



City of Austin Employees' Retirement System

February 18, 2011

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

RE: SEC Proposed Rule 34-63576

Dear Ms. Murphy:

We write to express our great concern regarding the SEC's proposed definition of "municipal advisor" under SEC Proposed Rule 34-63576.

A municipal financial advisor provides advice to a state or municipal entity, including public pension funds, as to the issuance of municipal securities, swap transactions and/or investment strategies. **We oppose the SEC's proposal to include appointed members of state and local government governing bodies as financial advisors, without regard to their profession or area of expertise. A state or local government governing board, comprised of appointed members, cannot serve as an advisor to itself. Further, the definition is so general as to include attorneys that only review and advise a board regarding proposed contracts.**

The SEC's proposed rule correctly exempts elected members, elected ex-officio, and employees of a municipal entity's governing board from the definition; however, under the proposed rule, non-elected (appointed) members of a governing board would have to register with the SEC and meet various regulatory requirements set forth by both the SEC and the MSRB, including registration requirements and fees, federal fiduciary standards, federal securities law liabilities, and federal financial disclosure standards. It also appears the over reach of this definition will increase the cost and expense incurred for legal services, solely because an attorney is required to advise the board of trustees regarding the structure and terms of contracts for investment services.

We urge the SEC to exclude all governing body members and the employees of appointed bodies, including those who serve across jurisdictional boundaries, from the municipal advisor definition. In addition, the SEC should make it clear that an attorney is not a "municipal advisor" simply because he/she prepares and advises the board on contracts for investment management services.

Appointed members of governing bodies, especially at the local level, typically are citizen volunteers who are interested in serving for the public good and often have special expertise that is critical to the effective functioning of the governing body. However, they may be deterred from serving on state and local governing boards if federal regulations are imposed upon them, which means we lose their valuable insight. The inclusiveness of the definition will also materially increase the cost of legal services provided by attorneys licensed and regulated by the state.


Elizabeth M. Murphy
February 18, 2011
Page 2

The City of Austin Employees Retirement System (“COAERS”) is a pension plan for the civilian employees of the City of Austin, Texas (“City”). We have approximately 12,000 members, and in addition to significant state and federal laws applicable to trusts and pension plans, COAERS was established by a very thorough and comprehensive state statute that is our primary plan document. We are governed by an eleven member board composed of two board members appointed by the governing body of the City; one board member designated by the City Manager of the City; four board members that are elected by the current active members of COAERS; two board members that are elected by the retired members of COAERS; and one board member elected by the board. All of COAERS’ investments are made via professional and licensed investment managers, selected with the assistance of a professional investment consultant/ advisor. In addition to the statute that is our plan document, the several state codes and federal law governing our plan, COAERS has adopted comprehensive and effective policies governing investments, operations and ethics.

We believe that if Congress had intended for appointed members of governing bodies to be included within the municipal financial advisor definition, it would have made this point clear in the statute. By excluding all governing body members, employees, and attorneys (that only prepare and advise regarding the terms of contracts, policies and procedures) from the definition of “municipal advisor”, we can be assured of retaining the expertise our board needs to make important decisions for our constituents.

Thank you for the opportunity to comment on the SEC’s Proposed Rule 34-63576.

Respectfully,


Anthony B. Ross, Sr.
Chairperson


Stephen C. Edmonds
Executive Director