

**SANDUSKY COUNTY-SENECA COUNTY-CITY OF TIFFIN  
PORT AUTHORITY  
C/O JAMES D. SUPANCE, CHAIRPERSON  
P.O. BOX 767  
TIFFIN, OHIO 44883-0767  
(419) 447-8811  
Fax (419) 447-2310**

February 22, 2011

U.S. Securities and Exchange Commission  
Fax 703-813-6965

Re: Comments on File S7-45-10  
Registration of Municipal Advisors

Greetings:

The Sandusky County-Seneca County-City of Tiffin Port Authority (SSTPA) located in Northwest Ohio consists of a seven (7) member all volunteer Board of Directors. Two (2) members are appointed by the Sandusky County Commissioners. Two (2) members are appointed by the Seneca County Commissioners. Two (2) members are appointed by the Mayor of the City of Tiffin with the approval of the Tiffin City Council. The appointment of the seventh member rotates among those governmental entities. The county seat of Sandusky County is Fremont, Ohio. The county seat of Seneca County is Tiffin, Ohio. I am the Chairperson of the Board.

It has come to my attention that the SEC is soliciting comments regarding the registration of "municipal advisors". One of the issues appears to be who is a "municipal advisor". As affects this Port Authority Board, this issue is whether the members of this Board of Directors would be "municipal advisors" subject to SEC registration.

My knowledge of your proposed rules is quite limited. Attached is a January, 2011 Public Finance Alert from the law firm of Squire Sanders & Dempsey. Also attached is a copy of a February 7, 2011, comment submitted to you by the Blanchard Valley Port Authority located just west of the SSTPA in Hancock County (Findlay, Ohio).

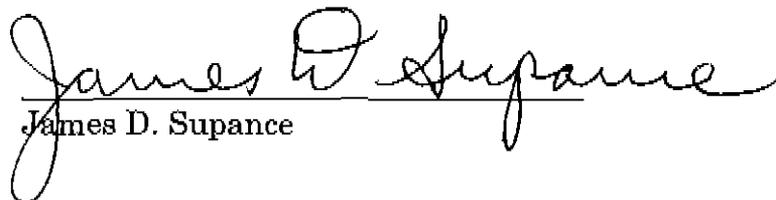
I personally adopt the comments of the Blanchard Valley Port Authority and submit them to the Commission as my comments and objection to your proposed rule.

The SSTPA is not heavily involved in the issuance of boards. However bond issuance is one of the economic development options at its disposal. Your proposed rule was issued in the apparent belief that there was a problem which could be solved (or lessened) by its issuance. I invite you to send a representative to the Port Authority's next meeting, May 10, 2011, at 2:00 P.M. in Tiffin, Ohio, to describe to us how your proposed rule, as applied to the SSTPA, would solve (or lessen) that problem. Until you can demonstrate to the SSTPA Board that our registration as "municipal advisors", if we do need to register, is required for the good of our jurisdiction then I must object to the proposed rule. If the Board or I can be of assistance to you in your drafting of a better rule do not hesitate to call on us.

This letter and these attachments are being sent to you by fax only.

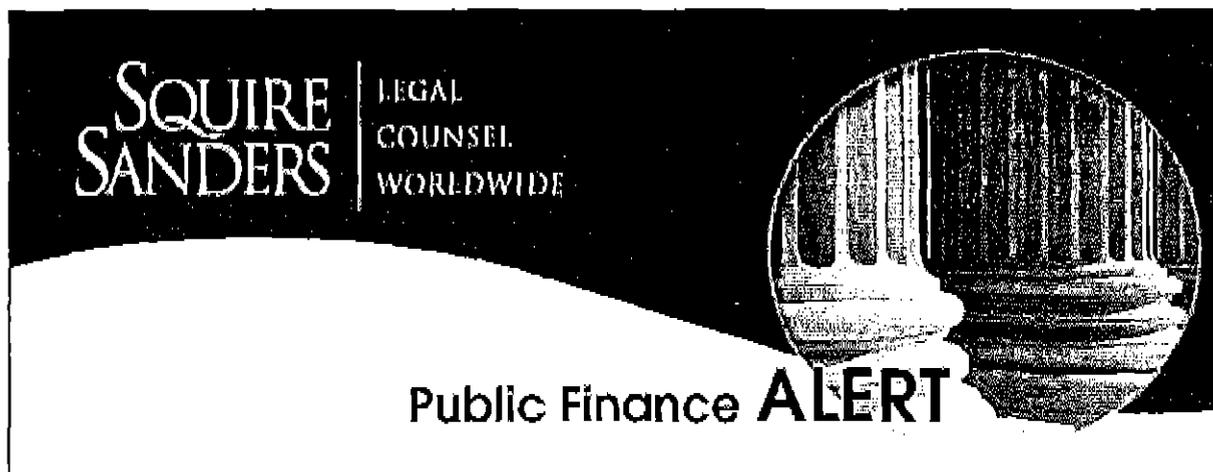
Thank you.

