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February 22, 2011

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

RE: File No. S7-45-10; SEC Proposed Rule 34-63576

Dear Ms. Murphy:

I am writing on behalf of the Delaware Economic Development Office (“DEDO”) and the Delaware Office of the State Treasurer, (“OST”), both agencies of the State of Delaware. **Each of these agencies wishes to expressly oppose the SEC’s proposal to consider appointed members of state and local government governing bodies as financial advisors, as proposed pursuant to SEC Proposed Rule 34-63576.**

DEDO-Council on Development Finance

Pursuant to 29 Del. C. Sec. 5007, the Council on Development Finance (“CDF”), serves in an advisory capacity to the Director of DEDO, and considers:

...matters relating to the financing and modernization of agricultural, industrial, commercial, emerging technologies and other facilities in the State and such other matters as may be referred to it by the Governor, or by the Director. The Council may study research, plan and advise the Director and the Governor on matters relating to economic development and strategic opportunities.¹

The CDF is comprised of seven volunteer members appointed by the Governor, and two members from the State Senate and House of Representatives respectively.² These appointed members are evenly distributed among the State’s counties, and between the State’s political parties, and include one

¹ 29 Del. C. § 5007(a).

² “...The Council shall be composed of 9 members who are Delaware residents. The Governor shall appoint 7 members: 2 members from New Castle County, 1 member from Kent County, 1 member from Sussex County and 3 at-large members. The President Pro Tempore of the state Senate shall appoint 1 member of the Senate and the Speaker of the state House of Representatives shall appoint 1 member of the House of Representatives. Council members shall serve for 3-year terms and may be reappointed.” 29 Del. C. § 5007(c).

Delaware attorney, and financial experts.³ Members serve without compensation, except for reasonable expenses.⁴ A quorum of five members physically present is required to conduct business.⁵

OST- Cash Management Policy Board, ("CMPB") and Deferred Compensation Council ("DCC").

Two advisory councils operate under the auspices of OST. The first, CMPB, is charged with the responsibility to:

...establish policies for the investment of all money belonging to the State or on deposit from its political subdivisions, except money deposited in any state pension fund or the State Deferred Compensation Program, and to determine the terms, conditions and other matters relating to those investments including the designation of permissible investments.⁶

Similarly, the DCC oversees the general administration of the Deferred Compensation programs in the State.⁷ DCC is charged with the oversight and advisory administration of the Deferred Compensation

³ "At least 3, but no more than 4 members of the Council shall be affiliated with 1 of the major political parties and at least 2, but no more than 3 of the members shall be affiliated with the other major political party; provided however, that there shall be more than a bare majority representation of 1 major political party over the other major political party. Any person who declines to announce a political affiliation shall also be eligible for appointment as a member of the Council... In making appointments to the Council, the Governor shall appoint professionals possessing 1 or more of the following designations: a member of the Bar of the Supreme Court of the State, an officer of a bank or trust company located in the State, an expert in private equity or a venture capital expert." 29 Del. C. §5007(d)-(e)."

⁴ 29 Del. C. §5007(f).

⁵ 29 Del. C. §5007(i).

⁶ 29 Del. C. Sec. 2716. "In carrying out its purpose to designate permissible investments, the Board shall exercise the judgment and care under the circumstances then prevailing which persons of prudence, discretion and intelligence exercise in the management of their own affairs with due regard to the probable income and level of risk from investments of money belonging to the State or its political subdivisions in accordance with the policies established by the Board... the Board shall find it not in the State's best interest, the Board shall:

(1) Require as a condition to any deposit of such funds in any state or national bank or savings and loan institution that such deposits be continuously and fully secured by direct general obligations of or obligations the payment of the principal and interest on which are unconditionally guaranteed by the United States of America or other suitable obligations as determined by the Board;

(2) Require that the selection of financial institutions to provide banking and investment services pursuant to this section be conducted on an open and competitive basis; and

(3) Require that temporary clearing accounts as well as major disbursement accounts be established in a bank or banks whose principal office is located within the State.

⁷ 29 Del. C. § 6053.

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Program for the State of Delaware.⁸ Both CMPB and DCC are comprised of State Officials *ex officio*, and volunteer members appointed by the Governor.⁹

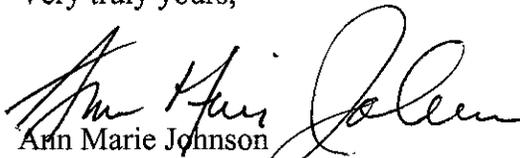
Appointed members of governing bodies, especially at the local level, typically are citizen volunteers who are interested in serving for the public good and often have special expertise that is critical to the effective functioning of the governing body. However, they may be deterred from serving on state and local governing boards if federal regulations are imposed upon them, and we may lose their valuable insight. Moreover, in the case of the Boards mentioned above, only *public* members of the Boards indicated would be required to undergo the onerous task of registration, with questionable benefit, as it is rare that the public members alone would be sufficient to influence the outcome of investment decisions. In fact, in all cases, the public member appointees are highly experienced members of the financial and business community who donate their time and energy on behalf of state citizens despite a very busy work schedule. There is independent Deputy Attorney General oversight for each of these Boards. Existing standards for oversight of the fiduciary duties of these Boards also exists in State law, and is sufficient to protect the citizens of Delaware from abuse in that regard.

A municipal financial advisor provides advice to a state or municipal entity, including public pension funds, as to the issuance of municipal securities, swap transactions and/or investment strategies. The SEC's proposed rule correctly exempts elected members, elected *ex-officio*, and employees of a municipal entity's governing board from the definition; however, under the proposed rule, non-elected (appointed) members of a governing board would have to register with the SEC and meet various regulatory requirements set forth by both the SEC and the MSRB, including registration requirements and fees, federal fiduciary standards, federal securities law liabilities, and federal financial disclosure standards.

We urge the SEC to exclude all governing body members and the employees of appointed bodies, including those who serve across jurisdictional boundaries, from the municipal advisor definition. We believe that if Congress had intended for appointed members of governing bodies to be included within the municipal financial advisor definition, it would have made this point clear in the statute. By excluding all governing body members and the employees of appointed bodies from the municipal advisor definition, we can be assured of retaining the expertise our boards need to make important decisions for our constituents.

Thank you for the opportunity to comment on the SEC's Proposed Rule 34-63576.

Very truly yours,


Ann Marie Johnson
Deputy Attorney General

⁸ 29 Del. C Ch. 60.

⁹ CMPB has 9 members, and is comprised of the State Treasurer, the Secretary of Finance, and Secretary of State and the Controller General, *ex officio*, and five public members appointed by the Governor, and balanced by county residency and political party. DCC is comprised of the Secretary of Finance, the State Treasurer, the Director of the Office of Management and Budget and the State insurance Commissioner, *ex officio*, two state employees, and one representative of the public at large.