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February 22, 2011

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

RE: File No. S7-45-10; SEC Proposed Rule 34-63576

Dear Ms. Murphy:

On behalf of Dallas Area Rapid Transit (DART), we are writing to confirm that we oppose the SEC's proposal to consider appointed members of the governing bodies of state and local government as municipal advisors. We believe the application of the rule to appointed members is unnecessary, unlikely to achieve the intended purpose of the rule, very burdensome to appointed members, and likely to have a chilling effect on the recruitment of citizen volunteers to serve on public boards.

The DART Board of Directors consists of 15 members, appointed by the 13 municipalities that encompass the 700 square mile geographical area the authority serves. The agency serves a population in excess of 2.4 million people. Similar to virtually every local jurisdiction in Texas of any size, DART is professionally represented by independent financial advisors and bond counsel.

Appointed members of governing bodies, especially at the local level, typically are citizen volunteers who are interested in serving for the public good and often have special expertise that is critical to the effective functioning of the governing body. However, they may be deterred from serving on state and local governing boards if federal registration requirements and annual reporting obligations are imposed upon them merely because of their presence on a board as an appointed member.

The SEC's proposed rule correctly exempts elected members, elected ex-officio, and employees of a municipal entity's governing board from the definition. We urge the SEC to exclude all governing body members and the employees of appointed bodies from the municipal advisor definition. Board members are duty bound to ask questions and discuss matters regarding the structure, timing, terms, and other similar matters concerning financial products or debt issues presented to the Board. Such discussions should not be deemed to be "engaging in municipal advisory activities."

Enclosed with this letter is commentary from our independent financial advisor, which more completely articulates the issues and recommendations in regard to the most appropriate manner in which to address them. We support their analysis and encourage your full consideration of the arguments contained therein.

Thank you for the opportunity to comment on the SEC's Proposed Rule 34-63576.

Sincerely,

David Leininger
Chief Financial Officer

Enclosure

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Commentary Regarding Proposed Rule Amending
Section 15B of the Securities Exchange Act of 1934

We submit the following comments to the above cited draft rule because of serious concerns about the unintended consequences that would result should the current draft rule be adopted without changes. We seek to assist the SEC in realizing that the draft rule will have very detrimental effects on the ability of state and local governments to conduct business with the assistance of private citizens who serve on boards and commissions across the country. We firmly believe it would be unfair, burdensome and counterproductive to extend the registration of "municipal advisors" to include persons who serve on boards and commissions falling within the definition of "municipal entity," such as an agency, authority, or instrumentality of a state, political subdivision or municipal corporate instrumentality.

One of the major flaws in the draft rule is the proposed definition of "municipal advisor" which correctly excludes an employee of a municipal entity from the definition. The SEC also indicates, correctly, that elected officials who serve as appointed members of a governing body of a municipal entity, to the extent such appointed members are ex officio by virtue of holding an elective office, would be excluded from the definition of "municipal advisor." **We strongly recommend expanding these exclusions by adding "any person appointed to a municipal entity by one or more elected officials, shall not be considered to meet the definition of municipal advisor."** The rationale for excluding elected officials seems to be that such individuals are held accountable for their conduct by the public. By the same token, the conduct of persons appointed by elected officials is subject to review by the same public, as all meetings are subject to the so-called "sunshine" laws that require proper notice of meetings and open deliberations at such meetings.

In the alternative, should the SEC refuse to expand the exclusions as suggested, we would propose a more precise definition of what constitutes "municipal advisory activities." The greatest concern among municipal entities whose appointed members of a governing body may be subjected, unnecessarily, to registration is based on whether or not such members are found to "engage in municipal advisory activities." We firmly believe the Dodd-Frank Act intends to require the registration of non-broker dealer advisors or consultants who actively render advice with respect to the structure, timing, terms, and other similar matters concerning financial products or debt issues of municipal entities, much as registered broker dealer advisors do. Such activities are far different in nature and substance from the role of a governing body appointed member who in the diligent exercise of his or her appointed duties asks logical questions about the plans recommended by employees or consultants of the municipal entity regarding the "structure, timing, terms, and other similar matters concerning financial products or debt issues." Under the draft rule, as written, there is great and dangerous uncertainty about whether or not such legitimate inquiries would render those appointed members subject to SEC registration and all the ancillary regulations expected to be imposed by the Municipal Securities Rulemaking Board ("MSRB") on registered municipal advisors!

This uncertainty could be cured by amending the definition of "municipal advisor" to clarify that an appointed member of a board or commission of a municipal entity who asks questions and discusses matters regarding the "structure, timing, terms, and other similar matters concerning financial products or debt issues" presented to such board or commission is not deemed to be "engaging in municipal advisory activities."

Yet another alternative to the concerns expressed herein would be to establish certain standards within the rule that provide a "safe harbor" for the vast majority of municipal entities by stating that any such municipal entity that retains a registered or regulated financial advisor for the purpose of providing qualified professional advice regarding the structure, timing, terms, and other matters concerning financial products or debt issues shall have any appointed members of such governing body excluded from falling within the definition of a municipal advisor.

Finally, it should be noted the inadvertent registration of any representative of a governing body of a state, municipality or sub-division thereof and the resulting regulation of such representative by the SEC and the MSRB would be tantamount to a "back door" repeal of the "Tower Amendment" to the Securities Exchange Act of 1934, which exempted state and local issuers from registration with the SEC. Had the Congress intended to repeal the Tower Amendment in adopting the Dodd-Frank Act, the Congress would have explicitly done so, but it did not. For the SEC to undertake rule writing for Dodd-Frank which, in effect, repeals the Tower Amendment is both inappropriate and unwarranted. Steps must be taken to amend the proposed rule to remedy this matter.