



February 18, 2011

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

Re: SEC Release No. 34-63576
File Number S&-45-10

Dear Ms. Murphy:

This letter is submitted by the Idaho College Savings Program Board (the "Idaho Board") in response to the Securities and Exchange Commission's request for comments concerning the above referenced release (the "Release"). The Idaho Board is concerned that the proposed interpretation of the term "Municipal Advisor" discussed in the Release, unnecessarily includes Idaho Board members within the definition and will inappropriately impact the Idaho College Savings Program (the "Idaho Program").

The Idaho College Savings Program

The Idaho Program and Board were created by state statute to encourage Idaho residents to save for higher education using the benefits provided by section 529 of the Internal Revenue Code and an attractive Idaho state tax deduction. The Idaho Board is composed of six Idaho constitutional officers or their designees. The officers are the Treasurer, Governor, Controller, Attorney General, Superintendent of Public Instruction, and Secretary of State. Currently, each of the Idaho constitutional officers has designated a member of his or her staff to serve on the Idaho Board. In the future, an officer could designate a person outside of his or her staff with particular interest in the Idaho Program or valuable expertise to serve as the officer's designee on the Idaho Board. Idaho Board members are not compensated for their service.

The Idaho Board has no employees and receives no appropriation of state funds. The Idaho Program receives a small administrative fee from the assets held in trust under the Idaho Program. Funds provided through the administrative fee are used to pay a consultant to the Idaho Board, provide training to Idaho Board members on issues relevant to the Idaho Program and to expand awareness of the Idaho Program and its benefits to families and individuals with

post-secondary education aspirations. The Idaho Board's consultant serves as a fiduciary to the Idaho Board and provides independent advice concerning the exercise of the Idaho Board duties directly to the Idaho Board.

The management of the Idaho Program is performed by a private company under contract to the Idaho Board. Idaho statute provides that the contracted program manager holds all funds in trust for the benefit of the state of Idaho and the owners of accounts in the program. The Idaho Board's contract with the program manager specifically provides that the manager is a fiduciary to the Board and to the account owners. The Idaho Program manager is responsible for complying with all securities laws applicable to the manager and the Idaho Program.

The Idaho Board also acts as a fiduciary. The assets of the Idaho Program are held by the Idaho Board as trustees under both Idaho law and a written Declaration of Trust. Idaho has adopted the Uniform Fiduciaries Law, the Uniform Trustees' Powers Act, the Uniform Prudent Investor Act, and the Uniform Principal and Income Act. As a fiduciary, the Idaho Board must invest and manage trust assets as a prudent investor and with the exercise of reasonable care, skill and caution. A trustee with special skills or expertise has a duty to use those special skills or expertise in managing trust assets. Idaho Board members are subject to the duty of loyalty, which requires the management of trust assets solely in the interest of the account owners, and the duty of impartiality, which requires that the management of trust assets not favor one account owner over another account owner.

The Idaho Tort Claims Act waives immunity from suit for a tort committed in the course and scope of an Idaho Board member's duties. Claims filed under the Idaho Tort Claims Act are initially addressed by the Idaho Division of Risk Management and regularly resolved without litigation. Any Idaho Board member who breaches his or her fiduciary duties outside of the course and scope of their services as a member of the Idaho Board may be personally liable. Breaches that may subject an Idaho Board member to personal liability include acting against the advice of legal counsel and knowingly breaching the duty of loyalty.

Idaho law provides a comprehensive system of public disclosure and protections against conflicts of interest. All Idaho Board meetings comply with the Idaho Open Meetings Law. This law requires the meetings to be noticed in advance, open to the public, and for all decisions by the Idaho Board to be made at a public meeting. Records of the Idaho Board are subject to inspection and copying under the Idaho Public Records Laws. Idaho Board members are subject to the Bribery and Corrupt Influences Act, the Prohibitions Against Contracts with Officers provisions, and the Ethics in Government Act. These laws generally prohibit an Idaho Board member from being interested in a contract issued by the Idaho Program and from receiving gifts or benefits related to their service of a value in excess of fifty dollars (\$50.00). Each of the laws governing the Idaho Board provides penalties, including criminal penalties. Lastly, the Idaho Program is subject to audit by the independent Office of Legislative Audits, which monitors the performance of each Idaho agency with the laws of the state of Idaho, including the ethics and public disclosure laws.

The Proposed Registration Requirements are Inappropriate and Needlessly Impact the Idaho Program

The Idaho Board is concerned with the conclusion in the Release that individual Idaho Board members are municipal advisors, with the disparate treatment of Idaho Board members under the proposed exemptions, and with the potential impact of the proposed registration requirements.

Idaho Board Members Do Not Provide Advice

The Release broadly discusses that board members of state college savings programs are “Municipal Advisors” because, among other things, the Idaho Board is required to structure the Idaho Program and select the investments offered under the Idaho Program. The Idaho Board’s duties are set by statute and include developing and implementing a college savings plan on behalf of the state of Idaho. The state of Idaho acts only through its officials, boards, commissions, and agencies. Here, the Idaho Board acting as the state of Idaho directs the Idaho Program through decisions made by a majority of the Idaho Board’s members.

