



SAN JOAQUIN COUNCIL OF GOVERNMENTS

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February 18, 2011

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CITIES OF
ESCALON,
LATHROP,
LODI,
MANTECA,
RIPON,
STOCKTON,
TRACY,
AND
THE COUNTY OF
SAN JOAQUIN

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

Re File Number S7-45-10
Release Number 34-63576
Registration of Municipal Advisors

Dear Chairman Schapiro and Members of the Commission.

On behalf of the San Joaquin Council of Governments (SJCOCG), we provide the following comments on the Securities and Exchange Commission's (Commission) proposed rule requiring "municipal advisors" to register with the SEC. The proposed rule fails to adequately identify the situations in which appointed local government officials would be exempt from the definition of "municipal advisor." We kindly request clarification on the proposed rule.

Section 15B(e)(4)(A) of the Exchange Act, as amended by the Dodd-Frank Act, defines the term "municipal advisor" to include both elected and appointed members of local government. In response to comments requesting clarification on the exclusions from the definition of "municipal advisor" the Commission responded.

The Commission believes that the exclusion from the definition of a "municipal advisor" for "employees of a municipal entity" should include any person serving as an elected member of the governing body of the municipal entity to the extent that person is acting within the scope of his or her role as an elected member of the governing body of the municipal entity. "Employees of a municipal entity" should also include appointed members of a governing body to the extent such appointed members are ex officio members of the governing body by virtue of holding an elective office. The Commission does not believe that appointed members of a governing body of a municipal entity that are not elected ex officio members should be excluded from the definition of a "municipal advisor."

SJCOG interprets the Commission’s response to exclude from the definition of a “municipal advisor” elected members of a local governing body that are appointed to and serve on another local governing body. SJCOG seeks in the final rule a clearer, more precise statement of this exclusion from the definition of “municipal advisor.” SJCOG suggests that the final rule exclude both elected and appointed members of the local governing body, and specifically state that local government officials that sit on the Board of Directors of Joint Powers Agencies or Councils of Governments are excluded from the definition of “municipal advisor.”

Structure of SJCOG

SJCOG is a joint powers agency created pursuant to California Government Code Section 6500 *et seq.*, and is comprised of the incorporated cities of Escalon, Manteca, Lathrop, Lodi, Ripon, Stockton, and Tracy and the County of San Joaquin, a political subdivision of the State of California. SJCOG is governed by a Board of Directors which is comprised of (i) members of the City Councils of each of the member cities; (ii) members of the Board of Supervisors of the County of San Joaquin, and (iii) ex-officio non-voting member representatives from the State Department of Transportation, the San Joaquin Regional Transit District, and the Stockton Port District Board of Port Commissioners.

Members of the SJCOG Board of Directors are appointed by the City Councils of the SJCOG member cities and the Board of Supervisors of the County. In most instances, the members of SJCOG’s Board have been elected to the City Council and the Board of Supervisors of the member agencies. Occasionally, a member may have been appointed to the City Council or Board of Supervisors to fill an unexpected or temporary vacancy. Whether the member was elected or appointed does not affect that member’s role or position on the SJCOG Board of Directors.

SJCOG serves many important functions within San Joaquin County, including but not limited to, serving as the Metropolitan Planning Organization as designated by the U.S. Department of Transportation, the Regional Transportation Planning Agency as designated by the Secretary of Business and Transportation Agency of the State of California, the San Joaquin Transportation Authority as designated by the Board of Supervisors of San Joaquin County, the Census Data Center as designated by the Bureau of the Census, and the Federal Clearinghouse to review federal grant applications under Section 6506 of Title 23 of the United States Code Annotated.

In fulfilling each of these roles, the SJCOG Board of Directors have been entrusted to oversee and act upon a number of activities and programs that can have profound impacts upon residents and businesses within San Joaquin County.

Each member of the SJCOG Board of Directors is accountable to the member agencies and their constituents through the Ralph M. Brown Act (*Cal. Gov Code §§ 54950 et seq.*) and the Political Reform Act of 1974 (*Cal Gov Code §§ 81000 et seq.*). These state laws address the Commission’s concern that “appointed members, unlike elected officials and elected ex officio members, are not directly accountable for their performance to the citizens of the municipal entity.” Each of these laws protects the public by providing for transparency in government,

comprehensive reporting requirements, regulation of conflicts of interests, and penalties for misconduct.

Request for Clarification

SJCOG strongly requests that the final rule clearly and concisely state (i) that both elected and appointed members of governing bodies are excluded from the definition of a “municipal advisor;” and (ii) that local government officials that sit on the Board of Directors of Joint Powers Agencies or Councils of Governments are excluded from the definition of “municipal advisor ”

As stated above, SJCOG interprets the Commission’s response to comments to exclude members of the SJCOG Board of Directors from the definition of a “municipal advisor” only if that member was elected to his or her underlying City Council or Board of Supervisors. SJCOG’s Board of Directors is comprised entirely of local government officials that may have been elected or appointed to their respective City Councils or the Board of Supervisors, and are then appointed to sit on the SJCOG Board of Directors. The fact that a local government official may have been appointed makes him or her no less accountable to the constituents.

When the Commission exempted a municipal entity and its employees from the definition of “municipal advisor,” we believe the intent was to exempt all of the entity’s officers and employees, both elected and appointed, from the definition. To do otherwise creates the unintended result of chilling discussions by board members on investment objectives. Requiring registration for those who participate in those discussions interferes with the fact-finding, deliberative, decision making process which is the core of informed analysis. Exempting employees of the governing body from registration while requiring governing board members to register as “municipal advisors” fails to recognize that the members of the governing bodies are the personnel that “operate” the governing body “Municipal advisors” serve and advise those officials.

Conclusion

We respectfully ask that the final rule clearly and concisely state (i) that both elected and appointed members of governing bodies are excluded from the definition of a “municipal advisor;” and (ii) that local government officials that sit on the Board of Directors of Joint Powers Agencies or Councils of Governments are excluded from the definition of “municipal advisor ”

Sincerely,



STEVE DIAL
Deputy Executive Director
San Joaquin Council of Governments