February 22, 2011

Via Email to rule-comments@sec.gov

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

Re: Comments of the Public Finance Director of the State of Indiana, et al, regarding Securities and Exchange Commission Release No. 34-63576, File No. S7-45-10 Registration of Municipal Advisors

Dear Ms. Murphy:

I, Kendra W. York, Public Finance Director of the State of Indiana, am submitting this letter on behalf of the State of Indiana and various affected authorities, commissions, agencies, instrumentalities and boards (collectively, the "State") in response to the Securities and Exchange Commission ("SEC" or "Commission") Release No. 34-63576, dated December 20, 2010 (the "Release"). The Release requests comments on Rules 15Ba1-1 through 15Ba1-7 (collectively, the "Proposed Rules") proposed to be issued by the Commission pursuant to Section 975 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the "Act") to implement permanent requirements for the registration of municipal advisors with the Commission and to exempt certain persons and activities from such registration.

The State of Indiana acknowledges the difficulties experienced by all parties to the world's financial markets in recent years. We also acknowledge the stated intent of Congress' goal in adopting the Act -- to promote the financial stability of the United States by improving accountability and transparency in the financial system, including municipal markets. We appreciate the difficult task the Commission faced in preparing rules and regulations to implement the Act in light of the multiplicity of structures of municipal entities across the United States. However, states and their local governmental units all operate somewhat differently. I am offering these comments regarding certain aspects of the Proposed Rules from the perspective of the State of Indiana. The executive director of the State's principal retirement plans joins me in these comments, all as set forth at the conclusion of this letter.

Public Finance Director

I serve as Public Finance Director (the "PFD") for the State of Indiana. The PFD is an administrative position appointed by the Governor of Indiana under Indiana law, with certain duties assigned by the Governor and other duties directed by various State statutes. In accordance with Indiana law, the PFD administers, manages and directs the affairs, activities and

employees of the Indiana Finance Authority (the "IFA") under the control and direction of the members of the IFA. In this capacity the PFD is directed to:

(1) approve all accounts for salaries, allowable expenses of the IFA or of any employee or consultant, and expenses incidental to the operation of the IFA; and

(2) perform other duties as may be directed by the members of the IFA in carrying out the purposes of the applicable statutes.

The PFD is an employee of the IFA, which is the principal issuer of bonds for the State under a variety of applicable statutes, both for the State and various state agencies, and as a conduit issuer for private entities. By statutory designation, the PFD also serves on the boards of other state instrumentalities such as the Indiana Housing and Community Development Authority, which issues bonds for, among other things, single family and multi-family housing, and the Indiana Bond Bank, which assists local governments in debt issuance. As executive of the IFA, the PFD has various oversight duties for other State-related debt, as described below, and is directed by Executive Order 2005-0004 to participate in meetings of investment committees for the State's Public Employees' Retirement Fund and Teachers' Retirement Fund.

The Indiana Finance Authority

The IFA is the State's principal issuer for "State-related" debt, (i.e. debt payable from appropriations, lease rentals, state revenues, etc., including debt for transportation facilities, prisons, health care facilities, state parks, state fair facilities, state office buildings, and certain stadium and convention facilities). In addition, the IFA is the principal statewide issuer of conduit debt in the State, issuing bonds and performing related functions for a variety of private activity bonds issued for economic development, health care, higher education, or charitable purposes. Further, the IFA is charged by State statute with certain review and oversight duties related to debt issued by other state instrumentalities, such as state universities.

The Board of the IFA is comprised of the Treasurer of the State (or his designee), the State Budget Director (or his designee), and three members appointed by the Governor from the public. Board members are uncompensated, but are entitled to certain reimbursements for expenses incurred. Of these Board members, only the Treasurer is an elected public official, and he may be represented at IFA meetings by an officially designated member of the Treasurer's staff.

State statutes charge the IFA and the PFD with responsibility for reporting on and managing State-related debt. The IFA is thus responsible for a State debt management plan, including:

(1) An inventory of existing debt.

(2) Projections of future debt obligations.

(3) Recommended criteria for the appropriate use of debt as a means to finance capital projects.

(4) Recommended strategies to minimize costs associated with debt issuance.

(5) An analysis of the impact of debt issued by all bodies corporate and politic and state educational institutions on the state budget.

(6) Recommended guidelines for the prudent issuance of debt that creates a moral obligation of the state to pay all or part of the debt.

(7) Recommended policies for the investment of:

(A) proceeds of bonds, notes, or other obligations issued by bodies corporate and politic and state educational institutions; and

(B) other money, funds, and accounts owned or held by a body corporate and politic.