An individual Idaho Board member does not direct the activities of the Idaho Program. The Idaho Open Meeting Law requires that all discussion and deliberation of matters before the Idaho Board occur in public. An individual Board member’s on-the-record discussion of a matter before the Idaho Board is not the provision of advice. Similarly, an individual Idaho Board member’s vote concerning the structure of the Idaho Program is not the provision of advice. Instead, these votes are collectively the action of the state of Idaho.

The Idaho Board solicits and receives comment from the public, other Idaho officials, its fiduciary investment consultant and its fiduciary program manager. The Idaho Board receives advice rather than providing advice. The advice received by the Idaho Board is open to the public under both the Idaho Open Meeting Law and the Idaho Public Records Laws. The decisions that the Idaho Board makes after receiving this advice are not the provision of advice.

The Exemptions Discussed in the Release are Inappropriate for Idaho

Limited exemptions are discussed in the Release for “employees” and for elected and “ex officio” members. Under the plain meaning of “employee” and “ex officio”, the employees of Idaho elected officials serving on their behalf will not be excluded from individual registration. These designees are not direct employees of the Idaho Program and are not serving the Idaho Program because of their specific position in Idaho government. If the legislature restructured the Idaho Program to include these board members as employees of the Idaho Program or to designate them as ex officio by reason of their position, the same individuals would be exempt from registration.

The Release identifies the concern addressed by a registration requirement as the Idaho Board members’ lack of accountability to the citizens of Idaho. This concern does not play out in Idaho. As discussed above, the Idaho Board and its individual members are accountable for breaches of their fiduciary duties under the laws of Idaho. Each Idaho constitutional officer who

has designated an Idaho Board member to serve on his or her behalf is directly accountable for the actions of their designee. The designee is acting as the agent of the elected official and the actions of the agent are the actions of the elected official.

In a state as small as Idaho, citizens regularly contact elected officials to express their concerns and elected officials are responsive to those citizens. In addition, the Idaho press actively serves as a watchdog of the activities of Idaho government. The Idaho press and individual citizens monitor the activities of their government through the generous provisions of the Idaho Open Meeting Law and the Idaho Public Records Laws. Idaho Board members are accountable to the citizens of Idaho and to the participants in the Idaho Program.

Registration will Negatively Impact the Idaho Program

The imposition of a registration requirement on individual Idaho Board members will have direct consequences to the Idaho Program. Idaho Board members receive no compensation for their service. State employees serving as designees of an elected official receive no additional compensation or employment benefits. The costs of registration will be paid by the Idaho Program and represent a significant portion of the small budget of the Idaho Program. The loss of those funds may threaten the Idaho Board's ability to engage a fiduciary consultant who provides valuable advice concerning the structure and performance of our Idaho Program.

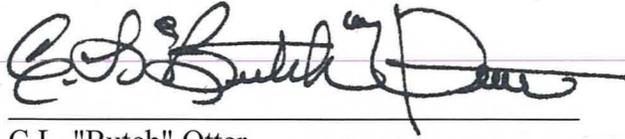
A registration requirement will also limit the pool of qualified individuals willing to serve as Idaho Board members. The current Idaho Board members have undertaken the responsibilities of service in addition to their regular job duties. In the future, a constitutional officer may designate a citizen volunteer to serve. Under Idaho law, personal information such as birthdates and home addresses of Idaho Board members is not subject to public release. A registration requirement will eliminate these protections. The broad release of this information will limit the pool of qualified applicants.

In addition, subjecting the Idaho Board members to current and future federal regulation will deter prospective members from service. Prospective members will be subjected to complicated requirements including record-keeping and filing provisions. State employees serving as Idaho Board members are already stretched to their limits by the addition of Idaho Program duties to their day-to-day positions. Citizen volunteers are often taking time away from their families, jobs and businesses to serve. Asking them to learn and comply with these requirements will not improve their day-to-day performance as Idaho Board members or increase their accountability to the Idaho Program and its participants. Instead, it will reduce the pool of qualified individuals willing to serve the Idaho Program.

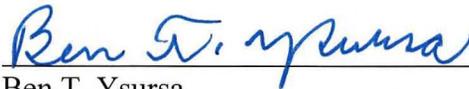
Conclusion

The Idaho Board requests that the Securities and Exchange Commission clarify that all members of public boards and commissions that manage or invest public funds, including boards directing state college savings programs, are excluded from the definition of Municipal Advisor. The Idaho Board would be happy to provide any assistance to you as you consider these matters.

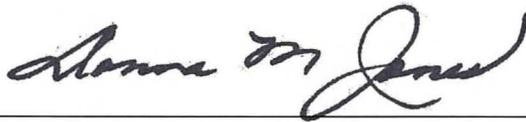
Sincerely,



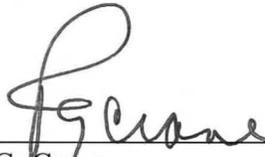
C.L. "Butch" Otter
Governor



Ben T. Ysursa
Secretary of State



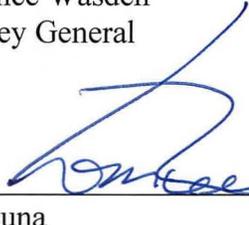
Donna Jones
Controller



Ron G. Crane
Treasurer



Lawrence Wasden
Attorney General



Tom Luna
Superintendent of Public Instruction