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ROBERT M. BALL, A.A.E.  
EXECUTIVE DIRECTOR

February 18, 2011

BOARD OF  
PORT COMMISSIONERS

Via E-Mail: [rule-comments@sec.gov](mailto:rule-comments@sec.gov)

BRIAN BIGELOW

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

TAMMY HALL

RAY JUDAH

FRANK MANN

Re: Comments to Proposed Rule Regarding Registration of  
Municipal Advisors, SEC Release No. 34-63576; File No. S7-45-10

JOHN E. MANNING

Dear Ms. Murphy:

I am writing on behalf of the Lee County Port Authority (the "Authority") in response to the referenced Release (the "Release"), which invites comments on new rules proposed by the Securities and Exchange Commission (the "SEC") that would require "municipal advisors" (as defined in the proposed rules) to register with the SEC. As discussed below, the Authority has significant concerns with several aspects of the proposed rules.

The Authority is a dependent special district of the State of Florida, established by Lee County, Florida (the "County") under applicable Florida law and, in particular County Ordinance No. 01-14 (the "Act"). The purpose of the Authority is to manage and operate the airport properties of the County including the Southwest Florida International Airport and the Page Field General Aviation Airport, both of which are located in Fort Myers, Florida. The governing body of the Authority is the Board of Port Commissioners, comprised of five members, all of whom are members of the County's Board of County Commissioners who serve *ex officio* as the Board of Port Commissioners (the "Board"), all of whom are publicly elected by the registered voters of Lee County, Florida. Although the Board members are publicly elected, the Board invites community participation in Authority matters by appointing several community volunteers to various Board committees, including, in particular, the Airports Special Management Committee (the "ASMC").

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The ASMC is a seven member citizen's advisory committee to the Board. There are five regular members who must be residents of the County. Each Port Commissioner appoints one regular member, whose term coincides with that of the appointing commissioner. The Chairman of the Board appoints two regional members, one from Charlotte County and one from Collier County, to serve for a two-year term. The regional members can be re-appointed for additional two-year terms without limit. Under the Act, each appointed member of the ASMC must be a person of integrity, responsibility, and business ability, who is competent and knowledgeable in one or more fields which include, but are not limited to, general business practices, aviation, public affairs, law, economics, accounting, engineering, finance, natural resource conservation, energy, or any other field substantially related to the duties and functions of the Authority.

Under the Act, the ASMC has general advisory responsibility to the Board, and provides recommendations, direction, plans, objectives and/or comments to the Board on a regular basis as determined by the Board. The ASMC is required under the Act to review, analyze, evaluate in a timely manner, and recommend actions to the Board on all matters and issues concerning the operation and functions of the Lee County Airports, to include but not be limited to:

- All external and internal Airport operations
- All contracts
- All budget matters
- Land use and acquisition
- Long-range planning and development
- Financing and refinancing of bonds
- Regulation of the Airports facilities
- All interlocal or intergovernmental matters affecting the Lee County Airports

In order to fulfill its lawful mission, the Authority is empowered, among other things, to establish, construct, operate, and maintain airports and other aviation and transportation facilities, and to provide for the financing and refinancing of these facilities through the issuance of municipal bonds. Some of the bonds issued for airport purposes are issued by the County and some are issued directly by the Authority. In connection with each bond financing undertaken by the Authority or the County for airport purposes, the Board separately engages a nationally recognized independent financial advisor with knowledge and special expertise in airport finance to advise the Board and the ASMC on matters relating to the issuance of municipal bonds and financial products.

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During the Board's and the ASMC's meetings, all of which are subject to Florida's open meeting laws, each committee member is encouraged to participate in the discussion regarding all matters coming before the Board and the committee, including the issuance of bonds or other financial-related agreements. During committee meetings, members customarily ask questions of outside consultants, make comments, express their opinions, discuss proposed actions, and vote on whether or not to recommend to the full Board the issuance of bonds and other matters before the Board. These are all part of the normal but vital deliberative process of the Authority's Board and the ASMC.

The SEC's proposed rules regarding the registration of municipal advisors would exclude elected board members of a municipal entity from the definition of "municipal advisor", but not appointed board members or appointed committee members. The Authority does not believe that disparate treatment of elected, appointed, or employed committee members proposed by the SEC to be justified.

