

**SECURITIES AND EXCHANGE COMMISSION**

**17 CFR Parts 240 and 249**

**[Release No. 34-70468; File No. S7-19-10]**

**RIN 3235-AK69**

**Extension of Temporary Registration of Municipal Advisors**

**AGENCY:** Securities and Exchange Commission.

**ACTION:** Final rule; extension.

**SUMMARY:** The Securities and Exchange Commission (“Commission”) is amending interim final temporary Rule 15Ba2-6T, which provides for the temporary registration of municipal advisors under the Securities Exchange Act of 1934 (“Exchange Act”), as amended by the Dodd-Frank Wall Street Reform and Consumer Protection Act (“Dodd-Frank Act”), to extend the date on which Rule 15Ba2-6T (and consequently Form MA-T) will sunset from September 30, 2013, to December 31, 2014. Under the amendment, all temporary registrations submitted pursuant to Rule 15Ba2-6T also will expire no later than December 31, 2014.

**DATES:** Effective Date: September 30, 2013. The expiration of the effective period of interim final temporary Rule 15Ba2-6T (17 CFR 240.15Ba2-6T) and Form MA-T (17 CFR 249.1300T) is delayed from September 30, 2013, to December 31, 2014.

**FOR FURTHER INFORMATION CONTACT:**

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**SUPPLEMENTARY INFORMATION:** The Commission is extending the expiration date for interim final temporary Rule 15Ba2-6T and Form MA-T under the Exchange Act.

## **I. DISCUSSION**

Section 15B(a)(1) of the Exchange Act,<sup>1</sup> as amended by Section 975(a)(1)(B) of the Dodd-Frank Act,<sup>2</sup> makes it unlawful for a municipal advisor to 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, or to undertake a solicitation of a municipal entity or obligated person, unless the municipal advisor is registered with the Commission. Section 15B(a)(2) of the Exchange Act,<sup>3</sup> as amended by Section 975(a)(2) of the Dodd-Frank Act, provides that a municipal advisor may be registered by filing with the Commission an application for registration in such form and containing such information and documents concerning the municipal advisor and any person associated with the municipal advisor as the Commission by rule may prescribe as necessary or appropriate in the public interest or for the protection of investors.

The registration requirement for municipal advisors became effective on October 1, 2010. On September 1, 2010, the Commission adopted interim final temporary Rule 15Ba2-6T under the Exchange Act,<sup>4</sup> which permits municipal advisors to temporarily satisfy the statutory

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<sup>1</sup> 15 U.S.C. 78o-4(a)(1).

<sup>2</sup> Pub. L. 111-203, 124 Stat. 1376 (2010).

<sup>3</sup> 15 U.S.C. 78o-4(a)(2).

<sup>4</sup> 17 CFR 240.15Ba2-6T.

registration requirement by completing Form MA-T<sup>5</sup> through the Commission’s public website.<sup>6</sup> Rule 15Ba2-6T serves as a transitional step to the implementation of a permanent registration program, makes relevant information available to the public and municipal entities, and permits municipal advisors to continue their business after October 1, 2010.

Under Rule 15Ba2-6T, as initially adopted, all temporary registrations submitted pursuant to that rule would have expired on the earlier of: (1) the date that the municipal advisor’s registration is approved or disapproved by the Commission pursuant to a final rule adopted by the Commission establishing another manner of registration of municipal advisors and prescribing a form for such purpose; (2) the date on which the municipal advisor’s temporary registration is rescinded by the Commission; or (3) on December 31, 2011. Also, as initially adopted, Rule 15Ba2-6T itself would have expired on December 31, 2011. On December 20, 2010, the Commission proposed for public comment rules for the permanent registration of municipal advisors.<sup>7</sup> On December 21, 2011, the Commission amended Rule 15Ba2-6T to extend the date on which that rule and Form MA-T would sunset from December 31, 2011, to

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<sup>5</sup> 17 CFR 249.1300T.

