

Dormitory Authority
State of New York

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Alfonso L. Carney, Jr., Chair
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February 17, 2011

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



Re: Release No. 34-63576
Comments Regarding the Registration of Municipal Advisors

Dear Ms. Murphy:

The Dormitory Authority of the State of New York ("DASNY") submits these comments regarding the permanent rules proposed by the Securities and Exchange Commission (the "SEC") on December 20, 2010 to implement the provisions of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the "Dodd-Frank Act") as they relate to the registration of municipal advisors. Specifically, for the reasons set forth below, DASNY believes that the definition of municipal advisor should be revised to exclude all members of DASNY's board from the ambit of the rules.

Overview of DASNY and Relevant State Statutes

DASNY is a body corporate and politic constituting a public benefit corporation of the State of New York that was created by the Dormitory Authority Act (Titles 4 and 4-B of the Public Authorities Law of the State of New York). One of DASNY's principal statutory functions is the issuance of tax-exempt conduit bonds for a variety of not-for-profit and governmental entities, including public and private colleges and universities, private hospitals and nursing homes, public schools and various departments and agencies of the State of New York. DASNY currently has approximately 43.6 billion dollars of bonds outstanding for the benefit of these entities.

Pursuant to the Dormitory Authority Act, DASNY's board consists of eleven members as follows:

- The New York State ("State") Commissioner of Education, the State Commissioner of Health and the State Director of the Budget. Each of these members serves in an *ex officio* capacity but may designate employees of their respective agencies to attend meetings in their stead.
- The State Comptroller, a state-wide elected official, (or his or her appointee).

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- One member appointed by the Temporary President of the State Senate and one member appointed by the Speaker of the State Assembly.
- Five additional members appointed by the Governor with the advice and consent of the Senate.

All of the appointed members of the Board are volunteers who serve without compensation.

The State Public Authorities Law (“PAL”) § 2824(1)(g) specifically requires all members of the Authority’s board to:

“perform each of their duties as board members, including but not limited to those imposed by this section, in good faith and with that degree of diligence, care and skill which an ordinarily prudent person in like position would use under similar circumstances, and may take into consideration the views and policies of any elected official or body, or other person and ultimately apply independent judgment in the best interest of the authority, its mission and the public.”

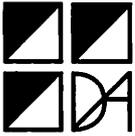
In furtherance of this fiduciary obligation, PAL § 2824(1)(h) requires each member to execute an acknowledgment of his or her fiduciary responsibilities, duty of loyalty and care to the Authority, and commitment to the Authority’s mission and the public interest. This section of law also requires board members to participate in State-approved training regarding their legal, fiduciary, financial and ethical responsibilities as directors of the Authority.

Each of the ex officio members of the board, as well as the State employees serving as their representatives, are subject the ethics provisions of the State’s Public Officer’s Law (see Public Officers’ Law, § 73, 73-a and 74). Appointed members to the board are subject to sections 73-a and 74 of the Public Officers Law.

Section 73 of the Public Officers law regulates and limits outside business and professional activities by employees of the State (including the *ex officio* members and their representatives). Section 73-a requires all members of DASNY’s board, including the unpaid members, to file detailed financial disclosure statements with the State’s Public Integrity Commission and §74 requires these same individuals to adhere to a statutory Code of Ethics. Finally, the Authority has adopted a Code of Ethical Conduct for its Members as required by the rules of the Public Integrity Commission (NYCRR § 932.5)

Comments

The proposed new rule applies to “municipal advisors” who (i) provide advice to or on behalf of a “municipal entity” or an “obligated person” with respect to municipal derivatives, guaranteed investment contracts, and investment strategies or the issuance of municipal securities,



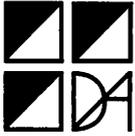
including advice with respect to the structure, timing, terms, and other similar matters concerning such financial products or issues, or (ii) undertakes a solicitation of a “municipal entity” or “obligated person. In addition, although the Dodd-Frank Act expressly excludes a municipal entity and the employees of the municipal entity from the definition of municipal advisors, the proposed rule would define “municipal advisor” to include all non-employee members of the issuer, other than elected officials who serve on the board in an ex-officio capacity.

In drawing its distinction between elected and non-elected members of the governing body of the municipal issuer, the SEC stated:

“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 “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.” [emphasis added]

With regard to the above, DASNY notes that the proposed rule is less than clear whether the *ex officio* members of DASNY’s board and their designated State employee representatives would be required to register under the proposed rule as they are employees of the State, not DASNY, and are not elected to their positions.

In any event, because the laws of the State make it very clear that **all** members of DASNY’s board (the ex officio State officers, the State employees acting as representatives of these State officers and the unpaid volunteer appointed members) owe a fiduciary duty to DASNY and are subject to the State’s ethics law, the above emphasized concern of the SEC is clearly not applicable to members of DASNY’s Board. Rather, State law makes it very clear that all of DASNY’s Board members are directly accountable to the citizens of the State who are served by DASNY. DASNY therefore strongly believes that the proposed rule should be revised to clearly exclude all members of the Authority’s board from the definition of “municipal advisor.”



DASNY is also very concerned that if the proposed rule is not changed to exclude volunteer board members from the definition of municipal advisor, it will be even more difficult to find competent individuals willing to volunteer to serve on the Authority's board. These unpaid board members are already subject to the State's financial disclosure and ethics rules. In addition, as members of DASNY's Board, they are already exposed to various liabilities, including potential claims under applicable securities law. To further increase the burdens and liabilities already placed on these volunteers, will surely make it more difficult, if not impossible, to recruit qualified individuals to become DASNY board members.

DASNY is also concerned that requiring members of its board to register as municipal advisors could send the wrong message to the entities for which it issues bonds. When DASNY's Board authorizes the issuance of its conduit debt for the benefit of not-for-profit and governmental entities, it is not endeavoring to provide financial advice to these entities. Rather, the Board seeks to evaluate whether the issuance of such bonds is in furtherance of the public purposes that DASNY was created to carry out. In this capacity, DASNY's board focuses on whether the projects being financed are in the public interest and comport with the applicable requirements of State law and federal tax law. While it is true that members of the DASNY board may ask questions regarding the structure and other terms of the proposed indebtedness as part of the bond issuance process, they do so not in the capacity as financial advisors to the entities for which the bonds are being issued but rather, to ensure that proposed bond issuance is in furtherance of the public interest and statutory mission of DASNY. In other words, when DASNY's board considers any particular financing, the members of the board are not acting as advisors to any entity. Instead, they are acting as the members of a deliberative body that is charged with performing the statutory function of authorizing the issuance of conduit debt by DASNY.

For the foregoing reasons, DASNY urges to the SEC to revise the above rule to exclude all members of DASNY's board from the definition of "municipal advisor."

Very truly yours,

Paul T. Williams, Jr.
President