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Via email: rule-comments@sec.gov

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Ms. Elizabeth M. Murphy
Secretary
U.S. Securities and Exchange Commission
100 F Street N.E.
Washington, D.C. 20549-1090

Re: Securities Exchange Act Release Number 34-63576; Registration of Municipal Advisors

Dear Ms. Murphy:

Honeywell International Inc. ("Honeywell") appreciates the opportunity to comment on the above-referenced release with respect to the registration of municipal advisors. Specifically, we submit this letter in response to the request for comments by the United States Securities and Exchange Commission (the "Commission") on the Commission's Exchange Act Release Number 34-63576 (December 20, 2010) proposing new rules 15Ba1-1 through 15Ba1-7 and related forms under the Securities Exchange Act of 1934 (the "Exchange Act") (together, the "Proposed Rules" or "Proposing Release"). In addition to the comments provided herein, please note that Honeywell supports the comments set forth in the letter submitted by Bingham McCutchen LLP on behalf of the National Association of Energy Services Companies ("NAESCO").

Honeywell is a Fortune 100 diversified technology and manufacturing company, serving customers worldwide with aerospace products and services, control, sensing, security and life safety technologies for buildings, homes and industry, turbochargers and automotive products, and specialty materials and process technologies. Through our Honeywell Building Solutions division, we participate in the engineering services industry by providing energy-efficiency and renewable energy solutions to institutional, industrial, commercial, residential and municipal customers to further their environmental, energy-efficiency, budgetary and infrastructure goals. Honeywell is concerned that the Proposed Rules will negate the express exclusion of engineering services providers from the statutory definition of "municipal advisor," and that this will result in adverse unintended consequences for municipalities and their constituents.

I. THE PROPOSED RULES DO NOT SUPPORT THE LEGISLATIVE INTENT OF THE DODD-FRANK ACT

Congressional reports indicate that a primary objective of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the "Dodd-Frank Act") is to provide municipal entities with protections similar to those provided to public corporations and their shareholders under the Exchange Act. This goal was summarized as follows:

> "A major lesson from the crisis is the importance of transparency in financial markets. The $3 trillion municipal securities market is subject to less supervision than corporate securities markets, and market participants generally have less information upon which to base investment decisions. During the crisis a number of municipalities suffered losses from complex derivatives products that were marketed by unregulated financial intermediaries. This title requires a range of municipal financial advisors to register with the SEC and comply with regulations issued by the Municipal Securities Rulemaking Board (MSRB)."[1]

Additional insight regarding Dodd-Frank Act Congressional intent is found in the following:

> "This Section [Section 975 of S. 3217, "The Restoring Financial Stability Act of 2009"] establishes municipal advisors as a new category of SEC registrant. Such municipal advisors provide advice to municipal entities on the issuance of municipal securities, the use of municipal derivatives, and investment advice relating to bond proceeds."[2]

With the express intent of addressing issues directly related to the *municipal securities market* (i.e., financial advice related to municipal securities, derivatives and bonds), Congress limited the scope of its intended controls under the Dodd-Frank Act to individuals specifically engaged in financial advisory activities related to such market and its products, and intentionally excluded persons engaged in the provision of non-financial goods and services. That is, the term "municipal advisor" as defined in Section 15B(e)(4)(B) of the Exchange Act, as amended by the Dodd-Frank Act, is defined to include "financial advisors, guaranteed investment contract brokers, third-party marketers, placement agents, solicitors, finders, and swap advisors." This statutory definition specifically excludes from its scope non-financial advisors, such as "engineers providing engineering services."[3] The Proposed Rules would, however, negate this exclusion by expanding the definition of "municipal advisor" to include energy services companies, whose primary scope of activities is to provide *engineering services* and not to offer advice, receive compensation, or act as a fiduciary with respect to the *municipal securities market.*

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[1] U.S. Senate. Committee on Banking, Housing, and Urban Affairs. *The Restoring American Financial Stability Act of 2010: Report Together with Minority Views (to accompany S. 3217)* (S. Rpt. 111-76), at 38.
[2] *Id.* at 147-148.
[3] Exchange Act Section 15B(e)(4)(C).

A. Engineering Services are Excluded from the Statutory Definition of a "Municipal Advisor"

As stated above, "engineers providing engineering services" are specifically excluded from the statutory definition of "municipal advisor." As such, activities that are "inextricably linked to engineering advice"[4] should similarly be excluded, otherwise the exclusion will be rendered meaningless. These activities include the provision of (1) "feasibility studies" analyzing potential energy conservation measures, implementation costs, payback periods, energy savings generation and cash flow modeling related thereto, (2) public information regarding government stimulus programs and incentives, and (3) general information regarding municipal financing alternatives and/or uncompensated introductions to potential funding sources. It is important to note that none of these activities constitute advice or recommendations about financing options, rather they merely provide information that municipal entities may use to evaluate options for a project. In other words, the provision of such information is simply necessary for the municipality to initially understand the costs associated with a proposed engineering project and the range of potential options for financing such project, not to assist it in specifically evaluating or recommending financing options.

