STATE OF INDIANA
OFFICE OF THE TREASURER
INDIANAPOLIS
46204

RICHARD E. MOURDOCK
TREASURER OF STATE

February 7, 2011

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

RE: SEC Release No. 34-63576, 76 FR 824 (January 6, 2011) (the "Release")

Dear Ms. Murphy:

As Chairman of the Indiana Education Savings Authority, which administers the Indiana CollegeChoice 529 Savings Plans, and Vice-Chair of the College Savings Plan Network (CSPN), I appreciate this opportunity to share my comments regarding how the proposed interpretation of the registration requirements applicable to "municipal advisors" would impact Section 529 college savings plans ("529 Plans"). As you know, under current law the governmental issuers that sponsor 529 Plans and municipal fund securities issued by such governmental issuers are generally exempt from registration with and regulation by the Securities and Exchange Commission (the "Commission"), although sales of municipal fund securities representing interests in 529 Plans are subject to the anti-fraud provisions of the Securities Exchange Act of 1934 (as amended, the "Exchange Act").

Recently enacted and currently effective amendments (the "Amendments") to Section 15B of the Exchange Act require that "municipal advisors" register with the Commission and with the Municipal Securities Rulemaking Board ("MSRB") and become subject to other statutory and regulatory requirements. The Exchange Act expressly excludes municipal entities and employees of municipal entities from the definition of "municipal advisors." However, in the Release, the Commission interprets the term "municipal advisors" to include unelected board members of municipal issuers who provide "advice" to the governmental entity they represent on, among other topics, the issuance of municipal securities and/or the investment of governmental funds (with an exception for unelected board members who hold office *ex officio* by virtue of holding an elective office.) The Release solicits comment on whether the Commission's distinction between unelected board members (who would be required to be registered and regulated as "municipal advisors" if they provide the applicable "advice" to their governmental entity) and elected board members (who would be exempt from registration and regulation as "municipal advisors") is appropriate.

I respectfully submit that the distinction between the treatment of elected and unelected board members of municipal issuers and/or municipal entities that invest their own governmental unit's funds is not appropriate, and that it is inappropriate, unanticipated and disruptive to construe "municipal advisor" as covering any board members of a municipal entity.

First, the notion that any board member of a 529 Plan, acting in such capacity, can constitute a "municipal advisor" on the issuance of interests in the 529 Plan or on investment matters to the entity such board member represents is a puzzling one. A governmental entity acts through decisions made by its board members. The board members effectively are, for decision-making purposes, the municipal entity they serve, as such entity cannot make decisions other than through its board. The board member is the principal, not an "advisor" to the principal. The "municipal advisor" requirements are intended to impose background checks, fiduciary duties and other requirements on third-party advisors. They are not intended to protect municipal entities from their own board members, who are generally subject to existing state law safeguards such as, among others, conflicts of interest statutes, fiduciary duties to the entity they serve and, in most cases, procurement laws.

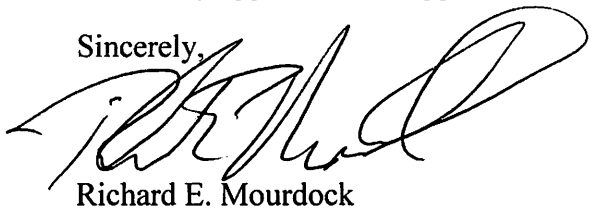
Second, although the term "advice" is not defined in the "municipal advisor" context, in the context of investment advisor regulation it has been construed quite broadly by the Commission. A board member who silently votes on a decision is not "advising" the entity, but exercising his or her statutorily mandated duty as a board member. The board member's status under the federal securities laws should not differ if the board member explains his or her reasons for such vote or makes comments that may influence other board members in, for example, authorizing the establishment of a new 529 Plan or investment option within a 529 Plan and the associated issuance of municipal fund securities, or authorizing the investment of 529 Plan assets in particular types of securities. It is unlikely that Congress intended an interpretation of "municipal advisor" that subjects a governmental board member to federal regulation if he or she discloses his thinking prior to a board vote but not if such thinking is not disclosed.

Third, the Commission's interpretation appears to interfere with state governance. Many, if not most, board members on the state agencies and authorities that administer 529 Plans are appointed, rather than elected, to their office. Their appointment is typically made by the state's Governor or other elected official or determined by state statute. State law or state officials determine the appropriate qualifications for such board members. In many cases, qualifications may include past public service or experience relevant to 529 Plan administration. However, board members do not serve in the capacity of financial advisors to the 529 Plan, leaving that role to the professionals the Amendments were designed to address. In addition, the board members are generally uncompensated or nominally compensated and serve for a limited period. Requiring such board members to register with the Commission and the MSRB and subject themselves to current and unknown future federal securities regulations will likely discourage a high percentage of capable and valuable potential board members from serving on state entity 529 Plan boards. With respect, the Commission should not, by its statutory interpretations, diminish the pool of state public servants in order to provide state entities with perceived protections that are redundant with or in addition to the state's own determinations as to the necessary qualifications and regulation of its public servants.

Finally, whatever the outcome of the Commission's interpretive determinations regarding the Amendments, we request that the Commission promptly clarify in writing that although the "municipal advisor" statute and registration requirements are already in effect, its interpretation that unelected 529 Plan board members who provide advice to their municipal entities, in the context of their decision-making process as principal of the municipal entity, relating to securities issuance or investment of the entity's funds are "advisors" is not currently effective, and will not be unless and until the Commission reaffirms it at some future point. As the Release interprets an existing statute without clearly indicating that such interpretation will only be enforced prospectively after the regulations accompanying the Release are finalized, unelected board members of state entities who arguably fall within the Commission's interpretation of a "municipal advisor" are currently left in a limbo status with no comfort that their continued service on their boards is in compliance with current federal securities law requirements.

I sincerely appreciate the opportunity to provide these comments to you.

Sincerely,



Richard E. Mourdock
Indiana State Treasurer