Sincerely,

  
James D. Supance

JDS/bry  
Encl.

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January 2011

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## Will Appointed Members of Boards of Municipal Bond Issuers Be Caught Under SEC's Proposed Regulations for Municipal Advisors?

The Securities and Exchange Commission's (SEC) proposed final regulations for the registration of municipal advisors (the Rules), if approved in the form proposed, will affect more than traditional municipal advisors. Specifically, appointed board members of a municipal or other public bond-issuing authority (municipal entity) will find themselves subject to the restrictions and registration requirements imposed by the regulations. Under the Rules as proposed, anyone providing advice to a municipal entity or obligated person, whether solicited or unsolicited, compensated or not, will be required to register with the SEC as a "municipal advisor" and be subject to the scrutiny of the SEC regarding competence and background information, in addition to paying any required filing fees. Elected officials and municipal employees are excluded as are attorneys, accountants and engineers (to a limited extent). The proposed Rules have been met with a firestorm of criticism from municipal issuer groups and their advocates and must be approved in final form by the SEC before they become effective.

If the proposed Rules concern you, you should let the SEC know by filing a comment with the SEC by February 22, 2011. The SEC has specifically requested comment on this and many other aspects of the proposed Rules. The full text of the proposed Rules, as

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### Contact:

For more information contact your principal Squire Sanders lawyer or any of the individuals in our [Public & Infrastructure Finance Practice Group](#).

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well as a link to submit comments directly to the SEC, can be found on [the SEC's website](#).

The proposed Rules implement the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank). Section 975 of Dodd-Frank makes it unlawful "for a municipal advisor to provide advice to or on behalf of a municipal entity... with respect to municipal financial products or the issuance of municipal securities... unless the municipal advisor is registered in accordance with this subsection."

Dodd-Frank defines "municipal advisor" as "a person (*who is not a municipal entity or an employee of a municipal entity*) who (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...*" (emphasis added). Under Dodd-Frank, municipal advisors include financial advisors, guaranteed investment contract brokers, placement agents and swap advisors, and exclude broker-dealers (when acting in a capacity as an underwriter) and certain other persons.

The current controversy arises from the SEC's interpretation of the definition of municipal advisor and those whom the SEC believes should be excluded from, and included in, that definition. In response to a comment received when the temporary registration system was instituted by the SEC on September 1, 2010 (prior to the October 1, 2010 effective date of the registration requirement), the SEC stated that elected members of a municipal bond-issuing authority are excluded from the definition, but appointed members should be included. The SEC explained its position by stating:

The Commission does 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.' The Commission believes that this interpretation is appropriate because employees and elected members are accountable to the municipal entity for their actions. In addition, the Commission 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 municipal entity.

At least for now, appointed members of the governing

body of a municipal issuer (such as a state-level bond authority, industrial development authority, housing finance authority, joint powers authority, municipal utility authority or similar entity) are not excluded from the definition of municipal advisor for purposes of the proposed Rules. This leads to the question of what it means to "provide advice to" a municipal entity or an obligated person. Would the simple act by an appointed member of the governing board of a municipal entity of publicly stating a basis for a vote in favor of or against a particular bond issue constitute "advice"? The answer is not clear under the Rules as proposed by the SEC, and the uncertainty has been met with sharp criticism in the financial press from state and local government officials and their advocates.

The SEC should be urged to reverse its position by stating clearly in the final Rules that all governing board members are exempt under the Rules and all statements made or positions taken by any governing board member of the municipal entity will not be considered to be advice if the statements are made or actions taken as part of the fact-finding, deliberative or decision-making process of the governing board. Additionally, the SEC should be urged to exclude from the reach of these proposed Rules casual statements made or opinions offered to a municipal entity by any person who is not acting in any professional advisory capacity.

Being required to register with the SEC as a municipal advisor has significant consequences – time, money and legal obligations, as well as becoming the subject of scrutiny by the SEC. The proposed application requires, among other things, that an individual certify that he or she has "sufficient qualifications, training, experience and competence;" will meet, within any applicable required time frames, "such standards of training, experience and competence and other qualifications, including testing, for a municipal advisor, required" by the SEC or other regulatory organizations; and have "necessary understanding of... all applicable regulatory obligations" under federal securities laws, as well as applicable rules promulgated by the SEC and Municipal Securities Rulemaking Board or other relevant self-regulatory organizations. Intentional misstatements in, or omissions of fact from, an application constitute a federal criminal violation. The proposed Rules also impose recordkeeping requirements, permit the SEC to inspect those records and require annual updates. Failing to comply with the Rules could subject a person to civil fines and sanctions, as well as criminal penalties. These and other issues raised by the

proposed Rules are likely to be the subject of many comments to the SEC.

