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July 18, 2011

U.S. Securities and Exchange Commission
100 F Street, N.E.
Washington, DC 20549-1090
Attn: Elizabeth M. Murphy, Secretary

Re: Release No. 34-63576
File No. S7-45-10
Registration of Municipal Advisors

Ladies and Gentlemen:

This letter is submitted on behalf of the American Hospital Association in response to the request by the Securities and Exchange Commission (the "**SEC**") for comments pursuant to the December 20, 2010 proposing release referenced in the subject line hereof (the "**Proposing Release**"). We appreciate the opportunity to comment on the proposed new rules 15Ba1-1 through 15Ba1-7 (the "**Proposed Rules**").

We share the sentiments of our fellow commentators that the Proposed Rules should be clear, unambiguous, and drafted narrowly to address the core conduct Congress intended to regulate. Although we believe the SEC has endeavored to achieve this goal, we believe that more clarity and guidance is needed with respect to the definition of "solicitation of a municipal entity or obligated person" as set forth in Section 15B(e)(9) of the Exchange Act of 1934 (the "**Act**"). Specifically, we urge the SEC to adopt a definition of "solicitation of a municipal entity or obligated person" that exempts advertisement, endorsement, sponsorship, and similar services offered by persons who are not municipal advisors, brokers, dealers, municipal securities dealers, or similar persons engaged in the financial advisory service industry.

The intent of Congress in adopting Section 975 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the "**Dodd-Frank Act**") was to subject "previously unregulated market participants and previously unregulated financial transactions with states, counties, cities and municipal entities" to SEC regulation.[1] Accordingly, the Dodd-Frank Act created a new category of SEC registrant, the municipal advisor. Congress crafted a definition of municipal advisor that captured two classes of previously unregulated participants. Section 15B(e)(4)(A)(i) of the Act targets persons providing advice to municipal entities on the issuance municipal securities, use of municipal derivatives, and other investment advice.[2] Such financial advisors who actively provide financial advisory services to municipal entities appear to have been the principal concern of Congress.[3]

[1] S. Rep. No. 111-176, at 147 (2010).
[2] *See* Section 15B(e)(4)(A)(i); *see also* S. Rep. No. 111-176, at 147-48 (2010).
[3] S. Rep. No. 111-176, at 147-48 (2010).

Congress also included an alternative definition of municipal advisor in 15B(e)(4)(A)(ii) of the Act that includes a "person that undertakes a solicitation of a municipal entity."[4] This second category of newly regulated person appears to have been an afterthought promulgated in response to proposed rules under the Investment Advisers Act of 1940 that sought to prohibit investment advisers from making payments to unrelated persons for solicitation of municipal entities for investment advisory services.[5] As observed in the legislative history to the Dodd-Frank Act:

> Rather than effectively prohibiting such third party solicitation for investment advisory services [pursuant to the proposed rules by the SEC], this section would provide that activities of a *municipal advisor*, *broker*, *dealer*, *or municipal securities dealer to solicit a municipal entity* to engage an unrelated investment advisor to provide investment advisory services to a municipal entity or to engage or to undertake underwriting, financial advisory or other activities for a municipal entity in connection with the issuance of municipal securities, would be subject to regulation by the MSRB (emphasis added).[6]

Notably, Congress appears to have enumerated a discreet group of persons that solicit municipal entities that it intended to regulate, namely municipals advisors, brokers, dealers, and municipals securities dealers soliciting on behalf of unrelated financial advisors. Notwithstanding, the term "solicitation of a municipal entity or obligated person" is defined in the Act so broadly as to conceivably capture any person making an indirect communication on behalf of a financial advisor. Section 15B(e)(9) of the Act defines "solicitation of a municipal entity or obligated person" as:

> [A] direct or *indirect communication with a municipal entity* or obligated person *made by a person*, for direct or indirect compensation, on behalf of a broker, dealer, municipal securities dealer, municipal advisor, or investment adviser … for the purpose of obtaining or retaining an engagement by a municipal entity or obligated person of a broker, dealer, municipal securities dealer, or municipal advisor for or in connection with municipal financial products, the issuance of municipal securities, or of an investment adviser to provide investment advisory services to or on behalf of a municipal entity (emphasis added).[7]

