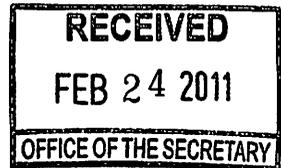


**COMMENTS OF THE**  
**ILLINOIS FINANCE AUTHORITY**  
**FEBRUARY 22, 2011**

**Securities and Exchange Commission Proposed Rule  
on Registration of Municipal Advisors  
(File No. S7-45-10)**



The Illinois Finance Authority (“IFA”) respectfully submits these comments to the Securities and Exchange Commission (“SEC”) regarding the definition of ‘municipal advisor’ under the “Proposed Rule” (17 CFR Parts 240 and 249; Release No. 34-63576; File No. S7-45-10; RIN 3235-AK86; pp. 40-41) pursuant to the new authority in Section of 975 of Title IX of the Dodd Frank Wall Street Reform and Consumer Protection Act. The IFA requests that the SEC specifically exclude appointed members of a governing body of a municipal entity from the proposed definition of ‘municipal advisor.’

Under the Proposed Rule, employees of municipal entities as well as elected members of the governing body of a municipal entity are already specifically excluded from the definition of ‘municipal advisor.’ The SEC believes that appointed members of a governing body of a municipal entity should be defined as ‘municipal advisor’ due to its concern that appointed members “are not directly accountable for their performance to the citizens of the municipal entity.” Proposed Rule, p. 41. The IFA disagrees with the SEC’s position on this point.

***Governmental Conduit Issuers: A Construct of Federalism***

Federally tax-exempt conduit finance is both a construct of federalism and a private-public partnership that has harnessed private sector capital investment to national public policy priorities articulated in the federal tax code. These federal policy priorities encourage capital investment in not-for-profit institutions including hospitals and continuing care retirement communities, cultural institutions and higher educational institutions; small and mid-sized manufacturers (industrial revenue bonds-not to exceed \$10 million); beginning farmers (not to exceed \$477,000); projects that safely dispose of solid waste or that ensure the distribution of clean water; multifamily housing; freight transfer facilities; and a variety of other projects. The benefit of federally tax-exempt conduit financing to the borrower is primarily reduced interest costs for capital projects.

The policy benefits for the nation and the State in which the project is located is the retention and creation of jobs, the general promotion of economic development, as well as promotion of the aforementioned national policy priorities. The borrower, not the conduit issuer, is responsible for the payment of the principal and interest under federally tax-exempt conduit financing. However, these federal benefits are not delivered directly from the federal government to an individual borrower. Instead, these federal benefits are delivered through the mechanism of a state or municipal (local) conduit issuers created by State law and governed by appointed, often volunteer, boards. Conduit issuers exist within architecture of state policy and statutory priorities, including those of accountability and transparency, created by governors, state legislatures, and state courts. This is the case in Illinois with the IFA.

Moreover, a primary benefit to all borrowers of tax-exempt financing is the reduced cost of borrowing money. The savings are used to stimulate the economy and to acquire, construct and equip

qualified projects. The Proposed Rule change has the effect of substantially increasing the cost of each financing, requiring increased insurance premiums covering increased liability of Board Members and legal costs, possibly eliminating the entire savings to a borrower in the tax-exempt market.

### ***The Illinois Finance Authority – an example of a conduit issuer***

The IFA is a body politic and corporate of the State of Illinois, created and governed by the Illinois General Assembly through the Illinois Finance Authority Act, 20 ILCS 3501/801-1, *et seq.* (the “Act”). The IFA’s major governmental function is that of a state issuer of federally tax-exempt conduit debt. In calendar year, 2010, the IFA issued \$3.1 billion in federally tax-exempt conduit debt. In calendar year 2009, the IFA issued \$4.7 billion in federally tax-exempt conduit debt.

Under the Act, the IFA is governed by a fifteen (15) member board, appointed by the Governor subject to the advice and consent of the Illinois Senate. IFA board members must be “persons of recognized ability and experience in one or more of the following areas: economic development, finance, banking, industrial development, small business management, real estate development, housing, health facilities financing, local government financing, community development, venture finance, construction and labor relations.” 20 ILCS 3501/801-15. The Chairman of the IFA is selected directly by the Governor. The Executive Director of the IFA is nominated by the Governor and appointed by the IFA board members. The Act also sets out limited terms for these positions: the Chairman serves a two-year term; the board members serve for staggered three-year terms; and the Executive Director serves for a one-year term. Any official action by the IFA board requires the approval of at least eight members present in the same physical location. The Governor may remove any IFA board member for incompetence, neglect of duty, or malfeasance in office.

