

South Broward Hospital District

Board of Commissioners

Kathleen A. Durham, *Chairman* • Sara E. Wolfer, *Vice Chairman* • Alfredo Avalos, *Secretary/Treasurer*
Hobel Florido • Albert C. Jones • Laura Raybin Miller

Frank V. Sacco / *President & Chief Executive Officer* • Gary S. Barber / *Senior Vice President & General Counsel*

February 8, 2011

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 the South Broward Hospital District (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 a special tax district of the State of Florida, established by Chapter 24415, Laws of Florida, Special Acts of 1947, as amended and codified in Chapter 2004-397, Laws of Florida (2004) (the "Act"). The purpose of the District, which operates as the Memorial Healthcare System, is to provide health care services within its geographical boundaries, which consist of approximately the southern one-third of Broward County, Florida. The District's primary service area had a population of approximately 650,270 in 2010. The governing body of the District is a seven-member Board of Commissioners (the "Board") appointed pursuant to the Act by the Governor of the State of Florida. Pursuant to Section 3 of the Act, "each [Commissioner] shall give bond to the Governor for the faithful performance of his or her duties..." Section 3 of the Act additionally provides that the Governor may remove any Commissioner for cause. Commissioners serve without compensation.

The appointed members of our Board are all volunteers, each with a diverse background. Historically, the Board has included business leaders, health care professionals, lawyers, accountants, bankers and community activists, each of whom, once appointed must take an oath of office that requires the member to uphold the constitution and laws of the State of Florida. These laws include Chapter 112, Florida Statutes, which encompasses Florida's code of ethics for public officials. Very little distinction is made within the Florida code of ethics between appointed and elected officials because all such public officials are held to the same high standard of conduct. As a public official, each Board member owes a fiduciary duty to the District and is specifically subject to Florida laws concerning conflicts of interest, gifts, public meetings and records, financial disclosure and doing business with one's agency.

Memorial Healthcare System

Memorial Regional Hospital • Memorial Regional Hospital South • Joe DiMaggio Children's Hospital • Memorial Hospital West
Memorial Hospital Miramar • Memorial Hospital Pembroke • Memorial Manor • Memorial Home Health Services

3501 Johnson Street, Hollywood, FL 33021 • (954) 987-2000 • mhs.net

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 same. Among the general powers of the District, Section 4(k) of the Act empowers the Board “[t]o borrow money and to issue the notes, bonds, and other evidences of indebtedness of the [D]istrict therefore [sic] to carry out the provisions of this act in the manner hereinafter provided.” This general provision is supplemented by numerous additional provisions of the Act which authorize the District to issue bonds and other forms of indebtedness as determined by the Board. 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 on matters relating to the issuance of municipal bonds and financial products. The Board also retains separate investment advisors and managers.

During the Board’s meetings, all of which are subject to Florida’s open meeting laws, each Board member is encouraged to participate in the discussion regarding the issuance of bonds, entry into financial-related agreements or the investment strategy of the District. During Board and committee meetings, Board members customarily ask questions of outside consultants, make comments, express their opinions, discuss proposed actions and vote on whether or not to authorize 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.

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. In light of the close similarity in duties and treatment of elected and appointed public officials under the laws of Florida as described above and, we understand, under the laws of many other states, the District does not believe that the disparate treatment of elected and appointed board members proposed by the SEC is justified.

Thus, as a threshold matter, the District respectfully requests the SEC to modify the proposed rules to exclude from the definition of “municipal advisor” all board members of a municipal entity, whether elected or appointed.

The SEC’s proposed rules do not include any definition of what constitutes “advice” or “providing advice.” They also lack a provision that should be a key element in determining what a “municipal advisor” 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 expectation that the municipal entity receiving 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 members and members of the general public filing written comments or making oral comments at board meetings. To fail to address these matters and to leave them subject to the interpretation and opinion of each municipal entity's legal counsel, and ultimately to future review by the SEC and its staff, is irresponsible and unfair to the municipal entities that will have to pay for the legal advice and to the board members exposing themselves to the risk of SEC sanctions.

The District therefore further 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 also should provide a clear and unconditional statement in the final rules that the statements and other activities of board members (whether elected or appointed) of municipal entities made or taken in the course of performing their duties as board 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 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 members to ensure that the best possible financial decisions are made for the District. The proposed rules would have a material and negative impact on the normal deliberative process of our Board 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 also would make it more difficult for the Governor to find individuals with business acumen, financial knowledge and backgrounds and other helpful experience who are willing to serve on the Board if doing so will require them to register with the SEC as a "municipal advisor." They would thereby deprive the District -- and the citizens it serves -- of the talent and robust discussion and deliberation by Board members that are needed for the Board to make sound financial decisions.

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 members, whether appointed or elected. In the case of the District (and we suspect this is the case with respect to most municipal boards), the members are the legislative or policy decision makers. In that capacity, they are entitled to rely, and in the case of the District's Board, indeed do rely, on advice rendered by professional, independent consultants. The Board 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

Ms. Elizabeth M. Murphy
February 8, 2011
Page 4

require registration of appointed members of municipal entities before they could engage in deliberations with their board 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 members of a municipal entity, whether elected or appointed;
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 members of municipal entities made or taken in the course of performing their respective duties as board 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,



Kathleen Durham
Chairman

cc: Board of Commissioners
Senator Bill Nelson
Senator Marco Rubio
Representative Frederica Wilson
Representative Ted Deutch
Representative Debbie Wasserman Schultz
Representative Mario Diaz-Balart
Representative Allen West
Representative Alcee L. Hastings