



OHIO WATER
DEVELOPMENT AUTHORITY

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February 11, 2011

Via E-Mail: rule-comments@sec.gov

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

Re: Comments to Proposed Rule Regarding Registration of
Municipal Advisors, SEC Release No. 34-63576; File No. S7-45-10

Dear Ms. Murphy:

We are writing on behalf of the Ohio Water Development Authority (the "Authority") in response to the referenced Release (the "Release"), which invites comments on new rules proposed by the Securities and Exchange Commission (the "SEC") that would require "municipal advisors" (as defined in the proposed rules) to register with the SEC. As discussed below, the Authority has significant concerns with several aspects of the proposed rules.

In 1968, the Ohio General Assembly enacted Chapter 6121, Ohio Revised Code, creating the Authority to provide financial assistance for environmental infrastructure from the sale of municipal revenue bonds through loans to local governments in the State of Ohio (the "State") and from issuance of industrial revenue bonds for qualified projects in the State. The Authority is a body both corporate and politic, constituting an agency and instrumentality of the State and performing essential governmental functions and public purposes of the State. The Authority consists of eight members. Five members of the Authority are appointed by the Governor of the State for 8-year, staggered terms, with the advice and consent of the State Senate. In addition, the State Director of Natural Resources, the State Director of Environmental Protection and the Director of Development of the State are members' ex-officio of the Authority, entitled to vote and participate in Authority activities on an equal basis with the other Authority members.

The appointed members of our Board have a diverse background. Historically, the Board has included business leaders, labor leaders, engineers, lawyers, bankers and community activists, each of whom, once appointed, must take an oath of office that requires the member to uphold the Constitution and laws of the State of Ohio. These laws include Ohio's code of ethics for public officials. Very little distinction is made in Ohio ethics law between appointed and elected officials, because all such public officials are held to the same high standard of conduct. As a public official, each Board member owes a fiduciary duty to the Authority and is

specifically subject to Ohio laws concerning conflicts of interest, gifts, public meeting and records, financial disclosure and doing business with one's agency.

The Authority has broad statutory authority to carry out its governmental functions, including the power to acquire public or private lands by the exercise of the right of condemnation; to make and enter into all contracts and agreements and execute all instruments necessary or incidental to the carrying out of its powers; to issue revenue bonds and notes of the State; to charge, alter, and collect rentals and other charges for the use of services of any water development project; and to do all acts necessary or proper to carry out the powers expressly granted in the Ohio Revised Code. In connection with the bond financings undertaken by the Authority, the Board engages a nationally recognized independent financial advisor with knowledge and special expertise in infrastructure finance to advise the Board on matters relating to the issuance of bonds and financial products, including interest rate swaps and investments.

During the Board's meetings, all of which are subject to Ohio's open meeting laws, each Board member is encouraged to participate in discussions regarding the Authority's issuance of bonds, its entering into other finance-related agreements, and the investment strategy of the Authority. During Board and committee meetings, Board members customarily ask questions of outside consultants, make comments, express their opinions, discuss proposed actions and vote on whether or not to authorize issuance of bonds and other actions put before the Board. These are all part of the normal but vital deliberative process of the Authority's Board.

The SEC's proposed rules regarding the registration of municipal advisors would exclude elected board members of a municipal entity from the definition of "municipal advisor," but not appointed board members. The Board of the Authority is comprised entirely of appointed members. In light of the close similarity in duties and treatment of elected and appointed public officials under the laws of Ohio as described above (and, we understand, under the laws of many other states), the Authority does not believe that disparate treatment of elected and appointed board members proposed by the SEC to be justified.

Thus, as a threshold matter, the Authority would respectfully request the SEC to modify the proposed rules to exclude from the definition of "municipal advisor" all board members of a municipal entity, whether elected or appointed.

