February 22, 2011

Ms. Elizabeth M. Murphy
Secretary
United States Securities and Exchange Commission
100 F Street, NE
Washington, D.C. 20549-1090

RE: File Number S7-45-10, Registration of Municipal Advisors

Dear Ms. Murphy:

The National Council of State Housing Agencies (NCSHA) thanks you for the opportunity to comment on the proposed rule requiring registration of municipal advisors, as defined in Section 975 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act). We urge you to exempt all board members of municipal entities from the requirements of the proposed rule.

NCSHA represents state Housing Finance Agencies (HFAs), which issue mostly tax-exempt bonds to finance affordable housing for home buyers and renters. HFAs also administer a wide range of affordable housing and community development programs, including the Low Income Housing Tax Credit, HOME, Section 8, down payment assistance, homebuyer education, loan servicing, homeless assistance programs, and state housing trust funds. The federal government has recently supported the HFAs' efforts to assist in housing and economic recovery by entrusting to them the administration of several new programs, including the Tax Credit Assistance Program, Housing Credit Exchange Program, New Issue Bond Program, Temporary Credit and Liquidity Program, Hardest-Hit Fund, and Emergency Homeowner Loan Program.

We appreciate that the Securities and Exchange Commission (SEC) is seeking comments on the application of the proposed rule to appointed board members of municipal entities. Applying registration and related requirements to appointed board members of municipal entities would impose substantial, unnecessary burdens on board members whose fundamental purpose is deliberative, not advisory, and who are clearly accountable for their actions and performance under state law and other federal regulations. The proposed rule's additional burdens would discourage otherwise willing and qualified candidates from agreeing to serve as appointed board members, undermining municipal entities' ability to function effectively.

Section 975 of the Dodd-Frank Act requires municipal advisors to register with the SEC, establishes a fiduciary duty between a municipal advisor and the municipal entity for which it is acting as an advisor, and subjects municipal advisors to rules issued by the Municipal

Securities Rulemaking Board (MSRB). Section 15B(e)(4)(A) of the Securities Exchange Act, as amended by the Dodd-Frank Act, specifically excludes a person who is a "municipal entity" or an "employee of a municipal entity" from the definition of "municipal advisor."

The proposed rule defines "an employee of a municipal entity" to include any elected member of the governing body of a municipal entity, to the extent he or she is acting within the scope of his or her role as a board member. In addition, "employees" would include appointed members of the governing body to the extent that they are ex officio members of the governing body by virtue of holding an elective office. However, the SEC does not include appointed board members of municipal entities that are not ex officio or elected in its interpretation of the term "employees" in the Dodd-Frank Act. Thus, appointed board members of municipal entities are not explicitly excluded from the requirements of the proposed rule.

Congress Did Not Include Appointed Board Members of Municipal Entities in the Statutory Definition of "Municipal Advisors"

Due to the specificity with which the Dodd-Frank Act defines the term, "municipal advisors," we believe Congress would have made it clear if it intended to include appointed board members in that definition. There is no evidence in congressional hearing transcripts, the Dodd-Frank Act's Joint Explanatory Language, or any other public documents that provides a basis for the SEC's broad interpretation of the statutory language. Without evidence to support its interpretation, NCSHA believes the SEC should exclude appointed board members from the definition of "municipal advisor."

Board members, whether elected or not, essentially serve as the "municipal entity" for purposes of the statute and the proposed rule. All board members should be excluded from the definition of "municipal advisor" on that basis. Congress, in excluding a "municipal entity" from the definition of "municipal advisor," surely intended that the exclusion have some practical effect. Since board members act as the municipal entity, none of them can reasonably be classified as advisors to themselves.

The board of directors is the municipal entity, both practically and as a matter of law. While there are common-sense differences between a governing body and the municipal entity itself, the governing body acts as the municipal entity for purposes of the municipal finance and investment activities contemplated by the proposed rule.

Board Members' Activities Are Fundamentally Deliberative, Not Advisory

Non-elected board members, like all other board members, do not advise their boards, because they are themselves the board. Board members are policy-makers, who make decisions in reliance on advice received from others.

Appointed Board Members of Municipal Entities Are Accountable for Their Actions

The SEC claims that the primary difference between elected or ex officio municipal board members and appointed municipal board members is the fact that, "appointed members, unlike elected officials and elected ex officio members, are not directly accountable for their

performance to the citizens of the municipal entity." NCSHA believes this is inaccurate in the case of municipal entities, and certainly in the case of HFAs. All board members are accountable to their respective municipal entities, to the extent deemed sufficient by state and local law. Appointed board members of HFAs are subject to substantial regulation involving, among other things, open meetings and public records, ethics, conflicts of interest, and data privacy. Appointed board members generally are subject to removal by the appointing authority, and non-elected members are generally treated as public officers and are subject to removal for cause. Meetings and records are open to public scrutiny. Further, boards and commissions represent the municipal entities legally, as they customarily sue and are sued, complain, defend, and contract in the name of the municipal entity.

In addition, elected officials who appoint municipal entity board members generally can remove those appointed members, adding an additional layer of accountability to the appointed board members' performance. Elected officials who appoint board members are themselves directly accountable to their electorates for their actions, including the making of such appointments and the performance of their appointees.

There is no compelling basis for the SEC to exempt some board members from the burdensome requirements of the proposed rule without exempting all board members. In general, all board members of an HFA have the same legal responsibilities under applicable state law. In most cases, all board members, regardless of their appointed status, have the same authority with respect to their ability to vote as well as the strength of their individual votes.

