NYSIF New York State Insurance Fund

February 18, 2011

VIA: ELECTRONIC and OVERNIGHT MAIL

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

Re: File Number S7-45-10

Dear Ms. Murphy:

I write as the General Attorney to the New York State Insurance Fund ("NYSIF") on behalf of NYSIF's Board of Commissioners to comment on the Securities and Exchange Commission's ("SEC") Release Number 34-63576. The proposed rule would require the registration of individuals and firms as so-called "municipal advisors" to implement provisions of the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank Act").

NYSIF is an agency of the State of New York established within the New York State Department of Labor. Pursuant to Section 76 of the New York State Workers' Compensation Law ("WCL"), NYSIF provides low-cost insurance to New York's employers for workers' compensation and statutory short-term non-occupational disability benefits and assures the payment of benefits to those entitled to them. NYSIF is completely self-sustaining and is funded entirely through premiums paid by employers and investment income. NYSIF has no authority to issue bonds.

NYSIF is governed by a board of ten (10) Commissioners who are appointed by the Governor of New York upon the advice and consent of the New York State Senate and must be policyholders with NYSIF. Among these ten Commissioners, one each is appointed upon recommendation of the New York State American Federation of Labor-Congress of Industrial Organizations ("AFL-CIO") and the New York State Business Council. In addition, the State Commissioner of Labor or his or her designee serves as an ex-officio Commissioner of NYSIF.

WCL § 82 specifically places a duty on the NYSIF Commissioners to "consider at all times the condition of the fund and to examine its reserves, investments and all other matters relating to its administration" making the Commissioners accountable for NYSIF's affairs. WCL § 87 provides for the investment of NYSIF surplus and reserve funds "by order" of its Commissioners and by approval of the State Superintendent of Insurance in certain statutorily prescribed types of investments.

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Under proposed section 240.15Ba1-1(d)(1), the term "municipal advisor" is given the same meaning as in Section 15B(e)(4) of the Securities and Exchange Act of 1934. That definition codified in 15 U.S.C. 78o-4(e)(4) defines "municipal advisor" as "a person (who is not a municipal entity or an employee of a municipal entity) 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...."

Although the term "advice" is not defined either by the statute or in the proposed rule, the explanatory material accompanying the rule filing seems to take an expansive view of this term. These materials opine that "it was Congress's intent to include in the definition of "municipal advisor" persons that provide advice with respect to plans, programs or pools of assets that invest funds held by, or on behalf of, a municipal entity such as a ... public pension plan...." (*See, Federal Register*, Vol. 76, No. 4, page 830). Under this definition, opinions provided by the NYSIF Commissioners during the course of their deliberations upon investment matters could be construed to be "advice." It is respectfully submitted that such a result should be avoided.

The explanatory materials to the filing state that the exclusion of employees of a municipal entity from required filing also applies to elected members of its governing body but not to appointed members of its governing body (*see, Federal Register*, Vol. 76, No. 4, page 834). Such an interpretation would, on its face, appear to require the NYSIF Commissioners and thousands of other individuals appointed to governing boards across the nation to file with the SEC as municipal advisors. Again, it is respectfully submitted that such a result could have unintended consequences and should be avoided.

The rationale provided in the explanatory materials for exempting elected members of a governing body but not appointed members is that "employees and elected members are accountable to the municipal entity for their actions" whereas "appointed members ...are not directly accountable for their performance to the citizens of the municipal entity." (*See, Federal Register*, Vol. 76, No. 4, page 834). The suggestion that appointed governing board members such as NYSIF's Commissioners are not accountable for their actions to the public at large is simply wrong. As stated above, NYSIF's Commissioners have a statutory duty to look after the interests of NYSIF. The duties of governing board members of other state and municipal entities to preserve the assets under their administration have to be similar. Distinguishing between elected and appointed governing boards while defining who is an "advisor" for investment purposes is a distinction without a difference.

NYSIF's Commissioners - like other appointed and elected governing board members - should not be treated as though they are outside advisors to the boards on which they serve. Both appointed and elected governing board members often receive advice from outside entities about the investment of the funds of those entities. Placing appointed governing board members on a par with the investment professionals who advise those bodies while exempting elected board members lacks a rational basis.

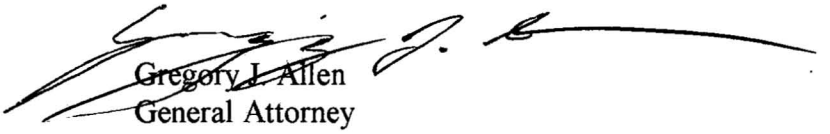
Government entities like NYSIF rely on the business acumen, expertise and experience of its appointed governing board members. Requiring appointed governing board members to register with the SEC would dissuade talented and qualified individuals from serving in these voluntary positions. State and municipal governments would be less effective as a result.

Although the NYSIF fully agrees with the goal of the Dodd-Frank Act to more closely regulate investment professionals and firms which are retained by state and local governing boards to provide investment advice, we see no public policy rationale for extending SEC registration requirements to the appointees who serve on those public bodies.

In sum, NYSIF recommends that the proposed rule be revised to explicitly exclude all appointed, elected and ex officio members of municipal governing boards from the definition of the term "municipal advisor." Alternatively, we recommend that a definition of the term "advice" be added to the rule to specifically exclude remarks, opinions, etc. expressed by appointed, elected and ex officio members of municipal governing boards expressed as part of that board's deliberations.

Thank you for your consideration of these comments.

Very truly yours,



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