February 22, 2011

Mary L. Schapiro, Chairman
Securities and Exchange Commission
100 F Street, NE.,
Washington DC 20549-1090

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

Re: Public Comment on Proposed Rule: Registration of Municipal Advisors
Section 175 of Title IX of the Dodd-Frank Act
File No. S7-45-10

Dear Chairman Schapiro and Secretary Murphy:

On behalf of the Association of Independent Colleges & Universities in Massachusetts (AICUM) and its sixty not-for-profit member institutions, I am writing to express our concerns about the proposed rule regarding the registration of municipal advisors and request clarification or modification so that persons acting in their capacity as board members or trustees of independent colleges and universities are not required to register as municipal advisors.

For many of the same reasons articulated by the *Association of Governing Boards of Colleges and Universities* as well as the *American Council on Education*, AICUM respectfully submits this letter in response to the proposed rule regarding the *Registration of Municipal Advisors*, Release No. 34-63576; File No. S7-45-10. Specifically, AICUM directs these comments to the Security and Exchange Commission's (Commission) request for comments regarding its interpretations of and exclusions from the definition of "municipal advisor".

AICUM represents the public policy interests of sixty independent colleges and universities in Massachusetts and the 275,000 students who attend those institutions. Our members include large nationally-renowned research universities, smaller, highly regarded liberal arts colleges, religiously-affiliated institutions, and colleges with special missions focused on business or music or allied health services. Each of AICUM's member institutions is governed by a board of trustees comprised of volunteers who provide a critical service in ensuring that that institution fulfills its charitable mission of delivering a high quality education to their students.

Section 975 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the "Dodd-Frank Act") amended Section 15B of the Securities and Exchange Act of 1934 to, among other things, require municipal advisors to register with the SEC. Section 975 defines the term "municipal advisor" to mean "a person (who is not a municipal entity or an employee of a municipal entity) (i) that provides 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 (ii) that undertakes a solicitation of a municipal entity." Fed. Reg. at 828.

The Commission's "discussion" of the proposed Rule further provides:

> The statutory definition of "municipal advisor" includes distinct groups of professionals that offer different services and compete in distinct markets. The three principal types of municipal advisors are: (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 76 Fed. Reg. at 29.

The Commission expressly excludes from the definition of "municipal advisor" elected board members of a municipal entity, including elected trustees of public colleges and universities, thus freeing them of the requirement to register.

AICUM is concerned that the Commission has crafted an overly broad and sweeping definition of "municipal advisor" that could be interpreted as including college and university board members who make decisions on behalf of their institution when it invests in municipal tax-exempt bond financing. Such an interpretation would impose unduly burdensome regulations on trustees, possibly conflict with the fiduciary responsibilities trustees owe to a college, and make it needlessly difficult for independent colleges and universities to attract and retain talented trustees. The opportunity for better board governance is lost when the proposed Rule likely deters some highly qualified individuals from sharing their financial and business expertise with a college or university.

Construing the proposed Rule to treat college trustees as "municipal advisors" would require them to publicly disclose, among other things, employment history for the last ten years with no gaps greater than 3 months, personal information, criminal history information, and information regarding bankruptcies or other judgments. A trustee would also be required to certify that he or she, and every natural person associated with him or her, has met or will meet the standards of training, experience, competence, and other qualifications, required by the Municipal Securities Rulemaking Board. 76 Fed. Reg. at 849. Any reasonable person would have to think twice before agreeing to serve on a college's board of trustees when faced with such disclosures.

The Commission's distinction between elected and non-elected board members also suggests a misunderstanding of the role of the board of trustees at a college or university. The board of trustees of a university is the governing body of the institution – or "obligated person" – and as such the board is a decision-maker acting on behalf of the institution, not advising it. The fact that a trustee offers a thought at a board meeting or in a report as to how a bond issue should be structured or how the bond proceeds should be used by the college should not constitute "advice" so as to trigger registration. Indeed, a trustee would not be meeting his fiduciary duty if he failed to ask informed and appropriate questions during a board meeting. The Commission concedes that "the services

being rendered are the trigger for registration and the corresponding fiduciary duty, not the title of the relationship, the terms of the contract, or the compensation received" but the services rendered by college trustees does not constitute "advice" as contemplated, yet not defined, under the proposed Rule.

The distinction between elected and non-elected board members improperly blurs the line between decision-maker and advisor, and seemingly ignores the fact that college trustees are accountable because they already must comply with fiduciary duty laws, conflicts of interest policies, IRS rules for tax-exempt organizations, and, in Massachusetts, oversight on non-profits by the Attorney General. This comprehensive level of existing regulations and oversight should render as moot any perceived need to bring college trustees within the scope of the proposed Rule.

For the reasons set forth above, AICUM respectfully request that the Commission modify the proposed Rule so as to clarify that persons acting in their capacity as trustees of an independent college or university are not "municipal advisors" and thus are not required to register with the SEC.

On behalf of AICUM and its sixty member institutions I want to thank you for your consideration of this important issue. We look forward to working with the Commission to achieve this crucial clarification to the proposed Rules. Please do not hesitate to call should you have any questions or need any additional information. Thank you.

Sincerely,

Richard Doherty
President
AICUM, Inc.