Securities and Exchange Commission

File No. S7-45-10
SEC Release No. 34-63576—Registration of Municipal Advisors

Comments of:

The Board of Trustees of the Minnesota State Colleges and Universities
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Saint Paul, Minnesota 55101-7751

Minnesota Housing Finance Agency
400 Sibley Street, Suite 300
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Minnesota Higher Education Facilities Authority
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Minnesota Rural Finance Authority
625 North Robert Street
Saint Paul, Minnesota 55155-2538

Minnesota Agricultural and Development Board
1st National Bank Building
332 Minnesota Street, E200
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Dated: February 22, 2011.

The above-described agencies or instrumentalities of the State of Minnesota welcome the opportunity to submit comments on SEC Release No. 34-63576 (the "Release"), which proposes Rules 15Ba1-1 through 15Ba1-7 requiring "municipal advisors" to register with the Securities and Exchange Commission (the "Commission"). We are concerned that the rules if adopted by the Commission in the form proposed would have a significant adverse effect on our agencies and administration of important State programs.

The Board of Trustees of the Minnesota State Colleges and Universities ("MnSCU")

The Minnesota State Colleges and Universities system is the largest single provider of higher education in the state of Minnesota with 32 institutions, including 25 two-year colleges and seven state universities. The colleges and universities operate 54 campuses in 47 Minnesota communities and serve about 277,000 students in credit-based courses. Overall, the system produces about 34,700 graduates

each year. The system also serves 157,000 students in non-credit courses. In addition to credit-based courses, the system offers customized training programs that serve about 179,500 employees from 6,000 Minnesota businesses each year. The system is separate from the University of Minnesota.

The system is headed by a Chancellor and governed by a 15-member Board of Trustees. All of the trustees are appointed by the governor and confirmed by the state Senate. The system has a budget of about $1.8 billion a year. About $647 million comes from tuition and fees, and the remainder from state appropriations and other sources.

Minnesota Statutes Chapter 136F authorizes MnSCU to establish a Revenue Fund and to issue its revenue bonds as secured by the Revenue Fund to finance the construction and improvement of dormitory, residence hall, student union, food service and other revenue-producing buildings and related facilities used for the primary benefit of students of the State colleges and universities within the Minnesota State Colleges and Universities System. As of September 2, 2010, MnSCU had $155,545,000 tax exempt bonds and $19,185,000 taxable bonds outstanding that are payable solely from and secured by an irrevocable pledge of revenues to be derived from the operation of the buildings financed from the Revenue Fund and from fees imposed upon students for student activities, student facilities or other sources all of which are received in the Revenue Fund. In addition to bonds, the Revenue Fund issues guarantees of debt (other than revenue bonds) incurred to finance Revenue Fund facilities. Two guarantees have been issued to date, one for $3,419,381 and the other for $12,820,000. The guarantees are on a parity to right of payment with the revenue bonds.

Minnesota Housing Finance Agency

The Minnesota Housing Finance Agency ("Minnesota Housing") is an agency of the State of Minnesota, established in 1971 pursuant to Minnesota Statutes Chapter 462A, as amended. Minnesota Housing has invested more than $8.7 billion and assisted more than 750,000 households since 1971, as a leader of an alliance of government, private sector, nonprofit and faith-based community interests working to provide affordable housing to Minnesota residents.

Minnesota Housing is authorized to issue bonds for the purpose of purchasing mortgage loans to persons and families of low and moderate income for the purchase of residential housing and to finance multifamily housing developments for persons of low and moderate income. As of December 31, 2010, there were approximately $2.14 billion in aggregate principal amount of Minnesota Housing's single family mortgage bonds outstanding under three bond resolutions and approximately $171 million in aggregate principal amount of Minnesota Housing's rental housing bonds outstanding under two bond resolutions. In addition to issuing bonds, Minnesota Housing also invests substantial additional resources in affordable housing, comprising federal funds, state appropriations and its own resources. During the 2010-2011 biennium, Minnesota Housing will invest more than $1.4 billion and address a continuum of affordable housing needs for an estimated 97,000 households or units in the state. Minnesota Housing would rank as the sixth largest bank in the state if ranked among commercial banks.

