OFFICE OF THE PRESIDENT

April 27, 2012

Elizabeth M. Murphy
Secretary
Securities & Exchange Commission
100 F Street, N.E.
Washington, DC 20549-1090

RE: Registration of Municipal Advisors under Section 975 of the Dodd-Frank Wall Street Reform and Consumer Protection Act
17 C.F.R. Parts 240 and 249—Comment
File Number S7-45-10

Dear Ms. Murphy:

We write in response to Release No. 34-63576, in which the Commission solicited comments on its proposed rule concerning registration of municipal advisors. Like the leaders of other private institutions of higher education, we are concerned that the proposed rule's broad definition of "municipal advisor" could be interpreted to require employees and trustees of private higher education institutions to register with the Commission. Although the proposed rule's definition of "municipal advisor" expressly excludes elected trustees and employees of public colleges and universities, it does not make the same exclusion for trustees and employees of private institutions.

As American Council on Education President Molly Corbett Broad states in her letter to you of February 22, 2012, higher education institutions, among them private colleges and universities, finance critical, mission-centered projects through the municipal securities market. Requiring employees and trustees of colleges and universities to register with the Commission will, we predict, have potential harmful consequences for higher education.

We would like to stress our agreement with President Broad's position that the proposed rule departs from settled policy. It is so broadly conceived that it could be interpreted to mean that trustees and employees of obligated persons would be defined as "municipal advisors" when they discuss municipal finance issues in the course of satisfying the obligations of their jobs or their service as trustees. The term "advice" is not defined, and the resulting lack of

clarity could mean that any and all discussions regarding municipal finance between colleges and their employees and trustees qualify as "advice." Surely that was not the intent of the Congress.

Applying the proposed rule to an employee discussing municipal finance with his or her employer departs from the settled federal policy that does not regulate internal advice provided by an employee to an employer. We believe the same principle should apply to college trustees who generously volunteer their time and expertise to institutions in the course of dispatching their fiduciary responsibilities and discuss municipal finance with institutional leaders, who likewise are engaging in internal communications. We ask the Commission to adhere to this settled policy, to continue to use the presently accepted interpretation of "advice," and therefore exclude trustees and employees of private colleges and universities from any requirement to register as "municipal advisors" on the grounds that theirs are internal communications.

In the case of both trustees and institutional employees, we believe that private colleges and universities will not benefit from SEC supervision. Franklin & Marshall's Board of Trustees, as well as the College's officers, are already governed by established and clearly defined fiduciary responsibilities (the College's charter and Bylaws) and extensive fiduciary regulations (both state and federal), and by both externally driven and internal institutional ethics policies, conflict of interest policies and regular review by institutional presidents (in the case of employees) and by senior leadership of the boards of trustees (in the case of both senior leaders and other trustees). These include the duty to exercise oversight and to satisfy ourselves that institutional financial personnel are competent and act in the best interests of the College, our faculty and staff, and the students we serve.

Mechanisms are in place at Franklin & Marshall College and we presume elsewhere to deal with unethical behavior in the rare instances when it might occur. Intrusion by the SEC into evaluations given to employees by their supervisors or to trustees by their Board chairs is not only an unnecessary departure from settled policy, but could pose a very real risk of affecting the quality of information given by employees and trustees to their institutional leaders and in turn the quality of decisions being made. Employees of obligated persons and college and university trustees could, we believe, be reluctant to speak about municipal financial matters if their opinions could constitute "advice" and require registration as a "municipal advisor." At a time when all higher education institutions, and particularly private colleges and universities, are under pressure to maximize their resources in order to control costs, setting up a situation where employees and trustees must register as "municipal advisors" would be counterproductive.

We also note the inconsistency of exempting some trustees of public universities from the requirement to register as "municipal advisors" while other trustees on the same boards and all trustees of private institutions are not exempted. The argument that publicly elected trustees of public universities are accountable to the public while others are not is simply not accurate. Trustees of public and private institutions are ultimately accountable to their institutions and, by law, to the public; in the case of private colleges like Franklin & Marshall, our obligations to the public are clearly stipulated in the charter granted to us by The Commonwealth of Pennsylvania. And like trustees of public institutions who are elected by the citizenry or appointed by public officials, all Trustees—of both public and private colleges—have a fiduciary responsibility to oversee the conduct of institutional business and to ensure that business is conducted ethically.

Finally, we do not believe that the record shows any evidence that the Dodd-Frank Act was intended to apply to public or private universities. Once again, we agree with the position articulated by President Broad in her February 22 letter and find her reasoning compelling. The Dodd-Frank Act is most accurately understood to extend regulations for advisors in other markets to the municipal securities market, and not to colleges, universities and other non-profits that rely on the proper and ethical functioning of those markets to support their missions.

Thank you for the opportunity to provide these comments. We would be happy to discuss them with you further, if you wish.

Sincerely,

Daniel R. Porterfield, Ph.D.
President

Lawrence I. Bonchek, M.D.
Chair, Board of Trustees

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cc: Mary L. Schapiro, Esq.
Chair, Securities & Exchange Commission