

Governor Brian Sandoval
Chairman



State of Nevada
STATE BOARD OF FINANCE

Members
Treasurer Kate Marshall
Controller Kim Wallin
David Funk
Steven Martin

February 22, 2011

Securities Exchange Commission
c/o Elizabeth N. Murphy, Secretary
1000 F Street, NE
Washington, DC 20549-1090

Via E-Mail to Rule-Comments@sec.gov

Dear Honorable Members of the Securities Exchange Commission:

RE: File No. S7-45-10 (Definition of Municipal Advisors)

This letter is being written on behalf of the State Board of Finance of the State of Nevada ("Nevada State Board"). The Nevada State Board is an entity created under Nevada Revised Statutes ("NRS") Sections 355.010. Pursuant to NRS, the Nevada State Board is responsible for the issuance of debt securities on behalf of the State of Nevada, including State general obligation bonds, State revenue bonds and State lease purchase certificates of participation.¹ The State of Nevada presently has outstanding in excess of \$2 billion in general obligation and revenue bonds authorized by the Nevada State Board.

The Nevada State Board is also responsible for advising the State Treasurer with respect to the investment of State monies. See generally Ch. 355 of NRS.

We write this letter to express concern with the definition of "municipal advisor" in Release 34-63576, 76 F. Reg. No. 4, Pg. 824, January 6, 2011 (the "Proposed Rule"). Specifically, in the commentary to the Proposed Rule provided by the Commission, the Commission describes an exemption from the definition of "municipal advisor" for "an employee of a municipal entity." Part of that description is as follows: "The Commission does

¹ See NRS 349.071 (generally authorizing the Nevada State Board to issue and redeem State of Nevada securities); NRS 349.150 through 349.364, the State Securities Law providing the procedures for issuing, limitations on issuing, security features and other details of State of Nevada Bonds which the Nevada State Board follows in issuing those bonds; Chapter 350A of NRS, authorizing the Nevada State Board to issue State of Nevada general obligation and revenue bonds for the State Bond Bank, and NRS 353.500 through 353.630, authorizing the Nevada State Board to issue lease purchase certificates of participation for the State of Nevada capital projects.

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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.' ” 76 F. Reg. at p. 834.

NRS Section 355.010 describes the composition of the Nevada State Board. It consists of the Governor, the State Controller and the State Treasurer, all of whom are popularly elected (the “Elected Members”) and two other members appointed by the Governor for terms of four years each (the “Appointed Members”). One of the Appointed Members must be actively engaged in commercial banking in the State. Subsection 3, NRS 355.010.

The commentary on the Proposed Rule, quoted above, indicates that the Appointed Members are not excluded from the definition of “municipal advisor” and therefore may be included in the definition of municipal advisor if they otherwise meet the definition.

The term “municipal advisor” is defined to include “a person (who is not a municipal entity or an employee of a municipal entity) that -- provides advice to or on behalf of a 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;” Section 15B(e)(4)(A)(i) of the Securities Exchange Act of 1934 (15 U.S.C. 78o-4(e)(4)(A)(i)). “Municipal financial products” is defined to include “investment strategies.” Section 15B(e)(5) of the Securities Exchange Act of 1934, 15 USC 78o-4(e)(5).

Under this very broad definition, an Appointed Member of the Nevada State Board who in the course of discussing the issuance of a series of State of Nevada Bonds, discusses the matter in a way that might be construed as advice with respect to the structure, timing, terms, and other similar matters related to the bonds could be deemed to be a “municipal advisor.” Similarly, an Appointed Member of the Nevada State Board who, in the course of discussing investment of the State of Nevada’s monies discussed the matter in a way that might be construed as advice on the structure, timing, terms or other such matters related to state investment strategies, could be deemed to be a “municipal advisor.” The result of the adoption of the Proposed Rule in its present form very likely is that none of the Nevada State Board’s Appointed Members could engage in a discussion that might be construed as advice with respect to the issuance of State bonds, or State investment strategies, e.g., advice about the structure, timing, terms and other similar matters concerning State bonds or investment strategies, unless these individuals register as municipal advisors.

