

SAN DIEGO COUNTY
REGIONAL AIRPORT AUTHORITY

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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 submitted on behalf of the San Diego County Regional Airport Authority 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, published in 76 Federal Register No. 4, on January 6, 2011.

The San Diego County Regional Airport Authority ("Authority") is a local governmental entity of regional government with jurisdiction extending throughout the County of San Diego. The Authority operates San Diego International Airport.

According to the Commission's Proposed Rule, the Commission intends to give effect to provisions of the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Act") by, *inter alia*, (a) establishing a permanent registration regime with the Commission for "municipal advisors" as financial advisors, (b) imposing record-keeping requirements, and (c) complying with the future rules of the Municipal Securities Rulemaking Board ("MSRB") which might include comprehensive training, examinations, and fees.

The Authority is concerned about the potential impact that the Commission's Proposed Rule would have on current and future members of its Authority Board. The voting members of the Authority's Board are *all* appointed. None are elected to serve on the Authority's Board, although three members are appointed to serve by virtue of holding another elected public office. They do not serve, however, as *ex officio* members. All members are appointed either by the Mayor of San Diego, the County Board of Supervisors, or by one of four selection committees comprised of mayors of various areas of the County of San Diego.



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The Proposed Rule excludes from the definition of “municipal advisor” elected members of a governing body of a municipal entity. The Proposed Rule, however, includes *appointed* members, unless they serve as *ex officio* members by virtue of holding elective office. The Commission’s Proposed Rule would, therefore, subject the Authority’s entire Board to the registration and other requirements of the Act, despite the fact that three of the nine voting members of the Board are elected officials. The Authority desires to register its opposition to those provisions of the Proposed Rule that treats appointed Board members differently than elected members.

The discussion in the Proposed Rule states that the Commission believes that appointed Board members should be included within the definition of “municipal advisor” and thereby be subject to registration and regulation. The stated reason is because appointed members, unlike elected members, “are not directly accountable for their performance to the citizens of the municipal entity.” (76 F.R. at 834.) This distinction falls short of a sound justification for the disparate treatment of appointed members who serve on public Boards. The Proposed Rule would exempt elected officials from the regulatory burdens while mandating compliance for appointed members, a form of discrimination, when both perform identical functions. As to the issue of accountability, some elected officials serve four year terms in County while our appointed Board members serve three year terms. It should be acknowledged that appointed members must face the scrutiny of their appointing agency for reappointment just as elected officials must face the scrutiny of voters for their re-election.

Under California law, all of the actions taken by the Authority’s Board must be taken during a public meeting and only after the proposed action has first been adequately noticed and described in a written agenda and where the agenda has been posted in a public place for at least 72 hours prior to the public meeting. (See Cal. Gov. Code Sec. 54950 *et seq.*) Additionally, every meeting of the Board is recorded and televised for community viewing.

The Authority appreciates the efforts of the Commission to implement the registration requirements of the Act, but submits that the inclusion of appointed members in the definition of the term “municipal advisor” is inappropriate. It will place a heavy and unreasonable burden on those citizens who volunteer to serve on our Board. The activities of the Authority’s Board do not likely present issues of concern that warrant the imposition of registration requirements and other burdensome requirements. *Board members do not serve as municipal advisors.*

A “municipal advisor” either (a) “undertakes a solicitation of a municipal entity”, or (b) 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 The solicitation of a municipal entity (i.e., the Authority) by appointed Board members is not a concern since stringent state and local ethics laws prohibit such actions. California has some of the most comprehensive conflict of interest statutes to prevent public entity board members

¹ 15 USC 780-4(e)(4)(A).

from soliciting the governmental entity they serve. Finally, in the event that a board member were a financial professional, he or she would already be subject to the municipal advisor registration requirements and would have undergone the necessary registration independent of his/her status as a municipal board member.

Our Authority's Board members are consumers of advice, not providers. In other words, the decisions of the Board are expressions of legislative will, and not advisory in nature. Under applicable California law, the legal direction of the Authority is determined by a majority vote of the Board members. Any action taken gives direction and does not serve as "advice" or "recommendation". In this sense, the inclusion of any governing board members in the definition of a "municipal advisor" does not meet the threshold "advice" requirement of the Act's registration provisions.

It is further submitted that it is not clear from the Proposed Rule that a paid employee, who is expressly exempt from Commission registration, faces a significantly different level of accountability than that of a volunteer board appointee. An appointed member of the Authority is appointed to represent a particular jurisdiction within the County of San Diego which adds a significant additional level of transparency to the decisions of the Board.

There are practical problems created by the Commission's Proposed Rule. These must be emphasized. The Proposed Rule will have a chilling effect on citizen participation in local government and particularly with regard to volunteering to serve on our Authority Board. The rule will severely limit participation by capable and talented individuals who are willing to serve. The rule would require that appointees, who are already giving voluntarily of their time and expertise, to incur the costs of registration requirements. These requirements usually include extensive testing on topics such as municipal securities rules, financial regulations tax issues and general finance and economic concepts. It must be recognized that appointed board members serve not only to decide the finance-related issues of the Authority, but must address actions with regard to all types of airport issues presented for consideration. The imposition of Commission registration requirements on such individuals will serve as a deterrent to serve. This will be particularly true if the registration burden is an annual one.

Finally, the Commission should consider the implications caused by subjecting Board appointees to registration, particularly the uncertainty about increased liability exposure in the course of their duties by virtue of the Proposed Rule. 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, which cost is not justified by the questionable benefits that would follow from the adoption of the Commission's Proposed Rule.

Conclusion

The Authority submits that municipal governing body appointees should not be subject to the registration requirements under the Act as proposed by the Commission. It believes that the implementation of such registration requirements on appointed and non-elected municipal board members will discourage citizen participation in government, impose uncertainty and confusion, and increase insurance costs, without adding any corresponding benefits. It is therefore requested that all members of municipal governing bodies, elected or appointed, be expressly exempted from the Act's registration requirement.

Thank for the opportunity to provide comments.

Very Truly Yours,

Breton K. Lobner
General Counsel