(8) Recommended policies for the establishment of a system of record keeping and reporting to meet the arbitrage rebate compliance requirements of the Internal Revenue Code.

(9) Recommended policies for the preparation of financial disclosure documents, including official statements accompanying debt issues, comprehensive annual financial reports, and continuing disclosure statements. The recommended policies must include a provision for approval by the budget director of any statements or reports that include a discussion of the state's economic and fiscal condition.

(10) Potential opportunities to more effectively and efficiently authorize and manage debt.

(11) Recommendations to the budget director, the governor, and the general assembly with respect to financing of capital projects.

Members of the IFA and other State Boards are bound by applicable ethics rules for the State and receive the same ethics training as do elected officials and State employees.

Overview

These comments are offered from the unique perspective which the PFD position affords me. They are also offered on behalf of other State officials and board members and speak both generally to the Proposed Rules and specifically in response to certain of the SEC's specific

requests. Our responses are ordered in accordance with their relative significance to us or their relevance to our functions.

The provisions of the Act applicable to "municipal entities" and "municipal securities" were intended to provide additional protection, not only to investors in the municipal debt markets, but also to the municipal entities themselves (and their constituents, citizens and taxpayers). The Act also extends protection to municipal entities in their capacity as investors of funds, and presumably to the citizens, taxpayers, and others who are the beneficiaries of these investments. The Act, therefore, we believe, intends to provide for a regulatory framework for those persons and entities who are in the business of advising municipal entities acting as debt issuers or as investors and for the benefit of investors, state and local governments and their citizens, taxpayers and other constituent groups.

The Act is **not** intended, we believe, to regulate the non-commercial interactions between a municipal entity and its various constituents, and most certainly, **not** intended to limit the ability of citizens and taxpayers to interact with, or to provide service to, their local governments, or to limit the ability of such persons to contribute their time, talents, expertise and support to these governmental entities, unless such support impairs or diminishes the integrity of governmental functions and activities, which is properly regulated by State ethics rules and criminal laws.

Further, we believe that, since the Act is intended to provide protections for municipal entities in their debt and investment capacities, it should **not** be construed or applied to impose material burdens on the effective performance of those functions by municipal entities, acting through their officials, board members and employees, nor to open the door for liabilities to municipal entities for dealings with unregistered advisors. We believe that the Proposed Rules are inappropriate on both counts.

Finally, we believe that the scope and breadth of the applicability of the Proposed Rules call into question their constitutionality because they are not narrowly tailored and have a high potential for political and civic disenfranchisement. As written, the Proposed Rules can easily be read to regulate almost everyone who interacts with state and local government on the functioning of governmental finance matters. We believe this is simply too great an intrusion on the constitutionally protected rights of individuals, as well as on the functioning of state and local governments, for the Proposed Rules to withstand constitutional scrutiny.

We are concerned in Indiana that the exceedingly broad definition of "municipal advisors" contained in the Proposed Rules will serve to:

- *Impair the willingness of citizens, taxpayers and other interested parties from serving on governmental boards, commissions, authorities, etc.;*

- *Impose liabilities on citizens, taxpayers and other interested parties for communications with governmental entities or their advisors on debt and investment activities;*

- *Disenfranchise concerned and knowledgeable citizens and taxpayers who wish to participate in the political process or provide public service;*

- *Limit the ability of governments to benefit from the input of knowledgeable and interested parties in public actions;*

- *Discourage the participation of key private sector participants in the economic development, health-care, and education programs of the State, due to concerns about service on boards of potential "obligated persons" leading to "municipal advisor" status;*

- *Lessen the effectiveness, creativity and efficiency of governmental entities in the discharge of their duties by limiting access to citizen advisors because of the breadth of the definition of "municipal advisors" and limitation on exclusions from the definition; and*

- *Impose potential liabilities on municipal entities because of interactions with un-registered "municipal advisors".*

These comments will specifically address the various specific requests for comment contained in the Release, but the central theme of all these specific comments is encapsulated above.

