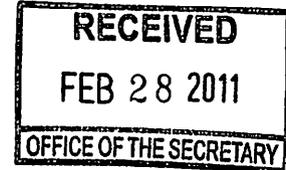


#714

February 16, 2011



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

**BOARD MEMBERS:**

**STEPHEN C. DIACO, Esq.**  
CHAIRMAN

Re: File Number S7-45-10 – Registration of Municipal Advisors

Dear Madam Secretary:

**DONALD E. PHILLIPS**  
VICE-CHAIR

The Tampa-Hillsborough County Expressway Authority (THEA) is an Expressway Authority created pursuant to the provisions of Chapter 348.50, Florida Statutes. Its duties and responsibilities are broadly described in statute but generally provide that the Authority may acquire, construct, hold, operate and maintain an expressway system, and make, issue or refund bonds or other evidence of indebtedness to finance such expressway system. The Authority is governed by a seven member Board of Directors (hereinafter referred to as “Members”), all serve without compensation, four of whom are appointed by Florida’s Governor.

**REBECCA J. SMITH**  
SECRETARY

**DON SKELTON**  
FDOT DISTRICT SECRETARY

**THOMAS SCOTT**  
CITY COUNCIL CHAIR

Gubernatorial appointees come from a variety of walks of life and are engaged in various business and professional endeavors such as the practice of law, real estate development, and construction contracting. One of the Members is a community relations officer for a bank but does not engage in the business of providing investment advice, sales or brokerage of financial products or banking. Members do indeed “participate in” decisions related to the “issuance of municipal securities” as part of their duties as Members. However, rather than acting as municipal advisors, Members competitively procure financial advisory services to assist them in fulfilling their statutory management and oversight responsibilities to THEA. THEA Board Members do not fit into any of the primary types of municipal advisors – financial advisors; investment advisors; or third-party marketers and solicitors – that the Commission intends to target with these rules.

**LES MILLER**  
COUNTY COMMISSIONER

**CURTIS STOKES**  
CITY COUNCILMAN

**PATRICK T. MAGUIRE, Esq.**  
GENERAL COUNSEL

Members are subject to the same stringent financial disclosure and ethics requirements as are applicable to elected officials in the State of Florida. Art. II, §8, FLA. CONST.; Section 112.311, *et seq*, Florida Statutes. As a result of Members being subject to these statutory ethics provisions, they are imbued with a fiduciary duty to THEA and to the public they serve. If any Member did in fact engage in the business of

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providing municipal advisory services, such Member would be precluded from providing such services to THEA because doing business with one's own agency is strictly barred by state ethics laws as well as the Authority's own ethics policy.

I am convinced the proposed rules would have adverse consequences to this Board and to the state and local governments to which it is responsible:

- Qualifications in the area of financial and municipal advisory services would be imposed on current and future Members that are beyond the qualifications in THEA's enabling statute. Such qualifications requirements would have minimal relationship to the vast majority of Members duties and would create an unreasonable and overly burdensome test for service.
- The business disclosure requirements attendant to registration with the Commission would have a serious chilling effect on those considering whether to make the commitment to become a volunteer servant because such disclosures go far beyond those currently required of Members.
- The time and expense associated with registration imposes an unreasonable burden on volunteer Members such as those serving THEA.
- Local governments currently are struggling to meet increasing demands in an environment of decreasing financial resources. Application of municipal advisor registration requirements to appointed members of local government boards will inevitably result in a narrower pool of willing participants unless local governments can identify additional resources to compensate members now volunteering their services in order to mitigate the increased actual costs to Members as well as potential adverse effects of having reduced business opportunities or having to forego others as a result of the enhanced registration and disclosure requirements imposed by the rules.
- There is little logic to treating employees of a local governmental entity serving a local board, members of a local board who are elected to their seats, and members of a local board who are appointed to their seats by elected officials, in a substantially different manner.
- A likely unintended consequence of subjecting both recipients of municipal advisory services as well as actual providers of such services to the same regulatory scheme is that the lines of responsibility will be so blurred that the intended protections registration should afford the public will be severely diminished.

As General Counsel for THEA I ask that the Commission carefully consider the foregoing and respectfully request that the Commission's final rules in this matter clearly state that all governing board members, regardless of

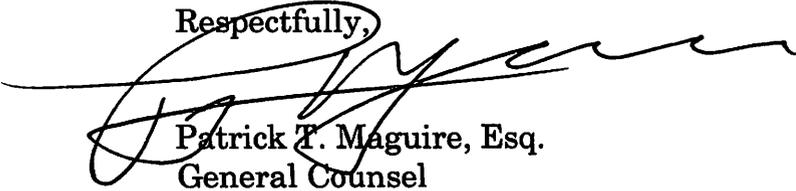
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whether they are elected or appointed, are exempt from application of the rules and that all statements made or positions taken by any governing board member of a municipal entity, will not be considered to be advice if the statements are made or actions are taken as part of the fact-finding, deliberative or decision making process of the governing board.

Respectfully,



Patrick T. Maguire, Esq.  
General Counsel

cc: Hon. Rick Scott, Governor of Florida