

Frank G. McCartney, President
Patrick D. Jones, Executive Director & CEO

February 18, 2011

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

RE: File Number S7-45-10

Dear Secretary Murphy:

The International Bridge, Tunnel and Turnpike Association (IBTTA) is the worldwide alliance of toll operators and associated industries that provides a forum for sharing knowledge and ideas to promote and enhance toll-financed transportation services. IBTTA represents more than 60 public toll agencies across the United States whose operations are overseen and approved by boards whose members would be affected by the proposed definition of "municipal advisors" to include appointed board members. A list of such IBTTA member agencies is attached.

Upon review of the Securities and Exchange Commission's (SEC) proposed rules, IBTTA requests that the SEC revise its interpretation of the term "municipal advisor" which, as proposed, subjects appointed board members to the registration requirement as municipal advisors but exempts elected officials who sit on such boards ex officio from the registration requirement. IBTTA suggests a broader and more reasonable reading of the "employee of a municipal entity" exemption to include all members of governing boards, whether elected or appointed.

Based on its current approach, we believe the SEC is erecting a barrier to the contributions of talented citizens who now and in the future would serve on the boards of directors at toll agencies across the country. Our concern is that existing and potential toll agency board appointees will be understandably reluctant to subject themselves to the registration, disclosure and financial burdens associated with municipal advisor registration in order to continue with or pursue demanding decision-making board member positions that in some cases are unpaid.

The SEC's rationale for treating elected and appointed board members differently is not persuasive. The SEC states that elected board members should not be subject to the registration requirement because those "elected members are accountable to the municipal entity for their actions." In contrast, the SEC suggests 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."

In our experience, appointed as well as elected board members of public toll agencies are held accountable in equal measure. Enabling acts and other laws typically require that board members be drawn from the locality served by the tolled facility. Disclosures of financial interests through annual ethics statements are generally required. Public agencies typically establish codes of ethics and standards of conduct applicable to their board members. Appointed board members are subject to removal from office for cause. Open meetings and freedom of information laws further ensure public accountability on the part of all board members, be they elected officials or appointees of elected officials. There is also a good measure of political accountability through the elected officials who appoint board members to tolling agency boards. In short, all board members are held publicly accountable for the actions of their agency.

The SEC's proposed disparate treatment of elected official board appointees and other board appointees has other problems as well. First, all board members are typically treated as "employees" on the books and records of the public agencies on which they serve, even if they are unpaid. This status as employees is sometimes mandated by state law, is typically a matter of historical practice, and it serves to make board members subject to agency ethics codes as well as policies allowing the reimbursement for agency-related expenses. The SEC's denial of exempt status for appointed board members is contrary to the "employee of a municipal entity" exemption, which by its terms should apply to all board member employees of public agencies.

Second, board members of tolling agencies and other public agencies are decision-makers and not advisors. Board members rely on the advice of staff and outside experts when making decisions relating to municipal securities. Board members themselves do not advise anyone. For all practical purposes they **are** the agency when it comes to decisions concerning municipal securities. They are the ones who give the necessary approvals and pass the appropriate resolutions. Treating board member decision makers as "advisors" stretches the term "advisor" beyond its common usage and intended scope.

Third, elected officials and appointed board members function the same way when serving on a board. They all contribute to the deliberative process and have the same vote. The SEC's approach fails to pass the test of common sense by treating appointed board members as mere "advisors" while casting elected official board members as publicly accountable decision-makers. There is no real-life basis for such a distinction in the operation of the public boards from the agencies that are IBTTA members or otherwise.

Fourth, extending the registration requirement to public agency decision makers is not necessary for the SEC to achieve its regulatory goals. Public agency board members are easy to find. Their names and often biographies are typically prominently featured on agency websites. Their decision making with respect to municipal securities is captured in board minutes, resolutions and other publicly available documents. There is thus no practical need for the SEC to force all appointed board members to register as municipal advisors in order to track who is making decisions concerning municipal securities at public agencies.¹

The proposed rule has other negative consequences:

- * Competency, experience and training qualifications in the area of financial and municipal advisory services would be imposed on current and future board members that exceed those imposed by the agency's enabling statutes and ordinances. These requirements would have minimal relationship to the vast majority of a Board member's duties, creating an unreasonable and burdensome test for service.
- * The business disclosure requirements attendant to registration with the SEC would have a chilling effect on those considering whether to make the commitment to become a board members because such disclosures may go beyond those currently required under state law or agency rule.
- * The time and expense associated with registration imposes an additional burden on the appointed Board member.
- * Application of municipal advisor registration requirements to appointed Board members will result in a narrower pool of those willing to serve as appointed members of public agency boards.

¹ Of course, in the hopefully rare circumstance where a board member is providing advice to his/her board in the capacity as an employee of a financial advisor retained by the board, the board member would still be subject to the registration requirement, but as a financial advisor and not as a board member.

For all these reasons, the IBTTA on behalf of its members urges the SEC to hold that the “employee of a municipal entity” exemption to the municipal advisors registration requirement applies to all board members of public agencies acting in their capacity as final decision makers for their agencies.

Sincerely,

A handwritten signature in black ink, appearing to read "Patrick Jones". The signature is fluid and cursive, with a large initial "P" and "J".

Patrick Jones
Executive Director and CEO

IBTTA PUBLIC AGENCY MEMBERS

Alamo Regional Mobility Authority, TX
Bay Area Toll Authority, Metropolitan
Transportation Commission, CA
Burlington County Bridge Commission, NJ
California Department of Transportation
Central Texas Regional Mobility Authority
Chesapeake Bay Bridge-Tunnel District, VA
Chesapeake Expressway, VA
Colorado Department of Transportation
Delaware Department of Transportation
Delaware River & Bay Authority
Delaware River Joint Toll Bridge Commission, PA
Delaware River Port Authority of PA/NJ
E-470 Public Highway Authority, CO
Florida's Turnpike Enterprise
Fort Bend County Toll Road Authority, TX
Genesee County Road Commission, MI
Georgia Department of Transportation
Georgia State Road & Tollway Authority
Golden Gate Bridge, Highway & Transportation
District, CA
Hidalgo County Regional Mobility Authority, TX
Illinois Tollway
Jacksonville Transportation Authority, FL
Jefferson Parkway Public Highway Authority, CO
Kansas Turnpike Authority
Knik Arm Bridge and Toll Authority, AK
Lee County Toll Facilities, FL
Louisiana Department of Transportation &
Development
Maine Turnpike Authority
Maryland Transportation Authority
Massachusetts Department of Transportation
Metropolitan Washington Airports Authority, VA
Miami-Dade Expressway Authority, FL
Michigan Department of Transportation
MTA Bridges and Tunnels, NY
New Hampshire Department of Transportation -
Bureau of Turnpike
New Jersey Turnpike Authority
New York State Bridge Authority
New York State Thruway Authority
North Carolina Turnpike Authority
North Texas Tollway Authority
Ohio Turnpike Commission
Oklahoma Turnpike Authority
Orange County Transportation Authority, CA
Pennsylvania Turnpike Commission
Rhode Island Turnpike and Bridge Authority
Richmond Metropolitan Authority, VA
Riverside County Transportation Commission, CA
San Diego Association of Governments, CA
South Bay Expressway, CA
South Jersey Transportation Authority
Tampa-Hillsborough Expressway Authority
Texas DOT, Texas Turnpike Authority Division
The Port Authority of New York & New Jersey
Thousand Islands Bridge Authority, NY
Transportation Corridor Agencies, CA
Virginia Department of Transportation
Washington State Department of Transportation
West Virginia Parkways Authority