**SECURITIES AND EXCHANGE COMMISSION**

**17 CFR Parts 240 and 249**

**[Release No. 34-63576; File No. S7-45-10]**

**RIN 3235-AK86**

**Registration of Municipal Advisors**

**AGENCY:** Securities and Exchange Commission.

**ACTION:** Proposed rule.

**SUMMARY:** Section 975 of Title IX of the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank Act") amended Section 15B of the Securities Exchange Act of 1934 (as amended, the "Exchange Act") to require municipal advisors, as defined below, to register with the Securities and Exchange Commission ("Commission" or "SEC") effective October 1, 2010. To enable municipal advisors to temporarily satisfy this requirement, the Commission adopted an interim final temporary rule and form, Exchange Act rule 15Ba2-6T and Form MA-T, effective October 1, 2010. Rule 15Ba2-6T will expire on December 31, 2011.

The Commission is proposing new rules 15Ba1-1 through 15Ba1-7 and new Forms MA, MA-I, MA-W, and MA-NR under the Exchange Act. These proposed rules and forms are designed to give effect to provisions of Title IX of the Dodd-Frank Act that, among other things, would establish a permanent registration regime with the Commission for municipal advisors and would impose certain record-keeping requirements on such advisors.

**DATES:** Comments should be received on or before [insert date 45 days after publication in the Federal Register].

**ADDRESSES:** Comments may be submitted by any of the following methods:

Electronic comments:

- Use the Commission's Internet comment form (http://www.sec.gov/rules/proposed); or

- Send an e-mail to rule-comments@sec.gov. Please include File Number S7-45-10 on the subject line; or
- Use the Federal eRulemaking Portal (http://www.regulations.gov). Follow the instructions for submitting comments.

Paper comments:

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number S7-45-10. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet website (http://www.sec.gov/rules/proposed.shtml). Comments will also be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

**FOR FURTHER INFORMATION CONTACT**: Martha Haines, Assistant Director and Chief, Office of Municipal Securities, at (202) 551-5681; Dave Sanchez, Attorney Fellow, Office of Municipal Securities, at (202) 551-5540; Victoria Crane, Assistant Director, Office of Market Supervision, at (202) 551-5744; Ira Brandriss, Special Counsel, Office of Market Supervision, at (202) 551-5651; Jennifer Dodd, Special Counsel, Office of Market Supervision, at (202) 551-5653; Steve Kuan, Special Counsel, Office of Market Supervision, at (202) 551-5624; Daniel Gien, Attorney-Adviser, Office of Market Supervision, at (202) 551-5747; Yue Ding, Law Clerk, Office

of Market Supervision, at (202) 551-5842; or any of the above at Division of Trading and Markets, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-6628.

**SUPPLEMENTARY INFORMATION:**

The Commission is proposing rules 15Ba1-1 to 15Ba1-7 [17 CFR 240.15Ba1-1 to 240.15Ba1-7] under the Exchange Act, and Forms MA, MA-I, MA-W, and MA-NR [17 CFR 249.1300, 1310, 1320, and 1330].

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## I. INTRODUCTION

### A. Background

On July 21, 2010, President Obama signed into law the Dodd-Frank Act.[1] The Dodd-Frank Act was enacted, among other things, to promote the financial stability of the United States by improving accountability and transparency in the financial system.[2] With Section 975 of Title IX of the Dodd-Frank Act, Congress amended Section 15B of the Exchange Act[3] to, among other things,

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

2 See Pub. L. No. 111-203 Preamble.

3 15 U.S.C. 78o-4. All references in this Release to the Exchange Act refer to the Exchange Act as amended by the Dodd-Frank Act.

make it unlawful for municipal advisors[4] to provide certain advice to, or solicit, municipal entities[5] or certain other persons without registering with the Commission.[6]

### 1. Overview of Municipal Securities Market

#### a. Municipal Advisors

Until the passage of the Dodd-Frank Act, the activities of municipal advisors were largely unregulated and municipal advisors were generally not required to register with the Commission or any other federal, state or self-regulatory entity with respect to their municipal advisory activities. As discussed below in this section, some entities that are now subject to registration as municipal advisors pursuant to Section 15B of the Exchange Act, and rules or regulations promulgated thereunder, currently are subject to regulation by various federal and state regulators in other capacities. These entities include brokers, dealers, municipal securities dealers, investment advisers, and banks. Such regulations, however, generally do not apply to their activities as municipal advisors.

Municipal advisors engage in municipal advisory activities in a variety of contexts. For example, municipal advisors participate in the majority of issuances of municipal securities.[7] According to the Municipal Securities Rulemaking Board ("MSRB" or "Board"), approximately

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4 See infra Section II.A.1. (discussing the term "municipal advisor").

5 See infra note 82, and accompanying text (discussing the term "municipal entity").

6 See Section 975(a)(1)(B) of the Dodd-Frank Act; 15 U.S.C. 78o-4(a)(1)(B).

7 With respect to the issuance of municipal securities, municipal advisors (which may include entities registered as broker-dealers acting as municipal advisors) engage in such activities as assisting municipal entities in developing a financing plan, assisting in the selection of other parties to the financing such as bond counsel and underwriters, coordinating the rating process, ensuring adequate disclosure, and evaluating and negotiating the financing terms. See JayaramanVijayakumar and Kenneth N. Daniels, 2006, The Role and Impact of Financial Advisors in the Market for Municipal Bonds ("Vijayakumar and Daniels"), Journal of Financial Services Research, 30:43, at 46.

$315 billion (70%)[8] of the municipal debt issued in 2008 was issued with the participation of municipal advisors commonly referred to as "financial advisors."[9] Research also suggests that participation by municipal advisory firms in the issuance of municipal securities is rising, with the MSRB noting a 63% participation rate in 2006, a 66% participation rate in 2007, and a 70% participation rate in 2008.[10] A study that looked at historical involvement by "financial advisors" identified participation rates of approximately 50% in a nearly twenty-year period ending in 2002.[11]

Municipal advisors also engage in municipal advisory activities with respect to municipal financial products.[12] For example, as derivatives have developed in the municipal securities market, some municipal advisory firms developed expertise in that area. These municipal advisory firms are generally referred to as "swap advisors."[13] Swap advisors may provide advice solely with respect to a municipal derivative transaction or may provide such advice in connection with other types of municipal advisory activities.

In addition, municipal advisors may provide advice to municipal entities concerning investment strategies. These advisory firms assist in investing proceeds from bond offerings as well

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8 See Municipal Securities Rulemaking Board, "Unregulated Municipal Market Participants: A Case for Reform" (Apr. 2009), available at http://www.msrb.org/News-and-Events/Press-Releases/Press-Releases/~/media/Files/Special-Publications/MSRBReportonUnregulatedMarketParticipants_April09.ashx ("MSRB Study").

9 See id. (referring to municipal advisors as "financial advisors"). Approximately 43% of the $453 billion of municipal debt issued in 2008 (by par amount of bonds) (or 62% of the $315 billion of municipal debt issued with financial advisors) was issued with the assistance of "financial advisors" that were not part of dealer firms regulated by the MSRB. Id.

10 See id.

11 See Arthur Allen and Donna Dudney, May 2010, Does the Quality of Financial Advice Affect Prices? The Financial Review 45: 389 ("Allen and Dudney") (analyzing data from 1984 to 2002).

12 See infra note 93 and accompanying text (discussing the term "municipal financial products").

13 See MSRB study, supra note 8.

as manage other public monies. Such public monies include, for example, the general funds of states and local governments, public pension plans and funds dedicated to other public programs, such as public transportation, police and fire protection, public health, and public education. In addition, municipal advisors provide risk management, asset allocation, financial planning and cash management services and help state and local governments find and evaluate other advisors that manage public funds and provide other types of services.[14] As discussed in more detail below, unless excluded, these firms generally will have to register as municipal advisors under Section 15B of the Exchange Act.[15] Municipal advisors subject to registration may include federal and state registered investment advisers, depending on the activities in which they are engaged.[16]

Depending on their role with respect to investment strategies for municipal entities, commercial banks subject to regulation by various federal and state regulators may also engage in activities that would subject them to registration as municipal advisors. Such commercial banks may act as trustees with respect to an issuance of municipal securities or otherwise provide advice with respect to municipal financial products. Other persons that are subject to registration as municipal advisors include those who solicit municipal entities on behalf of the types of municipal advisors discussed above, as well as on behalf of brokers, dealers, municipal securities dealers and other parties.

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14 See Investment Advisers Act Release No. IA-2910 (August 3, 2009), 74 FR 39840, 39840-41 (August 7, 2009) ("Political Contributions Proposed Rule").

15 See infra Section II.A.1. (discussing the term "municipal advisor").

16 See id.

### b. Municipal Entities and Municipal Financial Products

The municipal securities market consists of over 51,000 issuers,[17] a diverse group that includes states, their political subdivisions such as cities, towns and counties, and their instrumentalities such as school districts or port authorities. These public bodies are governed by state and local laws, including state constitutions, statutes, city charters, and municipal codes.[18] Such constitutions, statutes, charters, and codes impose on municipal issuers a vast and varied multiplicity of requirements relating to governance, budgeting, accounting, and other financial matters.[19] The governing bodies of municipal issuers are as varied as the types of issuers, ranging from state governments, cities, towns, and counties with elected officials to commissions and other special purpose enterprises having appointed members.[20] Municipal securities are issued by government entities to pay for a variety of public projects, for cash flow and other governmental needs, and to fund non-governmental private projects by acting as a conduit on behalf of private organizations that wish to obtain tax-exempt interest rates.[21] As of March 31, 2010, municipal issuers had an outstanding principal amount of securities in excess of $2.8 trillion.[22] In 2009 alone, 15,055 new issuances of municipal securities took place, with a value of over $474.5 billion.[23] As

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17 See Report on Transactions in Municipal Securities, Office of Economic Analysis and Office of Municipal Securities, the Division of Trading and Markets, U.S. Securities and Exchange Commission, (July 1, 2004).

18 See American Bar Association, Disclosure Roles of Counsel in State and Local Government Securities Offerings 1 (Third Edition, 2009) ("Disclosure of Bond Counsel").

19 See id. at 2.

20 See id. at 78.

21 The Internal Revenue Code delineates the purposes for which tax-exempt municipal bonds may be issued for the benefit of organizations other than states and local governments, i.e., conduit borrowers. See 26 U.S.C. 142-145, 1394.

22 See Federal Reserve Board, Flow of Funds Accounts, Flows and Outstandings, First Quarter 2010.

23 See The Bond Buyer Yearbook 14 (SourceMedia Inc.) (2010).

of 2009, the average daily trading volume for the municipal bond market was $12.5 billion, as compared to $16.8 billion in the corporate bond market and $407.9 billion in the Treasury bond market.[24]

Presently, there is no definitive public information regarding the size of the municipal securities derivative market. Estimates of the size of the market have been reported to range from $100 billion to $300 billion, annually, in notional principal amount.[25] Estimates of the number of municipal issuers that have engaged in derivative transactions also vary. Since interest rate swaps are bilateral contracts entered into privately, there is no comprehensive data on how many municipal issuers are active in the $450 trillion interest-rate swap market, although some anecdotal evidence suggests a relatively wide use. For instance, a review of Pennsylvania Department of Community and Economic Development records revealed that 185 school districts, towns and counties in Pennsylvania have engaged in derivative transactions since 2003, when the state's law was explicitly changed to allow for such transactions.[26] However, other estimates have pointed to a less widespread use of derivatives among municipal issuers.[27] Since 2008, the use of derivatives by

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24 See SIFMA, Average Daily Trading Volume in the U.S. Bond Markets, available at http://www.google.com/url?q=http://www.sifma.org/uploadedFiles/Research/Statistics/StatisticsFiles/CM-US-Bond-Market-Trading-Volume-SIFMA.xls&sa=U&ei=5EHsTLvBFoT58AbPqdGjAQ&ved=0CBYQFjAA&usg=AFQjCNHv-FKIpdi_QB8m7jgvg2ssJJ1ikg (last visited November 23, 2010).

25 See MSRB Study, supra note 8.

26 See Martin Z. Braun, Deutsche Bank Swap Lures County as Budgets Crumble, Bloomberg (November 26, 2008).

27 In a 2007 study, Standard & Poor's identified 750 municipal issuers that used swaps. See Joe Mysak, California Declares War on State Bond Short-Sellers, Bloomberg Businessweek (Apr. 27, 2010). In October 2009, Moody's undertook a review of the state and local governments that it rates with outstanding swaps and identified 500 of such entities. See id. Moody's also estimated that Pennsylvania issuers accounted for 22% of all municipal derivative transactions, suggesting that broad participation by municipal entities in Pennsylvania did not translate into broad participation by municipal entities nationwide. See Joe Mysak, Swaps Nightmares Become Real for Amateur Financiers, Bloomberg (Dec. 15,

municipal entities has declined and many municipal entities have terminated existing interest rate swaps.[28]

According to recently available United States census data, as of 2008, there were approximately 2,550 state and local government employee retirement systems.[29] These "public pension plans" had over $2.2 trillion of assets and represented one-third of all U.S. pension assets.[30] Public pension plans might seek advice with respect to municipal financial products. In addition, third parties might solicit these public pension plans on behalf of firms seeking to provide services to these plans.[31]

College savings plans ("529 Plans") that comply with Section 529 of the Internal Revenue Code ("IRC") provide tax advantages designed to encourage saving for future college costs.[32] 529 Plans are sponsored by states, state agencies, or educational institutions. 529 plan assets have increased from $8.6 billion in 2000 to $104.9 billion in the fourth quarter of 2008, and the number of 529 plan participants has increased from 1.3 million in 2000 to 11.2 million in the fourth quarter of 2008.[33] Like public pension plans, 529 Plans might be solicited on behalf of third parties seeking

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2009).

28 See, e.g., Michael McDonald, Wall Street Collects $4 Billion From Taxpayers as Swaps Backfire, Bloomberg (Nov. 10, 2010), available at http://www.bloomberg.com/news/2010-11-10/wall-street-collects-4-billion-from-taxpayers-as-swaps-backfire.html.

29 See U.S. Census Bureau, State & Local Government Employee Retirement Systems, available at http://www.census.gov/govs/retire.

30 See Federal Reserve Board, Flow of Funds Accounts, Flows and Outstanding, First Quarter 2009 (at table L.119).

31 See Investment Advisers Act Release No. IA-3043 (July 1, 2010), 75 FR 41018, 41019 (July 14, 2010) ("Political Contributions Final Rule").

32 See 26 U.S.C. 529.

33 See Investment Company Institute, 529 Plan Program Statistics, December 2008 (May 22, 2009), available at http://www.ici.org/research/stats/529s/529s_12-08.

to do business with such plans.[34] 529 Plans might also seek advice with respect to municipal financial products and the issuance of municipal securities.[35]

In addition to public pension plans and 529 Plans, state and local government agencies also maintain other pools of assets including their general funds and other special funds. Governmental entities generally invest such funds in a combination of individualized investments, investment agreements or local government investment pools ("LGIPs").[36]

### 2. Historical Regulation of Municipal Securities and Municipal Advisors

#### a. Municipal Securities Market

The Securities Act of 1933 ("Securities Act")[37] and the Exchange Act[38] were both enacted with broad exemptions for municipal securities from all of their provisions except for the antifraud provisions of Section 17(a) of the Securities Act and Section 10(b) of the Exchange Act.[39] In the

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34 See Political Contributions Final Rule, supra note 31, at 41019.

35 See MSRB, Interpretation Relating to Sales of Municipal Fund Securities in the Primary Market, Interpretative Notice of Rule D-12, dated January 18, 2001, available at http://www.msrb.org/Rules-and-Interpretations/MSRB-Rules/Definitional/Rule-D-12.aspx?tab=2 (citing Letter from Catherine McGuire, Chief Counsel, Division of Trading and Markets, Commission, to Diane G. Klinke, General Counsel, MSRB, dated February 26, 1999, in response to letter from Diane G. Klinke, General Counsel, MSRB, to Catherine McGuire, Chief Counsel, Division of Trading and Markets, Commission, dated June 2, 1998).

36 45 states have LGIPs with assets totaling more than $250 billion. See Jeff Pentages, Local Government Investment Pools and the Financial Crisis: Lessons Learned, October 2009, Government Finance Review 25. States have several trillion dollars in state funds, including general funds, public pension plans, and 529 plans. See e.g.,The National Association of State Treasurers, Reforming Corporate Governance, State Government News (June/July 2003), available at http://www.csg.org/knowledgecenter/docs/sgn0307ReformingCorporate.pdf.

37 15 U.S.C. 77a et seq.

38 15 U.S.C. 78a et seq.

39 See, e.g., Securities Act Section 3(a)(2) (15 U.S.C. 77c(a)(2)); Securities Act Section 12(a)(2) (15 U.S.C. 77l(a)(2)); Exchange Act Section 3(a)(12) (15 U.S.C. 78c(a)(12)); Exchange Act Section 3(a)(29) (15 U.S.C. 78c(a)(29)).

early 1970s, the municipal securities market was still relatively small.[40] Up until that time, the standard issue was usually a general obligation bond, with fairly standard features, and the typical participants were banks, underwriters, and bond counsel.[41]

The regulation of the market for municipal securities at the federal level essentially began in 1975. Congress, as part of the Securities Act Amendments of 1975 ("1975 Amendments") created a limited regulatory scheme for the municipal securities market at the federal level.[42] That scheme included mandatory registration with the Commission of brokers and dealers in municipal securities and gave the Commission broad rulemaking and enforcement authority over such brokers and dealers. At the same time, however, Congress prohibited the Commission from requiring issuers of municipal securities to file disclosures, such as a prospectus, with the Commission before selling municipal securities to investors. Thus, the Commission's oversight of the municipal securities market has been focused on the intermediaries between municipal entities and investors, rather than on municipal entities themselves. In addition, the 1975 Amendments authorized the creation of the MSRB and granted it authority to promulgate rules concerning broker and dealer transactions in municipal securities.