Minnesota Housing is a public body corporate and politic, and the "agency shall consist of the state auditor and six public members appointed by the governor with the advice and consent of the senate." (Minnesota Statutes Section 462A.04, Subdivision 1) The State Auditor is an elected office and serves ex-officio as a member of the agency. The six public members are appointed and are to reflect geographic diversity within the state. (*Id*.) The management and control of Minnesota Housing and the powers of the agency are vested solely in the members. (Minnesota Statutes Section 462A.04, Subdivisions 6 and 7)

Minnesota Higher Education Facilities Authority

The Minnesota Higher Education Facilities Authority (the "Facilities Authority") is an agency of the State of Minnesota, established in 1971 pursuant to Minnesota Statutes Sections 136A.25 through 136A.42, , as amended. The Facilities Authority is authorized to issue revenue bonds in furtherance of its statutory purpose to assist institutions of higher education within Minnesota in the construction, financing and refinancing of projects.

Educational institutions eligible for assistance by the Facilities Authority are generally private nonprofit educational institutions authorized to provide a program of education beyond the high school level. Public community and technical colleges are also eligible for assistance but only for child-care and parking facilities. In addition, pursuant to special legislation, the Facilities Authority has issued bonds on behalf of a public community college for housing purposes. Application to the Facilities Authority as a conduit issuer is voluntary.

The Facilities Authority may issue bonds for a broad scope of projects, including buildings or facilities for use as student housing, academic buildings, parking facilities, day-care centers, and other structures or facilities required or useful for the instruction of students, conducting of research, or in the operation of an institution of higher education. While the Facilities Authority retains broad powers to oversee planning and construction, the Facilities Authority's current policy is to permit the participating institution almost complete discretion with respect to these matters.

As of February 1, 2011, the Facilities Authority has had 182 issues (including refunded and retired issues) totaling over $1.8 billion, of which approximately $967 million is outstanding. Bonds issued by the Facilities Authority are payable only from the loan repayments, rentals, and other revenues and moneys pledged by conduit borrowers. The bonds of the Facilities Authority do not represent or constitute a debt or pledge of the faith or credit or moral obligation of the State of Minnesota. The aggregate principal amount outstanding is subject to a statutory limit that has been amended several times by the state legislature and the current limit is $1.3 billion.

The operations of the Facilities Authority are financed solely from fees paid by the conduit borrowers; it has no taxing power. Bond issuance costs, including bond counsel, the financial advisor and the trustee, are paid by the conduit borrower.

The Facilities Authority consists of eight members appointed by the governor with the advice and consent of the senate and two ex officio members. (Minnesota Statutes Section 136A.26, subdivision 1) The eight public members are appointed and are to reflect geographic diversity within the state and possess skill, knowledge and experience in state and municipal finance, building construction field and higher education. (*Id*.) A representative of the Minnesota Office of Higher Education, a state agency, is an ex officio voting member. The President of the Minnesota Private College Council, a nonprofit organization representing private nonprofit higher education in Minnesota, or the president's designee, is an advisory, non-voting member. The Facilities Authority is authorized to do all things necessary or convenient to carry out its statutory purpose, including hiring staff, issuing bonds, entering into contracts, employing consultants, making loans to participating institutions and charging administrative fees. (Minnesota Statutes Section 136A.29)

Minnesota Rural Finance Authority

The Minnesota Rural Finance Authority ("RFA") is a public body corporate and politic created pursuant to Laws of Minnesota for 1986, chapter 398, article 6 for establishment of a program under which state bonds are authorized to be issued and proceeds of their sale are appropriated under the authority of article XI, section 5, clause (h) of the Minnesota Constitution, to develop the state's agricultural resources by extending credit on real estate security. The purpose of the RFA's programs and of the bonds issued to finance or provide security for the programs is to purchase participation interests in loans, including seller-sponsored loans to be made available by agricultural lenders to farms on terms and conditions not otherwise available from other credit sources.

RFA has invested more than $219 million and assisted more than 2,920 farmers since 1986 to help beginning farmers and other farmers in Minnesota be successful and maintain a strong rural economy. As of December 31, 2010, there were approximately $56.2 million in bonds and funds outstanding under various bond resolutions helping more than 630 farmers. During the 2010-2011 biennium, RFA will invest more than $12 million to help over 85 beginning farmers, livestock producers, and other farmers.

The board of RFA consists of the commissioners of Agriculture, Commerce, Employment and Economic Development, and Management and Budget (each of whom is an employee of the State), the State Auditor (serving ex-officio in an elective office), and six public members appointed by the governor with the advice and consent of the senate. (Minnesota Statutes Section 41B.025, Subdivision 1)

Minnesota Agricultural and Economic Development Board

The Minnesota Agricultural and Economic Development Board ("MAEDB") is a multi-agency state board established in 1984 pursuant to Minnesota Statutes Chapter 41A, as amended. The Board provides direct loans and loan guarantees to expanding businesses to facilitate job creation. MAEDB's funding is provided by an existing revolving fund as well the issuance of tax-exempt industrial

development bonds which are backed by a state-funded reserve. MAEDB also serves as a conduit bond issuer to raise capital for revenue-generating projects where the funds generated are used by a third party "conduit borrower" to make payments to investors.

