



**DISTRICT OF COLUMBIA  
WATER AND SEWER AUTHORITY**

Board of Directors

*Governance Committee*

**March 9, 2011**

**9:30 a.m.**

1. Call to Order.....Alethia Nancoo, Chairperson
2. Discussion of Contract Fact Sheets to be Placed on the Website.....Randy Hayman  
General Counsel
3. Impact of the Open Meetings Amendment Act of 2010...Randy Hayman, General Counsel
  - a. [Amendments to the Board's By-Laws](#)
  - b. Application of Posting Notice for Committee Meetings
4. Government Affairs: Update .....Kim Turner  
Director, Policy and Government Relations
  - a. Federal Government
  - b. [Federal Regulatory Filing](#)
  - c. Council of the District of Columbia
5. Emerging Issues .....Chairperson
6. Adjournment.....Chairperson

**BY-LAWS  
DISTRICT OF COLUMBIA WATER AND SEWER AUTHORITY**

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Adopted - October 17, 1996; Resolution 96-11  
Amended - February 4, 1999; Resolution 99- 10  
Amended - February 1, 2001; Resolution 01-16  
Amended – September 12, 2002; Resolution 02-75  
Amended – December 4, 2003; Resolution 03-86  
Amended-July 5, 2007; Resolution 07-64  
Amended – October 2, 2008: Resolution 08-07  
Amended – April 1, 2010: Resolution 10-42  
Amended – October 7, 2010; Resolution 10-100  
Amended – December 2, 2010; Resolution 10-115  
Amended - 2011; Resolution 11-

**ARTICLE I  
General**

These By-Laws and the Water and Sewer Authority Establishment and Department of Public Works Reorganization Act of 1996 (the "Act"), as the Act shall be amended from time to time, govern the function and operation of the District of Columbia Water and Sewer Authority (the "Authority") and in the event of any conflict between these By-Laws and the Act, the Act shall control to the extent of the conflict. Terms defined in the Act shall have the same meaning when used in these By-Laws. References in these By-Laws to the Act, or any provision thereof, shall include a reference to any amendment to the Act which takes effect after the adoption of these By-Laws.

**ARTICLE II  
Board of Directors**

**§ 2.01 Composition**

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(a)    The Board of Directors of the Authority (the "Board") shall consist of 11 principal Board members ("principal members") and 11 alternate Board members ("alternate members").

(b)    Alternate members may participate in discussion at Board meetings, at the Chairperson's discretion, but may vote at Board meetings only when their corresponding principal Board member is absent. An alternate member permitted by this subsection to vote at a meeting shall do so as a representative of their corresponding principal member except that if the principal's position is vacant the alternate shall vote in her or his own right.

(c) \_\_\_ Principal members shall attend all Board meetings and meetings of those ~~committee~~Committees upon which they serve.

(d) \_\_\_ Alternate members shall attend any meeting which their corresponding principal is required to, but cannot attend. Alternates shall either attend all other meetings or familiarize themselves with the discussions and determination made at such meetings.

(e) \_\_\_ Alternate members may be appointed by the Chairperson to ~~committee~~Committees established by the Board and may fully participate in ~~committee~~Committee functions.

## § 2.02 Duties

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The Board shall develop policies for the management, maintenance, and operation of water distribution and sewage collection and treatment, disposal systems and other devices and facilities under the control of the Authority, and shall perform such other duties as are specified in or otherwise required by the Act and these By-Laws.

## § 2.03 Removal, Suspension, and Termination

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(a) \_\_\_ The Board may recommend that the Mayor remove, suspend, or terminate a principal or alternate member for misconduct or neglect of duty. The Mayor may remove a principal or alternate pursuant to section 204(g) of the Act (~~D.C. Code~~D.C. Official Code § 34-2202.04(a)(4)(g)).

(b) \_\_\_ The Board may recommend that the Mayor remove, suspend, or terminate a principal or alternate member for misconduct if the Board finds that the member or alternate committed any act involving moral turpitude. The Mayor may remove a principal or alternate pursuant to section 204(g) of the Act (~~D.C. Code~~D.C. Official Code § 34-2202.04(a)(4)(g)).

(c) \_\_\_ The Board may recommend that the Mayor remove, suspend, or terminate a principal or alternate member for neglect of duty if the Board finds that:

(i) The principal or alternate member committed any act or omission which constitutes a breach of the Board member's or alternate's fiduciary duty to the Board or the Authority;

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(ii) A principal member failed to attend two or more Board meetings, or three or more meetings of a ~~committee~~Committee to which such member is appointed, —within a twelve-month period, without providing a business or personal reason which the Board determines is legitimate; or

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- (iii) An alternate member, having received notice from his or her corresponding principal member of that member's inability to attend a meeting (as required by § 3.04-05 (c)), failed to attend two or more such Board meetings, or three or more ~~committee~~Committee meetings, within a twelve-month period, without providing a business or personal reason which the Board determines is legitimate.

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- (d) ~~\_\_\_~~A principal or alternate member who is indicted for the commission of a felony shall be automatically suspended from serving on the Board. Upon a final determination of guilt, the term of the principal or alternate member shall be automatically terminated. Upon a final determination of innocence, the Mayor may reinstate the Board member.

#### ~~\_\_\_~~ § 2.04 Resignation

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Any principal or alternate member may resign by giving notice of resignation to the Mayor and a copy of the notice to the Secretary to the Board. A non-District member shall also notify the official authorized to recommend a successor. The member's resignation shall take effect on the date specified in the notice.

#### ~~\_\_\_~~ § 2.05 Compensation

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Principal and alternate members of the Board of Directors shall be compensated and reimbursed for expenses as provided in the Act and in accordance with the Authority's reimbursement procedures for executive officers.

