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February 9, 2011

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

via email to: rulecomments@sec.gov

Re: File Number S7-45-10
SEC proposal to require officers of governmental entities to register as "municipal advisor"
Release 34-63576

Dear Chairman Schapiro and Members of the Commission;

I am writing on behalf of the City and County of Denver to comment on the exclusions from the definition of "municipal advisor" as proposed in Release 34-63576 concerning registration of municipal advisors. The definition as currently proposed fails to exempt appointed local government officials and volunteers from the definition of "municipal advisor". The Commission's proposal overreaches, misunderstands basic principles of local government law, and will have a negative effect on local government budgets and their operations.

In discussing the definition of "Municipal Employee", in response to the question of whether appointed officials of the entity were intended to be included within the definition of "municipal employee," the proposal responds:

> ...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." [*Footnote omitted.*]

Municipal Advisors. 76 Fed. Reg. 834 January 6, 2011.

Throughout the United States, local governments depend upon the members of their communities to help facilitate and run their governments through varying volunteer activities. These volunteers form the bulwark of American democracy and the foundation of our volunteer spirit. Tens of thousands of community volunteers give their time, expertise and common sense to enable their local governments to plan, to zone, to invest and to run various facets of local government operations. Some are true volunteers and others receive stipends. In the City and County of Denver, for example, the City has an all volunteer Investment Policy Committee which assists the appointed and remunerated Manager of Finance review the City's authorized investments and makes recommendations as to the language and substance of the Investment Policy. Both the Manager and the Committee members would potentially be subject to liability and regulation under the current definition.

As the commentator suggested, many such people hold offices, elective or otherwise, in the local government. Because they are "officers," or "appointees" such persons are not employees of the City and County of Denver, even though these positions are required to be filled by appointees under our City Charter and some, though not all, are paid on the same schedule as employees. Like most states, Colorado and the home rule City and County of Denver both distinguish between appointed officers and employees. Thus, the position of the Commission quoted above creates two problems:

- It would require thousands of community spirited volunteers to spend money and to subject themselves to federal regulatory controls, and would expose them to liability.
- It would create ambiguity over the issue of whether only elected "officers" are included within the definition of "municipal employee."

The Denver City Attorney's Office assumes as to the latter that the Commission does not intend to exclude from its definition of "municipal employee" the many appointed officers of local government who provide advice to their elected leaders and who hold positions variously titled: Controller, Manager, Commissioner, etc. Nevertheless, we believe this issue must be clarified. As to appointees who hold positions of trust within a state or local government, they already subject themselves to state and local ethics laws and common law responsibilities that include potential penalties for misfeasance or malfeasance. Such controls meet the Commission's stated intent of protecting the public by providing significant and sufficient state and local deterrent to misconduct that another layer of protection does not enhance. Additional layers of federal regulation expand the costs to local governments and the complexity of those regulations deters volunteer service.

When Congress exempted the municipal entity and its employees from the definition of "municipal advisor," this Office believes it expressly intended to include in the exemption all of the entity's officers and employees, including its appointees and volunteer board members. To do otherwise creates the anomalous result that the proposed regulation requires when it seeks to bring into the concept of "advice" those discussions by board members on investment objectives when those discussions involve decision-making debates by issuers and, in the case of boards of pension trustees, investors. Requiring registration for those who participate in those discussions chills informed analysis and debate - exactly the opposite result the SEC should be seeking. The SEC is mistakenly failing to recognize that appointed or volunteer members of governing bodies, and other state and local officials are often the personnel that operate the municipal entities. The term "municipal advisors" was intended to reference those who provide advice to those officials. It confuses the issue to suggest that those officials–the very intended beneficiaries of municipal advisor regulation–somehow are "municipal advisors" themselves. In short, the proposed regulations turn on its head the concept of "advice" and transform decision makers of entities who should be receiving advice into "advisors".

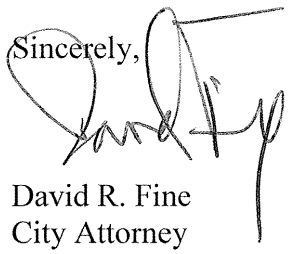
This Office recognizes that the Commission identifies past instances of misconduct to justify its need to regulate pervasively. This Office supports the concept of requiring regulation of those who truly are providing outside advice to our boards and our managers making investment and issuance decisions. However, municipal finance statistics suggest that there are far fewer

instances of violations and misconduct than in the area of private finance where the Commission already regulates pervasively. The current economic situation has devastated state and local government budgets, but there are fewer defaults and municipal bankruptcies than the number of banks taken over by the FDIC. In short, virtually every state and local government subjects itself to a transparency that surpasses that of the Commission's exemplary efforts at transparency through a combination of public information and public meeting laws and extensive reporting through the media to their stakeholders. These are coupled with an accessibility that fosters immediate individual contact with those concerned stakeholders.

The cost to local governments and officials to comply with this regulation will be extensive and comes at the worst economic time for local governments. Local governments will be required to pay the cost for registering and providing required education for municipal advisors who serve the local government in a volunteer capacity and for those who are its appointed officials. Local governments will incur insurance costs to cover the increased liability. In addition, the local government will need to hire counsel with expertise in dealing with the SEC to be sure that these officials are properly trained and advised in the intricacies of securities law, without reducing the expense for counsel and various advisors who in the past have handled issues on behalf of the municipal entity.

I ask respectfully that you expand the exclusion for local government officials, including among them, volunteers, appointed board members and other elected and appointed officials that may advise "municipal entities," from the requirement to register as "municipal advisors" by including them within the definition of "municipal employee."

Sincerely,



David R. Fine
City Attorney

cc: Senator Michael Bennett
Senator Mark Udall
U.S. Rep. Diana DeGette