



February 22, 2010

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

Re: **File Number S7-45-10**
SEC proposal to require officers of governmental entities to register as
“municipal advisors” Release 34-63576

Dear Chairman Schapiro and Members of the Commission:

I am writing on behalf of the Los Angeles County Employees Retirement Association (LACERA) to comment on the exclusions from the definition of “municipal advisor” as proposed in Release 34-63576 concerning registration of municipal advisors. Specifically, LACERA is concerned that the proposed rule fails to exempt appointed local government officials from the definition of “municipal advisor”. We believe that failure to extend the exclusion from the definition of municipal advisor to appointed members of public pension funds is unnecessary, duplicative of existing state fiduciary and disclosure requirements, and, as presently drafted, lacking in clarity.

LACERA is one of twenty California public employee retirement systems operating under the County Employees Retirement Law of 1937 (CERL). LACERA administers and manages the retirement fund for the County of Los Angeles (County). We are the largest county retirement system in the U.S., serving 156,000 members.

We are an independent governmental entity, separate and distinct from the County. Our fiduciary responsibility is to promote, enhance, and efficiently administer a financially sound retirement and health care benefits program through prudent investment and conservation of plan assets.

LACERA has been providing retirement, disability, and death benefits to eligible County employees, retirees, and their beneficiaries since 1938. In 1971, we began administering a retiree health care benefits program.

Our comment is prompted by our concern with the following statement in the release:

The Commission does not believe that appointed members of a governing body of a municipal entity that are not elected *ex officio* members should be excluded from the definition of a “municipal advisor.” The Commission believes that this

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interpretation is appropriate because employees and elected members are accountable to the municipal entity for their actions. In addition, the Commission is concerned that appointed members, unlike elected officials and elected *ex officio* members, are not directly accountable for their performance to the citizens of the municipal entity. (76 Fed.Reg. 834 (January 6, 2011))

Our reading of this statement suggests that under the proposed rule, the appointed members of public pension boards would be required to register as municipal advisors, while their elected colleagues would not be subject to this requirement. We believe the rationale for failing to exclude appointed board members from the definition of municipal advisor is flawed, and that as stated it is unclear what employee members of a public pension board would fall within the exclusion.

Under California's rule making statute, all proposed state rule making is subject to evaluation under a six part test. Failure of a rule to meet any one of these tests requires that the rule be redrafted or withdrawn. Included in this six part test are requirements that a rule shall be clear, non-duplicative, and necessary. (CA Gov. Code § 11340 *et seq.*)¹

The Rule Lacks Clarity

Under this proposal it is not clear what is meant by employee of the municipal entity. In California county public pension systems are independent of their plan sponsors. While County employees serve on our boards as both elected and *ex officio* members, none of our board members are actual employees of the retirement system. Whether the proposed rule is intended to exclude these County employee members or our boards from the definition of municipal advisor is neither clear to us nor to many other pension systems or other municipal entities who have all shared this same confusion with us.

¹ CA Government Code section 11349.1 provides that all state regulations shall be reviewed for:

- (1) Necessity.
- (2) Authority.
- (3) Clarity.
- (4) Consistency.
- (5) Reference.
- (6) Non-duplication.

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The Rule is Duplicative and Unnecessary

As noted in the rule making, the expressed purpose of the Dodd-Frank Act was to improve accountability and transparency in the financial system. The rule making notes that Municipal Advisors, while unregulated, have been involved in all manner of municipal finance from bond offerings to pension fund investment advice. But while municipal advisors have been unregulated, members of public pension boards have not.

First and foremost, all members of public pension fund boards in California are fiduciaries. This is set forth in the California Constitution, Article 16, section 17, which provides in part:

The members of the retirement board of a public pension or retirement system shall discharge their duties with respect to the system solely in the interest of, and for the exclusive purposes of providing benefits to, participants and their beneficiaries, minimizing employer contributions thereto, and defraying reasonable expenses of administering the system. A retirement board's duty to its participants and their beneficiaries shall take precedence over any other duty.

The California Constitution draws no distinction between the appointed or elected members of a retirement system board. Nor does it draw a distinction between those who are employees versus those who are not. The California Constitution does, however, require:

The members of the retirement board of a public pension or retirement system shall discharge their duties with respect to the system with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with these matters would use in the conduct of an enterprise of a like character and with like aims. (Ibid.)

In other words, members of public pension boards in California must conduct themselves with the same standards of care regardless of whether they have been appointed or elected to their office.

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In California, members of county public pension boards are subject to financial disclosure requirements under the Political Reform Act (CA Gov. Code § 81000 *et seq.*), open meeting requirements under the Ralph M. Brown Act (CA Gov. Code § 54950 *et seq.*), records disclosure requirements under the Public Records Act (CA Gov. Code § 6250 *et seq.*), and various conflict of interest requirements. Further, board members are restricted from marketing investment products to other public pension funds (CA Gov. Code § 7513.95), and former members are restricted for two years in what appearances they may make before their former board. (CA Gov. Code § 7508.5)

As noted above, members of public pension boards in California are heavily regulated already. They operate within strict parameters of transparency and public accountability. The systems they serve are required to be audited annually (CA Gov. Code § 31593) and are subject to other reporting requirements. Any additional reporting or regulatory requirement being placed on them at the federal level is duplicative of what they are already required to do at the state level and unnecessary for the purpose of bringing accountability and transparency to the financial system.

Advisees, not Advisors

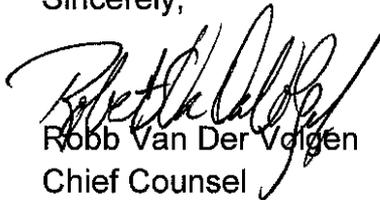
Finally, we note that because public pension fund board members set investment and benefit policies that have direct fiscal impact upon their funds, they must have access to expert advisors. But in this role, board members are advisees, not municipal advisors, a distinction the proposed rule appears to overlook. At LACERA we have a robust education and travel policy designed to assist our board members, both appointed and elected, in gathering information and education deemed critical to prudent decision making by a public pension board member. Again, these activities are conducted with complete transparency. All board member travel claims are subject to public review. All conferences and educational symposium are vetted before being placed on a prior approval list for attendance, and attendance at any conference not on the list requires action by the board in open session.

LACERA's mission is to preserve, protect and provide the promised benefit to our members. In meeting this mission, our board members already operate at a level of transparency that would only be duplicated but not enhanced by requiring appointed

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members to register as municipal advisors. For this reason, I respectfully request that you consider expanding the exclusion for local government officials to include appointed public pension board members and non-elected ex-officio members within the definition of "municipal employee."

Sincerely,



Robb Van Der Voigen
Chief Counsel

RV:dd

SEC Municipal Advisors ltr.022211