As noted above, pursuant to the 1975 Amendments, all brokers and dealers that underwrite or trade municipal securities are required to register with the Commission.[43] If a person engages in the activities of a broker or dealer in municipal securities and does not satisfy an exception from the

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40 There were $235.4 billion of bonds outstanding in 1975 after an issuance of $58 billion in that year. See The Bond Buyer's Municipal Finance Statistics, 1975 (June 1976).

41 See Ann Judith Gellis, Municipal Securities Market: Same Problems – No Solutions, 21 Del. J. Corp. L. 427, 428 (1996).

42 See, e.g., Exchange Act Sections 15(c)(1), 15(c)(2), 15B(c)(1), 15B(c)(2), 17(a), 17(b), and 21(a)(1) (15 U.S.C. 78o(c)(1), 78o(c)(2), 78o-4(c)(1), 78o-4(c)(2), 78q(a), 78q(b), and 78u(a)(1)).

43 See 15 U.S.C. 78o-4(a)-(b).

registration provisions of the Exchange Act, such person must register with the Commission and may have to join a self-regulatory organization ("SRO") such as the Financial Industry Regulatory Authority, Inc. ("FINRA"). The Exchange Act defines a "municipal securities dealer" as any person (including a separately identifiable department or division of a bank) engaged in the business of buying and selling municipal securities for its own account other than in a fiduciary capacity, through a broker or otherwise[44] and requires such person to register with the Commission.[45] All brokers, dealers, and municipal securities dealers that engage in municipal securities transactions also must register with the MSRB and may not act in contravention of its rules.[46]

Since 1975, the municipal securities market has grown and evolved significantly to encompass a wide variety of bond structures[47] and credit enhancement. Municipal bond insurance was first introduced in 1971 and letter of credit-supported municipal bonds became very popular after the introduction of variable rate municipal bonds in the early 1980's.[48] In 1988, auction rate securities were introduced into the municipal market.[49] In addition, the municipal securities market has experienced a proliferation of complex derivative products beginning generally with interest

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44 See 15 U.S.C. 78c(a)(30).

45 See 15 U.S.C. 78o-4(a)-(b).

46 See MSRB rule A-12. These requirements for registration with the Commission and MSRB were in effect prior to passage of the Dodd-Frank Act and remain in effect.

47 Although it is helpful to think of municipal securities as either (1) general obligation bonds backed by the "full faith and credit" or an unlimited taxing power of the issuing entity or (2) revenue bonds, these general categories mask a broad range of diversity and complexity in the underlying security for municipal bonds. See Gary Gray and Patrick Cusatis, Municipal Derivative Securities – Uses and Valuation 21 (1995) (discussion of revenue bonds). See also Disclosure of Bond Counsel, supra note 18, at 54-55 (discussion of conduit bonds).

48 See Gray and Cusatis, supra note 47, at 30-31. The Commission notes that although the use of letters of credit and bond insurance have declined since 2008, these forms of credit enhancement remain an option for municipal entities to consider when issuing municipal securities.

49 See id. at 41.

rate swap transactions in the mid 1980's.[50] The availability of such a variety of financing options has led to an increasing reliance on external advisors by municipal entities that issue municipal securities to assist them in deciding among the multiplying array of structural choices for their debt and to help them negotiate with the multiplying number of intermediaries.[51]

**b. Municipal Advisors**

As discussed above, many market professionals are involved in issuing municipal securities and advising municipal entities with respect to municipal financial products. Historically, however, municipal advisors have been largely unregulated. For example, Commission staff has taken the position that financial advisors that limit their advisory activities to advising municipal issuers as to the structuring of their financings rather than providing advice for compensation regarding the investment of assets may not need to register as investment advisers.[52] Also, while dealers who act as municipal financial advisors are subject to regulation,[53] those regulations apply primarily to their business as dealers rather than their activities as municipal financial advisors.[54] Only in limited circumstances do those rules also apply to their municipal advisory activities.[55]

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50 See id. at 49. Municipal market derivatives must often be structured in accordance with the provisions of the tax code and other laws that apply to the issuance of tax-exempt financings. See David L. Taub, Understanding Municipal Derivatives, August 2005, Government Finance Review 21. Therefore, the most common use for derivatives in the municipal securities market is the execution of interest rate swaps to hedge issuers' interest rate exposure for new, anticipated, or outstanding debt. See id.

51 See Vijayakumar and Daniels, supra note 7, at 43-44.

52 See Division of Investment Management: Staff Legal Bulletin No. 11, Applicability of the Advisers Act to Financial Advisors of Municipal Securities Issuers (Sep. 19, 2000), available at http://www.sec.gov/interps/legal/slbim11.htm (explaining the staff's views as to the circumstances under which financial advisors (a) may be investment advisers, and (b) may give advice to issuers of municipal securities regarding the investment of offering proceeds without being deemed to be investment advisers).

53 See supra notes 43-46, and accompanying text.

54 See, e.g., 17 CFR 240.15Ba2-2.

55 For example, MSRB rule G-37 currently prohibits a broker, dealer or municipal securities

Additionally, approximately fifteen states, as well as a number of municipalities, have rules relating to the conduct of some municipal advisors (generally, financial advisors and swap advisors). For example, these governmental entities have enacted pay-to-play prohibitions that range from broad proscriptions relating to all state and local contracts to narrowly defined rules that only apply to specific situations.[56] Some state and local entities also require certain types of municipal advisors to disclose actual or apparent conflicts of interest.[57]

As discussed in more detail below, the Dodd-Frank Act amended the Exchange Act to require municipal advisors to register with the Commission.[58] In addition, the Exchange Act, as amended by the Dodd-Frank Act, grants the MSRB regulatory authority over municipal advisors,[59] and imposes a fiduciary duty on municipal advisors when advising municipal entities.[60]

**B. Interim Final Temporary Rule 15Ba2-6T and Form MA-T**

The registration requirement for municipal advisors became effective on October 1, 2010.[61] Consequently, municipal advisors must now be registered in order to continue their municipal advisory activities. To enable municipal advisors to temporarily satisfy the registration

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dealer from engaging in "municipal securities business with an issuer within two years after any contribution to an official of such issuer…" MSRB rule G-37. The rule further defines "municipal securities business" to include, among other things, underwriting and the provision of financial advisory services. See id.

56 See MSRB study, supra note 8.

57 See id.

58 See Section 975(a)(1)(B) of the Dodd-Frank Act; 15 U.S.C. 78o-4(a)(1)(B).

59 See 15 U.S.C. 78o-4(b).

60 See 15 U.S.C. 78o-4(c). Specifically, Exchange Act Section 15B(c)(1) provides that: "A municipal advisor and any person associated with such municipal advisor shall be deemed to have a fiduciary duty to any municipal entity for whom such municipal advisor acts as a municipal advisor, and no municipal advisor may engage in any act, practice, or course of business which is not consistent with a municipal advisor's fiduciary duty or that is in contravention of any rule of the Board." 15 U.S.C. 78o-4(c)(1).

61 See Section 975(i) of the Dodd-Frank Act.

requirement, and to make relevant information available to the public and municipal entities, the Commission adopted interim final temporary rule 15Ba2-6T[62] under the Exchange Act on September 1, 2010.[63] Pursuant to rule 15Ba2-6T, a municipal advisor must temporarily satisfy the statutory registration requirement by submitting certain information electronically through the Commission's public website on Form MA-T.[64]

Form MA-T requires a municipal advisor to indicate the purpose for which it is submitting the form (i.e., initial application, amendment or withdrawal), provide certain basic identifying and contact information concerning its business, indicate the nature of its activities, and supply information about its disciplinary history and the disciplinary history of its associated municipal advisor professionals.[65]

The interim final temporary rule provides that, unless rescinded, a municipal advisor's temporary registration by means of Form MA-T will expire 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 establishing a permanent registration regime; (2) the date on which the municipal advisor's temporary registration is rescinded by the Commission; or (3) December 31, 2011.[66] The temporary registration procedure was developed as a transitional step toward the implementation of a permanent registration regime for municipal advisors. Accordingly, as discussed in more detail

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62 17 CFR 240.15Ba2-6T.

63 See Securities Exchange Act Release No. 62824 (September 1, 2010), 75 FR 54465 (September 8, 2010) ("Temporary Registration Rule Release").

64 17 CFR 249.1300T. A municipal advisor that completes the temporary registration form and receives confirmation from the Commission that the form was filed is temporarily registered for purposes of Section 15B. Approximately 800 firms and individuals have registered on Form MA-T as municipal advisors.

65 See Temporary Registration Rule Release, supra note 63, for a full description of the requirements of Form MA-T.

66 See 17 CFR 240.15Ba2-6T(e).

below, the Commission is proposing rules and forms that, if adopted, would establish a permanent registration regime for municipal advisors that would require registration by all persons meeting the definition of municipal advisor, including those persons currently registered on Form MA-T. In discussing the proposed permanent registration regime, the Commission addresses issues, concerns, and suggestions relevant to this proposal raised by commenters in response to the interim final temporary rule.[67]

## II. DISCUSSION

Section 15B(a)(1) of the Exchange Act, as amended by the Dodd-Frank Act, makes it unlawful for a municipal advisor[68] 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.[69] Section 15B(a)(2) of the Exchange Act, as amended by 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

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67 The Commission received seven comment letters in response to the interim final temporary rule. The comment letters are available on the Commission's Internet website at http://www.sec.gov/comments/s7-19-10/s71910.shtml. The Commission also received one comment letter in response to SEC regulatory initiatives under the Dodd-Frank Act that discussed municipal advisors in connection with pay-to-play rules and, therefore, is outside the scope of this release relating to the registration of municipal advisors. This comment letter is available on the Commission's Internet website at http://www.sec.gov/comments/df-title-ix/municipal-securities-municipal-advisors/municipal-securities-municipal-advisors.shtml.

68 See infra Section II.A.1. (discussing the term "municipal advisor").

69 See 15 U.S.C. 78o-4(a)(1)(B). For a discussion of the terms "municipal entity," "obligated person," "municipal financial product," and "solicitation of a municipal entity or obligated person," see infra Section II.A.1.b.

the protection of investors.[70]

Consistent with the requirements of the Dodd-Frank Act, as discussed in detail below, the Commission is proposing new rules and forms that, if adopted, would establish a permanent Commission registration regime for municipal advisors. The Commission believes that the information disclosed pursuant to the proposed rules and forms would provide significant value to the Commission in its oversight of municipal advisors and their activities in the municipal securities markets. The information provided pursuant to these rules and forms would also aid municipal entities and obligated persons in choosing municipal advisors, engaging in transactions with municipal advisors, or participating in municipal securities transactions in which a municipal advisor is also engaged.

### A. Proposed Rules for the Permanent Registration of Municipal Advisors

#### 1. Proposed Rule 15Ba1-1: Definition of "Municipal Advisor" and Related Terms

##### a. Statutory Definition of "Municipal Advisor"

Section 15B(e)(4)(A) of the Exchange Act,[71] as amended by the Dodd-Frank Act, defines the term "municipal advisor" to mean a person (who is not a municipal entity[72] or an employee of a municipal entity) (i) that provides advice to or on behalf of a municipal entity or obligated person[73] with respect to municipal financial products[74] or the issuance of municipal securities, including advice with respect to the structure, timing, terms, and other similar matters concerning such

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70 See 15 U.S.C. 78o-4(a)(2).

71 15 U.S.C. 78o-4(e)(4)(A).

72 See infra note 82, and accompanying text (discussing the term "municipal entity").

73 See infra note 86, and accompanying text (discussing the term "obligated person").

74 See infra note 93, and accompanying text (discussing the term "municipal financial products").

financial products or issues, or (ii) that undertakes a solicitation of a municipal entity.[75]

The statutory definition of a "municipal advisor" is broad and includes persons that traditionally have not been considered to be municipal financial advisors. Specifically, the definition of a "municipal advisor" includes "financial advisors, guaranteed investment contract brokers, third-party marketers, placement agents, solicitors, finders, and swap advisors" that engage in municipal advisory activities.[76] These persons are included if they 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 (including advice with respect to the structure, timing, terms and other similar matters concerning such financial products or issues) or undertake a solicitation of a municipal entity or obligated person (i.e., "municipal advisory activities").[77]

The definition of "municipal advisor" explicitly excludes "a broker, dealer, or municipal securities dealer serving as an underwriter,"[78] as well as attorneys offering legal advice or providing services that are of a traditional legal nature and engineers providing engineering advice.[79] Further, the definition of "municipal advisor" excludes "any investment adviser registered under the

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75 See infra note 103, and accompanying text (discussing the term "solicitation of a municipal entity or obligated person").

76 See 15 U.S.C. 78o-4(e)(4).

77 The proposed definition of "municipal advisory activities" has the same meaning as the definition of "municipal advisory services" in connection with rule 15Ba2-6T. Thus, in proposed rule 15Ba1-1 the Commission is proposing to define "municipal advisory activities" to mean "advice to or on behalf of a municipal entity (as defined in Section 15B(e)(8) of the Securities Exchange Act of 1934 (15 U.S.C. 78o-4(e)(8)) or obligated person (as defined in Section 15B(e)(10) of the Securities Exchange Act of 1934 (15 U.S.C. 78o-4(e)(10)) with respect to municipal financial products or the issuance of municipal securities, including advice with respect to the structure, timing, terms, and other similar matters concerning such financial products or issues; or a solicitation of a municipal entity or obligated person." Proposed rule 15Ba1-1(e).

78 See infra note 105 (defining the term "underwriter").

79 See 15 U.S.C. 78o-4(e)(4)(C).

Investment Advisers Act of 1940, or persons associated with such investment advisers who are providing investment advice" and "any commodity trading advisor registered under the Commodity Exchange Act or persons associated with a commodity trading advisor who are providing advice related to swaps." [80]

Consequently, the statutory definition of "municipal advisor" includes distinct groups of professionals that offer different services and compete in distinct markets. The three principal types of municipal advisors are: (1) financial advisors, including, but not limited to, broker-dealers already registered with the Commission, that provide advice to municipal entities with respect to their issuance of municipal securities and their use of municipal financial products; (2) investment advisers that advise municipal pension funds and other municipal entities on the investment of funds held by or on behalf of municipal entities (subject to certain exclusions from the definition of a "municipal advisor"); and (3) third-party marketers and solicitors.

**b. Interpretation of the Term "Municipal Advisor"; Definition of Related Terms**

As noted above, Section 15B(e)(4) defines the term "municipal advisor" to mean, in part, a person (who is not a municipal entity or an employee of a municipal entity) that (i) provides 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 (ii) undertakes a solicitation of a municipal entity or obligated person.[81] The Commission discusses below the terms "municipal entity," "obligated person," "municipal financial products," and "solicitation of a municipal entity or obligated person" as well as other terms relating to the definition of "municipal advisor."

The registration requirement for municipal advisors under Section 15B of the Exchange Act

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80 See id.

81 See 15 U.S.C. 78o-4(e)(4).

applies to every person, including every natural person, who provides the types of advice described in the definition of "municipal advisor" – whether that person is an organized entity, sole proprietor, employee of a municipal advisory firm, or otherwise. For clarity, the Commission refers to each organized entity that is a municipal advisor, including sole proprietors, as a "municipal advisory firm," and each municipal advisor that is a natural person, including sole proprietors, as a "natural person municipal advisor."

Municipal Entity

Exchange Act Section 15B(e)(8) provides that the term "municipal entity" means "any State, political subdivision of a State, or municipal corporate instrumentality of a State, including - (A) any agency, authority, or instrumentality of the State, political subdivision, or municipal corporate instrumentality; (B) any plan, program, or pool of assets sponsored or established by the State, political subdivision, or municipal corporate instrumentality or any agency, authority, or instrumentality thereof; and (C) any other issuer of municipal securities."[82] To provide additional clarification with respect to clause (B) of the definition of "municipal entity," the Commission notes that the definition includes, but is not limited to, public pension funds, local government investment pools and other state and local governmental entities or funds, as well as participant-directed investment programs or plans such as 529, 403(b), and 457 plans.

One commenter asked whether "small issuers such as individual charter schools (that are deemed public schools by the state with individual charters)" would be included in the definition of "municipal entity."[83] Charter schools are considered to be public schools and generally derive their charter from a political subdivision of a state (for example, local school boards, state universities,

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82 15 U.S.C. 78o-4(e)(8).

83 See letter from Brad R. Jacobsen, dated September 7, 2010 ("Jacobsen Letter").

community colleges or state boards of education)[84] and, therefore, would fall under the definition of municipal entity.[85]

Obligated Person

Exchange Act Section 15B(e)(10) provides that the term "obligated person" means "any person, including an issuer of municipal securities, who is either generally or through an enterprise, fund, or account of such person, committed by contract or other arrangement to support the payment of all or part of the obligations on the municipal securities to be sold in an offering of municipal securities."[86] One commenter stated that this definition in Exchange Act Section 15B(e)(10) is "potentially very broad" and asked for clarification regarding the definition.[87] In particular, the commenter encouraged the Commission to interpret the definition of "obligated person" for purposes of the definition of "municipal advisor" consistently with the definition of "obligated person" for purposes of rule 15c2-12.[88]

The Commission believes that the definition of "obligated person" for purposes of the definition of "municipal advisor" should be consistent with the definition of "obligated person" for

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84 See, e.g., US Charter Schools, Answers to Frequently Asked Questions, available at http://www.uscharterschools.org/pub/uscs_docs/o/faq.html (last visited November 2, 2010).

85 15 U.S.C. 78o-4(e)(8). Charter schools, or persons that operate charter schools such as charter school management organizations that are organized as non-profit corporations, may issue municipal securities through a municipal entity for capital needs such as facilities that are not provided for by state funding or other reasons. See, e.g., US Charter Schools, Charter School Facilities: A Resource Guide on Development and Financing, available at http://www.uscharterschools.org/gb/dev_fin/financing.htm (last visited November 23, 2010). In that instance, the charter school or charter school management organization would be an obligated person with respect to the issuance of municipal securities and any related municipal financial products.

86 15 U.S.C. 78o-4(e)(10). Obligated persons can include entities acting as conduit borrowers such as private universities, non-profit hospitals, and private corporations.

