



Greater New York Hospital Association

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Kenneth E. Raske, President

February
Seventeen
2011

The Honorable Elizabeth M. Murphy
Secretary
U.S. Securities and Exchange Commission
100 F Street, NE
Washington, DC 20001

**Re: GNYHA Comments on Proposed Rule Regarding Registration of Municipal Advisors,
File Number S7-45-10**

Dear Secretary Murphy:

On behalf of the nearly 250 tax-exempt and public hospitals and continuing care facilities represented by the Greater New York Hospital Association (GNYHA), I appreciate this opportunity to respond to the Securities and Exchange Commission's proposed rule regarding registration of municipal advisors. GNYHA and its members are concerned that the proposed rule may require board members and employees of tax-exempt hospitals to register with the SEC as "municipal advisors," even if they are only acting within the scope of their duties to the organization. We believe such a requirement exceeds the intent of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) and would act as a disincentive to volunteer for board service and create an unnecessary administrative burden for our members. For these reasons, GNYHA respectfully requests that the SEC clarify that such registration is *not* required for board members or employees of organizations like tax-exempt health care providers.

Background: GNYHA and Its Membership

GNYHA is a trade association representing nearly 250 tax-exempt hospitals and continuing care facilities, both voluntary and public, in the New York City metropolitan area, throughout New York State, and in New Jersey, Pennsylvania, Connecticut, and Rhode Island. GNYHA and its members devote significant resources to legal and regulatory compliance, as well as to developing responsible governance structures. These issues are at the core of what our members do for their patients and communities.

GNYHA has long provided its members with education and support on a host of legal and governance issues. Over the last several years, we have focused on tax-exempt requirements and policies, recognizing the invaluable role of hospital board members. GNYHA is currently working with its member organizations to create a compliance education tool for boards of directors, and we regularly hold briefings and member meetings that emphasize governance

processes and best practices. Not only are our members aware of their compliance and governance requirements as tax-exempt organizations, they are committed to exceeding their standard obligations to ensure that their hospitals are truly excellent.

GNYHA Concerns with SEC Proposed Rule

Nonetheless, GNYHA and its members respectfully object to the creation of an unnecessary registration requirement for our board members and some employees. Specifically, we question the suggestion that a “municipal advisor,” defined as “a person...that provides advice to or on behalf of a municipal entity or obligated person with respect to municipal financial products or the issuance of municipal securities ...,” should include certain tax-exempt organizations’ board members and employees. Under the SEC’s proposal, these individuals would have to register as municipal advisors on a recurring basis. As the proposed rule establishes that the term “obligated person” includes entities acting as conduit borrowers, such as tax-exempt hospitals, this interpretation would impact GNYHA members whether structured as “municipal entities” or “obligated persons.”

Significantly, the proposed rule states that elected and *ex officio* members of governing bodies of municipal entities should be exempt from the definition of “municipal advisor.” The SEC indicates that “employees and elected members are accountable to the municipal entity for their actions,” and concludes that appointed members are not similarly accountable to the organizations they serve. GNYHA must disagree with this distinction and urges the SEC to extend the exemption to all hospital board members and employees.

All board members provide valuable volunteer services and meet existing legal obligations.

As noted above, GNYHA and its members do not agree that board members, whether appointed or elected, should be considered “municipal advisors.” We do not believe that such a reading of the definition or the establishment of an associated registration requirement is either logical or beneficial when considered in the context of board operations. Board members engaged in internal board discussions are not providing external advice to the tax-exempt organization, but rather cooperatively working within a group of community leaders to reach an appropriate decision for the organization. At times, such decisions may be based on the input of outside capital financing professionals who themselves may well be subject to the proposed registration requirements. The hospital board members, however, are not the individuals specifically engaged to provide municipal finance advice, and they should not be viewed as somehow separate from the tax-exempt organization they are serving.

