

## SECURITIES AND EXCHANGE COMMISSION

Release No. 34-75714

### Designation of the Financial Industry Regulatory Authority to Administer Professional Qualification Tests for Associated Persons of Registered Municipal Advisors

**AGENCY:** Securities and Exchange Commission

**ACTION:** Order

**SUMMARY:** The Commission is designating the Financial Industry Regulatory Authority (“FINRA”) to administer professional qualification tests for associated persons of registered municipal advisors.

**EFFECTIVE DATE:** August 17, 2015

**FOR FURTHER INFORMATION CONTACT:** Jessica Kane, Director; Rebecca Olsen, Deputy Director; Mary Simpkins, Senior Special Counsel; Edward Fierro, Attorney-Adviser; at (202) 551-5680, Office of Municipal Securities, U.S. Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-7010.

### DISCUSSION

Section 975 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (“Dodd-Frank Act”)<sup>1</sup> amended Section 15B of the Securities Exchange Act of 1934 (“Exchange Act”) to, among other things, make it unlawful for a municipal advisor to provide certain advice to or on behalf of a municipal entity or obligated person with respect to municipal financial products or the issuance of municipal securities, or to undertake a solicitation of a municipal entity or obligated person, unless the municipal advisor is registered with the Commission.<sup>2</sup> The

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<sup>1</sup> See Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. No. 111-203, 124 Stat. 1376 (2010).

<sup>2</sup> See 15 U.S.C. 78o-4(a).

registration requirement for municipal advisors established by the Dodd-Frank Act became effective on October 1, 2010.<sup>3</sup> On September 20, 2013, the Commission adopted the final rules for the permanent registration of municipal advisors (the “Final Rules”).<sup>4</sup> Municipal advisors were required to comply with the Final Rules as of July 1, 2014, and to register with the Commission under the Final Rules pursuant to a four-month phased-in compliance period, which began on July 1, 2014.<sup>5</sup>

Exchange Act Section 15B(b)(2) provides that the MSRB shall propose and adopt rules to effect the purposes of the Exchange Act with respect to, among other things, advice provided to or on behalf of municipal entities or obligated persons by brokers, dealers, municipal securities dealers, and municipal advisors with respect to municipal financial products, the issuance of municipal securities, and solicitations of municipal entities or obligated persons undertaken by brokers, dealers, municipal securities dealers, and municipal advisors.<sup>6</sup>

Specifically, Exchange Act Section 15B(b)(2)(A) requires, among other things, that the MSRB have rules that provide that no broker, dealer, municipal securities dealer, or municipal advisor shall provide advice to or on behalf of a municipal entity or obligated person with respect to municipal financial products or the issuance of municipal securities, unless, among other things, such municipal securities broker or municipal securities dealer and every natural person

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<sup>3</sup> See supra note 1.

<sup>4</sup> See Securities Exchange Act Release No. 70462 (September 20, 2013), 78 FR 67468 (November 12, 2013).

<sup>5</sup> See Securities Exchange Act Release No. 71288 (January 13, 2014), 79 FR 2777 (January 16, 2014).

<sup>6</sup> See 15 U.S.C. 78o-4(b)(2).

associated with such municipal securities broker or municipal securities dealer meets such standards of training, experience, competence, and such other qualifications as the MSRB finds necessary or appropriate in the public interest or for the protection of investors and municipal entities or obligated persons.<sup>7</sup> Further, Section 15B(b)(2)(A) provides that, in connection with the definition and application of such standards, the MSRB may: (i) appropriately classify municipal securities brokers, municipal securities dealers, and municipal advisors (taking into account certain relevant matters), and persons associated with municipal securities brokers, municipal securities dealers, and municipal advisors; (ii) specify that all or any portion of such standards shall be applicable to any such class; and (iii) require persons in any such class to pass tests administered in accordance with Exchange Act Section 15B(c)(7).<sup>8</sup>

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<sup>7</sup> See 15 U.S.C. 78o-4(b)(2)(A).

<sup>8</sup> See id. MSRB Rule G-2 sets forth standards of professional qualification and MSRB Rule G-3 sets forth professional qualification requirements for municipal advisors and their associated persons. See Securities Exchange Act Release No. 74384 (February 26, 2015), 80 FR 11706 (March 4, 2015). MSRB Rule G-3 includes two registration classifications for municipal advisors: municipal advisor representative and municipal advisor principal. See MSRB Rule G-3. Qualification as a municipal advisor representative is a prerequisite to qualification as a municipal advisor principal. See id. Under MSRB Rule G-3, a natural person associated with a municipal advisor who engages in municipal advisory activities on the municipal advisor's behalf (other than a person performing only clerical, administrative, support or similar functions) must take and pass the Municipal Advisor Representative Qualification Examination prior to being qualified as a municipal advisor representative. See MSRB Rule G-3(d). The MSRB developed a content outline and specifications for the selection of examination questions for the Municipal Advisor Representative Qualification Examination, which were filed with the Commission on April 22, 2015 and became operative upon filing. See Securities Exchange Act Release No. 74858 (May 1, 2015), 80 FR 26310 (May 7, 2015). The MSRB will consider an examination for municipal advisor principals who are engaged in the management, direction or supervision of municipal advisory activities at a later date. See Securities Exchange Act Release No. 73708 (December 1, 2014), 79 FR 72225 (December 5, 2014).