As of December 31, 2010, MAEDB had a loan balance of nearly $2 million, $4.5 million in bond issue proceeds balance and $460 million in conduit bonds outstanding.

MAEDB's members consist of the commissioners of Management and Budget, Agriculture, Employment and Economic Development, and the Pollution Control Agency (each an employee of the State), and the president of Enterprise Minnesota, Inc. (a 501(c)(3) nonprofit corporation and affiliate of the NIST Manufacturing Extension Program) and two public members with experience in finance, appointed by Enterprise Minnesota, Inc. (Minnesota Statutes Chapter 41A.02, Subdivision 3).

Comments

The Commission has proposed rules in the Release requiring the registration of municipal advisors as mandated by Section 975 of the Dodd-Frank Act. Among other things, the Commission in the Release proposes a distinction in the application of the proposed rules to governing bodies of municipal entities: appointed members of a governing body of a municipal entity (excluding ex-officio members holding an elective office) are deemed "municipal advisors" for purposes of the proposed rules, but elected members are exempted. (76 Fed. Reg. at 834) The Commission has solicited comments on the proposed rules, including this proposed distinction (76 Fed Reg. 837), and we appreciate the opportunity to bring our concerns to your attention.

Section 15B(e)(4)(A) of the Exchange Act, as amended by Section 975(e) of the Dodd-Frank Act, defines the term "municipal advisor" to mean a person (who is not a municipal entity or *an employee of a municipal entity*) (i) that provides advice to or on behalf of a municipal entity or obligated person with respect to municipal financial products or the issuance of municipal securities, including advice with respect to the structure, timing, terms and other similar matters concerning such financial products or issues, or (ii) that undertakes a solicitation of a municipal entity. The Commission proposes that "an employee of a municipal entity" be interpreted to include any elected member of the governing body of a municipal entity, to the extent he or she is acting within the scope of her role as a board member. In addition, "employees" would include appointed members of the governing body to the extent that they are ex-officio members of the governing body by virtue of holding an elective office. But the Commission then concludes:

> The Commission does not believe that appointed members of the 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.

(76 Fed. Reg. 834) For the reasons that follow, we believe that this distinction is ill-founded and, if adopted as proposed, would have far-reaching implications for the sovereignty of state and local government entities including our agencies.

First, it is simply inappropriate for the Commission to make judgments regarding the accountability of state and local government officers to their governmental units. "State constitutions and statutes . . . define the responsibilities of public officials and the means by which they are held accountable, including removal from office." (Disclosure Roles of Counsel in State and Local Government Securities Offerings at 2 (ABA 3d ed. 2009)) The Commission acknowledges as much in the Release: "These public bodies are governed by State and local laws, including State constitutions, statutes, city charters, and municipal codes. Such constitutions, statutes, charters, and codes impose on municipal issuers a vast and varied multiplicity of requirements relating to governance, budgeting, accounting, and other financial matters." (76 Fed. Reg. 825-26) The proposal that appointed board members are not accountable reflects an ignorance of state and local government law or is simply disingenuous.

Appointed board members generally are subject to removal by the appointing authority, and the appointing authority is generally an elected official. (See, e.g., Minnesota Statutes Sections 15.0575, Subdivision 4, and 462A.04, Subdivision 1a.) In Minnesota, as in many other jurisdictions, appointed board members to state agencies are subject to substantial regulation involving, among other things, open meetings, ethics, conflicts of interest, and data practices. (See, e.g., Minnesota Statutes Sections 10A.07, 10A.071, 10A.09, and 136A.41. See generally Minnesota Statutes Chapters 10A, 13D, and Section 15.0575, as amended. In addition, the governor has adopted by executive order a Code of Conduct for administrative officials, including appointed board members, which is attached as Exhibit A.) Furthermore, the principle on which the Commission proposes to base the distinction—that only board members elected by voters are sufficiently accountable—has nothing to do with whether an individual is a municipal advisor or not or is qualified to act as one.[1] From a regulatory perspective, it makes no difference whether a board member is elected or appointed if he or she is deemed to be acting as a "municipal advisor." Any benefits of registration and regulation in this context[2] apply no matter how a board member attains office. The distinction proposed by the Commission is unfounded, since all board members are accountable to the extent deemed sufficient by state and local law, and false, since the distinction is immaterial to the purposes of the proposed rules.

