

COLLEGE SAVINGS

PLANS OF MARYLAND

Martin O'Malley
Governor

February 8, 2011

Anthony Brown
Lt. Governor

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

Nancy K. Kopp
State Treasurer
Board Chair

Thomas H. Price, III
Board Vice Chair

Re: File Number S7-45-10

Lewis A. Robinson
Board Secretary

Ladies and Gentleman:

Susan R. Buswell

We write to you in response to your request for comments with respect to Securities Release No. 34-63576 (the "Proposing Release") and the proposed rules set forth therein (the "Proposed Rules").

W. Gary Dorsch

Peter Franchot
State Comptroller

Helene Grady

Section 975 of the Dodd Frank Wall Street Reform and Consumer Protection Act (the "Dodd-Frank Act") amended Section 15B of the Securities Exchange Act of 1934 (the "1934 Act") by, among other things, requiring municipal advisors to register with the Commission. Although we generally support Congress's attempt to protect the interests of municipal entities by enacting this provision, as well as the Commission's effort to implement its mandate, we are particularly concerned with the Commission's inclusion of persons serving as appointed members of a board of a municipal entity in the definition of "municipal advisor."

Nancy S. Grasmick, Ph.D.
Superintendent of Schools

William E. Kirwan, Ph.D.
Chancellor - University
System of Maryland

Vacant
Secretary,
Higher Education

Joan E. Marshall
Executive Director

The College Savings Plans of Maryland ("CSPM") consist of two qualified State tuition programs (as such term is defined in §529 of the Internal Revenue Code): the Maryland Prepaid College Trust and the Maryland College Investment Plan (collectively, the "Plans"). The Plans are administered by a Board comprised of 10 members (the "CSPM Board"). The CSPM Board consists of the Secretary of the Maryland Higher Education Commission, the State Superintendent of Schools, the State Treasurer, the State Comptroller, the Chancellor of the University System of Maryland and, of particular importance to this letter, five members of the public who are appointed by the Governor (the "Appointed Members").

We strongly believe that all board members of municipal entities, including appointed volunteers, are not of the class of persons Congress intended to regulate when it drafted and adopted Section 975. Not only

does the legislation impose a registration requirement on municipal advisors but it also gives the Commission and the Municipal Securities Regulatory Board the authority to impose fees, establish testing, examination, continuing education, and books and records requirements and prescribe professional standards for municipal advisors¹; imposes a heightened fiduciary duty upon municipal advisors;² and vests the Commission with the authority to deny a municipal advisor's registration.³

The application of the administrative requirements to appointed board members seems unduly burdensome. With respect to Form MA-I itself, it is nearly 30 pages long and would require the assistance of an attorney well-versed in the federal securities laws to complete.⁴ As applied to the Appointed Members of the CSPM Board, the expense of compliance with the registration and other administrative requirements of amended Section 15B would fall to them personally because, by statute, no member of the CSPM Board is permitted to receive compensation.

The second result is duplicative of a fiduciary standard mandated by State law. In the Proposing Release the Commission states that appointed board members are not directly accountable to the citizens of the municipal entity for their performance, and, therefore, exclusion of such members is inappropriate. On the contrary, in the case of the CSPM Board, all members, the Appointed Members included, are fiduciaries of CSPM and, accordingly, owe the Plans a duty of care and a duty of loyalty. These fiduciary duties are specifically imposed by CSPM's enabling legislation. Before taking office, each appointee is required to take the oath of office set forth in the Maryland State Constitution. The Appointed Members also operate under the strictures of the Maryland State public ethics law. Further, all meetings of the CSPM Board are subject to State open meetings law. Through operation of these laws, the CSPM Board is thoroughly accountable to CSPM and, by extension, its participants and the citizenry of Maryland in general.

The third consequence of application of Section 15B of the 1934 Act to appointed board members is also troublesome. By statute, the Governor alone is vested with the authority to determine whether a candidate for board membership is qualified to serve on the CSPM Board. He is directed by our enabling legislation to appoint an individual with

¹ §§ 15B(b)(2)(A)(iii), 15B(b)(2)(E), 15B(b)(2)(G), 15B(b)(2)(J), 15B(b)(2)(L)(i) and (ii), and 15B(c)(7) of the Exchange Act.

² §15B(c)(1) of the Exchange Act.

² §15B(a)(2) of the Exchange Act.

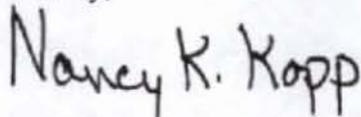
² It is also worth noting that Form MA-I requires the disclosure of certain personal information that a board member may not wish to be readily available to the public. In explaining the reasons for eliciting certain information about a municipal advisor on Form MA-I, the Commission explains that the collection of this information is "useful for interested parties in exploring the background, credentials, reliability, and trustworthiness of an individual...." (Page 105 of the Proposing Release; see also pages 100, 104, 107, 110, 114, 119, 120 and 122 of the Proposing Release.) However, in the case of the boards of municipal entities, it is the appointment to a board that would trigger the registration requirement. Any information available to, for example, the Governor by virtue of Form MA-I would be after-the-fact and of no use in the appointment process.

experience in areas that can be of assistance to the CSPM Board such as finance and accounting. The Governor also has the power to remove an appointed member in certain circumstances. With the ability to accept or deny the registration of appointed board members, the Commission would have a *de facto* veto over the decision and appointment powers of our Governor. It is unlikely that Congress intended to impinge States' rights in this manner when it enacted the Dodd-Frank Act.

In closing, we would also like to note the chilling effect the Commission's interpretation of the term "municipal advisor" would have on the ability of municipal entities to attract qualified candidates to serve on their boards in a voluntary capacity. The participation of appointed members of a board in the deliberations and decision-making process of that board is necessary for a municipal entity to function properly. These members bring their expertise as well as a different viewpoint to a board. It would be an unfortunate consequence of including appointed board members in the definition of "municipal advisor" to deprive municipal entities of such an important resource.

We appreciate this opportunity to comment of the Proposed Rules, and we hope that the Commission will give our comments consideration in drafting the final rules.

Sincerely,

A handwritten signature in black ink that reads "Nancy K. Kopp". The signature is written in a cursive, slightly slanted style.

Nancy K. Kopp
State Treasurer and Board Chair