Request No. 1. ***In light of our understanding of Congressional objectives and intent, are the Commission's interpretations under the definition of "municipal advisor" and related terms, and the exclusions from the definition of "municipal advisor" appropriate? Should any of these interpretations be modified or clarified in any way?***

The scope of the definition of "municipal advisor" is too broad and too uncertain. Further, the exclusions from the definition are too narrow and too unclear. In particular:

1. The rules should be applicable only to persons who are engaged in the business of providing "municipal advisory activities", and should not apply to citizens, taxpayers, board members of municipal entities (whether elected or appointed) and other constituents of municipal entities who are involved with municipal entities or obligated persons in political, community or public processes on a volunteer or non-commercial basis. *For example, under the Proposed Rules a request that a former board member offer historical perspective would subject the former board member to registration as a municipal advisor.*

2. The rules should not apply to tangential, inadvertent or insubstantial municipal advisory activities which are incidental to the provision of other professional or similar services which are otherwise excluded from the rules' scope. *For example, a bond attorney who comments on her experience with market trends in the course of an engagement should not become subject to registration as a municipal advisor.*

3. We are concerned that the practical effect of the Proposed Rules, which are intended to provide some protection to municipal entities, will instead add additional duties, limit our flexibility, hinder our ability to fulfill our functions and increase our costs, without corresponding benefits. *For example, will issuers face the obligation to review and disclose all possible instances of advice from unregistered municipal advisors?*

4. The rules should be more strictly applied to advisors dealing with municipal entities than to advisors dealing with obligated persons, because the public interest in regulating advice to private entities is a lesser interest, and better handled outside of municipal markets regulations. *For example, a banker discussing options with a customer may unwittingly become a municipal advisor if the customer subsequently seeks a conduit municipal bond issue.*

5. *We are also persuaded by the arguments of other commenters that the broad scope and uncertain application of these definitions causes impermissible limitations on constitutionally protected speech and political rights under the First Amendment. Regulation of free speech and political activity must be more narrowly tailored in order to be constitutional. The scope (and uncertainty) of application of those Proposed Rules goes well beyond the prior regulation of brokers and dealers.*

We will address specific concerns below in response to other Requests for Comment.

Request No. 2. ***The Commission is proposing to exclude from the definition of "municipal entity" 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. Are these distinctions appropriate? Please explain. Are there other persons associated with a municipal entity who might not be "employees" of a municipal entity that the Commission should exclude from the definition of a "municipal advisor"?***

We believe that the Commission's conclusion that an appointed member of a municipal entity board could be a municipal advisor is one of the biggest flaws in the Proposed Rules. This conclusion creates invidious distinctions between different categories of public servants who have similar duties and obligations to the entities they serve. Finally, we believe these measures do not accomplish the goals they are intended to accomplish.

1. A great many citizens serve their states and local governmental units by volunteer service on a governing board or a commission or on an authority that exercises powers over municipal debt issues or municipal investments. We understand that the experience of the Commission over the years is that not all public servants live up to the standards required by their positions. However, requiring registration of public servants as municipal advisors is an exceedingly inefficient, inappropriate and ineffective way of providing protection of these entities, as well as an extraordinary breach of federalism, in that the applicable state and local ethics rules and laws would be "trumped" by federal securities laws. The Commission has

demonstrated its ability to hold municipal officials -- both elected and unelected -- personally accountable for fraud and wrongdoing, and the Proposed Rules will not add anything to that capacity.

2. The members of a governing board of a municipal entity have duties under state law to that entity. They are accountable to those who appoint them and to those who enforce the laws of those states. The distinction between elected and appointed officials is without merit at the most fundamental level, and is incorrect. In Indiana, essentially all municipal entities are subject to open door laws, open records laws and other public access and ethics rules. Federal regulations of these basic functions of state government in the context of municipal securities regulation is inappropriate.

3. The members of a governing board of a municipal entity are not advisors, but, in a very real sense, and often explicitly by statutory declaration, the municipal entity itself. When the members discuss a proposed investment or financing, and when they weigh the input from one of their own -- whose opinions may carry extra weight because of years of experience -- these members are not functioning as advisors of the municipal entity: they are, in fact, functioning as the municipal entity itself.

4. The Proposed Rules would disenfranchise citizens who are most knowledgeable and interested in the affairs of the local government and improperly limit their willingness to serve or provide input. They will not serve if they are unable to pursue their professions, and the municipal entities will be deprived of their expertise. The effect of these rules is far beyond the effect of time-honored rules of ethics governing even the squeakiest of clean states. The scope of the proposed MSRB "pay to play" rules make this clear.