The SEC's proposed rules do not include any definition of what constitutes "advice" or "providing advice." They also lack specification of what should be a key element in determining what a "municipal advisor" is. That missing element is that the person must be acting in some professional capacity and holding him or herself out to the public as having special expertise in the area in which he or she is providing advice. There must be some risk or expectation that the municipal entity being provided the advice will view the person in a professional capacity with the knowledge, experience and competence to make the advice reliable. To omit this key element is to bring under the purview of the SEC's proposed rules literally anyone who offers an opinion or view ("advice") on these matters to a municipal entity, including board members and members of the general public filing written comments or making oral comments at board meetings. To fail to address these matters and leave them subject to the interpretation and

opinion of each governmental entity's legal counsel is unfair to the governmental entities that will ultimately have to pay for the legal advice.

The Authority would therefore, further respectfully request, that the SEC provide specific guidance with respect to what it means to "provide advice" by requiring that the advice be provided in a professional capacity by a person holding him or herself out to have special knowledge and expertise in municipal financial matters where there is an expectation and a likelihood that the advice will be relied upon by others in making financial decisions for the municipal entity. The SEC should also provide a clear and unconditional statement in the final rules that the statements and other activities of board members (whether elected or appointed) of municipal entities made or taken in the course of performing their duties as board members will not be construed as "providing advice" in the role of a "municipal advisor" to a municipal entity requiring prior registration by the board member with the SEC.

Without such modifications and guidance, the SEC's proposed rules will have significant deleterious effects on our Board and the efforts of its members to ensure that the best possible financial decisions are made for the Authority. They would have a material and negative impact on the normal deliberative process of our Board by restraining the freedom of its members to express their views on matters relating to municipal bond issues and municipal financial products for fear of subjecting themselves to the potential risk and expense of an SEC investigation over whether their comments constituted "advice" requiring prior registration as a "municipal advisor." They would also make it more difficult for the Governor to find individuals with business acumen, financial knowledge and backgrounds and other helpful experience who are willing to serve on the Board if doing so will require them to register with the SEC as a "municipal advisor." They would thereby deprive the Authority – and the citizens it serves ---of talent and robust discussion and deliberation by Board members that are needed for the Board to make sound financial decisions.

The Dodd-Frank Act provision that led to the SEC's proposed rules was intended to protect municipal entities but, with all due respect, municipal entities, such as the Authority, do not need to be protected from their own Board members, whether appointed or elected. In the case of the Authority (and we suspect this is the case with respect to most municipal boards), the members are the legislative or policy decision makers. In that capacity, they are entitled to rely, and in the case of the Authority's Board, indeed do rely, on advice rendered by professional, independent consultants. The Board members are the *recipients* of the financial advice, not the *providers* of such advice. Moreover, nothing in the Dodd-Frank Act indicates Congress intended the SEC to require registration of appointed members of state and local governmental entities before they could engage in deliberations with their board colleagues and execute the duties they were appointed to perform under state law.

To summarize, for the foregoing reasons, the Authority respectfully requests that the SEC specifically modify the proposed rules as follows:

1. exclude from the definition of "municipal advisor" all board members of a state and local governmental entity, whether elected or appointed;

2. provide specific guidance with respect to what it means to “provide advice” by requiring that the advice be provided in a professional capacity by a person holding him or herself out to have special knowledge and expertise in municipal financial matters where there is an expectation and a likelihood that the advice will be relied upon by others in making financial decisions for the municipal entity; and

3. provide clear and unambiguous guidance that the statements and activities of board members of state and local governmental entities made or taken in the course of performing their respective duties as board members will *not* be construed as “providing advice” to a municipal entity such as would require prior registration by the board member with the SEC.

If you have any questions concerning these comments or desire any additional information regarding the Authority, please contact the undersigned.

Respectfully submitted,



James P. Joyce, Chairman



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Telephone: (614) 466-5822

cc: Governor John R. Kasich
U.S. Senator Sherrod Brown
U.S. Senator Rob Portman
Congressional Delegation