Second, board members, whether elected or not, essentially serve as the "municipal entity" for purposes of the rules and all board members should be excluded from the definition of "municipal advisor" on that basis. The statutory definition excludes "a municipal entity" from the definition. (Section 15B(e)(4)(A) of the Exchange Act, as amended by the Dodd-Frank Act, defines the term "municipal advisor" to mean a person (*who is not a municipal entity* or an employee of a municipal entity) . . . ." (Emphasis added.)) Congress in excluding a "municipal entity" from the definition must

[1] Employees are no more accountable than appointed board members if accountability is ultimately based on voter approval.

[2] We respectfully submit there are no benefits of regulation of the governing bodies of municipal entities as proposed or, at a minimum, any incidental benefits that may result are vastly outweighed by the burdens imposed on municipal entities by the proposed rules.

have intended that the exclusion have some practical effect. For example, the statutory definition of "solicitation of a municipal entity" requires "direct or indirect communication with a municipal entity." (Exchange Act, Section 15B(e)(9)) If municipal entity refers solely to the legal entity, no such communication is possible.

While the governing body generally is not identical with the municipal entity,[3] for all practical purposes the governing body acts as the municipal entity for purposes of the municipal finance and investment activities contemplated by the proposed rules, either authorizing, or delegating with sufficient parameters authorization of, bond issues, the execution of derivatives, the making of investments, the selection of financial advisors, swap advisors, etc. The advice that a municipal advisor gives under the proposed rules relates to actions of a municipal entity that are the responsibility of its governing body. The voters of a municipal entity do not structure bond issues, authorize investments, or select investment advisors, for example. In sum, it is the governing body that receives and acts on the advice of municipal advisors as contemplated by the proposed rules.[4] No other person or entity acts on behalf of the municipal entity (although sometimes voter approval of bond issues is required).

A "municipal advisor" under Section 15B(e)(4)(A) of the Exchange Act is a person "that provides advice to or on behalf of a municipal entity"[5] or "that undertakes a solicitation of a municipal entity." If an appointed member of a governing body is a municipal advisor, are we to suppose that board members are giving advice when they vote on a bond issue or swap contract or they are soliciting when they approve the hiring of underwriters or financial or swap advisors? It is strained, indeed, to find, as the Commission seems to propose, that the governing body (at least an appointed member) is providing advice on such matters or soliciting. But that absurd result is the logic of the Commission's proposed rationale.[6]

The Commission would better implement Congressional intent if it excludes all members of governing bodies of municipal entities from the definition of "municipal advisor" under the proposed rules. That interpretation would give a natural meaning to both parts of the parenthetical exclusion in the statutory definition "a person (who is not a municipal entity or an employee of a municipal entity)":

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[3]But see, e.g., Minnesota Statutes Section 462A.04, Subdivision 1, which creates Minnesota Housing as a "public body corporate and politic" but then provides that the "agency shall consist of the state auditor and six public members appointed by the governor with the advice and consent of the senate." See also Minnesota Statutes Section 136A.25, which creates the Facilities Authority as "a state agency" but then provides in Minnesota Statutes Section 136A.26, Subdivision 1 that the Facilities Authority shall consist of eight members appointed by the governor with the advice and consent of the senate, and a representative of the Minnesota Office of Higher Education. In each case, the agency consists of, and acts through, its members.

[4]The Commission in the release summarizes the three principal types of "municipal advisors" as financial advisors, investment advisors and third-party marketers and solicitors. (76 Fed. Reg. 829) The governing body of a municipal entity hardly falls naturally into any of these groups, which the Commission characterizes as "distinct groups of professionals that offer different services and compete in distinct markets." (*Id*.)

[5]It is not clear what is intended by the phrase "provides advice . . . on behalf of a municipal entity." But the use of "on behalf of" connotes an agency relationship, i.e., providing advice to a third party on behalf of the municipal entity. Thus, the phrase has no relevance to the application of the rules to board members.

[6]Does the Commission by its rationale propose that the governing body is advising voters? If so, representative democracy is turned on its head.

the phrase "municipal entity or an employee" means the governing body and employees of the municipal entity. The proposed interpretation by the Commission ignores the first term in the parenthetical and interprets "employee of a municipal entity" to mean, in addition to employees, elected board members (who, of course, are not "employees" in any ordinary sense).