5. Further, these proposed rules would convert the board members of countless private organizations who are obligated persons into "municipal advisors" whether they know it or not, and either inhibit service on boards, or inhibit participation in the political and public life of a state. Alternatively, this rule could cause a private university board of trustees, for example, with awareness that its members risk treatment as unregistered municipal advisors or risk imposition of the corresponding conduct and status rules imposed on municipal advisors, to forego projects using the economic development options offered by states and avoid the issuance of conduit bonds. In this way the State's ability to use these tools for promoting the public good is diminished. These board members are, of course, already fiduciaries or similarly situated with respect to their institutions under the state laws which govern non-profits and other corporations, and so they already are accountable for their actions. Further, these board members are also functioning as the entity itself, and not as advisors, when they discuss options such as the issuance of municipal securities.

Request No. 3. ***The Commission proposes to exclude from the definition of municipal advisor attorneys offering legal advice or services of a traditional legal nature. As discussed above, the Commission interprets this exclusion to apply only when the legal services are to a client of the attorney that is a municipal entity or obligated person. Is this an appropriate interpretation? Please explain. Should the Commission provide an exclusion for all activities***

of an attorney as long as that attorney has an attorney-client relationship with the municipal entity or obligated person? Why or why not? Should the scope of the exclusion for attorneys be different for attorneys for obligated persons? Why or why not? Neither the Dodd-Frank Act nor the proposed rule defines the term "services of a traditional legal nature." Is the meaning of the term sufficiently clear? If not, should the Commission provide additional interpretive guidance? How should the Commission interpret the term?

We believe the Proposed Rules will have an adverse impact on our ability to work efficiently with the attorneys involved in municipal securities practice and will ultimately increase our costs of borrowing. We believe that uncertainties about the scope of the exclusion (and thus the applicability of the rule to attorneys) will limit our attorneys' willingness to provide assistance and our ability to use attorneys effectively at a reasonable cost.

We believe that attorneys regularly engaged in the municipal markets will have significant concerns that providing general advice, thoughts, recommendations, feedback and introductions, when not formally engaged by the municipal entity may lead them outside the scope of the exemption and thus into the purview of the municipal advisor regulations. This concern, we believe, will lead them to carefully circumscribe their activities and to limit their participation in transactions as a whole, while simultaneously seeking to increase fees to cover the increased risks of these traditional practices. Here are a few examples of problem situations we foresee:

1. Not all attorneys who are integrally involved in a typical municipal finance transaction have an attorney/client relationship with the municipal entity issuing the bonds. Many transactions have numerous participants working cooperatively to help the municipal entity accomplish its goals. In particular, underwriter's counsel and LOC Bank counsel are regular participants in our transactions, and they contribute to the discussions and provide advice regarding timing, structure and terms, etc. Their engagements are only with their clients, but the service they render as members of the financing team accrues also to the benefit of the municipal entity. The responsibilities of these counsel are relatively standard at the core, but can be varied in accordance with the agreements of the various parties to the transaction to produce the most efficient and effective final product for the municipal entity (see the NABL publication "Disclosure Roles of Counsel", for example). In the normal functioning of a working group, particularly on a complex financing such as one undertaken by the State, we need the experience and input of all counsel, whether engaged by the IFA or engaged by another party. All these attorneys need absolute comfort that their contributions will not be considered municipal advisory services which are outside the scope of the exemption simply because they are not engaged by the municipal entity.

    - It seems to us that the simplest path to curing this problem is for the Commission to remove the requirement that the attorney must be providing advice to a municipal client pursuant to an engagement with that entity in order to meet the exemption.

- Another alternative that would resolve some of the issues (if not all) would be a clear statement by the SEC that engagement letters with non-municipal clients can be sufficient to indicate that these attorneys are not offering municipal advisory services subject to the rules because they are advising their clients and are **not** advising the municipality.

2. Second, we believe that the exclusion should **not** be dependent on an actual engagement at the time of discussions on the matter being considered. Planning advice is often sought prior to formal engagements, and follow-up advice is often sought after an engagement is over. The accident of timing should not determine the rules' applicability. Similarly, it is in our best interests as issuers to be able to get early, good advice, so that we do not inadvertently run afoul of intricate or arcane state or federal tax law rules -- of which there are many examples.

3. Third, an integral part of what bond lawyers should do is to keep the issuer abreast of new developments, pending rules, and new products. We do not want to penalize lawyers for being proactive in dealing with us. These activities benefit issuers, and help keep us in compliance with our obligations and the law.

