



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

February 25, 2011

Ronald W. Smith  
Corporate Secretary  
Municipal Securities Rulemaking Board  
1900 Duke Street  
Alexandria, VA 22134

*By Electronic Mail*

Re: MSRB Notice 2011-04; Request for Comment on Pay to Play Rule for Municipal Advisors

Dear Secretary Smith:

We write in response to the draft proposal of the Municipal Securities Rulemaking Board (MSRB) to establish "pay to play" rules for municipal advisors set out in the above referenced regulatory notice. On February 22, 2011 this office filed comments with the Securities and Exchange Commission (SEC) on behalf of the State of Texas to express our objection to the Commission's proposal to require appointed board members of municipal entities to register as municipal advisors. (Attached) We are gratified that the MSRB filed comments with the SEC taking the same position.

Our comments filed with the SEC point out the problems of applying the draft proposed MSRB "pay to play" rules, and other anticipated MSRB rules, to appointed board members. We understand that that these difficulties result from the SEC's proposal and are not of the MSRB's making. As the MSRB's comments to the SEC recognize, the SEC's rule making is likely to have a significant impact on the substance, interpretation and enforcement of MSRB rules. In apparent recognition of this, the MSRB's comments to the SEC state that the MSRB may request comment on revisions to its draft proposals of other rules implementing the Dodd- Frank Act if the SEC's proposed rules were to be adopted in their current form. We trust that if the SEC adopts final rules requiring board members of municipal entities to register as municipal advisors, the MSRB will indeed reconsider all of its draft proposed rules relating to the registration of municipal advisors, including the "pay to play" rules, and invite comments to guide that reconsideration. We will reserve any further comments for that reconsideration, should it be necessary.

Thank you for the opportunity to comment on the MSRB's draft proposals.

Sincerely,

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Attachment To Comments Of Office Of Attorney General Of Texas  
To MSRB Notice 2011-04; Request For Comment On Pay To Play Rule  
For Municipal Advisors



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

February 22, 2011

By Electronic Mail  
Ms. Mary L. Schapiro  
Chairman  
Securities and Exchange Commission  
100 F Street, NE  
Washington, DC 20549-1090

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

Re: S.E.C. Release No. 34-63576: File No. S7-45-10 (Dec. 20, 2010)

Dear Chairman Schapiro and Secretary Murphy:

We write in response to the notice of proposed rule for the registration of municipal advisors issued by the Securities and Exchange Commission on December 20, 2010. This comment is submitted on behalf of the State of Texas, including the Office of the Governor, the Office of Attorney General, the Texas Comptroller of Public Accounts and the agencies on the attached list. We write to express our objection to the Commission's proposal to require appointed board members of municipal entities to register as municipal advisors.

**Introduction**

**Texas Relies Upon Its Citizen Volunteers To An Extraordinary Degree.**

Citizen volunteers serve on approximately 400 Texas state boards, commissions, authorities and committees. Collectively, they are critical to the governance of Texas. These citizen volunteers oversee great universities, public health and safety, criminal justice, historic preservation, parks and wildlife, environmental protection, public utilities, occupational licensing, and virtually every other aspect of Texas state government. These boards and commissions are a bastion of democracy, where over

3000 uncompensated citizen volunteers, selected from 25 million Texans for their skills for the job and their heart for the work, come to serve their State on a part time basis in the finest tradition of participatory government. There is no beltway mentality in Austin because these citizen volunteers bring Texas to the Capitol. Their hometown insights and experience guide Texas government. Texas government cannot run without the service of these citizen volunteers on its state boards and commissions. The SEC must not create a needless roadblock to their service.

Texas therefore opposes the SEC's proposed interpretation and application<sup>1</sup> of the Dodd Frank Wall Street Reform and Consumer Protection Act<sup>2</sup> ("Dodd Frank Act") to the extent it requires these citizen volunteers to register as municipal advisors. To do so would be profoundly unwise and statutorily unauthorized.