87 See letter from John J. Wagner, Kutak Rock LLP, to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, dated September 28, 2010 ("Kutak Rock Letter").

88 See id. Rule 15c2-12 relates to municipal securities disclosures. See 17 CFR 240.15c2–12.

purposes of rule 15c2-12. Rule 15c2-12 defines the term "obligated person" to mean "any person, including an issuer of municipal securities, who is either generally or through an enterprise, fund, or account of such person committed by contract or other arrangement to support payment of all, or part of the obligations on the municipal securities to be sold in the Offering (other than providers of municipal bond insurance, letters of credit, or other liquidity facilities)."[89] Thus, pursuant to the exemptive authority granted in Section 15B(a)(4) of the Exchange Act, the Commission proposes to exempt from the definition of "obligated person" providers of municipal bond insurance, letters of credit, or other liquidity facilities. Specifically, proposed rule 15Ba1-1(i) provides that the term "obligated person" shall not include providers of municipal bond insurance, letters of credit, or other liquidity facilities.[90] The Commission believes that this interpretation does not conflict with the goals of the Dodd-Frank Act to provide further protections for certain entities that participate in borrowings in the municipal securities market and would help ensure uniformity among rules relating to such market. Providers of municipal bond insurance, letters of credit, or other liquidity facilities are generally non-governmental providers of credit enhancements.[91] As providers of credit enhancement, these entities are not borrowing funds through a municipal entity and, therefore, the Commission believes they do not require the type of protection that should be applicable with respect to those who borrow funds through municipal entities in municipal securities transactions. In addition, the Commission notes that this interpretation would further uniformity among rules relating to the definition of obligated persons in the municipal securities

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89 See 17 CFR 240.15c2–12(f)(10). "Offering" as used in this definition is defined in rule 15c2-12(a). See 17 CFR 240.15c2–12(a).

90 See proposed rule 15Ba1-1(i). See also Securities Exchange Act Release No. 34961 (November 10, 1994), 59 FR 59590 (November 17, 1994).

91 The Commission notes that a municipal entity that provides credit enhancement could be an obligated person for purposes of the proposed rule.

market.[92]

Municipal Financial Products; Investment Strategies

Section 15B(e)(5) provides that the term "municipal financial product" means "municipal derivatives, guaranteed investment contracts, and investment strategies."[93] Exchange Act Section 15B(e)(3) provides that "the term 'investment strategies' includes plans or programs for the investment of the proceeds of municipal securities that are not municipal derivatives, guaranteed investment contracts, and the recommendation of and brokerage of municipal escrow investments."[94] One commenter requested that the Commission clarify the term "investment strategies" for purposes of the definition of "municipal financial products."[95] The Commission notes that the definition of "investment strategies" provides that it "includes" plans or programs for the investment of the proceeds of municipal securities and, therefore, the Commission interprets the definition to mean that it includes, without limitation, the investment of the proceeds of municipal securities. Further, the Commission interprets this definition to include plans, programs, or pools of assets that invest funds held by or on behalf of a municipal entity, and, therefore, any person that provides advice with respect to such funds must register as a municipal advisor unless it is covered by one of the exclusions discussed below. Consistent with this interpretation, proposed rule 15Ba1-1(b) provides that the term "investment strategies" includes "plans, programs or pools of assets that

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92 See Kutak Rock Letter.

93 15 U.S.C. 78o-4(e)(5).

94 15 U.S.C. 78o-4(e)(3).

95 See letter from Carolyn Walsh, Vice President and Senior Counsel, Center for Securities, Trust and Investments, American Bankers Association ("ABA"), and Deputy General Counsel, ABA Securities Association, to Elizabeth M. Murphy, Secretary, Commission, dated October 13, 2010 ("ABA Letter"). See also letter from Leslie M. Norwood, Managing Director and Associate General Counsel, Securities Industry and Financial Markets Association ("SIFMA"), to Martha Haines, Assistant Director and Chief, Office of Municipal Securities, Commission, dated November 15, 2010 ("SIFMA Letter") (suggesting interpretations of the term "investment strategies").

invest funds held by or on behalf of a municipal entity."[96] In proposing this interpretation of the term "investment strategies," the Commission considered the statutory definitions of "municipal advisor" and "municipal entity." Specifically, the Commission noted that the definition of a "municipal entity" includes "any plan, program, or pool of assets sponsored or established by the State, political subdivision, or municipal corporate instrumentality or any agency, authority, or instrumentality thereof."[97] Based on these definitions, the Commission believes it was Congress's intent to include in the definition of "municipal advisor" persons that provide advice with respect to plans, programs or pools of assets that invest funds held by, or on behalf of, a municipal entity, such as a 529 college savings plan, LGIP or public pension plan. Such plans, programs, and pools of assets are generally funded from sources other than proceeds of municipal securities, such as families who wish to save for a child's college expenses, general monies of state and local governments being temporarily invested prior to their budgeted expenditure, and pension contributions from employees and state and local government employers. As a result, the Commission does not believe that it was Congress's intent to limit the requirement to register as a municipal advisor only to those persons that provide advice with respect to plans or programs for the investment of proceeds from municipal securities. Also, because every bank account of a municipal entity is comprised of funds "held by or on behalf of a municipal entity," money managers providing advice to municipal entities with respect to their bank accounts could be municipal advisors. The Commission notes, however, that to the extent a person is providing advice to a pooled investment vehicle in which a municipal entity has invested funds along with other investors that are not municipal entities, the pooled investment vehicle would not be considered funds "held by or on behalf of a municipal entity" and, therefore, the person providing

96 Proposed rule 15Ba1-1(b).

97 15 U.S.C. 78o-4(e)(8)(B).

advice to the pooled investment vehicle would not have to register as a municipal advisor.[98]

One commenter that asked for clarification regarding the definition of the term "investment strategies" stated that it assumes that "once the proceeds of a municipal securities offering are commingled with other operating funds or the general funds of the municipal entity that they lose their characteristic as 'proceeds' under the statute, and the provision of advice by a bank to the municipal entity with respect to the investment of such operating or general funds would not make the bank a 'municipal advisor' under the statute."[99] Further, this commenter stated that it assumes that "the proceeds of a municipal securities offering that are used to fund a municipal pension plan, once deposited in the plan and commingled with other funds, would likewise lose their characteristic as proceeds under the statute; and the provision of advice by a bank to the municipal entity with respect to the investment of plan assets would not make the bank a 'municipal advisor' under the statute."[100]

As noted above, the Commission is proposing to interpret the term "investment strategies" to include plans, programs or pools of assets that invest funds held by or on behalf of a municipal entity, as well as plans or programs for the investment of the proceeds of municipal securities that are not municipal derivatives or guaranteed investment contracts, or the recommendation of or brokerage of municipal escrow investments. Municipal entities utilizing the services of advisors with respect to plans, programs or pools of assets that invest funds are subject to the same risks

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98 To the extent that the pooled investment vehicle is a LGIP, the pooled investment vehicle would be considered to be funds "held by or on behalf of" a municipal entity and, therefore, a person providing advice with respect to a LGIP would have to register as a municipal advisor. See also supra note 36 (discussing LGIPs).

99 See ABA Letter. See also SIFMA Letter (suggesting that moneys in a commingled account would not be considered proceeds unless the municipal entity specifically communicates that such investment is being made with proceeds of an issue of municipal securities).

100 See ABA Letter.

regardless of whether those funds are the proceeds of municipal securities. The Commission does not have any evidence that the competency of the advisors or quality of advice needed by municipal entities with respect to the proceeds of municipal securities and municipal escrow investments is any different than with respect to the investment of other public funds – which may exceed the amount of proceeds of municipal securities or municipal escrow investments. Furthermore, this approach avoids any need to trace the investment of proceeds of municipal securities commingled with other public funds and eliminates the potential for abuse from the artificial commingling of the proceeds of municipal securities with other public funds solely to avoid registration as a municipal advisor and compliance with any rules or regulations relating to such advisors.

Municipal Derivatives

The term "municipal derivatives" is not defined in Section 15B of the Exchange Act. Accordingly, the Commission is proposing, in rule 15Ba1-1(f), that the term "municipal derivatives" means "any swap (as defined in Section 1a(47) of the Commodity Exchange Act (7 U.S.C. 1a(47)) and Section 3(a)(69) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(69)), including any rules and regulations thereunder) or security-based swap (as defined in Section 3(a)(68) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(68)), including any rules and regulations thereunder) to which a municipal entity is a counterparty, or to which an obligated person, acting in its capacity as an obligated person, is a counterparty."[101] Thus, the Commission is including in the definition of "municipal derivatives" the definitions of "swap" and "security-based swap," as those terms are defined by statute (and any rules or regulations thereunder). The Commission believes it is appropriate to use such definitions for purposes of defining the term "municipal derivatives" where the counterparty is a municipal entity or obligated person.

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101 See proposed rule 15Ba1-1(f).

Solicitation of a Municipal Entity or Obligated Person

The definition of "municipal advisor" in Exchange Act Section 15B(e)(4) includes a person that undertakes a solicitation of a municipal entity or obligated person.[102] Exchange Act Section 15B(e)(9) provides that the term "solicitation of a municipal entity or obligated person" means "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 (as defined in section 202 of the Investment Advisers Act of 1940 [15 U.S.C. 80b-2]) that does not control, is not controlled by, or is not under common control with the person undertaking such solicitation 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."[103] As a result of this definition, the Commission notes that, unless an exclusion applies, any third-party solicitor that seeks business on behalf of a broker, dealer, municipal securities dealer, municipal advisor or investment adviser from a municipal entity must register as a "municipal advisor." For example, a third-party solicitor that seeks business on behalf of an investment adviser from a municipal pension fund or a local government investment pool must register as a "municipal advisor." In addition, the determination regarding whether a solicitation of a municipal entity requires a person to register as a municipal advisor is not based on the number, or size, of

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102 See 15 U.S.C. 78o-4(e)(4)(A)(ii). The Commission notes that the definition of "municipal advisor" under Section 15B(e)(4)(A) means, in part, a person that "undertakes a solicitation of a municipal entity." Id. In defining the phrase "solicitation of a municipal entity," Section 15B includes within that phrase, the words "or obligated person." See 15 U.S.C. 78o-4(e)(9). Section 15B(a)(1)(B) also includes solicitations of obligated persons. Thus, the Commission interprets the definition of "municipal advisor" to include the solicitation of a municipal entity or obligated person.

103 15 U.S.C. 78o-4(e)(9).

investments that are solicited. Thus, the Commission would consider a solicitation of a single investment of any amount in a municipal entity to require the person soliciting the municipal entity to register as a municipal advisor.

As noted above, the definition of "solicitation of municipal entity or obligated person" applies to solicitations on behalf of a broker, dealer, municipal securities dealer, municipal advisor, or investment adviser that does not control, is not controlled by, or is not under common control with the person undertaking such solicitation. Accordingly, persons soliciting on behalf of affiliated entities would not fall within the definition of municipal advisor and would not be required to register pursuant to Section 15B of the Exchange Act. The statute would not, however, preclude such persons from registering as municipal advisors and being subject to the rules and regulations applicable to registered municipal advisors. For example, a person that makes a direct or indirect communication with a municipal entity or obligated person on behalf of a broker, dealer, municipal securities dealer, municipal advisor, or investment adviser that controls, is controlled by, or is under common control with the person undertaking such communication, where the communication is 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, may voluntarily file Form MA or MA-I, as applicable, and apply to register as a municipal advisor. By registering as a municipal advisor, such person must comply with all federal securities laws and rules or regulations promulgated thereunder relating to registered municipal advisors, including the obligation to comply with MSRB rules that apply to municipal advisors.[104]

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[104] Recently proposed amendments to the Investment Advisers Act seek to permit investment advisers to pay any "regulated municipal advisor" to solicit government entities on its

### c. Exclusions from the Definition of "Municipal Advisor"

Broker, Dealer, or Municipal Securities Dealer Serving as an Underwriter

The definition of "municipal advisor" in proposed rule 15Ba1-1(d) would clarify that the exclusion from the definition for a broker, dealer, or municipal securities dealer serving as an underwriter[105] does not apply when such persons are acting in a capacity other than as an underwriter on behalf of a municipal entity or obligated person.[106] The Commission interprets the exclusion to apply solely to a broker, dealer, or municipal securities dealer serving as an underwriter on behalf of a municipal entity or obligated person in connection with the issuance of municipal securities.[107] Thus, a broker, dealer or municipal securities dealer would not be excluded from the definition of a "municipal advisor" if the broker, dealer or municipal securities dealer engages in municipal advisory activities when acting in a capacity other than as an underwriter on behalf of a municipal entity or obligated person. For example, a broker-dealer advising a municipal entity with

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behalf. See Investment Advisers Act Release No. IA-3110 at 69 (November 19, 2010). Such solicitors may include affiliated entities of the investment adviser. As part of its deliberations with respect to the Dodd-Frank Act, Congress expressed its intent that municipal advisors be permitted to solicit government clients and be subject to regulation as municipal advisors. See id. at n. 217. Allowing entities to register as municipal advisors and subject themselves to the regulatory regime for municipal advisors as a condition to being paid as solicitors on behalf of affiliated investment advisers does not contravene this Congressional intent.

105 The term "underwriter" is defined in Section 2(a)(11) of the Securities Act of 1933. See 15 U.S.C. 77b(a)(11).

106 See 15 U.S.C. 78o-4(e)(4)(C) (providing that the definition of "municipal advisor" does not include a broker, dealer, or municipal securities dealer serving as an underwriter (as defined in section 2(a)(11) of the Securities Act of 1933)).

107 See Temporary Registration Rule Release, supra note 63, at 54467, n.19. See also S. REP. NO. 176, 111th Cong., 2d. Sess. 148 (2010) ("Senate Report") (noting the need to subject activities such as solicitation of a municipal entity to engage an investment adviser to MSRB regulation). The Commission believes that Congress excluded a broker, dealer or municipal securities dealer acting as an underwriter on behalf of a municipal entity or obligated person in connection with the issuance of municipal securities because such activity is already subject to MSRB rules.

respect to the investment of bond proceeds or the advisability of a municipal derivative, would be a municipal advisor with respect to those activities. In addition, a broker-dealer acting as a placement agent for a private equity fund that solicits a municipal entity or obligated person to invest in the private equity fund would be a municipal advisor with respect to that activity. The Commission notes that including such activities within the scope of municipal advisory activities is consistent with the Exchange Act.[108]

One commenter asked for clarification regarding whether a broker-dealer or another entity that provides advice or assistance to a municipal entity on an informal non-contractual (and non-compensated) basis would have to register as a municipal advisor.[109] This commenter believes that such persons should not have to register as municipal advisors.[110] Another commenter, however, stated that "[a]ny advisor who provides 'free' service will be compensated at some point for this service. The services being rendered are the trigger for registration and the corresponding fiduciary duty, not the title of the relationship, the terms of the contract, or the compensation received. Such advisor should not be permitted to avoid registration and fiduciary responsibilities."[111] Similarly,

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108 See Exchange Act Section 15B(e)(4)(A) and (B) (including placement agents and solicitors that undertake a solicitation of a municipal entity in the definition of municipal advisor); Senate Report; Letter from Senator Christopher J. Dodd, U.S. Senate Committee on Banking, Housing and Urban Affairs, to Elizabeth M. Murphy, Secretary, Commission, dated February 2, 2010.

109 See Kutak Rock Letter. See also letter from Amy Natterson Kroll and W. Hardy Callcott, Bingham McCutchen LLP, to Elizabeth M. Murphy, Secretary, Commission, dated October 13, 2010 ("Bingham Letter") (stating that it urges "the Commission to clarify that providing uncompensated introductions to potential underwriters or other potential financing participants does not constitute a 'solicitation' that would trigger registration as a municipal advisor").

110 See Kutak Rock Letter.

111 See letter from Steve Apfelbacher, President, National Association of Independent Public Finance Advisors, to Commission, dated October 8, 2010 ("NAIPFA Letter"). See also Bingham Letter (acknowledging that "clean energy services companies ultimately do

another commenter stated that individuals that offer "'free' or 'voluntary' Municipal Securities Advisory Services should not be exempt from registration."[112]

In defining the term "municipal advisor" in Exchange Act Section 15B(e)(4), Congress did not distinguish between those municipal advisors who are compensated for providing advice and those who are not compensated for providing advice. Thus, consistent with Congress's definition of the term "municipal advisor," the Commission does not believe the issue of whether a municipal advisor is compensated for providing municipal advice should factor into the determination of whether the municipal advisor must register with the Commission.[113]

Registered Investment Advisers

Proposed rule 15Ba1-1(d)(2)(ii) would clarify the exclusion from the definition of "municipal advisor" in Exchange Act Section 15B(e)(4)(C) for Commission-registered investment advisers.[114] Specifically, consistent with the Commission's interpretation in connection with rule 15Ba2-6T, proposed rule 15Ba1-1(d)(2)(ii) would provide that the term "municipal advisor" shall

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receive compensation for their projects – but they do not get paid separately (either by municipal entities, or by the firms providing financing) for making introductions").

112 See letter from Joy A. Howard, Principal, WM Financial Strategies, to Commission, dated October 5, 2010 ("Howard Letter").

113 The Commission notes that in defining the term "solicitation of a municipal entity or obligated person" Congress included language that such solicitation means, in part, "a direct or indirect communication with a municipal entity or obligated person made by a person, for direct or indirect compensation." "Indirect compensation" has been interpreted by other regulatory agencies to include non-monetary compensation. For example, the Commodity Futures Trading Commission ("CFTC") has interpreted the term "indirect compensation," in the context of the registration requirements and procedures for introducing brokers, to include, among other things, soft compensation such as research. See CFTC Release on Introducing Brokers and Associated Persons of Introducing Brokers, Commodity Trading Advisors and Commodity Pool Operators; Registration and Other Regulatory Requirements, 48 FR 35248, 35251 (August 3, 1983) (the CFTC's definition of "introducing broker" excludes those persons who are not compensated, directly or indirectly, for their activities as introducing brokers).