4. Fourth, large issuers, or entities such as the IFA who assist multiple issuers, are often apt to have multiple attorneys involved in multiple engagements simultaneously and sometimes in multiple capacities. Bond counsel on matter "A" for the Department of Corrections, may be special issuer's counsel on transaction "B" for the highway commission, underwriter's counsel on stadium transaction "C" and bank counsel on a conduit transaction "D" for an obligated person. In our situation, the IFA would be the issuer in all cases. Often, the roles of respective counsel vary in order to best utilize their respective expertise and avoid dependence on a single person or firm. Typically, this is at the request of (or even insistence) of the issuer, and appropriate consents and conflict waivers are granted. Classifying an attorney as a municipal advisor simply because an engagement is not with the IFA as issuer will clearly inhibit the insights and guidance from experienced counsel we need in our transaction.

5. Fifth, we believe that the host of publications from the National Association of Bond Lawyers and related groups on the roles of counsel in municipal finance transactions are the presumptive descriptions of "services of a traditional legal nature" for the roles of bond counsel, issuer's counsel, underwriter's counsel, disclosure counsel, etc., and we urge the Commission to simply state that fact.

6. Finally, we are concerned that the SEC has not adequately considered the consequences of requiring attorneys who concentrate on municipal finance transactions to register as municipal advisors under the circumstances discussed in the Release. These attorneys are already regulated by the State Bars and Supreme Courts in the jurisdictions where they practice, are already subject to licensing, fitness and continuing education standards and are already held to specific ethical standards. As stated above, NABL has

created useful guidelines and standards reflecting the unique circumstances of municipal securities offerings. Anti-fraud and other provisions apply to attorneys in the performance of their duties in municipal offerings. Adding another regulatory regime does not further the purposes of the Act. Instead, we fear that attorneys will limit their services and increase their rates as a protective measure for their engagements with us. Further, we will likely have access to fewer competent attorneys if, by virtue of practicing in the area, they must register as municipal advisors and become subject to MSRB rules that force them to either forego participation in the political processes on their own behalf or on behalf of their partners or forego fees earned for working with governmental entities. In all instances, the municipal entities lose.

The current exclusion for attorneys from the Proposed Rules makes false distinctions, based on an inadequate understanding of the way municipal securities transactions work and of the consequences of the rules' applicability to both the issuers and counsel.

Request No. 4. In interpreting the term "solicitation of a municipal entity or obligated person," the Commission also notes that such solicitation must be "for the purpose of obtaining or retaining an engagement in connection with municipal financial products [or] the issuance of municipal securities." Are there types of obligated persons to which this definition should not apply in connection with the issuance of municipal securities? If so, please identify the types of obligated persons to which the definition should not apply and explain why. Are there types of municipal financial products (such as municipal derivatives which include swaps or security-based swaps where an obligated person is the counterparty) to which this definition should not apply? If so, please identify the types of municipal financial products to which the definition should not apply and explain why.

We strongly believe that our non-governmental conduit borrowers are not in need of the protection of federal securities regulation in standard banking or investment contexts.

The SEC's rules should be less restrictive on private, obligated persons. For example, a private, non-profit secondary school pursues a small bond issue (its first in the last 10 years) through the IFA to build a gymnasium. The school (and not the IFA) is responsible for the investment of bond proceeds in the construction fund until disbursed for the project, and the construction fund moneys are not public moneys under State law. The attorney for the school and its accountant, or perhaps a board member of the school, are asked to recommend a couple of local banks and a local broker as potential providers of CDs or money market funds for the short term investment of bond proceeds. Are these persons the providers of municipal advisory services to an obligated person and thus subject to the registration requirements and the regulatory regime of the MSRB? It is unrealistic to expect that they would be aware that these activities would subject them to SEC regulation, nor would it seem that any meaningful purpose is served by applying the Proposed Rules in this situation.

This lessening of restrictions on obligated persons need not be absolute and across the board, however. For example, as an issuer of conduit obligations for "obligated persons", we share concerns that some instruments, such as swaps and other derivatives, should not be used by

the casual or occasional borrower. It seems more appropriate that the issue of improvident and risky usage of derivatives by unsophisticated borrowers is more properly regulated by focusing on suitability rules applicable to the providers of these services rather than a focus on their use in the municipal market. At any rate, municipal derivatives present a significantly different situation than standard deposit or money market products. We are cognizant of special issues arising in the investment of bond proceeds in guaranteed investment contracts, particularly in the tax area, but are unclear how the situation is improved for our applicants by additional regulation of GIC providers by the SEC.

