



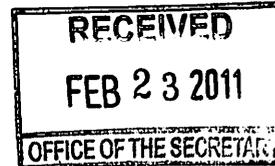
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Ms. Elizabeth M. Murphy

Secretary
U.S. Securities and Exchange Commission
100 F Street, NE
Washington, DC 20499-1090



February 18, 2011

Re: SEC Proposal to Require Board Members of Municipal Entities to Register as Municipal Advisors.
File No.: S7-45-10; Release No. 34-63576

Dear Ms. Murphy:

The United States Securities and Exchange Commission has recently caused to be published in the Federal Register Release 34-63576 (the "Release") proposing new rules that purport to give effect to portions of the Dodd-Frank Act and that would require certain board members of municipal entities to register with the SEC. The Release requests comments on various provisions of the proposed rules.

The Minnesota Association of Governments Investing for Counties (the "MAGIC Fund") is a Minnesota joint powers entity in the form of a common law trust established in 1990 to provide a vehicle to allow its participants to jointly invest their respective funds in accordance with the laws of the State of Minnesota. This entity would come within the definition of a local government investment pool ("LGIP") as that term is used in the Release. Participants in the MAGIC Fund must be Minnesota counties or instrumentalities of counties. The MAGIC Fund contracts for all services and has no employees of its own.

Pursuant to its existing Declaration of Trust, the MAGIC Fund is governed by a Board of Trustees composed of nine Trustees. Four of the Trustees are county treasurers appointed by the President of the Minnesota Association of County Auditors, Treasurers and Finance Officers (MACATFO) to staggered two-year terms. In some cases, those treasurers will be elected and in others they will be appointed by a county board. Four of the Trustees are elected county commissioners appointed by the President of the Association of Minnesota Counties to staggered two-year terms. These eight appointed members appoint a ninth Trustee to a two-year term upon recommendation by the Minnesota Government Finance Officer's Association ("GFOA"). The GFOA Trustee may or may not be an employee of a municipal entity or an elected official of a county. The Executive Director of the AMC and the President of the MACATFO may chose to serve as ex officio members without a vote. Vacancies in the office of Trustee are filled by the appointing authority specified above. While Trustees are reimbursed for actual expenses, they are not compensated for their service.



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The relevant provisions of the Dodd-Frank Act define the term "municipal advisor" to mean a person "who is not . . . an employee of a municipal entity". 15U.S.C. 78o-4(e)(4)(A) A county is a municipal entity. Thus, it appears that if an employee of any county serves on the board of a LGIP, that person will not be considered a municipal advisor, even though he or she is not an elected official and is not an employee of the LGIP itself.

The provisions of the Release specify that the exclusion from the definition of municipal advisor shall 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 of an elected member of the governing body of the municipal entity. The four county commissioners serving as Trustees of the MAGIC Fund are county commissioners of participant counties. The same would be true for the elected treasurers. They are elected to those positions by the voters of their respective counties. However, if a vacancy occurs in an elected county official position, the remaining commissioners may appoint a person to fill that vacancy until a successor is elected and qualifies. We believe the intention of the Release is to allow the exclusion to apply to those elected officials while they serve on the board of the MAGIC Fund even though they are not directly elected by the voters to serve as a Trustee on that LGIP. The confusion arises because the Release refers to elected officials of "the" municipal entity. Here, they are directly elected officials of participant counties but are not directly elected by the voters to serve as Trustees of the MAGIC Fund.

The proposed rules need to be clarified to make clear the following:

- 1) If an employee of a county that is a participant in an LGIP serves on the board of that LGIP, the employee exclusion continues to apply and that Trustee is excluded from the definition of municipal advisor;
- 2) If an elected county commissioner or other elected official (or an appointed member filling a vacancy in that office) of a county that is a participant in an LGIP serves on the board of that LGIP, the elected official exclusion continues to apply and that Trustee is excluded from the definition of municipal advisor;
- 3) An ex officio nonvoting member of the board who is designated as an ex officio Trustee under the articles, bylaws or declaration of trust of the LGIP as a result of his or her position should be excluded from the definition of a municipal advisor.



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In reviewing these issues, the commission should be cognizant of the duties of the Trustees. Their duties are to do those things necessary and proper for conducting the affairs of the LGIP or promoting the interests of the LGIP and its participants. In the case of the MAGIC Fund, the Trustees hire an administrator to carry out specified duties, an advisor to supervise and carry out the investment program with respect to investment of assets, a custodian to carry out custodial bank functions on behalf of the Trust, an accountant to audit the program and legal counsel to provide legal advice. The Trustees supervise the work done by the Trust's hired professionals rather than trying to do that work themselves. If those duties are not properly performed, the professionals are replaced. Certain of these professionals may themselves be included within the definition of municipal advisor.

Moreover, each of the Trustees, whether elected, appointed or an employee, has the same fiduciary duty to the participant counties. As employees and elected officials of the participating counties, they are directly accountable for their performance to not only the citizens of the counties from which they come but to the citizens of all the counties which are participants.

If the proposed rules are interpreted to bring these employees and elected county officials within the definition of municipal advisors, it will literally be impossible to fill these spots. County commissioners and other elected county officials represent the people who elect them. They have diverse backgrounds that may not be finance related. The time and expense of getting the licensure will be enough to drive off most persons who would otherwise fill these positions. If the rules do not specifically provide exclusions for all county commissioners and other elected county officials, treasurers, auditors and ex officio members designated as a result of their positions, we would respectfully request that these proposed rules either be amended to so provide or not be adopted.

Sincerely,

A handwritten signature in black ink that reads "Fran Windschitl". The signature is written in a cursive style with a horizontal line underneath the name.

Fran Windschitl
Chair
MAGIC Fund