114 See proposed rule 15Ba1-1(d)(2)(ii).

not include: "An investment adviser registered under the Investment Advisers Act of 1940 (15 U.S.C. 80b-1 et seq.) or a person associated with such registered investment adviser, unless the registered investment adviser or person associated with the investment adviser engages in municipal advisory activities other than providing investment advice that would subject such adviser or person associated with such adviser to the Investment Advisers Act of 1940."[115]

Thus, the Commission interprets the exclusion from the definition of "municipal advisor" in Exchange Act Section 15B(4)(C) for registered investment advisers and their associated persons who are providing investment advice, to mean that a registered investment adviser or an associated person of a registered investment adviser would not have to register as a "municipal advisor" with respect to the provision of any investment advice subject to the Investment Advisers Act.[116] A registered investment adviser or an associated person of a registered investment adviser must register with the Commission as a municipal advisor if the adviser or associated person engages in any municipal advisory activities that would not be investment advice subject to the Investment Advisers Act.[117] For example, a Commission-registered investment adviser that provides advice with respect to how a municipal entity should structure or issue municipal securities would be required to register as a municipal advisor.[118] A Commission-registered investment adviser that

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115 See id. See also Temporary Registration Rule Release, supra note 63, at 54467.

116 See id. The staff interprets broadly the term "advice" with respect to the Investment Advisers Act. See supra note 52 (noting the Division of Investment Management: Staff Legal Bulletin No. 11). For purposes of the Commission's interpretation under proposed rule 15Ba1-1(d)(2)(ii), the Commission interprets "advice" to include any activity that constitutes "advice" subject to the Investment Advisers Act.

117 Similarly, a municipal advisor registered under Section 15B of the Exchange Act may be required to register as an investment adviser if its business includes providing investment advice that is subject to the Investment Advisers Act. Commission staff has provided guidance with respect to circumstances under which a municipal advisor may be required to register as an investment adviser. See Staff Legal Bulletin No. 11, supra note 52.

118 The Commission notes that a person that provides advice as to whether and how a municipal

solicits a municipal entity on behalf of a municipal advisor would also be required to register as a municipal advisor. The Commission believes that this interpretation is in furtherance of the goals of the Dodd-Frank Act to regulate persons that engage in municipal advisory activities.

Commodity Trading Advisors

Consistent with the Commission's interpretation in connection with rule 15Ba2-6T, the Commission interprets the exclusion in the Dodd-Frank Act for registered commodity trading advisors and their related persons providing advice related to swaps to apply only to such persons when they are providing advice related to swaps, as that term is defined in Section 1a(47) of the Commodity Exchange Act and Section 3(a)(69) of the Exchange Act,[119] and any rules or regulations promulgated thereunder.[120] Accordingly, proposed rule 15Ba1-1(d)(2)(iii) would provide that the exclusion from the definition of "municipal advisor" in Exchange Act Section 15B(e)(4)(C) for registered commodity trading advisors, or any person associated with a registered commodity trading advisor, is only available to a commodity trading advisor or person associated with a commodity trading advisor, to the extent such commodity trading advisor or associated person of the commodity trading advisor is providing advice related to swaps. The exclusion would not apply to the commodity trading advisor or associated person of the commodity trading advisor to the extent he or she engages in municipal advisory activities other than the provision of advice related to swaps.[121] A commodity trading advisor, or an associated person of a commodity trading

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entity should issue municipal securities would not have to register with the Commission as an investment adviser. See id. (stating "[w]e would not consider a financial advisor to be an investment adviser if it limits its activities to providing advice as to whether and how a municipality should issue debt securities").

119 7 U.S.C. 1a(47) and 15 U.S.C. 78c(a)(69). The exclusion would not apply when such persons are providing advice with respect to security-based swaps.

120 See Temporary Registration Rule Release, supra note 63, at 54467.

121 See proposed rule 15a1-1(d)(2)(iii).

advisor, must register with the Commission as a municipal advisor if the commodity trading advisor, or an associated person of a commodity trading advisor, engages in any municipal advisory activities that do not include advice related to swaps.[122] For example, if an advisor is providing advice to a municipal entity with respect to engaging in a swap transaction and provides advice to the municipal entity with respect to the structure of a municipal securities offering, the advisor would have to register with the Commission as a municipal advisor and would be subject to regulation by the MSRB as a municipal advisor. In addition, a commodity trading advisor must register with the Commission if the advisor provides advice with respect to swaps on behalf of a municipal entity or obligated person, but is not registered as a commodity trading advisor.

Attorneys, Engineers and Other Professionals

The definition of municipal advisor in Exchange Act Section 15B(e)(4) excludes professionals such as attorneys offering legal advice and engineers providing engineering advice.[123] One commenter noted that the definition of "municipal advisor" does not contemplate a specific exclusion for accountants offering "traditional accounting advice."[124] In discussing what is "traditional accounting advice," the commenter noted the engagement of accountants by municipal entities in connection with the issuance of municipal securities for the purpose of consenting to the use of accountant prepared or audited financial statements and/or providing bring down or comfort letters[125] relating to such financial statements.[126]

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122 See id.

123 See 15 U.S.C. 78o-4(e)(4)(C).

124 See Kutak Rock Letter.

125 In auditing literature, bring down and comfort letters are referred to as "letters for underwriters." See AU Sec. 634, Letters for Underwriters. Thus, the Commission is proposing to use the term "letters for underwriters" for this purpose.

126 See Kutak Rock Letter.

Because accountants may provide advice to municipal entities that includes advice about the structure, timing, terms, and other similar matters concerning the issuance of municipal securities, the Commission does not believe it is appropriate to exclude these professionals from the definition of municipal advisor entirely. Accountants may also be engaged by municipal entities to provide other services, such as conducting feasibility studies or preparing financial projections.[127] In addition, as noted by this commenter, in defining "municipal advisor" in Exchange Act Section 15B(e)(4), Congress only excluded attorneys offering legal advice or services of a traditional legal nature, or engineers providing engineering advice.[128] At this time, the Commission believes that it is not necessary or appropriate to exclude all accountants from the definition of "municipal advisor."

The Commission believes, however, that the preparation or audit of financial statements, or the issuance of letters for underwriters[129] by accountants would not constitute the provision of advice within the meaning of Exchange Act Section 15B(e)(4)(A)(i).[130] Accordingly, in proposed rule 15Ba1-1(d)(2)(vi), the Commission proposes to exclude from the definition of a "municipal advisor" accountants preparing financial statements, auditing financial statements, or issuing letters for underwriters for, or on behalf of, a municipal entity or obligated person.[131]

In addition, with respect to the exclusion from the definition of "municipal advisor" for attorneys offering legal advice or services of a traditional legal nature, the Commission interprets

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127 See id. See also Howard Letter (stating that certified public accountants that provide advice on bond issues "clearly meet the definition of 'Municipal Advisor' under the Act and should be subject to registration").

128 See Kutak Rock Letter. See also 15 U.S.C. 78o-4(e)(4)(C).

129 See supra note 125.

130 See 15 U.S.C. 78o-4(e)(4)(A)(i).

131 See proposed rule 15Ba1-1(d)(2)(vi).

this exclusion to apply only when the legal services are to a client of the attorney that is a municipal entity or obligated person. Accordingly, proposed rule 15Ba1-1(d)(2)(iv) provides that the term "municipal advisor" shall not include any attorney unless the attorney engages in municipal advisory activities other than offering legal advice or providing services that are of a traditional legal nature to a client of the attorney that is a municipal entity or obligated person.[132] Generally, the Commission interprets advice provided by a lawyer to its client with respect to the structure, timing, terms and other similar matters concerning municipal financial products or the issuance of municipal securities to be services of a traditional legal nature if such advice is provided within a lawyer-client relationship specifically related to such products in conjunction with related legal advice. Thus, for example, advice comparing the structures, terms, or associated costs of issuance of different types of securities or financial instruments (such as fixed rate bonds or variable rate demand obligations) given by an attorney hired to advise a municipal entity client embarking on a bond offering, would be considered to be services of a traditional legal nature, as would advice concerning the tax consequences of alternative financing structures or advice recommending a particular financing structure due to legal considerations such as the limitations included in existing contracts and indentures to which the issuer is a party. However, advice which is primarily financial in nature, such as advice concerning the financial feasibility of a project or financing, advice estimating or comparing the relative cost to maturity of an issuance depending on various interest rate assumptions or advice recommending a particular structure as being financially advantageous under prevailing market conditions, would be primarily financial advice and not services of a traditional legal nature.

With respect to the exclusion from the definition of "municipal advisor" for engineers

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132 See proposed rule 15Ba1-1(d)(2)(iv).

providing engineering advice, one commenter requested that the Commission include in this exclusion "activity which is incidental to engineering services."[133] In addition, this commenter urged the Commission to "distinguish purely informational and educational activities which do not rise to the level of advice from individualized advice about the appropriate investment for a particular state or local government entity."[134] Moreover, this commenter stated that "a clean energy services company should not also be required to register as a municipal advisor simply because it provides cash-flow modeling and other similar information that is inextricably linked to the engineering analysis, even if that modeling is individualized to the municipal entity."[135] In addition, the commenter urged the Commission to define "advice" to "exclude feasibility studies that are a necessary part of any engineering projects, including clean energy services projects."[136]

As discussed above and below, the exclusions from the definition of "municipal advisor" included by Congress in Section 15B(e)(4) of the Exchange Act were limited.[137] With respect to engineers, the exclusion applies to engineers providing "engineering advice." For example, costing out engineering alternatives would not subject an engineer to registration as a municipal advisor because such activity would be considered engineering advice. The exclusion does not include circumstances in which the engineer is engaging in municipal advisory activities, including cash-flow modeling or the provision of information and education relating to municipal financial products or the issuance of municipal securities, even if those activities are incidental to the provision of engineering advice. In addition, the exclusion does not include circumstances in which

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133 See Bingham Letter.

134 Id.

135 Id.

136 Id.

137 See 15 U.S.C. 78o-4(e)(4)(C).

the engineer is preparing feasibility studies concerning municipal financial products or the issuance of municipal securities that include analysis beyond the engineering aspects of the project and, therefore, an engineer preparing such studies would be subject to registration as a municipal advisor.[138]

Employees of a Municipal Entity

Exchange Act Section 15B(e)(4)(A) provides that the term "municipal advisor" excludes employees of a municipal entity.[139] One commenter suggested that the Commission clarify that this exclusion from the definition of "municipal advisor" would include any person serving as an appointed or elected member of the governing body of a municipal entity, such as a board member, county commissioner or city councilman.[140] This commenter stated that because these persons are not technically "employees" of the municipal entity (but rather are "unpaid volunteers"), these persons would not fall within the exclusion from the definition of "municipal advisor" for "employees of a municipal entity" and, therefore, may have to register as municipal advisors.[141]

The Commission believes that the exclusion from the definition of a "municipal advisor" for "employees of a municipal entity" should include any person serving as an elected member of the governing body of the municipal entity to the extent that person is acting within the scope of his or

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138 A "feasibility study" is a report detailing the economic practicality of and the need for a proposed capital program. It frequently analyzes demand for the product or service being sold and forecasts financial statements or other operating statistics. The feasibility study may include a user or other rate analysis to provide an estimate of revenues that will be generated for the purpose of substantiating that debt service can be met from pledged revenues. In addition, the feasibility study may provide details of the physical, operating, economic or engineering aspects of the proposed project, including estimates of construction costs, completion dates and drawdown schedules. See MSRB Glossary of Municipal Securities Terms, available at http://www.msrb.org/msrb1/glossary/glossary_db.asp?sel=f.

139 15 U.S.C. 78o-4(e)(4)(A).

140 See Kutak Rock Letter.

141 See id. See also 15 U.S.C. 78o-4(e)(4)(A).

her role as an elected member of the governing body of the municipal entity. "Employees of a municipal entity" should also include appointed members of a governing body to the extent such appointed members are ex officio members of the governing body by virtue of holding an elective office.[142] The Commission does not believe that appointed members of a governing body of a municipal entity that are not elected ex officio members should be excluded from the definition of a "municipal advisor." The Commission believes that this interpretation is appropriate because employees and elected members are accountable to the municipal entity for their actions. In addition, the Commission is concerned that appointed members, unlike elected officials and elected ex officio members, are not directly accountable for their performance to the citizens of the municipal entity.

Banks

Another commenter stated that the Commission should exempt from the definition of a "municipal advisor" banks providing "traditional banking services" and banks and trust companies that provide "investment advisory services."[143] As support, this commenter stated that banks are currently well-regulated and banks that offer trustee services are subject to rigorous and frequent

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142 This would include persons appointed to fill the remainder of the term for an elective office.

143 See ABA Letter. In providing examples of the types of activities in which banks and trust companies engage, this commenter stated that: "[o]n the commercial side of the bank, these services and products include direct loans, checking accounts, and CDs. Banks of all sizes also frequently are asked to respond to RFP requests from municipal entities regarding investment products offered by the banking entity, such as interest-bearing bank deposits, money market mutual funds, or other exempt securities. Banks also are significant investors in the securities issued by municipalities and provide credit or, through their affiliates, underwriting services to municipalities when the city or township wants to buy a fire truck or build a new school or other similar facility. Furthermore, for over one hundred and fifty years, banks and trust companies have provided fiduciary services to municipal entities in the United States. In this capacity banks often manage investment accounts for local towns and act as trustees with respect to bond proceeds, escrow accounts, governmental pension plans and other similar capacities." Id.

examination, as well as extensive regulation by the various federal or state banking regulators.[144] The Commission notes that Congress included in the statutory definition of "municipal advisor" a limited number of exclusions from the definition, and such exclusions did not include banks in any capacity. As discussed below, under "Request for Comment," among other things, the Commission is seeking comment on whether the definition of a "municipal advisor" should exclude banks providing advice to a municipal entity or obligated person concerning transactions that involve a "deposit," as defined in Section 3(l) of the Federal Deposit Insurance Act,[145] at an "insured depository institution," as defined in Section 3(c)(2) of the Federal Deposit Insurance Act.[146] Such an exclusion, if adopted, would result in excluding banks from the definition of a "municipal advisor" to the extent that the bank is providing advice to a municipal entity or obligated person with respect to such traditional banking products as insured checking and savings accounts and certificates of deposit, while not excluding from the definition of a "municipal advisor" a bank that is providing advice to a municipal entity or obligated person concerning other municipal advisory activities. The Commission notes that, similarly, banks are not excluded from the requirement to register as municipal securities dealers.

Request for Comment

The Commission requests comments generally on its proposals discussed above and also requests comment on the following specific issues:

- In light of our understanding of Congressional objectives and intent, are the Commission's interpretations under the definition of "municipal advisor" and related terms, and the exclusions from the definition of "municipal advisor" appropriate?

144 See id.

145 12 U.S.C. 1813(l).

146 12 U.S.C. 1813(c)(2).

Should any of these interpretations be modified or clarified in any way?

- The Commission notes that the definition of "municipal entity" includes, but is not limited to, public pension funds, local government investment pools and other state and local governmental entities or funds as well as participant-directed investment programs or plans such as 529, 403(b), and 457 plans. Is the Commission's interpretation of "municipal entity" for purposes of the proposed definition of "municipal advisor" appropriate? Is additional clarification necessary? If so, how should the Commission further clarify this interpretation?
- In what circumstances with respect to municipal financial products or the issuance of municipal securities should charter schools be considered municipal entities? In what circumstances with respect to municipal financial products or the issuance of municipal securities should charter schools be considered obligated persons? To what extent do state laws vary in their treatment of charter schools in ways that would affect their classification as municipal entities or obligated persons?
- The Commission proposes to exempt from the definition of "obligated person" providers of municipal bond insurance, letters of credit, or other liquidity facilities so that the definition of "obligated person" for purposes of the proposed rules is consistent with the definition of "obligated person" in rule 15c2-12 under the Exchange Act. Should the proposed definition be modified or clarified in any way? Should the term "obligated person" for purposes of municipal advisor registration be consistent with the definition of "obligated person" for purposes of rule 15c2-12? If so, why? If not, why not? Should the Commission include additional exemptions from the definition of "obligated person"? If so, please explain and provide specific examples.

- The Commission proposes to interpret the term "investment strategies" to include plans or programs for the investment of the proceeds of municipal securities (other than municipal derivatives and guaranteed investment contracts), plans, programs or pools of assets that invest funds held by or on behalf of a municipal entity, or the recommendation of or brokerage of municipal escrow investments. Should the Commission modify or clarify this interpretation in any way? If so, why? If not, why not? Please provide any suggested alternative language. Should the Commission exclude plans, programs or pools of assets that invest funds held by or on behalf of a municipal entity that are not proceeds of the issuance of municipal securities from the definition of investment strategies? If so, why? If not, why not? If the Commission were to limit investment strategies to "plans or programs for the investment of the proceeds of municipal securities (other than municipal derivatives and guaranteed investment contracts) or the recommendation of or brokerage of municipal escrow investments," how should the Commission determine when funds should no longer be considered "proceeds of municipal securities?" What obligations should parties other than the municipal entity have in determining whether funds held by or on behalf of a municipal entity are proceeds of municipal securities?
- As noted above, to the extent a person is providing advice to a pooled investment vehicle in which one or more municipal entities are investors along with other investors that are not municipal entities, the pooled investment vehicle would not be considered funds "held by or on behalf of a municipal entity" and, therefore, a person providing advice to the pooled investment vehicle would not be required to register as a municipal advisor. Should the Commission modify or clarify this interpretation in any way? If so, why? If

not, why not? Please provide any suggested alternative language. Should the Commission provide that such interpretation should apply only if the investors that are not municipal entities are the primary investors in the pooled investment vehicle? If so, how, and above what level, should the Commission determine that investors that are not municipal entities are the primary investors in the pooled investment vehicle? Should such a determination be based on a dollar amount or a percentage of the pooled investment vehicle's assets? Should the Commission provide that this pooled investment vehicle interpretation would no longer apply if the municipal entity (or municipal entities) investing in the pooled investment vehicle becomes the primary investor in the pooled investment vehicle subsequent to the initial investment? If so, above what level of investment should a municipal entity (or municipal entities) be considered to be the primary investor in the pooled investment vehicle? Should such a determination be based on a dollar amount or a percentage of the pooled investment vehicle's assets?

