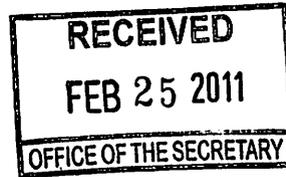


H 687



February 11, 2011

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

Re: File Number S7-45-10

Dear Secretary Murphy:

I am writing this letter as Chairman of the Board of Directors of the North Texas Tollway Authority ("NTTA"), a regional tollway authority and political subdivision of the State of Texas currently serving Collin, Dallas, Denton and Tarrant Counties in North Texas. The NTTA's governing body is a nine-member board of directors with one director appointed by the Texas Governor and the remainder appointed by the counties served by NTTA. While the NTTA board members are appointed by the Governor and its member counties, the NTTA is a separate legal entity not otherwise controlled by any other local or state agency. The NTTA board members are the final decision makers for the NTTA.

Upon careful review of the Security and Exchange Commission's (the "SEC") proposed Rules 15Ba1 to 15Ba7 (the "Rule"), NTTA requests that the SEC revise its interpretation of the definition of the term "municipal advisor" to exclude appointed board members. Appointed board members should be categorized no differently than elected board members and employees of a municipal entity. Requiring citizen volunteers to submit to SEC reporting and be subjected to a heightened fiduciary obligation would have the unintended consequence of depleting the pool of citizen volunteers who expend their time and expertise as policymakers for the NTTA, one of the largest tollway authorities in the nation and the world.

The SEC is charged with promulgating rules to administer Section 975 of Title IX of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the "Dodd-Frank Act") which amended Section 15B of the Securities Exchange Act of 1934. The Dodd-Frank Act requires municipal advisors to register with the SEC, effective October 1, 2010. The Dodd-Frank Act defines municipal advisor to mean:

a person (who is not a municipal entity or an employee of a municipal entity) (i) that 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) that undertakes a solicitation of a municipal entity.

In Release No. 34-63576 (the "Release"), the SEC provided further clarification on the term "municipal advisor." In response to comments urging the SEC to exclude persons serving as an appointed or elected member of a municipal entity, the SEC limited the otherwise broad language of the Dodd-Frank Act to interpret the term "employee of a municipal entity" to include "a person serving as an elected member of the governing

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body." The SEC further broadened the exclusion to include ex officio members who hold elective office.

The SEC does not conclude, however, that appointed board members should be excluded from the definition of municipal advisor. The Release provided that the SEC's interpretation was "appropriate because employees and elected members are accountable to the municipal entity for their actions." The SEC concluded that it "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."

The NTTA respectfully disagrees with the SEC's rationale for treating appointed board members differently from municipal employees and elected board members. A more reasonable and effective interpretation would distinguish between consultation and solicitation versus policymaking. Board members, appointed or elected, perform the function of policymaking and approving certain decisions of their staff. A board's function is to guide an organization in order to meet its constitutional and statutory objectives. Board members are not advisors or consultants in that they are responsible for making final decisions on behalf of the municipal entity. The duty of every NTTA board member to the Texas State constitution and statutes is not based on appointment, employment or election. Each NTTA board member takes the same oath as elected officials in Texas and, just as important, is subject to liability for fraud and subject to suit for malfeasance. Further, NTTA board members are subject to strict statutory conflict of interest restrictions.

In contrast, advisors such as financial and swap advisors have minimal legal or ethical duties to the municipal entity or the citizens of the municipal entity. Their objective is to receive compensation in return for providing a service. Even when compensation is not immediate or expressly sought, it is fair to conclude that they seek clients for the purpose of profit making and providing expert advice. Their services are critical to municipal entities, both large and small, yet their motivations and their relationship to the municipal entity cannot be compared to a citizen volunteer who is an appointed board member.

The NTTA's appointed board members, who are citizen volunteers, are subject to statutory residency requirements, have strong ties to the community in which they serve and are just as accountable to the citizens they serve as employees and elected officials. These citizens are firmly rooted in their communities and are typically community leaders. As noted above, one director is appointed by the Texas Governor and the remainder are appointed by the counties served by NTTA. The NTTA's board meetings are subject to state open meeting laws.

Citizen volunteers assume great risks when they are appointed board members. They have a heightened risk of being sued as they are decision-makers for an institution that serves the public. Immunity may protect the board members in some instances, but not all. Moreover, just being named in a suit imposes a personal burden on appointed board members. Moreover, as leaders in the community with reputations at stake, appointed board members are at risk of having their reputations impugned for reasons outside of their control. Unlike employees of municipal entities or a large number of elected officials, these costs are not offset by compensation. In many ways, citizen volunteers who serve as appointed board members assume far more risk than employees of municipal entities or compensated elected officials. Accordingly, in important facets, they are more accountable.

The SEC's interpretation will impose a heavy burden on municipal entities such as NTA when the benefits are unclear. Municipal entities rely on the expertise, community leadership and civic responsibility of appointed board members. From large tollway authorities, airports and state

universities to the smallest local economic development corporation, citizen participation on boards is essential to operating important institutions. Volunteer citizens provide an important third view to policymaking. Many are leaders in their professions and provide invaluable information and insight to the municipal entities they serve. Finally, because these volunteers are rooted in their communities, they validate institutions to the citizens they serve as they reflect the composition of the citizenry.

Valuable talent will be lost because prospective NTA board members will not want to subject themselves to the additional regulations of the SEC and the heightened fiduciary duty the Rule imposes. Even those prospective board members who would otherwise provide the required information, will, however, refuse to be subject to the oversight and regulations of the Rule. The extent to which the Rule will dissuade talented people from serving on boards cannot be measured. However, for states and municipal entities such as NTA that rely on volunteers the risk of depleting the pool of talented citizens far outweighs the benefit of requiring appointed board members to register with the SEC.

Thus, NTA requests that the SEC revise its interpretation of the term "employee of a municipal entity" to include appointed board members. All board members perform the function of policymaking and decision-making and should be treated as such. Appointed board members are, in many ways, more accountable than municipal employees and compensated elected officials. Moreover, NTA and other municipal entities will pay a high price for the Rule as it will deplete the pool of talented civic volunteers willing to serve on boards.

Sincerely,


Victor T. Vandergriff
Chairman

Cc: The Honorable Kay Bailey Hutchison, U.S. Senate
The Honorable John Cornyn, U.S. Senate
The Honorable Joe Barton, U.S. House of Representatives
The Honorable Michael Burgess, U.S. House of Representatives
The Honorable Bill Flores, U.S. House of Representatives
The Honorable Kay Granger, U.S. House of Representatives
The Honorable Ralph Hall, U.S. House of Representatives
The Honorable Jeb Hensarling, U.S. House of Representatives
The Honorable Eddie Bernice Johnson, U.S. House of Representatives
The Honorable Sam Johnson, U.S. House of Representatives
The Honorable Kenny Marchant, U.S. House of Representatives
The Honorable Pete Sessions, U.S. House of Representatives