### ARTICLE III Meetings

#### ~~\_\_\_~~ § 3.01 Meetings to be Open to Public; Availability of TranscriptsRecords

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(a) ~~For purposes of these By-Laws, the term "meeting" shall be defined as a gathering of a quorum the members of the Board, including hearings and roundtables, whether formal or informal, regular, closed executive session, special, or emergency, at which the members of the Board during a Board or Committee meeting consider, conduct, or advise on Authority business, including gathering of information, taking testimony, discussing, deliberating, recommending, and voting, regardless whether the meeting is held in person, by telephone, electronically, or by other means of communication. The term "meeting" shall not include a chance or social gathering or press conference.~~

(b) ~~All meetings (including hearings) at which any official action is taken shall be open to the public and recorded by electronic means, and if a recording is not~~

feasible, detailed minutes of the meeting shall be kept. A meeting shall be deemed open to the public if:

(i) The public is permitted to be physically present;

(ii) The news media, as defined by D.C. Official Code § 16-4701, is permitted to be present; or

(iii) The meeting is televised.

(c) Copies of records, including a written transcript or transcription shall be made available to the public, at a reasonable cost, upon request in accordance the following schedule, provided that a record, or a portion of a record, may be withheld under the standards established for closed executive session meetings as provided in § 3.04:

(i) A copy of minutes of a meeting shall be made available for public inspection as soon as practicable, but no later than 3 business days after the meeting, open to the public;

(ii) and A copy of the full record, including any recording or transcript, shall be made available for public inspection as soon as practicable, but not later than 7 business days after the meeting.

(d) A meeting may be held by video conference, telephone conference, or other electronic means, provided that:

(i) Reasonable arrangements are made to accommodate the public's right to attend the meeting;

(ii) The meeting is recorded; and

(iii) All votes are taken by roll call.

(e) A meeting held by electronic means shall comply with all of the requirements of these By-Laws.

(f) E-mail exchanges between members shall not constitute an electronic meeting.

a written transcript or transcription, including (at a reasonable cost) copies thereof, shall be made available to the public upon request in accordance with section 742 of the Self-Government and Governmental Reorganization Act (D.C. Code §1-207.42).

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### § 3.02 Regular Meetings

Regular meetings of the Board shall be held on the first Thursday of each month, or if such day is a legal holiday in the District of Columbia, then on the next weekday following such day unless an alternate date is determined to be appropriate by the Chairperson. All meetings shall be held at the Blue Plains Wastewater Treatment Plant, 5000 Overlook Avenue, S.W., Washington, D.C., or as otherwise specified in the notice of such meeting.



### § 3.03 ~~Special or Emergency~~ Meetings

(a) ~~Special Emergency~~ meetings of the Board to address an urgent matter may be called by the Chairperson on his or her own initiative, or upon the written request of not less than three members of the Board entitled to vote on the matter or matters to be considered at the ~~special emergency~~ meeting (which request shall specify such proposed matter or matters and shall be delivered to the Chairperson and the Secretary to the Board).

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(b) When an ~~special emergency~~ meeting is convened, the Chair shall open the meeting with a statement explaining the subject of the meeting, the nature of the emergency and how public notice was provided.

### § 3.04 Closed (Executive Session) Meetings

(a) The Board or Committee may only close a meeting or portion of a meeting for an executive session for the following reasons:

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(i) A law or court order requires that a particular matter or proceeding not be public;

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(ii) To discuss, establish, or instruct the Authority's staff or negotiating agents concerning the position to be taken in negotiating the price and other material terms of a contract, including an employment contract, if an open meeting would adversely affect the bargaining position or negotiating strategy of the Authority;

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(iii) To discuss, establish, or instruct the Authority's staff or negotiating agents concerning the position to be taken in negotiating incentives relating to the location or expansion of industries or other businesses or business activities in the District;

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(iv) To consult with an attorney to obtain legal advice and to preserve the attorney-client privilege between an attorney and the Authority, or to approve settlement agreements; provided, that, upon request, the Authority may decide to waive the privilege. A meeting shall not be closed that would otherwise be open merely because an attorney for the Authority is a participant;

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(v) Planning, discussing, or conducting specific collective bargaining negotiations;

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(vi)	Preparation, administration, or grading of scholastic, licensing, or qualifying examinations;	Formatted: Font: (Default) Arial, 12 pt
(vii)	To prevent premature disclosure of an honorary degree, scholarship, prize, or similar award;	Formatted: Normal, Indent: Left: 1", No bullets or numbering
(viii)	To discuss and take action regarding specific methods and procedures to protect the public from existing or potential terrorist activity or substantial dangers to public health and safety, and to receive briefings by staff members, legal counsel, law enforcement officials, or emergency service officials concerning these methods and procedures; provided, that disclosure would endanger the public and a record of the closed session is made public if and when the public would not be endangered by that disclosure;	Formatted: Font: (Default) Arial, 12 pt Formatted: Normal, Indent: Left: 1", No bullets or numbering
(ix)	To discuss disciplinary matters;	Formatted: Font: (Default) Arial, 12 pt Formatted: Normal, Indent: Left: 1", No bullets or numbering
(x)	To discuss the appointment, employment, assignment, promotion, performance evaluation, compensation, discipline, demotion, removal, or resignation of government appointees, employees, or officials;	Formatted: Font: (Default) Arial, 12 pt Formatted: Normal, Indent: Left: 1", No bullets or numbering
(xi)	To discuss trade secrets and commercial or financial information obtained from outside the Authority, to the extent that disclosure would result in substantial harm to the competitive position of the person from whom the information was obtained;	Formatted: Font: (Default) Arial, 12 pt Formatted: Normal, Indent: Left: 1", No bullets or numbering Formatted: Font: (Default) Arial, 12 pt Formatted: Normal, Indent: Left: 1", No bullets or numbering
(xii)	To train and develop members of a public body and staff;	Formatted: Font: (Default) Arial, 12 pt Formatted: Normal, Indent: Left: 1", No bullets or numbering
(xiii)	To deliberate upon a decision in an adjudication action or proceeding by the Authority exercising quasi-judicial functions; and	Formatted: Font: (Default) Arial, 12 pt Formatted: Normal, Indent: Left: 1", No bullets or numbering
(xiv)	To plan, discuss, or hear reports concerning ongoing or planned investigations of alleged criminal or civil misconduct or violations of law or regulations, if disclosure to the public would harm the investigation.	Formatted: Font: 12 pt Formatted: Indent: First line: 0.5"
(b)	Before a Board or Committee meeting or portion of a meeting is closed for an executive session, the Board or Committee shall:	Formatted: List Paragraph, Numbered + Level: 1 + Numbering Style: i, ii, iii, ... + Start at: 1 + Alignment: Left + Aligned at: 1" + Indent at: 1.5"
(i)	Meet in an open session at which a majority of the members present shall vote in favor of closure; and	Formatted: Font: (Default) Arial, 12 pt Formatted: Font: (Default) Arial, 12 pt Formatted: List Paragraph, Indent: Left: 1.5"
(ii)	The Chairperson or acting Chairperson of the Board or Committee shall make a statement providing the reason for closure, including a citation from § 3.04(a) and the subjects to be discussed.	Formatted: List Paragraph, Numbered + Level: 1 + Numbering Style: i, ii, iii, ... + Start at: 1 + Alignment: Left + Aligned at: 1" + Indent at: 1.5"
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(iii) A copy of the roll call vote and the statement shall be provided in writing and made available to the public.

