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VIA EMAIL to rule-comments@sec.gov

February 14, 2011

Elizabeth M. Murphy, Secretary
U.S. Securities and Exchange Commission
100 F. Street, N.E.
Washington, D.C. 20001

Re: Proposed Rules 15Ba1-1 through 15Ba1-7 Regarding
Registration of Municipal Advisors, Release No. 34-63576
(File Number S7-45-10)

Dear Ms. Murphy:

The Committee on Non-Profit Organizations (the "Committee") of the Association of the Bar of the City of New York (the "New York City Bar Association") is submitting these comments on proposed Rules 15Ba1-1 through 15Ba1-7 (the "Proposed Rules") set forth in SEC Release No. 34-63576 (the "Release"), available at <http://www.sec.gov/rules/proposed/2010/34-63576.pdf>, regarding registration of municipal advisors with the Securities and Exchange Commission (the "Commission") and the Municipal Securities Rulemaking Board.

The Proposed Rules, implementing Section 975 (Title IX) of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the "Dodd-Frank Act"), which amended Section 15B(a) of the Securities Exchange Act of 1934 (the "Exchange Act"), would create a procedure for individuals considered "municipal advisors" (as defined by the Dodd-Frank Act) to register with the Commission.

We are concerned that such rules, as currently drafted, may have an inadvertent adverse impact on nonprofits that have tax exempt debt or on other nonprofits that are deemed to be municipal entities such as charter schools.

We fear that the rule could require board members (and maybe employees and volunteers) of not-for-profit corporations which issue tax-exempt debt (such as schools and hospitals, among other nonprofits) or charter schools, which are considered to be municipal entities, and possibly other nonprofit entities to register with the SEC as "municipal advisors" even if their only involvement is to provide advice to other board members or management in board meetings, or to enable the board of the nonprofit of which they are directors (or trustees) or its employees to reach a decision concerning municipal finance matters. There appears to be no justification for this requirement and it could be very detrimental to not-for-profit organizations because it may cause many qualified individuals to refuse to serve on charitable boards or work or volunteer for nonprofits. It may also lead to nonprofits being unable to utilize tax-free municipal bonds if their directors, employees and volunteers are unwilling to register. We do not believe such effect was intended by the legislators adopting the Dodd-Frank Act.

This issue surfaces because the Proposed Rules provide interpretative guidance on the meaning of the term "municipal advisor." We specifically refer to the discussion starting at page 19 of the Release generally and to the discussion on pages 40-41 of whether appointed or elected members of governing bodies of municipal entities would be exempt, as are employees of such municipal entities.

We also note the question posed by Commission staff, starting on page 51, as to whether employees (and volunteers) of obligated persons should also be excluded from the definition of "municipal advisor" (as are employees of a municipal entity) to the extent that they are providing advice to the obligated person, acting in its capacity as an obligated person, in connection with municipal financial products or the issuance of municipal securities.

The discussion starting on page 19 notes that the Dodd-Frank Act defines the term "municipal advisor" as "a person (who is not a municipal entity or an employee of a municipal entity) (i) that provides advice to or on behalf of a municipal entity or obligated person which respect to municipal financial products or the issuance of municipal securities . . ." Footnote 86 of the Release, on page 23, cites the definition of obligated persons as including entities acting as conduit borrowers such as private universities and non-profit hospitals. The Release, on page 20, notes that the statutory definition of municipal advisor is broad and includes persons that traditionally have not been considered to be municipal financial advisors. The Act excludes from the definition certain persons, including attorneys offering legal advice or providing traditional legal services, engineers providing engineering advice, investment advisors registered under the Investment Advisors Act of 1940 and commodity trading advisors registered under the Commodity Exchange Act. The discussion on page 22 of the Release notes that "municipal entity" includes charter schools. The discussion on page 24 of the Release cites Rule 15c2-12 which defines the term "obligated person" to include any person who is "committed by contract or other arrangement to support payment of all, or part of the obligations on the municipal securities" and concludes that such term should have a similar meaning for purposes of a definition of "municipal advisor," meaning that such term includes the conduit borrowers noted above.