#### The SEC Should Issue Definitive Public Guidance on the Interim Rules.

Unfortunately, the SEC release has created needless anxiety and confusion among the thousands of citizen volunteers who serve their states and communities in Texas and across this country. The SEC release states, "The Commission does not believe that appointed members of a governing body of a municipal entity that are not elected ex officio members should be excluded from the definition of a "municipal advisor." *Id* at 41. Many have raised the concern that this statutory interpretation, combined with the interim rule<sup>3</sup>, in effect since October 1, 2010, requiring municipal advisors to register, could mean that appointed members of boards are required to register immediately. Conflicting reports of inconsistent guidance from the SEC are circulating. The SEC should issue definitive public guidance immediately that the interim rules do not require members of the boards of municipal entities to register as municipal advisors unless, for some reason other than their service on their board, they meet the definition of municipal advisor.

#### The Proposed Rule Interferes with Traditional State Authority.

In his first inaugural address, Thomas Jefferson reviewed what he deemed "the essential principles of our Government." Among them was "support of the State governments in all their rights, as the most competent administrations for our domestic concerns and the surest bulwarks against antirepublican tendencies." The SEC should adhere to this essential principle and conclude that determining who is qualified to serve on State boards and commissions is quintessentially a State right and function that should be supported rather than interfered with by the federal government. Surely, Texas and the other States are more competent and better positioned than the SEC to select those with the skills for the job and the heart for the work of State governance.

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<sup>1</sup> S.E.C. Release No. 34-63576: File No. S7-45-10 (Dec. 20, 2010) found at 76 Fed. Reg. 824 (Jan. 6, 2011) and *available at* <http://sec.gov/rules/proposed/2010/34-63576.pdf>. ("SEC Release") References in this comment to the SEC Release are to the version posted at the SEC website.

<sup>2</sup> Pub. L. No. 111-203, 124 Stat. 1376 (2010)

<sup>3</sup> 17 C.F.R. 240.15Ba2-6T

### The Intrusion of the Proposed Interpretation into State Governance Is Breathtaking.

The proposed rules would allow the SEC and the Municipal Securities Rulemaking Board (MSRB), rather than state elected officials, to set the requirements for service on virtually any state or local board. For example, the SEC Release states that boards of charter schools are municipal entities. SEC Release at 22 – 23. In addition, because the SEC Release proposes that the registration requirement reach even to those who provide advice to “municipal entities with respect to their bank accounts” or any other investment, the members of virtually any board or committee could be deemed by the SEC to be a “municipal advisor” and required to register. See SEC Release at 25-26. If board members are deemed to be “advisors”, then the SEC and MSRB rules on municipal advisors could determine who serves on environmental boards, parks and wildlife boards, historical commissions, and other boards having little or nothing to do with public finance. Even if this transfer of power from elected state officials to the unelected staff of the SEC and the MSRB<sup>4</sup> was limited to those boards directly involved in public finance, it would be objectionable to anyone, who like Jefferson, was concerned about “antirepublican tendencies” and the constitutional role of the states in our federal system.

### The Proposed Registration Requirements Could Cripple Texas State Boards.

The knot of rules and requirements, including an initial combined registration and annual fee of \$600 followed by an annual \$500 registration fee, to be imposed by the SEC and MSRB, will deter citizen volunteers from serving on boards. Some have already stated they will not serve if they are required to register. Furthermore, unless the SEC establishes clear standards that allow board members to determine with certainty when they need not register, the fear of penalties, both civil and criminal, for failing to register will chill the deliberation and comments of those brave enough to serve.

