

Board Members

M. Dean Buffington, Chairman
Max C. Black Gavin M. Gee
Vaughn Heinrich Thomas F. Kealey
Susan K. Simmons Richelle Sugiyama
R. John Taylor Charles L. Winder

816 W. Bannock St., Ste. 301
Boise, Idaho 83702
Phone: (208) 334-3311
Fax: (208) 334-3786
Website: www.efib.idaho.gov

February 17, 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:

The Idaho Endowment Fund Investment Board (the “EFIB”) appreciates the opportunity to comment on the above referenced release (the “Release”). Below, I briefly describe the EFIB, Idaho laws providing significant oversight of the EFIB, and the impact of the proposal to require EFIB members to register as Municipal Advisors.

Duties, Structure and Oversight of the EFIB

The EFIB is established by statute to provide professional investment oversight for approximately \$1.8 billion of assets consisting of four types of funds: the financial assets of Idaho’s land grant endowments, the reserve fund of Idaho’s workers compensation insurance program, the assets of the Idaho Judges’ Retirement Fund, and small endowments granted to Idaho agencies. The statutory framework of the EFIB is constructed to remove the professional investment oversight provided by the EFIB from day-to-day political considerations including short-term budget issues and the pressures of special interest groups.

The EFIB has nine members. The members are appointed by the Governor and confirmed by the Idaho senate. Once confirmed, a member cannot be removed by the Governor or the Senate, but only by a majority vote of the EFIB itself. By law, one EFIB board member must be a sitting Idaho state senator and one EFIB board member must be a sitting Idaho state representative. Idaho statute precludes the remaining board members from holding an office, position or employment in a political party. One EFIB board member must have a minimum of ten years’ broad experience in the field of public educational administration, reflecting the fact that 90% of land grant endowments benefit public schools and higher education (e.g. “land grant” universities). Idaho law requires that the remaining six board members must be “public members from the citizenry at large who are knowledgeable and experienced in financial matters and the placement of or management of investment assets.” This qualification of the six board members helps ensure the board has a professional, rather than political, bias.

Each of the funds managed by the EFIB is held in trust and the EFIB acts as a fiduciary when it oversees and directs the management of these trusts. Although it is a government entity, the EFIB must discharge its duties in similar form to a private trust manager. Idaho law specifically provides that the land grant endowments are trusts of the “highest and most sacred order.” 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 EFIB must invest and manage the assets of each fund under its authority as a prudent investor and with the exercise of reasonable care, skill and caution. An EFIB board member with special skills or expertise has a duty to use those special skills or expertise in managing trust assets. EFIB board members are subject to the duty of loyalty, which requires the management of trust assets solely in the interest of the trust, and the duty of

impartiality, which requires that the management of trust assets not favor one trust or one beneficiary over another trust or another beneficiary.

The Idaho Tort Claims Act waives immunity from suit for a tort committed in the course and scope of an EFIB 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 EFIB member who breaches his or her fiduciary duties may be personally liable if the member's actions were outside the course and scope of their regular duties as an EFIB member. Breaches that may subject an EFIB member to personal liability include acting against the advice of legal counsel and knowingly breaching the duty of loyalty. Therefore, EFIB members have significant legal, as well as moral, motivation to abide by their fiduciary responsibilities and resist any political or other pressure to sub-optimize the funds to achieve non-fiduciary objectives.

Idaho law provides a comprehensive system of public disclosure and protections against conflicts of interest, which help ensure that EFIB members feel acutely accountable to the public for their actions. All EFIB 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 EFIB to be made in open session at a public meeting. The EFIB's records are subject to inspection and copying under the Idaho Public Records Laws. EFIB 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 EFIB board member from being interested in a contract issued by the EFIB and from receiving gifts or benefits related to their service of a value in excess of fifty dollars. Each of the laws governing the EFIB provides penalties, including criminal penalties. The EFIB 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. More importantly, by state statute the EFIB's three largest investment pools are also subject to an annual audit by an independent public accountant.

The Proposed Registration Requirements are Overly Broad and Will Impact the EFIB's Ability to Perform its Duties

The Release states that the Commission believes that "plans, programs, or pools of assets that invest funds held by, or on behalf of, a [state]" are "Municipal Entities" and that any person who provides "advice" with respect to the structure, timing, terms, risk management, asset allocation, financial planning and public fund management is a "Municipal Advisor." The Release specifically identifies appointed board members of pension boards and pooled public investment funds as subject to registration. The broad strokes painted by the Release could include EFIB board members.

The Release discusses that the problem sought to be remedied by inclusion of appointed board members of public investment boards in the registration requirement is a lack of accountability for their performance to the citizens of Idaho. The structure of the EFIB is designed to create an open and public process for the management of the trusts assigned to the EFIB, to impose strict fiduciary responsibilities on the EFIB and its board members, and to remove considerations other than the long term best interests of the trusts from the investment process.

An individual EFIB member is not providing advice to the EFIB. The Idaho Open Meeting Law requires that all discussion and deliberation of matters before the EFIB occur in public. An individual Board member's on-the-record discussion of a matter before the EFIB is not the provision of advice. Similarly, an individual EFIB board member's vote concerning matters before the EFIB is not the provision of advice. Instead, these votes are collectively the action of the state of Idaho, acting as a manager of a trust (as opposed to acting as a manager of public tax funds).

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

The imposition of a registration requirement on individual EFIB members will have direct consequences to the recruitment and retention of citizens willing to serve as board members. EFIB members receive a token per diem payment for their service. The annual costs of registration will exceed the annual per diem payment. If paid as a cost of the EFIB, the funds will come directly from the trusts overseen by the EFIB.

A registration requirement will limit the pool of qualified individuals willing to serve as EFIB members. Under Idaho law, personal information concerning EFIB members is not subject to public release. A registration requirement disclosing personal information will limit the pool of qualified applicants to those willing to disclose their personal information on the SEC website.

In addition, subjecting the EFIB members to current and future federal regulation will deter prospective members from service. Prospective members will be subjected to complicated requirements including inappropriate record-keeping and filing provisions. The record-keeping provisions duplicate the records retention requirements applicable to the EFIB. The proposed filing forms do not reflect the duties of the board members and are confusing when applied to appointed board members of public boards.

The citizen volunteers serving on the EFIB are taking time away from their families, jobs and businesses to serve. Asking them to learn and comply with the proposed requirements will not improve their day-to-day performance as EFIB members or increase their accountability to the citizens of Idaho. Instead, it will reduce the pool of qualified individuals willing to serve on the EFIB.

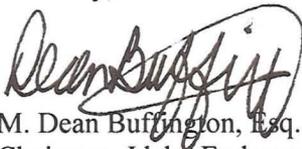
Conclusion

The EFIB requests the Securities and Exchange Commission clarify that:

- Board members of public boards are not providing advice to the public board and instead acting as the public entity.
- Board members of public boards are not “Municipal Advisors” because they are the recipients of advice and not providing advice.
- All members of public boards and commissions that manage or invest public funds regardless of whether they are elected, are employees of the board or of another public entity, or are appointed are excluded from the definition of “Municipal Advisor”.

The EFIB would be happy to provide any assistance to you as you consider these matters.

Sincerely,



M. Dean Buffington, Esq.
Chairman, Idaho Endowment Fund Investment Board