

**Macquarie Capital (USA) Inc.**

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February 22 2011

Ms. Elizabeth Murphy  
Secretary  
U.S. Securities and Exchange Commission  
100 F Street, NE

WASHINGTON DC 20549-1090



Dear Ms. Murphy,

**FILE NUMBER S7-45-10 -- REGISTRATION OF MUNICIPAL ADVISORS, 76 FED. REG. 824 (JAN. 6, 2011)**

This letter is submitted by the Macquarie Capital Advisors division ("**Macquarie Capital Advisors**" or "**we**") of Macquarie Capital (USA) Inc. ("**MCUSA**"). Macquarie Capital Advisors is pleased to have the opportunity to comment on the proposal by the Securities and Exchange Commission ("**SEC**") to establish a permanent registration program for municipal advisors under Section 975 ("**Section 975**") of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (the "**Dodd-Frank Act**").

MCUSA is a significant participant in the US private infrastructure finance market acting as financial adviser we have played a critical role in the financing of many leading infrastructure assets including North Tarrant Expressway and LBJ in Texas, Eagle P3 Project in Colorado, Port of Miami Tunnel and I-95 in Florida.

In providing financial advisory services for the transactions described in this letter, MCUSA operates as a licensed broker-dealer and member of FINRA. MCUSA is also a member of SIFMA.

MCUSA and its affiliates worldwide are regulated by multiple financial services and banking regulators. We recognize that compliance with applicable regulatory regimes and good relationships with regulators are critical to our ongoing success. Macquarie Capital Advisors supports the SEC's effort to implement a system for regulation of advisors to municipal entities.

We have significant concerns, however, that the SEC's proposed rules are unnecessarily broad in scope and will result in certain financial services and products that are currently being provided to municipal entities and other market participants becoming much more costly or, indeed, unavailable to those market participants. In particular, we are concerned that the

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proposed rules will have unintended and adverse consequences for the structuring and completion of large-scale infrastructure financings, as described in further detail below.

We endorse SIFMA's comments to the proposed rules, dated February 22, 2011 (the "**SIFMA Proposal**"). In particular, we would like to reiterate the following elements of the SIFMA Proposal:

- Certain activities should be expressly excluded from the definition of "advice", including responding to a request for proposals or qualifications from a municipal entity regarding investment products, providing terms on which we or another financial institution would be prepared to enter into a transaction, or providing terms on which we or another financial institution would be prepared to purchase securities issued by a municipal entity.
- Entities providing services to a transaction in their capacity as a broker-dealer should not be subject to additional regulation by the SEC under Section 975. Similarly, a broker-dealer acting as a private placement agent for a private equity fund that solicits a municipal entity to invest in the fund should not be considered a "municipal advisor".
- The SEC should clarify that "investment strategies", when used as a trigger for municipal investment advisor status, should include only advice with respect to the investment of funds held by or on behalf of a municipal entity, not regarding other expenditure or use of those funds for non-investment purposes. In particular, the SEC should clarify that the term does not include expenditures for infrastructure investments.

In addition, we write to express specific concern about the effect of the proposed regulations on the conduct and success of public-private partnership transactions ("**P3 Transactions**") in the infrastructure sector.

As described above, Macquarie Capital Advisors has significant experience with P3 Transactions in the United States, both as a principal investor and as a financial advisor. For example, we acted as financial advisor to Denver Transit Partners on the recently completed financing for the Eagle P3 Project, part of the Denver Regional Transportation District's FasTracks Program, to LBJ Mobility Partners on the financing of the LBJ Managed Lanes Project in Dallas, Texas. Both of these projects utilized private activity bonds issued by a state or municipal financing conduit and on lent to the project company. In each case, and many likely similar cases, it is the project company that is responsible for the repayment of the bonds rather than the state or municipal financing conduit which is obligated to repay the bonds.

Under the proposed rules, the private project company, its sponsor(s) and its financial advisor may be considered to be providing "advice" with respect to a municipal entity with respect to the terms or structure of a PABs bond issuance which may be just one part of an overall financing plan for a P3 transaction and ultimately for which there is no recourse to the municipal entity. Bid documents submitted in response to the municipal authority's request for private financing proposals could also be considered to be "advice" under the proposed rules with the result that these transaction participants would be required to register under the proposed rules. Potential registration as a "municipal advisor" by these transaction participants is difficult to reconcile with the roles played by private sector participants in P3 transactions, particularly since in each instance the municipal authority is represented by its own financial and technical advisors. We are concerned that the logistical and risk-

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management burdens imposed by the proposed regulations will discourage participation in the P3 market and make these transactions more costly and more difficult to execute in the future.

Macquarie Capital Advisors looks forward to being a constructive voice in the commentary and debate surrounding the proposed rules. We would be glad to discuss any of the issues raised in this letter with any member of the Commission staff.

Yours sincerely  
**Macquarie Capital (USA) Inc.**



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**Nick Butcher**  
Senior Managing Director  
Macquarie Capital Advisors

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