Exchange Act Section 15B(c)(7)(A) provides that the tests pursuant to Section 15B(b)(2)(A)(iii) shall be administered by, or on behalf of, the Commission or its designee, in the case of municipal advisors.<sup>9</sup> The Commission designates FINRA to administer professional qualification tests for associated persons of registered municipal advisors who engage in municipal advisory activities or engage in the management, direction or supervision of municipal advisory activities, pursuant to the Commission’s authority under Exchange Act Section 15B(c)(7)(A)(iii).<sup>10</sup>

The Commission notes that FINRA has responsibility to enforce compliance by its members and persons associated with its members with the rules of the MSRB<sup>11</sup> and currently administers all professional qualification tests developed, maintained, and owned by the MSRB, which are intended to ensure that municipal professionals demonstrate a basic competence in the subject matter related to the professional qualification classification in compliance with MSRB professional qualification requirement rules.<sup>12</sup> FINRA currently has technical systems and

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<sup>9</sup> See 15 U.S.C. 78o-4(c)(7)(A)(iii).

<sup>10</sup> The Dodd-Frank Act also amended Exchange Act Section 15B to expressly provide that “the Commission, or its designee, in the case of municipal advisors,” conduct periodic examinations pursuant to Exchange Act Section 15B(b)(2)(E). See Exchange Act Section 15B(c)(7)(A). In the Final Rules, the Commission designated FINRA as a designee to examine its members’ activities as registered municipal advisors and evaluate compliance by such members with federal securities laws, Commission rules and regulations, and MSRB rules applicable to municipal advisors. See Securities Exchange Act Release No. 70462 (September 20, 2013), 78 FR 67468 (November 12, 2013).

<sup>11</sup> See 15 U.S.C. 78o-3(b)(2).

<sup>12</sup> See Securities Exchange Act Release No. 74561 (March 23, 2015), 80 FR 16485 (March 27, 2015). These professional qualification tests are Series 51 (Municipal Fund Securities Limited Principal Qualification Examination); Series 52 (Municipal Securities Representative Qualification Examination); and Series 53 (Municipal Securities Principal Qualification Examination). The Commission is responsible for oversight of FINRA and the MSRB to ensure they comply with their respective rules and applicable federal

procedures in place for scheduling examinations, collecting fees, administering examinations, and maintaining examination records and testing centers operated by vendors located throughout the country.<sup>13</sup> In addition, FINRA has extensive experience in administering professional qualification tests for its broker-dealer members (which include municipal securities brokers and dealers) and other securities professionals.<sup>14</sup> These qualification tests cover a broad range of

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securities laws. See Exchange Act Section 19. FINRA and the MSRB are also subject to various requirements under the Exchange Act, including the requirements in Section 19(b) and Rule 19b-4 thereunder to file proposed rule changes with the Commission (including proposed rule changes related to fees and professional qualification standards and requirements). No proposed rule change will take effect unless approved by the Commission or otherwise permitted in accordance with the provisions of Exchange Act Section 19(b). See Exchange Act Section 19(b).

<sup>13</sup> See <https://www.finra.org/industry/qualification-exams>.

<sup>14</sup> See id. These professional qualification tests are Series 3 (National Commodities Futures Exam); Series 4 (Registered Options Principal); Series 6 (Investment Company and Variable Contracts Products Representative); Series 7 (General Securities Representative Examination); Series 9 and 10 (General Securities Sales Supervisor); Series 11 (Assistant Representative - Order Processing Exam); Series 14 (Compliance Official Exam); Series 16 (Supervisory Analysts Exam); Series 17 (United Kingdom Securities Representative); Series 22 (Direct Participation Representative); Series 23 (General Securities Principal Exam - Sales Supervisor Module); Series 24 (General Securities Principal); Series 26 (Investment Company and Variable Contracts Products Principal); Series 27 (Financial and Operations Principal Exam); Series 28 (Introducing Broker-Dealer Financial and Operations Principal Exam); Series 30 (NFA Branch Managers Exam); Series 31 (Futures Managed Funds Exam); Series 32 (Limited Futures Exam – Regulations); Series 34 (Retail Off-Exchange Forex Exam); Series 37 (Canada Securities Representative Exam); Series 38 (Canada Securities Representative Exam); Series 39 (Direct Participation Programs Principal Exam); Series 42 (Registered Options Representative); Series 55 (Equity Trader Exam); Series 56 (Proprietary Trader Examination); Series 62 (Corporate Securities Representative Exam); Series 63 (Uniform Securities State Law Examination); Series 65 (NASAA Investment Advisors Law Examination); Series 66 (NASAA Uniform Combined State Law Examination); Series 72 (Government Securities Representative Exam); Series 79 (Investment Banking Representative Exam); Series 82 (Private Securities Offerings Representative Exam); Series 86 and 87 (Research Analyst Exam); Series 91 (FDIC Safety and Soundness Technical Evaluation); Series 92 (FDIC Compliance Technical Evaluation); Series 93 (FDIC Division of Resolutions and Receiverships Technical Evaluation); and Series 99 (Operations Professional Exam).

subjects on the markets, the securities industry and its regulatory structure, including knowledge of FINRA rules and the rules of other self-regulatory organizations, such as the MSRB.<sup>15</sup>

IT IS THEREFORE ORDERED, pursuant to Exchange Act Section 15B(c)(7)(A), that FINRA is designated to administer professional qualification tests for associated persons of registered municipal advisors who engage in municipal advisory activities or engage in the management, direction or supervision of municipal advisory activities.

By the Commission.

Brent J. Fields  
Secretary

Date: August 17, 2015

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Id.