

# NEFA

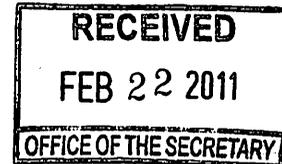
NEBRASKA EDUCATIONAL FINANCE AUTHORITY

# 712

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February 16, 2011

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



Re: File No. S7-45-10

Dear Ms. Murphy:

This letter is in response to the request of the Securities and Exchange Commission (the "Commission") for comments on Rules 15Ba1-1 through 15Ba1-7, and accompanying Forms (the "Proposed Rule"), to require municipal advisors to register with the Commission as set forth in Release No. 34-63576 (the "Release"). The Proposed Rule implements the requirements of Section 975 of Title IX of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the "Act"). The Release includes within the scope of "municipal advisors" appointed members of "municipal entities," apparently because of a concern that such appointed members are not accountable for their actions. Nebraska Educational Finance Authority ("NEFA") strongly disagrees with the position taken by the Release, both in substance and in terms of the perhaps unintended, but nonetheless materially damaging consequences for municipal entities such as NEFA. I write respectfully to urge the Commission to reverse its position regarding appointed members by treating all members of municipal entities, whether elected or appointed, as not being "municipal advisors."

NEFA was created by the Nebraska Educational Finance Authority Act (Article 17, Reissue Revised Statutes of Nebraska, 2008, as amended) as a public instrumentality of the State of Nebraska performing an "essential public function" of the State, namely, to assist Nebraska's private colleges and universities to finance their educational capital projects by issuing educational facilities revenue bonds on their behalves. NEFA consists of seven unpaid volunteer members, each of whom, by law, is appointed by the Governor for set terms from statutorily-identified professions and businesses pertinent to the financing of projects for institutions of higher education. **NEFA's statute expressly provides that the Governor may remove any of its members "for misfeasance, malfeasance or willful neglect of duty or other cause...."**

The Commission is rightly concerned about member accountability and, implicitly, the integrity with which members of NEFA and like municipal entities discharge their duties and responsibilities. NEFA would like to point out that elected officials unfortunately can lack scruples, and that they may well not be called to task until a succeeding election. An appointed member would be subject to much more expeditious removal.

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While NEFA is the “municipal entity,” NEFA obviously could not function and perform its essential public function without its members. Each member of NEFA is a statutorily-required integral component of NEFA. Each member is appointed by the Governor and may be removed by the Governor for cause. Accordingly, each member is accountable directly to the highest elected official of the State of Nebraska. It is simply incorrect to disregard Nebraska’s statutory scheme by disclaiming or discounting this accountability.

The members of NEFA meet at least twice a year to consider financing applications from Nebraska’s private institutions of higher education, and discharge their responsibilities by discussing, questioning, deliberating and finally deciding matters pertinent to such applications and related NEFA business. NEFA is its members, and if its members are “advising” anyone, it is themselves as NEFA. NEFA could not function as a credible issuer of municipal securities without such free give-and-take participation by its members.

I have informally polled NEFA’s members about their willingness to remain in their positions should they, as appointed members, be characterized as “municipal advisors” subject to the Commission’s regulation and the accompanying time-consuming, privacy-invading and costly compliance requirements. I am deeply concerned that the proposed imposition of “municipal advisor” regulation on appointed members will, in the short term, effectively squelch member participation in NEFA’s deliberations. The paramount concern, however, is that NEFA will lose a quorum of its existing members and that the Governor will be unable to find qualified public-spirited individuals willing to take their places in the face of the “municipal advisor” rules.

It is critical that the Commission understand that NEFA’s appointed members comprise NEFA, are not advisors to NEFA and that, as individuals, each is fully accountable to the Governor of the State of Nebraska—and that the “municipal advisor” element of the Proposed Rule, if it becomes final in its existing form, may impede if not destroy the ability of NEFA and similarly situated municipal entities to perform their essential public functions under their respective state laws. Accordingly, NEFA respectfully urges that the Commission not include appointed members of NEFA and similarly situated municipal entities within the definitional and regulatory scope of “municipal advisors.”

NEBRASKA EDUCATIONAL FINANCE  
AUTHORITY

  
Linda Beaver, Executive Director