LEAGUE OF MINNESOTA CITIES

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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
Proposed Rules for the Permanent Registration of Municipal Advisors - Release 34-63576

Dear Chairman Schapiro and Members of the Commission:

Introductions

On behalf of the League of Minnesota Cities (League)[1] and its members, the League is writing to comment on the "Proposed Rules for the Permanent Registration of Municipal Advisors", specifically proposed rule 15Ba1-1: Definition of "Municipal Advisor" and Related Terms, a. Statutory Definition of "Municipal Advisor"; b. Interpretation of the Term "Municipal Advisor" Definition of Related Terms; and c. Exclusions from the Definition of "Municipal Advisor". We will try to respond generally to the proposals and address more specifically the relevant areas identified in the Commission's "Request for Comment."

Statutory Definition of "Municipal Entity" under Definition of Related Terms

"Municipal Entity"

We agree with the Commission's suggested clarification of the definition of "municipal entity". In particular, we are in support of the Commission's observation that the term "includes, but is not limited to, public pension funds, local government investment pools and other state and local government entities or funds, as well as participant-directed investment programs or plans such as

[1] The League of Minnesota Cities has a voluntary membership of 830 out of 854 Minnesota cities. The League represents the common interests of Minnesota cities before judicial courts and other governmental bodies and provides a variety of services to its members including information, education, training, policy-development, risk-management, and advocacy services. The League's mission is to promote excellence in local government through effective advocacy, expert analysis, and trusted guidance for all Minnesota cities.

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529, 403(b), and 457 plans." The League believes that this expanded clarification of the phrase adequately captures a variety of local government related entities that the law is designed to protect.

For example, Minnesota has many local fire relief association pension funds that receive advice and recommendations from individuals that would rightly qualify as "municipal advisors" under the act. Similarly, in addition to the local government investment pools identified in the proposed rules, Minnesota, as with many states, has well established local government insurance pools that invest millions of dollars of public funds through the use of municipal advisors. Accordingly, the League concurs with the Commission's broad interpretation of the statutory phrase "municipal entity."

Exclusions from the Definition of "Municipal Advisor"

"Employees of a municipal entity"

<u>"Elected and ex-officio members of a governing body"</u>
As identified in the commentary on the proposed rules, the Exchange Act Section 15B (e) (4) (A) excludes employees of a municipal entity from the definition of "municipal advisor". The Commission states that it thinks it is appropriate to interpret the term "employees" to include "elected" members of governing bodies as well as "ex-officio" members. In clarifying footnote 142 to the commentary, the Commission also states that employee "would include persons appointed to fill the remainder of the terms for elective office." As far as it goes, the League wholeheartedly supports the inclusion of elected and ex-officio members within the definition of employees. It is our belief that these individuals are the very persons to whom the act and proposed rules are designed to help.

<u>"Appointed members of a governing body"</u>
Unlike elected and ex-officio members, the Commission in its commentary, makes the statement that it "does not believe that appointed members of a governing body of a municipal entity . . . should be excluded from the definition of municipal advisor." The Commission reasons 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. The Commission then later asks in its "Request for Comment" "are these distinctions appropriate?" The Commission also asks "Are there other persons associated with a municipal entity who might not be 'employees' of a municipal entity that the Commission should exclude from the definition of a 'municipal advisor'?"

As discussed below, the League emphatically believes the distinction between elected and appointed officials is not appropriate. We are also of the opinion there are other persons associated with the municipal entity that should be rightly excluded from the definition of "municipal advisor."

Elected vs. Appointed Distinction
The distinction the Commission makes between elected and appointed members of governing bodies ignores and misunderstands basic principles of local government law, and will have a negative effect on local government budgets and their operations.

In Minnesota and throughout the United States, local governments depend upon the members of their communities to help facilitate and run their governments through varying volunteer activities. These volunteers form the bulwark of American democracy and the foundation of our volunteer spirit. Tens of thousands of community volunteers give their time, expertise and common sense to enable their local governments to plan, zone, and invest and to run various facets of local government operations. Some are true volunteers and others receive stipends. These individuals, in addition to employees and elected officials, are the clients of the "municipal advisor" and are precisely the people that the Exchange Act is meant to protect.

