



Colorado Public Employees' Retirement Association  
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February 22, 2011

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

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

Dear Ms. Murphy:

I am writing on behalf of The Colorado Public Employees' Retirement Association ("COPERA"), a pension fund with approximately \$37.8 billion in assets and a duty to protect the retirement security of over 465,000 plan participants and beneficiaries. COPERA is an instrumentality of the state of Colorado and its purpose is to provide benefits and programs as specified in Colorado law. These benefits and programs are governed by the Board of Trustees. The Board governs PERA by establishing policy and overseeing policy implementation, while management is responsible for implementing policy and day-to-day operations. On behalf of COPERA's plan participants and beneficiaries, I welcome the opportunity to provide comments on the Securities and Exchange Commission's (SEC) Release concerning the registration of Municipal Advisors.

In response to the second full bulleted item on page 51 of the above-named Release, we are writing to urge respectfully that the Commission not adopt its proposal to treat appointed members of the governing body of a municipal entity (but not elected officials serving on that body) as excluded from the definition of "municipal entity" for the purposes of the definition of "municipal advisor" in 15 U.S.C. §78o-4(e)(4)(A).

COPERA's Board of Trustees was created by Colorado statute to currently include 11 trustees elected by the participants of our Plans, the State Treasurer as an *ex officio* trustee, 3 trustees appointed by the Governor and confirmed by the Senate, and one non-voting Trustee appointed by the Board of Education of a local school district. The Board is tasked with the administration of the plan and the oversight of the investments that primarily fund the retirement benefits for our plan participants and beneficiaries. We submit that the Board of Trustees is an inseparable part of the "municipal entity" that is COPERA, and that any exclusion from registration that applies to the "municipal entity" also applies to the Trustees of the Board of such "municipal entity". We respectfully urge the SEC to treat all governing bodies of municipal entities and all individuals elected or appointed to serve on their governing boards, as part and parcel of the "municipal entity" for the purposes of 15 U.S.C. §78o-4(e)(4)(A). Further to this point, the Trustees of our Board receive advice on behalf of the municipal entity instead of give advice. We join the many other commenters, such as NCPERS, on asserting that the governing board members of municipal entities are not "advisors".

Ms. Elizabeth M. Murphy, Secretary  
Page Two  
February 22, 2011

The Release, however, proposes to treat the Trustees as individuals who may or may not be subject to registration, not as undividable parts of the municipal entity. According to the Release, elected Trustees are excluded from having to register because they are accountable to the municipal entity, much like the employees are. Conversely, the SEC asserts that appointed Trustees are not directly accountable to the citizens of the municipal entity; thus, those Trustees must register.

In this regard, we disagree. All of our 16 Trustees act in concert to administer the Plans and oversee the investments. By statute, no one Trustee has the power or authority to act on behalf of COPERA without the actions of others on the Board. The fiduciary duties owed by each of the Trustees do not differ in any respect. Regardless of the process that placed the Trustee on COPERA's Board, he or she owes a fiduciary duty to all members and beneficiaries. Further, all of COPERA's Trustees must comply with several laws, regulations and rules pursuant to which they will be accountable to the citizens of the State of Colorado and, in particular, the participants of the Plans.

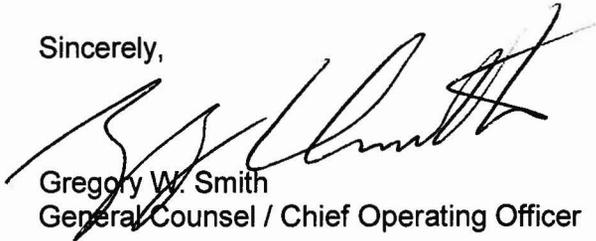
- Colorado Open Meetings Laws – COPERA's Trustees may only take action in a public meeting;
- Colorado Open Records Laws – COPERA's records are open records under Colorado Law and must be revealed to the public as requested;
- Exclusive Benefit Rule – This is a requirement under Federal law to ensure that the Trustees act on behalf of COPERA for the exclusive benefit of its membership;
- Fiduciary Laws and Standards – Colorado's law specifically states that the Trustees shall be held to the standard of conduct of a fiduciary in the discharge of their functions.
- Required Financial Disclosures – the Trustees are required by law to provide annual financial disclosures to the Colorado Secretary of State which are available for inspection and include information regarding income sources, loans and assets.
- Conflict of Interest Laws – Colorado has robust conflict of interest laws that require the Trustee to disclose conflicts and recuse him or herself from actions that may give the appearance of a conflict. See C.R.S. § 24-18-108.5; C.R.S. § 24-51-207(3); Article 8 of Title 18 of the Colorado laws imposes criminal responsibility for several actions based on conflicts.
- Reappointment and Reelection – by Colorado law, the appointed Trustees must be reappointed every four years and such appointment must be consented to by the Senate. This is not dissimilar to the four-year reelection required of our elected Trustees.

By State law, accountability to the constituents of the "municipal entity" is the same for appointed and elected board members. Both owe strict fiduciary duties to all the plans they serve. Further, COPERA's elected Trustees are basically volunteers receiving reimbursement for necessary expenses only and the appointed Trustees receive a \$100.00 payment for each of up to twenty meeting days per year plus expense reimbursement. Excessive burdens, costs and further liabilities substantially increase the risks that suitable professionals will be discouraged from seeking a Trustee position with a highly sophisticated and complicated entity such as COPERA.

Ms. Elizabeth M. Murphy, Secretary  
Page Three  
February 22, 2011

COPERA would like to again thank the SEC for providing the opportunity to voice our thoughts regarding the registration of municipal advisors.

Sincerely,

A handwritten signature in black ink, appearing to read "G. W. Smith", written over a faint, illegible typed name.

Gregory W. Smith  
General Counsel / Chief Operating Officer

GWS/jk