- As discussed above, the Commission is proposing to interpret the term "investment strategies" to include plans, programs or pools of assets that invest funds held by or on behalf of a municipal entity. Thus, commingled proceeds, regardless of when they lose their characteristic as proceeds, would still constitute "funds held by or on behalf of a municipal entity" and, therefore, any advice with respect to such funds would be municipal advice, unless subject to an exclusion. Is this interpretation too broad? Please explain and include a discussion of concerns, if any, such an interpretation could raise.
- In interpreting the term "solicitation of a municipal entity or obligated person," the Commission notes that, unless an exclusion applies, any third-party solicitor that seeks

business on behalf of an investment adviser from a municipal entity or obligated person, such as a municipal pension fund or a local government investment pool, must register as a municipal advisor. In addition, the Commission notes that the determination regarding whether a solicitation of a municipal entity or obligated person requires a person to register as a municipal advisor is not based on the number, or the size, of investments that are solicited. Thus, the Commission would consider a solicitation of a single investment by a municipal entity or obligated person in any amount to require the person soliciting the municipal entity or obligated person to register as a municipal advisor. Do these interpretations require further clarification? If so, how? Should these interpretations be modified in any way? Please explain and provide suggested alternative language, as appropriate. Is there a de minimis number or size of investments that should be allowed to be solicited before a person is required to register as a municipal advisor? If so, what should this de minimis amount be? Please explain the rationale for providing for a de minimis exception.

- Should the Commission, as proposed, permit the voluntary registration by persons that solicit a municipal entity or obligated person on behalf of a broker, dealer, municipal securities dealer, municipal advisor, or investment adviser that controls, is controlled by, or is under common control with the person undertaking such solicitation? If not, why not? Should the Commission permit voluntary registration by any other group of persons? If so, which persons and why?
- In interpreting the term "solicitation of a municipal entity or obligated person," the Commission also notes that such solicitation must be "for the purpose of obtaining or retaining an engagement . . . in connection with municipal financial products [or] the

issuance of municipal securities." Are there types of obligated persons to which this definition should not apply in connection with the issuance of municipal securities? If so, please identify the types of obligated persons to which the definition should not apply and explain why. Are there types of municipal financial products (such as municipal derivatives which include swaps or security-based swaps where an obligated person is the counterparty) to which this definition should not apply? If so, please identify the types of municipal financial products to which the definition should not apply and explain why.

- Proposed rule 15Ba1-1(f) would define the term "municipal derivatives" to mean "any swap (as defined in Section 1a(47) of the Commodity Exchange Act (7 U.S.C. 1a(47)) and Section 3(a)(69) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(69)), including any rules and regulations thereunder) or security-based swap (as defined in Section 3a(68) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(68)), including any rules and regulations thereunder) to which a municipal entity is a counterparty, or to which an obligated person, acting in its capacity as an obligated person, is a counterparty." Should this definition be clarified or modified in any way? If so, how? Should the definition of municipal derivatives specifically include other financial products? For example, should the definition specifically include options, forwards or futures? If so, which products and why? Should this definition include a financial product that is composed of multiple components where one or more of such components is derivative in nature, such as a structured note or convertible bond?[147] Should this definition include financial products, in addition to swaps and security-based

147 See SIFMA Letter.

swaps, that are based on municipal securities that are exempted securities under the Exchange Act or are exempt from registration under the Securities Act? Should it include an over-the-counter option contract with a municipal entity? If so, which additional financial products should be included in the definition and why?

- Is our interpretation of the exclusion from the definition of a "municipal advisor" for a broker, dealer, or municipal securities dealer serving as an underwriter appropriate? Specifically, the Commission interprets this exclusion to mean that a broker-dealer acting as an underwriter or placement agent that solicits a municipal entity to invest in a security, or a broker-dealer acting as an underwriter that also advises a municipal entity with respect to the investment of proceeds of municipal securities or the advisability of a municipal derivative would be a municipal advisor. Should these interpretations be modified in any way, or further clarified? If so, how?
- Consistent with Congress's definition of the term "municipal advisor," the Commission does not believe that whether a municipal advisor is compensated for providing municipal advice should factor into the determination regarding whether the municipal advisor must register with the Commission. Are there any persons who engage in uncompensated municipal advisory activities, or municipal advisory activities for indirect compensation, that the Commission should exclude from the definition of "municipal advisor"? Please explain.
- The Commission would interpret the exclusion from the definition of "municipal advisor" in Exchange Act Section 15B(4)(C) for Commission-registered investment advisers and their associated persons who are providing investment advice, to mean that a Commission-registered investment adviser or an associated person of a Commission-

registered investment adviser would not have to register as a "municipal advisor" with respect to the provision of any advice that would subject the adviser (or associated person) to the Investment Advisers Act. Should this interpretation be modified or clarified in any way? If so, how?

- As a result of the changes in the threshold for registration as an investment adviser,[148] fewer entities will be required to register as investment advisers under the federal securities laws and will instead be subject to state registration requirements. Investment advisers that are not registered with the Commission would not be exempt from registration as municipal advisors to the extent that they are engaging in municipal advisory activities. Should state-registered investment advisers be exempt from the definition of "municipal advisor" to the extent they are providing advice that otherwise would be subject to the Investment Advisers Act, but for the operation of a prohibition to, or exemption from, Commission registration?
- Should the Commission's interpretation of the exclusion from the definition of a "municipal advisor" for registered commodity trading advisors and their associated persons providing advice related to swaps be modified in any way, or further clarified? If so, how?
- The Commission proposes to exclude from the definition of a "municipal advisor" persons preparing financial statements, auditing financial statements, or issuing letters for underwriters for, or on behalf of, a municipal entity or obligated person. Should persons providing these accounting services be excluded from the definition of "municipal advisor"? Are there additional types of services that an accountant provides

148 See 15 U.S.C. 80b-3a(a).

that should not require the registration of an accountant as a municipal advisor? If so, what additional types of accounting services should qualify an accountant for an exclusion from the definition of "municipal advisor"? Are there activities that are incidental to the provision of accounting services or inextricably linked to accounting services that can only reasonably be performed by an accountant that might otherwise constitute advice with respect to the issuance of municipal securities or municipal financial products?

- Should the Commission expand the exclusion from the definition of "municipal advisor" beyond engineers providing engineering advice? If so, why and how should such exclusion be expanded? If not, why not? How should the Commission interpret the term "engineering advice"? Are there activities that are "incidental to the provision of engineering advice" or "inextricably linked to engineering advice" that can only reasonably be performed by an engineer that might otherwise constitute advice with respect to the issuance of municipal securities or municipal financial products? As discussed above, the Commission does not interpret the exclusion of engineers providing engineering advice to include circumstances in which the engineer is preparing feasibility studies concerning municipal financial products or the issuance of municipal securities that include analysis beyond the engineering aspects of the project and, therefore, an engineer preparing such studies would be subject to registration as a municipal advisor. Is this an appropriate interpretation? Please explain.
- The Commission proposes to exclude from the definition of municipal advisor attorneys offering legal advice or services of a traditional legal nature. As discussed above, the Commission interprets this exclusion to apply only when the legal services are to a client

of the attorney that is a municipal entity or obligated person. Is this an appropriate interpretation? Please explain. Should the Commission provide an exclusion for all activities of an attorney as long as that attorney has an attorney-client relationship with the municipal entity or obligated person? Why or why not? Should the scope of the exclusion for attorneys be different for attorneys for obligated persons? Why or why not? Neither the Dodd-Frank Act nor the proposed rule defines the term "services of a traditional legal nature." Is the meaning of the term sufficiently clear? If not, should the Commission provide additional interpretive guidance? How should the Commission interpret the term?

- Are there other types of professional activities that should be excluded from the definition of a "municipal advisor"? Please explain.
- The Commission is proposing to exclude from the definition of "municipal entity" elected members of a governing body of a municipal entity, but to include appointed members of a municipal entity's governing body unless such appointed members are ex officio members of the governing body by virtue of holding an elective office. Are these distinctions appropriate? Please explain. Are there other persons associated with a municipal entity who might not be "employees" of a municipal entity that the Commission should exclude from the definition of a "municipal advisor"?
- Should employees of obligated persons be excluded from the definition of "municipal advisor" to the extent 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? One commenter[149] expressed concern that volunteers

[149] See Jacobsen Letter.

at entities such as charter schools could be required to register as municipal advisors. Are there types of persons other than employees of obligated persons that should be excluded from the definition of "municipal advisor?" If yes, please provide examples of the specific types of persons and the specific circumstances under which they should be excluded.

- Should the Commission exclude from the definition of a "municipal advisor" banks providing advice to a municipal entity or obligated person concerning transactions that involve a "deposit," as defined in Section 3(l) of the Federal Deposit Insurance Act[150] at an "insured depository institution," as defined in Section 3(c)(2) of the Federal Deposit Insurance Act,[151] such as insured checking and savings accounts and certificates of deposit? Should the Commission exclude from the definition of a "municipal advisor" banks that respond to requests for proposals ("RFPs") from municipal entities regarding other investment products offered by the banking entity, such as money market mutual funds or other exempt securities? Should the Commission exclude from the definition of "municipal advisor" a bank that provides to a municipal entity a listing of the options available from the bank for the short-term investment of excess cash (for example, interest-bearing bank accounts and overnight or other periodic investment sweeps) and negotiates the terms of an investment with the municipal entity?[152] Should the Commission exclude from the definition of "municipal advisor" a bank that provides to a municipal entity the terms upon which the bank would purchase for the bank's own account (to be held to maturity) securities issued by the municipal entity, such as bond

150 See supra note 145.

151 See supra note 146.

152 See SIFMA Letter.

anticipation notes, tax anticipation notes, or revenue anticipation notes?[153] Should the Commission exclude from the definition of "municipal advisor" a bank that directs or executes purchases and sales of securities or other instruments with respect to funds in a trust account or other fiduciary account in accordance with predetermined investment criteria or guidelines, including on a discretionary basis?[154] Should the Commission exclude from the definition of a "municipal advisor" banks and trust companies that provide other fiduciary services to municipal entities, such as acting as trustees with respect to governmental pension plans and other similar capacities? Should banks and trust companies be exempt from the definition of "municipal advisor" to the extent they are providing advice that otherwise would subject them to registration under the Investment Advisers Act, but for the operation of a prohibition to or exemption from registration? Please explain any response to these questions and to the extent that an exemption is recommended, please provide suggested exemptive language.

- Should the Commission exclude from the definition of "municipal advisor" a broker-dealer that provides a municipal entity with price quotations with respect to particular securities (or securities having particular characteristics) which the broker-dealer would be prepared to sell as principal or acquire for the municipal entity?[155] Should the Commission exclude from the definition of "municipal advisor" a broker-dealer that provides to a municipal entity a list of securities meeting specified criteria that are readily available in the marketplace, but without making a recommendation as to the merits of any investment particularized to the municipal entity's specific circumstances

153 See id.

154 See id.

155 See id.

or investment objectives?[156]

- Should the Commission exclude from the definition of "municipal advisor" an entity that provides to clients investment advice, such as research information and generic trade ideas or commentary that does not purport to meet the needs or objectives of specific clients, and is provided to a municipal entity as part of its ongoing ordinary communications?[157]
- Should the Commission permit registration of only separately identifiable departments or divisions of a bank ("SIDs")? Please explain. Would the following suggested rule text, based on MSRB rule G-1 relating to SIDs engaged in municipal securities dealer activitites, provide appropriate conditions for determining whether and when a SID engaged in municipal advisory activities may register as a municipal advisor: "(a) A separately identifiable department or division of a bank, as such term is used in Section 3(a)(30) of the Securities Exchange Act of 1934, is that unit of the bank which conducts all of the municipal advisory activities of the bank, provided that: (1) Such unit is under the direct supervision of an officer or officers designated by the board of directors of the bank as responsible for the day-to-day conduct of the bank's municipal advisory activities, including the supervision of all bank employees engaged in the performance of such activities; and (2) There are separately maintained in or separately extractable from such unit's own facilities or the facilities of the bank, all of the records relating to the bank's municipal advisory activities, and further provided that such records are so maintained or otherwise accessible as to permit independent examination thereof and enforcement of applicable provisions of the Exchange Act, the rules and regulations

156 See id.

157 See id.

thereunder and the rules of the MSRB relating to municipal advisors; (b) The fact that directors and senior officers of the bank may from time to time set broad policy guidelines affecting the bank as a whole and which are not directly related to the day-to-day conduct of the bank's municipal advisory activities, shall not disqualify the unit hereinbefore described as a separately identifiable department or division of the bank or require that such directors or officers be considered as part of such unit; and (c) The fact that the bank's municipal advisory activities are conducted in more than one geographic organizational or operational unit of the bank shall not preclude a finding that the bank has a separately identifiable department or division for purposes of this rule, provided, however, that all such units are identifiable and that the requirements of paragraphs (1) and (2) of section (a) of this rule are met with respect to each such unit. All such geographic, organizational or operational units of the bank shall be considered in the aggregate as the separately identifiable department or division of the bank for purposes of this rule."? Should this language be clarified or modified in any way? Please provide suggested alternative language, as appropriate. Are there reasons that the language of MSRB rule G-1, as modified, should not be used for SIDs engaging in municipal advisory activities? Please explain.

- Are there other exclusions from the definition of "municipal advisor" that the Commission should consider? Please explain.

**2. Proposed Rule 15Ba1-2**

**a. Application for Municipal Advisor Registration**

As discussed above, the registration requirement for municipal advisors under Section 15B of the Exchange Act applies to every person, including every natural person, who provides the types of advice described in the definition of a "municipal advisor" – whether that person is an organized

entity, sole proprietor, employee of a municipal advisory firm, or otherwise.[158] The information that is appropriate to seek from a firm before it can be allowed to register may be different from the information that is appropriate to seek from an individual. Thus, as described in detail below, the Commission is proposing the submission of Form MA by municipal advisory firms and the submission of Form MA-I by natural person municipal advisors. A sole proprietor is included in the definition of "municipal advisory firm" and "natural person municipal advisor." As a result, a sole proprietor would have to complete both Form MA and Form MA-I.

The Commission is proposing rule 15Ba1-2, which would establish the procedures by which a municipal advisor may apply to the Commission for registration. The proposed rule provides that an application for the registration of a municipal advisor must be filed electronically with the Commission on proposed new Form MA or Form MA-I, in accordance with the instructions to Forms MA or MA-I, as applicable.[159]

Proposed rule 15Ba1-2(a) would require a municipal advisory firm, including those currently registered on Form MA-T, to apply for registration with the Commission as a municipal advisor by completing Form MA in accordance with the instructions to the form, and filing Form MA electronically with the Commission. Proposed rule 15Ba1-2(b) would require a natural person municipal advisor, which would include an individual employee of a firm who meets the definition of municipal advisor, to apply for registration with the Commission as a municipal advisor by completing Form MA-I in accordance with the instructions to the form and electronically filing the

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158 See supra Section II.A.1. (discussing the definition of the term "municipal advisor").

159 If the Commission adopts the registration rule as proposed, municipal advisors may be required to file the forms required by the proposed rule in paper until such time as an electronic filing system is operational and capable of receiving the forms. Municipal advisors would be notified as soon as the electronic system can accept filing of the forms. At such time, the Commission may require each municipal advisor to promptly re-file electronically the applicable forms.

form with the Commission.[160]

Each Form MA and MA-I would be considered filed upon acceptance by the Commission. As noted above, proposed rule 15Ba1-2 would require Forms MA and MA-I to be filed electronically with the Commission.[161] Similarly, the Commission's registration forms for broker-dealers and investment advisers – Forms BD and ADV – are currently filed electronically through the Central Registration Depositary ("CRD") system operated by FINRA and the Investment Adviser Registration Depository ("IARD") system operated by FINRA, respectively. The Commission is considering whether forms for the permanent registration as a municipal advisor should be submitted through the Commission's Electronic Data Gathering, Analysis, and Retrieval System ("EDGAR"), or otherwise.[162] Filings required to be made on a day that the Commission's electronic filing system is closed would be considered timely filed, if filed electronically no later than the following business day.[163] Information required by the forms would be made publicly

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160 See infra note 233.

161 The Commission is also proposing that Forms MA-W (relating to withdrawals from registration) and MA-NR (relating to appointments of agent for service of process by non-resident municipal advisors and non-resident general partners and managing agents of municipal advisors) be filed electronically. Form MA-W would also constitute a "report" for purposes of Sections 15B(c), 17(a), 18(a), 32(a) (15 U.S.C. 78o-4(c), 78q(a), 78r(a), 78ff(a)) and other applicable provisions of the Exchange Act. See proposed rule 15Ba1-3(d). As a consequence, it would also be unlawful for a municipal advisor to willfully make or cause to be made, a false or misleading statement of a material fact or omit to state a material fact in Form MA-W.

162 If the registration forms are required to be submitted through EDGAR, the electronic filing requirements of Regulation S-T would apply. See generally 17 CFR 232 (governing the electronic submission of documents filed with the Commission). In addition, the Commission is considering whether a fee would be charged for filing Forms MA, MA-I, MA-NR or MA-W. For example, the MSRB, in conjunction with or on behalf of the Commission, has the authority to charge reasonable fees for the submission of information to information systems developed for the purpose of serving as a repository of information from municipal market participants. See Section 15B(b)(3) of the Exchange Act (15 U.S.C. 78o-4(b)(3)).

163 See proposed rule 15Ba1-2(c).

available unless otherwise noted below. In addition, Forms MA and MA-I would constitute "reports" for purposes of Sections 15B(c), 17(a), 18(a), 32(a) (15 U.S.C. 78o-4(c), 78q(a), 78r(a), 78ff(a)) and other applicable provisions of the Exchange Act.[164] As a consequence, it would be unlawful for a municipal advisor to willfully make or cause to be made, a false or misleading statement of a material fact or omit to state a material fact in Form MA or Form MA-I.