Third, the most troubling aspect of the interpretation proposed by the Commission is the invasion of state sovereignty the proposed rules unleash. Many state and local government governing bodies have responsibilities beyond the financial realm, such as deciding or implementing matters of public policy. Often, individuals are appointed to such bodies for reasons other than financial expertise. For example, some board members must come from certain industries or geographical areas to provide, in the state's sovereign judgment, the required experience and background to meet the responsibilities of the governing body.[7] The Commission in the proposed rules simply override these state prerogatives.

In essence, the Commission proposes to dictate to state and local governmental units who is eligible to be appointed to a governing body if one of the responsibilities of the governing body involves activities of a municipal advisor under the proposed rules. An appointed board member in such a circumstance must apply to the Commission for registration as a municipal advisor; if the application is denied, he or she may not serve.[8] Presumably, an application may be denied not only for criminal or ethical violations, but because the candidate does not have sufficient training, experience, competence or such other qualifications as the MSRB will impose by rule as necessary or appropriate in the public interest or for the protection of investors and municipal entities. (See Exchange Act, Section 15B(b)(2)(A), as amended by Section 975(b) of the Dodd-Frank Act)

The proposed rules further substantially impinge on state sovereignty by the application process. The mere process of applying for registration as a municipal advisor introduces a substantial waiting period that is foreign to state and local board appointments.[9] The recordkeeping requirement, the procedure for withdrawal from registration (which may be denied (see 76 Fed. Reg. 857)), and the payment of registration or annual fees, not to mention the potential for required training and periodic examination, is a substantial burden on candidates for appointment to a municipal governing body, even if the candidates are otherwise qualified. Such appointees generally serve as their contribution to the

[7]See, e.g., Minnesota Statutes Section 136A.26, as amended. All eight members of the Facilities Authority appointed by the governor shall be residents of Minnesota and at least two members must reside outside the Minneapolis - Saint Paul metropolitan area. In addition, at least one member must have skill, knowledge and experience in state and municipal finance, at least one member must have skill, knowledge and experience in the building construction field, and at least one member must be a trustee, director, officer or employee of an institution of higher learning. See also Minnesota Statutes Section 136f.02, subd. 1, providing that three of the 15 trustees responsible for governing MnSCU must be college or university students and one must be a labor representative. Cf. Section 975(b) of the Dodd-Frank Act (composition of the MSRB).

[8]Section 975 of the Dodd-Frank Act makes it unlawful for municipal advisors to provide certain advice to or solicit municipal entities without registering with the Commission. (Exchange Act, Section 15B(a)(1)(B))

[9]The Commission has 45 days to grant an application or institute proceedings to determine whether denial is proper. Such proceedings, if initiated, are to be completed within 120 days of the application, unless the Commission finds good cause for extension. See 76 Fed. Reg. 860.

public good, usually with little or no compensation for their time and efforts.[10] The number of individuals willing to serve on governing bodies with responsibility for financial matters will undoubtedly be substantially reduced if the rules are adopted in the form proposed and undoubtedly some, if not many, current board members will resign. Such a result would be devastating for the sound administration of our agencies' programs.

Evidently, this intrusion into state sovereignty is deemed necessary by the Commission for the purpose of protecting the municipal entity itself, since Section 975 of the Dodd-Frank Act and the amendments to the Exchange Act effected thereby are clearly aimed at the protection of municipal entities and obligated persons.[11] The arrogance of the proposition that municipal entities must be protected from themselves (in terms of appointed board members), and not just from third-party advisors, is simply breathtaking, especially when deference is due under principles of federalism to matters of state sovereignty.

For the foregoing reasons, the Commission should interpret Section 15B(e)(4) of the Exchange Act to exclude all members of the governing body of a municipal entity from the definition of "municipal advisor." If the Commission finds that interpretation unconvincing as a matter of statutory interpretation, the Commission has broad authority under Section 15B(a)(4) of the Exchange Act (as amended by Section 975(a) of the Dodd-Frank Act) to exempt any municipal advisor or class of municipal advisors from any provision of Section 15B or the rules or regulations thereunder, if the Commission finds that such exemption is consistent with the public interest, the protection of investors, and the purposes of Section 15B. Exempting all members of a governing body of a municipal entity is surely in the public interest (since it respects state sovereignty) and does not adversely affect protection of investors, so the Commission should by rule or order grant such exemption.

Thank you for consideration of our comments.

Respectfully submitted,

THE BOARD OF TRUSTEES OF THE MINNESOTA STATE COLLEGES AND UNIVERSITIES

By Laura King
Vice Chancellor

MINNESOTA HOUSING FINANCE AGENCY

By Patricia Hippe
Deputy Commissioner

[10] In Minnesota, members of state boards receive a per diem of $55, plus reimbursement of certain expenses. See Minnesota Statutes Section 15.075, Subdivision 3.

