



Oregon  
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System

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February 21, 2011

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

DELIVERED VIA EMAIL AND US MAIL

RE: *Proposed Rules and Municipal Advisor Definition*

Ms. Murphy:

I write on behalf of the Oregon University System, Oregon's public seven-campus system of higher education, governed by the Oregon State Board of Higher Education. The purpose of my comments is to respond to proposed permanent rules offered to implement the amendment to Section 15B of the Securities Exchange Act of 1934 found in the *Dodd-Frank Wall Street Reform and Consumer Protection Act*. These proposed rules, among other things, expand the definition of "municipal advisor" and impose substantial recordkeeping and registration requirements on these individuals. I urge the SEC's reconsideration of the definition of municipal advisor that includes *appointed* members of certain public boards. Particularly without further guidance on what constitutes "advice" to a municipal entity under the proposed rules, distinguishing *appointed* board members from *elected* board members may likely not enhance accountability, but place an onerous and unnecessary burden on these board members, who, in many instances, including in Oregon, are volunteer members of our community.

On December 20, 2010, in a release announcing the proposed permanent rules, the Securities and Exchange Commission observed: "Under the proposed permanent registration regime, municipal advisors would have to submit more detailed information than is currently required and certify that they have met or will meet the qualifications and regulatory obligations required of them." In response to previous comments about the scope of individuals included in the definition of "municipal advisor," the SEC clarified that elected and ex officio board members were not included in the definition, but appointed board members were because, in part, elected board members were accountable to the municipal entity, yet appointed members were not. These artificial distinctions are not necessary to enhance accountability or the ability of the volunteer members—in the case of

members of the Oregon State Board of Higher Education—to discharge fiduciary oversight of the Oregon University System.

Briefly, in Oregon, all members of the Oregon State Board of Higher Education are appointed by the Governor and confirmed by the Oregon Senate, in part, to ensure public accountability in the management of Oregon’s public universities. *See* ORS 351.020, 171.562, 171.565. Further, the Governor may remove a member for cause, a situation analogous to the employment relationship designed to enhance accountability. *See* ORS 351.040(2). Finally, Board members, under Oregon law, are subject to substantial government ethics provisions, including the requirement to submit a verified statement of economic interest. *See* ORS Chapter 244. These, and other processes, illustrate the accountability of appointed Board members in Oregon, and the confusion that might emerge if the SEC were to distinguish, without further explanation, between elected and appointed board members accountable to municipal entities. It is quite possible, that without revision or amendment, the burden of SEC registration and recordkeeping requirements could dissuade qualified, volunteer members of our communities from contributing to public boards and commissions across the United States. Between the breadth of the definition of “advice” under the proposed permanent rules and the steep learning curve that many of our volunteer, appointed board members face, the specter of violating federal securities law is certainly an unnecessary burden to impose on these individuals.

Thank you for your consideration. I urge your reconsideration of the proposed permanent rules implementing amendments to Section 15B of the Securities Exchange Act of 1934. At a minimum, the definition of advice requires far more precision and appointed board members should, as with elected and ex officio board members, be exempted from the definition of “municipal advisor.”

Sincerely,

A handwritten signature in black ink, appearing to read "George Pernsteiner", with a long horizontal line extending to the right.

George Pernsteiner  
Chancellor