Request for Comment

The Commission requests comments generally on the proposed registration procedures and also requests comment on the following specific issues:

- Forms MA and MA-I would have to be filed electronically for purposes of registering with the Commission. Should the proposed rule include an option for the forms to be filed in paper rather than electronically? If so, please explain under what circumstances it would be appropriate for allowing paper filings of the forms.
- Are there any other issues concerning the filing of forms electronically about which the Commission should be made aware? If so, what are they?
- Are there specific capabilities that the Commission should consider in developing an electronic registration system? For example, should the system have the capability to cross-check other electronic registration systems, such as IARD and CRD? If so, which systems and why?
- Is EDGAR the best vehicle for filing of the required forms with the Commission? If not, what vehicle would be superior and why? Should the Commission allow the filing of documents in electronic media other than EDGAR? If so, please make specific recommendations.

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164 See proposed rule 15Ba1-2(d).

- Would requiring the filing of the forms on EDGAR be an appropriate way to make the requested information publicly available? Should the Commission require website posting of the information instead or in addition? What advantages, if any, would website posting have over requiring that the information be filed, and made publicly available, on EDGAR?
- Does the method for submitting documents in electronic format as opposed to paper format create any issues or hardships for any group of potentially affected firms?

**b. Instructions and Glossary**

The Commission is proposing a set of instructions ("Instructions"), which include general instructions for proper completion and submission of each of the proposed Forms MA, MA-I, MA-W and MA-NR ("General Instructions"), specific instructions for the completion of Form MA and Form MA-I ("Instructions to Form MA" and "Instructions to Form MA-I", respectively), and a glossary of terms ("Glossary") intended to help municipal advisors complete the forms for registration. These Instructions and Glossary are attached to this release, together with proposed Forms MA, MA-I, MA-W and MA-NR.[165] The instructions are intended to answer basic questions concerning completion of the forms. Generally, the definitions in the Glossary are derived from Form ADV,[166] the terms in Exchange Act Section 15B(e),[167] and the definitions in proposed rule 15Ba1-1.[168] For ease of reference, we are proposing one Glossary that would apply to all of the

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165 Proposed Form MA-W would be used for withdrawal from registration as a municipal advisor, and proposed Form MA-NR would be used for the appointment of an agent for service of process by a non-resident municipal advisor or a non-resident general partner or managing agent of a municipal advisor. See infra Sections II.A.3.b. and II.A.5. (discussing Forms MA-W and MA-NR, respectively).

166 See 17 CFR 279.1.

167 See 15 U.S.C. 78o-4(e).

168 See proposed rule 15Ba1-1.

proposed forms. All terms in the forms that appear in italics are defined or described in the Glossary.[169]

General Instruction 1 would direct an applicant looking for more information about the Commission's rules with respect to municipal advisors and the Exchange Act to the Commission's website. General Instruction 2 explains who should file Forms MA, MA-I, MA-NR and MA-W, including who may voluntarily register as a municipal advisor. General Instruction 3 would instruct an applicant with respect to the organization of Form MA (for example, that Form MA also includes Schedules A, B, C, and D, as well as Criminal Action, Regulatory Action, and Civil Judicial Action Disclosure Pages, as described further below), and would require that an applicant complete all items in Form MA. General Instruction 4 would provide comparable instructions as to the organization and completion of Form MA-I and the schedules and disclosure pages required by that form. General Instruction 5 would instruct that domestic municipal advisors would be required to execute the Domestic Execution Page to Form MA, while non-resident municipal advisors would be required to execute the Non-Resident Municipal Advisor Execution Page. General Instruction 6 would provide that with respect to Form MA-I, a municipal advisor would sign Item 7 of that form. General Instruction 7 would set forth the applicable person to sign Form MA or MA-I on behalf of the applicant, and that such person would be the sole proprietor (in the case of a sole proprietorship), a general partner (in the case of a partnership), an authorized principal (in the case of a corporation), and for all others, an authorized individual who participates in managing or directing the municipal advisor's affairs, or in the case of a natural person, the natural person filing

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169 There are a number of terms in the Glossary. In addition to those described elsewhere in this release, the Glossary also includes definitions or descriptions of the following terms: charged, Chief Compliance Officer, contingent fees, discretionary authority, enjoined, federal banking agency, felony, foreign financial regulatory authority, found, investigation, investment-related, involved, minor rule violation, misdemeanor, order, person, proceeding, resign, and supervised person.

the form on its own behalf, and that in all cases the signature should be a typed name. General Instructions 8 and 9 discuss when to update Forms MA and MA-I respectively, as discussed further herein.[170] General Instruction 10 would provide that an applicant would complete and file all of the forms electronically, and would provide the website for the electronic filing system once the appropriate web address has been confirmed. General Instruction 11 would provide the instructions for electronic filing with the Commission. General Instructions 12 and 13 would provide instructions for how and when an applicant would complete a self-certification as to its qualifications as a municipal advisor and ability to comply with federal securities laws. General Instruction 14 would discuss the requirement for a non-resident municipal advisor to attach a legal opinion to its Non-Resident Municipal Advisor Execution Page to Form MA.

The General Instructions would also inform an applicant that the Commission collects information for regulatory purposes, that filing the Form MA or MA-I is mandatory for municipal advisors that are required to register with the Commission, that the Commission will not accept forms that do not include the required information, and that the Commission will maintain and make publicly available the information submitted on the forms.

The Instructions also would provide some instructions specific to each of Form MA and Form MA-I. Instruction 1 to Form MA would explain that a municipal advisor that has taken over the business of another municipal advisor or has changed its structure or legal status would be a new organization with registration obligations under the Exchange Act. A municipal advisor that is acquiring or assuming substantially all of the assets and liabilities of the advisory business of a registered municipal advisor would file a new application for registration on Form MA within 30 calendar days of the succession, and once the new registration is effective, Form MA-W (as

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170 See infra Section II.A.4.

described below) must be filed to withdraw the registration of the acquired municipal advisor. If a new municipal advisor is formed solely as a result of a change in form of organization, a reorganization, or a change in the composition of a partnership, and there has been no practical change in control or management, the applicant may amend the existing registration to reflect the changes by filing an amendment within 30 calendar days after the change or reorganization. Instruction 2 to Form MA would explain that the response to Item 4 of Form MA (described below) should reflect the applicant's current municipal advisory activities, except with respect to its responses regarding the types of compensation the applicant expects to accept, or the types of municipal advisory activities in which the applicant expects to engage, during the next year. Instruction 3 to Form MA would explain that Schedule D is to be completed if any response to Form MA requires further explanation, or if the applicant wishes to provide additional information.

Instruction 1 to Form MA-I would explain that the applicant must enter its CRD number (if assigned), his or her social security number,[171] and the addresses of all offices at which he or she will be physically located or supervised, in Item 1 of the form. Instruction 2 to Form MA-I would clarify that for purposes of completing Item 2 to Form MA-I, the applicant must enter all the other names that the applicant is using, has used, is known, or has been known, other than the applicant's legal name, since the age of 18, which would include nicknames, aliases, and names used before and after marriage. Instruction 3 to Form MA-I would make clear that for purposes of Item 3, with respect to the applicant's residential history for the past 5 years, post office boxes may not be used to complete the response and the applicant may not leave any gaps in residential history greater than 3 months. Instruction 4 to Form MA-I would provide that with respect to Item 4 of Form MA-I, the

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171 An applicant's social security number would not be made publicly available. This information is necessary in connection with the Commission's enforcement and examination functions pursuant to Section 15B(c) of the Exchange Act (15 U.S.C. 78o-4(c)).

applicant's employment history for the past 10 years must be provided with no gaps greater than 3 months, and that the history should account for full-time and part-time employment, self-employment, military service and homemaking, and that unemployment, full-time education, extended travel, and other similar statuses should be included. Instruction 5 to Form MA-I for Item 5 of the form would explain that with respect to other businesses in which the applicant is engaged, the following information would be required: the name and address of the other business; nature of the business; position, title, or relationship with the other business, including duties; start date of the relationship with the other business; and the approximate number of hours per month devoted to the other business. Instruction 6 to Form MA-I for Item 6 would also make clear that responses to certain disclosure questions (discussed further below) could make the individual applicant subject to a statutory disqualification. As with Form MA, Instruction 7 to Form MA-I would indicate that the form would be signed (in Item 7 of Form MA-I) by typing a signature in the designated field, and would make clear that by typing a name, the signatory acknowledges and represents that the entry constitutes in every way, use, or aspect, his or her legally binding signature.

Request for Comment

The Commission requests comment generally on the proposed Instructions and Glossary and also requests comment on the following specific issues:

- Are the proposed General Instructions to Forms MA, MA-I, MA-W and MA-NR, and the specific Instructions to Forms MA and MA-I, sufficiently clear? If not, identify any instructions that should be clarified and, if possible, offer alternatives.
- Are the proposed definitions in the Glossary appropriate and sufficiently clear? If not, why not and how should they be modified or clarified? Please suggest alternate language, as applicable.

- Would it be useful if the Commission were to provide any additional instructions or define any additional terms in the Glossary? If so, what are they?
- Are there alternatives to requiring applicants to provide their social security number that the Commission should consider? If so, what are they?

**c. Information Requested in Form MA**

Proposed Form MA, which would be the form submitted by municipal advisors that are municipal advisory firms, is modeled primarily on Form ADV (Part 1)[172] used for the registration of investment advisers with the Commission, with appropriate changes made to reflect the differences in the activities of municipal advisors and the markets that they serve. More specifically, applicants would be required to provide the information described below. The items are drafted broadly to apply to the different types of municipal advisors that may register with the Commission. If adopted, the contents of the proposed form (unless otherwise specified) would be publicly available.

Form MA would ask for information about the municipal advisor and persons associated with the advisor. The Commission believes it is necessary to obtain the requested information to decide whether to grant or deny an application for registration, to manage the Commission's regulatory and examination programs, and to make such information available to the MSRB to better inform its regulation of municipal advisors. Specifically, the information would assist the Commission in identifying municipal advisors, their owners, and their business models, and in determining whether a municipal advisor might present sufficient concerns as to warrant the Commission's further attention in order to protect their clients. In addition, the information would assist the Commission in understanding the kinds of activities in which the applicant participates that form the basis for registration. The information would also be useful to the Commission in

172 See 17 CFR 279.1.

tailoring any requests for additional information that the Commission may send to a municipal advisor. Furthermore, the required information would assist the Commission in the preparation of the Commission's inspection and examination of municipal advisors and the MSRB in determining what regulations for municipal advisors may be necessary or appropriate and how such regulations might be best accomplished. In determining what information to propose to be disclosed, the Commission has also considered the broader public interest in the availability of information about municipal advisors to the public (including clients and prospective clients).

Form MA would require the applicant to provide information describing itself and its business through a series of fill-in-the-blank, multiple choice, and check-the-box questions. Form MA would first require a municipal advisor to indicate whether it is submitting the form for initial registration as a municipal advisor, submitting an annual update to a registration as a municipal advisor, or submitting an amendment (other than an annual update) to a registration as a municipal advisor.[173]

Request for Comment

The Commission requests comment generally on proposed Form MA and also requests comment on the following specific issues:

- The Commission requests comment generally on the organization of the form and the clarity of the language it has used.
- Is the use of Form MA for purposes of registration, submitting an annual update, and submitting an amendment (other than an annual update) appropriate? Would the use of the same form for multiple purposes be confusing for applicants? Would it be preferable to have a separate form for each of these purposes? Would these requirements be

[173] Amendments to Form MA are discussed further below. See infra Section II.A.4.

confusing or otherwise difficult for a municipal advisor to comply with?

- Are there any issues concerning the public availability of information provided on Forms MA and MA-I about which the Commission should be made aware? If so, what are they and how might they be addressed?

Item 1: Identifying Information

Proposed Form MA would require a municipal advisor to indicate the full legal name of the municipal advisor and, if different, the name under which it primarily conducts its municipal advisor-related business; the address of its principal office and place of business;[174] the telephone and fax numbers at that location; and any website addresses.[175] In addition, the municipal advisor would be required to supply the name of its Chief Compliance Officer, if any, and title of any other person whom the municipal advisor has authorized to receive information and respond to questions about the registration (the "contact person"), as well as the address, telephone number and fax number, if any, and e-mail address, if any, of the Chief Compliance Officer and any other contact person. Further, Item 1 of Form MA would require an applicant to list on Schedule D any additional names under which it conducts municipal advisor-related business and the offices at which such business is conducted. The Commission is requesting this identifying and contact information to assist the Commission and the staff in evaluating applications for registration and overseeing registered municipal advisors.

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174 Proposed rule 15Ba1-1(j) would define principal office and place of business to mean: "the executive office of the municipal advisor from which the officers, partners, or managers of the municipal advisor direct, control, and coordinate the activities of the municipal advisor." See also Glossary.

In addition, the municipal advisor must supply its mailing address, if it is different from its principal office and place of business.

175 If the applicant has more than one website, it would be required to list all its website addresses on Schedule D.

Form MA would also require a municipal advisor to provide its Employer Identification Number (used with respect to Internal Revenue Service matters), or, if a sole proprietor, a social security number.[176] If the municipal advisor is also registered with the Commission as an investment adviser, broker, dealer, or municipal securities dealer, or if it has previously registered with the Commission as a municipal advisor on Form MA-T, it would be required to provide its related SEC file number or numbers. In addition, if the municipal advisor has a number (a "CRD Number") assigned to it either under the CRD system or the IARD system, it would be required to provide its CRD Number. If it is otherwise registered with the Commission, it would also be required to disclose its other SEC file numbers.[177]

This information would allow the Commission to more effectively cross-reference those entities applying for registration as municipal advisors to those who are registered as brokers, dealers, municipal securities dealers, investment advisers, or otherwise registered[178] with the Commission. The ability to cross-reference would allow the Commission to assemble more complete information concerning a municipal advisor who is also registered as a broker, dealer, municipal securities dealer, investment adviser, or otherwise registered with the Commission to inform the Commission's decision as to whether to approve an application for registration as a

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176 We are proposing to ask for the social security number of sole proprietors to permit the electronic filing system to distinguish between persons who share the same name. This information is necessary in connection with the Commission's enforcement and examinations functions pursuant to Section 15B(c) of the Exchange Act (15 U.S.C. 78o-4(c)). To protect the privacy of these persons, the social security numbers would not be available on the public disclosure system. Similarly, the public disclosure system would not report the home address of a sole proprietor who reports its home address as its principal office and place of business.

177 The Commission is also proposing that applicants would be required to disclose any state registration numbers.

178 For example, the Commission notes that pursuant to Section 764 of the Dodd-Frank Act, security-based swap dealers will be required to register with the Commission. See Section 764(a) of the Dodd-Frank Act; 15 U.S.C. 78oF(a).

municipal advisor. The ability to cross-reference would also permit the Commission to plan for and carry out efficient and effective examinations of registered municipal advisors that are also otherwise registered.[179] In addition, by obtaining all of an applicant's regulatory file numbers, the Commission would be able to cross-reference disciplinary information that is submitted to the CRD or IARD systems with that submitted on Form MA, and would be able to gain a more complete understanding of a municipal advisor's structure and business.

Item 1 of Form MA would also require the applicant to state whether it maintains, or intends to maintain some or all of its books and records required to be kept under MSRB or Commission rules somewhere other than at its principal office and place of business, and if so to provide (on Schedule D) information about the other location. Form MA would also require an applicant to disclose on Schedule D all of the entities with which it is affiliated, and whether it is affiliated with a business that is registered with a foreign financial regulatory authority, and if so to provide (on Schedule D) the name, in English, of each foreign financial regulatory authority and country with which the affiliated person is registered. This information would help inform the Commission as to the structure of the municipal advisor's business, which would help staff prepare for examinations of the municipal advisor.

Request for Comment

The Commission requests comment generally on Item 1 of proposed Form MA and also requests comment on the following specific issues:

- Is the identifying and contact information requested under Item 1 of Form MA appropriate? Should the Commission request disclosure of additional or different information?

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179 See 15 U.S.C. 78o-4(c)(7) (providing that examinations shall be conducted by the Commission).

- Would any of the information required to be disclosed under Item 1 be difficult for a municipal advisor to provide?
- Would the use of other identifying numbers be more useful or appropriate? Please explain.
- Is there information requested under Item 1 that should not be publicly disclosed? Please explain.
- Would information as to an applicant's affiliated entities be useful for gaining an understanding of a municipal advisor's relationship with other entities? Would it be useful to prospective municipal advisory clients? Is there different information that would provide a better understanding of a municipal advisor's relationship with other entities? If so, what information? Is providing the information requested overly burdensome? If so, why? Should the disclosure required by Item 1-K be limited to affiliates that engage in financial activities?

Item 2: Form of Organization

Item 2 of proposed Form MA would require a municipal advisor to specify whether it is organized as a corporation, partnership, sole proprietorship, limited liability company, limited liability partnership, limited partnership, or other; the month of its annual fiscal year end; the date on which it was organized; and state where it was organized (either the U.S. state or the country outside the U.S.). This information would assist the Commission in evaluating the applications for registration and overseeing registered municipal advisors.

Item 2 would also require an applicant to specify whether it is a public reporting company under Section 12 or 15(d) of the Exchange Act, and if so, provide its Commission assigned Central Index Key ("CIK") number. This information would provide a signal that additional public

information is available about the municipal advisor and/or its control persons.

Request for Comment

The Commission requests comment generally on Item 2 of proposed Form MA and also requests comment on the following specific issues:

- Would the information requested to be disclosed in Item 2 be useful in evaluating a municipal advisor? Is there additional information under Item 2 that should be disclosed? Please explain.
- Are the forms of organization listed under Item 2-A appropriate? Are there additional forms of organization that should be listed?
- To what extent would it be beneficial to require disclosure of whether a municipal advisor is a public reporting company? If a municipal advisor is a public reporting company, is there additional information on Form MA that should be disclosed about the advisor?
- In addition to providing a current CIK number, should municipal advisors be required to disclose all previously issued CIK numbers for that municipal advisor? Would such historical CIK numbers be helpful in accessing the information filed with regulators relating to a municipal advisor? Would SEC and CRD numbers be sufficient for tracking all regulatory filings by a municipal advisor? Please explain.

