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Public Financial Management

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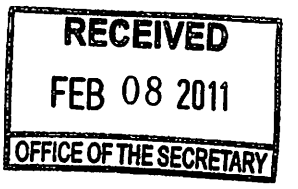

Securities and Exchange Commission
100 F St NE
Washington, DC 20549
Attention: Elizabeth M. Murphy, Secretary
(202) 551-6000

Re: File No. S7-45-10

Dear Commissioners:

The Commission has caused to be published in the Federal Register Release 34-63576 ("Release") proposing new Rule 15Ba-1 et seq. ("Proposed Rule") intended to give effect to Section 975 of the Dodd-Frank Act ("Act").

Public Financial Management, Inc. is the largest financial advisor to state and local governments in the United States and has served that community for more than 40 years. We are registered as a municipal advisor with the Commission and with the Municipal Securities Rulemaking Board.

Public Financial Management believes that in general the Commission's proposed treatment of financial advisors is appropriate under the Act. We always have conducted our business to provide our clients with skilled service and advice that is independent of the motivation of making money in some further way from the client. We believe that recognition of a fiduciary obligation of municipal advisors demands of our competitors a standard of service that we have established for ourselves. Because the Proposed Rule - - mistakenly in our view - - appears to impose municipal advisory status on the government of, and is not limited to, external advisors to, municipal entities, we believe that these additional comments are appropriate, and are intended to be helpful to the Commission.

Public Financial Management is intimately familiar with the personnel of state and local governments who bear the ultimate responsibility of determining the fiscal policies of the governments which are closest to the people. We have high respect for those individuals, particularly those persons who do not seek the public acclaim of election but nevertheless, at personal

sacrifice, are willing to devote their time and talent to the needs of the community.

The Commission doubtless is aware of the apparently universal opposition to the proposed distinction in the Release's definition of "municipal advisor" between elected and appointed members of the governing bodies of municipal entities. Without citation of any reason in the language or the legislative history of the Act, the Commission concludes that the Congress intended that elected persons serving on the governing body of a municipal entity should be exempt individually from the definition of municipal advisor but that persons who are appointed to governing boards will be deemed in that capacity to be municipal advisors and subject individually to the registration and regulatory obligations of the Proposed Rules. This conclusion is premised on the unsupported claim that such persons are "not directly accountable * * * to the citizens". There are insurmountable intellectual and policy obstacles to the dichotomy proposed by the Commission.

To begin with, the words of the Act - - which, even if the Commission believes are not controlling, are a good starting point - - nowhere refer to whether an individual has an elective or appointive relationship with a municipal entity. The statute exempts "employees" of a municipal entity from the definition of municipal advisor. Insofar as the statute is concerned, it is up to the municipal entity to decide whether or not a member of its governing body will be denominated an employee, however nominal his or her compensation. If the Commission were to persist in its misguided dichotomy, state and local governments could respond by designating virtually all, if not entirely all of the members of governing bodies of municipal entities employees of the entities which they serve. And the local government community would observe with some interest if the Commission should seek to have the Department of Justice prosecute a non-elected director of a government entity for a criminal violation of Section 15B by reason of the director's failure to have registered as a municipal advisor immediately upon assuming office.

That image raises other significant concerns of federal-state relations and statutory enforcement. Whatever view one may hold as to the wisdom of the entire scheme of the Act, it is unmistakably clear that the focus of Congress' attention was to elevate the standards of advice to municipal governments. The Commission appears not only to have turned its back on that limited purpose, but to have run far afield. The issuers of municipal securities can carry out the vital function of municipal finance only by the initiative and decision making of their legislatively-created governing bodies. If it is to be

interpreted in accordance with the commentary in the Commission's Release, the Proposed Rule is the first and only federal regulation of which I am aware that requires any of the decision makers of local finance to be federally registered and qualified and further regulated. Although that demand by the Commission does not by its express terms contradict Section 15B(d) of the Exchange Act, it is clear that the Commission's Proposed Rule cannot coexist with the spirit of the Tower Amendment's federal recognition that the source of authority for local financing should not come under the federal thumb.

Finally, it takes no surveys or studies to know intuitively that the Commission's proposed imposition of regulatory burdens on non-elected board members of municipal entities will deplete the population of qualified experts, persons of wisdom, and just plain good citizens who will be willing to contribute their time, and expose their lives, to the burden of navigating a financial course for municipal government in a time of crisis. Beginning with the Continental Conventions that resulted in the Declaration of Independence, there is a proud history of volunteers selected by state governments serving on appointed boards and commissions without being subject to federal licensing. It is our view, to begin with, that the Act is not a charter for the Commission to interfere at all with the governance of municipal financial affairs. But even if the Commission ignores that admonition, it surely should recognize that the proposed distinction between publicly-elected officials and those who are selected by other legislatively-directed methods creates too great a burden to be supported by the unpersuasive reasoning advanced by the Commission. In addition, the Commission should confirm that an employee of a municipal entity who is serving as a designee on the board of another municipal entity is exempt from the definition of municipal advisor.

Very truly yours,

F. John White
Chief Executive Officer

FJW:plj