



OKLAHOMA STATE TREASURER

February 7, 2011

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

Dear Ms. Murphy:

The source of our economic prosperity is the strength of our people and capital markets which support their efforts. The vibrancy of our capital markets is dependent upon fair dealings among participants and transparency. It is a primary objective of the Securities and Exchange Commission (the "Commission") to insure fair dealing and transparency through regulation, monitoring, and if appropriate, prosecution. However, unnecessary, burdensome and redundant regulation serves to inhibit the performance of the capital markets, leading to unnecessary costs and restraining organizations' (including public bodies') ability to raise capital to invest in their future prosperity.

No participant in the capital markets must be a greater steward of funds than those in the public sector. We in public service have a solemn duty to our constituents to protect the tax dollars with which we have been entrusted. As a means of protecting that trust, the State of Oklahoma has adopted laws, among others, requiring the members of public boards to be of "good moral character". Further, the various state and local authorities in Oklahoma are subject to enabling statutes that include safeguards through minimum qualifications, duties, responsibilities, means of removal and recall, and codes of conduct and ethics, among others.

On December 20, 2010, the Commission released proposed rules that, if implemented, would require appointed board members of municipal entities to register with both the Commission and the Municipal Securities Rulemaking Board ("MSRB") if they provide "advice" on the issuance of municipal securities or the investment of public funds (the "Proposed Rules"). The Proposed Rules were published in the Federal Register on January 6, 2011; Volume 76 No. 4, Pages 824-969. In conjunction with the release of the Proposed Rules, the Commission provided guidance, regarding the definition of *municipal advisor*, that it does not believe that appointed members of a governing body of a municipal entity that are not elected ex-officio members should be excluded from the definition of a *municipal advisor*. The Proposed Rule represents an intrusion on the basic form of state governance, and may violate the Tenth Amendment to the United

States Constitution, which reserves to the States those powers not delegated to the Federal Government by the Constitution.

While I support the Commission's efforts to improve the quality of financial advice provided to municipal entities and the ethics and qualifications of those providing such advice, the inclusion of appointed members of a governing body of a municipal entity that are not elected *ex-officio* members in the definition of a *municipal advisor* fails to recognize the prudent and appropriate steps already taken by state and local governments, while introducing costly and burdensome regulations on volunteers seeking to further the public good. While the definition of a *municipal advisor* may be well intended, it will have the effect of making it more difficult to recruit qualified and honorable individuals to serve as members of a governing body of a municipal entity.

The individuals asked to serve on the governing body of a municipal entity in Oklahoma typically do so absent compensation, and sacrifice their personal and professional time so the residents of Oklahoma may benefit from their wisdom and experience. Their inclusion in the definition of a *municipal advisor* would require still greater sacrifice, while providing no benefit to the public, by subjecting them to:

- Registration with the Commission and the Municipal Securities Rule Making Board, which currently charges \$600 for initial and annual registration fees for advisors;
- Compliance with MSRB rules and regulations. Such rules may (and most likely will) provide for:
 - Standards of training, experience, competence, and such other qualifications for municipal advisors as the MSRB finds necessary or appropriate in the public interest or for the protection of investors and municipal entities
 - Periodic examination
 - Records maintenance requirements
 - Continuing education requirements and professional standards
- Compliance with anti-fraud provisions; and
- The MSRB's G-17 Rule on Fair Dealing and the G-5 Rule on MSRB disciplinary actions.

Though these hard working volunteers do not share the same level of scrutiny as elected officials, there is a level of accountability to the general public. Non-elected members of a governing body share some treatment with public officials in that they are subject to removal for cause pursuant to state statute and/or the enabling legislation of such municipal entity. In some cases, they are treated as public officials with statutes not distinguishing between appointed and elected board members in terms of voting strength.

There is a more basic problem with the Proposed Rule than its establishment of a distinction between elected and appointed officials; it fails to recognize that members of a governing body of a municipal entity cannot serve to advise the body as they are responsible for the governance of the municipal entity. A municipal entity only acts through its governing body. Accordingly, the exception for a municipal entity should be interpreted to mean all members of a governing body.

As the financial markets grow increasingly complex, the need for regulation increases, but effective and well-reasoned legislation becomes more difficult to develop. While the Commission seeks to regulate and improve the quality of financial advice received by municipal entities and the ethics and qualifications of those providing such advice, the Proposed Rule intrudes on a most basic form of state governance without any Congressional history or legislative intent. It represents flawed public policy through its discouragement of public participation which is counter-productive to good governance.

Respectfully,

A handwritten signature in black ink, appearing to read "Ken Miller". The signature is written in a cursive, flowing style with a large initial "K" and "M".

Ken Miller
Oklahoma State Treasurer