Request No. 5. ***… Thus, the Commission would consider a solicitation of a single investment by a municipal entity or obligated person in any amount to require the person soliciting the municipal entity or obligated person to register as a municipal advisor. Do these interpretations require further clarification? If so, how? Should these interpretations be modified in any way? … (This is an example of several similarly themed requests.)***

At present, the Proposed Rules arguably apply to every situation in which a market professional is introduced to or recommended to a municipal entity (or obligated person) in the context of a potential engagement. This broad application will impair the ability of these entities to obtain quality professional services in a timely fashion at reasonable costs. Municipal entities depend on their ability to seek and accept guidance from other trusted advisors or knowledgeable persons (whether they are board members, staff of other municipal entities, attorneys, accountants, commercial or investment bankers, etc.) on what persons and firms are experienced and competent to advise the municipal entity on matters related to the issuance of municipal securities.

Further, the Proposed Rules would not provide an exception for governmentally driven requests for information or introductions. If the State, for example, wishes to explore a potential undertaking, transaction or project, it must be free to solicit advice and recommendations without triggering the imposition of regulatory burdens on these knowledgeable persons. Similarly, it is in the interest of a municipal entity for the professionals we know and trust to introduce us to others we may not know, and to offer recommendations, which we are free to accept, reject or take with the proverbial grain of salt. Our professionals provide us with knowledge regarding their experiences with other market participants and their integrity, diligence, reliability, creativity, etc. While we remain free to rely on such professionals under the Proposed Rules, our ability to get useful input because the professionals may well be "chilled" by the threat of imposition of new rules and restrictions on their behavior, and by the potential imposition of liability for their incidental behavior undertaken at our request. Such requests for information or proposals are usually in the context of a specific potential engagement and therefore are not excluded because they are not conducted for purposes of obtaining or retaining an engagement. Therefore --

1. The solicitation rules should only be applicable to persons or firms who are regularly engaged in the business of soliciting municipal entities or obligated persons who are engaged in the business of investment advice on behalf of other municipal advisors.

2. The rules should not apply to requests for information or advice solicited by the municipal entity or obligated person or its advisors. Municipal entities and obligated persons, who are the protected persons under the Act, must be free to seek out qualified advisors.

Request No. 6. ***Is our interpretation of the exclusion from the definition of a "municipal advisor" for a broker, dealer, or municipal securities dealer serving as an underwriter appropriate? Specifically, the Commission interprets this exclusion to mean that a broker-dealer acting as an underwriter or placement agent that solicits a municipal entity to invest in a security, or a broker-dealer acting as an underwriter that also advises a municipal entity with respect to the investment of proceeds of municipal securities or the advisability of a municipal derivative would be a municipal advisor. Should these interpretations be modified in any way, or further clarified? If so, how?***

Given the ordinary processes of municipal bond transactions, we are concerned that the Proposed Rules will create confusion among brokers, dealers and municipal securities dealers in regard to their duties in any particular matter and may limit their willingness to assist us in the multiple component aspects of debt issuance. This confusion will limit our flexibility in working with investment bankers and others and prevent us from achieving the results we seek in these relationships.

We do not object to the regulation of investment banks by the SEC nor to the expansion of that regulatory regime to their services to us outside the confines of specific engagements for underwriting services. We are concerned, however, that, the ambiguity of the Proposed Rules will limit our ability to consult with investment bankers (as well as our bankers' willingness to readily respond) regarding ideas and options on upcoming projects. or during the planning or follow-up phases for the issuance of municipal bonds. We fear that these bankers will seek earlier formal engagements for "future" financings before they agree to consult with us, which will work to our detriment, by short circuiting preferred engagement decision-making processes.

We are concerned further that the dual regulation of investment bankers under regulations pertaining to them as underwriters and other regulations pertaining to them as municipal advisors will create conflicts which lessen the quality or quantity of service provided, and perhaps force us into the retention of additional bankers, at additional expense, in order to fulfill separate underwriting and advisory functions. In this way, the additional protection afforded us may turn out to be harmful, by increasing costs, diminishing service quality and diminishing flexibility.

Request No. 7. ***The Commission proposes to exclude from the definition of a "municipal advisor" persons preparing financial statements, auditing financial statements, or issuing letters for underwriters for, or on behalf of, a municipal entity or obligated person. Should persons providing these accounting services be excluded from the definition of "municipal advisor"? Are there additional types of services that an accountant provides that should not require the registration of an accountant as a municipal advisor? If so, what additional types of accounting services should qualify an accountant for an exclusion from the definition of "municipal advisor"? Are there activities that are incidental to the provision of***

accounting services or inextricably linked to accounting services that can only reasonably be performed by an accountant that might otherwise constitute advice with respect to the issuance of municipal securities or municipal financial products?