IFA board members are volunteers who serve without compensation, save for reimbursement for travel expenses, based on a belief in public service. Under the Act, IFA board members have the authority to hire staff and vendors, including financial advisors, also known as ‘municipal advisors.’ The IFA members meet once a month, or more, in open session, to consider and approve conduit finance projects, prepared by IFA staff and reviewed by IFA financial advisors, critical to the State of Illinois and the nation as a whole. The lengthy project materials prepared by the IFA staff for IFA board member consideration are posted online at [www.il-fa.com/public](http://www.il-fa.com/public). The State of Illinois and the nation as a whole directly benefit from the decades of experience in a wide variety of professions provided by the IFA’s volunteer board members. See attached list of brief IFA board member biographies. Under the conduit approval and issuance process undertaken by the IFA, IFA board members may be the clients of ‘municipal advisors’ but IFA board members certainly do not act as ‘municipal advisors.’ The IFA board members have a fiduciary duty to the IFA as an organization and are thus accountable to the IFA for their actions in their official capacity.

At the January 18, 2011 meeting, IFA staff informed the IFA board members of the potential adverse consequences resulting from the adoption and implementation of the Proposed Rule both to the IFA as an organization and to the board members as individuals. The IFA board authorized IFA staff to proceed with drafting these comments.

### ***Multiple Layers of Direct Accountability for Actions and Performance***

As a conduit issuer, IFA board members are subject to the following (but not exhaustive) multiple layers of direct accountability for their actions and performance in their official capacity:

1. ***Accountability to the Federal Government:*** The Internal Revenue Service of the United States Treasury Department regularly asserts its right to audit conduit bond issues to determine that the requirements for the tax exemption have been met. Poor performance by board members of a conduit issuer could mean penalties, interest and compliance costs for the issuer. In addition, if conduit issuers are not meeting the national priorities established by Congress under the tax code, the federal benefits delivered through the conduit issuers could be reduced or eliminated.
2. ***Accountability to the Governor:*** Illinois Governor Pat Quinn may, in his discretion, choose not to re-appoint members of the IFA. In addition, and as noted above, the Illinois Governor may remove any IFA board member for incompetence, neglect of duty, or malfeasance in office. The Illinois Governor is directly accountable for his actions and performance to the citizens of Illinois.
3. ***Accountability to the Illinois Legislature:*** The appointment of IFA board members is subject to the advice and consent of the Illinois Senate. The Illinois Senate has a robust view of its powers of advice and consent. See Senate Resolutions 2 and 25, 97<sup>th</sup> Illinois General Assembly. The members of the Illinois Senate are directly accountable for their actions and performance to the citizens of Illinois.
4. ***Accountability to the Illinois Auditor General:*** The actions and performance of IFA board members is subject to an annual statutory compliance audit and a financial audit by the Illinois Auditor General, an Illinois Constitutional Officer appointed by the Illinois Legislature. The audit process conducted by the Illinois Audit General's Office is lengthy and exhaustive. The audit process culminates in the consideration and approval in a public meeting of both the compliance and financial audits by the Legislative Audit Commission, a bipartisan body representing both chambers of the Illinois General Assembly.
5. ***Accountability to the Illinois Attorney General:*** The actions and performance of the IFA board members is subject to oversight by the Illinois Attorney General, the chief law enforcement officer of the State. The Illinois Attorney General is directly accountable for her actions and performance to the citizens of Illinois.
6. ***Accountability and Transparency under Illinois Law:*** In addition to the direct accountability mechanisms described above, the actions and performance of IFA board members are also subject to the Freedom of Information Act ("FOIA"; 5 ILCS 140/1 *et seq.*), the Open Meetings Act ("OMA"; 5 ILCS 120/1 *et seq.*), the Procurement Code (30 ILCS 500/1-11 *et seq.*) and the State Officials and Employees Ethics Act ("Ethics Act"; 5 ILCS 430 /1-1 *et seq.*). The Ethics Act also created the Office of the Executive Inspector General which also has jurisdiction over IFA board members. The Attorney General also

has enforcement authority for FOIA, OMA, the Procurement Code and the Ethics Act.

Based upon the above list, which is far from exhaustive, IFA board members are arguably subject to more direct accountability for their individual actions and performance than if they were elected officials or employees of a municipal entity in most other states. In addition, Illinois State elected officials and State employees are, in fact, subject to many of the same accountability measures described in items 2-6, above, as IFA board members. Therefore, the distinction drawn by the SEC in the Proposed Rule between elected officials and government employees, who are excluded from the definition of ‘municipal advisor’ and appointed members (presumably IFA board members), who are subject to regulation and liability as ‘municipal advisors’ is without logic or merit. Both IFA board members and State elected officials are subject to detailed standards that require regular arduous and thorough third-party reviews.

