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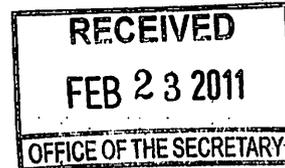


GENERAL LAND OFFICE

JERRY PATTERSON, COMMISSIONER

February 22, 2011

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



Re: SEC File Number S7-45-10
Release Number 34-63576
Comments on Proposed Rule regarding Registration of Municipal Advisors

Dear Ms. Murphy:

Under the Proposed Rules, the Securities and Exchange Commission (the "Commission" or the "SEC") would interpret the term "municipal advisor" as including non ex-officio appointed members of a governing body and not exempt as "employees of a municipal entity." Specifically, the Commission states: "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.'" [1] The Commission offers a two-step explanation for its belief. First, it states "this interpretation is appropriate because employees and elected members are accountable to the municipal entity for their actions." [2] Second, it adds: "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." [3]

We respectfully submit that in looking to accountability as the determinative distinction between elected and appointed board members, the Commission overlooks the many different ways appointed officials may be and are held accountable under state law. Board members are appointed under statutory schemes by various state or local government officials exercising the executive, legislative or other powers provided under the state constitution. Such schemes provide the means for removal as well as appointment, and identify the obligations and limitations that apply during tenure. For example, unlike financial advisors and third-party marketers who are indentified in the statute as "municipal advisors" required to register, appointed board members of public agencies, boards and commissions are typically subject to:

- Fiduciary duties
- Ethics and conflicts of interest rules
- Financial reporting requirements
- Open meetings laws
- Appointment subject to advice and consent of a legislative body
- Removal from office for failure to meet certain duties

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Direct accountability for performance to citizens of the municipal entity is likewise a narrow indicia of accountability. Certainly its absence does not equate with an absence of accountability among appointed officials. Rather, appointment of individuals to authorities, boards, and commissions by elected officials is imbedded in the very concept of representative government as it exists at both federal and state levels.

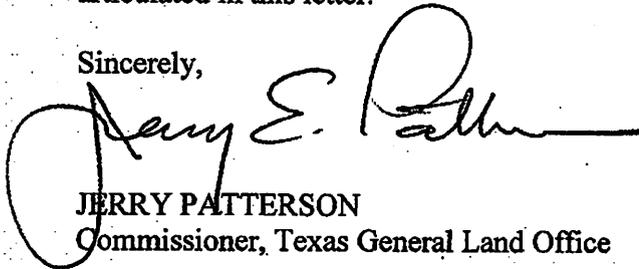
Exempting elected board members and not exempting appointed board members from the definition of "municipal advisor" seems to ignore the laws and rules among the states that have long been in place for appointed board members and potentially undermines the authority of state and local government in this area. The Commission has identified nothing in Dodd-Frank or elsewhere which either authorizes or justifies the intrusion into the authority of a state to manage its own affairs that would result from the Commission's proposed interpretation.

Further, requiring registration of appointed board members of public agencies, boards and commissions not only seems at odds with the fundamental intent of the statute – which is aimed at advisors from whom board members *receive* advice – but also imposes an unnecessary burden on these board members who typically serve without compensation.

We suggest the better approach for the Commission is to interpret any person elected to, appointed to, or employed by a municipal entity, governing body, or advisory board under state or local law as "employees of a municipal entity." Such an interpretation would not impede any remedial purpose of Dodd-Frank identified by Congress or the Commission as necessary among appointed members of municipal entity boards.

The comments included in this letter are with respect to the School Land Board and the Veterans' Land Board of the State of Texas. We point out that other state and local government entities may present characteristics important to this rulemaking not articulated in this letter.

Sincerely,



JERRY PATTERSON
Commissioner, Texas General Land Office

- [1] 76 F.R.at 834.
- [2] *Id.*
- [3] *Id.*
- [4] *See, e.g.*, Section 802.203 of Texas Government Code.
- [5] *See, e.g.*, Chapter 572, Subchapter C of Texas Government Code.
- [6] *See, e.g.*, Chapter 572, Subchapter B of Texas Government Code.
- [7] *See, e.g.*, Chapter 551 of Texas Government Code.
- [8] *See, e.g.*, Section 845.002 of Texas Government Code.
- [9] *See, e.g.*, Section 572.058 of Texas Government Code.