### Board Members Do Not Meet the Definition of Municipal Advisors.

Members of governing boards are not municipal advisors because they do not provide advice. Furthermore, governing board members, as the very embodiment of the “municipal entity” they govern, fall within the “municipal entity” exception to the Act’s “municipal advisor” definition

Advisory boards are a component part of the municipal entity they advise. In addition, an advisory board is a separate “municipal entity” as defined by the Act. The

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<sup>4</sup> The MSRB is a Virginia non-stock corporation established by the SEC pursuant to the Securities Acts Amendments of 1975, Securities Exchange Act of 1934 §15B(b), 15 U.S.C. §78o-4(b). See also MSRB Governance available at <http://www.msrb.org/About-MSRB/Governance.aspx>. The Board consists of 15 members selected by the Board. MSRB By-Laws, Rule A-3, available at <http://www.msrb.org/About-MSRB/~media/Files/Governance/By-Laws.ashx>

citizen members of the advisory board are the embodiment of the advisory board and therefore are excepted by the "municipal entity" exception from the definition of municipal advisor. In addition, citizens who serve on advisory boards that act collectively do not individually provide advice to the governing body. Accordingly, members of such boards do not meet the definition of a "municipal advisor" by reason of their service.

If Necessary, the SEC Should Exercise Its Discretion to Exempt Board Members.

Congress granted the SEC discretion to exempt anyone from the municipal advisor registration requirement. 15 U.S.C. § 78o-4(a)(4). If the SEC concludes that the proposal to treat board members as municipal advisors is statutorily compelled, the SEC should exercise that discretion here and exempt any member of a governing or advisory board of a municipal entity from the registration requirement. The SEC cannot allow a population, whose willingness to serve is critical to the nation, to be dissuaded from service by unnecessary and overreaching regulations

Board Members Are Not Municipal Advisors.

The Act defines "municipal advisor" as "a person (who is not a municipal entity or an employee of a municipal entity) that provides advice to or on behalf of a municipal entity. ..." 15 U.S.C. § 78o-4(e)(4). Without considering whether a governing board member "provides advice" or constitutes a "municipal entity", the SEC Release states: "The Commission does not believe that appointed members of a governing body of a municipal entity that are not elected ex officio members should be excluded from the definition of a 'municipal advisor.'"

Board Members Do Not Provide Advice.

Governing board members do not provide advice to their respective boards. They deliberate, decide and act on it. Governing board members function by receiving advice, debating and discussing that advice, questioning and deliberating, and ultimately, voting. These actions should not be considered "advice" for purposes of the registration requirement.

Furthermore, a governing board and its members are a single legal entity. A municipal entity cannot advise itself any more than a private individual can.

Board Members Embody the Municipal Entity and Are Therefore Excepted from the Definition of Municipal Advisor.

Municipal entities are explicitly excepted from the definition of municipal advisors. Members of the governing board of a municipal entity are the very embodiment of the municipal entity and, as such, are excepted from the statutory definition of municipal advisor. This principle of identity between a board and its members is reflected in sovereign immunity law which holds that a claim or suit against a

board member in his official capacity, for acts within his authority, is a claim or suit against the board. Congress understandably wished to exempt municipal entities from the burdens of registration and regulation as municipal advisors. That statutory objective is foiled if citizen volunteers serving as the boards of municipal entities are subjected to those burdens.

Citizen members of official advisory boards are likewise excepted from the definition of municipal advisors. Official advisory boards are municipal entities for two independent reasons. First, they are a component part of the municipal entity they advise and therefore a municipal entity. Second, they meet the statutory definition of a “municipal entity” standing alone. That definition expressly includes “any agency, authority, or instrumentality of the State, political subdivision, or municipal corporate instrumentality;” 15 U.S.C. § 78o-4(e)(8)(A). (Emphasis added.) Official advisory boards are therefore a “municipal entity” and excepted from the registration requirement. The citizen members of the advisory board are the embodiment of the advisory board and therefore excepted from the definition of “municipal advisor”.

#### Citizen Members of Advisory Boards that Act Collectively Are Not Persons Who Provide Advice.

Many advisory boards only offer advice collectively such as upon a vote or resolution approved by its members. In these cases, the individual board members do not offer advice. The advice is provided by the advisory board. Accordingly, citizens who serve on advisory boards that act collectively, by vote or otherwise, should not be included within the definition of a “municipal advisor” by reason of that service.

#### Texas Does Not Ask For Immunity for Citizens Who Serve on Boards.

If citizen volunteers act as a municipal advisor outside of their role as a board member they should be subject to the registration requirements. However, there must be clear and definitive criteria that allow these citizen volunteers to determine with certainty when they need to register.