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(c) A Board or Committee meeting in a closed executive session shall not discuss or consider matters other than those matters listed under § 3.04(a).

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**§ 3.04-05 Notice to the Board of Meetings**

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(a) Before any meeting of the Board, the Secretary to the Board shall notify principal and alternate members of the meeting by:

(i) Mailing a notice by first class mail, postage prepaid at least five days (Saturdays, Sundays and legal holidays excluded) before the date of such meeting to the principal and alternate members' addresses appearing on the Authority's records; or

(ii) Delivering a notice by hand facsimile or e-mail transmission at least one day (Saturdays, Sundays and legal holidays excluded) before the date of such meeting to the principal and alternate members' respective addresses, facsimile numbers or e-mail addresses appearing on the record.

(b) The notice shall state the date, time, and place of the meeting and shall be accompanied by a proposed agenda, prepared in accordance with § 3.0607(a), except that where an special-emergency meeting is called, and time does not allow for the preparation of an agenda prior to the issuance of notice, the notice shall include a brief description of the matters to be considered.

(c) A member who is unable to attend a meeting due to legitimate personal or business reasons shall notify the designated alternate and the Secretary to the Board.

If the member's corresponding alternate is also unable to attend, the alternate shall notify the Secretary to the Board of these circumstances and the reason for his or her absence.

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(d) Satisfaction of the notice requirements of this Section may be waived by a majority of the members of the Board at a meeting at which a quorum is present, provided that the Secretary to the Board shall have made reasonable efforts to comply with such requirements. The attendance of a principal or alternate member at a Board meeting shall constitute such a waiver unless specific objection is made before the presence of a quorum is determined.

**- § 3.05-06 Notice of Meetings to the Public**

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(a) The Secretary to the Board shall inform the public of any Board or Committee meeting, including regular, and special-emergency, or closed executive

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~~session meeting at which official action is to be taken, when they are scheduled and when the schedule is changed;~~

(b) ~~Notices to the public shall be posted on the Authority's website and in a public area at the Blue Plains Wastewater Treatment Plant or the location of the Board or Committee meeting at the same time as notice of the meeting is issued to Board members, not less than 48 hours or 2 business days before a meeting. Notice of meetings shall also be published in the D.C. Register as timely as practicable.~~

(c) ~~The Secretary to the Board shall inform the public except that notice of a hearing to consider the establishment or adjustment of retail water and sewer rates, or of a Board meeting to establish or adjust such rates, by publishing a notice shall also be published in the D.C. Register and a newspaper of general circulation at least ten days prior to the date of the hearing or meeting.~~

(d) ~~The Secretary to the Board shall inform the public of any emergency meeting by posting the notice of the meeting on the Authority's website and in a public area at the Blue Plains Wastewater Treatment Plant or the location of the Board or Committee meeting at the same time as notice of the meeting is issued to Board members.~~

(e) ~~Each notice to the public for a Board or Committee meeting shall include the date, time, location, and planned agenda to be covered at the meeting. If the meeting or any portion of the meeting is to be closed, the notice shall include, if feasible, a statement of intent to close the meeting or any portion of the meeting, including citations to the reason for closure under § 3.04(a), and a description of the matters to be discussed.~~

### § 3.06-07 Agenda

(a) ~~The Secretary to the Board shall prepare a proposed agenda under the Chairperson's direction, including a consent agenda, for each regularly scheduled meeting of the Board and Committee, where time permits, for any special meeting of the Board.~~ The agenda shall be attached to the notices provided for in §§ 3.04-05 and 3.06, and shall designate, by an asterisk or other mark, those items which do not involve "joint-use sewerage facilities" within the meaning of Section 201(4) of the Act (a "non joint-use" matter).

(b) ~~A motion to change the designation or non-designation of an agenda item as non joint-use must be made and acted on prior to discussion of the item. In the event that the Board is to consider a matter not listed on the proposed agenda or matters at an special-emergency meeting for which no agenda was prepared, such matters are presumed to be joint use items unless a motion to redesignate the item is made and acted on prior to discussion of the item.~~

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§ 3.07-08 Quorum

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(a) Six (6) principal members shall constitute a quorum for the transaction of Board business, except that an alternate member may be counted towards a quorum in the absence of their corresponding principal member.

(b) The number of attendees at a Board or Committee meeting shall not be kept below the number required to establish a quorum to avoid these requirements.

§ 3.08-09 Conduct of Business

- (a) The Chairperson shall preside over Board meetings.
- (b) Board actions shall be presented for a vote in the form of a resolution.
- (c) The Board may postpone consideration of an agenda item by a majority vote of those members authorized to participate in the decision.

(d) All votes of the Board or Committee to hold a closed executive session or during a meeting conducted by electronic means shall be taken by roll call and recorded by the Secretary to the Board.

(d) Physical attendance at Board meetings is the preferred method of participation. However, Board members may participate telephonically and via videoconferencing in both Board and Committee meetings. Members participating in Board meetings telephonically or via videoconferencing may both be considered for purposes of determination of a quorum and vote. Members participating in ~~committee~~ Committee meetings telephonically or via videoconferencing may voice their recommendations to the Board. However, such telephonic and videoconferencing participation is to occur only when the following conditions are met: (i) neither the principal nor the principal's alternate can attend the meeting in person; and (ii) the Chairman determines that the telephonic and/or videoconferencing communication is in the best interest of the Authority. In order for the Chairman to make this determination, the Board member wishing to participate telephonically or via videoconferencing must notify the Chairman as soon as he/she is aware of the need to participate in this manner or the day before the meeting, whichever occurrence is earlier in time.