***Conclusion:***

Under the Proposed Rule, it appears that the SEC will view individual members of the IFA volunteer board as “municipal advisors” subject to SEC regulation as well as the potential liability that comes with such regulation merely by virtue of their voluntary public service. If adopted and implemented, the Proposed Rule will undermine the IFA’s ability to fulfill both its State statutory mission as well as its federal policy missions by chilling the desire of qualified board members to serve as volunteer board members. Without willing, qualified volunteer board members appointed by the Governor and confirmed by the Illinois Senate pursuant to the Illinois Constitution and Illinois statute, the IFA would cease to operate. Finally, in the event that the IFA board is able to find board members to serve and muster a quorum for official action, the cost of additional regulatory compliance associated with the Proposed Rule would increase the cost of conduit issuance to a point where it would outweigh the value of the tax exemption. That would severely and negatively impact the IFA’s mission to retain and create jobs and to promote economic development in Illinois.

The IFA would not be the only Illinois Authority to suffer the consequences that the Proposed Rule would have on board member recruitment and retention. The Illinois Housing Development Authority, the Metropolitan Pier and Exposition Authority, The Illinois Student Assistance Commission, the Southwestern Illinois Development Authority, and the Illinois Tollway –to name just a few- will be negatively impacted.

Accordingly, the IFA asks that appointed members of a municipal entity be excluded from the definition of ‘municipal advisor’ under the Proposed Rule.

Respectfully submitted,



Christopher B. Meister  
Executive Director, Illinois Finance Authority

**Chairman: William A. Brandt, Jr.**

Mr. Brandt is President and CEO of Development Specialists, Inc. ("DSI"), a firm specializing in management, consulting and turnaround assistance to troubled or reorganizing enterprises. He is widely recognized as one of the foremost practitioners in the field of corporate restructuring, bankruptcy and related public policy issues. He currently resides in the Chicagoland area. His term as Chairman expires 7/1/12.

**Vice Chairman: Michael W. Goetz**

Mr. Goetz is currently the Executive Director of the Laborers' Home Development Corporation (1997-Present). His experience includes: Director of the Midwest Region Foundation for Fair Contracting; Vice President of the Chicago Corporation; and Executive Director of the Illinois Public Treasurer's Investment Pool. He currently resides in Springfield, Illinois. His term as a member of the board expires on 7/21/11.

**Dr. William Barclay**

Dr. Barclay is an Adjunct Professor, Liautaud Graduate School of Business at the University of Illinois at Chicago. He is retired from the Chicago Stock Exchange. Dr. Barclay resides in the Chicagoland area. His term as a member of the board expired on 7/21/08.

**Gila J. Bronner**

Ms. Bronner is President and CEO of Bronner Group, LLC, multi-disciplined professional services company that delivers comprehensive strategy, transformation and accountability consulting services to state and local governments and federal agencies. Ms. Bronner is a highly respected expert on auditor independence and related accountability and internal control issues and is a nationally recognized authority on governmental accounting, auditing, compliance and oversight. She also is a recognized thought leader on public sector implementation and compliance issues. Appointed to the United States Holocaust Memorial Museum's original governing board, Ms. Bronner has chaired its Audit and Finance Committees. She also served as an initial member of NASA's Advisory Council Financial Audit Committee. Her term of office expires on 7/21/11.

**Ronald E. DeNard**

Mr. DeNard is the Director of Investor Relations for Exelon Corporation and is a Certified Public Accountant. He served on the Governor's Pension Reform Commission from January, 2004 - February, 2005, was the former Chief Financial Officer of the Chicago Park District and is a member of the National Investor Relations Institute. Mr. DeNard also serves on the boards of National Lewis University, Friends of the Park and the League of Chicago Theatres. Mr. DeNard resides in the Chicagoland area. His term of office expires on 7/16/13.

**John E. Durburg**

Mr. Durburg is the Executive Managing Director of CB Richard Ellis, Inc. He previously served as Vice President and Regional Leasing Director at Jones Lang LaSalle, Inc. Mr. Durburg is also a board member of the National Association of Industrial and Office Properties and the Chicago Office Leasing Brokers Association. He has a Master of Business Administration from DePaul University. His term of office expires on 7/21/11.

**James J. Fuentes**

Mr. Fuentes has served in management and engineering positions for Lucent Technologies, Northrop Defense Systems Division and Lockheed Aircraft Company. He holds several patents and has won numerous awards for technical innovation and achievement. Mr. Fuentes is active in the U.S. Hispanic Chamber of Commerce among other civic organizations. He resides in the Chicagoland area. His term of office expired 7/17/09.

