

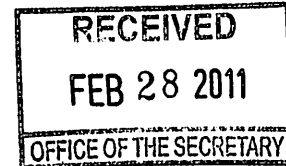
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Alaska Retirement Management Board

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February 18, 2011



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

RE: File Number S7-45-10, Registration of Municipal Advisors, Release No. 34-63576, 76 Federal Register 824

Dear Chairman Shapiro and Members of the Commission:

I am writing to comment on the interpretation provided by the Securities Exchange Commission ("Commission") in regard to the definition of "municipal entity" under Securities Exchange Act ("Act") Section 15B(e)(8). The Commission's interpretation creates uncertainty regarding the application of Section 15B(e)(8) to entities such as the Alaska Retirement Management Board ("ARMB"), which has fiduciary responsibility to invest and manage the assets of the State of Alaska's retirement systems, but has no authority to issue securities (bonds, etc.)¹. Secondly, I am also commenting on the Commission's inclusion of appointed members of boards in the definition of "municipal advisor" under Section 15B(e)(4). There is no compelling rationale to include appointees under the definition. Moreover, the Commission's view fails to recognize that the governing body of a municipal entity cannot be a municipal advisor to such entity.

I. Whether non-issuers are included in the definition of "municipal entity"

Section 15B(e)(8) of the Act provides as follows:

(e) Definitions. For purposes of this section—

(8) the term "municipal entity" means any State, political subdivision of a State, or municipal corporate instrumentality of a State, including—

(A) any agency, authority, or instrumentality of the State, political subdivision, or municipal corporate instrumentality;

(B) any plan, program, or pool of assets sponsored or established by the State, political subdivision, or municipal corporate instrumentality or any agency, authority, or instrumentality thereof; and

¹ ALASKA STATUTES 37.10.210-220.

(C) any other issuer of municipal securities;

In commenting on this section, the Commission expressed the view that the definition of "municipal entity" under clause (B) includes "public pension funds, local government investment pools and other state and local governmental entities or funds, as well as participant-directed investment programs or plans such as 529, 403(b) and 457 plans."² The Commission's interpretation of Section 15B(e)(8) suggests that public pension funds are included within the definition of "municipal entity" regardless of ability to issue municipal securities. This view is contrary to the plain wording of Section 15B(e)(8), and if applied, may create challenges for the wise stewardship of public pension funds within the State of Alaska. If, on the other hand, the Commission's view is that Section 15B(e)(8) only applies to entities that are indeed authorized to issue municipal securities, then we respectfully request that the Commission make that clarification.

Inclusion of public pension funds, and other public plans, within the definition of "municipal entity" regardless of their ability to issue municipal securities is contrary to the plain wording of Section 15B(e)(8). The key language is found in clause (C), which is read in conjunction with clause (A) and (B). Clause (C) states that the definition in Section 15B(e)(8) is applicable to "any other issuer", thereby suggesting that the legislature intended that clause (A) and (B) also contemplate issuers of municipal securities. Otherwise, there would be no need to include the word "other" in clause (C). We do not believe that a fair interpretation of this section indicates that the Act applies to non-issuers, notwithstanding the Commission's comments noted above.

II. Whether board appointees are included in the definition of "municipal entity"

The Commission also indicated that appointed members of governing bodies of municipal entities would be subject to the municipal advisor registration requirements of the Act.³ We believe that interpretation runs contrary to the intent of the Act. Section 15B(e)(4) defines the term "municipal advisor" to include persons who provide advice to municipal entities or solicit municipal entities. In defining municipal advisors, the Act excludes the municipal entity and employees thereof from the definition. The Commission expressed the view that elected and *ex officio* members were excluded from the definition, but that appointed members were not.⁴ In our view, there is no compelling rationale for this distinction.

²REGISTRATION OF MUNICIPAL ADVISORS, 76 Fed. Reg. 824, 829, January 6, 2011.

³REGISTRATION OF MUNICIPAL ADVISORS, 76 Fed. Reg. 824, 834, January 6, 2011.

⁴The Commission also appears to narrow the definition of *ex officio* members to elected officials who are *ex officio* members, as opposed to appointed government officials who are *ex officio* members.

The Commission's justification for this distinction was that elected members are subject to the electorate, but appointed members are not. This distinction fails to account for the fact that all trustees of ARMB are subject to stringent fiduciary duties and obligations under state law, and may be removed for cause. The fact that some trustees are non *ex officio* appointments has no bearing on their fiduciary obligations. Neither do we see how an elected trustee, solely because of his or her elected status, would be compelled to act any more faithfully than an appointed trustee.

III. The difficulties created by the inclusion of ARMB board appointees in the definition of "municipal entity"

Interpretation of Section 15B(e)(8) as being applicable to non-issuer entities, along with the inclusion of board appointees in the definition of "municipal entity" would be detrimental to the management and stewardship of the State of Alaska's retirement systems. ARMB consists of nine trustees, some of whom are knowledgeable citizens that are appointed to ARMB because of their experience and judgment. It could be detrimental to the operations of ARMB if these citizen volunteers were required to register as municipal advisors and be subject to the rules and regulations of both the Commission and the Municipal Rulemaking Securities Board (which we note are in addition to their fiduciary duties under state law). Such requirements, as well as expenses, and possible continuing education requirements, will make it difficult for ARMB to find qualified citizen volunteers to serve as trustees. The overall effect will be detrimental to the wise stewardship of the State of Alaska's retirement systems.

IV. The Governing Body of a Municipal Entity is not a Municipal Advisor

The broader question is whether the governing body of a "municipal entity" should be included in the definition of a "municipal entity". The Commission's view, as noted above, is that appointed members of governing bodies are subject to the municipal advisor registration requirements. This position indicates that Commission views the governing body as a separate entity from the municipal entity. We respectfully disagree with that view, and do not believe that a governing body is separate from the municipal entity for purposes of registration of municipal advisors.

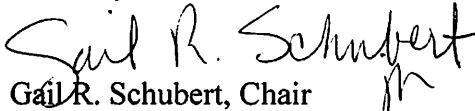
The difficulty with the Commission's position is that the governing body of a municipal entity cannot be a municipal advisor to such entity. The municipal entity acts collectively through its governing body, which is comprised of individual members. Those individual members collectively comprise the decision making process of the municipal entity. When fulfilling their roles on the governing body the individual members are not providing advice to the municipal entity. Instead, they are deliberating and acting. In making their collective decisions, the governing body relies on advice from otherwise registered financial advisers. It is

hard to fathom how individual members of a governing body, in fulfilling their roles as part of that governing body, would be considered as providing financial advice to the municipal entity.

V. Conclusion

I ask that you clarify that a non-issuer of municipal securities is not considered to be a "municipal entity" under the Act. I also request that the Commission adopt the view that a governing body of a municipal entity is considered part of the municipal entity itself, and thus not a separate body whose members are subject to the municipal advisor registration requirements. If the Commission disagrees and concludes that a governing body and its individual members are subject to registration, I request that you withdraw the artificial distinction between appointed and elected members, and allow both to be excluded from the municipal advisor registration requirements.

Sincerely,


Gail R. Schubert, Chair
Alaska Retirement Management Board

cc: ARMB Trustees