(e) The Board may establish rules governing the conduct and procedure of Board and ~~committee-Committee~~ meetings. Questions of procedure for meetings of the Board or ~~committee-Committee~~ meetings that are not determined by these By-Laws or any rules adopted by the Board shall be governed by Robert's Rules of Order as interpreted by the Chairperson.

ARTICLE IV  
Officers of the Board

§ 4.01 Appointment

(a) The officers of the Board shall consist of the Chairperson, who shall be selected as provided for in the Act and a Vice-Chairperson. The Vice-Chairperson and all other Board officers established by these By-Laws, shall be selected by the Board from among persons nominated by the Nominating Committee.



(b) \_\_\_The Board may, by resolution, create or abolish any officer position (other than the Chairperson).

(c) \_\_\_The Board may, by resolution, delegate the duties of the officer position (other than the Chairperson) to any alternate member.

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#### § 4.02 Duties

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(a) \_\_\_The Chairperson's duties shall include but are not limited to calling ~~special~~~~emergency~~ meetings of the Board in accordance with § 3.03, determining the agenda of a meeting for purposes of § 3.0607, presiding over Board meetings in accordance with § 3.0809, establishing ad-hoc ~~committees~~~~Committees~~ of the Board, appointing members and chairpersons of the standing and ad-hoc ~~committees~~~~Committees~~ of the Board and carrying out such other duties as are specified in these By-Laws or delegated to the Chairperson by resolutions of the Board that are in accordance with the Act and these By-Laws.

(b) \_\_\_The Vice-Chairperson shall fulfill the duties of the Chairperson if the Chairperson is absent or otherwise unavailable to do so.

#### § 4.03 Term of Office

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An officer of the Board shall serve a one-year term or until a successor assumes office, unless the officer resigns or is removed.

#### § 4.04 Resignation and Removal of Officers

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(a) \_\_\_Officers of the Board shall serve the full term provided in these By-Laws unless such term is terminated earlier by resolution of the Board for cause.

(b) \_\_\_An officer may resign by written notice to the Chairperson and the Secretary to the Board. The resignation shall take effect on the date the notice is received, unless the notice specifies a later effective date, which is acceptable to the Chairperson.

(c) \_\_\_The Board may appoint a successor to fill the unexpired term of a resigned or removed officer (other than the Chairperson), or for a new term, as the Board considers appropriate.

### ARTICLE V Committees

§ 5.01 Establishment

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(a) The following shall be standing ~~committee~~Committees of the Board, with such other responsibilities as are specified by the Chairperson or appropriate resolution of the Board, including but not limited to the review of contracts that are material to the ~~committee~~Committee's assigned duties. The Board may create additional standing ~~committee~~Committees as it deems necessary. The ~~committee~~Committees shall receive detailed information in their areas of responsibility and make recommendations to the Board. Only formal actions of the Board through resolution can bind the Authority. The chairperson of a standing or ad-hoc ~~committee~~Committee, with the concurrence of the Chairperson of the Board, may designate an acting chairperson for the purposes of chairing a particular standing or ad-hoc ~~committee~~Committee meeting.

(i) Finance and Budget Committee: Shall make recommendations to the Board regarding actions required of or desired by the Board of Directors which have a significant and material fiscal effect as a result of operations, including by way of example and not limitation, adoption of the budget, borrowings, investments, grants, acquisitions, accounting, sales, insurance, adjustments to charges due for services or commodities furnished by the Authority, appropriations and the settlement of claims.

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(ii) District of Columbia Retail Water and Sewer Rates Committee: Shall be composed of the six members of the Board representing the District and shall make recommendations to the ~~Board~~ regarding actions required of or desired by the Board of Directors with respect to the establishment of rates and fees for services or commodities furnished by the Authority.

(iii) Environmental Quality and Sewerage Services ~~Committee~~: Shall make recommendations to the Board regarding actions required of or desired by the Board of Directors with respect to the safety of operations, emergency planning and the operation, repair, replacement, rehabilitation, modernization and extension of the sewage disposal and its treatment, transmission, pumping and storage systems, groundwater and stormwater collection systems and other assets and property available to the Authority's use.

(iv) Human Resources and Labor Relations Committee: Shall make recommendations to the Board regarding actions required of or desired by the Board of Directors with respect to the terms, requirements and conditions of employment for all employees including the General Manager, to include, by way of example and not limitation, matters involving compensation, pension and other benefits, awards and collective bargaining agreements.

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- (v) Audit Committee: Shall make recommendations to the ~~Board~~ regarding actions required of or desired by the Board of Directors with respect to the independent appraisal of internal controls, operations and procedures utilized by the Authority in its financial and other operations, shall make recommendations to the Board regarding the selection of the Authority's independent outside auditors, and shall meet as appropriate with such auditors with or without the presence of the Authority's management.

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- (vi) Governance Committee: ~~Shall~~ make recommendations to the Board regarding the policies and procedures to be followed by the Board, matters of internal governance of the Board, resolution of ethical questions, the discharge of the Board's duties, including any modifications of these By-Laws, and policy level oversight of the Authority's legislative and governmental relations activities. The Committee may also consider other matters involving the conduct of members, which may be referred by the Chairperson.

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- (vii) Water Quality and Water Services Committee: Shall be composed of ~~Board~~ members representing the District and shall make recommendations to the Board regarding actions required of or desired by the Board of Directors with respect to drinking water quality, the safety of operations, emergency planning and the operation, repair, replacement, rehabilitation, modernization and extension of the water distribution, pumping and storage systems, and regarding communications with ratepayers and customers without regard to the medium employed, including by way of example and not limitation, responses to customer inquiries, customer education initiatives and customer assistance programs.

- (viii) Strategic Planning Committee: Shall make recommendations to the Board regarding both long and short term strategic ~~planning~~.