We agree with the exclusion of the Proposed Rules' applicability to accountants performing audit functions, including letters to underwriters etc., but believe the exclusion should be broadened to cover incidental activities to these functions. We are concerned that our accountants will limit their services to us (to our detriment), in order to avoid any arguments that they are municipal advisors.

We are unconvinced, however, that the SEC should consider other activities performed by accountants such as feasibility studies or perhaps, actuarial studies, for municipal securities offerings, as potentially being municipal advisory activities, subjecting the accountants to the SEC/MSRB's jurisdiction. Our specific concerns are twofold:

1. that our ability to retain accountants to provide important services may be hindered by their concerns about the potential for municipal advisory status, and

2. that the status of accountants as "municipal advisors" may undermine or destroy their status as "independent" which is a precondition for their services in a variety of critical contexts.

With regard to the latter, since a municipal advisor assumes fiduciary duties with respect to the municipal entity, we are concerned that an accountant/municipal advisor will not be considered independent, and thus of no use to us.

Request No. 8. Should the Commission expand the exclusion from the definition of "municipal advisor" beyond engineers providing engineering advice? If so, why and how should such exclusion be expanded? If not, why not? How should the Commission interpret the term "engineering advice"? Are there activities that are "incidental to the provision of engineering advice" or "inextricably linked to engineering advice" that can only reasonably be performed by an engineer that might otherwise constitute advice with respect to the issuance of municipal securities or municipal financial products? As discussed above, the Commission does not interpret the exclusion of engineers providing engineering advice to include circumstances in which the engineer is preparing feasibility studies concerning municipal financial products or the issuance of municipal securities that include analysis beyond the engineering aspects of the project and, therefore, an engineer preparing such studies would be subject to registration as a municipal advisor. Is this an appropriate interpretation? Please explain.

We believe that this exclusion is correct, but should be broadened to include other activities incidental to those services for the same reasons cited in "7" above.

One valuable program (which exists in similar forms in many states -- qualified energy savings projects) will be in jeopardy if the Proposed Rules are not modified. State law allows, in

several variations, for the issuance of debt by governmental entities when the cost savings resulting from the project (from rehabilitation, upgrades, and other energy improvements, etc.) is sufficient to match the debt service on the indebtedness over a designated period of time, such as ten or fifteen years, etc. Obviously, the engineering advice in this context is significant and generally exempted from the Proposed Rules. However, the engineering component lies at the core of the financing itself, because both the statutory authority for, and the structure of, the financing are tied to the engineering analysis and design. Imposition of the municipal advisor rules to engineers performing this work will likely result in the diminished use of a valuable tool for local governments.

Request No. 9. ***Are there other types of professional activities that should be excluded from the definition of a "municipal advisor"? Please explain.***

Actuaries, who are vital to assisting governmental entities in the issuance of several types of bonds, but most particularly, pension bonds, are not covered specifically. If actuaries fall under the "accountant" category, they would not be excluded from the rules. However, their services are vital in many cases, and the application of the rules to these professionals will have negative consequences for issuers.

Request No. 10. ***Should employees of obligated persons be excluded from the definition of "municipal advisor" to the extent they are providing advice to the obligated person, acting in its capacity as an obligated person, in connection with municipal financial products or the issuance of municipal securities? One commenter expressed concern that volunteers at entities such as charter schools could be required to register as municipal advisors. Are there types of persons other than employees of obligated persons that should be excluded from the definition of "municipal advisor?" If yes, please provide examples of the specific types of persons and the specific circumstances under which they should be excluded.***

The employee exclusion from municipal advisor status should most definitely include employees of obligated persons. How else can they be protected when doing their jobs in the context of a municipal securities offering? Further, the employee exclusion should be interpreted broadly to include employees of related entities to the municipal entity in question.

A review of my duties as Public Finance Director of the State of Indiana makes this clear. The Executive Orders creating this position make clear that the PFD is an employee of the IFA (through its predecessor entities). However, under the statutes and Executive Orders make clear that the position is responsible for the debt management of many other state entities to one extent or another. (See PFD job description above.) Must I register as a municipal advisor because I advise The Trustees of Purdue University on debt financings by direction of Indiana law? This would be an odd result, leading to discrepancies among the several states which are unrelated to any sound policies.

