



TENNESSEE

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February 22, 2011

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

Re: File Number S7-45-10  
Release No. 34-63576 (the "Release")

Dear Secretary Murphy:

This letter is submitted in response to the Commission's request for comments on the proposed rules related to the registration of "municipal advisors" set forth in the Release.

We submit that the Commission's proposal to require appointed members of state and local governing bodies to register as municipal advisors, and the rationale for that proposal, are misguided and should be reconsidered. For convenience, such governing bodies will be referred to as "municipal boards."

On page 41 of the Release, the Commission writes: "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 'municipal advisor.' The Commission believes that this interpretation is appropriate because employees and elected members are accountable to the municipal entity for their actions. In addition, the Commission is concerned 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."

We have reviewed many of the comments submitted in response to the proposal, concur with the objections expressed in those comments, and will not repeat them in detail here. We do, however, wish to emphasize two points of substantial significance to state and local governments, their citizens, and taxpayers.

**Citizen members increase governmental accountability by acting as watchdogs.**

Many commentators have pointed to the services and expertise that citizen members contribute to governmental activities at little or no cost. We agree with those comments. There is, however, another public benefit that citizen members provide. The Commission's proposal fails to recognize that the presence of citizen members on municipal boards increases governmental accountability. One of the purposes of appointing citizen members to municipal boards is to provide oversight of government officials and the procedures and activities of municipal boards. In many cases, citizen members are appointed to municipal boards because local citizens have demanded their appointment. Their membership is typically required by statutes, ordinances, or policies adopted by elected officials.

**The Commission's proposed rule will not enhance governmental accountability.**

If the Commission requires non-elected citizen members to register with the Commission and to be subject to its ongoing regulation and jurisdiction, the Commission will virtually assure a mass exodus of the citizen members appointed to municipal boards across the country. The initial and ongoing expense associated with registered status, including the expense of retaining counsel with securities laws experience, is exceedingly burdensome and will undoubtedly prove prohibitive for many individuals who are otherwise willing to volunteer for public service. In addition, the potential liabilities associated with violation of the securities laws by a registered, regulated individual, including liabilities for inadvertent, unintentional violations, will further discourage voluntary public service. After the exodus, many municipal boards will continue to operate, but without the benefit of citizen watchdogs. Governmental accountability will not be enhanced.



### *Additional Comments*

In addition, we urge the Commission to consider the following comments made by other representatives of state and local governments and their agencies.

*Interference with local activities.* There is no basis for the Commission, under the Dodd Frank Act or other authority, to regulate the manner in which local governments conduct their day to day activities. If the Commission has no jurisdiction to regulate the day to day activities of, *e.g.*, a municipal pension board, by what authority does it claim the right to regulate the membership of that board?

*Transparency and accountability.* Municipal boards are typically regulated by local laws and established policies that govern conflicts of interest, other ethical practices, open meetings, open records, and issues related to fiduciary duty. They are subjected to scrutiny by the press. The suggestion that citizen members who have been appointed (rather than elected) are not accountable is wrong. As one commentator put it, the Commission's statement that appointed members are not accountable to anyone is akin to saying that the SEC Commissioners are not accountable for their actions.

*Illogical result.* A municipal board member, whether elected, employed, or appointed, is a consumer, not a purveyor, of advice concerning financial products and investment strategies. A citizen member of a municipal board is not acting as a financial intermediary. The Commission's proposed interpretation would convert municipal board members – the individuals who retain advisors and make decisions – into advisers. Surely this result is illogical and cannot have been intended.

If the rule's definition of municipal advisor is adopted as proposed, the impact to state and local governments will be substantial. The loss of citizen board members and other appointees

If the rule's definition of municipal advisor is adopted as proposed, the impact to state and local governments will be substantial. The loss of citizen board members and other appointees will be damaging on many levels. Any benefit the Commission hopes to achieve by requiring the registration and regulation of these individuals will come at an unreasonable price. We know of no evidence demonstrating that registration and regulation of citizen volunteers – or their resignation from municipal boards – will be beneficial to the public.

Thank you for your kind consideration of this matter.

Yours very truly,



Roland McElrath  
Finance Director, City of Memphis

C: A C Wharton, Mayor - City of Memphis