#### § 5.02 Appointment

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Members of the Board's standing ~~committeeCommittees~~ and ad-hoc ~~committeeCommittees~~, and the chairpersons of these ~~committeeCommittees~~, shall be selected by the Chairperson of the Board. Only District Board members may serve on ~~committeeCommittees~~ or ~~subcommittees-Subcommittees~~ with jurisdiction over non joint-use matters or the rates charged to District retail water and sewer customers.

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—§ 5.03 Duties

The principal duty of any ~~committee~~Committee shall be to recommend proposed action to the Board of Directors. No ~~committee~~Committee or individual member shall have the power to bind the Board or the Authority to any matter or obligation or to authorize any act by the Authority.

—§ 5.04 Standing Committee Meetings

(a) \_\_\_ At the first meeting each year of a standing ~~committee~~Committee, the chairperson of such ~~committee~~Committee (or the acting chairperson designated pursuant to § 5.01(a)), in consultation with the other members of the ~~committee~~Committee, the Chairperson of the Board, and the General Manager, shall establish a meeting schedule for the remainder of the year and for the first meeting in the ensuing year. Such schedule shall specify the date, time, and location at which each ~~committee~~Committee meeting shall be held. In consulting with the other members of the ~~committee~~Committee, the Chairperson of the Board, and the General Manager, the chairperson of the ~~committee~~Committee shall endeavor to the greatest possible extent to avoid conflicts with the meeting schedules of other ~~committee~~Committees and to minimize inconvenience to Board Members and Alternates serving on multiple ~~committee~~Committees, and to the General Manager and relevant staff, so as to facilitate ~~committee~~Committee meeting attendance by all appropriate participants.

(b) \_\_\_ Following the establishment of a ~~committee~~Committee meeting schedule as provided in subsection (a), should the chairperson of a ~~committee~~Committee be unable to attend a scheduled meeting, such ~~committee~~Committee chairperson shall request the vice-chairperson of the ~~committee~~Committee (if a vice-chairperson has been designated) to serve as acting chairperson for the purpose of conducting the meeting at the previously scheduled date, time, and location. If the vice-chairperson is unable to attend, the ~~committee~~Committee chairperson shall request another member of the ~~committee~~Committee to serve as acting chairperson for such meeting. In the event that neither the vice-chairperson nor another ~~committee~~Committee member is available to serve as acting chairperson for a previously scheduled meeting, or if it appears that a significant number of ~~committee~~Committee members will be unable to attend at the scheduled date, time, or location, or at the request of the General Manager, the ~~committee~~Committee chairperson may request that the Chairperson of the Board waive the requirements of this subsection for good cause shown and permit such ~~meetin~~meeting to be held on a different date, or at a different time or location. Should the Chairperson not grant such a waiver, the meeting shall be cancelled.



**ARTICLE VI**  
**Administration**

**§ 6.01 General Manager**

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The Board shall hire a General Manager upon the affirmative vote of eight voting members. The General Manager shall be the chief administrative officer of the Authority and, subject to the direction and supervision of the Board, shall have such supervisory and management responsibilities concerning the Authority's business, affairs, property, agents, and employees as the Board expressly determines by resolution. The General Manager may only be terminated upon an affirmative vote of eight voting members.

**§ 6.02 Delegation**

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The Board may by resolution delegate to the General Manager any of its authority to the extent permitted by the Act, including, but not limited to procurement authority in such amounts as are specified by the Board.

**§ 6.03 Secretary to the Board**

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(a) There is hereby established the Office of Secretary to the Board. The Secretary to the Board shall not be an officer of the Board and may not vote, but may be an employee of the Authority.

(b) The Secretary shall:

- (i) In addition to the responsibility established in section 3.0607, coordinate under the direction of the General Manager, all Board meetings and other business activities of the Board;
- (ii) Prepare meeting minutes from Board meetings and other business activities when appropriate and prepare agendas in accordance with § 3.076-;
- (iii) Keep a written transcript or transcription of the proceedings of the Board and any hearings in one or more books kept for that purpose. The Secretary shall have custody of all books, records and papers of the Board;;
- (iv) Make available to the public any recordings, transcripts or transcription prepared pursuant to § 3.01 of these By-Laws and furnish copies to the public in accordance with that section;
- (v) Maintain the annual reports required by law and approved by the Board. The Secretary shall transmit copies of the approved report to the Mayor and the Council, and shall make the report available to the public;
- (vi) Have custody of the seal of the Authority and shall have authority to affix, impress or reproduce such seal on copies of resolutions and other official actions of the Authority and on all documents, the execution and delivery of which has been duly authorized by the Board; and
- (vii) Perform all duties and have all powers incident to the Office of the Secretary and shall perform such other duties and have such other powers as may be assigned by these By-Laws, the Board, its Chairperson, or the General Manager.

## ARTICLE VII Amendment

These By-Laws may be amended by a majority vote of the Board at a meeting which is open to the public in accordance with the Open Meetings Amendment Act of 2010 section 742 of the District of Columbia Self Government and Governmental Reorganization Act (D.C. Code D.C. Official Code § 12-501 et seq. 207-43).

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## ARTICLE VIII Miscellany

### § 8.01 Offices

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(a) — The principal office of the Authority and of the Board shall be located at the Blue Plains Wastewater Treatment Plant, 5000 Overlook Avenue, S.W., Washington, D.C.

(b) The Board may maintain other offices at such other places in the District as the Board may establish from time to time.

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### § 8.02 Seal

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The seal of the Authority shall be in the form of a circle and shall bear the name of the Authority and its year of establishment.

### § 8.03 Fiscal Year

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The Fiscal Year of the Authority shall end on the last day of September of each year.

### § 8.04 Sureties and Bonds

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The Board may require any officer, employee, or agent of the Authority to execute, as a condition of employment or continued employment, a bond in such sum, with such surety or sureties as the Board may direct, conditioned upon the faithful performance of such person's duties to the Authority, including responsibility for negligence and of the accounting of all property, funds, or securities of the Authority as may come into such person's control.