Moreover, given that information such as feasibility studies and cash flow modeling analyses are often required by state law or engineering services RFPs with respect to such projects, it is inconceivable that Congress intended for these activities to constitute municipal advisory activities, given the explicit engineering services exclusion. The Proposed Rules would expand the definition of "municipal advisor" so as to negate the specific exclusion provided by Congress.

II. AS PROVIDERS OF NON-FINANCIAL PRODUCTS AND SERVICES, ENERGY SERVICES COMPANIES DO NOT ACT AS A FIDUCIARY TO MUNICIPALITIES AND IMPOSING SUCH A DUTY WILL RESULT IN ADVERSE UNINTENDED CONSEQUENCES

A. Energy Services Companies Should Not be Deemed to Have a Fiduciary Responsibility to Municipalities

Energy services companies are often the initial source of general and educational information for many state and local government entities regarding the variety of options aimed at addressing prevalent environmental, energy-efficiency, budgetary and infrastructure concerns. Specifically, these parties provide engineering solutions that supply efficient, low-cost, state-of-the-art power and energy-efficiency services designed to reduce municipalities' energy expenditures and upgrade often-ailing physical infrastructure; as discussed above, these solutions are often coupled with general information regarding financing alternatives and/or providers.

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[4] Proposing Release at 50.

Without the information provided by energy services companies, municipalities may never learn about programs and incentives specifically designed for their benefit. A constraint on the ability of energy services companies to share general and educational information with municipal entities would not only be contrary to the plain intent of Congress in adopting the engineering services exclusion, but would also have the counter-productive effect of making it more difficult for municipalities to learn about the full range of options available to them.

The Proposing Release includes as municipal advisory activities the provision of general information about municipal financing products and the issuance of municipal securities.[5] We urge the Commission to recognize that the provision of general information under any circumstances is not "advice" and, moreover, that the provision of such general information should not be defined, in any instance, as municipal advisory activities that would give rise to a fiduciary responsibility. There will be no "regulatory gap" if the Commission excludes from municipal advisory activities the provision of general and educational information regarding financing alternatives and/or providers.

B. The Consequences on the Regulator and the Regulated Parties are Burdensome and Unproductive

Under the Proposed Rules, companies providing energy services will be regulated by a financial services regulator – that is, a regulator with little or no understanding of the predominant engineering activities and services that such companies offer. This regulatory structure is likely to be unnecessarily burdensome for both the regulator and the regulated parties, without commensurate public benefit. Moreover, the licensing or similar qualification requirements for energy services providers will presumably focus on municipal finance, and not energy services or other engineering activities. This is not only counter-productive given the services such personnel actually provide as discussed above, but such licensing restrictions would likely have the effect of precluding many such persons from practicing their engineering trade given that they may have difficulty obtaining the required licenses and related qualifications – again, this result would be contrary to the plain intent of Congress in adopting the engineering services exclusion.

III. DISCLOSURE WOULD ADDRESS ANY CONFLICT OF INTEREST CONCERNS

Although Honeywell strongly believes that the services of energy services companies are not, in any way, the services that Congress intended to regulate when it enacted the system for the registration and regulation of municipal advisors, Honeywell also understands that municipalities may benefit from additional disclosure regarding proposed energy services projects. Accordingly, Honeywell suggests that where energy services companies supply municipal entities with only general or educational information, and provide no recommendations regarding financing alternatives and receive no compensation related thereto, then disclosure could

[5] Proposing Release at 39.

adequately address any potential concerns the Commission may have regarding the activities of such energy services companies. Such disclosure may, in principle, include the following:

- That an energy services company is not a municipal advisor.
- That an energy services company is not a fiduciary and does not provide any information, advice or services under a fiduciary duty of care.
- That financial information about municipal securities or other municipal financial products (as defined in the statute) is provided for informational and educational purposes only.
- That an energy services company will be compensated for the energy services provided, and not for providing financing information (or, that compensation will be received for performing other functions).
- That the municipal entity should obtain the advice of a financial advisor, municipal advisor or other third party qualified to advise the municipal entity regarding any of the information provided by the energy services company about municipal securities or municipal financial products (as defined in the statute).

IV. CONCLUSION

For the reasons set forth above and in the referenced NAESCO letter, Honeywell respectfully urges the Commission to adopt final rules that clearly recognize that the activities discussed in this letter are covered by the statutory and regulatory exclusions from the definition of "municipal advisor" for engineers providing engineering services.

Thank you for your consideration of the comments raised in this letter.

Sincerely,

Anthony A. Kuznik
Vice President and General Counsel
Honeywell Building Solutions