The SEC's proposed rules do not include any guidance as to what constitutes "advice" or "providing advice." The rules also lack provision of what should be a key element in determining what a "municipal advisor" is. That missing element is that the person must be acting in some professional capacity and holding him or herself out to the public as having special expertise in the area in which he or she is providing advice. There must be some risk or expectation that the municipal entity being provided the advice will view the person in a professional capacity with the knowledge, experience, and competence to make the advice reliable. To omit this key element is to bring under the purview of the SEC's proposed rules literally anyone who offers an opinion or view ("advice") on these matters to a municipal entity, including board and committee members or members of the general public filing written comments or making oral comments at board meetings. To fail to address these matters and leave them subject to the interpretation and opinion of each municipal entity's legal counsel is unfair to the municipal entities that will ultimately have to pay for the legal advice. The Dodd-Frank provisions were clearly intended to be protective of municipal entities and yet through the proposed rules, it would appear the SEC is positioning itself to undertake the regulation of municipal board and committee members.

The Authority, therefore, respectfully requests that the SEC provide specific guidance with respect to what it means to "provide advice" by requiring that the advice be provided in a professional capacity by a person holding him or herself out to have special knowledge and expertise in municipal financial matters where there is an expectation and a likelihood that the advice will be relied upon by others in making financial decisions for the municipal entity. The SEC should also provide a clear and unconditional statement in the final rules that the statements and other activities of board and committee members of the municipal entity (whether elected, appointed or

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employed) made or taken in the course of performing their duties as board or committee members will not be construed as “providing advice” in the role of a “municipal advisor” to a municipal entity requiring prior registration by the board or committee member with the SEC.

Without such modifications and guidance, the SEC’s proposed rules will have significant deleterious effects on our Board and the efforts of its ASMC to ensure that the best possible financial decisions are made for the Authority. The proposed rules will have a material and negative impact on the normal deliberative process of our ASMC by restraining the freedom of its members to express their views on matters relating to municipal bond issues and municipal financial products for fear of subjecting themselves to the potential risk and expense of an SEC investigation over whether their comments constituted “advice” requiring prior registration as a “municipal advisor”. They would also make it more difficult for the Board to find individuals with business acumen, financial knowledge and backgrounds and other helpful experience who are willing to serve on the ASMC if doing so will require them to register with the SEC as a “municipal advisor.” They would thereby deprive the Authority, and the citizens it serves, of talent and robust discussion and deliberation by committee members that is needed for the ASMC to make sound recommendations to the full Board.

The Dodd-Frank Act provision that led to the SEC’s proposed rules was intended to protect municipal entities but, with all due respect, municipal entities, such as the Authority, do not need to be protected from their own Board and committee members, whether appointed or elected, or their Board’s appointed committees. In the case of the Authority (and we suspect this is the case with respect to most municipal boards), the Board members are the legislative or policy decision makers and the committees exist to provide a more efficient method of reviewing and analyzing particular matters that will ultimately go before the full Board. With respect to financial matters, the Board and the ASMC members are entitled to rely, and in the case of the Board and the ASMC, indeed do rely, on advice rendered by professional, independent consultants. The Board and its ASMC are the *recipients* of the financial advice, not the *providers* of such advice. Moreover, nothing in the Dodd-Frank Act indicates Congress intended the SEC to require registration of appointed members of municipal entities before they could engage in deliberations with their board and committee colleagues and execute the duties they were appointed to perform under state law.

To summarize, for the foregoing reasons, the Authority respectfully requests that the SEC specifically modify the proposed rules as follows:

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1. exclude from the definition of “municipal advisor” all board and committee members of a municipal entity, whether elected or appointed, whether part of the governing body or appointed committees;

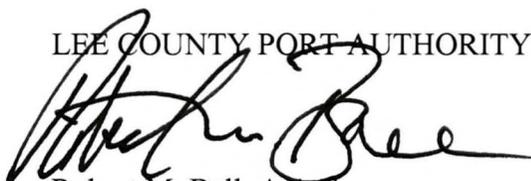
2. provide specific guidance with respect to what it means to “provide advice” by requiring that the advice be provided in a professional capacity by a person holding him or herself out to have special knowledge and expertise in municipal financial matters where there is an expectation and a likelihood that the advice will be relied upon by others in making financial decisions for the municipal entity; and

3. provide clear and unambiguous guidance that the statements and activities of board and committee members of municipal entities made or taken in the course of performing their respective duties as board or committee members will *not* be construed as “providing advice” to a municipal entity such as would require prior registration by the board member with the SEC.

If you have any questions concerning these comments or desire any additional information regarding the Authority, please contact the undersigned.

Respectfully submitted,

LEE COUNTY PORT AUTHORITY



Robert M. Ball, A.A.E.  
Executive Director

cc: Board of Port Commissioners  
Senator Bill Nelson  
Senator Marco Rubio  
Congressman Connie Mack, IV