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Tucson, Arizona, 85724

February 21, 2011

*Via Email: [rule-comments@sec.gov](mailto:rule-comments@sec.gov)*

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

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

Dear Ms. Murphy:

On behalf of UA Healthcare, Inc. (“**UAH**”), University Medical Center Corporation (“**UMCC**”) and University Physicians Healthcare (“**UPH**”), we offer comments to rules (the “**Proposed Rules**”) proposed by the Securities and Exchange Commission (the “**SEC**”) in the above-referenced releases (the “**Releases**”) requiring “municipal advisors,” as defined in the Proposed Rules, to register with the SEC in response to the Dodd-Frank Wall Street Reform and Consumer Protection Act (the “**Act**”). UAH, UMCC, and UPH have serious concerns as noted below with aspects of the Proposed Rules.

UAH, UMCC, and UPH collectively serve as the clinical components of an academic medical center which includes the University of Arizona (“**University**”) Colleges of Medicine, Nursing, Pharmacy, and Public Health, and are integral to the healthcare, teaching and research missions of those colleges. The University is a state land-grant university under the jurisdiction of and governed by the Arizona Board of Regents (“**ABOR**”), a constitutionally created agency of the State of Arizona, the members of which are appointed by the Governor of the State of Arizona subject to approval by the Arizona State Senate.

University Medical Center Corporation.

UMCC is an Arizona non-profit corporation that has been determined to be an exempt organization under Section 501(c)(3) of the Internal Revenue Code. Under the authority of Section 15-1637 of the Arizona Revised Statutes, as amended, UMCC, since 1984, has leased the

land upon which the University of Arizona Medical Center (the “**Medical Center**”) is located and owns and operates the Medical Center. The UMCC Board consists of nine directors appointed by ABOR and includes the University’s Vice President for Health Affairs. All directors of UMCC are appointed within the meaning of the Proposed Rules. UMCC’s CEO is the only employee director of UMCC.

Under the Internal Revenue Code, UMCC qualifies as a governmental issuer of tax-exempt obligations and, since 1985, has issued in excess of \$300 million of those obligations. UMCC is a “municipal entity” in the context of the Act and the Proposed Rules. Tax-exempt obligations of UMCC are subject to approval by UAH and by ABOR. In addition, tax-exempt obligations of UMCC are subject to approval by ABOR in order to satisfy the requirements of the Internal Revenue Code.

Investment decisions by UMCC are made pursuant to internal policies adopted by and with oversight by the UAH Investment Committee and the UAH Board as delegated by and reported to the UMCC Board.

#### University Physicians Healthcare

UPH was organized in 1985 as an Arizona non-profit corporation and has also been determined to be an exempt organization under Section 501(c)(3) of the Internal Revenue Code. UPH serves as the vehicle by which clinical healthcare services are delivered by the approximately 500 voting faculty physicians of the University’s College of Medicine (“**COM**”). In addition to outpatient clinics, UPH leases and operates the County Hospital in Tucson, Arizona and is one of the largest multi-specialty physician practices in Arizona. UPH provides physician leadership at UMCC’s Medical Center.

UPH is governed by a Board of Directors which consists of (i) the University’s Vice President for Health Affairs, the Dean of the COM and six members of the COM physician faculty, (ii) the Chief Executive Officer of UPH and UAH, and (iii) six directors appointed from the community by and among the UAH Board of Directors. All UPH directors are appointed directors within the meaning of the Proposed Rules.

While UPH is not a municipal entity, it has undertaken a variety of financings on a tax-exempt basis utilizing principally the Arizona Health Facilities Authority as a conduit. Those financings have been and are required to continue to be supported by obligations and security provided by UPH. Accordingly, UPH is an “obligated person” in the context of the Act and the Proposed Rules. These financings have been historically authorized by the UPH Board. With the organization of UAH, UPH financing as well as its investment decisions are delegated to and subject to approval by UAH and, under some circumstances, ABOR.

UA Healthcare, Inc.

UAH was organized, with the approval of ABOR, as an Arizona non-profit corporation in 2010. It is expected that UAH will receive a determination that it is an exempt organization under Section 501(c)(3) of the Internal Revenue Code.