[11] Protection of investors is not mentioned by the Commission in its discussion of benefits of the proposed rules. See 76 Fed. Reg. 873-75.

MINNESOTA HIGHER EDUCATION FACILITIES AUTHORITY

By Marianne Remedios
Executive Director

MINNESOTA RURAL FINANCE AUTHORITY

By Dave Frederickson
Chair

MINNESOTA AGRICULTURAL AND DEVELOPMENT BOARD

By Mark Phillips
Chair

OFFICE OF GOVERNOR MARK DAYTON

CODE OF CONDUCT FOR ADMINISTRATION OFFICIALS

The citizens of Minnesota expect, and deserve, the highest level of ethical conduct and accountability from their elected and appointed public servants. Accordingly, I, Governor Mark Dayton, along with Lieutenant Governor Yvonne Prettner Solon, adopt this Code of Conduct on behalf of the Administration, and we shall insist that all Administration Officials conduct themselves in accordance with this Code and Minnesota law regarding ethical conduct of public employees.

SECTION I: DEFINITIONS

1. "**Administration Official**" means the Governor and Lieutenant Governor, commissioners, deputy commissioners, assistant commissioners, all other individuals and/or employees appointed by the Governor who serve "at the pleasure" of the Governor, along with all employees in the Office of the Governor.

2. "**Public Official**" means an Administration Official who meets the definition of a public official set forth in Minn. Stat. § 10A.01, subd. 35. [1]

SECTION II: CODE REQUIREMENTS

1. **Acceptance of Gifts and Outside Compensation.** Administration Officials in the course of or in relation to their official duties shall not, directly or indirectly, receive or agree to receive any

[1] "Public official" is defined in Minn. Stat. § 10A.01, subd. 35 to include any: "(3) constitutional officer in the executive branch and the officer's chief administrative deputy; . . . (5) commissioner, deputy commissioner, or assistant commissioner of any state department or agency as listed in section 15.01 or15.06; (6) member, chief administrative officer, or deputy chief administrative officer of a state board or commission that has either the power to adopt, amend, or repeal rules under chapter 14, or the power to adjudicate contested cases or appeals under chapter 14; (7) individual employed in the executive branch who is authorized to adopt, amend, or repeal rules under chapter 14 or adjudicate contested cases under chapter 14 [and any deputy to such individual]; …(12) member, regional administrator, division director, general counsel, or operations manager of the metropolitan council; (13) member or chief administrator of a metropolitan agency; (14) director of the division of alcohol and gambling enforcement in the department of public safety; (15) member or executive director of the higher education facilities authority; (16) member of the board of directors or president of Minnesota Technology, Inc.; or (17) member of the board of directors or executive director of the Minnesota state high school league."

payment of expense, compensation, gift, reward, gratuity, favor, service or promise of future employment or other future benefit from any source other than the State for any activity related to the duties of the Official. However the following are not considered a violation of this Code:

(a) Services to assist a public official in the performance of official duties, including but not limited to providing advice, consultation, information, and communication in connection with legislation, and services to constituents;

(b) Services of insignificant monetary value;

(c) A plaque with a resale value of $5 or less;

(d) A trinket or memento costing $5 or less;

(e) Informational material with a resale value of $5 or less;

(f) Payment of reimbursement expenses for work-related travel or meals, not to exceed actual expenses incurred, which are not reimbursed by the state and which have been approved in advance by the appointing authority as part of the work assignment; and

(g) Honoraria or expenses paid for papers, talks, demonstrations or appearances made by Officials on their own time for which they are not compensated by the state.

2. **Prohibition on Gifts from Lobbyists and Lobbyist Principals**. Public Officials must also comply with the prohibition on gifts from a lobbyist or lobbyist principal as required by Minn. Stat. § 10A.071.[2]

3. **Confidential Information.** An Administration Official shall not use confidential information to further the Official's private interest, and shall not accept outside employment or involvement in a business or activity that will require the Official to disclose or use confidential information.

4. **Political Activity.** No Administration Official shall, during hours of employment, directly or indirectly solicit or receive funds for political purposes, or indirectly, use official authority or influence to compel any state employee to apply for membership in or become a member of any political organization, to pay or promise to pay any assessment, subscription, or contribution, or take part in any political activity.

5. **Use of State Property and Resources**. Administration Officials shall not use or allow the use of state time, supplies, or state owned or leased property and equipment for the Administration

[2] A copy of Minn. Stat. § 10A.071 is available from the General Counsel to the Governor.

