



February 22, 2011

Via E-Mail: rule-comments@sec.gov
Ms. Elizabeth M. Murphy, Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090

Re: Registration of Municipal Advisors (RIN 3235-AK86) (File Number S7-45-10)

Dear Ms. Murphy:

We are writing to provide the comments of the Metropolitan Washington Airports Authority (“Airports Authority”) on rules proposed in Release No. 34-63576 (“Proposing Release”) of the Securities and Exchange Commission (“Commission”) that would include the non-elected members of the boards of directors of entities like the Airports Authority within the definition of “municipal advisor,” thereby requiring the members to register with the Commission and imposing on the members a new federal fiduciary duty to the municipal entity.

The Airports Authority is an interstate compact entity created in 1986 by the Commonwealth of Virginia and the District of Columbia with the consent of the Congress of the United States. The Airports Authority was established for the purpose of developing, promoting and operating Ronald Reagan Washington National Airport (“Reagan National”) and Washington Dulles International Airport (“Dulles International”). The Airports Authority also has operational and financial control of the Dulles Toll Road which is located in Northern Virginia. The Airports Authority’s Board of Directors is composed of thirteen members, all of whom serve without compensation. Three members of the Board of Directors are appointed by the President of the United States with the advice and consent of the United States Senate, five members are appointed by the Governor of Virginia, two members are appointed by the Governor of Maryland, and three members are appointed by the Mayor of the District of Columbia. All powers of the Airports Authority are vested in its Board of Directors.

Ms. Elizabeth M. Murphy, Secretary
Securities and Exchange Commission
February 22, 2011
Page 2

The proposed rules set forth in the Proposing Release are being issued pursuant to the provisions of the Dodd-Frank Wall Street Reform and Consumer Protection Act. In the Proposing Release, the Commission asks, among other things, whether it is appropriate to include in the definition of “municipal advisor” the non-elected, appointed members of a municipal entity’s governing body.¹

The Airports Authority believes that all members of governing bodies of municipal entities, whether elected or non-elected, and including members of its Board of Directors, should not be included in the definition of “municipal advisor.”

First, the powers of the Airports Authority are vested by law in its Board of Directors. Accordingly, the Airports Authority, like municipal entities generally, exercises its powers largely by and through its Board of Directors. In exercising these powers, the Board of Directors does not “advise” the Airports Authority, but makes decisions and take actions as, or on behalf of, the Airports Authority. Treating the Airports Authority’s Board of Directors, or the governing bodies of other municipal entities, as “advisors” fails to acknowledge the role they play as the primary decision-making body of a municipal entity.

Second, treating appointed members of the boards, and governing bodies, of municipal entities as “municipal advisors” would seriously deter individuals from volunteering to serve in these positions. This is because these appointed members would be exposed to civil and criminal liability under a federal fiduciary duty which would not otherwise apply.

All appointed members of a municipal entity’s governing body should be excluded from the definition of “municipal advisor”

The Proposing Release requests comments on whether the Commission's interpretations of the definition of “municipal advisor” and related terms, and the exclusions from the definition of “municipal advisor,” should be modified or clarified in any way. We believe that the Commission’s characterization of non-elected, appointed board members as “municipal advisors” to the municipal entities which they serve fundamentally misapprehends the role of board members in the governance and functioning of municipal entities.

We believe that the Commission’s proposed rules fail to give adequate consideration to the fact that the governing body of a municipal entity is the medium through which the entity

¹ The Airports Authority is a “municipal entity” under §15B(e)(8) of the Securities Exchange Act of 1934 and, therefore, would be subject to the proposed rule addressed in these comments were it adopted.

Ms. Elizabeth M. Murphy, Secretary
Securities and Exchange Commission
February 22, 2011
Page 3

conducts its business and exercises its public powers and functions.² In many instances, a municipal entity may not take action without the approval of its governing body. Without the ability to engage in full and open discussion, the members of a municipal entity's governing body would be unable to perform the policy and decision-making that is required of them. When engaging in such discussions, members are not providing "advice," as that term is used in the proposed rules, to their municipal entity; nor is the municipal entity looking to, or relying on, them for such "advice." Rather, they engage in these discussions in order to reach a collective decision, based on a wide range of factors, that they consider to be in the best interest of the municipal entity. To the degree that a municipal entity needs protection from the "financial" misdeeds of governing body members, the protection is already afforded through the fiduciary duty that state law usually imposes upon the members. And, to the degree that a municipal entity requires financial advice, it can turn to a "municipal advisor" who can provide this, and only this, advice. In contrast, governing body members, both elected and non-elected, must be free to candidly discuss and debate, and cast informed votes on, the issuance of municipal securities and the use of municipal financial products. The Proposing Release, by bringing such member conduct into the realm of "advice," would significantly discourage the conduct, to the detriment of municipal entities and their citizens.