To inhibit the Nevada State Board’s Appointed Members from engaging in this type of discussion and advice is in effect to encourage them not to carry out their duties. Indeed, the Appointed Members are selected as members of the Nevada State Board because of their expertise in dealing with the matters with which the Nevada State Board must deal with, and their advice on the structure, timing, terms and similar matters concerning the issuance of State bonds and State investment strategies is essential to the Nevada State Board in carrying out its legislatively mandated duties. NRS requires that one of the Appointed Members be actively engaged in commercial banking in the State in order to provide the Nevada State Board with the expertise that a commercial banker would have in discussions of the structure, timing, terms and similar matters related to State bonds and State investment strategies.

The effect of the rule will either be to silence the Appointed Members of Nevada State Board on these important matters, thus leaving the Nevada State Board without the guidance that its Appointed Members are there to provide, or to discourage any person from becoming an Appointed Member of Nevada State Board because an Appointed Member would be subject to the regulatory regime imposed by the Commission on a “municipal advisor,” be subject to payment of fees to both the SEC and the MSRB, and be subject to the completion of complicated paperwork for both the SEC and the MSRB in order to register as a municipal advisor. None of the Appointed Members of the Nevada State Board become members of Nevada State Board in order to be municipal financial advisors. Forcing these public spirited citizens into being registered municipal advisors under SEC and MSRB rules to carry out their duties, because the Nevada State Board issues and discusses the structure, timing and terms of the bonds the State of Nevada issues and the investment structures it uses, is inappropriate.

Further, we very much dispute the implication of the assertion in the commentary to the Proposed Rule that “appointed members, unlike the elected officials and elected ex officio members, are not directly accountable for their performance to the citizens of the municipal entity.” This seems to assert that non-elected governing body members are not accountable or responsible. In fact, it puts these officials in a position less desirable than employees, whom the Commission deems to be accountable just as elected officials are accountable (“ . . . employees and elected members are accountable to the municipal entity for their actions.” 76 F. Reg. at p 834). The Appointed Members of the Nevada State Board are directly accountable to the elected Governor of the State, who appointed them. The Governor and citizens of the State who elect the Governor will and do hold the other Appointed Members of the Nevada State Board accountable for their activities on the Nevada State Board. To imply that these members of are not accountable or at least not as accountable as an employee is simply untrue and belittles these members’ considerable efforts on behalf of Nevada State Board for which they receive nominal compensation (not more than \$80 per day while actually engaged in the performance of their duties as members of the Nevada State Board. See NRS 355.020).

The Appointed Members of Nevada State Board direct the activities that employees of the State undertake and the policies the employees are to follow in the issuance of state bonds and in engaging in investment strategies. It is very difficult to see the logic of treating an employee who must follow the directive of a board comprised in part of Appointed Members as more “accountable” to the Nevada State Board than the Appointed Members of the Nevada State Board who, together with their Elected Members, direct the employees’ activities. Further, to include these virtually unpaid citizens as “municipal advisors” and subject them to registration with the SEC and MSRB, to filing of considerable paperwork with the SEC and MSRB, and to payment of fees to SEC and the MSRB imposes an unfair and wholly inappropriate burden on them for applying their time and effort for the public good in the State of Nevada and may likely become a strong deterrence to acceptance of such an appointment.

Finally, it should be mentioned that NRS has strong ethical laws (see the Nevada Ethics in Government Law, Ch 281A of NRS) to prevent conflicts of interest and other misconduct by appointed or elected board members. Nevada Law makes no distinction in the application of these ethics laws between appointed and elected officials. See NRS 281A.160 (“Public officer” defined).

Conclusion

The Nevada State Board of Finance very strongly urges the Commission to alter its description of the exceptions to municipal advisors to include as excepted from this definition appointed members of the governing body of a municipal entity that issues municipal securities or is involved in other municipal financial products.

Thank you very much for your attention to this letter.

Respectfully submitted,



Brian Sandoval
Governor, State of Nevada and
Chairman, Nevada State Board of Finance

Cc: Senator Harry Reid
Senator John Ensign
Congresswoman Shelley Berkley
Congressman Joe Heck
Congressman Dean Heller