MassHousing

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February 22, 2011

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

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

Dear Ms. Murphy:

The Massachusetts Housing Finance Agency ("MassHousing") appreciates this opportunity to share with the Securities and Exchange Commission (the "Commission") our comments regarding how the proposed interpretation of the registration requirements applicable to "municipal advisors" would impact MassHousing and possibly other state housing finance agencies.

The Release includes an unanticipated and potentially disruptive interpretation of the recently enacted and currently effective amendments to Section 15B of the Securities Exchange Act of 1934 (as amended, the "Exchange Act") requiring that "municipal advisors" register with the Commission and with the Municipal Securities Rulemaking Board ("MSRB") and subjecting "municipal advisors" to other statutory and regulatory requirements. The Exchange Act expressly excludes municipal entities and employees of municipal entities from the definition of "municipal advisors." However, in the Release, the Commission interprets the term "municipal advisors" to include unelected board members of municipal issuers who provide "advice" to the governmental entity they represent on, among other topics, the issuance of municipal securities and/or the investment of governmental funds (with an exception for unelected board members who hold office ex officio by virtue of holding an elective office).

The Release solicits comment on whether the Commission's distinction between unelected board members (who would be required to be registered and regulated as "municipal advisors" if they provide the applicable "advice" to their governmental entity) and elected board members (who would be exempt from registration and regulation as "municipal advisors") is appropriate. The Release 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."

MassHousing respectfully submits that the distinction between the treatment of elected and unelected board members of municipal issuers and/or municipal entities that invest their own governmental unit's funds is not appropriate, and that it is inappropriate to construe "municipal advisor" as covering any board members of a municipal entity. MassHousing would also suggest that members

of an advisory committee set up under state law to assist a designated municipal entity should be excluded from the definition of a "municipal advisor."

MassHousing is a body politic and corporate and a public instrumentality of The Commonwealth of Massachusetts (the "Commonwealth") established by Chapter 708 of the Acts of 1966, as amended (the "Act"), to increase the supply of residential housing in the Commonwealth for occupancy by persons and families of low and moderate income.

MassHousing is empowered by the Act, among other things, to issue bonds and notes to finance owner-occupied, residential housing for persons and families of low and moderate income and to make mortgage loans to sponsors of rental housing projects containing two or more dwelling units having promise of supplying well-planned, well-designed apartment units for low-income persons or families in locations where there is a need for such housing. Pursuant to the Act, MassHousing has the power to issue bonds and notes to finance construction and permanent mortgage loans, to finance mortgage loans through the acquisition of certain mortgage-backed securities and to enter into agreements and perform other functions in furtherance of its public purposes.

MassHousing is governed by a nine member board including the Secretary for Administration and Finance and the Director of the Department of Housing and Community Development of the Commonwealth, ex officio (neither the Secretary nor Director are elected officials), and seven other members appointed by the Governor. Three of the seven appointees are required to have expertise in mortgage banking, architecture or city or regional planning and real estate transactions, and two appointees are required to have experience in single-family housing finance. Another appointee is required to be a representative of organized labor appointed from a list of at least five names submitted by the Massachusetts State Labor Council, AFL-CIO. Each appointive member serves for a term of seven years and until his or her successor is appointed and duly qualified. The members serve without compensation and meet once a month or more frequently, if necessary. Action by the membership requires the affirmative vote of five members.

Our comments stated above are based upon a number of factors. First, the notion that any board member, acting in such capacity, can constitute a "municipal advisor" on bond issuance or bond investment matters to the entity such board member represents is a puzzling one. A governmental entity acts through decisions made by its board members. The board members effectively are, for decision-making purposes, the municipal entity, as such entity cannot make decisions other than through its board. The board member is the principal, not an "advisor" to the principal. The "municipal advisor" requirements are intended to impose background checks, fiduciary duties and other requirements on third-party advisors. They are not intended to protect municipal entities from their own board members, who are generally subject to existing state law safeguards such as, among others, conflicts of interest statutes, fiduciary duties to the entity they serve, and qualification requirements.

Second, although the term "advice" is not defined in the "municipal advisor" context, in the context of investment advisor regulation it has been construed quite broadly by the Commission. A board member who silently votes on a decision is not "advising" the entity, but exercising his or her statutorily mandated duty as a board member. The board member's status under the federal securities laws should not differ if the board member explains his or her reasons for such vote or makes comments that may influence other board members in, for example, authorizing the establishment of a new bond program or investment option within a program and the associated issuance of municipal securities, or authorizing the investment of bond funds in particular types of

securities. An interpretation of "municipal advisor" that subjects a governmental board member to federal regulation if he or she discloses his or her thinking prior to a board vote but not if such thinking is not disclosed cannot be a reasonable interpretation of Congressional intent.

Third, the Commission's interpretation is inconsistent with the Commission's treatment of directors of public companies who are not subject to similar registration requirements.

Fourth, the Commission's interpretation interferes, without apparent justification, with state governance. Many, if not most, board members of the state agencies and authorities are appointed, rather than elected, to their office. Their appointment is typically made by the state's Governor or other elected official or determined by state statute. State law or state officials determine the appropriate qualifications for such board members. The board members are generally uncompensated or nominally compensated and serve for a defined period. Requiring such board members to register with the Commission and the MSRB and subject themselves to current and unknown future federal securities regulations will likely discourage a high percentage of capable and valuable potential board members from serving on state entity boards involved in the issuance of securities and/or investment of funds. With respect, the Commission should not, by its statutory interpretations, diminish the pool of state public servants in order to provide state entities with perceived protections that are redundant with or in addition to the state's own determinations as to the necessary qualifications and regulation of its public servants.

Under existing law, two Advisory Committees have been established to assist MassHousing in formulating policies and procedures relevant to the development of its rental and home ownership housing programs. Each Advisory Committee is composed of up to 15 members who are appointed by the Governor and serve without compensation, including persons with experience or training in urban renewal, building, social work, mortgage financing, the municipal bond market, architecture, land use planning and municipal government. Unlike board members, members of the Advisory Committees do not have fixed terms but serve solely at the will of the Governor. Because of the desire of the Commonwealth to provide insight into the housing markets generally, members of the Advisory Committees are not subject to the same conflict of interest statutes as board members. Any recommendations of the Advisory Committees are made to the board and/or staff and the implementation of any such recommendation is subject to review and action by the MassHousing board. Neither the Exchange Act nor the Release clearly addresses the status of members of advisory committees established by state law, such as the MassHousing Advisory Committees.

As to the MassHousing Advisory Committees, we would suggest that the members of such committees (committees created by state law) should be excluded from the definition of a "municipal advisor."

Finally, whatever the outcome of this "interpretation" process, the Commission should promptly clarify that although the "municipal advisor" statute and registration requirements are already in effect, its interpretation that unelected board members who provide advice to their municipal entities relating to securities issuance or investment of the entity's funds are "advisors" is not currently effective, and will not be unless and until the Commission reaffirms it at some future point. As the Release interprets an existing statute without clearly indicating that such interpretation will only be enforced prospectively after the regulations accompanying the Release are finalized, unelected board members of state entities who arguably fall within the Commission's interpretation of a "municipal advisor" are currently left in a limbo status with no comfort that their continued service on their boards is in compliance with current federal securities law requirements.

We sincerely appreciate the opportunity to provide these comments to you.

Respectfully,

Thomas R. Gleason
Executive Director

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