Official's private interests or any other use not in the interest of the state, except as provided by law. Administration Officials may make reasonable use of state time, property, or equipment for personal communications to other persons provided this use, including the value of time spent, results in no incremental cost to the state or results in an incremental cost that is so small as to make accounting for it unreasonable or administratively impractical. Administration Officials must comply with the Statewide Policy on Appropriate Use of Electronic communication and Technology issued by the Department of Management and Budget.3

6. **Use of State Vehicles**. A state vehicle may be used only for authorized state business except as specifically authorized by law.
7. **Discrimination**. An Administration Official who is found to have engaged in illegal discrimination, sexual or other harassment, is subject to discipline, including termination.
8. **Outside Employment.** An Administration Official shall not accept other employment or contractual relationships that will affect the Official's independence of judgment in the exercise of his or her official duties.
9. **Use of Official Position.** An Administration Official shall not use or attempt to use their official position to secure benefits, privileges, exemptions, or advantages for the Official or the Official's immediate family or an organization with which the Official is associated that are different from those available to the general public.
10. **Agency Appearances.** No Administration Official shall serve as an agent or attorney in any action or matter pending before any state agency except in the proper discharge of Official duties or on the Official's behalf.
11. **Self-Dealing.** No Administration Official shall solicit a financial agreement for the Official or an entity other than the state when the state is currently engaged in the provision of the services that are the subject of the agreement or where the state has expressed an intention to engage in competition for the provision of the services, unless the affected state agency and the Governor waive this provision.
12. **Avoiding Conflicts of Interest.** When an Administration Official believes a potential conflict of interest exists, it is the Administration Official’s duty to disclose it publicly and recuse herself or himself from any actions or decisions regarding the situation. A

[3] A copy of the Commissioner of Management and Budget Policy for Electronic Communication and Technology is currently available on the department’s website or may be obtained from the General Counsel to the Governor.

conflict of interest exists when a review of the situation reveals any of the following situations: (a) the use for private gain or advantage of state time, facilities, equipment, supplies, or use of a badge, uniform prestige or influence of the state office or employment; (b) receipt or acceptance by an Administration Official of any money or other thing of value from anyone other than the state for the performance of an act that the employee would be required or expected to perform in the regular course or hours of state employment or as part of the duties as an Administration Official; (c) employment by a business that is subject to the direct or indirect control, inspection, review, audit or enforcement by the Administration Official or the Official's agency; or (d) the performance of an act in other than the Administration Official's official capacity that may later be subject, directly or indirectly, to the control, inspection, review, audit or enforcement by the Administration Official or the Official's agency.

If an Administration Official believes that a potential or actual conflict of interest exists, the matter must be assigned to another employee who does not have a conflict of interest. If, after notification and consultation with the Governor, his designee, or the Commissioner of Management and Budget, it is determined that it is impossible to reassign the matter, the Administration Official may proceed with the assignment, but interested persons must be notified of the conflict.

13. **Additional Requirements for Public Officials**. A Public Official has a conflict of interest if the discharge of the Public Official's duties would require the Public Official to take an action or make a decision that would substantially affect the Official's financial interests or those of an associated business, unless the effect on the Official is no greater than on other members of the Official's business classification, profession or occupation. If a Public Official has a conflict of interest, the Public Official must prepare and deliver to the Official's superior a written statement describing the situation and the potential conflict of interest. An oral statement followed up by a written statement is sufficient if time does not allow for a written statement. The Official's immediate superior must reassign the matter to an employee without a conflict of interest. If there is no immediate superior, the Official must abstain, if possible, from exerting any influence on the action or decision in question. If the Official is unable to abstain, the Official must file a written statement describing the potential conflict and action taken with the Governor or his designee and with the Campaign Finance and Public Disclosure

Board.

14. **State Contracts.** Administration Officials shall not award a state contract based on political considerations and must comply with all state laws regarding the provision of state contracts. In addition, Administration Officials may not (a) have a direct or indirect financial interest in any state contract, purchase order, sale or lease; (b) accept any kind of a financial advantage from suppliers or potential suppliers of goods or services to the state; or (c) receive any gifts in connection with state contracts.

    Administration Officials involved directly or indirectly in the acquisition process at any level must avoid conflicts of interest and must comply with the Department of Administration's policies regarding prevention of conflicts of interest in the acquisition of goods, services and utilities and in relation to avoidance of organizational conflicts of interest.