If read out of context, the definition of "solicitation of a municipal entity or obligated person" could potentially subject an entire class of persons providing legitimate services that were not intended to be regulated by Congress to SEC oversight. The potential concern that unintended persons may be required to register as municipal advisors is augmented by the fact that neither Congress nor the SEC has endeavored define or provide any guidance with respect to the term "indirect communication." The substantial regulatory burdens applicable to municipal advisors and potential for indiscriminate enforcement by the SEC should compel the SEC to provide specific guidance with respect to that part of the definition of "solicitation of a municipal entity or obligated person" relating to "indirect communication with a municipal entity … by a person."

At present, persons providing advertising, endorsement, sponsorship, and similar services to, or for products provided by, brokers, dealers, municipal securities dealers, municipal advisors, and/or investment advisers that may reach even a single municipal entity (the "**Endorsement Services**") are left to subjectively determine whether their conduct constitutes an "indirect communication" without any meaningful guidance from the SEC. Although Congress arguably did not intend to regulate these Endorsement Services, the definition of "solicitation of a municipal entity or obligated person" conceivably could be interpreted to require such persons providing

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[4] *See* Section 15B(e)(4)(A)(i).
[5] S. Rep. No. 111-176, at 148 (2010).
[6] S. Rep. No. 111-176, at 148 (2010).
[7] Section 15B(e)(9).

Endorsement Services to register as municipal advisors. To illustrate our concern, we have provided three examples below:

> EXAMPLE 1: A magazine such as People Magazine sells advertising space to a registered investment advisor like Prudential Investment Management, Inc. ("**Prudential**"). A copy of People Magazine containing the Prudential advertisement is sold to various persons including municipal entities.
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> EXAMPLE 2: An entity such as the American Bar Association (the "**ABA**") licenses certain intellectual property, including the "ABA" trademark, to Prudential for use by Prudential in its promotional materials. Prudential includes the ABA logo in its promotional materials and distributes such materials to various entities including municipal entities, giving the appearance of endorsement by the ABA.
>
> EXAMPLE 3: ABC association, whose membership is composed of municipal entities and other persons, enters into an endorsement or similar agreement with Prudential. Pursuant to the agreement, ABC association agrees to make a series of general and individualized communications with its constituent members aimed at introducing and endorsing the services of Prudential to such members irrespective of whether or not such members are municipal entities.

In each case, we do not believe Congress intended to regulate persons such as those described in Examples 1-3. First, the types of persons identified in Examples 1-3 are people engaged in the business of selling advertising or endorsing various products, not municipal advisors, brokers, dealers, municipals securities dealers, or similar persons engaged in the financial advisory service industry. These persons are not the type of unregulated market participant sought to be regulated by the Dodd-Frank Act. Second, the Endorsement Services provided by such persons are not directed specifically to municipal entities, but rather are prepared and circulated without regard to whether the audience will be composed of municipal entities.

In light of the foregoing, we request that the SEC provide guidance with respect to that part of the definition of "solicitation of a municipal entity or obligated person" relating to "indirect communication with a municipal entity … by a person." Specifically, we urge the SEC to provide guidance distinguishing those forms of communications that are permissible from those that constitute a "solicitation of a municipal entity or obligated person." In addition, we urge the SEC to adopt in the Final Rule 15Ba1-1 a definition of "solicitation of a municipal entity or obligated person" that exempts advertisement, endorsement, sponsorship, and similar services offered by persons who are not municipal advisors, brokers, dealers, municipal securities dealers, or similar persons engaged in the financial advisory service industry.

We appreciate the opportunity to comment on the Proposing Release and respectfully request that the SEC consider the recommendations and requests set forth above. We are prepared to discuss any of these matters and respond to any questions at the convenience of the SEC and its staff-members.

Sincerely,

Anthony Burke
President and CEO
AHA Solutions, Inc.
An American Hospital Association Company