

HOUSTON FIREFIGHTERS'
RELIEF AND RETIREMENT FUND
Investing for Firefighters and Their Families®



February 22, 2011

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

RE: SEC File No. S7-45-10
Release No. 34-63576

I am writing on behalf of the Houston Firefighters' Relief and Retirement Fund ("HFRRF") to submit HFRRF comments in response to Release No. 34-63576 (hereinafter the "Release"). The Release proposes the adoption of rules 15Ba-a to 15Ba1-7 and new forms MA, MA-1, MA-W and MA-NR under the Securities Exchange Act (hereinafter the "Proposed Rules"). HFRRF believes that the Proposed Rules as drafted would have an adverse impact on HFRRF, and thus requests modifications to address HFRRF concerns. HFRRF also believes that when the Proposed Rules are viewed against the particular make-up of the HFRRF Board of Trustees, the effect of the Proposed Rules are unclear.

HFRRF is an entity created and governed by article 6243e.2(1) of the Texas Civil Statutes, to provide retirement, disability and death benefits to Houston Firefighters and their survivors. It is also governed in part by Texas Government Code Chapter 802, as well as (e.g., for purposes of plan qualification) the various sections of the United States Internal Revenue Code of 1986 applicable to governmental plans, including, but not limited to, sections 401(a) and 414(d). HFRRF was created by the Texas Legislature in 1937. The status of HFRRF Trustees as fiduciaries is provided for in Article 16 of the Texas Constitution and in Chapter 802 of the Texas Government Code, as well as HFRRF's own Code of Ethics, which is a set of administrative rules governing Trustee conduct. A State of Texas regulatory agency, the Texas Pension Review Board, oversees Texas governmental plans, including HFRRF.

There are currently slightly in excess of 6,500 members of the HFRRF plan, including active and retired firefighters and their survivors or beneficiaries. HFRRF holds approximately \$2.9 billion in assets. The HFRRF Board of Trustee receives investment advice sitting as an Investment Committee, which is a committee of the whole. The Investment Committee does not make recommendations to the Board. As a committee of the whole Board, it is empowered to act as the Board. Both Board meetings and Investment Committee meetings are publicly posted and open to the public, as specified in the Texas Open Meetings Act. Hereinafter, the Investment Committee and the Board shall both be referred to as the Board. The Board (or Investment Committee) has no "ex-officio" members.

HFRRF is concerned that the second full bulleted item on page 51 of the referenced Release blurs the distinction between the advisor and the advised in an unproductive and perhaps unintended manner. HFRRF submits that the term "municipal entity" as that term is

employed in 15 U.S.C. section 780-4 should be understood as including the HFRRF Trustees who receive investment advice from advisors. No HFRRF Trustee is statutorily or by policy enabled to provide investment advice to the Board. Although recently the Board and HFRRF as an entity were distinguished by definition due chiefly to state law purposes unrelated to matters addressed here, in many regards the HFRRF governing statute (and other state law) treats those two designations as synonymous or virtually synonymous. For the majority of the years of its existence the Board did not have an employed staff and the Board of Trustees itself was essentially the entire entity.

If HFRRF or the Board constitute a “municipal entity”, its Trustees, as components of the HFRRF Board that cannot individually (or in numbers less than a majority of a quorum) act or bind the Board need to be considered part and parcel of that “municipal entity.” Any other approach simply de-constructs the reality of the Board’s operation. Moreover, an attempted division in status of “elected” Trustees, “appointed” Trustees and any other category of Trustees is problematic from the viewpoint of how some HFRRF Trustees are actually selected and tends to blur the essential fact that all Trustees have the same fiduciary duties. The ten-Trustee board that governs HFRRF is composed as follows:

- Five active firefighters are elected by the entire population of active Houston firefighters. The election is not an election in the sense understood or falling under the Texas Elections Code, as not involving the citizenry as voters, but rather is supervised by an independent accounting firm under HFRRF authority. The active firefighters are employees of a separate political entity from HFRRF, namely the City of Houston.

- One retired firefighter is elected by the entire population of retired firefighters, by the same method described as to the election of active firefighter Trustees.

- Two registered voters of the municipality are selected by active and retired firefighters on the Board. These are currently a former City Councilmember and a former City Budget Director.

- The Mayor of Houston or an appointed representative of the Mayor serve on the Board. It may be that no Mayor ever personally served. Currently the appointment is currently held by an individual who is the sole owner of an investment advice corporation that has an ADV, but the individual does not have a separate ADV. The prior holders of the appointment were a retired Harvard Business School professor and before that, a prominent Houston businesswoman, not in the investment advice business. The appointments tend to change with changes in mayoral administrations.

- The treasurer of the City of Houston serves on the Board, or if none (and there is none), the person who performs the duties of the treasurer.

With regard to the Proposed Rules, any implied divisions between “elected” versus “selected”, “appointed” or Trustees sitting by other form of designation are difficult to work out with any certainty as to how the Proposed Rules intend to differentiate among them. In addition to not

providing any investment advice to the HFRRF Board, none of the Trustees provides any investment advice to the City of Houston or any other municipal entity. Nor does the HFRRF Board as a whole provide investment advice to the City of Houston. It is important to recognize that neither HFRRF itself nor the HFRRF Board, as a municipal entity, has "citizens." There are members and beneficiaries of the pension trust, and the duty owed to those persons by the Trustees is by definition of federal and state law, exclusive.

Further, if the Commission's proposal is to simply regard as "municipal advisors" all, most or any of the HFRRF Trustees as described above, this will itself imply a conflict of interest, apparently contrary to the Trustee's duty to independently evaluate the advice of investment advisors. Each Trustee would appear to be in a conflict with himself or herself. HFRRF notes in this connection that all the HFRRF Trustees, whether considered elected, appointed, or in some other category or categories, have to answer to the HFRRF membership under a fiduciary standard of care, the highest standard of care known in the law.

Finally, HFRRF believe that the registration requirement, if imposed on the volunteer citizen Trustees, or the mayoral appointee, particularly when a private citizen, will harm HFRRF in discouraging qualified Trustees from service given the considerable time and concentration needed to serve. Since there is so little benefit to proposed Trustee registration, in that no Trustee does or could provide investment advice to HFRRF, the harm is not warranted.

HFRRF respectfully requests that the Proposed Rules be revised to state that Trustees serving as components of Boards of Trustees of municipal pension plans be clearly and unmistakably exempted from registration and simply treated as component parts of the "municipal entity" Board.

Respectfully submitted,



Jonathan W. Needle,
Chief Legal Officer

cc: Mr. Todd Clark
Board Chair
HFRRF

Mr. Christopher Gonzales
Executive Director and Chief Investment Officer
HFRRF