SECTION III: STATUTORY PROVISIONS ON ETHICS

Public Officials must also adhere to the provisions of Minn. Stat. ch. 10A (campaign finance and public disclosure). Administration Officials must also adhere to the applicable provisions of Minn. Stat. §§ 15.054 (prohibition on purchase of merchandise from agencies); 15.0596 (prohibition on payment of additional compensation from contingent fund); 15.06, subd. 9 (limitation on future appearances); 15.43 (acceptance of advantage in state contracts or purchasing); 15.85 (non- discrimination); 15.86 (zero tolerance for violence); 16B.55 (use of state vehicles); 16C.04 (ethical practices in state procurement and conflict of interest); 43A.32 (prohibitions on political activity); 43A.37 (payroll honesty); 43A.38 (code of ethics for public employees); 43A.39 (prohibited acts of public employees in the civil service process); 609.42 (bribery); 609.43 (criminal misconduct of public officers and employees); 609.45 (unauthorized compensation) and 609.455 (permitting false claims) and 609.456 (required reporting to legislative auditor). In the event that any provisions of this Code should be in conflict with a statutory provision, the strictest provision shall apply.

SECTION IV: INTERPRETATION OF THE CODE

Any questions regarding the interpretation of this Code of Conduct or its application to Administration Officials, and any other questions regarding what is and is not appropriate conduct for Administration Officials, shall be directed to the General Counsel to the Governor.

SECTION V: VIOLATIONS

Any Administration Official who knowingly or negligently violates any provision of this Code of Conduct is subject to disciplinary action, up to and including termination.

SECTION VI: ACKNOWLEDGMENT

In order to ensure that all Administration Officials receive and are aware of this Code of Conduct, each Official shall execute the attached Code of Conduct Acknowledgement confirming receipt of and familiarity with this Code. The Code of Conduct Acknowledgment forms must be signed and filed with the General Counsel to the Governor.

ACKNOWLEDGMENT OF RECEIPT AND COMMITMENT

I, _____ , hereby acknowledge that I have received
(print name/title)
and read the Code of Conduct. I agree to conduct myself in an ethically responsible manner and abide by the Code of Conduct and applicable laws regarding ethical conduct. I further acknowledge that I am accountable for the actions of those employees for whom I am responsible, and that it is my obligation to ensure that they, too, conduct themselves in an ethically responsible manner.

_____

(Signature) (Date)

Securities and Exchange Commission
File No. S7-45-10
SEC Release No. 34-63576—Registration of Municipal Advisors

Thank you for the opportunity to submit comments on SEC Release No. 34-63576, which proposes a rule requiring municipal advisors to register with the Securities and Exchange Commission. As commissioner of Minnesota's state economic development agency, I am very concerned that the rule, if adopted in its proposed form, would have a significant adverse effect on the activities of the Minnesota Department of Employment and Economic Development as well as local economic development throughout the state.

Minnesota has a long tradition of citizen involvement in public body decisionmaking. Nowhere is this true more than in local and state economic development activities. I serve as chair of the Minnesota Agricultural and Economic Development Board (MAEDB), a multi-agency state board that provides direct loans and loan guarantees to expanding businesses to facilitate job creation. Board activities are funded by an existing revolving fund as well the issuance of tax-exempt industrial development bonds which are backed by a state-funded reserve. The Board, which includes two public members, also serves as a conduit bond issuer to raise capital for revenue-generating projects where the funds generated are used by a third party (known as the "conduit borrower") to make payments to investors.

Whether it is the MAEDB or the nearly 400 local economic development and redevelopment authorities with similarly-structured boards, citizens serve an important and essential role in local and state economic development decisionmaking. This public participation is why I agree with the points included in a letter sent to you by the MAEDB and several other instrumentalities of the State of Minnesota. It is unrealistic to assume that board members are not accountable and it is reasonable to conclude all board members – elected, employed and appointed - should be considered equal members and be excluded from your definition of "municipal advisor." However, the letter's third point is especially problematic for public boards.

Public board members are generally appointed based on expertise in a given area, which may or may not include financial expertise. Not only would some members possibly not be eligible for serving on public boards depending on the qualifications that will imposed by the final rule, but the lengthy and fee-based registration process is unreasonable and burdensome without providing additional value to the public or the boards. Appointees generally serve with little or no compensation for their time and this registration requirement will reduce the pool of interested candidates significantly which is an undesirable outcome for any government seeking public expertise through board participation. This result is ultimately a less efficient administration of state and local economic development programs.

Government accountability is important and a key for Governor Mark Dayton's administration. However, the proposed rule's inclusion of public board members as "municipal advisors" causes an undue burden without any value to the public that they are serving. Thank you for consideration of my comments.

Regards,

Mark R. Phillips
Commissioner

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