Item 3: Successions

Item 3 of Form MA would require applicants to disclose whether they are succeeding to the business of a registered municipal advisor, the date of succession, and disclose on Schedule D the name of, and registration information for, the firm they are succeeding. As discussed below, depending on whether the succession is a result of a merger or acquisition, or a reorganization, the

succeeding firm would be able to register by either submitting a new Form MA or amending the Form MA of its predecessor.[180] This information would assist the Commission, among other things, in overseeing registered municipal advisors and in determining whether there has been a change in control of a municipal advisor.[181]

Request for Comment

The Commission requests comment generally on Item 3 of proposed Form MA and also requests comment on the following specific issues:

- Would the information requested to be disclosed in Item 3 provide information that would help inform an understanding of the relationship between a municipal advisor and its successor, and whether the succession involves a change of control or a change of corporate form? Is there additional information under Item 3 that should be disclosed? Please explain.
- Is there additional information about a succession that would be useful to have disclosed on the Form MA? For example, should the applicant disclose the reason for the succession?

Item 4: Information About Applicant's Business

Item 4 would require an applicant to provide information regarding the approximate number of employees it has, approximately how many of those employees engage in municipal advisory activities, approximately how many of those employees are registered representatives of a broker-dealer or an investment adviser, approximately how many firms or other persons that are not employees or associated persons of the applicant solicit municipal advisory clients on the

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180 See infra Section II.A.6. (discussing proposed rule 15Ba1-6 regarding registration of a successor to a municipal advisor).

181 See id.

applicant's behalf (if the number entered includes firms, the names of such firms would be required to be disclosed on Schedule D), and approximately how many employees also do business independently on the applicant's behalf as affiliates of the applicant (the names of these employees would be required to be disclosed on Schedule D).[182]

Item 4 would also require the applicant to approximate the number of clients with whom it engaged in municipal advisory activities in the past fiscal year, and to specify by checking the appropriate box(es) whether its clients include: municipal entities, non-profit organizations (e.g., 501(c)(3) organizations) who are obligated persons, corporations or other businesses not listed who are obligated persons, other types of entities, or whether the applicant only engages in solicitation and does not serve clients in the context of its municipal advisory activities. Applicants would also have to specify approximately the number of municipal entities or obligated persons that were solicited by the applicant on behalf of a third-party during its most recently completed fiscal year, including any clients that it both solicits and with which it engages in other municipal advisory activities; and whether it solicits public pension funds, 529 plans, local or state government investment pools, hospitals, colleges, or other types of municipal entities or obligated persons (and which other types of municipal entities or obligated persons), as well as whether the applicant only serves clients and does not engage in solicitation at all in the context of its municipal advisory activities.

Applicants would also be required to disclose whether they are compensated by hourly charges, fixed fees (not contingent on the issuance of municipal securities), contingent fees, subscription fees (for a newsletter or other publications), or otherwise. If the applicant receives

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[182] Instruction 2 to Form MA would provide guidance to newly-formed municipal advisors for completing Item 4.

compensation from anyone other than clients, the applicant would be required to provide an explanation of such arrangement.

Disclosure of information relating to the number of a municipal advisor's employees and compensation arrangements would provide the Commission with a clearer understanding of the business structure of registered municipal advisors, including the size of the advisors, the number of its employees that engage in municipal advisory activities, and in what capacity these employees engage in such activities. Information about compensation arrangements also would identify possible conflicts of interest that the municipal advisor may have with its clients.

Item 4 would also require the municipal advisor to indicate the general types of municipal advisory activities in which it engages. The following eleven activities are listed: (1) advice concerning the issuance of municipal securities (including, without limitation, advice concerning the structure, timing, terms and other similar matters, such as the preparation of feasibility studies, tax rate studies, appraisals and similar documents, related to an offering of municipal securities), (2) advice concerning the investment of the proceeds of municipal securities (including, without limitation, advice concerning the structure, timing, terms and other similar matters concerning such investments), (3) advice concerning municipal escrow investments (including, without limitation, advice concerning their structure, timing, terms and other similar matters), (4) advice concerning the investment of other funds of a municipal entity or obligated person (including, without limitation, advice concerning the structure, timing, terms and other similar matters concerning such investments), (5) advice concerning guaranteed investment contracts (including, without limitation, advice concerning their structure, timing, terms and other similar matters), (6) advice concerning the use of municipal derivatives (including, without limitation, advice concerning their structure, timing, terms and other similar matters), (7) solicitation of investment advisory business from a

municipal entity or obligated person (including, without limitation, municipal pension plans) on behalf of an unaffiliated person or firm (e.g., third party marketers, placement agents, solicitors and finders), (8) solicitation of business other than investment advisory business from a municipal entity or obligated person on behalf of an unaffiliated broker, dealer, municipal securities dealer, municipal advisor or investment adviser (e.g., third party marketers, placement agents, solicitors and finders), (9) advice or recommendations concerning the selection of other municipal advisors or underwriters with respect to municipal financial products or the issuance of municipal securities, (10) brokerage of municipal escrow investments, or (11) other (specify). Applicants who check "other" activities would be required to provide a narrative description of such activities. The listed activities are those in which the Commission understands that municipal advisors engage, and are derived from the definition of municipal advisor in Exchange Act Section 15B(e)(4).[183] This information would assist the Commission in understanding the scope of activities in which a municipal advisor engages, in identifying possible conflicts of interest, in preparing for on-site inspections and examinations, and would provide the Commission with data useful to making regulatory policy.

Request for Comment

The Commission requests comment generally on Item 4 of proposed Form MA and also requests comment on the following specific issues:

- Is the information requested to be disclosed in Item 4 information that would best help inform an understanding of the scope of a municipal advisor's business? Is there additional information under Item 4 that should be disclosed? Please explain. Is any of the requested information unnecessary or not useful? Please explain.

183 See 15 U.S.C. 78o-4(e)(4).

- Is there other information that would be helpful to request regarding the structure of a municipal advisor, in addition to the number of employees, to help provide a clear understanding of the municipal advisor's business structure?
- Are there other types of compensation arrangements for municipal advisors that should be listed under Item 4?
- Are there additional types of municipal advisory activities that should be included in the list of activities provided to municipal entities and obligated persons under Item 4? Please explain, and provide suggested language, as appropriate.

Item 5: Other Business Activities

Item 5 would require applicants to provide information about their other business activities. Specifically, an applicant would be asked whether it is actively engaged in business as a (1) broker-dealer, municipal securities dealer or government securities broker or dealer, (2) registered representative of a broker-dealer, (3) commodity pool operator (whether registered or exempt from registration), (4) commodity trading advisor (whether registered or exempt from registration), (5) futures commission merchant, (6) major swap participant,[184] (7) major security-based swap participant,[185] (8) swap dealer[186] or security-based swap dealer,[187] (9) trust company, (10) real estate broker, dealer, or agent, (11) insurance company, broker, or agent, (12) banking or thrift institution (including a separately identifiable department or division of a bank), (13) investment

184 See Exchange Act Rule 3(a)(66) (15 U.S.C. 78c(a)(66)), as amended by Section 761(a) of the Dodd-Frank Act, and the rules and regulations thereunder.

185 See Exchange Act Rule 3(a)(67) (15 U.S.C. 78c(a)(67)), as amended by Section 761(a) of the Dodd-Frank Act, and the rules and regulations thereunder.

186 See Exchange Act Rule 3(a)(76) (15 U.S.C. 78c(a)(76)), as amended by Section 761(a) of the Dodd-Frank Act, and the rules and regulations thereunder.

187 See Exchange Act Rule 3(a)(71) (15 U.S.C. 78c(a)(71)), as amended by Section 761(a) of the Dodd-Frank Act, and the rules and regulations thereunder.

adviser (including financial planners), (14) lawyer or law firm,[188] (15) accountant or accounting firm,[189] (16) engineering firm,[190] or (17) other financial product advisor and if so, to specify. An applicant would also be asked to state whether it is actively engaged in any other business, and if such other business is its primary business. If an applicant's primary business is not one of those enumerated above, it would be required to describe the other business on proposed Schedule D to Form MA. This information would assist the Commission, among other things, in identifying conflicts of interests for municipal advisors, preparing for inspections and examinations of municipal advisors, and would assist the Commission and the MSRB in understanding municipal advisors in the context of their activities for regulatory purposes.

Request for Comment

The Commission requests comment generally on proposed Item 5 of Form MA and also requests comment on the following specific issues:

- Would the information requested to be disclosed in Item 5 help inform an understanding of the other business activities in which a municipal advisor engages? Is there additional information under Item 5 that should be disclosed? Please explain.
- Are there additional categories of other business activities that should be listed under Item 5? Please explain, and provide examples, as appropriate. Is any of the requested information unnecessary or not useful? Please explain.

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188 See supra section II.A.1.c. (discussing the definition of "municipal advisor" and under what circumstances attorneys would be excluded from such definition). Lawyer and law firm applicants would also be required to disclose the jurisdictions where licensed.

189 See supra section II.A.1.c. (discussing the definition of "municipal advisor" and under what circumstances accountants would be excluded from such definition). Accountant and accounting firm applicants would also be required to disclose the jurisdictions where licensed.

190 See supra section II.A.1.c. (discussing the definition of "municipal advisor" and under what circumstances engineers would be excluded from such definition).

Item 6: Financial Industry Affiliations of Associated Persons

Item 6 would require an applicant to provide information about its associated persons (i.e., any person associated with a municipal advisor) and the types of activities in which the associated persons are engaged.[191] The proposed list of activities under Item 6 is broader than that in Item 5, which allows the Commission to elicit more complete information about the associated persons of a municipal advisor who are actually providing advice or are controlling the firm, which would inform the Commission's regulatory and examination programs. Specifically, under Item 6, a municipal advisor would have to disclose if an associated person is a (1) broker-dealer, municipal securities dealer, or government securities broker or dealer; (2) investment company (including mutual funds), (3) investment adviser (including financial planners), (4) swap dealer, (5) security-based swap dealer, (6) major swap participant, (7) major security-based swap participant, (8) commodity pool operator (whether registered or exempt from registration), (9) commodity trading advisor (whether registered or exempt from registration), (10) futures commission merchant, (11) banking or thrift institution, (12) trust company, (13) accountant or accounting firm, (14) lawyer or law firm, (15) insurance company or agency, (16) pension consultant, (17) real estate broker or dealer, (18) sponsor or syndicator of limited partnerships, (19) engineer or engineering firm, (20) other municipal advisor. Also, an applicant would need to disclose on Schedule D of proposed

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[191] Section 15B(e)(7) provides that the term "person associated with a municipal advisor" or "associated person of an advisor" means "(A) any partner, officer, director, or branch manager of such municipal advisor (or any person occupying a similar status or performing similar functions); (B) any other employee of such municipal advisor who is engaged in the management, direction, supervision, or performance of any activities relating to the provision of advice to or on behalf of a municipal entity or obligated person with respect to municipal financial products or the issuance of municipal securities; and (C) any person directly or indirectly controlling, controlled by, or under common control with such municipal advisor." 15 U.S.C. 78o-4(e)(7). For purposes of Form MA, the Glossary would define "associated person or associated person of a municipal advisor" to have the same meaning as in Exchange Act Section 15B(e)(7) (15 U.S.C. 78o-4(e)(7)), but would exclude employees that are solely clerical or administrative.

Form MA each associated person, including any foreign associated persons, that is a municipal advisor, broker-dealer, municipal securities dealer, government securities broker or dealer, investment adviser, registered swap dealer, banking or thrift institution, or trust company. For each associated person identified on Schedule D, the applicant would be required to provide information regarding the nature of the affiliation between the municipal advisor and the associated person, as well as any foreign registrations of the associated person. The information provided would assist the Commission in having a clearer understanding of the types of business activities in which associated persons are engaged and the possible conflicts of interest those activities may create.

Request for Comment

The Commission requests comment generally on Item 6 of proposed Form MA and also requests comment on the following specific issues:

- Would the information requested to be disclosed in Item 6 inform a meaningful understanding of the relationship between a municipal advisor and its associated persons and the kinds of activities in which they engage? If not, why not? Is there additional information under Item 6 that should be disclosed, such as additional categories of activities in which an associated person might be engaged? Please explain. Should any of the categories be deleted?

Item 7: Participation or Interest in Municipal Advisory Client Transactions

Item 7 would require applicants to disclose information about participation and interest of the municipal advisor or its associated persons in the transactions of its municipal advisory clients. The purpose of Item 7 is to identify possible conflicts of interest that the municipal advisor and its associated persons may have with the municipal advisor's clients. For example, a municipal advisor that receives commissions or other payments for sales of securities to clients may have a

conflict of interest with its clients. This type of practice gives the municipal advisor and its personnel an incentive to base investment recommendations on the amount of compensation they will receive rather than on the client's best interests.

Specifically, Item 7 would require an applicant to disclose whether it, or any of its associated persons, have a proprietary interest in the securities or other investment or derivative product transactions of its clients, such as whether it buys securities or other investment or derivative products from, or sells them to, its clients. An applicant would also be asked to disclose whether it or its associated persons recommend purchases or sales of securities or other investment or derivative products to clients for which the municipal advisor or its associated persons serve as underwriter or purchaser representative, or have any other sales interest; whether it or its associated persons have certain discretionary authority over securities or other investment transactions for its clients; and whether it or its associated persons recommend brokers, dealers, or investment advisers to its clients, and if so, whether those brokers, dealers, or investment advisers are associated persons of the municipal advisor. Item 7 would also require the municipal advisor to disclose whether it or its associated persons give or receive compensation for municipal advisory client referrals.

Request for Comment

The Commission requests comment generally on Item 7 of proposed Form MA and also requests comment on the following specific issues:

- Would the information requested to be disclosed in Item 7 be appropriate for identifying potential conflicts of interest between municipal advisors and/or associated persons and the municipal advisors' clients? Should any be deleted? Why?
- Is there additional information under Item 7 that should be disclosed to provide a clearer understanding of potential conflicts of interest? Please explain.

Item 8: Control Persons

In Item 8, applicants would be asked to identify on Schedules A and B every person that directly or indirectly controls the applicant, or that the applicant directly or indirectly controls.[192] An initial applicant would be required to complete proposed Schedules A and B. Schedule A would require information about the applicant's executive officers and persons that directly own 5% or more of the applicant. Schedule B would request information about persons that indirectly own 25% or more of the applicant. Schedule C would be used to amend information previously reported on Schedules A and B. Applicants would also be asked to identify, on Schedule D, any person that controls the applicant's management or policies if not otherwise identified. Further information would be requested with respect to control persons that are public reporting companies under Sections 12 or 15(d) of the Exchange Act.[193] For control persons that do not have a CRD number, Schedules A, B, and C would require disclosure of their social security number and date of birth, IRS tax number or employer ID number.[194] The proposed information that would be requested and

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192 The term "control" is defined in the Glossary to mean "the power, directly or indirectly, to direct the management or policies of a person, whether through ownership of securities, by contract, or otherwise." Further, the Glossary provides that: (a) each of the municipal advisor's officers, partners, or directors exercising executive responsibility (or persons having similar status or functions) is presumed to control the municipal advisor; (b) a person is presumed to control a corporation if the person: (i) directly or indirectly has the right to vote 25 percent or more of a class of the corporation's voting securities; or (ii) has the power to sell or direct the sale of 25 percent or more of a class of the corporation's voting securities; (c) a person is presumed to control a partnership if the person has the right to receive upon dissolution, or has contributed, 25 percent or more of the capital of the partnership; (d) a person is presumed to control a limited liability company ("LLC") if the person: (i) directly or indirectly has the right to vote 25 percent or more of a class of the interests of the LLC; (ii) has the right to receive upon dissolution, or has contributed, 25 percent or more of the capital of the LLC; or (iii) is an elected manager of the LLC; and (e) a person is presumed to control a trust if the person is a trustee or managing agent of the trust. See Glossary.

193 Section 8-B of proposed Schedule D to Form MA would require the name and CIK number of each control person listed on Schedule A, B, C or Section 8-A of Schedule D.

194 The Commission would not make this information publicly available.

the proposed definition of control are consistent with that requested and used by the Commission in other contexts.[195] This information would help to inform the Commission's understanding of the ownership structure of the municipal advisor and in identifying who ultimately controls the municipal advisor, including its policies and procedures, which would provide useful information in preparing for examinations and also in identifying potential conflicts of interest. The information requested also would inform the Commission about changes in control of the municipal advisor.

Request for Comment

The Commission requests comment generally on Item 8 of proposed Form MA and also requests comment on the following specific issues:

- Would the information requested to be disclosed in Item 8 be appropriate for understanding the ownership structure of a municipal advisor and identifying possible conflicts of interest? Is there additional information under Item 8 that should be disclosed? Please explain. Should any be deleted? Why?
- Is the proposed definition of "control" broad enough to elicit information that would provide an understanding of a municipal advisor's structure and its control persons? Should additional or different information be requested? If so, what information?

Item 9: Disclosure Information

Section 975(c)(3) of the Dodd-Frank Act amended Section 15B of the Exchange Act to direct the Commission, by order, to censure, place limitations on the activities, functions, or operations, suspend for a period not exceeding twelve months, or revoke the registration of any

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[195] The proposed requested information and definition of "control" are consistent with the information requested and definition used for investment advisers required to register on Form ADV. See 17 CFR 279.1.

municipal advisor, if it finds[196] that such municipal advisor has committed or omitted any act, or is subject to an order or finding, enumerated in subparagraph (A),[197] (D),[198] (E),[199] (G)[200] or (H),[201] of paragraph (4) of Section 15(b) of the Exchange Act; has been convicted of any offense specified in Section 15(b)(4)(B)[202] of the Exchange Act within ten years of the commencement of the proceedings under Section 15B(c); or is enjoined from any action, conduct, or practice specified in Section 15(b)(4)(C)[203] of the Exchange Act.[204] Item 9 of Form MA includes questions intended to

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196 Such findings must be on the record after notice and opportunity for hearing and include a finding that the particular disciplinary action is in the public interest. See 15 U.S.C. 78o-4(c)(2).