<sup>6</sup> See Securities Exchange Act Release No. 62824 (September 1, 2010), 75 FR 54465 (September 8, 2010) (“Interim Release”). The Commission received seven comment letters on the Interim Release. See letters from Brad R. Jacobsen, dated September 7, 2010; John J. Wagner, Kutak Rock LLP, dated September 28, 2010; Joy A. Howard, Principal, WM Financial Strategies, dated October 5, 2010; Steve Apfelbacher, President, National Association of Independent Public Finance Advisors, dated October 8, 2010; Carolyn Walsh, Vice President and Senior Counsel, Center for Securities, Trust and Investments, American Bankers Association, Deputy General Counsel, ABA Securities Association, dated October 13, 2010; Amy Natterson Kroll and W. Hardy Callcott, Bingham McCutchen LLP, on behalf of the National Association of Energy Service Companies, dated October 13, 2010; and Leslie M. Norwood, Managing Director and Associate General Counsel, Securities Industry and Financial Markets Association, dated November 15, 2010.

<sup>7</sup> See Securities Exchange Act Release No. 63576 (December 20, 2010), 76 FR 824 (January 6, 2011) (“Proposing Release”).

September 30, 2012.<sup>8</sup> On September 21, 2012, the Commission further amended Rule 15Ba2-6T to extend the date on which that rule and Form MA-T would sunset from September 30, 2012, to September 30, 2013.<sup>9</sup> Accordingly, if the Commission does not take further action, all temporary registrations submitted pursuant to Rule 15Ba2-6T will expire no later than September 30, 2013. Further, existing Rule 15Ba2-6T will expire on September 30, 2013.

The Commission is also adopting the rules for the permanent registration of municipal advisors in a separate release.<sup>10</sup> As stated in the Adopting Release, rules and forms for the permanent registration of municipal advisors will become effective 60 days after publication of the final rules in the Federal Register.<sup>11</sup> Moreover, to ensure an orderly transition from the temporary registration regime to the permanent registration regime and submission of applications through EDGAR, the Commission in the Adopting Release provided staggered compliance dates for municipal advisors to complete their applications for registration under the permanent registration regime.<sup>12</sup> These compliance dates are based on a municipal advisor's

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<sup>8</sup> See Securities Exchange Act Release No. 66020 (December 21, 2011), 76 FR 80733 (December 27, 2011) (“2011 Extension Release”). In the 2011 Extension Release, the Commission inadvertently omitted a reference to Subpart N and 17 CFR 249.1300T in the “Statutory Authority and Text of Rule and Amendments” section. As such, Subpart N, which consists of 17 CFR 249.1300T, was deleted from the Code of Federal Regulations. On July 12, 2012, the Commission adopted a technical amendment to restore Subpart N and 249.1300T to Title 17 of the Code of Federal Regulations. See Securities Exchange Act Release No. 66020A (July 12, 2012), 77 FR 42176 (July 18, 2012).

<sup>9</sup> See Securities Exchange Act Release No. 67901 (September 21, 2012), 77 FR 59061 (September 26, 2012) (“2012 Extension Release” and, together with the 2011 Extension Release, “Extension Releases”).

<sup>10</sup> See Securities Exchange Act Release No. 70462 (September 20, 2013) (“Adopting Release”).

<sup>11</sup> See id., at Section V.

<sup>12</sup> See id.

registration number under Rule 15Ba2-6T and Form MA-T (“temporary registration number”).<sup>13</sup> The first filing period will begin on July 1, 2014, and the last filing period will end on October 31, 2014.<sup>14</sup> A municipal advisor that enters into the municipal advisory business on or after October 1, 2014, and does not have a temporary registration number as of October 1, 2014, must file a complete application for registration under the permanent registration regime on or after October 1, 2014, and be registered with the Commission before engaging in municipal advisory activities.<sup>15</sup> In contrast, new municipal advisors who engage in municipal advisory activities before October 1, 2014, must continue to submit applications for temporary registration until September 30, 2014.

As explained in the Adopting Release, for a municipal advisory firm registered under the temporary registration regime that files a complete application for permanent registration during the applicable filing period, its temporary municipal advisor registration will continue to be in effect until the Commission grants or denies the application for permanent registration, unless the temporary registration is rescinded by the Commission or withdrawn by the municipal advisory firm.<sup>16</sup> For a municipal advisory firm registered under the temporary registration regime that does not timely file a complete application for permanent registration, the firm’s temporary registration will expire forty-five days after the compliance date for permanent registration for the firm.<sup>17</sup>

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<sup>13</sup> See id.

<sup>14</sup> See id. For purposes of this release, the “applicable filing period” is the appropriate filing period for a specific municipal advisor.

<sup>15</sup> See id.

<sup>16</sup> See id.

<sup>17</sup> See id.

