



COLORADO STATE UNIVERSITY SYSTEM

Colorado State University • Colorado State University - Pueblo • CSU Global Campus

MICHAEL D. NOSLER, GENERAL COUNSEL

February 21, 2011

VIA E-MAIL: rule-commentssec.gov

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

Re: Registration of Municipal Advisors (RIN 3235-AK86) (File Number S7-45-10)

Dear Ms. Murphy:

I am writing on behalf of the Board of Governors of the Colorado State University System (“Board”), which is one of the governing boards of institutions of higher education in the State of Colorado (the “State”). The Board governs the operations of three institutions of higher education under the title of the Colorado State University System (“CSUS”).

This letter is in response to Release No. 34-63576 (the “Proposing Release”) in which the Securities and Exchange Commission (the “Commission”) solicits comments generally on the proposed new rules discussed in the Proposing Release that would require “municipal advisors,” as defined in the Proposing Release, to register with the Commission. The proposed rules are being issued pursuant to the provisions of the Dodd-Frank Wall Street Reform and Consumer Protection Act (“Dodd-Frank”). In the Proposing Release, the Commission asks, among other things, whether it is appropriate to exclude from the definition of “municipal advisor” elected members of a governing body of a municipal entity, but to include appointed members of a municipal entity’s governing body unless such appointed members are ex officio members of the governing body by virtue of holding an elective office.

As discussed further below, we believe that all members of governing boards of State institutions of higher education, such as our Board, should be excluded from the definition of “municipal advisor.” CSUS, like other institutions of higher education in the State, exercises its legislative functions by and through its Board. The Board is a state public body corporate composed of thirteen persons, nine of whom are appointed by the Governor with consent of the Colorado Senate. The powers of governance and operation of the Colorado State University System (“CSUS”) are, by statute, vested in the Board. Therefore treating Board members as advisors to CSUS fails to acknowledge their function as the bodies through which CSUS and other State institutions of higher education operate rather than as advisors to the institution.

We believe that all board members should be excluded from the definition of “municipal advisor”

We believe that the Commission’s characterization of board members as “municipal advisors” to the State institutions of higher education for which they serve as board members fundamentally misapprehends the role of board members in the governance and functioning of institutions of higher education. The Commission’s proposed rules fail to acknowledge that the governing body of an institution of higher education is the medium through which it conducts its business and exercises its public powers and functions.

Board members are policy makers and they make decisions in reliance on advice received from the staff, consultants and experts engaged by the institutions of higher education. We believe that they are entitled to rely on such advice as decision-makers and in order to perform their responsibilities as board members. While we commend the Commission’s efforts to regulate the financial advisors who hold themselves out as such to municipal entities, we believe that seeking to regulate the very decision-makers who rely on such advice, i.e., the board members themselves, is not appropriate. As the representatives of the institutions of higher education, members of the governing bodies, including appointed members, are the recipients of advice, not advisors themselves, and they should not be considered “municipal advisors” for purposes of the Proposing Release. Moreover, this creates an inherent conflict of interest for the board, as it would become not only the issuer, but a “municipal advisor” to itself. In our view, the members of our Board, as the decision-makers in which the powers of governance of CSUS are vested, should be treated no differently than the institution itself for purposes of the definition of “municipal advisor” in the Proposing Release. They should be excluded from that definition.

We believe that the Commission’s proposal to treat elected and appointed officials differently is a distinction without a difference.

In the Proposing Release, the Commission asks whether it is appropriate to exclude from the definition of “municipal advisor” elected members of a governing body of a municipal entity, but to include appointed members of a municipal entity’s governing body unless such appointed members are ex officio members of the governing body by virtue of holding an elective office.

No convincing rationale is advanced by the Commission in the Proposing Release for distinguishing between elected and appointed members of governing boards. The Proposing Release assumes that elected officials are more accountable than appointed officials because they are “directly accountable for their performance to the citizens of the municipal entity.” But, as described below, appointed officials are subject to the same rules and obligations under State law as are elected officials and are also accountable for their performance.

State rules of conduct and ethics laws generally apply equally to appointed and elected board members. For example, State ethics laws, which prohibit board members of municipal entities from engaging in conflicting interest transactions, apply equally to elected and appointed board members. In addition, State criminal laws also impose ethical obligations on elected and appointed board members. For example, Title 18, Article 8, Part 3 (Bribery and Corrupt Influences) and Title 18, Article 8, Part 4 (Abuse of Public Office) of the Colorado Revised Statutes would cover board members because they expressly apply to any “public servant” defined as “any officer or employee of government, whether elected or appointed” Specifically, the crime of “official misconduct” is committed if a public servant commits an act that is an unauthorized exercise of an official function, refrains “from performing a duty imposed by law,” or violates “any statute or lawfully adopted rule or regulation.” Moreover, state public bodies with elected and/or appointed board members are subject to the state open meetings laws that provide for accountability of such board members to the general public.

Based on the above, we believe that there is no justification for the distinction between elected and appointed officials. In our view, appointed officials should be treated the same as elected board members and excluded from the definition of “municipal advisor.”

We believe that the Commission’s failure to exclude board members from the definition of municipal advisors” will stifle discourse among board members and discourage potential board volunteers from serving as board members.

The Commission’s classification of board members as “municipal advisors” will have the very harmful consequences of stifling discourse among board members and discouraging unelected volunteers from serving as board members of institutions of higher education. Most appointed board members are volunteers who are appointed by elected officials based on their qualifications and the value they will bring to higher education. Such appointed board members receive no compensation for their services and generally participate in the spirit of public service on the governing boards to “give back” to the communities in which they live. The uncertainty regarding the impact of categorizing volunteer board members as “municipal advisors” and the additional civil and criminal liability to which board members qualifying as “municipal advisors” will be subjected will discourage appointed board members from actively discussing financial matters and proposed financial transactions of the entities on whose boards they serve. This would interfere with the proper functioning of these boards and may result in poor and uninformed decision-making. The additional administrative burdens and potential civil and criminal liability associated with qualifying as a “municipal advisor” will make it very difficult, if not impossible, for the governor to find qualified volunteers willing to serve on boards of state public bodies for institutions of higher education. The willingness of qualified volunteer citizens to serve on our Board is critical to the ability of CSUS to fulfill our public purposes, and we have grave concerns about our ability to attract and retain such people to serve on our Board if the proposed rule is not changed. We believe that the Commission should appropriately address this concern by excluding all board members of state public bodies from the definition of “municipal advisor.”

We appreciate this opportunity to comment on the Proposing Release and welcome any questions that you may have with respect to this letter.

ON BEHALF OF THE BOARD OF GOVERNORS OF THE
COLORADO STATE UNIVERSITY SYSTEM



Michael D. Nosler
General Counsel
Assistant Attorney General
Colorado State University System