**§8.05 Joint Use Sewerage Facilities**

Section 34-2202.01(4) of the D.C. Official Code, designates the following facilities as joint use:

Little Falls Trunk Sewer; Upper Potomac Interceptor Sewer; Upper Potomac Interceptor Relief Sewer; Rock Creek Main Interceptor Sewer; Rock Creek Main Interceptor Relief Sewer; (duplicate deleted) Potomac River Sewage Pumping Station; Potomac River Force Mains; Watts Branch Trunk Sewer; Anacostia Force Main (Project 89 Sewer); Anacostia Force Main & Gravity Sewer; Outfall Sewers (Renamed Potomac River Trunk Sewers); Outfall Relief Sewers (Renamed Potomac River Trunk Relief Sewers); Upper Oxon Run Trunk Sewer; Upper Oxon Run Trunk Relief Sewer; Lower Oxon Run Trunk Sewer; Lower Oxon Run Trunk Relief Sewer; Blue Plains Wastewater Treatment Plant (Blue Plains); and -Potomac Interceptor Sewer.

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**§ 8.06 Captions**

The captions of the articles and sections of these By-Laws are provided solely for convenience of reference and shall not affect the meaning thereof.

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Secretary, Board of Directors



MEMORANDUM

**To:** Governance Committee Members

**From:** Kimberly Turner, Policy and Government Relations *KT*

**Date:** February 28, 2011

This *Legislative Update* is current through February 23, 2011 and provides information on the activities of the 112th Congress of interest to DC Water. For more specific and detailed information regarding DC Water strategy and other activities related to specific legislation, please contact me directly.

Federal Government

A. 2011 Federal Budget

The most immediate congressional decision involves enacting short-term funding to keep the government running for several weeks past March 4, so lawmakers and the White House can negotiate over the larger spending cut bill. The Continuing Resolution that has been funding the entire government since Oct. 1 provides spending at mostly fiscal 2010 levels. The House GOP unveiled a second measure Friday, February 25 that proposes \$4 billion in cuts over a two-week period, hitting many programs that President Obama already has targeted for termination or reduction included in the White House's fiscal 2012 request. As of February 28 the GOP's second proposal has not been made public. We are monitoring the changing debate over the federal budget – both the current debate over the Continuing Resolution (CR) needed to keep the government operating in real time, and the debate over the 2012 budget.

B. 2012 President's Budget

The White House on Feb. 14 released the President's budget for fiscal 2012. The President requested that his Administration go line-by-line through the Budget to identify programs that are outdated, ineffective, or duplicative. The President cut \$20 billion in each year (FY 10 and FY 11). For 2012, the Administration is proposing 211 terminations, reductions, and savings measures that will save more than \$33 billion. Among these measures are a dramatic reduction in EPA funding. In total, EPA will be receiving \$9 billion in funding. This number represents a \$1.3 billion loss for EPA. In addition, and Clean Water and Drinking Water State Revolving Funds were among the hardest hit. Clean Water and Drinking Water State Revolving Funds- \$2.54 billion requested for FY 2012 this represents loss of \$947 million from FY 2010 (\$3.847). EPA section 319 Non-point source runoff grants- \$165 million requested for FY 2012. This represents loss of \$36 million from FY 2010 (\$201 million). Finally, The Water Infrastructure Grants Program was totally eliminated. This represents a \$157 million loss. The President proposed that DC

Water's Clean Rivers Project receive \$25 million in federal funds, the same amount as the FY 10 budget proposal.

We are working with many of our partners to push back vigorously in particular on proposed cuts to the State Revolving Funds – which is contrary to the principle highlighted in conjunction with this budget to invest in infrastructure. Clearly we are also monitoring and advocating for specific appropriations for all of our capital projects. We will report to the Board as this unfolds.

#### C. Homeland Security Hearing

On February 11 General Manager George Hawkins testified before the United States House of Representatives Committee on Homeland Security, Subcommittee on Cybersecurity, Infrastructure Protection and Security Technologies to discuss the circumstances surrounding the decision to have the Blue Plains Wastewater Treatment Facility voluntarily switch from using chlorine gas in the treatment of wastewater to a potentially safer alternative, liquid sodium bisulfite. The Committee commended Blue Plains on its ability to proactively make an assessment and swiftly garner positive change in the furtherance of national security.

#### D. Federal Regulatory Filings

DC Water submitted comments in response to Proposed Rules on the Registration of Municipal Advisors causing Board Members to Register as Municipal Advisors, Release No. 34-63576; File No. S7-45-10. These rules were proposed by the U.S. Securities and Exchange Commission (SEC). DC Water comments, urge the SEC to narrow the scope of the definition of Municipal Advisor in the Proposed Rules, in a manner that allows appointed as well as elected members of the board of directors of a municipal entity to serve without registering with the SEC.

There were 70 plus letters sent to the SEC. There were numerous filings from water authorities:

1. Colorado Water Resources Power Development Authority, Denver, Colorado
2. Otter Lake Water Commission
3. West Central Texas Municipal Water District
4. Ohio Water Development Authority
5. Denver Water, Denver, Colorado
6. Upper Neches River Municipal Water Authority
7. Central Harris County Regional Water Authority
8. North Texas Municipal Water District
9. Northeast Texas Municipal Water District

We will continue to monitor the Proposed Rule on the Registration of Municipal Advisors and track any significant changes the SEC may make to the proposal.

Council of the District of Columbia

Public Oversight Hearing

On Tuesday, February 22 General Manager Hawkins testified before Chairperson Wells and members of the Committee on Public Works and Transportation. Mr. Hawkin's successfully delivered testimony and answered questions ranging from the agency's operations and initiatives to the organization's budget, program and policies. In addition, DC Water submitted complete answers to 41 questions covering all aspects of the agency in a timely fashion. Testimony was also received from DC Water Board Chairman Walker and DC Water Board member Alan Roth.



Office of the General Counsel  
t 202 787-2240 f 202 787-2254

DISTRICT OF COLUMBIA WATER AND SEWER AUTHORITY | 5000 OVERLOOK AVENUE, SW | WASHINGTON, DC 20032

February 22, 2011

**Via Electronic Mail**

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

[Rule-comments@sec.gov](mailto:Rule-comments@sec.gov)

Re: Proposed Rules on the Registration of Municipal Advisors causing Board Members to Register as Municipal Advisors (the “Proposed Rules”), Release No. 34-63576; File No. S7-45-10

Dear Ms. Murphy:

As the General Counsel of the District of Columbia Water and Sewer Authority (“DC Water”), I submit the following comments to the draft definitions of “Municipal Advisor” currently proposed by the Securities and Exchange Commission (the “SEC”). By these comments, we<sup>1</sup> urge the SEC to narrow the scope of the definition of Municipal Advisor in the Proposed Rules, as set forth in Release No. 34-63576 (the “Release”) in a manner that allows appointed as well as elected members of the board of directors of a municipal entity to serve without registering with the SEC.