Because municipal advisors would need to rely on their temporary registrations until they are registered under the permanent registration regime, the Commission has determined that it is necessary and appropriate to extend the expiration date of Rule 15Ba2-6T and Form MA-T to December 31, 2014.<sup>18</sup> The extension will provide an orderly method for municipal advisors to continue to temporarily satisfy the registration requirement under Section 15B of the Exchange Act until their permanent registrations are granted or denied by the Commission. The extension will also prevent a gap between the time at which the temporary rule, absent this extension, expires and at which municipal advisors must be registered with the Commission under the permanent registration regime.

Specifically, the Commission is amending Rule 15Ba2-6T(e) to provide that all temporary registrations submitted pursuant to Rule 15Ba2-6T will expire on the earlier of: (1) the date that the municipal advisor's permanent registration, submitted pursuant to the Exchange Act and the rules thereunder, is approved or disapproved by the Commission; (2) the date on which the municipal advisor's temporary registration is rescinded by the Commission; (3) for a municipal advisor that has not applied for permanent registration with the Commission in accordance with the Exchange Act and the rules thereunder, forty-five days after the compliance date of such rules for the municipal advisor; or (4) on December 31, 2014. In addition, the Commission is amending Rule 15Ba2-6T(f) to provide that the interim final temporary rule will expire on December 31, 2014. Thus, absent further action by the Commission, Rule 15Ba2-6T and Form MA-T will expire on December 31, 2014, at 11:59 p.m. Eastern Time.

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<sup>18</sup> The Commission notes that it is amending Rule 15Ba2-6T only to extend the expiration date of that rule and, consequently, the expiration date of Form MA-T in order to coordinate the expiration of the temporary registration regime with the compliance dates under the permanent registration regime.

The Commission is adding new subsection (3) to Rule 15Ba2-6T(e), as indicated above, to coordinate the expiration date of the temporary registrations in light of the staggered compliance dates under the permanent registration regime and to clarify that the December 31, 2014 expiration date for Rule 15Ba2-6T is not meant to extend the date by which a municipal advisor must apply for registration under the permanent registration regime. Rule 15Ba2-6T(e)(3) also would help ensure an orderly transition from the temporary registration regime to the permanent registration regime.

As previously noted in the Extension Releases, the Commission has considered the seven comment letters received on the Interim Release and, given the limited nature of this extension and the upcoming compliance dates for the permanent registration regime, the Commission is not making any other changes to Rule 15Ba2-6T and Form MA-T.<sup>19</sup> Making other changes to the temporary registration regime is unnecessary in light of the Commission's adoption of the permanent registration regime. The Commission also notes that the comment letters received in response to the Interim Release were addressed in the Proposing Release and were considered for purposes of the proposed and final rules for the registration of municipal advisors.

The amendments to Rule 15Ba2-6T will be effective on September 30, 2013. The Administrative Procedure Act ("APA") generally requires an agency to publish notice of a proposed rulemaking in the Federal Register.<sup>20</sup> This requirement does not apply, however, if the agency "for good cause finds (and incorporates the finding and a brief statement of reasons therefor in the rules issued) that notice and public procedure thereon are impracticable,

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<sup>19</sup> See 2011 Extension Release, supra note 8, at 80734; and 2012 Extension Release, supra note 9, at 59062-63.

<sup>20</sup> See 5 U.S.C. 553(b).

unnecessary, or contrary to the public interest.”<sup>21</sup> The Commission notes that extending the expiration date of the temporary municipal advisor registration regime will not affect the substantive provisions of Rule 15Ba2-6T and Form MA-T. The amendments will merely allow municipal advisors who timely apply for permanent registration to continue to comply with the statutory registration requirement and thus continue to operate as municipal advisors until their permanent registration is granted or denied by the Commission. Extending the expiration date of Rule 15Ba2-6T and Form MA-T also will prevent a regulatory gap from developing between the temporary and permanent registration regimes. The extension, consequently, is designed to be temporally limited in scope to accommodate the staggered compliance dates under the permanent registration regime. For these reasons, and the reasons discussed throughout this release, the Commission believes that there is good cause to extend the expiration date of Rule 15Ba2-6T and Form MA-T to December 31, 2014, and to find that notice and solicitation of comment on the extension is impracticable, unnecessary, or contrary to the public interest.<sup>22</sup>

The APA also generally requires that an agency publish a substantive rule in the Federal Register not less than 30 days before its effective date.<sup>23</sup> However, this requirement does not apply if the agency finds good cause and publishes such cause with the rule.<sup>24</sup> As noted above,

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<sup>21</sup> See 5 U.S.C. 553(b)(3)(B).