#### Concern About Who Is Accountable Does Not Trump Statutory Exceptions.

Under the SEC’s interpretation of the Act, elected officials serving on governing boards are considered municipal employees, but appointed governing board members are not. SEC Release at 40-41. The SEC Release gave this explanation. “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.” *Id.*

That the SEC would have this concern about the accountability of appointed governing board members is puzzling given the SEC’s recognition that municipal

security issuers 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. The governing bodies of municipal issuers are as varied as the types of issuers, ranging from state governments, cities, towns, and counties with elected officials to commissions and other special purpose enterprises having appointed members.”<sup>5</sup> SEC Release at 9. (Emphasis added) Unfortunately, the SEC release fails to consider whether application of a new layer of federal regulation, on top of the existing “vast and varied multiplicity of requirements” to which the citizen members of these bodies are subject, is needed or counterproductive.

Later, the Commission asked whether the distinction between elected and appointed members was appropriate. *Id* at 51. The distinction is not appropriate. First, the explanation ignores the text of the statute. There is no explanation of why being “accountable” to someone is the determining criteria of a “municipal advisor” such that an elected official is considered not to be an advisor but “concerns” about the accountability of an appointed member requires registration.

Second, the SEC offers no explanation of why appointed members must be “directly accountable ... to the citizens of the municipal entity” when municipal employees are not. As the Commission itself stated, municipal employees “are accountable to the municipal entity for their actions.” SEC Release at 41. (Emphasis added.) Why then require appointed members to be directly accountable to the citizens?

Third, in Texas, members of state boards are held directly accountable by law for honest and ethical conduct.

**In Texas, Citizen Volunteers Are Held Directly and Publicly Accountable by Law for Honest and Ethical Conduct. Accordingly, There Is No Justification for the Many Burdens Resulting from the SEC’s Proposed Intrusion into State Governance.**

**Conflicts of Interest Are Against the Official Policy of the State of Texas.**

The State of Texas has, by statute, declared its official policy “that a state officer or state employee may not have a direct or indirect interest, including financial and other interests, or engage in a business transaction or professional activity, or incur any obligation of any nature that is in substantial conflict with the proper discharge of the officer's or employee's duties in the public interest.” The statute defines “state officer” to include appointed members of governing boards. *See* Tex. Gov’t Code §§ 572.001 and 572.002 (1) and (12).

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<sup>5</sup> The SEC Release refers only to municipal securities issuers in this discussion. Given the expansive definition of municipal entity to include municipal entities that make any type of investment, the requirements to which governing boards and their members are subject are even more vast and varied.



The statute recognizes that citizens who serve owe a responsibility to the people and government of Texas. The statute states "...this chapter provides standards of conduct and disclosure requirements to be observed by persons owing a responsibility to the people and government of this state in the performance of their official duties." §572.001

The statute provides both a guide for conduct and a basis for discipline. It continues, "It is the intent of the legislature that this chapter serve not only as a guide for official conduct of those persons but also as a basis for discipline of those who refuse to abide by its terms." *Id.*

#### Texas Law Goes Well Beyond the Municipal Advisor Registration Requirements.

The Texas statute requires governing members of state boards to file public financial statements, publicly disclose conflicts of interest and recuse themselves from voting on or participating in any decision on which they are conflicted. *See* Tex. Gov't Code §§ 572.021, 023, .032 and .058. Those who fail to file financial statements as required are subject to civil and criminal penalties. *See* §§ 572.33 and .34. Those who fail to disclose conflicts of interest and recuse themselves may be removed from office. *See* § 572.058. This information is available to both the Commission and participants in the municipal securities markets and thus satisfies the Commission's objectives for registration. *See* SEC Release at 19. Section 572.051 prohibits gifts, employment, investments or compensation that could create a conflict of interest.

Texas laws specific to the operation of particular state boards also hold board members accountable for honest and ethical service. *See e.g.* Tex. Educ. Code §§ 54.606 - .611 (Governing the Texas Prepaid Higher Education Tuition Board.) *See also*, Exhibit A, ERS Accountability and Oversight Chart, attached to the February 18, 2011 comments of the Employees Retirement System of Texas submitted to the SEC on the subject rulemaking.

