

February 7, 2011

Via Email: rulecommittee@sec.gov

Rules Committee
Securities and Exchange Commission
Washington, DC

Subject : File Number S7-45-10

Dear Rules Committee:

I am writing this letter as Vice-Chair of the Board of Directors of the Hays Caldwell Public Utility Agency (the "Agency"), a political subdivision of the State of Texas formed by the cities of Buda, Kyle and San Marcos, and the Canyon Regional Water Authority. The Agency was formed in order to achieve economies of scale in developing a regional water supply project. The Agency is governed by a board of directors whose members are, by Texas law, appointed by the governing bodies of the four sponsoring entities. Texas law authorizes the Agency to issue long-term obligations to finance the water supply project, and the Agency board is vested with the authority to approve issuance of any such obligations.

The Agency has reviewed the SEC's proposed Rules 15Ba1 to 15Ba7 (the "Rule"). The Agency requests that the SEC revise its interpretation of the definition of the term "municipal advisor" to exclude appointed board members. At the very least, appointed board members acting in their "official capacity" should be excluded from the term. Appointed board members should be treated the same as elected board members and employees of an entity for purposes of the "municipal advisor" rules. Requiring citizen volunteers to submit to SEC registration and undertake a fiduciary obligation would deplete the pool of citizens who volunteer their time and expertise as local policymakers.

The Agency understands the SEC's role in promulgating rules under Section 975 of Title IX of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the "Dodd-Frank Act"), requiring municipal advisors to register with the SEC. In Release No. 34-63576 (the "Release"), the SEC limited the otherwise broad language of the Dodd-Frank Act to interpret the term "employee of a municipal entity" to include "a person serving as an elected member of the governing body." The SEC also broadened the exclusion to include persons who hold elective office and also serve as ex officio members of an

exclusion to include persons who hold elective office and also serve as ex officio members of an appointed board of a municipal entity. The Agency supports these exclusions. However, the Release concludes that appointed board members should not be excluded from the definition of municipal advisor because "appointed members [of a municipal entity board], unlike elected officials and elected ex officio members, are not directly accountable for their performance to the citizens of the municipality." The Agency respectfully disagrees with this rationale.

A more reasonable and effective interpretation would distinguish between consultation and policymaking. Board members, appointed or elected, provide policy guidance to an entity in order to meet its constitutional and statutory objectives. Board members of an entity acting in their official capacity are not advisors or consultants to the entity; rather, they are responsible for making final decisions on behalf of the entity. The role of a board member to make decisions, as opposed to offering advice, does not vary based on whether the member holds an elective office, or is employed by an entity, or is simply a volunteer appointed to an entity's board. Each board member takes the same oath and, just as important, is subject to the same legal obligations to the entity.

In contrast, advisors such as financial and swap advisors receive compensation in return for providing a service. Even when compensation is not immediate or expressly sought, it is fair to conclude that they serve clients with the intent of making a profit and providing expert advice. Their services are important to municipal entities, yet their motivations and their relationship with municipal entities cannot be likened to those of a citizen volunteer who is an appointed board member.

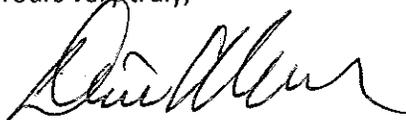
As previously stated, the Agency board is composed entirely of members who are appointed by the governing bodies of the four sponsoring entities. Some of the board members are elected officials and employees of the sponsoring entities. Other board members, however, are not employees or elected officers of a sponsor, but rather, they are citizen volunteers, with strong ties to the communities they serve. They are just as accountable to the citizens they serve as employees and elected officers of the sponsors. They serve without compensation. They are firmly rooted in their communities and are community leaders, and because of this, they validate Agency actions to the citizens they serve. The Agency Board's meetings are subject to state open meeting laws, and Agency records are subject to public disclosure under state public information laws. All investments of the Agency are subject to the Texas Public Funds Investment Act. Texas law prohibits Agency board members from participating in board decisions in which they have a conflicting personal interest. All Agency board members are subject to removal at the will of the governing body that appointed them, and certainly any action by a board member in contravention of state law or against the interests of the Agency, a sponsoring entity, or its citizens would be a basis for removal.

The SEC's current interpretation would impose a heavy burden on the Agency. The Agency relies on the expertise and broad-based community leadership of its appointed board members. If the Rule is adopted in its present form and interpreted as described in the Release, valuable talent will be lost because prospective board members will not want to subject themselves to the regulations of the SEC and the heightened fiduciary duty the Rule imposes.

For these reasons, the Agency requests that the SEC revise its interpretation of the term “employee of a municipal entity” to include appointed board members, at least to the extent they act in their official capacity. The Agency further requests the SEC consider adding an exception to make it clear that elected officials, employees, and citizen volunteers of a municipal entity appointed to represent that entity on the board of a regional governmental entity such as the Agency are excluded from the “municipal advisor” definition while acting in their official capacity as members of the regional entity board.

Thank you for taking these comments into consideration.

Yours very truly,



Vice-Chair, Board of Directors
Hays Caldwell Public Utility Agency

cc: john_etue@hutchison.senate.gov
Yesenia_Monsour@Hutchison.senate.gov