<sup>22</sup> This finding also satisfies the requirements of 5 U.S.C. 808(2), allowing the rule amendments to become effective notwithstanding the requirements of 5 U.S.C. 801 (if a federal agency finds that notice and public comment are “impracticable, unnecessary, or contrary to the public interest,” a rule “shall take effect at such time as the Federal agency promulgating the rule determines”). Because the Commission is not publishing the rule amendments in a notice of proposed rulemaking, no analysis is required under the Regulatory Flexibility Act. See 5 U.S.C. 601(2) (for purposes of the Regulatory Flexibility Act, the term “rule” means any rule for which the agency publishes a general notice of proposed rulemaking).

<sup>23</sup> See 5 U.S.C. 553(d).

<sup>24</sup> See 5 U.S.C. 553(d)(3).

the Commission is also adopting the rules for the permanent registration of municipal advisors in a separate release.<sup>25</sup> This extension is being adopted to accommodate the staggered compliance dates for permanent registration established in the Adopting Release. For this reason, and the reasons discussed throughout this release, the Commission finds good cause not to delay the effective date of the extension.

In connection with the adoption of Rule 15Ba2-6T and Form MA-T, the Commission submitted to the Office of Management and Budget (“OMB”) a request for approval of the “collection of information” requirements contained in the temporary rule and form in accordance with the Paperwork Reduction Act of 1995.<sup>26</sup> OMB initially approved the collection of information on an emergency basis with an expiration date of March 31, 2011. The Commission subsequently submitted a request for extension of the approval, and OMB extended the approval to March 31, 2014.<sup>27</sup> The collection of information to which Rule 15Ba2-6T and Form MA-T relates is “Rule 15Ba2-6T and Form MA-T – Temporary Registration of Municipal Advisors.” The OMB control number for the collection of information is 3235-0659. Since the Commission is not amending Rule 15Ba2-6T or the disclosure requirements contained in Form MA-T other than to extend the expiration date for Rule 15Ba2-6T and Form MA-T, this amendment will not change the “collection of information” previously approved by the OMB.<sup>28</sup>

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<sup>25</sup> See supra note 10.

<sup>26</sup> 44 U.S.C. 3501 et seq.

<sup>27</sup> The Commission will submit a request for further extension of the OMB approval in light of this extension of the temporary registration regime.

<sup>28</sup> Consistent with the prior Extension Releases, the Commission recognizes that some new municipal advisors may register pursuant to Rule 15Ba2-6T during the extension period, and municipal advisors registered pursuant to Rule 15Ba2-6T may submit amendments and withdrawals during the extension period. See 2011 Extension Release, supra note 8, at 80735; and 2012 Extension Release, supra note 9, at 59063-64. Also, the Commission notes that the Adopting Release contains estimates of the reporting and recordkeeping

The Commission is sensitive to the costs and benefits of its rules. Section 3(f) of the Exchange Act requires the Commission, whenever it engages in rulemaking and is required to consider or determine whether an action is necessary or appropriate in the public interest, to consider, in addition to the protection of investors, whether the action would promote efficiency, competition, and capital formation.<sup>29</sup> In addition, Section 23(a)(2) of the Exchange Act requires the Commission, when making rules under the Exchange Act, to consider the impact such rules would have on competition.<sup>30</sup> Section 23(a)(2) of the Exchange Act prohibits the Commission from adopting any rule that would impose a burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act.<sup>31</sup>

As discussed above, the amendments to Rule 15Ba2-6T extend the expiration date of that rule and Form MA-T to December 31, 2014. The temporary registration regime currently in effect serves as the economic baseline against which the costs and benefits, as well as the impact on efficiency, competition, and capital formation, of the amendments are measured. In the Interim Release, the Commission considered and discussed the costs and benefits of Rule 15Ba2-6T and Form MA-T.<sup>32</sup> In the Interim Release, the Commission also considered the effects of Rule 15Ba2-6T and Form MA-T on efficiency, competition, and capital formation.<sup>33</sup> In

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burdens under the final municipal advisor registration rules and forms. See Adopting Release, supra note 10, at Section VII.

<sup>29</sup> See 15 U.S.C. 78c(f).

<sup>30</sup> See 15 U.S.C. 78w(a)(2).

