



COMMONWEALTH of VIRGINIA

VIRGINIA COLLEGE SAVINGS PLAN
9001 Arboretum Parkway, Richmond, VA 23236

Mary G. Morris
Chief Executive Officer

February 22, 2011

Ms. Elizabeth M. Murphy
Secretary
Securities & Exchange Commission VIA email
100 F Street NE
Washington, D.C. 20549-1090

Re: File Number S7-45-10

Dear Ms. Murphy:

Thank you for the opportunity to respond to Securities Release No. 34-63576 (the "Release"), relating to the Registration of Municipal Advisors. I write on behalf of the Virginia College Savings Plan ("Virginia 529"), the independent state agency which administers Virginia's four I.R.C. § 529 qualified State tuition programs. Our enabling legislation and other controlling state statutes promote the goals of transparency and accountability discussed in the Release, which we wholeheartedly support. This comment letter is directed to the provisions of the Release related to certain exclusions from the registration requirement as they relate to members of our governing Board.

That portion of the Release which discusses the exclusion from the registration provisions of the Release of Employees of a Municipal Entity has generated a great deal of confusion and consternation among those of us in the 529 industry as the proper treatment of certain governing Board members of 529 plans such as Virginia 529 is unclear. In responding to a request for clarification, the Commission states that only "employees of a municipal entity," "any person serving as an elected member of the governing body of the municipal entity," and, any "appointed members of a governing body to the extent such appointed members are *ex officio* members of the governing body by virtue of holding an **elective office** (emphasis added)" are excluded from the definition of "municipal advisor." The Release next states that "the Commission does not believe that appointed members of a governing body of a municipal entity that are not elected *ex officio* members should be excluded from the definition of a "municipal advisor." This statement creates the impression, therefore, that any governing body member not specifically excluded must necessarily be a "municipal advisor" and register as such. I submit this is an incorrect conclusion and unsupported by any kind of logic. We therefore request further clarification and a specific exclusion for all members of the governing bodies of a municipal entity, just as is provided for employees of a municipal entity.

The Commission states in the Release that the reason for its interpretation is that appointed members of a governing body “are not directly accountable for their performance to the citizens of the municipal entity.” This is an incorrect assumption, as discussed below.

Virginia 529 is the nation’s largest 529 plan with over two million accounts and over \$33 billion dollars in assets under management as of December 31, 2010. The Plan is administered by an eleven member Board which is comprised of four persons who serve by virtue of their **appointed** state offices, four members appointed by the Governor of Virginia, two members appointed by the Speaker of the Virginia House of Delegates and one member appointed by the Virginia Senate Committee on Rules. The Board is regularly advised by an Investment Advisory Committee and an Audit and Actuarial Committee, mandated by statute. None of our Board members would be exempt under the current form of the Release.

Our enabling legislation (*Va. Code Ann. § 23-38.76 et seq.*) (2009) mandates that all appointed citizen Board members exhibit significant experience in finance, accounting, law, or investment management. Again by statute, non-Board members of the IAC must demonstrate extensive experience in one or more of the following areas: domestic or international equity or fixed income securities; cash management; alternative investments; institutional real estate investments; or managed futures and members of the Audit and Actuarial Committee must demonstrate an understanding of generally accepted accounting principles, generally accepted auditing standards, enterprise risk management principles, and financial statements, and evidence an ability to assess the general application of such principles to the Plan's activities. Enabling legislation further provides that Board members and non-Board committee members serve in a fiduciary capacity as trustees of the plan. So, to say that the Virginia 529 Board and Committee members are “not directly accountable for their performance” is inaccurate and does a great disservice to the volunteer members of our Board who contribute large quantities of time for no compensation.

State laws further mandates that the Board and those who serve on its committees be fully and publically identified and ensure that a director or committee member’s discussions and votes are heard and recorded in open public meetings. Each Board and committee member is required to annually file with the Secretary of the Commonwealth a Financial Disclosure Statement which requires, among other things, disclosure of paid offices, directorships, and salaried employments of both the members and their immediate families. This disclosure statement also requires that they list all businesses and state governmental agencies to which they have furnished services in excess of \$1,000 and identify sources of expense reimbursements in excess of \$200, all of which is subject to public inspection. Again, their accountability to our 529 plan participants as well as the citizens of the Commonwealth of Virginia is clearly mandated in a variety of applicable state statutes. Thus, while we support the principals promoted by the Release’s registration requirement, we respectfully submit that all of our Board and committee members should be exempt from the term “municipal advisors.” To do otherwise, would subject these governing Board members to requirements which are duplicative and unnecessary, would improperly infringe upon Virginia’s gubernatorial and legislative

appointment powers, and would unduly burden governing Board members and hamper our ability to attract qualified persons to serve in these important positions.

It must be noted at the outset that while the Release does not define the term “advice” in the municipal advisor context, it seems unlikely that ordinary course discussions or voting by Board or committee members equates to the “advice” contemplated under the proposed rules. The governing Board members are, for all practical purposes, the municipal entity and not individuals advising the municipal entity. The Release notes that prior to the passage of the Dodd-Frank Act, municipal advisors were not required to register with any federal, state, or self-regulatory entity with respect to their municipal advisory activities. (Release p.6). Hence their actions and even their identities prior to the passage of the Dodd-Frank Act may have been unknown or at least not fully disclosed to government authorities and the general public. However, since VCSP’s inception, the composition and activities of our Board and committees has always been thoroughly disclosed and open to regulatory and public scrutiny. Board members’ pictures and biographies are published on our website. More importantly, other than for a very limited number of specific exceptions under the Virginia Freedom of Information Act (Virginia Code §2.2-3700 *et seq.*)(the “Act”), all meetings of our Board, IAC, and other committees are open to the public and their dates, times, and locations are published in advance in compliance with the Act. Similarly, with the exception of limited exceptions defined under the Act, all communications and writings of any kind are public documents.

With all the safeguards provided by state statute, we believe that our Board and committees operate in the open with effective, established procedures in place to ensure that their decisions are made in an unbiased manner and that members of the Board of Virginia 529, or other similar boards, should be exempt from the definition of municipal advisor under the Release. We believe it is unlikely that Congress intended the Dodd-Frank Act to provide further regulation and oversight in areas of the municipal securities market where effective supervision and transparency already exists.

Finally, members of our Board and committees are not compensated, with the very limited exception of direct expense reimbursement, subject to our governing rules on such reimbursement. Service on our Board and committees is demanding as evidenced by the fact that last year, our Board and IAC met six and nine times, respectively. To subject them to the temporary and permanent registration processes described in the Release in order to meet regulatory goals that are already met by existing laws is to unnecessarily burden and would unfairly penalize our Board and committee members. Further, the Release hints that once the registration processes are complete, our Board and committee members would be subject to a full range of other regulations. Given that they already voluntarily serve under laws that fully and openly identify them and their connection to Virginia 529, that ensure that their discussions and votes are heard and recorded in public meetings, and that require them to provide thorough annual written financial disclosure, we fear the chilling effect of the Release’s duplicative, complicated, and time-consuming requirements will dissuade well-qualified persons from serving on our Board and committees.

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Thank you again for the opportunity to share our concerns about this one aspect of the Release. I ask that you consider these concerns as the SEC adopts final rules.

Sincerely,

A handwritten signature in black ink, appearing to read 'Mary G. Morris', followed by a long horizontal line extending to the right.

Mary G. Morris
Chief Executive Officer