

PENNSYLVANIA ASSOCIATION OF BOND LAWYERS
P.O. Box 1635
Harrisburg, PA 17108

February 11, 2011

Elizabeth M. Murphy, Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-0609

Re: File No. S7-45-10

Dear Chairman Schapiro and Members of the Commission:

The Pennsylvania Association of Bond Lawyers is a voluntary association of lawyers who serve as bond counsel on debt offerings by government entities in Pennsylvania. We wish to comment on the exclusions from the definition of "municipal advisors" as proposed in SEC Release No. 34-63576.

You have already received numerous comment letters from government entities and public officials across the country objecting to the inclusion of unelected board members of municipal entities in the definition of "municipal advisors." Based on our experience in representing hundreds of municipal entities across Pennsylvania with unelected board members, we concur in the conclusions set forth in these other comment letters.

When undertaking financial transactions, municipal entities are advised by independent municipal advisors. Board members of municipal entities, whether elected or appointed, are serving as public officials who comprise the municipal entity and who need to make financial decisions on behalf of the municipal entity. To suggest, as the SEC does, that by engaging in the very act of taking a position on a matter of public policy, the board member himself or herself becomes a municipal advisor to the municipal entity and subject to extensive SEC regulation is nonsensical and extremely dangerous to the functioning of a democratic body.

It is our experience that appointed board members are very much part of the political environment and are responsive to the citizens they serve. Whether they are raising rates to pay for a sewer system extension or deciding to add a new runway to an airport, appointed board members do and must respond to the opinions of citizens and elected officials in their service areas.

We believe that all board members and employees of a municipal entity should be treated as "municipal employees" and not as "municipal advisors."

We have a similar concern about the potential treatment of attorneys as "municipal advisors." One of the traditional roles of an attorney is to serve as a counselor or advisor. For example, Rule 2.1 of the Pennsylvania Rules of Professional Conduct states:

In representing a client, a lawyer shall exercise independent professional judgment and render candid advice. In rendering advice, a lawyer may refer not only to law but to other considerations such as moral, economic, social and political factors, that may be relevant to the client's situation.

The comments to Rule 2.1 contain the following observations:

A client is entitled to straightforward advice expressing the lawyer's honest assessment. Legal advice often involves unpleasant facts and alternatives that a client may be disinclined to confront. In presenting advice, a lawyer endeavors to sustain the client's morale and may put advice in as acceptable a form as honesty permits. However, a lawyer should not be deterred from giving candid advice by the prospect that the advice will be unpalatable to the client.

Advice couched in narrow legal terms may be of little value to a client, especially where practical considerations, such as cost or effects on other people, are predominant. Purely technical legal advice, therefore, can sometimes be inadequate.

Matters that go beyond strictly legal questions may also be in the domain of another profession. Family matters can involve problems within the professional competence of psychiatry, clinical psychology or social work; business matters can involve problems within the competence of the accounting profession or of financial specialists. Where consultation with a professional in another field is itself something a competent lawyer would recommend, the lawyer should make such a recommendation. At the same time, a lawyer's advice at its best often consists of recommending a course of action in the face of conflicting recommendations of experts.

Bond lawyers sometimes have municipal clients who are facing difficult decisions relating to the incurrence of debt. There are legal and financial aspects to these decisions that are so extensive and complicated that it is often unclear where legal advice ends and financial advice begins and vice versa.

On top of that, the municipal client often wants advice from its bond counsel on the overarching questions: Should I incur the debt? Should I invest bond proceeds in this

investment? Should I enter into this derivative? As Rule 2.1 and its comments suggest, a lawyer's advice is often at its best when the lawyer provides his or her clients with a recommendation that is beyond the realm of "is this technically legal?"

In Release No. 34-63576, the SEC takes the position that "advice which is primarily financial in nature" does not constitute "services of a traditional legal nature." This is simply not an accurate reflection of what bond lawyers or any securities lawyers do in a transaction. Giving advice on the overall advisability of the transaction, taking into account the interrelated legal and financial concerns, is something a lawyer often does.

On both of these issues addressed in this letter, the approach of the SEC seems to be to force anyone involved in a municipal securities transaction either to register as a municipal advisor or to be silent on the financial advisability of the transaction. This approach ignores the fact that both issuer board members and lawyers are already subject to stringent, state-imposed standards under statutes, regulations and rules of professional conduct. Under the SEC approach, appointed board members are forced to be silent. Bond lawyers are forced to be silent. Only registered municipal advisors may express financial opinions.

In that scenario, who can act as a counterweight to a municipal advisor in a transaction? No one. Does this not invite the "speak no evil, hear no evil, see no evil" atmosphere that led to the outrageously risky financial structures that have landed our country in its worst financial condition in 70 years? A crucially important way to avoid problems is to have the public officials and lawyers and others involved in financial transactions asking the hard questions and, when appropriate, saying "I disagree" to the sometimes erroneous expert.

PENNSYLVANIA ASSOCIATION OF BOND
LAWYERS

By: Richard D. Michael
Richard D. Michael, President