



February 22, 2011

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

RE: File Number S7-45-10

Dear Ms. Murphy:

I am writing this letter as Executive Director of the Nebraska Investment Finance Authority (“NIFA”) in response to the Securities and Exchange Commission’s (the “SEC”) request for comments on its proposed rule regarding the registration of municipal advisors (the “Rule”).

NIFA is a body politic and corporate, and an independent instrumentality of the State of Nebraska exercising essential public functions. NIFA’s programs provide lower interest rate financing for manufacturing facilities, certain farm property, health care facilities, residential rental properties, housing rehabilitation, homeownership, and wastewater treatment and safe drinking water facilities. NIFA has a nine-member board of directors, comprised of three ex-officio non-elected members and six public members appointed by the governor to four-year terms, none of whom are employees of NIFA. The three ex officio members may each designate a representative to perform their respective duties. Of the six appointed members, two members must be from each of Nebraska’s three Congressional districts. Further, each public member is required to be experienced in and represent one of the following areas: real estate development, industrial mortgage credit, commercial credit, agricultural credit or housing mortgage credit, banking or investment banking, home building or licensed real estate broker, agricultural production and the public at large.

The adoption of the proposed Rule will adversely impact NIFA on two fronts, the proposed interpretation of the term “municipal advisor” to include (i) appointed or non-elected board members and (ii) persons who engage in uncompensated municipal advisory activities.

Board Members as Municipal Advisors

The Dodd-Frank Wall Street Reform and Consumer Protection Act (the “Act”) defines “municipal advisor” to mean a person (who is not a municipal entity or an employee of a municipal entity) that (i) provides advice to or on behalf of a municipal entity or obligated person

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 or (ii) undertakes a solicitation of a municipal entity. The definition explicitly includes financial advisors, guaranteed investment contract brokers, third-party marketers, placement agents, solicitors, finders, and swap advisors, if such persons are described in either clause (i) or (ii) above.

The SEC has stated that it believes the exclusion from the definition of “municipal advisor” for “employees of a municipal entity” should include any person serving as an elected member of the governing body of the municipal entity, but that it does not include appointed members of a governing body unless they are elected ex officio members. We believe this interpretation is inconsistent with the Act and is not in the best interests of NIFA and similarly situated state instrumentalities.

First, members of governing bodies operate the municipal entities and should be the beneficiaries of the municipal advisor regulation. They are not “municipal advisors” themselves, regardless of whether they are elected or appointed to serve as board members. They represent the municipal entity which is the recipient of advice given by advisors.

Second, appointed board members should not be distinguished from elected or elected ex officio board members. The SEC “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 municipality.” However, the duty of every board member does not discriminate based on whether he/she was elected or appointed. All board members have the same responsibilities and the same exposure to liability. All NIFA board members are statutorily liable to NIFA and the State of Nebraska for willful dishonesty or intentional violations of law. NIFA’s appointed board members, like most appointed board members, may be removed from office for incompetency, neglect of duty, or malfeasance in office. Interestingly, elected members may only be removed by impeachment, so the standards for removal of appointed members are actually easier to meet than the standards for removal of elected officials! All NIFA board members are required to disclose in writing any direct or indirect interest in any transaction with NIFA.

Third, requiring appointed board members of municipal entities to register as municipal advisors will be a burden on the related municipal entities, including NIFA, and is not in the public interest. NIFA’s appointed board members are civic-minded volunteers who are interested in serving for the public good and have special expertise that is critical to NIFA’s operations. They receive no compensation for their service. Volunteers, such as the NIFA volunteers, will be deterred from serving on public boards if subject to onerous registration processes and federal regulation. Further, the financial burden of complying with such regulations will fall upon NIFA further constraining already limited public resources.

Finally, if Congress had intended appointed board members to be deemed municipal advisors, it would have explicitly stated so. The Act targets professionals providing advice with respect to the structure, timing, terms, and other similar matters concerning financial products or issues. A citizen volunteer that is an appointed board member cannot be compared to a financial

advisor, guaranteed investment contract broker, third-party marketer or the like that is being retained and compensated for their expertise in financial products or issues.

For the reasons expressed above, NIFA requests that the SEC revise its interpretation of the definition of “municipal advisor” to exclude all board members of municipal entities from application of the Rule.

Similarly, certain ex officio board members, by virtue of their position may hold numerous positions on municipal entity boards, thus finding it necessary to designate a representative to perform their respective duties. We request such designees also be excluded from the “municipal advisor” definition.

Uncompensated Advice to Municipal Entities

In its release the SEC stated it does not believe that whether a municipal advisor is compensated for providing municipal advice should factor into the determination regarding whether the municipal advisor must register with the SEC. This position is not in the best interest of municipal entities, including NIFA.

NIFA, similar to other municipal entities, relies upon outside professional input for expertise concerning matters in which it has limited knowledge and limited resources to obtain such knowledge. Many professionals, such as accountants, bankers, financial advisors, lawyers and investment bankers will provide uncompensated advice to municipal entities regarding topics within their expertise as a public service. Many of these professionals are already subject to ethical rules and are simply community-minded individuals that are interested in assisting local governments with incidental advice.

We fear the proposed rule would chill the providing of such advice. These professionals will no longer be willing to assist municipal entities in such a manner because they do not want to be deemed municipal advisors and subject to registration and regulatory enforcement for providing uncompensated advice. The result will be that NIFA and other municipal entities will receive less of this type of advice and/or be required to pay more for such advice.

Rather than discouraging uncompensated advice given to municipal entities, the SEC should be encouraging greater participation of knowledgeable and experienced professionals consulting with local government.

For the foregoing reasons, NIFA recommends that the definition of municipal advisor exclude persons who engage in uncompensated municipal advisory activities.

Sincerely,

/s/ Tim Kenny