. The Proposed Rules will also make it more difficult for the citizens of Calaveras County, who elect the District’s Board members, 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.” The Proposed Rules will deprive the District – and the citizens it serves --- of the discussion and deliberation by experienced Board members, which are necessary for the Board to make prudent financial decisions.

The Dodd-Frank Act provision that led to the SEC’s Proposed Rules was intended to protect municipal entities. The District strongly believes that municipal entities, such as the District, do not need to be protected from their own Board members, whether appointed or elected. In the case of the District (and we believe this is the case for most governing bodies of municipal issuers), its governing Board is the legislative or policy decision maker for the District. In that capacity, the Board routinely seeks advice from professional, independent consultants. The District’s governing Board members are the

recipients of the financial advice, not the providers of such advice. Moreover, nothing in the Dodd-Frank Act indicates Congress intended the SEC to require registration by appointed members of governing boards of municipal entities before these members could engage in discussions and deliberations with their Board colleagues and perform the duties for which they were appointed.

To summarize, for the foregoing reasons, the District respectfully requests that the SEC specifically modify its Proposed Rules as follows:

1. Exclude from the definition of "municipal advisor" all board members of a municipal entity, whether elected or appointed.

2. Provide clear and unambiguous guidance concerning what it means to "provide advice" by requiring that the advice must be provided in a professional capacity by a person holding him or herself out to the municipal issuer as having special knowledge and expertise in municipal financial matters and where there is reasonable expectation the advice will be relied upon by a municipal issuer in making decisions concerning issuance of bonds.

3. Provide clear and unambiguous guidance that the statements and activities of members of governing bodies of municipal entities, which are made or taken in the course of performing their duties as board members, do **not** constitute "providing advice" to a municipal entity requiring prior registration by the board member with the SEC.

If you have any questions concerning these comments or desire any additional information regarding the District, please contact me.

Sincerely,

CALAVERAS COUNTY WATER DISTRICT



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Jeff Davidson  
President, Board of Directors