Our board members work within clear requirements to place the interests of the organization above their own. They are bound by fiduciary duties to conduct their activities in good faith, with reasonable care, and in the best interests of the hospital and community they serve. Violating such fundamental duties can yield legal action and expulsion from a board. Board actions and organizational governance are monitored by the Internal Revenue Service and state corporate law at the very least. Increasingly, in states like New York, hospital board composition and decisions are also scrutinized by oversight agencies like the Office of the Medicaid Inspector General. The extensive regulation of tax-exempt organizations and their board members does not warrant an additional check by the SEC, and GNYHA would respectfully argue that our board members

should be exempt from any registration requirements, just as broker-dealers, attorneys, or others “currently regulated” or “governed by other professional codes of conduct” would be under the SEC’s proposal.

Accordingly, we believe there is no need for the distinction between elected and appointed board members suggested by the SEC. The legal standards and obligations imposed on board members remain the same whether the board member is elected or appointed. A board member’s sense of responsibility is not derived from the outcome of a popular election but from more significant legal and personal commitments. Our board members contribute their time, energy, and expertise with no expectation of compensation to ensure that they meet their fiduciary duties and contribute significantly to organizational decisions. They are leaders in their communities and are proud to be contributing to the hospitals they serve. Yet we fear that creating unnecessary requirements will deter volunteers from continuing their service.

The proposal creates a disincentive for service.

GNYHA’s members are concerned about the imposition of any new regulatory or administrative burden, particularly one imposed on our enormously valuable volunteer board members. If board members are required to register as municipal advisors, it may well motivate some existing directors to resign rather than face the fee, burden, and liability associated with the mandatory registration process. Other individuals may opt against serving on hospital boards in the future for the same reason. Even if the board member elects to continue providing his or her volunteer service, the organization will be burdened with yet another regulatory mandate and associated fee, and it will have to divert some of its limited time and resources to assisting volunteer board members as they satisfy the registration requirements. None of these are logical or desirable outcomes.

The exemption should extend to employees as well.

Likewise, hospital employees should be exempt from the definition of “municipal advisor” and the resulting registration requirement. Hospitals’ senior management work for the betterment of their organizations every day, and they do so within the extensive restrictions imposed by hospital regulations and the necessary oversight of their boards. They are not taking unfettered individual actions, and they are not serving as outside financial experts. Like their municipal colleagues who are already exempt from the definition of “municipal advisor,” tax-exempt hospital employees are accountable to their boards and communities, and they are additionally subject to Federal and state corporate and tax law requirements. They are no different from municipal employees and likewise should be relieved of any registration obligations.

GNYHA’s Request for Exemption

Respectfully, GNYHA believes it is appropriate for the SEC, in its final rule, to exempt board members and employees of tax-exempt organizations like hospitals—whether they be municipal entities and obligated parties—from the definition of “municipal advisor.” This is an appropriate limitation and one that will not inhibit necessary volunteer service or create an unwarranted administrative burden.

Ultimately, GNYHA respectfully questions whether the Dodd-Frank Act was intended to require tax-exempt organizations' board members to register as municipal advisors when only carrying out their fiduciary duties as board members, or to require employees or volunteers of obligated persons to register when only performing a normal job function not specifically related to municipal finance. Rather, it is our understanding that the law was created to regulate external market professionals who had previously been unregistered and without appropriate limitations. Mandating registration for board members goes well beyond that goal and is highly unnecessary, given the wide set of requirements already established by Federal and state laws.

Conclusion

GNYHA is extremely grateful for this opportunity to comment on the proposed regulations. Along with our tax-exempt and hospital colleagues around the country, we thank the SEC for its outreach and consideration of our priorities in this process. If you have any questions about these comments, please contact Deborah Brown, brown@gnyha.org or (212) 258-5314, at GNYHA.

Sincerely,

A handwritten signature in black ink, appearing to read "Kenneth E. Raske". The signature is written in a cursive style with a large initial "K".

Kenneth E. Raske
President