Moreover, board members are decision-makers who routinely rely on the advice of staff and consultants, including financial advisors, who have been engaged by their municipal entity. Regulating the consultants who provide financial advice to a governing body, and who hold themselves out as financial advisors, is certainly proper. But treating and regulating members of a governing body in the same manner is unnecessary. These members are often the *recipients* of financial advice, not advisors themselves, and need not be considered "advisors" for purposes of the Proposing Release.

² We note that the Commission states in the Proposing Release that:

... [T]he statutory definition of "municipal advisor" includes distinct groups of professionals that offer different services and compete in distinct markets. The three principal types of municipal advisors are: (1) financial advisors, including, but not limited to, broker-dealers already registered with the Commission, that provide advice to municipal entities with respect to their issuance of municipal securities and their use of municipal financial products; (2) investment advisers that advise municipal pension funds and other municipal entities on the investment of funds held by or on behalf of municipal entities (subject to certain exclusions from the definition of a "municipal advisor"); and (3) third-party marketers and solicitors.

The inclusion of appointed board members in the definition of "municipal advisor" is inconsistent with this statement. Board members are not "professionals that offer different [financial or investment] services and compete in distinct markets," but rather are policy- and decision-makers for a governmental entity.

Ms. Elizabeth M. Murphy, Secretary
Securities and Exchange Commission
February 22, 2011
Page 4

There is no reasonable basis on which to include appointed members of a municipal governing body in the definition of "municipal advisor" while excluding elected members

In the Proposing Release, the Commission asks whether it is appropriate to exclude from the definition of "municipal advisor" elected members of a governing body of a municipal entity, but to include appointed members, except where an appointed member is an *ex officio* member by virtue of holding an elective office. We do not believe it is appropriate to treat elected and appointed members differently in this manner.

No convincing rationale is advanced by the Commission in the Proposing Release for distinguishing between elected and appointed members of governing boards of municipal entities. The Proposing Release states that elected officials are more accountable than appointed officials because they are "directly accountable for their performance to the citizens of the municipal entity." But, while not subject to electoral review by citizens, appointed officials are nonetheless subject to rules and obligations imposed by state law that hold them to a high standard of accountability.

State rules of conduct and ethics laws generally apply to appointed board members. For example, state ethics laws usually prohibit appointed board members of municipal entities from engaging in transactions representing a conflict of interests, and municipal entities with appointed board members are generally subject to open meetings laws that enable citizens to hold the members accountable. In addition, appointed members of the governing body of a municipal entity generally may be removed by the appointing official for cause.

Thus, there are numerous ways under current law in which appointed members of municipal governing bodies may be held accountable to the local citizenry. That they are not subject to periodic electoral review by citizens does not, in our view, warrant treating them in a different manner than elected board members for purposes of the "municipal advisors" rule.

The inclusion of appointed governing body members in the definition of "municipal advisors" will stifle discourse and discourage individuals from serving on such bodies

Most appointed members of municipal governing bodies are volunteers who are appointed by elected officials based on their qualifications and the value they will bring to the public arena. These appointed members typically receive only *de minimis* compensation for their services and generally participate to "give back" to the communities in which they live. In the case of the Airports Authority, members of the Board of Directors serve without compensation.

Ms. Elizabeth M. Murphy, Secretary
Securities and Exchange Commission
February 22, 2011
Page 5

The inclusion of volunteer appointed members in the definition "municipal advisors" will make them subject to civil and criminal liability for conduct which, if undertaken by a non-"municipal advisor," would not necessarily form the basis for liability. This new and additional potential liability will only serve to discourage appointed board members from candidly discussing financial matters and proposed financial transactions, thereby harming the quality of decision-making at the municipal level. Moreover, this potential liability will make it more difficult for governors, mayors and other appointing officials to find qualified individuals willing to voluntarily serve on boards of municipal entities. To avoid these impacts, the Commission should not include municipal governing board members in the definition of "municipal advisor."

* * *

We appreciate this opportunity to comment on the Proposing Release.

Sincerely,

A handwritten signature in black ink, appearing to read "Lynn Hampton", written in a cursive style.

Lynn Hampton
President and Chief Executive Officer