DC Water is governed by a Board of Directors consisting of 11 principal and 11 alternate members. The Board is composed of six District of Columbia representatives, two representatives from both Montgomery and Prince George’s Counties in Maryland, and one representative from Fairfax County in Virginia. The Mayor of the District of Columbia appoints, and the DC Council confirms, all six District Board members and alternates, including the Chairman. In addition, the Mayor appoints the five principal and alternate members who represent the surrounding jurisdictions based on executive submissions from those jurisdictions. Consequently, the Rules, if promulgated as proposed, will have a direct impact on the board members of DC Water.

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<sup>1</sup> In this letter, I shall use the collective “we” or “our” to refer to the Office of General Counsel and DC Water collectively.



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We believe that the SEC should treat appointed board members the same as elected board members and employees of a municipal entity. The SEC's Rules requiring appointed board members to comply with various registration and reporting requirements, in addition to Municipal Securities Rulemaking Board rules and regulations ("MSRB") not yet promulgated, will have significant consequences to board members of municipal entities such as DC Water. We cannot overstate the importance of our Board of Directors' contributions to DC Water and our concerns that the Proposed Rules will have a detrimental effect on our ability to find qualified individuals willing to volunteer their time and expertise on our board.

We are concerned that the definition of the term "Municipal Advisor" in the Proposed Rules is too broad and, if it remains as proposed, will inhibit the willingness of even civic-minded volunteers to serve on the boards of municipal entities. The Proposed Rules under the Securities Exchange Act of 1934 (as amended by the Dodd-Frank Act, the "Exchange Act") defines "Municipal Advisors" as a person who –

- (i) provides advice to or on behalf of a "municipal entity" or an "obligated person" with respect to municipal derivatives, guaranteed investment contracts, and investment strategies or the issuance of municipal securities, including advice with respect to the structure, timing, terms, and other similar matters concerning such financial products or issues, or
- (ii) undertakes a solicitation of a "municipal entity" or "obligated person."

The U.S. Congress, when it enacted the Dodd-Frank Act, deliberately excluded "employees" from the definition of Municipal Advisor.<sup>2</sup> We believe that appointed board members are more properly categorized under the definition of "employee" along with elected board members and *ex officio* board members of municipal entities. In contrast, appointed board members do not serve the same function as the "three principal types" of Municipal Advisors set forth in the Release: (1) financial advisors, including, but not limited to, broker-dealers already registered with the Commission, that provide advice to municipal entities with respect to their issuance of municipal securities and their use of municipal financial products; (2) investment advisers that advise municipal pension funds and other municipal entities on the investment of funds held by or on behalf of municipal entities (subject to certain exclusions from the definition of a "Municipal Advisor"); and (3) third-party marketers and solicitors. See Page 21 of the Release.

On its face, this broad definition of Municipal Advisors includes financial advisors, guaranteed investment contract brokers, third-party marketers, placement agents, solicitors, finders and swap advisors who are engaged in municipal advisory activities.<sup>3</sup> In addition, it appears to include

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<sup>2</sup> Section 15B(e)(4)(A) of the Exchange Act, 71, as amended by the Dodd-Frank Act.

<sup>3</sup> Municipal advisory activities include providing advice to or on behalf of a *municipal entity* or *obligated person* with respect to *municipal financial products* or the issuance of municipal securities, including advice with respect to the structure, timing, terms and other similar matters concerning such financial products or issues, or solicitation of a municipal entity or obligated person. Dealers may constitute "Municipal Advisors" even if they do not receive compensation for advice

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banks, accountants, engineers and underwriters providing “advice” and even lawyers not representing the municipal entity or a conduit borrower who are deemed providing “advice” to the municipal entity or conduit borrower, such as underwriter’s counsel, bank counsel or swap counsel. In fact, the Release makes clear that the SEC interprets “Municipal Advisor” to include non-employee, non-elected municipal officials who advise a municipal entity on its municipal securities offerings. Moreover, the proposed rules provide that a person can be considered a Municipal Advisor regardless of whether a contract exists or whether such person is compensated for the advice.

Of even greater concern to us is the SEC’s exclusion in the Release of persons serving as an appointed board member of a municipal entity from the term “employee of a municipal entity.” The Proposed Rules specifically exclude employees of a municipal entity from the term “Municipal Advisor,” and then goes on to exclude elected board members and *ex officio* board members of municipal entities from the definition. The Release does not exclude appointed board members from the term “Municipal Advisor.” The Release explained that the SEC’s disparate treatment is “appropriate because employees and elected members are accountable to the municipal entity for their actions.” Further, the SEC voiced its concern that “appointed members, unlike elected officials and elected *ex officio* members, are not directly accountable for their performance to the citizens of the municipality.”

We disagree with that distinction. Appointed board members, who may be removed by the elected officials who appointed them in accordance with applicable law, are no less accountable for their performance to the citizens of the municipality than regular employees of a municipality, who may only be removed from their employment in accordance with applicable laws relating to civil service. In addition, appointed board members, like elected board members, are subject to statutory fiduciary duties, ethics laws, prohibitions on conflicts of interest, and other limitations under the applicable enabling act or other state or local statutes – which statutory duties and other limitations may not be, or may be only to a lesser degree, imposed on regular employees of a municipality. Moreover, municipal entities with elected and/or appointed board members are subject to the open meetings laws that provide accountability of such board members to the municipal entities on which boards they serve and to the constituents of such municipalities.

As is the case with DC Water, it is not unusual for regular municipal employees (such as heads of agencies or cabinet members) to be among those appointed to the board of directors of municipal authorities – would they then cease to be excluded from the definition of “Municipal Advisors” because they are appointed board members? We see no reason to differentiate appointed and elected board members, all of whom should be treated as “municipal employees” excluded from the definition of “Municipal Advisor.”