For example, Minnesota law authorizes the creation of numerous municipal entities that help accomplish a variety of public purpose within our state,[2] including fire firefighter pension relief associations, economic development authorities, housing authorities, water management organizations, storm and sanitary sewer districts, gas, electric and cable utilities commissions, and park districts, just to name a few. These legislatively authorized entities, with very explicit powers and duties, are sometimes governed by elected officials, but more often than not, they are governed by volunteers who have been appointed by and are accountable to elected officials.

A few examples might be helpful in illustrating this point.

1. **HRAs, EDAs, and port authorities.** Minnesota law authorizes a city to create several types of economic development entities: housing and redevelopment authorities (HRAs), under Minn. Stat. Sec. 469.03 et seq.; economic development authorities (EDAs) under Minn. Stat. Sec 469.090 et seq.; and/or port authorities under Minn. Stat. Sec. 469.08 et seq. While there are differences among the various types of entities, each has the authority to issue bonds under certain conditions; each is legally a separate public corporation and political subdivision of the state, and is a separate legal entity from the city which creates it; and each is governed by a board whose members are appointed either by the mayor of the city or by the city council.

   The League cannot believe it is the intent of the Exchange Act or Commission's rules to treat these individuals as "municipal advisors". These are the very individuals that hire and retain traditional municipal advisors to help them fulfill their responsibilities.

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[2] Minn. Stat. § 424A.04 (fire firefighter pension relief associations); Minn. Stat. § 469.090 to 469.1081 (economic development authorities); Minn. Stat. §469.001 to 469.047 (housing authorities); Minn. Stat. § 103D (water management organizations); Minn. Stat. § 115.18 to 115.37 (storm and sanitary sewer districts); Minn. Stat. § 453A.04; Minn. Stat. § 453.54; Minn. Stat. § 238.08 (gas, electric and cable utilities commissions); and Minn. Stat. ch. 398 (park districts).

The League can conceive of no rationale that would support subjecting these individuals to registration requirements**.**

2. **Joint powers boards.** Cities in Minnesota are authorized under Minn. Stat. Sec 471.59 to form joint powers entities. An example is a joint fire department which provides services to two or more cities. Such a joint entity will typically be governed by a joint powers board, consisting of individuals appointed by the city councils of the participating cities. The individuals appointed to the joint powers board may be members of the city council, city employees, citizen volunteers, or a combination of the three. The cities who are parties to the joint powers arrangement can, if they choose, delegate to the joint powers board the power to issue bonds. A joint powers board may also provide advice to a city regarding issuance of bonds for purchases or expenditures relating to the joint powers entity's activities. Again, it is difficult for us to conceive of the rationale for treating members of these joint powers boards as "municipal advisors" under the act.

3. **League of Minnesota Cities Insurance Trust.** An additional example is another joint powers arrangement related to the core activities of the League of Minnesota Cities itself. Over 30 years ago the Minnesota State Legislature authorized local governments to manage their insurance risks through intergovernmental risk pools. The League of Minnesota Cities Insurance Trust (LMCIT), which is such a pool, was formed under Minn. Stat. Sec. 471.59 and Minn. Stat. Sec 471.98 et seq. LMCIT is governed by a board whose members are members of the city council or staff members of LMCIT's member cities. The LMCIT Board members are appointed by the board of directors of the League of Minnesota Cities. Like virtually every intergovernmental risk pool, LMCIT staff regularly provides loss control and related advice to member cities, which in some cases could relate to city projects involving bond issues. LMCIT holds a significant amount of funds in trust for the member cities. Those funds are invested until they are needed to pay claims or necessary expenses. LMCIT staff provides guidance to the LMCIT Board regarding LMCIT investment policies and practices and regarding individual investments. At the same time, the LMCIT Board contracts with registered financial advisors to provide the Board with investment expertise.

   Several questions arise under this situation. First, is it the Commission's intent that any or all of the city officials or city staff appointed to the LMCIT Board would be considered "municipal advisors" and therefore subject to the registration and other requirements under the proposed rules? Would it be the intent of the proposed rules to subject LMCIT staff (and League staff for that matter) to municipal advisor requirements either because of their role in advising the LMCIT Board regarding investments, or because of their role in advising member cities? Again, the League can conceive of no particular rationale to support such a requirement.