#### Registration of Citizen Board Members Is Not Necessary Because the Appointment Process and Operation of Government Are a Matter of Public Record in Texas and Subject to Official and Public Scrutiny.

In Texas, the Governor's Office appoints most members of state boards. That office seeks to select from the 25 million Texans those with the skill for the job and the heart for the work. In doing so, it screens the candidates to eliminate those who do not qualify under Texas Government Code Chapter 572 and the specific statutes governing the board in question. Everything in an applicant's file is a public record subject to the Texas Public Information Act. *See generally*, Tex Gov't Code Chapter 552.

All appointees subject to Chapter 572 (the vast majority of appointees) are subject to approval by the Texas State Senate. This public appointment process, combined with official scrutiny by the Senate, and public disclosure of the citizen's finances and conflicts of interest go far beyond the information made available by the registration requirement.

State Open Records and Open Meetings Laws Are Another Measure of Transparency at the State and Local Level That Make the Proposed Registration Requirement for Board Members Unnecessary.

In Texas, the Open Meetings Act requires prior public notice of the time, place, and subject matter of meetings of governmental bodies. Except for expressly authorized exceptions, the meetings must be open to the public. *See* Tex. Gov't Code §§ 551.002, 551.041. Under Texas law, the authority vested in a governmental body may be exercised only at a meeting of a quorum of its members.<sup>6</sup> The provisions of the Act are mandatory and are to be liberally construed in favor of open government. *See City of Laredo v. Escamilla*, 219 S.W.3d 14, 19 (Tex. App.—San Antonio 2006, pet. denied).

Under the Texas Public Information Act, information in the possession of a governmental body is generally available to the public. *See* Tex. Gov't Code §§ 552.002(a) and .021. Exceptions to this requirement exist, but generally, disputes about the availability of information must be submitted to the Office of the Attorney General. *See* Tex. Gov't Code §§ 552.301 – 303. The Act also authorizes the public to file suit to compel the release of information, even if the Attorney General has ruled otherwise. Tex. Gov't Code § 552.321. Like the Open Meetings Act, the Public Records Act is to be liberally construed in favor of open government. Tex Gov't Code § 552.001.

The Public Information Act is based on the principle that:

“The people, in delegating authority, do not give their public servants the right to decide what is good for the people to know and what is not good for them to know. The people insist on remaining informed so that they may retain control over the instruments they have created.” *Id.*

This principle is best defended and upheld by the people of Texas rather than the SEC and MSRB. It is the people, not the SEC and MSRB, that should control these boards.

The Commission Should Not Distinguish Between Those Who Serve on Governing Boards and Those Who Serve on Advisory Boards.

Such a distinction is unworkable as some advisory boards are subcommittees of governing boards; other advisory boards are made up of a combination of governing board members and other citizen volunteers; and others have no members from the governing board. These advisory board members are screened and selected by state officials, usually in compliance with specific statutory requirements. The identities of the citizen volunteers who serve on the advisory boards are public information. These citizen volunteers are accountable to the appointing official, to the advisory board and to the entity they advise. Texas law regulates these boards in a manner appropriate to their

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<sup>6</sup> *See* Office of the Attorney General of Texas, *Open Meetings Act Handbook*, at 2-3 (2010), available at [www.oag.state.tx.us/open/publications\\_og.shtml](http://www.oag.state.tx.us/open/publications_og.shtml).

function and authority, and it should be the State of Texas and not the SEC and the MSRB that determines their eligibility requirements and duties.

**The Proposed Rule Would Impose a Significant Financial Burden on States at a Time When They Can Least Afford It.**

The expenses of most state board members are reimbursed by the State. The initial MSRB registration and annual fees alone will cost \$1.8 million for the estimated 3000 Texas appointed board members. What could be more significant is the cost of advising and training these 3000 citizen volunteers on their obligations in this complex and evolving regulatory environment. At the MSRB's Out Reach Seminar in Austin on February 15, 2011, its General Counsel stated that the MSRB had just begun to write rules for municipal advisors and he expected the rule making to take "years and years" to complete. The SEC's proposed rule will compel states to assign attorneys to monitor that process and inform the citizen volunteers of the ever changing requirements. The cost in both time and money is multiplied many times when the burdens borne by local governments are added.

