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February 22, 2011

Ms. Elizabeth Murphy, Secretary
U.S. Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549

RE: File No. S7-45-10 (*Registration of Municipal Advisors*)

Dear Ms. Murphy:

On behalf of the nation's governors, we write to urge the U.S. Securities and Exchange Commission ("Commission", or "SEC") to exempt both elected and appointed members of a governing body from the proposed definition of "municipal advisors" in the above-captioned rulemaking.

In this proposed rule required by Section 975 of Title IX of the Dodd-Frank Wall Street Reform and Consumer Protection Act, the Commission would require municipal advisors to register with both the SEC and the Municipal Securities Rulemaking Board if they advise a state or local government about municipal financial products or the issuance of municipal securities. In its draft rule, the Commission excludes employees of a state or local government from the registration requirement. The draft rule, however, distinguishes between "elected" and "appointed" members of a governing body, denying this exclusion to the latter because they "are not directly accountable for their performance to the citizens...."

We oppose this artificial distinction for the following reasons.

As governors who make appointments to public boards, commissions, and advisory bodies, appointed members of a governing body are accountable to citizens because their appointments often require formal action by legislators elected by those citizens. The Commission makes a distinction without a difference when it parses the definition of "municipal advisor" to exclude elected and elected ex officio board members from the registration requirement, but not their appointed colleagues. As the Commission recognized when it rejected a distinction between compensated and voluntary municipal advisors, the official roles and responsibilities for all members of a governing body are the same.

The Commission's proposed rule would preempt legitimate state authority over its governing bodies. According to President Obama's May 2009 memorandum to federal department and agency heads, "preemption of State law...should be undertaken only with full consideration of the legitimate prerogatives of the States and with a sufficient legal basis for preemption." Generally, states enact regulatory and statutory guidelines that govern the performance, transparency, and accountability of elected and appointed members of governing boards. The Dodd-Frank Act's definition of "municipal advisor" excludes a municipal entity, which itself could include a governing body comprised of elected and appointed members. The Commission's proposed distinction between "elected" and "appointed" appears to exceed congressional intent and does not have a sufficient legal basis for preempting state laws and regulations.

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The Commission's proposed rule could have a chilling effect on public service because it would shift new costs and reporting burdens onto appointed members of governing bodies. We must not make it more difficult and less attractive for private citizens to engage in public service, especially in this post-recession environment where states are making tough decisions that involve structural cuts in services and personnel.

We believe that the Commission should honor the longstanding partnership between states and the federal government, and avoid triggering unintended consequences through federal preemption of state authority.

Sincerely,



Governor Gary R. Herbert
Chair
Economic Development and Commerce Committee



Governor Bev Perdue
Vice Chair
Economic Development and Commerce Committee