UAH serves as the vehicle by which the activities and operations of UMCC and UPH are coordinated and integrated and has been characterized as the “corporate parent” of UMCC and UPH. UAH is the sole member of UMCC, is the sole corporate member of UPH and has been delegated the authority to make or approve certain decisions by UMCC and UPH, including those pertaining to debt financing and investment strategies. Arizona law provides that in exercising authority that would otherwise be exercised by the Boards of Directors of UMCC and UPH, the UAH Board undertakes the duties and obligations that accompany such authority.

UAH is governed by a Board of Directors that consists of the following, all of whom are appointed directors within the meaning of the Proposed Rules:

- Two members of and selected by ABOR;
- The President of the University;
- The University’s Vice-President for Health Affairs of the University;
- The Dean of the COM;
- The Chief Executive Officer of UAH; and
- Twenty individuals appointed by ABOR under a formalized selection process for four year staggered terms subject to term limits.

Decision Making Processes

The functioning of the Boards and Board Committees of UAH, UMCC and UPH depend upon the full participation of Board and Committee members. This has included and is expected to continue to include the expression of comments and opinions, questioning of management, consultants and other professionals, discussions of proposed actions and alternatives and ultimately voting on motions that involve financing, investment strategies and other matters that attend the successful operation of a healthcare enterprise with annual revenues in excess of \$1 billion and responsibility for effective delivery of quality and, in many cases, novel medical services to thousands of patients. Members of these Boards bring with them a variety of knowledge, talents and experience derived from diverse healthcare, business, academic, governmental, and cultural backgrounds.

All three organizations have and enforce conflict of interest policies which require officers, directors and employees to disclose financial interests they or their family members may have in decisions or contracts made or under consideration by their corporations and to refrain from participating in or influencing any such decision or contract. Board members and employees of all three organizations are held to their fiduciary obligations of care, loyalty, and obedience to purpose and mission.

UAH and UMCC are public bodies under the Arizona governmental public open meeting statutes. Accordingly, decisions and deliberations by their Boards of Directors and Board Committees take place in meetings that are publically noticed and open to the public under publically available agendas. All three corporations report regularly to ABOR and produce audited financial statements. UMCC is statutorily required to submit semi-annual reports to the Governor of Arizona, the Arizona Legislature, and ABOR.

### **Issues Raised by the Proposed Rules**

#### Elected vs. Appointed Directors

The Act exempts employees of municipal entities from classification as municipal advisors. We focus here upon UMCC since it is the only organization of the three that is a municipal entity. The Proposed Rules include members elected to governing bodies of municipal entities and members who serve on those governing bodies by virtue of their election to public office. As stated in the Release:

“The Commission believes that this interpretation is appropriate because employees and elected members are accountable to the municipal entity for their actions. In addition, the Commission is concerned that appointed members, unlike elected officials and elected *ex officio* members, are not directly accountable for their performance to the citizens of the municipal entity.”  
(Page 41)

Under the Proposed Rules, eight of the nine members of the Board of Directors of UMCC are appointed and would not fall within the “employee” exception.

All members of the UMCC Board are fully accountable to UMCC and ABOR by reason of the manner by which they are appointed, the prospect of their removal as well as reporting responsibilities and approval/decision making authority delegated or granted to UAH and ABOR as noted above. We respectfully question the extent to which popular election, in the context of issuing debt and developing and implementing important investment strategies, would lead to increased or more effective accountability of members of the Board of Directors particularly of UMCC as a municipal entity.

#### Absence of Definition - “Advice” and “Providing Advice”

The absence in the Act or the Proposed Rules, of definitions of “advice” or “providing advice” or of meaningful guidance as to what a municipal advisor really is, particularly when coupled with the exemption of elected members of a governing body of a municipal entity from the definition of municipal advisor, lead, in the cases of our three organizations, to risks that all

appointed directors of UMCC and all employees and directors of UAH and UPH, when acting in those capacities in connection with the issuance of municipal securities or investment strategies, may be viewed as municipal advisors. In the cases of UAH, UMCC and UPH, such a reading of the Proposed Rules would require registration of some 30 individuals as municipal advisors (after taking into account service on multiple Boards).

Beyond that, there is a prospect that a member of the public when submitting any comment in connection with the issuance of municipal securities by UMCC or as to which UPH would be an obligated person or in connection with investment strategies either would consider or employ, would also be regarded as a municipal advisor under the Proposed Rules. It also appears that UAH and UPH may, under the Proposed Rules, be viewed as municipal advisors when and if they pursue conduit tax-exempt financing in the future.