**Texas' Ability to Recruit Board Members Could Be Crippled If the Proposed Rule Is Adopted.**

Texas and the other states must be able to recruit qualified people with a background in finance to its boards. Texas has already heard from citizen volunteers who are stating that they will not continue to serve if they are required to register. The burden on the citizen volunteers is not limited to the SEC registration. Board members required to register with the SEC will also have to register with the MSRB and will be subject to MSRB rules. It appears that political contributions by the member's employer or the member's associates or supervisors could disqualify the member from service under the MSRB's proposed "pay to play" rules. The MSRB has also proposed rules that would impose overlapping fair play and fiduciary duty requirements on board members if they are deemed municipal advisors. In the near future, the MSRB will propose additional rules regulating gifts and gratuities and setting professional qualifications, including tests, for municipal advisors. It is hard to imagine how the States might convince a sensible person to serve her state if doing so subjects her employer and her to this knot of evolving regulations laid on top of existing state regulations.

**The Proposed Rules Will Interrupt State Government and Place Board Members Choosing Not to Register in an Untenable Position.**

The Texas Constitution, Article 16, Section 17, commands that "[a]ll officers within this State shall continue to perform the duties of their offices until their successors shall be duly qualified." The purpose of the provision is to prevent the interruption of governmental functions. That purpose will be frustrated when Texas board members decide not to register and the proposed registration requirement prevents or delays selection of willing successors. The resigning board members will be in the untenable

position of being compelled by the Texas Constitution to continue to perform their duties but prohibited by the proposed rules from doing so because they are not registered. Boards will be unable to function if a quorum cannot be obtained. The likely eventual result is reduced reliance on governing and advisory boards. The Commission should alter its proposal to avoid these consequences.

**A “Facts and Circumstances” Approach to the Application of the Municipal Advisor Registration Requirement is Unworkable and Unfair.**

Some have suggested a “facts and circumstances” approach for determining when a board member must register. This nebulous approach is unworkable and unfair to citizen volunteers.

Uncertainty as to the registration requirement might be tolerable if the consequence of an error was a trivial matter. It is not. The MSRB registration fee is \$100.00 and the MSRB annual fee is \$500.00. The penalties for failing to register are potentially severe and, at a minimum, career threatening.

If board members are expected to serve, they must be able to determine what they can or must do to lawfully avoid the registration requirement. A “facts and circumstances” approach will leave the members unable to determine how much, if any, discussion at a meeting or consultation with staff would constitute “advice” under the Dodd-Frank Act and thereby subject them to penalties for failing to register. This approach will cause many citizen volunteers to withdraw from service. Other volunteers will needlessly register. The uncertainty will chill the debate, discussion, and inquiry of those remaining members who are brave enough to continue to serve without registering.

**The SEC Should Adopt the Same Standard for Appointed Members as Elected Members.**

Texas objects to any approach that fails to inform volunteer citizens serving on boards what they can or must do to lawfully avoid the burdens of registration. The SEC proposed such a standard for elected board members and should adopt the same standard for all board members. All members of both advisory and governing boards should be excepted from the definition of “municipal advisor” to the extent they are acting within the scope of their role as a member of a board of the municipal entity.

The SEC should make clear that all of the following would fall within the scope of citizens’ roles as a member of a governing or advisory board of the municipal entity:

1. Votes or communications of board members made or distributed at or for official meetings, whether in public or in closed session, of a board of the municipal entity on which the appointed member serves;
2. Communications by board members with the municipal entity’s staff, attorneys, or other hired professionals; and

3. Communications or activities carried out by board members in furtherance of any board duty or assignment.

This approach addresses concerns that board members might improperly promote investments or solicit business outside of their roles as board members and offers a clear standard for determining when an appointed board member may decline to register.

