



NATIONAL ASSOCIATION OF INDEPENDENT SCHOOLS

VIA ELECTRONIC DELIVERY

February 22, 2011

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

RE: Comments to Proposed Rule Regarding Registration of Municipal Advisors,
SEC Release No. 34-63576; File No. S7-45-10

Dear Ms. Murphy:

I am writing on behalf of National Association of Independent Schools (“NAIS”) and the National Business Officers Association (“NBOA”) in response to the request for comments on the definition of “municipal advisor” contained in Release No. 34-63576 (the “Proposed Rule”) of the Securities and Exchange Commission (the “Commission”) relating to the registration of municipal advisors.

NAIS is a nonprofit membership organization representing approximately 1,400 independent nonprofit schools and associations of independent nonprofit schools in the United States, and affiliates with independent schools abroad as well. Our primary purpose is to serve and strengthen independent schools of the United States and affiliated schools around the world by helping them maintain high quality and standards, preserve their independence to serve effectively the free society from which that independence derives and provide access to students through the principles of diversity, choice, and opportunity.

Founded in 1998, NBOA is the only national association for independent school business officers. NBOA membership currently includes business officers from over 745 schools from every region in the United States. Combined enrollment of member schools exceeds 271,000 students and combined budgets exceed \$6.1 billion. The mission of NBOA is to develop, deliver and promote best business practices to advance financially sustainable independent schools.

Our member nonprofit schools often finance their activities with funds raised for their benefit through the issuance of tax-exempt revenue bonds by municipal bonding authorities. These nonprofit schools are solely responsible for the payment of such bonds, consequently, they would meet the Proposed Rule’s definition of an “obligated person” as they are “committed by contract or other arrangement to support the payment of all or part of the obligations on the municipal securities to be sold in an offering of municipal securities.”

The Commission requested comment on whether “employees of obligated persons [should] be excluded from the definition of ‘municipal advisor’ to the extent they are providing advice to the obligated person, acting in its capacity as an obligated person, in connection with municipal financial products or the issuance of municipal securities.” In addition, the Commission also requested comment on whether “there [are] types of persons other than employees of obligated persons that should be excluded from the definition of ‘municipal advisor.’” We believe that the Commission should exclude from the definition of “municipal advisor” employees, officers, directors and volunteers serving nonprofit schools, each of whom may provide advice to the obligated person in connection with municipal financial products or the issuance of municipal securities.

One of the key purposes of Section 975 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the “Act”) is to protect municipalities and nonprofit entities issuing municipal debt when engaging independent, third party advisors. It is apparent that the Act intended to do so by requiring the registration and regulation of these advisors, who are providing financial and investment advice to obligated persons with respect to municipal securities. It does not appear that the Act was intended to apply to the groups that we are requesting be excluded from coverage of the Act, who are not independent third parties, but are closely affiliated with the entities which the Act is seeking to protect.

There would be no benefit to a nonprofit school by requiring the registration of its own employees, officers, directors and volunteers. The Proposed Rule requires “municipal advisors” to register with the Commission and provide certain personal and professional information, so that the obligated person can have access to sufficient information to enable it to evaluate whether a potential advisor is suitable to provide financial advice with respect to municipal securities. Nonprofit schools already obtain this information from potential employees, officers, directors and volunteers through the screening process they perform before hiring, electing or otherwise entering into a relationship with these persons. Because the process of hiring, electing or otherwise engaging these persons provides nonprofit schools the opportunity to require all of the information required by the registration form, as well as additional information, nonprofit schools will not gain any benefit from subjecting employees, officers, directors or volunteers to the registration requirements.

In recognition of this dynamic, the Act and the Proposed Rule explicitly exclude employees and certain board members of municipal entities from the definition of “municipal advisors.” Further, the rationale that such individuals are acting in the scope of their roles and are directly accountable to the municipal entities applies to the employees, officers, directors and volunteers serving nonprofit schools as well. When employees, officers, board members and volunteers provide advice to their nonprofit schools with respect to municipal securities, they are doing so in their capacities as such, and are held accountable for providing this advice. Therefore, we believe that a parallel exception should be made for employees, officers, directors and volunteers serving nonprofit schools.

Moreover, the relationship between nonprofit schools and their employees, officers, directors and volunteers are already adequately regulated by state statutes, state common law and internal governance policies adopted by many nonprofit schools. The fiduciary duties and the standards of care applicable to the relationships between a nonprofit school and its employees, officers, directors and volunteers and the conflict of interest policies adopted by nonprofit schools already afford nonprofit schools the protections with respect to employee, officers, directors and

volunteers that the Act and the Proposed Rule seek to provide by registering and regulating municipal advisors. Employees, officers, directors and volunteers are held accountable to the nonprofit schools in accordance with these duties and policies, and it is unnecessary to impose additional protections. In fact, the Act, if applied to employees, officers, directors or volunteers of nonprofit schools, may impose a duty or standard of care inconsistent with those currently in place under state law.

Subjecting employees, officers, directors and volunteers of nonprofit schools to the registration and reporting requirements applicable to municipal advisors is likely to severely impair the ability of nonprofit schools to attract and retain people to serve in these positions. Individuals will be less likely to serve as an employee, officer, director or volunteer with a nonprofit school if they would be subject to costly and burdensome federal registration and reporting requirements and related civil and criminal liabilities. Persons frequently assist nonprofit schools by serving as directors, advisory committee members or volunteer advisors. They do this as a matter of service to the school and the community, and directors, advisory committee members and volunteer advisors usually serve without compensation. Nonprofit schools frequently depend upon the expert advice of these volunteers and would be seriously impaired if they were no longer an available resource.

Finally, if employees, officers, directors and volunteers were required to register, the nonprofit schools may be required to assume the burden and expense of compliance in order to retain the important services of these persons. The costs associated with complying with the registration provisions will strain the limited resources of nonprofit schools. In addition to filing fees, the costs of complying and thereafter monitoring compliance, will require nonprofit schools to divert resources away from their core mission.

Accordingly, and consistent with the intent and purposes of the Act, we request that the Commission clarify that employees, officers, directors and volunteers of nonprofit schools are excluded from the definition of "municipal advisor" when they provide advice to these obligated persons in connection with municipal financial products or the issuance of municipal securities. We commend the Commission's efforts to improve transparency and accountability in the municipal securities market, but we see no benefit to the community in imposing additional regulations on nonprofit schools.

Thank you for your attention and consideration. If you have any question regarding these comments, please contact the undersigned.

Sincerely,



Debra P. Wilson
Legal Counsel
NAIS
1620 L Street, NW
Washington, DC 20036
(202) 973-9716
(202) 247-9692 (fax)
www.nais.org