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February 16, 2011

VIA EMAIL TO rule-comments@sec.gov

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

RE: File Number S7-45-10

Dear Secretary Murphy,

I am writing this letter as County Attorney for El Paso County, Texas ("County") in order to provide my perspective and comments on the SEC's proposed interpretation of Rules 15Ba1 to 15Ba7 which include appointed board members in the definition of "municipal advisors".

Background

The Dodd Frank Act defines **municipal advisor** to mean:

> A person **(who is not a municipal entity or an employee of a municipal entity)** (i) that provides advice to or on behalf of a municipal entity or obligated person with respect to municipal financial products or the issuance of municipal securities, including advice with respect to the structure, timing, terms, and other similar matters concerning such financial products or issues, or (ii) that undertakes a solicitation of a municipal entity. (Emphasis added).

In Release No. 34-63576,[1] the SEC provided clarification of the term "municipal advisor." In response to comments urging the SEC to exclude persons serving as an appointed or elected member of a municipal entity from being required to be trained, tested, and registered as a "municipal advisor", the SEC limited the otherwise broad language of the Dodd-Frank Wall Street Reform and Consumer Protection 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 further broadened the list of those excluded from registration to include ex-officio members who hold elective office. The SEC chose, however, to require registration as a municipal advisor for appointed board members.

The Release provided the SEC's interpretation was "appropriate because employees and elected members are accountable to the municipal entity for their actions" while "appointed members ... are not directly accountable for their performance to the citizens of the municipality."

As legal advisor for El Paso County, I respectfully disagree with the SEC's proposal to define the term "municipal advisor" to include appointed board members. My concern is on a number of levels, including registration requirements, training and testing requirements, and the general harm to the municipal entities and their board members.

Registration requirements:

The registration requirements for individuals who serve as board members are extensive. They require detailed disclosure of a large variety of personal information. It appears that this information is publically available, since numerous statements indicate that the disclosed information will be "useful to the municipal entity". Interestingly, some of the information required in Form MA-I could not be disclosed by a law enforcement agency, such as the individual's detailed criminal history -- which includes arrests that do not result in prosecution or conviction. Government disclosure of a compiled criminal history is a criminal offense. If the FBI cannot disclose this information to the public, how is the SEC allowed to do so?

Training, experience and competency requirements:

The appointed board member is required to certify that he or she has:

> (1) sufficient qualifications, training, experience, and competence to effectively carry out his or her designated functions; (2) met, or within any applicable required timeframes will meet, such standards of training, experience and competence, and such other qualifications, including testing, for a municipal advisor, required by the Commission, the MSRB or any other relevant SRO; and (3) the necessary understanding of ability to comply with, all applicable regulatory obligations.

Fortunately, the commentary explained that the applicable regulatory obligations are obligations under the Federal securities laws and rules and the applicable rules promulgated by the MSRB,

[1] Rederal Register, Vol. 76. No. 4, January 6, 2011, Part II - Registration of Municipal Advisors, Proposed Rules at p. 834.

or any other relevant SRO. Unfortunately, I had to look up MSRB (Municipal Securities Rulemaking Board) and SRO (Self-Regulatory Organizations) to figure out the meaning of these abbreviations, and I have no idea what designated functions a municipal advisor ***must perform*** or what training he or she is required to receive or what level of expertise he or she is acquired to master.

Essentially, both board members and elected officials are members of the community interested in serving the public, often for little or no remuneration. The education and background of board members vary widely. The types of boards that can issue municipal bonds also vary widely. Many appointed board members serve in places like volunteer fire departments and emergency service districts. Some boards specifically require that members have to be a recipient of services (such as a parent of a child with mental health problems). The smaller the community, the more likely it is that the persons selected to serve are being chosen from a limited pool of qualified applicants. Sometimes board members do not volunteer and must be solicited because no one will volunteer. It makes absolutely no sense to hold these part-time volunteers to the same standard of training and knowledge that you would impose on a person who is trained and registered to provide advice to others regarding municipal investments and obligations.

Governmental boards with appointed members don't need to become municipal advisors, they need to use the services of municipal advisors, financial advisors and bond counsel who assist them to issue municipal debt.

Presently, in Texas, as a prerequisite to serving, members are required to receive training on the Public Information Act and Open Meetings Act -- if the board on which they serve is subject to these acts. A requirement that individuals who serve on boards of public bodies, which are authorized to issue public debt, must receive basic training about public debt is an acceptable measure. However, the appointee should receive a certificate of attendance, not a registration number and a title.

Appointed board members should not be misled into believing they are adequately trained to give others advice regarding the intricacies of issuing and spending municipal bond funds. This is a complicated business. Many lawyers and CPAs do not have this level of expertise. Even those persons capable of learning the material will be reluctant to commit the time and energy necessary to master the material and maintain a proficiency – particular to serve as an unpaid, volunteer board member with a two year term in office.

The SEC's proposal to train and test appointed board members will either: intimidate individuals from serving, publicly embarrass those who cannot handle the material, or provide certain individuals with a false sense of security that they have the knowledge base and are equipped to function as a Registered SEC "Municipal Advisor." All of these outcomes are bad.

Inappropriate and harmful requirements for appointed board members:

The definition of a "municipal advisor" is set out on page 828 of the publication under section II.A.1.a. It includes " 'financial advisors, guaranteed investment contract brokers, third-party

marketers, placement agents, solicitors, finders, and swap advisors' that engage in municipal advisory activities."

The Proposed Rules fail to recognize that the governing board of a municipal entity cannot be a municipal advisor to such entity. Board members, whether appointed or elected, are the clients of advisors. Various conflict of interest and criminal statutes are triggered if board members provide input and vote on matters wherein they have a financial interest. The Proposed Rules bring ambiguity to these statutes, which are themselves intended to create accountability.

One comment from a small municipal entity correctly pointed out:

> The proposed rule would impose an unnecessary and burdensome duty to permanently register all of the [municipal entity's board members] with the SEC as "Municipal Advisors" and each [board member] to be individually held accountable for disclosing, among other things, personal information and employment history, be duty bound to certain record keeping requirements, continuing education requirements, and to be held liable for civil and or criminal matters that would be beyond the scope of knowledge for such board members. In addition, the registration requirement would add a significant and unnecessary financial burden upon our [board members], the [municipal entity], and the citizens to which the Board is ultimately accountable. This added financial burden does not in any way enhance or "add value" to the operation of small municipal [entities] such as our own.

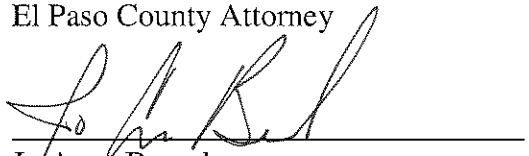
A municipal entity acts through its governing body, which is necessarily comprised of individual members. Accordingly, the exception for a "municipal entity" should properly be interpreted to mean all governing body members, whether elected or appointed.

In the alternative the term "employee of a municipal entity" should be interpreted to include appointed board members, including board members appointed by an elected official or a body of elected officials.

Thank you for this opportunity to provide comments.

Sincerely,

El Paso County Attorney



Jo Anne Bernal