4. **Fire Pension Relief Association Trustees.** Minnesota relies mainly on volunteer fire departments to provide vital fire protection to its cities. For the most part, these volunteers are unpaid. However, an important retention and recruitment tool available to these volunteer fire departments is to offer a pension after a set number of years of service. The pension also offers benefits to widowed spouses and children of volunteer firefighters killed in the line of duty. Minn. Stat. Sec. 424A.04 requires that the pension be overseen by a fire relief association board that consists of both elected and appointed members. By state law, each year the city council must appoint three trustees to the fire relief board. These appointees must include one elected city official; one elected or appointed city official and the chief of the city fire department. Again, it is difficult for us to conceive of the rationale for treating members of these relief boards, including a fire chief, as "municipal advisors" under the act.

When Congress exempted the municipal entity and its employees from the definition of "municipal advisor," the League believes it did so with the express intent to include all of the entity's officers and employees, including its volunteer board members within that exemption. To do otherwise creates an anomalous result. Mere discussions by board members on investment objectives when those discussions involve decision-making debates by issuers and, in the case of boards of pension trustees, investors, is not "advice" as you have technically defined it in the proposed rules. Requiring registration for those who participate in those discussions chills informed analysis and debate - exactly the opposite result the SEC should be seeking. The SEC is mistakenly failing to recognize that those members of governing bodies and other state and local officials are the personnel that operate the municipal entities. The "municipal advisors" serve those officials. It confuses the issue to suggest that those officials—the very intended beneficiaries of municipal advisor regulation—somehow are "municipal advisors" themselves. In short, the proposed regulations turn on its head the concept of "advice" and transform decision makers of entities who should be receiving advice into "advisors".

City employees providing services to related municipal entities

Another problem and ambiguity created by the proposed interpretation of who is considered a municipal employee, relates to staffing for the various separate entities identified above. The Exchange Act excludes "employees" of the municipal entity from the definition of municipal advisor. However, many of the entities identified above do not have their own employees. Rather they are staffed by employees of other entities, such as a city in which the HRA is located. These individuals are not technically "employees" as the proposed rules define them, but none the less, provide employee-like services to the entities.

For example, as discussed above, while an HRA, EDA, or port authority is legally a separate political subdivision, it may or may not have its own employees. A very common approach in Minnesota is that one or more city employees provides the necessary staffing for the HRA's, EDA's, or port authority's activities. The HRA, EDA, or port authority then reimburses the city for the cost of those services. In this type of arrangement, a city employee may often provide guidance to the EDA, HRA, or port authority board regarding a proposed project to be funded by

bonds. Is it the SEC's intent that a city employee who provides advice to the board of a city HRA, EDA, or port authority would be considered a "municipal advisor" and therefore subject to the registration and other requirements under the proposed rules? If so, what would be the public policy rationale for such an interpretation?

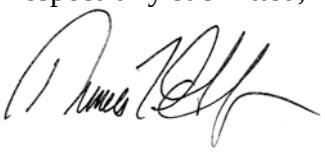
To be fair, the Commission identifies past instances of misconduct to justify its need to regulate pervasively. Nevertheless, municipal finance statistics suggest that there are far fewer instances of violations and misconduct than in the area of private finance where the Commission already regulates pervasively. The current economic situation has devastated state and local government budgets, but there are far fewer defaults and municipal bankruptcies than the number of banks taken over by the FDIC. In short, virtually every state and local government subjects itself to a transparency that surpasses that of the Commission's exemplary efforts at transparency through a combination of public information and public meeting laws and extensive reporting through the media to their stakeholders. These are coupled with an accessibility that fosters immediate individual contact with those concerned stakeholders.

Conclusion

The cost to local governments and officials to comply with this regulation will be extensive and comes at the worst time for local governments. Local governments will be required to pay the cost for registering municipal advisors who serve the local government in a volunteer capacity and for those who are its officials. In addition, the local government will need to hire counsel with expertise in dealing with the SEC to be sure that these officials are properly trained and advised in the intricacies of securities law, without reducing the expense for counsel and various advisors who in the past have handled issues on behalf of the municipal entity. In addition, volunteers are critical to the functioning of local government. They grow more critical as municipal budgets shrink. The uncertainties created by this type of regulation may deter individuals from volunteering their needed expertise.

The League asks respectfully that Commission consider expanding the exclusion for local government officials, including among them, appointed board members and other elected and appointed officials that may advise "municipal entities," from the requirement to register as "municipal advisors" by including them within the definition of "municipal employee."

Respectfully submitted,



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c: Minnesota Congressional Delegation