The Proposed Rule Imposes Significant Administrative and Monetary Costs on Municipal Board Members and Deters Voluntary Participation on the Boards

The proposed rule imposes onerous, costly, and personally invasive requirements that will discourage individuals from participating as appointed HFA board members. Among other things, appointed board members would be required to undergo criminal background checks, provide a 10-year employment history, disclose their personal financial liabilities for the previous 10-year period, and provide information regarding the business activities in which they are currently engaged. All this information will then be made available to the public, and appointed board members will be required to immediately amend any of the information if it changes or becomes inaccurate in any way.

Complying with these strict, costly, and intrusive requirements would be particularly burdensome given that board members typically receive little or no compensation for their time and efforts. In addition, the rule would impose heightened fiduciary standards on appointed board members that would make them civilly and criminally liable for violations of the rule, liability that board members do not presently have.

The importance of skilled, competent board members cannot be overstated. Many state and local government governing bodies have responsibilities beyond the financial realm, such as making decisions on matters of public policy. Often, individuals are appointed to such bodies for reasons other than financial expertise. For example, some board members must come from certain industries or geographical areas to provide, in the state's sovereign judgment, the required experience and background to meet the responsibilities of the governing body.

Municipal entities that do not find individuals with the necessary qualifications to serve on their boards could face numerous disadvantages. Fewer qualified board members would adversely impact the managerial capacity of a municipal entity, which could affect the ability of a municipal entity, such as an HFA, to continue to meet its public purpose goals. Should the HFAs' managerial capacity and innovative expertise diminish as a result of the proposed rule, they could face increased borrowing costs, thereby reducing the benefits they provide to homeowners and renters in bond-financed affordable housing. Rather than discouraging participation in the governing bodies of municipal entities by requiring registration and imposing additional liabilities, the SEC should be encouraging greater participation of individuals knowledgeable and experienced in finance.

In addition, the proposed rule would impose higher administrative and monetary costs on some municipal entities than others, resulting in an unfair distribution of burden among them. For example, some municipal entities have boards made up entirely of appointed board members, while others may have a board made up of half appointed members and half non-appointed members. These distinctions vary by state and are often determined by the state or local laws that established the municipal entity.

Many HFAs and other municipal entities may also have advisory boards or committees with appointed members. These boards and committees assist the municipal entities in formulating policies and procedures related to their missions and objectives. Without an explicit exemption, some may interpret the proposed rule as requiring appointed members of these advisory boards and committees to register as municipal advisors. We strongly urge the SEC to exempt all appointed board members and make clear that through this action, it is also exempting appointed members of advisory boards and committees.

Current Oversight of Municipal Board Members is Reasonable and Sufficient

Board members of municipal entities are already required to meet stringent disclosure requirements and are subject to legal liabilities under state and local law. Municipal entities must file, at a minimum, information on the terms of the securities; financial information and operating data concerning the issuer and other entities, enterprises, funds, accounts, and other persons material to an evaluation of the offering; and a description of the continuing disclosure undertaking made in connection with the offering (including an indication of any failures to comply with such undertaking during the past five years).

HFAs are typically subject to greater oversight and disclosure requirements than other municipal entities, as they are often audited not only by private auditors but also by the United States Department of the Treasury, the United States Department of Housing and Urban Development, and by various state regulators. In addition, some HFAs have financial disclosure laws in their states that require any appointed board or commission member to report annually sources of income, investments and real estate holdings, and other financial interests.

The SEC's proposed rule also appears inconsistent with President Obama's recently announced Executive Order 13563, which directs federal regulatory agencies to, among other

things, "(1) propose or adopt a regulation only upon a reasoned determination that its benefits justify its costs … (2) tailor its regulations to impose the least burden on society, consistent with obtaining regulatory objectives." The proposed rule imposes substantial burdens on appointed board members, with seemingly little reason or benefit.

Defining Appointed Board Members As "Municipal Advisors" Will Create Significant Unnecessary SEC Administrative Burden at a Time of Scarce Resources

The SEC's broad interpretation of the definition of "municipal advisor" in the proposed rule represents a wasteful expenditure of already limited resources. SEC Commissioner Elise Walter discusses this in the SEC's recently-released "Study Enhancing Investment Adviser Examinations:"

> For instance, Title IX of the Dodd-Frank Act requires that municipal advisors register with the Commission. The staff expects that this requirement will result in thousands of new entities and individuals registering with the Commission... [The Office of Compliance Inspections and Examinations (OCIE)] staff estimates that nearly half of the examinations of municipal advisors will divert resources directly from the investment advisory area.

Based on this statement, NCSHA believes the SEC's broad interpretation of the definition of "municipal advisor" under Section 975 of the Dodd-Frank Act is unnecessary and unwise. The Dodd-Frank Act provides specific examples of municipal market participants that must register with, and be regulated by, the SEC and MSRB. Congress understood that the SEC did not have unlimited resources with which to oversee the municipal market. Instead, Congress pointed to those individuals and groups that it believed required the most oversight by federal regulators. Broadly interpreting the statutory definition of "municipal advisor" to include participants—such as appointed board members of municipal entities—not expressly included in Congress' definition poses a problematic additional burden on the SEC for no apparent reason.

In summary, NCSHA recommends that the SEC explicitly exempt from the definition of "municipal advisor" all appointed, elected, and ex officio members of municipal entity boards.

Thank you for your consideration of our comments. Please do not hesitate to contact me if we can provide additional information.

Sincerely,

Barbara J. Thompson
Executive Director