



Jeremiah W. (Jay) Nixon, Governor

Sara Parker Pauley, Director
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Thomas Welch, Director

By email to rule-comments@sec.gov

Securities and Exchange Commission
Attention: Elizabeth M. Murphy, Secretary
100 F Street, N.E.
Washington, DC 20549-1090

RE: File Number S7-45-10

Dear Ms. Murphy:

The Environmental Improvement and Energy Resources Authority (EIERA) is a body corporate and politic serving the State of Missouri by providing a number of programs for financing environmental projects. Our Board unanimously voted to express its concerns regarding proposed rules to implement Section 975 of the Dodd-Frank Wall Street Reform and Consumer Protection Act relating to the registration of municipal advisors. While the EIERA appreciates the efforts to protect municipal entities, this proposed rule would have significant negative consequences.

Given the variety of programs administered by the EIERA, many of which do not involve the issuance of municipal securities, it is vital to have Board members with diverse backgrounds. Our members often have experience in law, municipal government, business and environmental affairs. Requiring appointed board members to register as municipal advisors will impose financial and time burdens, significantly decreasing the number of individuals willing to volunteer in the future as well as resulting in the resignation of many current members. Lower income individuals will most likely be excluded from service. With this requirement, it is likely that only finance professionals will be willing to serve. The result will be placing finance industry professionals in control of these entities—hardly a sound basis for well-rounded decision making.

Under the Frank-Dodd Act, Congress defined “municipal advisor” as “a person (who is not a municipal entity or an employee of a municipal entity)...” who “provide[s] advice to or on behalf of a municipal entity or obligated person with respect to municipal financial products or the issuance of municipal securities, including advice with respect to the structure, timing, terms and other similar matters concerning such financial products or

Missouri Environmental Improvement and Energy Resources Authority



issues." A municipal entity cannot legally be distinguished from its Board or individual members while acting in the capacity of policy/decision makers. Collectively, board members are the entity. A board, and through it the entity it governs, is the recipient of municipal advice; not the advisor. To hold otherwise not only alters the legal status of a board, but also ignores the express Congressional intent in this matter.

To draw a distinction between appointed board members and elected, ex officio members on the grounds of public accountability modifies the legal status of board members and ignores current state laws in this area. The States have each passed laws regarding not only the qualifications for those serving, but also accountability, transparency and conflict standards under which all municipal boards operate. The EI ERA members are appointed by the Governor and confirmed by the State Senate, serve for a specific terms, are governed by conflict of interest laws, have disclosure requirements, are subject to removal and board actions and records are open to the public. To say that an appointed board member is not accountable to the public is simply wrong. Municipal entity board members, elected or appointed, have equal powers and responsibilities and are held to the same fiduciary duty. By distinguishing between appointed and elected members a new, arbitrary class or status is created for no legitimate purpose.

A sound decision making process depends upon the ability of a municipal entity board to engage in a free flow of communication and deliberations. These communications take place not only with fellow board members, but also staff and borrowers. The abuses Dodd-Frank sought to eliminate are not those engaged in by board members acting within the scope of their decision making authority. By indicating that registration is necessary only if an appointed board member gives municipal advice without any type of clear, bright line definition unnecessarily opens appointed board members (but oddly not elected or ex officio board members) to liability. Determinations of whether activities are considered advice would be made after the fact. Without the exemption Congress intended for municipal entity board members, any discussion, deliberation or debate would subject the appointed board member to potential liability. At the very least, a rule such as this will chill open, deliberative discussions regarding the issuance of bonds, financings and investments by appointed board members. This is clearly contrary to the goals of transparency, accountability and a sound decision making process.

Finally, as a conduit issuer, the EI ERA issues debt on behalf of or in cooperation with various municipal entities and private companies. Discussions with the employees and boards of these municipal entities and borrowers regarding the issuance of municipal securities should not be deemed advice on the part of the issuer, municipal entity or borrower so long as the discussions are limited to matters within the appropriate scope of their duties to that entity. For example, advice provided by a state revolving fund program to municipal entities that borrow through the state revolving fund program (and, in many cases, issue bonds or notes to the state revolving fund to evidence such

borrowing) should not result in the state revolving fund, or its employees through which such advice is provided within the scope of their duties, being treated as a municipal advisor. Likewise, discussions between an issuer and a conduit borrower (its board or employees) should not be deemed municipal advice by either party.

The EI ERA respectfully requests that appointed members be excluded from the definition of municipal advisors and that clarifications are made to ensure that discussions between issuers, municipal entities and borrowers, within the appropriate scope of their duties, be excluded from the definition of municipal advice.

Sincerely,

A handwritten signature in black ink, appearing to read 'Thomas Welch', with a long, sweeping underline that extends to the right.

Thomas Welch
Director

TW:klm:vlh