

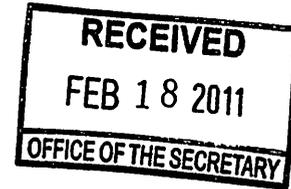


## DU PAGE WATER COMMISSION

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# 639

February 11, 2011



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

Re: File Number S7-45-10

SEC Proposal to Require Appointed Officers of Governmental Entities to Register as "municipal advisors" Release 34-63576

Dear Chairman Schapiro and Members of the Commission:

I am writing to comment on the rules proposed by the Securities and Exchange Commission (SEC) concerning the exclusion of municipal entities and their employees from regulation as municipal advisors under the Dodd-Frank Wall Street Reform and Consumer Protection Act. Specifically, I am concerned with the SEC's narrow interpretation of the exclusion such that only elected but not appointed governing board members and no other persons holding public office would be exempted. By creating artificial distinctions between elected and appointed officials, and between public officers and employees, the proposal fails to consider the identical roles these officials play in the operation of municipal entities, not to mention the negative affect the regulation will have on local government budgets and operations.

When Congress excepted municipal entities and their employees from the definition of "municipal advisor," I believe it did so with the express intent to include all of the entity's officers and employees within the exemption, including governing board members and other persons holding public office, regardless of whether elected or appointed or compensated. Members of governing bodies and other officers of units of local government are the very personnel that deliberate and determine policy and are responsible for the day-to-day operations of the municipal entity. They are the personnel that are advised by traditional, third-party financial advisors. It confuses the issue to suggest that these officials—the very intended beneficiaries of the municipal advisor regulation—somehow are "municipal advisors" themselves. In short, the proposed regulations turn on its head the concept of "advice" and transform decision makers into advisors.

For example, responsibility for the operating and financial policies of the DuPage Water Commission is vested in its Board of Commissioners. The Board of Commissioners consists of: a Chairman, appointed by the Chairman of the DuPage County Board with the advice and consent of the County Board and with the advice and consent of the Board of Commissioners; one Commissioner from each of the six DuPage County

Board districts, appointed by the Chairman of the County Board with the advice and consent of the County Board; and one Commissioner from each DuPage County Board district, appointed by majority vote of the mayors of municipalities which are "included units" and that have the greatest percentage of their respective populations residing within the respective districts.

Similarly, the Treasurer of the DuPage Water Commission is appointed by the Chairman of the Board of Commissioners with the advice and consent of the Board of Commissioners and with the advice and consent of the County Board. The Treasurer is responsible for a periodic review of the financial procedures and practices being employed by staff, and is required to advise the Commission on the adequacy of these procedures and practices. If necessary, the Treasurer is required to formulate recommendations to be used in establishing the Commission's financial policies regarding, among other things, receipt and disbursement of funds, investment practices, accounting and control systems, relationships with the local financial community, and treasury and cash management objectives.

None of these individuals is an employee of the Commission in the traditional sense. These individuals are all appointed officers performing public duties imposed by Illinois state statute and are subject to extensive regulation that is for the most part identical to that applicable to elected public officers. However, according to the Release:

The Commission believes that the exclusion from the definition of a "municipal advisor" for "employees of a municipal entity" should include any person serving as an elected member of the governing body of the municipal entity to the extent that person is acting within the scope of his or her role as an elected member of the governing body of the municipal entity. "Employees of a municipal entity" should also include appointed members of a governing body to the extent such appointed members are *ex officio* members of the governing body by virtue of holding an elective office. 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." [Footnotes omitted.]

*Municipal Advisors.* 76 Fed. Reg. 834 January 6, 2011.

It does not make sense to exempt elected but not appointed members of the entity's governing board, turning traditional advisees into advisors simply because they happen to be appointed rather than elected. Likewise, it does not make sense to subject the many appointed officers of local government that provide advice to their governing

boards on bond issues and investment policy, and who hold positions various titled: treasurer, comptroller, manager, etc., to regulation as a municipal advisor but exempt employees of the municipal entity that engage in the very same activities.

Creating artificial distinctions between elected and appointed officers and between officers and employees does not serve the stated purpose of the Dodd-Frank Act to improve accountability and transparency in the financial system. Virtually every state and local government subjects itself to transparency through a combination of public information and public meeting laws and extensive reporting through the media to their stakeholders. These are coupled with an accessibility that fosters immediate individual contact with those concerned stakeholders.

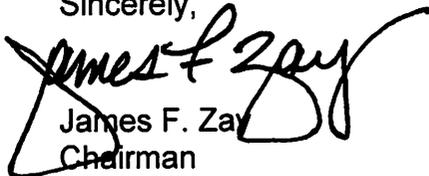
Besides, persons who hold public office—positions of trust within units of local government—subject themselves to state and local ethics laws and common law responsibilities that include potential penalties for misfeasance or malfeasance. Each of these controls protect the public by providing significant and sufficient state and local deterrent to misconduct that another layer of protection does not enhance.

In addition, the complexity of this regulation will deter volunteer service. Local governments depend upon members of their communities to help facilitate and run their operations through varying volunteer activities. Tens of thousands of community volunteers give their time, expertise, and common sense to enable local governments to plan, finance, and manage their operations.

Finally, the cost to local governments and officials to comply with this regulation will be extensive and comes at the worst time for local governments. Not only will local governments have to pay the cost of registering appointed officers, but local governments will also need to hire special counsel to ensure that these officials are properly trained and advised in the intricacies of securities law.

I respectfully request that you reconsider including only elected but not appointed governing board members and no other persons holding public within the definition of "municipal advisor" as proposed in Release 34-63576.

Sincerely,



James F. Zay  
Chairman

cc: Congressional Delegation  
Commissioners  
Terry McGhee, Acting General Manager