

PA Housing Finance Agency  
211 North Front Street  
Harrisburg PA 17101

PA Infrastructure  
Investment Authority  
22 South 3<sup>rd</sup> Street  
Harrisburg PA 17101

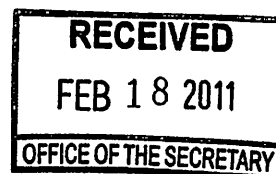
PA Economic Development  
Financing Authority  
Commonwealth Keystone Bldg  
4<sup>th</sup> Floor  
Harrisburg PA 17102

PA Turnpike Commission  
PO Box 67676  
Harrisburg PA 17113

# 704

February 15, 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 Ms. Murphy:

This letter is in response to the notice of proposed Rule 15Ba1 of the Securities and Exchange Commission (the "Commission").

The Pennsylvania Housing Finance Agency ("PHFA"), the Pennsylvania Infrastructure Investment Authority (PENNVEST), the Pennsylvania Economic Development Financing Authority ("PEDFA") and the Pennsylvania Turnpike Commission ("PTC") are public corporations and governmental instrumentalities of the Commonwealth of Pennsylvania (the "Commonwealth"), created for the respective purposes of providing financing for affordable housing, clean water infrastructure, and economic activity and the alleviation of unhealthy conditions for the benefit of the residents of the Commonwealth, and in the case of PTC, for the purpose of constructing and operating the 359-mile Pennsylvania Turnpike Mainline and certain other roads in the Commonwealth. PHFA, PENNVEST, PEDFA and PTC are governed by their respective boards, which, in each case, constitutes the respective agency in accordance with state law. Some of the various board members are public *ex officio* members, serving by virtue of their office within state government, some of the members are elected and others are private citizens who are appointed by elected officials. With the exception of PTC board members who receive nominal compensation, no one receives compensation for their board membership.

Each of the PHFA, PENNVEST, PEDFA and PTC board members has the same duties and each is subject to the same ethics rules and conduct standards in performance of fiduciary duties as any board member. The duties include duty of loyalty, duty of care and duty of fair dealing, in addition to applicable state law governing public officials. Failure to abide by the appropriate standards may lead to criminal sanctions and removal.

The SEC has interpreted the term "municipal advisor" to include appointed board members of municipal entities, while excluding elected *ex officio* members and employees. We understand that employees were specifically excluded in the language of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the "Act"). In fact, the language in the Act is appropriate to clarify that employees of an entity are not covered by the term "municipal advisor." The mere absence of language also excluding board members should not lead the Commission to conclude that Congress intended them to be covered by the Rule. Exclusion of all board members from characterization as "municipal advisor" is both necessary and appropriate and consistent with a common sense reading of the language.

First, creating artificial distinctions between board members is wholly inconsistent with state law. The same ethics rules are applicable under state law and the same “business judgment rule” is applicable to determining the standard of care to be exercised by a board member regardless of who appointed the member to the board - voters or elected officials. As a matter of public policy, creating a different standard among board members is completely arbitrary, and potentially very expensive. Many public issuers have some type of insurance coverage for directors and officers, and they would now need to grapple with new classifications and different coverage standards.

Secondly, the Commission’s determination that board members of municipal entities act as “municipal advisors” within the meaning of the underlying statute fundamentally misstates the nature of board membership. Municipal board members and commissioners do not serve to advise municipal entities with respect to financial products, securities, or other matters; rather their role is to oversee an entity’s internal operations and authorize transactions on the recommendations of staff and external advisors. These members are not “advisors” in the commonly understood sense of the word; rather, they are the decision makers.

Thirdly, in essence, the governing body and the municipal issuer entity are one and the same, not only for practical, operational purposes, but for formal legal purposes: customarily, boards and commissions sue and are sued, complain, defend and contract in the name of the municipal entity. Any definition of “municipal advisor” that includes a municipal board member or commissioner creates contradiction in which such a member or commissioner is deemed to advise him- or herself. Accordingly, we share the industry recommendation that the definition of “municipal advisor” explicitly exclude all members of municipal governing bodies, just as municipal entities and their employees are already excluded.

We recommend that appointed, non-elected, and elected *ex officio* members of municipal governing boards alike be explicitly excluded from the definition of “municipal advisor.” Failure to do so would place an unreasonable administrative burden on municipal entities, which rely on volunteer board service, ultimately affecting candidate quality and willingness to serve. Municipal boards with shorter or variable terms or a staggered term structure, such as the PHFA, PENNVEST, PEDFA and PTC Boards, would encounter special difficulty meeting this regulatory burden, as each change in board constitution would require the submission of one or more new MA-I forms, each approximately thirty pages in length, and associated labor and fee expenditures.

Of further concern is the broad reaching application of the Rule to members of boards and commissions of “obligated persons”, which are entities participating in pooled financing transactions or otherwise receiving financing through conduit transactions. For the same reasons set forth above, the nature of board membership is counter to the Commission's premise. The individual board members act in concert as a whole, not as individuals. Individual members of nonprofit boards and commissions, municipal authorities and municipal governing bodies should not be viewed as “municipal advisors” unless they actually perform such functions in their professional capacity. Mere membership on a board does not constitute such functional performance. In addition, the Rule will impose added expense and unnecessary burdens on the entities whose board members must register.

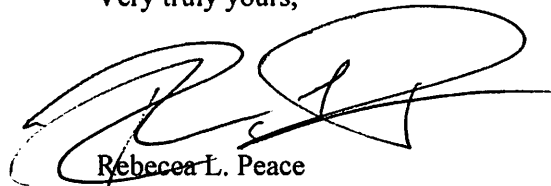
The Commission should continue to enforce the registration requirement for any individual who happens to serve on a board or commission if they truly are providing services as a “municipal advisor”. This determination will, however, be based on the individual's professional capacity, and will not be triggered merely because they sit on a board or commission.

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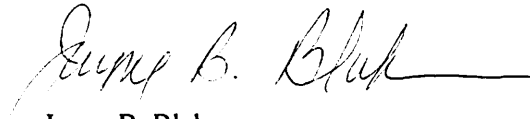
In the event that the Commission elects not to exclude appointed members of municipal governing bodies or nonprofit boards, we share the recommendation offered by other commenter's, that Form MA-I be substantially revised in order to accommodate applicants who are not paid employees of municipal advisory firms. In its proposed form, entire sections of Form MA-I would not generally apply to appointed members of municipal governing bodies or nonprofit boards, namely Item 1 Part A (requiring a CRD number); Item 1 Part B ("The Applicant's Municipal Advisory Firm") and Item 4 (requiring inclusion of "the municipal advisory firm noted in Item 1"). Furthermore, for applicants who are uncompensated members of municipal governing bodies or nonprofits, it is unclear how and where to classify volunteer board service and unrelated employment activities in Items 4 and 5.

Thank you for your consideration.

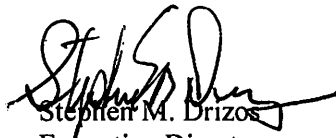
Very truly yours,



Rebecca L. Peace  
Chief Counsel  
Pennsylvania Housing Finance Agency



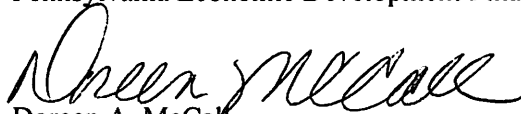
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