February 22, 2011

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

In re file number S7-45-10

Dear Ms. Murphy:

The National League of Cities (NLC) respectfully submits the following comments regarding the Securities and Exchange Commission's (SEC) December 20 rulemaking, titled "Registration of Municipal Advisors," which implements the municipal advisor registration requirement in the Dodd-Frank Wall Street Reform and Consumer Protection Act (Public-Law 111-203, 124 Stat. 1376 (2010)). NLC is the oldest and largest organization representing municipal governments throughout the United States. Its mission is to strengthen and promote cities as centers of opportunity, leadership, and governance. NLC serves as a national advocate for the more than 19,000 cities, villages, and towns, and for the tens of thousands of additional local government jurisdictions formed when two or more municipalities coordinate on joint initiatives. NLC works in partnership with 49 state municipal leagues, 38 self-insurance risk pools for local government property, liability, workers' compensation, and employee benefit programs, and representatives of bond pooling programs that secure aggregate financing for local government capital projects.

Under the Dodd-Frank law, municipal advisors are required to register with both the SEC and with the Municipal Securities Rulemaking Board (MSRB). The registration requirement applies to all municipal advisors who provide counsel to "municipal entities," as well as other borrowers involved in the issuance of municipal securities. The advice may be related to derivatives, guaranteed investment contracts, "investment strategies," or the issuance of municipal securities. It also applies to advisers who solicit business from a state or local government for a third party.

As drafted, the proposed rule exempts municipal elected officials and staff from the registration requirement, with which we concur. Not exempted, however, are board members of municipal and regional organizations and authorities, which include regional utilities that invest reserves, joint power agreement organizations that run transit authorities, special districts, relief associations and all other public service entities with volunteer decision makers. Also included would be members of NLC's Public Finance Consortium; its members, state bond pools, aggregate a number

of municipal borrowers into one larger issue. Every hometown will be faced with this new expansion of SEC and MSRB regulation.

If Congress had intended for all the appointed members of these bodies to be included within the municipal financial definition it would have stated so in the law. With no statutory authority or legislative history, the SEC proposes to unilaterally subject board members and others volunteering for the public interest to duplicative and redundant SEC and MSRB rules by classifying them as municipal financial advisors.

Not only is the SEC's statement of authority faulty but the conduct it seeks to regulate involves no second party to be protected. Here the SEC creates a strange fiction that volunteer appointed board members step outside of themselves and occupy another space when they advise themselves. Simply put, a local governing board, with appointed members, cannot serve as an advisor to itself. The rulemaking confuses decision makers with advisors.

The expansive inclusion of board members and other volunteers who express an opinion into the scope of the proposed rule only serves to micro-manage local governments and impose duplicative regulatory burdens as an answer to unsubstantiated and undefined issues. These volunteers are already publicly accountable via their appointing officials' election before or after they make appointment. Importantly, for transparency and accountability, many cities already impose fiduciary responsibilities for volunteer board members of their authorities to protect tax dollars and these authorities are subject to the same open meeting laws, public record laws, and code of ethics as entities governed by elected officials.

In addition, these volunteers are not motivated by private gain but by public service and the betterment of their communities. Accountable through sunshine laws and public scrutiny, and motivated by a higher calling than those in the private sector, there is no demonstrated need to burden volunteers with the same regulatory regime as for-profit advisors.

Registration, with its burdensome paperwork and associated costs, will have a chilling effect on the ability of local governments to obtain the highest quality volunteer participation for municipal authorities. It will be hard to justify service if an individual's motivation is questioned by the federal government, particularly when faced with a regulatory burden that includes disclosure of personal information beyond that deemed by the local community as necessary to serve. Registration costs may also discourage volunteer service; if not paid by the individual, costs will be shifted to local governments, who continue to face a cumulative fiscal shortfall of between $56 and $83 billion between 2010 and 2012. Finally, the rulemaking raises unanswered questions of

the potential scope of legal liability to unknown third parties for cities that fail to comply fully with all of the regulatory requirements of the SEC and MSRB.

Thank you for your consideration. We certainly hope you will decide not to proceed with this rulemaking. Please contact Lars Etzkorn at 202-626-3173 or etzkorn@nlc.org if you have questions about these comments.

Sincerely,

Donald J. Borut
Executive Director