Missing from the Proposed Rules is any requirement in order to warrant treatment as a municipal advisor (i) that a person act, or purport to act, in some professional capacity outside the scope of service as an employee or governing body member of the municipal entity or obligated person, (ii) that a person hold himself or herself out to the public as having some particular expertise in the area that is the subject of the advice, and (iii) a risk or expectation that the municipal entity or obligated person receiving the advice will view the person in a professional capacity with the knowledge, expertise and capability necessary to make the advice reliable.

We respectfully suggest that the SEC consider and include in the final rules, clear statements (a) that the activities of board members (whether elected or appointed) and employees of, municipal entities or obligated persons, in the course of performing their duties as board members or employees, will not be “providing advice” as “municipal advisors” requiring registration with the SEC and (b) that an obligated person in requesting, negotiating and participating in the issuance of municipal securities or investment strategies involving that obligated person as such, will not be “providing advice” as a “municipal advisor.”

#### Impact of Proposed Rules on UAH, UMCC, and UPH

The Proposed Rules, will not, in any sense, improve financial decisions made by UAH, UMCC, or UPH. Indeed, they will have a material negative impact on the decision making process of the boards of the three organizations by restraining the freedom of directors and committee members to express their views on matters related to municipal financings and investment strategies for fear of subjecting themselves to the time, effort and expense of registration or the potential risk and expense of an SEC investigation over whether their comments and activities constituted “advice” requiring prior registration as “municipal advisors.” The Proposed Rules would also make it more difficult to recruit and retain individuals, particularly on the boards of directors of the three organizations, with business acumen, financial knowledge and background and other relevant experience who are willing to serve on the boards if doing so will require them to register with the SEC as “municipal

advisors.” This would deprive the corporations and those they serve of talent and energetic discussions and deliberations by board members that are needed for sound financial decisions.

As we believe other commentators have noted, provisions of the Act that establish the setting for the Proposed Rules were intended to protect municipal entities and obligated persons. Municipal entities and obligated persons such as UAH, UMCC and UPH do not, we respectfully submit, need to be protected from their own board members whether appointed or elected or from their own employees. As we suspect is the case with most boards of municipal entities and obligated persons, board and committee members serve as legislative and policy decision makers. In that capacity they rely on advice rendered by professional independent consultants. Board members, board committee members, and employees of UAH, UMCC, and UPH are the recipients of financial advice not the providers of that advice. Nothing in the Act suggests a congressional intent that the SEC require registration of governing body members or employees of municipal entities or obligated persons as conditions to engaging in deliberations, making decisions and executing the duties that attend their offices.

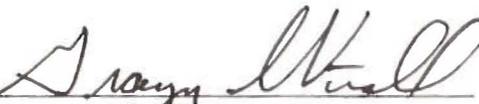
#### Summary

In summary and for the reasons outlined above, UAH, UMCC, and UPH respectfully request that the SEC modify the Proposed Rules as follows:

1. Exclude all members of governing bodies of municipal entities, whether elected or appointed, from the definition of “municipal advisor.”
2. Provide unambiguous guidance that statements and activities of members of governing bodies of municipal entities and of obligated persons and employees of obligated persons made or taken in the course of performing their duties as governing body members and employees, respectively, would not be considered to be “advice” or “providing advice” to a municipal entity or obligated person so as to require registration by those governing body members and employees as municipal advisors with the SEC.
3. Provide unambiguous guidance that statements and activities of an obligated person made or taken in the course of requesting, negotiating and obtaining municipal financial products or the issuance of municipal securities involving that obligated person, as such, will not be regarded as “providing advice” to a municipal entity or other obligated persons.
4. Provide unambiguous guidance as to what it means to “provide advice” by requesting that the “advice” be offered in a professional capacity by a person holding himself or herself out to have special knowledge and expertise in municipal financial matters accompanied by an expectation and likelihood that the advice on the basis of such knowledge and expertise, will be relied upon by others in connection with the issuance of municipal securities or investment strategies.

Please contact the undersigned should there be any questions concerning these comments or a desire for any additional information from UAH, UMCC or UPH.

**UA Healthcare, Inc.**

By:   
Granger Vinall  
Chairman of the Board of Directors

By:   
Kevin J. Burns  
Chief Executive Officer

**University Medical Center Corporation**

By:   
Kevin J. Burns  
Chief Executive Officer

**University Physicians Healthcare**

By:   
Kevin J. Burns  
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