

February 22, 2011

Elizabeth M. Murphy, Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-109

By email

Re: File No. S7-45-10
Release 34-63576

Dear Ms. Murphy:

Towers Watson is a global human capital and financial management consulting firm. With 14,000 associates around the world, we offer solutions in the areas of employee benefit plans, talent management, rewards, and risk and capital management. While the majority of Towers Watson clients are private plan sponsors, we also provide services to governmental plans and plans maintained by tax-exempt organizations.

Towers Watson appreciates the opportunity to provide our views and information on the proposed rule that would require "municipal advisors" to register with the SEC. We are writing to request an exemption from the definition of "municipal advisor" for providers of actuarial services to the extent that their services and advice are limited to actuarial valuations, contribution projections, funding strategies, plan design strategies and other non-investment related advisory services.

Under the proposed rule, "Municipal Entity" is defined to include "any plan, program, or pool of assets sponsored or established by the State, political subdivision, or municipal corporate instrumentality or any agency, authority or instrumentality thereof." The proposed rule provides that this "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."

"Obligated person" is defined to include all persons who are committed to support the payment obligations of municipal securities (e.g., conduit borrowers), except for providers of liquidity facilities, such as bond insurers and banks that provide letters of credit. This definition appears to encompass tax-exempt organizations that rely on municipal bond issues to finance their operations and retirement plans.

Our interpretation of the proposed rules is that they might be interpreted to require an actuary who provides actuarial services to a governmental pension plan or a retirement plan of a tax-exempt organization that is an “obligated person” (or to the sponsors of such plans) to register as a municipal advisor and become subject to fiduciary duties under the Dodd-Frank Act. Thus, it is important to us to understand the types of services that may be provided outside of the scope of the regulation, as well as those that would require registration. We therefore wish to respond to the Commission’s request for specific comments on “whether there are other types of professional activities that should be excluded from the definition of municipal advisor.”

Currently the proposed rule would exclude certain professionals such as attorneys providing legal advice, engineers providing engineering advice, and accountants preparing financial statements, auditing financial statements or issuing letters for underwriters for, or on behalf of, municipal entities or obligated persons. In our opinion, actuaries providing actuarial services with respect to public pension plans, 403(b) plans and 457(b) plans should also be excluded from the definition of “municipal advisors.” In giving consideration to excluding actuarial professionals from the definition of “municipal advisor,” we believe it would be useful for the Commission to look to the private pension regulatory scheme for guidance and to also consider the role of actuarial services in the administration of the retirement programs affected by the regulation.

In *Mertens v. Hewitt Associates*, 508 U.S. 248 (1993), the U.S. Supreme Court held that actuaries are not ERISA fiduciaries unless they assume discretionary authority over the plan’s assets or administration. Specifically the Court determined that the setting of actuarial assumptions to reflect retirement costs was not a fiduciary function. Although the U.S. Supreme Court’s decision applied to a private pension plan regulated under ERISA, we believe that it is equally applicable to governmental retirement plans. It would be incongruent to conclude that actuaries who are not fiduciaries under ERISA should be deemed fiduciaries with respect to governmental plans when the services provided by actuaries to public plans are essentially the same in their nature as the services provided to private plans (as described in more detail below). Moreover, retirement plans sponsored by tax exempt organizations that are “obligated persons” under the proposed regulation are subject to ERISA and the imposition of fiduciary status on actuarial services with respect to such plans would conflict in principle with the *Mertens* decision.

In considering the requested exemption, we also ask the Commission to recognize the necessary role of an actuary in retirement plan administration. Traditionally, the actuary for a governmental plan applies a funding method that spreads costs over time, and determines the amount of contributions needed to satisfy the requirements of the funding method and the plan’s current administrative expenses. Actuaries also calculate the cost of potential changes to plan benefit formulas and the pension expense for financial accounting. But for these services, the long-term actuarial soundness of a retirement plan could not be evaluated by the plan sponsor. If an exemption from registration is not provided, the likely result is that public pension plans would have difficulty finding appropriate advisors to evaluate their plans’ funded status, contribution requirements and long-term sustainability.

To summarize, actuaries play a significant role in assisting clients that manage plans that fall within the definition of “municipal entity” because they possess quantitative skill sets that are uniquely relevant to managing the longevity risks of such plans. Therefore, we believe that an exemption from the definition of “municipal advisor” for providers of actuarial services is extremely important to our governmental plan clients and respectfully request that the Commission provide such exemption in any final municipal advisor registration rules.

Respectfully submitted,

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