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given. There are only a few limited categories of exclusions from this definition; otherwise, all persons taking action as described in (i) or (ii) above will be encompassed by this definition.

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It is relevant to note that, many appointed board members receive little or no pay for their service, provide municipal entities with a wide range of knowledge and experience and agree to serve only out of their sense of civic duty. Imposing a new level of regulatory compliance and potential liability on such appointed board members will only discourage citizens from becoming involved in their government, hardly a victory for participatory democracy. We do not think Congress intended to do this through the Dodd-Frank Act. Further yet, excluding appointed board members from the definition of “employee” creates a potential for abuse by municipal entities and non-profits to “employ” their appointed board members to avoid the Municipal Advisor registration and compliance.

We believe that without an exclusion from the definition of “Municipal Advisor,” the board members of municipal entities and even nonprofit organizations would be subject to the uncertainty as to whether their internal discussions, consultations and recommendations constitute advice within the meaning of the Dodd-Frank Act and thereby make them “Municipal Advisors.” Neither the Dodd-Frank Act nor the Proposed Rules provide any definition of the term “advice,” which complicates any efforts of a board member to delineate clearly, which activities cause him or her to be a “Municipal Advisor.” This may result in these employees and board members registering as Municipal Advisors as a precaution -- or choosing, even worse, not to serve as board members.

We believe it would be helpful to bear in mind that board members are policy makers who make decisions in reliance on advice received from the staff, consultants, attorneys and other experts who are engaged by the municipal entity they serve. It stands to reason that board members are entitled to, and required to, rely on such advice to perform their responsibilities as board members and as decision makers. Regulating the very decision makers who rely on such advice, *i.e.*, the board members themselves, is not appropriate. The board members of municipal entities are the representatives of municipal entities who are the recipients of advice, not the advisors themselves, and they should not be considered Municipal Advisors for purposes of the Proposed Rule.

DC Water will suffer the worst possible result of the Proposed Rules since our entire board of directors is comprised of appointed members, as discussed above. Thus, under the Proposed Rules, all of our board members will be required to register with the SEC, which registration can be denied by the SEC. The implications of qualifying as a “Municipal Advisor” for purposes of the Exchange Act are significant and will subject persons qualifying as Municipal Advisors to regulation by, and registration with, the SEC and the MSRB. Registration with the MSRB is expected to require the payment of a fee of approximately \$600.

Further, registration is a formidable undertaking; it involves a comprehensive questionnaire that makes the contents of which publicly available. The information sought in such registration includes, in pertinent part: (i) personal information (including any bankruptcies, unsatisfied judgments, or any denial of bond); (ii) employment and residential history; (iii) information concerning business activities that involve a “Municipal Advisor;” (iv) information regarding past felony charges or convictions, violations of federal securities laws or MSRB rules; and (v)

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information concerning any discharges or resignations relating to violations of investment-related or Municipal Advisor-related rules, fraud, wrongful taking, or failure to supervise in connection with a violation of investment-related or Municipal Advisor-related rules. Further, a Municipal Advisor is also required to comply with record-keeping requirements and consent to service of any civil action or notice of any proceeding before the Commission regarding its municipal advisory activities via registered or certified mail. Municipal Advisors also would be required to provide disciplinary history information similar to the information that the SEC obtains from registered broker-dealers and investment advisers. Individual Municipal Advisors would be required to amend the form whenever any of the required information has become inaccurate in any way. Compliance with the Proposed Rules is no small burden and is not warranted with respect to citizens volunteering to serve as appointed board members of municipal entities.

We believe that the SEC may have overlooked the fact that a municipal entity's governing body is the medium through which it conducts its business, exercises its public powers and functions and, further, a municipal entity may not take action without the approval of the members of its governing body. Without a board and its members, and without the ability of the members of a board to engage in full and open discussion in the exercise of such public powers and functions, a municipal entity would not be able to perform the essential public powers and functions for which it is formed. We believe that it would be an unreasonable and overreaching position for the SEC to allow "advice" to encompass the routine and necessary workings of the board of a municipal entity that are undertaken in good faith and in accordance with board members' existing fiduciary duties. What's more, all boards should be allowed and encouraged to discuss, debate, analyze and conduct informed votes on the issuance of municipal securities and the use of municipal financial products. Absent a clear safe harbor for these board functions, the Proposed Rules bring all board activities into the realm of a Municipal Advisor.

As if the foregoing were not enough to deter citizens from serving on the boards of municipal entities, the Proposed Rules impose a fiduciary obligation on these individuals. We would endure a significant loss from the unintended consequence of depleting the pool of citizen volunteers who expend their time and expertise as policymakers. The establishment of a fiduciary duty with respect to Municipal Advisors and all persons associated with such Municipal Advisors requires that no Municipal Advisor may engage in any act, practice or course of business that is not consistent with a Municipal Advisor's fiduciary duty or that is in contravention of any rule of the MSRB. The Municipal Advisor will likely have to comply with additional federal regulations as set forth by the final SEC rule. Currently, we believe it is unclear whether board members that qualify as "Municipal Advisors" will need to comply with additional fiduciary duties above and beyond the state or local fiduciary duties with which they are already required to comply as board members.

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In support of our position, we noted that the consequence of requiring appointed board members to submit to SEC and MSRB registration and reporting and a heightened fiduciary obligation would have the unintended consequence of depleting the pool of citizen volunteers who expend their time and expertise as policymakers. As proposed, the Proposed Rules subject appointed board members to unwarranted registration and reporting requirements, as discussed herein. Although we believe the Proposed Rules provide some appreciated regulation of many categories of Municipal Advisors who provide advice to state and local governments and other borrowers involved in the issuance of municipal securities or with respect to the investment of governmental monies, we request the SEC to adopt the approach we suggest here, which permits appointed board members to serve on the boards of directors of municipal entities under an exemption from the definition of Municipal Advisors.

Sincerely yours,



Randy E. Hayman, Esq.  
General Counsel

cc: Alethia Nancoo, Esq., Chairman of the DC Water Governance Committee