BayCare Health System

Morton Plant Mease Hospitals
St. Anthony's Hospital
St. Joseph's Hospitals
South Florida Baptist Hospital

16255 Bay Vista Drive
Clearwater, FL 33760
www.baycare.org

February 21, 2011

Elizabeth M. Murphy
Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090
(e-mail transmission)

Dear Secretary Murphy:

Re: Release No. 34-63576; File No. S7-45-10

This letter is submitted by BayCare Health System, Inc. ("BayCare") in response to your request for comments on the proposed S.E.C. rules relating to municipal advisors, set forth in SEC Release No. 34-63576 (Dec. 20, 2010) (the "Release"). In particular, we feel that board members of nonprofit corporations, such as BayCare, and employees of such corporations, acting in their usual and proper course, should not be deemed "municipal advisors" as such term is used in the Release. We are hereby requesting that the Commission clarify, by appropriate means, that not only employees, but also officers and directors, of obligated persons be excluded from the definition of "municipal advisor" when they provide advice to the obligated person in connection with municipal financial products or the issuance of municipal securities.

BayCare is a not-for-profit corporation organized and existing under the laws of the State of Florida, and is exempt from federal income taxation under Section 501(a) of the Internal Revenue Code of 1986, as amended (the "Code"), as an organization described in Section 501(c)(3) of the Code. BayCare is the "parent" corporation of a number of other Florida not-for-profit corporations that own and operate nonprofit hospital and healthcare facilities, as a multi-hospital health care system located in the Tampa Bay area of Florida. The BayCare health system includes ten acute-care hospitals, encompassing approximately 2,709 licensed beds, and a long-term care facility with 163 beds. The hospitals within the BayCare health system include Morton Plant Hospital in Clearwater, St. Joseph's Hospital in Tampa, South Florida Baptist Hospital in Plant City, Morton Plant North Bay Hospital in New Port Richey, Mease Dunedin Hospital in Dunedin, Mease Countryside Hospital in Safety Harbor, St. Anthony's Hospital in St. Petersburg, St. Joseph's Women's Hospital in Tampa, St. Joseph's Children's Hospital in Tampa, and St. Joseph's Hospital North in Lutz.

BayCare, and the not-for-profit corporations within the BayCare Health System that operate the above hospitals, are jointly and severally obligated, as the members of the BayCare obligated group, on a number of outstanding revenue bond issues, and as such are "obligated persons" within the scope of the Release. Such revenue bonds have been issued by different "municipal entities", such as the Pinellas County Health Facilities Authority and the City of

Tampa, as conduit issuers, on behalf of the BayCare obligated group, to finance and refinance nonprofit hospital facilities. Since 1999 BayCare has been able to finance the construction and equipping of our hospital and healthcare facilities with funds raised for our benefit through the issuance of tax-exempt revenue bonds by municipal bonding authorities. We are solely responsible for the payment of such bonds and as such are the "obligated person" as that term is used in the Release.

BayCare and such other not-for-profit corporations are governed by boards comprised of numbers of the public who have been requested and volunteered to serve on such boards, not unlike the boards of most other private nonprofit hospitals, nursing homes, colleges and universities across the nation. The BayCare board of trustees is comprised of [20] individuals. The vote of at least two-thirds of the board is required for the approval of BayCare's strategic and community benefit plans, the incurrence of material debt, and the approval of capital and operating budgets. The board members typically will discuss proposed capital programs, and the incurrence of debt to fund such programs. These discussions of the board would include the structure of the debt (short-term, long-term, maturity, call provisions, fixed rate versus variable rate, hedges of the debt, etc.). This debt is typically incurred in the form of tax-exempt revenue bonds issued on behalf of the BayCare obligated group by a conduit governmental issuer (i.e., a "municipal entity").

BayCare is of the view that actions of its own board members, and actions of its obligated group member's boards, as well as actions of employees of BayCare and its obligated group members, in the normal and proper course of the roles of these individuals, should not result in any of these board members or employees being deemed "municipal advisors" within the meaning of the Release. Indeed, since BayCare and other nonprofit corporations act through their boards, it is counter-intuitive to conclude that a board member, acting as such, is an advisor to such corporation. That would be tantamount to a board being considered an advisor to itself. Board members are volunteers, and are not compensated. Neither board members nor employees of nonprofit corporations such as BayCare and its obligated group members should be treated as if they were independent third-party advisors and subject to the same registration requirements as independent third-party advisors who are retained and paid specifically to give financial advice.

