These comments are submitted regarding the proposed rule 15 Ba1 through 15 Ba7 of the Securities and Exchange Commission ("SEC") regarding registration of municipal advisors.

The Dodd-Frank Wall Street Reform and Consumer Protection Act (the "Dodd-Frank Act") amended Section 15B of the Securities Exchange Act of 1934 (the "Exchange Act") to require municipal advisors to register with the SEC. Effective as of October 1, 2010, the SEC issued interim final rules concerning the temporary registration of municipal advisors. On December 20, 2010, the SEC issued proposed rules for a permanent registration regime for municipal advisors.

I am an attorney who represents numerous public bodies, including several Arizona irrigation and electrical districts and towns.

Many of my clients and other public bodies are in the process of forming a Joint Action Authority (JAA) for the primary purpose of procuring and financing electric power resources.

The JAA will, itself, be a political subdivision of the State of Arizona. Each of the participating public bodies will be members of the JAA and each will appoint a director and one or more alternates to the governing board of the JAA. These appointees may be elected officials of the member's governing body, employees of the member or outside consultants.

In the proposed rule, the SEC clarifies that the term "employee of a municipal entity" should include any person serving as an elected member of the governing body of a municipal entity (JAA directors are not elected) and appointed members of the governing body to the extent such appointed members are ex officio members of the governing body by virtue of holding an elective office (the appointed JAA directors and alternates are not ex officio members). The SEC specifically declined to include appointed members that are not elected ex officio members because it concluded that they are not directly accountable for their performance to the citizens of the municipal entity.

We request that the SEC revisit its position and that the rule be revised to clarify that appointees, like those appointed to the governing body of the JAA, are not "municipal advisors" for purposes of Section 15B for the following reasons:

- Congress intended to include all of the municipal entity's officers and directors within the term "employee" regardless of whether they are elected or appointed;
- Elected and appointed members on the same board have the same responsibilities and the same exposure to liability;
- Members of governing bodies operate the municipal entities and should be the beneficiaries of the municipal advisor regulation. They are not "municipal advisors" themselves;
- SEC's determination that the board members of municipal entities act as municipal advisors is incorrect because they are decision-makers and perform policymaking functions as distinguished from giving "advice";
- Current SEC interpretation in connection with the concept of "advice" chills informed analysis and debate;
- State and local government is transparent and accessible to stakeholders and pervasive SEC regulation is not necessary;
- Municipal entity meetings are subject to state open meeting laws, their records are public records, and the board members are subject to strict conflicts of interest statutes that provide both civil and criminal penalties;
- Complex regulation increases costs for local government such as JAA and its member entities;

- Proposed rule will be costly for local governments because they will be required to pay the cost for registering municipal advisors who serve the local government;
- Local government will need to hire counsel with expertise dealing with the SEC to be sure officials are properly trained;
- Inconsistency with other SEC rules and regulations because the members of the Board of Directors of a public company are not required to register as "investment advisors."

We appreciate this opportunity to comment and hope that the SEC will reconsider its position.

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