



February 22, 2011

VIA Electronic Mail

Elizabeth M. Murphy, Secretary
Securities and Exchange Commission
100 F Street, N.E.
Washington, DC 20549-1090

**RE: File Number S7-45-10 (Securities and Exchange Commission Release No. 34-63576,
Registration of Municipal Advisors**

Dear Ms. Murphy:

This letter is being submitted on behalf of Airports Council International – North America (ACI-NA) in response to the Proposed Rule issued by the Securities and Exchange Commission (“Commission”) in SEC Release No. 34-63576, dated December 20, 2010 regarding Registration of Municipal Advisors (also appearing in 76 Federal Register No. 4, January 6, 2011). The Commission states that the proposed rule seeks to give effect to certain provisions of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the “Act”), which contains requirements for the registration of municipal advisors with the Commission.

The Members of ACI-NA

ACI-NA represents local, regional and state governing bodies that own and operate commercial airports in the United States and Canada. As you may know, ACI-NA’s 366 member airports enplane more than 95 percent of the domestic and virtually all of the international airline passenger and cargo traffic in North America. Over 330 aviation-related businesses are also members of ACI-NA, providing goods and services to airports.

ACI-NA appreciates the opportunity to submit comments in response to the Commission’s proposed rule. We note that many of the airport members of ACI-NA are either independent airport organizations or are governed by state or local authorities that operate airports, among other transportation organizations. Many of our members are concerned about the impact that the Commission’s proposed rule would have on members of their airport boards and commissions. Since the proposed rule would exclude from the definition of a “municipal

advisor” elected members of a governing body of a municipal entity, but include appointed members of such a body, unless appointed members serve as ex officio members of the governing body by virtue of holding elective office, the result of the Commission’s proposed rule would be that appointed members of the authority’s governing body (except those elected officials who serve ex officio) would be subject to the registration requirements of the Act. In other words, some members of the board of the authority would be subject to the registration requirements of the Act while others would not, despite the fact that all municipal governing board members—elected or appointed---would be carrying out the same functions in their capacities on the board. We believe that the distinction the Commission is proposing is an artificial one that does not merit that the registration requirements of a “municipal advisor” be imposed on appointed and non-elected governing body members. We therefore request that the Commission exclude all municipal governing body members--elected or appointed--from the definition of “municipal advisor.”

ACI-NA Concerns with the Rule

Although ACI-NA recognizes the efforts of the Commission to implement a registration regime to meet the requirements of the Act, we do not believe that the exclusions proposed from the definition of the term “municipal advisor” are appropriate. In fact, ACI-NA and many of its member airports believe that the Commission’s interpretation of these exclusions create confusion that could have significant negative impacts on the operations of airport authorities and similarly situated airport and other municipal authorities nationwide.

We refer you to comments of several of the ACI-NA member airports in this rulemaking proceeding. We thus commend for your reference, the positions of the Detroit Metropolitan Wayne County Airport Authority, those of the Dallas/Fort Worth International Airport, the Indianapolis Airport Authority, the Allegheny County Airport Authority, Tampa International Airport, the Metropolitan Washington Airports Authority and the Port of Portland. Each of the referenced comments raise the general concern outlined above, and provides more specific examples of the ways in which its board members will be adversely affected if the Commission’s rule is implemented as currently drafted.

ACI-NA states further that activities of governing body members in terms of the provision of advice on behalf of the municipal entities that they represent, are not likely to present issues of concern that warrant the imposition of registration requirements on appointed and non-elected board members. A “municipal advisor” either “undertakes a solicitation of a municipal entity” or provides “advice to or on behalf of the municipal entity...with respect to municipal financial products or the issuance of municipal securities, including advice with respect to the structure, timing, terms and other similar matters concerning such financial products or issues;...”¹ Solicitation of a municipal entity is not an issue or a concern with respect to governing body

¹ 15 USC 780-4(e)(4)(A).

appointees since, as many of the member airports who have submitted comments in this proceeding indicate, many governmental entities have in place ethics policies that prohibit members from soliciting their own boards for financial advisory services or products. Indeed, most states have conflict of interest statutes that similarly prevent board members from soliciting governmental entities that they serve. Moreover, in the event that a board member was indeed a financial professional, by virtue of such professional status, he or she would already be subject to the municipal advisor registration requirement and would have undergone the necessary registration independent of his/her status as a municipal board member.