### **Norman M. Gold**

Mr. Gold has a sophisticated corporate and real estate transactional practice that includes securities, tax, corporate governance and corporate finance issues, mergers & acquisitions and formation of partnerships and joint ventures. He has particular proficiency in general corporate counseling and advisory work representing boards of directors, special committees of boards, and bidders and investors in such transactions as IPOs, sales and going private transactions, strategic and financial acquisitions, mergers, financings, tender offers and related matters. He is routinely involved in the organization of venture capital and private equity funds for U.S. and foreign investors, as well as the implementation of their investment activity. His term as a member of the board expires on 7/17/12.

### **Dr. Roger D. Herrin**

Dr. Herrin is President of RDK Management Services which owns and manages three long-term care facilities in Southern Illinois, and is past Chairman of ComBank, Inc., a banking corporation that owns and operates 7 community banks known as Community National Bank. Dr. Herrin has formerly served on the Illinois Health Care Reform Task Force and as a board member of the former Illinois Health Facilities Authority. Retired from the practice of surgical podiatry and sports medicine, he currently resides in Harrisburg, IL. His term as a member of the board expires on 7/16/13.

### **Edward H. Leonard, Sr.**

Mr. Leonard is President of Leonard Farms, a fourth generation farm near the city of Decatur. Mr. Leonard has served on several boards and commissions in the last 40 years, including Macon County Regional Planning Commission (1977-Present) and Niantic Farmers Grain Company Board of Directors (1972-2003, President 1995-1993). He currently resides in Niantic, Illinois. His term as a member of the board expires on 7/17/12.

### **Joseph McInerney**

Mr. McInerney is President and CEO of Cardinal Growth Corp., a Chicago based private equity firm focused on lower middle market transactions and special opportunities. He is active in fostering the economic development of the State of Illinois through his board membership of the Chicagoland Chamber of Commerce and the Chicagoland Entrepreneurial Center. He is currently resides in the Chicagoland area. His term expired on 7/16/10.

### **Terrence M. O'Brien**

Mr. O'Brien is owner and President of Terrence O'Brien & Co., a real estate appraisal, brokerage and consulting services firm. His expertise includes appraisal of fee, leasehold and partial interest as well as equity investment analysis, feasibility, market and highest and best use studies. Mr. O'Brien previously served on the Board of Directors of the Illinois Development Finance Authority, the Board of Banks and Trust Companies for the State of Illinois, and the Board of Directors of a Chicago bank. He resides in the Chicagoland area. His term of office expires on 7/21/11.

### **Heather D. Parish**

Ms. Parish is an independent consultant who specializes in developing strategies and capacity-building initiatives for non-profit organizations and foundations engaged in community economic development and finance, housing and entrepreneurial/business development. Previously, Ms. Parish worked as a fiscal and policy analyst for the California Legislative Analyst's Office, as a senior consultant in KPMG Peat Marwick's Government Services Practice, and as a public finance investment banking associate with Prudential Securities. She holds a Bachelor of Arts degree in Applied Mathematics from the University of California at Berkeley, and a Master of Public Policy degree from Harvard University's John F. Kennedy School of Government, where she specialized in housing, community development, and urban economic development. Ms. Parish currently holds memberships in the Association of Consultants to Non Profits (Chicago), Women in Planning and Development (Chicago), the Harvard Club of Chicago, and the California Alumni Association. Ms. Parish also serves as a board member of the Wieboldt Foundation, and recently served as a board member for the Illinois State Board of Investment during 2009-2010. Her term of office expires on 7/16/13.

**Roger E. Poole**

Mr. Poole, who recently retired after 30 years of service, was the Directing Business Representative for Machinists District No. 9. He has received the Labor Man of the Year Award from the Southwestern Illinois Central Labor Council, the Community Services Labor Man of the Year Award from the St. Louis Labor Council, and the Labor Man of the Year Award from the St. Louis Port Council. His term of office expires on 7/17/12.

**Bradley A. Zeller**

Mr. Zeller is chairman of the Morgan County Board of Commissioners and serves on the Emergency 911 Board and the Jacksonville Regional Economic Development Corporation Board. He is a member of the Jacksonville Area Chamber of Commerce and formerly Vice President of the Alexander Businessmen's Association. Zeller's background is in agricultural economics including farming 1,300 acres among which are his family's 700-acre Centennial Farm. He resides in Alexander. His term as a member of the board expires on 7/17/12