



February 22, 2011

The Honorable Elizabeth M. Murphy  
Secretary  
Securities and Exchange Commission  
100 F Street, NE  
Washington, DC 20549-0609

Re: File No. S7-45-10, Proposed Rule on the Registration of Municipal Advisors

Dear Secretary Murphy:

The Healthcare Financial Management Association (HFMA), on behalf of its 35,000 members, appreciates this opportunity to comment on the Securities and Exchange Commission's proposed rule on registration of municipal advisors (File No. S7-45-10), published in the January 6, 2011 *Federal Register*.

Among the questions the Commission asks in the proposed rule are:

- Whether the Commission's interpretations under the definition of "municipal advisor" and related terms, and the exclusions from the definition of "municipal advisor," are appropriate.
- 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.

HFMA believes that the Commission's proposed definition of "municipal advisor" is too broad. Specifically, we urge the Commission to exclude from the definition (1) all board members (appointed and elected) of a municipal entity's governing body and all board members of an obligated person and (2) the employees of an obligated person.

Some hospitals are organized as "municipal entities" under the definition of the Dodd-Frank Act; almost all hospitals and health systems, as conduit borrowers through the issuance of taxable or tax-exempt municipal bonds, are "obligated persons" under the Act's definition. The definition of "municipal advisor" in the proposed rule, unless modified, would apply to the appointed members of public hospital boards and to the board members, officers, and employees of almost all hospitals and health systems.

With respect to board members of municipal entities and obligated persons alike, HFMA is concerned by the proposed rule's lack of guidance as to what would constitute "advice" that would trigger the municipal advisor registration requirements. If a board member expressed his or her views on the desirability of a proposed issuance of municipal bonds, would that board

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member be offering advice? Would a board member's explanation of his or her vote constitute advice? Such discussions and deliberations are an important and proper function of a board member, and to subject board members to the risk of triggering the municipal advisor registration requirements would have a chilling effect on the board.

The proposed rule would also have an adverse impact on the ability of many hospitals and health systems to recruit members of the board. Most members of not-for-profit hospital boards are not compensated for their service, and hospitals and health systems are already challenged to recruit board members who have the skills necessary to help navigate the complexities of the healthcare system. To require board members to publicly disclose residential and employment history, business activities, and personal financial information as a further condition of their service would make an already challenging effort to recruit skilled board members even more difficult.

HFMA also believes that the same exclusion from the definition of "municipal advisor" that the proposed rule applies to employees of municipal entities should be applied to employees of obligated persons as well. The employees of obligated persons are no less accountable than the employees of municipal entities. Moreover, the lack of definition as to what constitutes "advice" triggering the proposed rule's registration requirements poses significant difficulties for finance officers and other employees of finance departments who, as part of their regular job responsibilities, evaluate and make recommendations on the structure, timing, and terms of municipal securities. Does an internal evaluation of a proposed municipal bond offering constitute "advice" under the proposed rule? And would all employees who contribute to such an evaluation be subject to the rule's registration requirements? If so, the rule would add significant administrative burdens and expense to the finance departments of hospitals and health systems that HFMA believes were not contemplated by the Dodd-Frank Act.

Finally, to treat the board members and employees of hospitals and health systems as "municipal advisors" blurs an important distinction between individuals who, *as part of* a municipal entity or obligated person, contribute to decisions on the issuance of municipal securities, and those who, as advisors *external to* the municipal entity or obligated person, offer advice or recommendations on municipal securities. The proposed rule's discussion states that the statutory definition of "municipal advisor" includes "distinct groups of professionals that offer different services and compete in distinct markets"—none of which include board members or employees. The discussion also notes that the increasing variety of municipal financing options "has led to an increasing reliance on *external advisors* (emphasis added)" by municipal entities to assist in evaluating the options available to them. Neither board members nor employees are external to the organization they serve: instead, they are part of the internal governing and operating structures of their organizations.

HFMA appreciates the opportunity to raise its concerns with the Commission regarding the registration of board members and employees of hospitals and health systems as "municipal advisors." HFMA takes pride in its longstanding ability to provide objective technical expertise to federal agencies and hopes that these comments prove useful.

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We are at your service to provide additional background material or perspective on this issue. You may reach me, or Richard Gundling, Vice President in HFMA's Washington, D.C., office, at (202) 296-2920.

Sincerely,



Richard L. Clarke, DHA, FHFMA  
President and CEO

### **About HFMA**

HFMA is the nation's leading membership organization for more than 35,000 healthcare financial management professionals. Our members are widely diverse, employed by hospitals, integrated delivery systems, managed care organizations, ambulatory and long-term care facilities, physician practices, accounting and consulting firms, and insurance companies. Members' positions include chief executive officer, chief financial officer, controller, patient accounts manager, accountant, and consultant.

HFMA is a nonpartisan professional practice organization. As part of its education, information, and professional development services, HFMA develops and promotes ethical, high-quality healthcare finance practices. HFMA works with a broad cross-section of stakeholders to improve the healthcare industry by identifying and bridging gaps in knowledge, best practices, and standards.