BayCare is of the view (i) that obligated persons such as BayCare and its obligated group operate through their governing boards and the construct that a board member can be a municipal advisor to such board or the obligated person is fundamentally flawed, that board members should not be considered municipal advisors and should be exempt from treatment as municipal advisors; (ii) that employees of obligated persons also should not be considered as municipal advisors, and such employees should also be exempt; (iii) that the assumption that members of boards of obligated persons are not accountable is incorrect and reflects a misunderstanding of how such boards operate and how such board members are appointed and their responsibilities; and (iv) that subjecting board members or employees of obligated persons to the registration requirements and expense, federal fiduciary standards, and federal securities law liability will have the effect of discouraging participation. If BayCare's and our obligated group members' directors, officers and employees are deemed to be municipal advisors simply by virtue of performing their natural and proper roles in connection with our bond financings, BayCare would be required to expend substantial money, time and resources to ensure compliance with the detailed registration, record-keeping, reporting and other requirements of the proposed

registration rule. Valuable and limited resources that would otherwise be used to further BayCare's charitable mission and purpose would need to be redirected to regulatory compliance. As a healthcare organization, BayCare is already subject to extensive oversight by federal and state agencies, and another layer of regulatory oversight provides no meaningful public benefit.

Our strong preference would be for the release accompanying the final rules to recognize and confirm that neither the governing board nor a member of a governing board of a municipal entity or obligated person, nor an employee of a municipal entity or an obligated person, can be a municipal advisor to such municipal entity or obligated person when acting for such entity or person.

If our above preference is not implemented, then BayCare would respectfully offer a drafting suggestion to address the concerns raised in the second paragraph of this letter. This drafting suggestion focuses on the interpretation of the word "advice" rather than an interpretation of the word "employee". Section 15B(e)(4)(A)(i) defines a "municipal advisor" as one who "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." We understand the legitimate concerns of the Commission and the staff that an individual's service as a member of the board of a municipal entity or of an obligated person should not exempt him or her from federal regulation as a municipal advisor, if that individual separately acts as a compensated financial advisor to the municipal entity or obligated person, or if his or her board participation is compromised by the private interests of the individual or of a firm with which he or she is associated. These concerns could be addressed if the rule is clarified to provide that "a person is not providing 'advice' within the meaning of Section 15B(e)(4)(A)(i) if he or she is acting within the scope of his or her obligations or responsibilities as a board member or an employee of a municipal entity or obligated person, as applicable, under applicable state or local law." If a person violated state or local law regarding conflicts of interest, such person would not be acting within the scope of his or her obligations under state or local law, and in any event would be subject to any applicable statutorily-defined penalties for such violation.

In light of the concerns described above with respect to the scope of the terms "municipal adviser", "municipal entity" and "obligated person" and in light of the potential application of the proposed rules to board members and employees of conduit borrowers as presented in the Release as being an interpretation of the applicable statutory terms rather than in the proposed rule itself, such persons must be concerned that these interpretations are intended to be applicable to determining the scope of registration and other requirements under the temporary rule that was published in the Federal Register on September 8, 2010 (SEC Release No. 34-62824) (the "Temporary Rule"). If this were the case, it would appear to expose such persons to a new, and hidden, regulatory compliance burden that might be viewed as having not been satisfied since the effective date of the Temporary Rule. This would, in turn, mean that the potentially severe adverse effects of these interpretations upon the financing programs and governance of obligated persons such as BayCare and its obligated group might begin to be felt prior to the adoption of the proposed rules in their final form. Accordingly, BayCare would respectfully request that the S.E.C. staff issue a prompt no-action letter to the effect that the requirements of the Temporary Rule will not be deemed to have been applicable to members of a governing board of a "municipal entity", to members of a governing board of an "obligated person" or to officers or employees charged with advising or approving financial affairs of a

"municipal entity" or an "obligated person", in each case, with respect to actions taken in such respective capacities, prior to the effective date of the proposed rules as finally adopted.

Accordingly, and consistent with the purposes of the Dodd-Frank Act, BayCare requests that the Commission clarify that board members, officers and employees of obligated persons such as BayCare and its obligated group members be excluded from the definition of "municipal advisor" when they provide advice to the obligated person in connection with municipal financial products or the issuance of municipal bonds.

We thank you for your time, consideration and attention.

Very truly yours,

BAYCARE HEALTH SYSTEM, INC.

By: Tommy Inzina
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