The discussion starting on page 40 of the Release concludes that elected and *ex officio* (but not appointed) members of the governing bodies of municipal entities should be exempt from the definition of “municipal advisor” even though they are not technically employees of such municipal entities (which are exempt under the Dodd-Frank Act). The Release notes that technically they are unpaid volunteers.

In specifically exempting such elected or *ex officio* members of the governing body of the municipal entity from the scope of that term, the Release may be viewed to create a negative implication that board members (directors or trustees) and employees of conduit obligors, such as nonprofit organizations with tax-exempt debt, or of charter schools, may not be similarly exempt. This view gives rise to a concern that the Commission could take the position that such individuals would be required to register as municipal advisors when providing advice on municipal financial products or municipal offerings internally within the nonprofit, as might be the case when the board members are reviewing a proposed offering with management of the nonprofit. We further do not believe that this position would be warranted, as it relates to internal board discussions. Individuals engaged in such discussions are not providing advice *to* the nonprofit but rather cooperatively working as a board to reach a decision. Additionally, discussion among employees (and volunteers) or between employees (and volunteers) and board members is similarly an internal matter, at least with respect to employees or volunteers not specifically engaged to advise on municipal finance matters, not a situation where the employees or volunteers of an obligated person should be viewed as separately providing advice or services to such person.

Moreover, we believe that it could not be the intent of the statute and the Proposed Rules to require board members of nonprofits to register as municipal advisors when only carrying out their fiduciary duties as board members or to require employees or volunteers of obligated persons to register when only performing a normal job function not specifically related to municipal finance. While the language used in the Dodd-Frank Act may not be precise, we believe that the intent was to regulate market professionals, not volunteer board members, employees and other volunteers of obligated persons. We believe that directors are, like elected or appointed members of the governing body of the municipal entity, unpaid volunteers and should be treated similarly. Similarly, we think that employees and other volunteers of the conduit obligors should be treated like employees of the municipal entity, and thus also exempt.

While it may be possible to conclude, on the basis of logic, that directors and nonprofit employees should not be subject to registration as municipal advisors when only providing such internal advice, such conclusion is not necessarily supported by the technical language of the Proposed Rules.

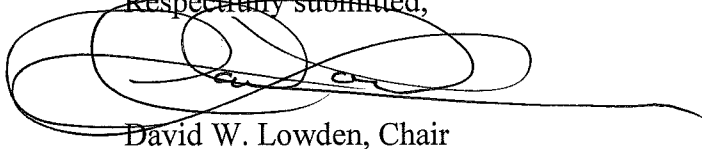
If board members are required to register as municipal advisors, it may lead to the illogical result that existing directors of affected nonprofits may resign (and other individuals may not wish to become directors) or that such directors would be obligated to abstain from providing advice on matters of finance, which may be a violation of their fiduciary duties to the nonprofit. If employees or volunteers of obligated persons are required to register, the pool of potential employees or volunteers may be similarly restricted, possibly leading to increased

compensation costs. And, in both cases, if the directors or employees or volunteers agree to register, the nonprofit will have to divert some of its limited time and resources to assisting such individuals complete the registration process.

Accordingly, we believe that it is appropriate for the Commission, in its final release, to note the ambiguity in the legislation and, as it does with respect to elected and *ex officio* members of governing bodies of municipal entities, to include language exempting from the scope of the term "municipal advisors" members of nonprofit boards of conduit obligors and other nonprofit organizations (including charter schools) and employees and volunteers of such organizations when they are only providing advice internally within their nonprofits regarding municipal finance matters in their capacity as board members, employees or volunteers and are not otherwise receiving any compensation for such advice. Individual board members and employees would not be so exempt if engaged to provide such services for the nonprofit as compensated advisors.

We appreciate this opportunity to comment on the Proposed Rules and request that you consider these comments in preparing the final rules. If further comment is desired, David Lowden, the Chair of the Committee, can be reached at 212-806-6187 or dlowden@stroock.com.

Respectfully submitted,



David W. Lowden, Chair

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