



February 21, 2011

Via E-Mail: rule-comments@sec.gov

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

Re: Comments to Proposed Rule Regarding Registration of
Municipal Advisors, SEC Release No. 34-63576; File No. S7-45-10

Dear Ms. Murphy:

I am writing on behalf of Lee Memorial Health System (the "District") in response to the referenced Release (the "Release"), which invites comments on new rules proposed by the Securities and Exchange Commission (the "SEC") that would require "municipal advisors" (as defined in the proposed rules) to register with the SEC. As discussed below, the District has significant concerns with several aspects of the proposed rules.

The District is an independent special district of the State of Florida, established by special legislative action codified in Chapter 2000-439, Laws of Florida (2000) (the "Act"). The purpose of the District, is to provide health care services within its geographical boundaries, which consist of Lee County, Florida. The governing body of the District is a 10-member Board of Directors (the "Board") who are publicly elected by the registered voters of Lee County, Florida. Although the Board members are publicly elected, the Board invites community participation in District matters by appointing one or more "community members" to various Board committees, including, in particular, the Board's Finance Committee and its Investment Committee.

In order to fulfill its health care mission, the District is empowered, among other things, to establish, construct, operate and maintain hospitals and other health facilities, and to provide for the financing and refinancing of these facilities through the issuance of municipal bonds. Additionally, among the powers of the District, the Act empowers the Board to invest funds and enter into derivative transactions. In connection with each bond financing undertaken by the District, the Board separately engages a nationally recognized independent financial advisor with knowledge and special expertise in health care finance to advise the Board and its Finance Committee on matters relating to the issuance of municipal bonds and financial products, including interest rate swaps. Additionally, the Board separately engages a nationally recognized

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independent investment advisor to advise the Board and its Investment Committee on matters relating to the investment strategies and policies of the Board.

During the Board's committee meetings, all of which are subject to Florida's open meeting laws, each committee member, including our community members, is encouraged to participate in the discussion regarding the issuance of bonds, entry into swaps or other financial-related agreements, or the investment strategy of the District. During committee meetings, members customarily ask questions of outside consultants, make comments, express their opinions, discuss proposed actions and vote on whether or not to recommend to the full Board of Directors the issuance of bonds and other matters before the Board. These are all part of the normal but vital deliberative process of the District's Board of Directors and the Board's committees.

The SEC's proposed rules regarding the registration of municipal advisors would exclude elected board members of a municipal entity from the definition of "municipal advisor", but not appointed board members or appointed committee members. The District does not believe that disparate treatment of elected, appointed or employed committee members proposed by the SEC to be justified.

The SEC's proposed rules do not include any guidance as to what constitutes "advice" or "providing advice." The rules also lack provision of what should be a key element in determining what a "municipal advisor" is. That missing element is that the person must be acting in some professional capacity and holding him or herself out to the public as having special expertise in the area in which he or she is providing advice. There must be some risk or expectation that the municipal entity being provided the advice will view the person in a professional capacity with the knowledge, experience and competence to make the advice reliable. To omit this key element is to bring under the purview of the SEC's proposed rules literally anyone who offers an opinion or view ("advice") on these matters to a municipal entity, including board and committee members or members of the general public filing written comments or making oral comments at board meetings. To fail to address these matters and leave them subject to the interpretation and opinion of each municipal entity's legal counsel is unfair to the municipal entities that will ultimately have to pay for the legal advice. The Dodd-Frank provisions were clearly intended to be protective of municipal entities and yet through the proposed rules, it would appear the SEC is positioning itself to undertake the regulation of municipal board and committee members.

The District, therefore, respectfully requests that the SEC provide specific guidance with respect to what it means to "provide advice" by requiring that the advice be provided in a professional capacity by a person holding him or herself out to have special knowledge and expertise in municipal financial matters where there is an expectation and a likelihood that the advice will be relied upon by others in making financial decisions for the municipal entity. The SEC should also provide a clear and unconditional statement in the final rules that the statements and other activities of board and committee members of the municipal entity (whether elected, appointed or employed) made or taken in the course of performing their duties as board or committee members will not be construed as "providing advice" in the role of a "municipal

advisor” to a municipal entity requiring prior registration by the board or committee member with the SEC.

Without such modifications and guidance, the SEC’s proposed rules will have significant deleterious effects on our Board and the efforts of its respective committee members to ensure that the best possible financial decisions are made for the District. They would have a material and negative impact on the normal deliberative process of our committees by restraining the freedom of its members to express their views on matters relating to municipal bond issues and municipal financial products for fear of subjecting themselves to the potential risk and expense of an SEC investigation over whether their comments constituted “advice” requiring prior registration as a “municipal advisor”. They would also make it more difficult for the Board to find individuals with business acumen, financial knowledge and backgrounds and other helpful experience who are willing to serve on the Board’s committees if doing so will require them to register with the SEC as a “municipal advisor.” They would thereby deprive the District – and the citizens its serves ---of talent and robust discussion and deliberation by committee members that are is needed for the Board’s committees to make sound financial recommendations to the full Board of Directors.

The Dodd-Frank Act provision that led to the SEC’s proposed rules was intended to protect municipal entities but, with all due respect, municipal entities, such as the District, do not need to be protected from their own board and committee members, whether appointed or elected, or their Board’s appointed committees. In the case of the District (and we suspect this is the case with respect to most municipal boards), the Board members are the legislative or policy decision makers and the committees exist to provide a more efficient method of reviewing and analyzing particular matters that will ultimately go before the full Board of Directors. With respect to financial and investment matters, the Board and its committee members are entitled to rely, and in the case of the District’s Finance and Investment Committees, indeed do rely, on advice rendered by professional, independent consultants. The Board and its committee members are the *recipients* of the financial advice, not the *providers* of such advice. Moreover, nothing in the Dodd-Frank Act indicates Congress intended the SEC to require registration of appointed members of municipal entities before they could engage in deliberations with their board and committee colleagues and execute the duties they were appointed to perform under state law.

To summarize, for the foregoing reasons, the District respectfully requests that the SEC specifically modify the proposed rules as follows:

1. exclude from the definition of “municipal advisor” all board and committee members of a municipal entity, whether elected or appointed, whether part of the governing body or appointed committees;
2. provide specific guidance with respect to what it means to “provide advice” by requiring that the advice be provided in a professional capacity by a person holding him or herself out to have special knowledge and expertise in municipal financial matters where there is an expectation and a likelihood that the advice will be relied upon by others in making financial decisions for the municipal entity; and

3. provide clear and unambiguous guidance that the statements and activities of board and committee members of municipal entities made or taken in the course of performing their respective duties as board or committee members will *not* be construed as “providing advice” to a municipal entity such as would require prior registration by the board member with the SEC.

If you have any questions concerning these comments or desire any additional information regarding the District, please contact the undersigned.

Respectfully submitted,

FOWLER WHITE BOGGS, P.A.



James T. Humphrey, Counsel to the Elected
Board of Directors of the District
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Fort Myers, Florida 33901
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cc: Board of Directors
Legislative Delegation

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person holding him or herself out to have special knowledge and expertise in municipal financial matters where there is an expectation and a likelihood that the advice will be relied upon by others in making financial decisions for the municipal entity; and

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If you have any questions concerning these comments or desire any additional information regarding the District, please contact the undersigned.

Respectfully submitted,

A handwritten signature in black ink that reads 'Richard B. Akin'.

Richard B. Akin, Board Chairman
Lee Memorial Health System Board of Directors

cc: LMHS Board of Directors
Legislative Delegation