<sup>31</sup> See 15 U.S.C. 78w(a)(2).

<sup>32</sup> See Interim Release, supra note 6, at 54474-75.

<sup>33</sup> See id., at 54475.

addition, in the Adopting Release, the Commission discussed the costs and benefits of the temporary registration regime and the current state of the municipal advisor market.<sup>34</sup>

Since the Commission is not amending Rule 15Ba2-6T and Form MA-T other than to extend their expiration date, the Commission believes the discussion of the temporary registration regime in the Adopting Release applies and the Commission does not expect additional significant costs or effects on efficiency, competition, or capital formation to result from the extension. The Commission also continues to believe that Rule 15Ba2-6T and Form MA-T, as extended, will not result in a burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act.

The Commission, however, recognizes that allowing municipal advisors to continue to comply with the statutory registration requirement until a permanent registration regime becomes effective and preventing a regulatory gap from developing between the temporary and permanent registration regimes are important. The Commission also notes that not extending the expiration date of Rule 15Ba2-6T and Form MA-T could result in significant costs and burdens on efficiency, competition, and capital formation for municipal advisors who will be unable to comply with the statutory registration requirement.

## **II. Statutory Authority and Text of Rule and Amendments**

Pursuant to the Exchange Act, and particularly Section 15B (15 U.S.C. 78o-4), the Commission is amending § 240.15Ba2-6T and restating § 249.1300T of Title 17 of the Code of Federal Regulations in the manner set forth below.

### **List of Subjects in 17 CFR Parts 240 and 249**

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<sup>34</sup> See Adopting Release, supra note 10, at Section VIII.C.

Reporting and recordkeeping requirements, Municipal advisors, Temporary registration requirements.

**Text of Rule and Amendments**

For the reasons set out in the preamble, Title 17, Chapter II, of the Code of Federal Regulations is amended as follows.

**PART 240 – GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934**

1. The general authority citation for Part 240 continues to read as follows:

**Authority:** 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77z-2, 77z-3, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78c-3, 78c-5, 78d, 78e, 78f, 78g, 78i, 78j, 78j-1, 78k, 78k-1, 78l, 78m, 78n, 78n-1, 78o, 78o-4, 78o-10, 78p, 78q, 78q-1, 78s, 78u-5, 78w, 78x, 78ll, 78mm, 80a-20, 80a-23, 80a-29, 80a-37, 80b-3, 80b-4, 80b-11, 7201 et. seq., and 8302; 7 U.S.C. 2(c)(2)(E); 12 U.S.C. 5221(e)(3); 18 U.S.C. 1350; and Pub. L. 111-203, 939A, 124 Stat. 1376, (2010), unless otherwise noted.

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**§ 240.15Ba2-6T [Amended]**

2. In § 240.15Ba2-6T, paragraphs (e) and (f) are amended to read as follows:

(e) All temporary registrations submitted pursuant to this section will expire on the earlier of:

(1) The date that the municipal advisor’s permanent registration, submitted pursuant to the Act and the rules thereunder, is approved or disapproved by the Commission;

(2) The date on which the municipal advisor’s temporary registration is rescinded by the Commission;

(3) For a municipal advisor that has not applied for permanent registration with the Commission in accordance with the Act and the rules thereunder, forty-five days after the compliance date of such rules for the municipal advisor; or

(4) On December 31, 2014.

(f) This section will expire on December 31, 2014.

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**PART 249 – FORMS, SECURITIES EXCHANGE ACT OF 1934**

3. The authority citation for Part 249 continues to read in part as follows:

**Authority:** 15 U.S.C. 78a et seq. and 7201 et seq.; 12 U.S.C. 5461 et seq.; and 18 U.S.C. 1350, unless otherwise noted.

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4. Subpart N, consisting of § 249.1300T, continues to read as follows:

**Subpart N – Forms for Registration of Municipal Advisors**

**§ 249.1300T Form MA-T – For temporary registration as a municipal advisor, and for amendments to, and withdrawals from, temporary registration.**

The form shall be used for temporary registration as a municipal advisor, and for amendments to, and withdrawals from, temporary registration pursuant to Section 15B of the Exchange Act, (15 U.S.C. 78o-4).

[Note: The text of Form MA-T does not, and the amendments will not, appear in the Code of Federal Regulations.]

By the Commission.

Elizabeth M. Murphy  
Secretary

Date: September 23, 2013