Lawyers in the Squire Sanders Public & Infrastructure Finance Practice Group are available to answer any questions about or further discuss the implications of the proposed Rules.

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The contents of this update are not intended to serve as legal advice related to individual situations or as legal opinions concerning such situations. Counsel should be consulted for legal planning and advice.

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2011

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BLANCHARD VALLEY



*Serving Hancock County, Ohio*

February 7, 2011

**Submit Comments on File No. S7-45-10  
Registration of Municipal Advisors**

SEC Complaint Center  
100 F Street, NE  
Washington, DC 20549-0213

Dear SEC Complaint Center:

I am Chairman of the governing Board of Directors of the Blanchard Valley Port Authority, an Ohio port authority, a body corporate and politic and a political subdivision of the State of Ohio created under Ohio Revised Code Chapter 4582 (the "Port Act"). Under the Port Act, a port authority is created by a municipal corporation, a township, a county or any combination thereof. Ohio port authorities are governed by a Board of Directors appointed by the elected official(s) of the creating government entity.

Ohio port authorities engage in various activities, including the issuance of revenue bonds for economic development. Issuance of port revenue bonds are authorized by resolution of a port authority's governing board, its Board of Directors. Members of a port authority's governing board are subject to state ethical rules, as well as open meeting and public records laws. As part of the bond authorization process, Board members typically receive, review, discuss and consider financing proposals, analysis from financial advisers and/or underwriters, and other aspects of the proposed bond issuance set forth in the authorizing resolution.

In the SEC Release No. 34-63576, the SEC discusses the exclusion of employees of a municipal entity from the definition of "municipal advisor". In its discussion, the SEC specifically rejected a proposal to exclude from the definition of municipal advisor appointed members of a governing board of a municipality that are not elected. We respectfully disagree with the SEC's rationale that appointed members of a governing board of a municipal entity are somehow not accountable to the municipal entity for their actions. This rejection of the proposed exclusion for appointed governing board members raises a serious concern as to what constitutes "providing advice" to or on behalf of a municipal entity.

It is our position that because a port authority can only act through its governing board, the decision to authorize and approve revenue bond issuances and other finance transactions, as well as all review, discussion and other actions of board members being part of the process leading to such authorization, does not

1660 Tiffin Ave., Findlay, OH 45840, 419/480-9656

SEC Complaint Center  
February 7, 2011  
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constitute "advice" to or on behalf of a municipal entity such as would require a port board member to register as a municipal advisor.

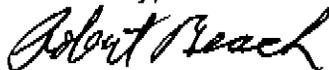
Therefore, we urge the SEC to clearly state in the final Rules that all governing board members (whether elected or appointed) of municipal entities are exempt under the Rules and all statements made or positions taken by any governing member of the municipal entity will not be considered to be advice if the statements are made or actions are taken as a part of a fact-finding, deliberative, or decision-making process of the governing board. Additionally, excluded from the reach of these proposed Rules should be any casual statements made or opinions offered to a municipal entity by any person who is not acting in a professional advisory capacity.

Being required to register with the SEC as a municipal advisory has significant consequences, including time, money and legal obligations. This registration requires certification of qualifications and training, as well as knowledge of regulatory obligations for municipal issuers. The record-keeping requirements, potential fines and sanctions (including criminal penalties), will overwhelm municipal issuers like ours that operate on small budgets with lean staffing.

Without the requested clarification, the nearly 60 port authorities in Ohio may be found to be subject to these proposed Rules. Each port authority has boards which must approve the business of the port. The vast majority of these boards are comprised solely of volunteers. The ability to attract strong board members will be greatly hindered by this rule. We rely on legal counsel and financial advisors, who are paid for this service, to provide guidance and feedback on any bond issuance or other financing that we undertake. To ask our board members to register with the SEC, with all of its attendant requirements, would be so onerous as to discourage talented individuals in our community from serving on our boards. This in effect could shut down a series of programs that offers critical financing tools in the State of Ohio.

We urge the SEC to clearly state in its final rule for registration of municipal advisors that board members of municipal issuers are not required to register as municipal advisors by virtue of engaging in their duties related to the review and authorization of the issuance of municipal securities.

Sincerely,



Robert Beach  
Chairman

cc: Ohio Congressional Delegation  
Ohio Council of Port Authorities  
Council of Development Finance Agencies