



STATE OF OREGON
OREGON STATE TREASURY
159 STATE CAPITOL, 900 COURT ST NE
SALEM, OREGON 97301-4043

February 22, 2011

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

Re: SEC Release No. 34-63576
File No. S7-45-10

Dear Ms. Murphy,

Thank you for the opportunity to submit comments related to Securities and Exchange Commission ("SEC") Release No. 34-63576. These comments are limited to a response to the second full bulleted item on page 51 of the above Release. The proposed rule purports to regulate appointed volunteer trustees of public funds as "municipal advisors," though their elected counterparts and employees are exempt. We will discuss the many reasons that the governing body of a pension fund or other state fund does not provide advice to a municipal entity and therefore should not be included as a "municipal advisor." In short, we respectfully request the SEC adopt a common sense definition of the term "municipal entity" that will include the governing body of that municipal entity, regardless of whether its individual members land on the board through election or appointment.

Financial Management in Oregon:

Oregon, like many states, has an extensive system of volunteer boards that contribute to the operation of state government, across all disciplines. Members of these governing bodies are appointed by the governor and are subject to advice and consent by the Oregon legislature. These governing bodies act collectively and no individual member of the governing body has any power or authority to act apart from the remainder of the governing body. Each member has equal authority to participate in the actions and decisions of the governing body. These boards operate in public meetings, where citizen participation is welcomed. Lastly, the boards charged with managing state funds are subject to a strict fiduciary duty, public records laws, and ethics and conflicts of interest laws all enumerated in the Oregon Revised Statutes. These boards include the Oregon Investment Council, the Oregon Short Term Fund Board, the Oregon Growth Account Board and the Oregon College Savings Board.

Oregon Investment Council:

The Oregon Investment Council (OIC) oversees the investment of most funds managed by the State Treasury, including the Public Employees Retirement Fund. The Council makes high level decisions on behalf of the fund, including prescribing an appropriate asset allocation, and selecting investment firms to manage investments on Oregon's behalf.

The Council consists of a six-member board made up of four gubernatorial appointees, the State Treasurer, and the Executive Director of the Public Employees Retirement System, who serves in an ex-officio and non-voting capacity. The Council is required to report to the Governor and the Legislative Assembly at each regular session and at other times the Council considers to be in the public interest.

Oregon Short Term Fund Board:

State agencies, cities, counties, and other public entities across Oregon have the option to invest in the Oregon Short Term Fund (OSTF) or the Local Government Investment Pool (LGIP) to keep their funds safe while earning a modest return.

OSTF investment decisions are made by financial professionals at the State Treasury, under the direction of the seven-member OSTF Board. This board is comprised of the Deputy State Treasurer, plus three members appointed by the Treasurer and three more appointed by the Governor, with input from the Association of Oregon Counties, League of Oregon Cities, and the Oregon School Boards Association.

Oregon Growth Account Board:

The Oregon legislature created the Oregon Growth Account (“OGA”) in 1995, giving it a mandate to help create jobs and foster economic development in Oregon, while at the same time generating investment returns for schools. This board is comprised of the State Treasurer, and seven additional members appointed by the Governor and approved by the Legislature.

The OGA, like the OIC, does not make any direct investments but instead hires qualified, independent investment managers.

The Oregon College Savings Board:

The Oregon College Savings Board is responsible for the prudent management, including identifying and selecting qualified investment managers, of college savings for Oregon’s citizens. The board consists of five members; the State Treasurer, serving by office; three gubernatorial appointees; and one board member appointed by and serving at the pleasure of the Oregon State Board of Higher Education.

The trustees of Oregon’s public funds do not “provide advice” to those funds:

The language of the Dodd-Frank act states: “It shall be unlawful for a municipal advisor to provide advice to or on behalf of a municipal entity or obligated person with respect to municipal financial products or the issuance of municipal securities, or to undertake a solicitation of a municipal entity or obligated person, unless the municipal advisor is registered in accordance with this subsection.”

This situation does not occur under Oregon’s system of prudential financial management. The trustees of Oregon’s public funds vote to make high-level decisions with respect to asset allocation, appropriate levels of risk, and selecting the right investment managers. They are subject to strict ethics and conflict of interest laws that do not permit them to financially benefit from an investment decision. These boards do not provide advice; instead, they hire and oversee qualified investment managers to manage funds. These investment managers present to the board in public meetings, allowing board members the opportunity to ask questions and solicit advice on the prudent management of funds. Board members do not, under these circumstances, “provide advice.”

Accountability in Oregon:

The SEC noted that appointed members of these boards are not directly accountable for their performance to the citizens of the municipal entity. There is in Oregon, however, a robust system in place

to establish an appropriate level of accountability and transparency to fund beneficiaries. These are public bodies, subject to media scrutiny and enhancement, or damage, to their reputations as a result of their service to the State. Perhaps more importantly, these board members are accountable to the State and to its citizens through several statutory mechanisms, including:

1. They are appointed by the governor and subject to the advice and consent of the Oregon legislature;
2. They are required to provide regular updates and information to the governor and the legislature;
3. They are subject to a strict fiduciary duty to the beneficiaries of the fund, enumerated in the Oregon statutes;
4. They are subject to the Oregon Public Meetings and Public Records laws, and all decisions are made in a public forum where citizens are encouraged to participate;
5. They are subject to the state's conflict of interest laws; and
6. They are subject to heightened requirements under the Oregon Ethics laws, including a requirement to present an annual "Statement of Economic Interest" to the Oregon Government Ethics Commission.

If the governing body of a municipal entity is not part and parcel of the "municipal entity" for the purposes of these provisions, then any third party providing advice to the governing body or soliciting the governing body would not be subject to these provisions. Plainly that was not Congress' intent. Given that, there is no basis for believing that the governing body of a municipal entity is excluded from the term "municipal entity" as used in 15 USC §780-4(e)(4)(A).

Conclusion:

We laud the SEC's goal of enhanced accountability and transparency among the professionals responsible for managing public funds. In this case, however, there are significant measures already in place and creating accountability is not an issue. It is important to note that these board members are volunteers, with particular expertise in the investment field. The pool of potential volunteers is small enough without adding a burdensome registration requirement, which would not add any additional benefit to the system already in place.

We write today to urge respectfully that the Commission not adopt its proposal to exclude appointed members of the governing body of a municipal entity (but not elected officials serving on that body *ex officio*) from the definition of "municipal entity" for the purposes of the definition of "municipal advisor" in 15 U.S.C. §780-4(e)(4)(A). 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. §780-4(e)(4)(A). We thank you for the opportunity to participate in this discussion, and welcome any further questions you may have.

Sincerely,



Ted Wheeler
State Treasurer