**Questions Presented by the SEC's Proposed Statutory Interpretation.**

1. Are employees of municipal entities, who serve on boards of other municipal entities, considered to be employees? For example:
  - a. Is a city employee serving on the board of a pension fund for city employees an employee of a municipal entity for purposes of the exception to the definition of municipal advisor?
  - b. Would an employee of a state agency that provides the staff and administrative functions to a state board be an employee of a municipal entity for purposes of the exception?

As the SEC Release recognized, employees are accountable to the municipal entity. Consequently, all municipal employees acting within the scope of their employment should be exempt from the registration requirement whether or not they are advising their employer. Otherwise, Congressional intent to except municipal employees will be frustrated.

2. Are members elected by pension beneficiaries as opposed to the "citizens of the municipal entity" "elected" members?
3. Are members nominated by vote of the beneficiaries and appointed by a public official, as in the case of the Teachers Retirement System of Texas, "elected" officials?
4. Is a person designated by an elected official to represent the official on a board considered an elected member of the board?

That none of these questions can be answered by referring to the text of the statute demonstrates that the SEC's interpretation is not statutorily based.

5. Assuming only for the sake of this question that board members are not excepted from the definition of "municipal adviser", would a board member "provide advice" if he participated in the oversight of a grant and loan guarantee fund where the grants and loan guarantees are not made for investment purposes? The fund no longer loans money but collects payments

on existing loans. Authority to refinance existing bond debt of the fund has been delegated to staff. This oversight includes:

- a. approval of a budget for the fund;
- b. delegating authority to staff to make decisions on loan guarantees;
- c. approving loan guarantees;
- d. determining the amount available for grants from the fund subject to statutory limits;
- e. determining eligibility for grants from the fund;
- f. awarding grants from the fund;
- g. approval of loan modifications;
- h. delegating authority to staff to make decisions on loan modifications;  
and
- i. reviewing and approving audits.

**Conclusion.**

The SEC should issue immediate public notice that citizen volunteers need not fear enforcement action under the interim rule with respect to activities within the scope of their role as board members.

The SEC should abandon its unnecessary and counterproductive proposal to regulate citizen volunteers for their service on governing or advisory boards of municipal entities.

If the SEC concludes that the proposal to treat citizen volunteer board members as municipal advisors is statutorily compelled, the SEC should exercise its discretion under 15 U.S.C. § 78o-4(a)(4) and exempt any member of a governing or advisory board of a municipal entity from the registration requirement.

## **Joining Entities**

Alamo Regional Mobility Authority  
Angelina and Neches River Authority  
Brazos River Authority  
Cameron County Regional Mobility Authority  
Camino Real Regional Mobility Authority  
Cancer Prevention and Research Institute of Texas Oversight Committee  
Lavaca-Navidad River Authority  
Lower Neches Valley Authority  
Northeast Texas Regional Mobility Authority  
Nueces River Authority  
Office of the City Attorney for the City of Houston, Texas  
Red River Authority of Texas  
Sabine River Authority  
San Antonio River Authority  
San Jacinto River Authority  
Sulphur River Basin Authority  
Teacher Retirement System of Texas  
Texas Agricultural Finance Authority  
Texas Board of Criminal Justice  
Texas Board of Professional Engineers  
Texas Board of Professional Land Surveying  
Texas Commission on Law Enforcement Officer Standards and Education  
Texas Department of Agriculture  
Texas Department of Housing and Community Affairs  
Texas Department of Transportation  
Texas Education Agency  
Texas General Land Office  
Texas Health and Human Services Commission  
Texas Health Services Authority Corporation  
Texas Higher Education Coordinating Board  
Texas Prepaid Higher Education Tuition Board  
Texas Public Finance Authority  
Texas School for the Deaf  
Texas State Board of Public Accountancy  
Texas Treasury Safekeeping Trust Company  
The Texas State University System  
Trinity River Authority of Texas  
University of Houston System  
Upper Neches River Municipal Water Authority