Request No. 11. ***Should the Commission exclude from the definition of a "municipal advisor" banks providing advice to a municipal entity or obligated person concerning transactions that involve a "deposit," as defined in Section 3(l) of the Federal Deposit***

Insurance Act at an "insured depository institution," as defined in Section 3(c)(2) of the Federal Deposit Insurance Act, such as insured checking and savings accounts and certificates of deposit? Should the Commission exclude from the definition of a "municipal advisor" banks that respond to requests for proposals ("RFPs") from municipal entities regarding other investment products offered by the banking entity, such as money market mutual funds or other exempt securities? Should the Commission exclude from the definition of "municipal advisor" a bank that provides to a municipal entity a listing of the options available from the bank for the short-term investment of excess cash (for example, interest-bearing bank accounts and overnight or other periodic investment sweeps) and negotiates the terms of an investment with the municipal entity? Should the Commission exclude from the definition of "municipal advisor" a bank that provides to a municipal entity the terms upon which the bank would purchase for the bank's own account (to be held to maturity) securities issued by the municipal entity, such as bond anticipation notes, tax anticipation notes, or revenue anticipation notes? Should the Commission exclude from the definition of "municipal advisor" a bank that directs or executes purchases and sales of securities or other instruments with respect to funds in a trust account or other fiduciary account in accordance with predetermined investment criteria or guidelines, including on a discretionary basis? Should the Commission exclude from the definition of a "municipal advisor" banks and trust companies that provide other fiduciary services to municipal entities, such as acting as trustees with respect to governmental pension plans and other similar capacities? Should banks and trust companies be exempt from the definition of "municipal advisor" to the extent they are providing advice that otherwise would subject them to registration under the Investment Advisers Act, but for the operation of a prohibition to or exemption from registration? Please explain any response to these questions and to the extent that an exemption is recommended, please provide suggested exemptive language.

Banks (including bond trustees) should most certainly not be considered municipal advisors simply because they offer customary banking and depository services (such as deposit accounts, CDs, money market funds, cash management services, etc.) to governmental customers. These activities are regulated under federal banking law and State law. Most municipal entities are limited in the scope of banking deposit relationships into which they may enter by state laws governing investments of public funds, which typically deal specifically with limitations on bank CDs etc.

Responses to governmental RFPs should not be considered as municipal advisory activities in any situation. Many municipal entities, including those with whom we interact, are required by state law to solicit services by RFP, and those solicitations by the governmental entity and responses by potential vendors are already governed by state laws which require honesty in responses and prior compliance with procedural requirements. A federal layer of regulation, particularly one this far removed from the functioning of the securities markets regulated by the SEC is simply harmful and not helpful, in our view.

We thank you for the opportunity to comment.

Sincerely,

Kendra W. York, Public Finance Director of the
State of Indiana

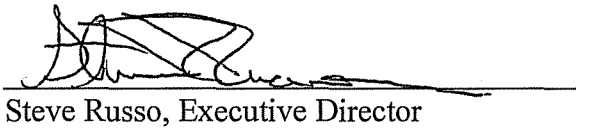
SUPPLEMENTAL RESPONSE OF INDIANA PUBLIC EMPLOYEES' RETIREMENT FUND AND INDIANA STATE TEACHERS' RETIREMENT FUND

Also supporting the submission of these comments is Steve Russo, Executive Director of the Public Employees' Retirement Fund (PERF) and Indiana State Teachers' Retirement Fund (TRF).

PERF has been in existence since 1945 to provide retirement, disability and survivor benefits for most State and local government employees. PERF is administered by a six-member governing Board of Trustees. Five members are appointed by the Governor and the sixth is an *ex officio* board member, the State Budget Director (or his designee). As required by the Indiana Code, two of the Governor's appointees must be members of the fund. All trustees serve in a fiduciary capacity and are subject to the State's open door laws, public access laws and ethics rules. PERF is the State's largest pension fund and has management responsibility for pension assets of State employees; local government unit employees; judges; legislators; prosecutors; municipal police and fire unit employees; and State conservation, gaming agent, gaming control officer and excise officials.

TRF has been in existence since 1921 and administers a retirement fund established to provide pension benefits for teachers and their supervisors in the State's public schools. TRF provides retirement benefits, as well as death and disability benefits. TRF is administered by a six-member Board of Trustees, which includes five members appointed by the Governor as well as the State Budget Director (or his designee) as an ex officio member. As with PERF, two of the Governor's appointees must be members of the fund. All trustees serve the fund in a fiduciary capacity and are subject to the State's open door laws, public access laws and ethics rules.

PUBLIC EMPLOYEES' RETIREMENT FUND
and INDIANA STATE TEACHERS'
RETIREMENT FUND

By: 
Steve Russo, Executive Director