The “advice” requirement also underscores the fundamental problem with the proposed rule as interpreted and described in the Commission’s Release: governing body members are consumers of advice, not providers. In other words, decisions of governing body members, whether appointed or elected, are expressions of legislative will, and not advisory in nature. Under most state laws, the legal direction of the municipal authority will be determined by the votes of the members and the majority vote will prevail. Thus, the action taken by the governing authority will give direction and not serve as “advice” or a mere “recommendation”. In this sense, the inclusion of any governing board member in the definition of a “municipal advisor” does not meet the threshold “advice” requirement of the Act’s registration provisions.

We note further that although the Commission’s discussion of the “municipal advisor” definition implies that accountability is a concern underlying its belief that appointed governing body members should not be excluded from the “municipal advisor” definition, this concern is not apparent. It is not clear that a paid employee, who is expressly exempt from registration, faces a level of accountability that is different from that of a volunteer board appointee. An appointee is typically in that position to enhance the participation by other groups that might not otherwise be represented on the board, and to add transparency to the decisions of the board. The appointment power is usually accompanied by the power of removal for cause and many entities have authority to remove an appointee for cause. So while an appointee is not directly accountable to the electorate, the appointee may be removed and the appointing authority may be held accountable to the voters for the performance and integrity of their appointees.

Additionally, and importantly, we would emphasize the practical problems created by the Commission’s proposed rule. The rule would have a chilling and disparaging effect on citizen participation in government. The rule would severely limit participation by capable and talented individuals who are willing to serve. The rule would require that such appointees, who would already be giving voluntarily of their time and expertise, also incur the costs of registration requirements, which usually include extensive testing on topics such as municipal securities rules, financial regulations, tax issues and general finance and economic concepts. Notably, such appointed board members serve not only to provide advice on finance-related issues, but all of the issues presented to the authority’s board for consideration. The imposition of Commission registration requirements on such individuals would serve as a deterrent for many such appointees, especially given the fact that these aspects of their responsibilities would likely

represent a small percentage of the issues on which they provide input to the board. In light of the fact that not all municipal bodies are even evaluating matters relating to municipal finance products or municipal securities on an ongoing basis, when would the appointed and non-elected board member become a “municipal advisor” under the proposed rule? Would the registration requirement “spring forth” once a bond issue or some other transaction involving municipal investments or municipal securities arises?

Finally, we would raise for the Commission’s consideration the fact that subjecting governing body appointees to registration may create uncertainty about the liability exposure such appointees face in the course of their board duties. Governing board appointees are generally indemnified and held harmless for actions taken within the scope of their duties in office. Such indemnification is typically backed by public officials’ liability insurance. The inclusion of registration requirements on appointed and non-elected board members could result in an increase in liability insurance cost for such municipal entities, which cost is not justified by the questionable benefits that would follow from the adoption of the Commission’s proposed rule.

Conclusion

ACI-NA believes that municipal governing body appointees should not be subject to the registration requirements under the Act as proposed by the Commission. We believe that the implementation of such registration requirements on appointed and non-elected municipal board members is not required under the Dodd-Frank Wall Street Reform and Consumer Protection Act. We believe, in addition, that the proposed rule would discourage participation in government, impose uncertainty and confusion, and possibly increase insurance costs, without adding any corresponding benefits. We therefore request that all members of municipal governing bodies, elected or appointed, be expressly exempted from the Act’s registration requirement.

Again, we appreciate the opportunity to provide comments on behalf of our members. We look forward to continued participation in any further review of these issues before the Commission.

Sincerely,



Gregory O. Principato
President, ACI-NA