197 See 15 U.S.C. 78o(b)(4)(A) (e.g., making false or misleading statements of a material fact in a report filed with, or preceding before, the Commission).

198 See 15 U.S.C. 78o(b)(4)(D) (e.g., violating or being unable to comply with the Securities Act, the Investment Advisers Act , the Investment Company Act, the Commodity Exchange Act, the Exchange Act, the rules or regulations under any of such statutes, or the rules of the MSRB).

199 See 15 U.S.C. 78o(b)(4)(E) (e.g, aiding and abetting violations of, or failing to supervise to prevent violations of, the Securities Act, the Investment Advisers Act , the Investment Company Act, the Commodity Exchange Act, the Exchange Act, the rules or regulations under any of such statutes, or the rules of the MSRB).

200 See 15 U.S.C. 78o(b)(4)(G) (e.g., being found by a foreign financial regulatory authority to have made false or misleading statements of material facts; violated or been unable to comply with foreign regulations; or aided and abetted violations of, or failed to supervise to prevent violations of, foreign regulations).

201 See 15 U.S.C. 78o(b)(4)(H) (e.g., being subject to a final order of a State securities commission, an appropriate Federal banking agency, or the National Credit Union Administration that bars such person from associating with an entity regulated by such authority or agency, or prohibits such person from engaging in the business of securities, insurance, banking, savings association activities, or credit union activities).

202 See 15 U.S.C. 78o(b)(4)(B) (e.g., being convicted within the ten years preceding application for registration of certain felonies or misdemeanors, including felonies and misdemeanors involving the purchase and sale of securities or arising out of the conduct of the business of a broker, dealer, municipal securities dealer, or municipal advisor).

203 See 15 U.S.C. 78o(b)(4)(C) (e.g, being enjoined by order from acting as an investment adviser, underwriter, broker, dealer, municipal securities dealer or municipal advisor).

204 The Commission has the same authority with respect to municipal securities dealers. See 15 U.S.C. 78o-4(c).

solicit information from a municipal advisor concerning certain of its activities or activities of its associated persons that could subject the municipal advisor to disciplinary actions by the Commission under such subparagraphs of Section 15(b)(4) of the Exchange Act.

The information proposed to be required by Item 9 would be used to determine whether to grant the applicant's application for registration, institute proceedings to determine whether registration should be denied, place limitations on the applicant's activities as a municipal advisor, and to focus on-site examinations.[205] Also, in addition to its value for the Commission's oversight of the municipal securities markets generally, the Commission proposes to seek this information because it may indicate that a municipal advisor could be statutorily disqualified from acting as a municipal advisor.[206] In addition, the Commission would make this information available to municipal entities and obligated persons who engage municipal advisors, to investors who may purchase securities from offerings in which municipal advisors have participated, and to other regulators.

The disciplinary information to be disclosed is substantially similar to the information required to be disclosed in Form BD[207] for broker-dealers and in Form ADV[208] for investment advisers. The requested information is also consistent with the disclosure requirements of Form MA-T.[209] In addition to information with respect to investment-related activities, Form MA would

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205 See also supra Section II.B. (discussing approval or denial of registration).

206 See id.

207 See 17 CFR 249.501.

208 See 17 CFR 279.1.

209 On Form MA-T, the disclosure required with respect to orders entered against the municipal advisor by regulatory authorities, and whether any court has enjoined the municipal advisor or associated person in connection with investment related activities are limited to the past 10 years. On Form MA, the Commission is not proposing any time limitation on this disclosure for the reasons discussed in this Section II.A.2.c.

additionally request parallel information for municipal advisory activities. Specifically, as discussed below, Form MA asks questions concerning the disciplinary history of the municipal advisor and of its associated persons.[210]

In Form MA-T, the Commission limited the disciplinary history disclosure requirements to "associated municipal advisor professionals."[211] The Commission limited the disclosure requirements to this subgroup of associated persons to obtain information about those associated persons who are closely associated with an advisor's municipal advisory activities, i.e., those who are primarily engaged in an advisor's municipal advisory activities, have supervisory responsibilities over those primarily engaged in municipal advisory activities, are engaged in day-to-day management of the conduct of an advisor's municipal advisory activities, or are responsible for executive management of the advisor.[212] Due to the short time-frame between the passage of the Dodd-Frank Act and the deadline for registration of municipal advisors on October 1, 2010, the Commission believed it was appropriate to limit the disclosure requirement to this subgroup of associated persons. In connection with the proposed permanent registration regime, however, the Commission believes it is appropriate to propose in Item 9 that a municipal advisor disclose the

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210 See supra note 191 (discussing the definition of "person associated with a municipal advisor" or "associated person of a municipal advisor").

211 The Commission defined the term "associated municipal advisor professional" in the glossary section of Form MA-T to mean: (A) any associated person of a municipal advisor primarily engaged in municipal advisory activities; (B) any associated person of a municipal advisor who is engaged in the solicitation of municipal entities or obligated persons; (C) any associated person who is a supervisor of any persons described in subparagraphs (A) or (B); (D) any associated person who is a supervisor of any person described in subparagraph (C) up through and including, the Chief Executive Officer or similarly situated official designated as responsible for the day-to-day conduct of the municipal advisor's municipal advisory activities; and (E) any associated person who is a member of the executive or management committee of the municipal advisor or a similarly situated official, if any; and excludes any associated person whose functions are solely clerical or ministerial.

212 See Temporary Registration Rule Release, supra note 63, at 54469.

disciplinary history, as applicable, of all its associated persons, as that term is defined in Exchange Act Section 15B(e)(7).[213] Specifically, Item 9 would require disclosure with respect to any partner, officer, director or branch manager of a municipal advisor, and any other employee who is engaged in the management, direction, supervision, or performance of any municipal advisory activities relating to the provision of advice to or on behalf of a municipal entity or obligated person with respect to municipal financial products or the issuance of municipal securities; and any person that directly or indirectly controls, is controlled by, or under common control with the municipal advisor. As a result, Form MA would capture information with respect to employees that engage in municipal advisory activities, even if that is not their primary activity. Form MA also would require disclosure with respect to controlling persons and other affiliates of the municipal advisor.

The Commission believes that "associated person" as defined in Exchange Act Section 15B(e)(7) (15 U.S.C. 78o-4(e)(7)) (and as it is proposed to be defined) is an appropriate definition to use[214] because it would allow the Commission to obtain, and municipal entities, obligated persons, investors and other regulators to have access to, information about the municipal advisor's supervisory and management personnel, employees engaged in the management, direction, supervision, or performance of activities relating to the provision of advice to or on behalf of a municipal entity or obligated person with respect to municipal financial products or the issuance of municipal securities, and control persons. This information would help provide a clear understanding regarding the persons associated with municipal advisors.

In addition, the Commission notes that the time-period limits proposed for disclosure on

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213 See 15 U.S.C. 78o-4(e)(7).

214 The definition of "associated person of a municipal advisor" in the Glossary would be consistent with the definition of "associated person" in Exchange Act Section 15B(e)(7) (15 U.S.C. 78o-4(e)(7)). The definition would exclude, however, employees who are solely clerical or administrative. This exclusion would be consistent with the comparable term on Form ADV, which also excludes employees who are solely clerical or administrative.

Form MA are consistent with the disclosure reporting requirements on Form BD, adopted pursuant to Section 15(b)(1) of the Exchange Act. Specifically, with respect to felonies and misdemeanors involving municipal advisor-related business,[215] investments or an investment-related business, Form MA would require disclosures of matters within the last ten years.[216] With respect to all other matters proposed to be identified on Form MA (including federal, state, and foreign regulatory actions and actions taken by SROs), no time limit is placed on disclosure. For example, a municipal advisor would be required to disclose whether the municipal advisor or any associated person was ever enjoined by any domestic or foreign court in connection with any municipal advisor-related or investment-related activity. Disclosure would also be required concerning any orders entered against the municipal advisor or any associated person of the municipal advisor by any federal or state regulatory agency other than the SEC and Commodity Futures Trading Commission ("CFTC") or by any foreign financial regulatory authority. The Commission believes that, for purposes of the permanent registration regime, it is important to collect information about matters within these timeframes because, under the Exchange Act, the Commission could use such matters to form the basis for an action to suspend or revoke a municipal advisor's registration.[217]

The questions asked in Item 9 are generally consistent with the disciplinary disclosure questions asked on Form BD. Unlike on Form BD, Item 9 asks for information regarding actions relating to municipal advisor-related business, in addition to investment-related business.

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215 The Commission proposes that the term "municipal advisor-related" would mean "[c]onduct that pertains to municipal advisory activities (including, but not limited to, acting as, or being an associated person of, a municipal advisor)." Glossary.

216 As is the case with respect to brokers and dealers pursuant to Section 15(b)(4) of the Exchange Act (15 U.S.C. 78o(b)(4)), Section 15B(c)(2) of the Exchange Act (15 U.S.C. 78o-4(c)(2)), as amended by the Dodd-Frank Act, limits the Commission's ability to impose sanctions on municipal advisors for conviction of felonies and misdemeanors to convictions occurring within ten years preceding the filing of any application for registration.

217 See Section 15B(c)(2) of the Exchange Act.

Specifically, Item 9 of the proposed form would ask for information regarding convictions, pleading and charges related to felonies and certain misdemeanors. It would ask for information regarding whether the SEC or the CFTC has ever: found the municipal advisor or any associated person to have made a false statement or omission; found the municipal advisor or any associated person to have been involved in a violation of its regulations or statutes; found the municipal advisor or any associated person to have been a cause of a municipal advisor- or investment-related business having its authorization to do business denied, suspended, revoked, or restricted; entered an order against the municipal advisor or any associated person in connection with municipal advisor- or investment-related activity; or, imposed a civil money penalty on the municipal advisor or any associated person, or ordered the municipal advisor or any associated person to cease and desist from any activity. Item 9 of the form would also ask for similar information with respect to other federal regulatory agencies, any state regulatory agency, or any foreign financial regulatory authority. Item 9 would ask for information regarding whether any SRO or commodity exchange ever found the municipal advisor or any associated person to have made a false statement or omission; found the municipal advisor or any associated person to have been involved in a violation of its rules (other than a violation designated as a "minor rule violation" under a plan approved by the SEC); found the municipal advisor or any associated person to have been the cause of a municipal advisor- or investment-related business having its authorization to do business denied, suspended, revoked, or restricted, or disciplined the municipal advisor or any associated person by expelling or suspending it from membership, barring or suspending its association with other members, or otherwise restricting its activities. It would also ask whether the municipal advisor or its associated persons have had authorization to do business or to act as an advisor, attorney, or federal contractor revoked or suspended. In addition, Item 9 would ask for information about

pending regulatory proceedings; and civil proceedings related to municipal advisor- or investment-related activities, including pending proceedings.

These questions are designed to elicit responses that would enable the Commission to institute proceedings against the municipal advisor, if appropriate, and also to make the information available to the public. Section 15B(c)(2) of the Exchange Act provides that the Commission shall censure, place limitations on the activities, functions and operations of, suspend, or revoke the registration of a municipal securities dealer or municipal advisor if it finds that doing so is in the public interest and that the municipal advisor has committed the kinds of acts, is subject to the kinds of orders or findings, has been convicted of the kinds of offenses, or is enjoined from the kinds of actions, conduct and practices enumerated in Section 15(b)(4) of the Exchange Act.[218] Section 15(b)(4) of the Exchange Act[219] provides that the Commission shall censure, place limitations on the activities, functions and operations of, suspend, or revoke the registration of a broker or dealer if it finds that doing so is in the public interest and that the broker or dealer, or any person associated with the broker or dealer, has made false or misleading statements with respect to material facts in any registration or report filed with the Commission; has been convicted in the ten years preceding any application for registration or any time thereafter of any felony or misdemeanor or of a substantially equivalent crime by a foreign court of competent jurisdiction which the Commission finds involves or arises out of certain activities, including conduct of the business of a municipal advisor; or is permanently or temporarily enjoined by order, judgment, or decree of any court of competent jurisdiction from acting as, among other things, a municipal advisor, or from engaging in or continuing any conduct or practice in connection with any such activity, or in connection with the purchase or sale of any security. If a municipal advisor answers "yes" to any of the disciplinary

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218 See 15 U.S.C.78o-4(c)(2).

219 See 15 U.S.C. 78o(b)(4).

history questions in Item 9, the municipal advisor would be required to complete a Disclosure Reporting Page ("DRP") to Form MA.

Proposed Form MA includes separate DRPs to report information relating to criminal, regulatory, and civil actions involving the municipal advisor or its associated persons. Each would require detailed information about the action, such as the entities or regulatory authorities involved, where the charges were filed and when, a description of the charge and the circumstances related to it, in the case of municipal advisor- and investment-related charges – the product type, and the status of the charge, including resolution details as appropriate. Consistent with the limitations set forth in Section 15(b)(4)(B)[220] of the Exchange Act, however, information on the criminal DRP would be limited to matters within the last ten years. If a municipal advisor or associated person that is registered through the investment adviser or broker-dealer registration systems (the "IARD" or "CRD", respectively) has submitted a DRP with Forms ADV, BD, or U4 to the IARD or CRD, or a municipal advisor has previously submitted disclosure to the Commission with a prior registration on Form MA-T, for the matter that reports the information required by a DRP to Form MA, information included with respect to Forms MA-T, ADV, BD, or U4 as applicable, could be incorporated by reference (to the extent possible, depending on the technical capabilities of the electronic filing system).

The Commission believes that it is important to collect the information that would be required by the DRPs to assist it in deciding whether to grant or institute proceedings to deny an application for registration, to revoke a registration, to manage the Commission's regulatory and examination programs, and to make such information available to the MSRB to better inform its regulation of municipal advisors and the municipal securities market generally.

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220 15 U.S.C. 78o(b)(4)(B). See also 15 U.S.C. 78o-4(c)(2).

Request for Comment

The Commission requests comment generally on Item 9 of proposed Form MA and also requests comment on the following specific issues:

- How might the disclosures regarding associated persons whose actions are covered by Item 9 of Form MA be improved?
- Are the questions in Item 9 sufficient for providing information to investors, municipal entities, obligated persons, and regulators regarding the disciplinary history of municipal advisors and associated persons?
- Should additional or other questions be included? Please provide examples of any additional questions that should be included.
- Would the questions in Item 9 impose an excessive burden on municipal advisors to answer?
- Does expanding the disciplinary history disclosure requirement in Item 9 of Form MA to associated persons of municipal advisors, rather than limiting it to associated municipal advisor professionals (as in Form MA-T), include persons whose disciplinary history is sufficiently relevant to a municipal advisor's activities to warrant disclosure?
- Are the timeframes to the questions in Item 9 appropriate? Would the public and municipal entities find the full history of disciplinary information important and useful rather than putting time limitations on disclosure of criminal information? Are the timeframes too long, such that they would require disclosure of information that is no longer useful or relevant, or such that they would impose an undue burden on applicants for registration?
- Would including the disciplinary questions in Form MA impose undue hardship on, or

have other consequences for, small municipal advisors?

- Would the ability to incorporate by reference to disciplinary disclosures on Form BD and Form ADV for registered broker-dealers and investment advisers, respectively, or to disclosures made with a previous registration on Form MA-T, make it more difficult for municipal entities, obligated persons, investors and others to obtain this information than if it were included in Form MA itself?
- Would the ability of municipal advisors to incorporate by reference such disclosures on Forms MA-T, BD, ADV, and U4 significantly reduce the burden on municipal advisors, and particularly small municipal advisors, to complete Form MA?

Item 10: Small Businesses

As described further in Section VII below, the Commission is required by the Regulatory Flexibility Act ("RFA")[221] to consider the effect of its regulations on small entities. The Commission's rules do not define "small business" or "small organization" for purposes of municipal advisors. The Small Business Administration ("SBA") defines small business for purposes of entities that provide financial investment and related activities as a business that had annual receipts of less than $7 million during the preceding fiscal year and is not affiliated with any person that is not a small business or small organization.[222] The Commission is using the SBA's definition of small business to define municipal advisors that are small entities for purposes of the RFA.

Item 10 of Form MA would enable the Commission to determine how many applicants meet the SBA's definition of "small business" or "small organization" as applied to municipal advisors, by requiring each applicant to disclose whether it had annual receipts of less than $7 million during

221 5 U.S.C. 601 et seq.

222 See 13 CFR 121.201.

its most recent fiscal year (or the time it has been in business, if it has not completed its first fiscal year in business). The applicant would also be required to disclose whether any business or organization with which it is affiliated had annual receipts of more than $7 million in its most recent fiscal year (or the time it has been in business, if it has not completed its first fiscal year in business).

Request for Comment

The Commission requests comment generally on Item 10 of proposed Form MA and also requests comment on the following specific issues:[223]

- Are the questions asked in Item 10 sufficiently clear? If not, please explain.
- Should the Commission request any other information to make its determination?

Execution and Self-Certification

Proposed Form MA would include an execution page that must be signed and attached to any initial application for registration, as well as to any amendments to Form MA. The proposed execution page is similar in purpose to the execution page of Form ADV,[224] but deletes references to state registration, bonding requirements and other inapplicable components, and would require a non-resident municipal advisor to execute a separate form (Form MA-NR) to designate agent for service of process.

Form MA would be electronically "signed" by an authorized person of the advisor before the form could be electronically submitted. The authorized person would sign the form by typing his or her name and submitting the form on behalf of the advisor. An authorized person would sign one of two different execution pages, depending on whether the advisor is resident in the United

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223 See also infra Section VII (discussing the impact of the proposed rules on municipal advisors that are small entities).

224 See 17 CFR 279.1.

States or a "non-resident" municipal advisor.[225] By signing the domestic municipal advisor execution page, the authorized person would affirm that the information in Form MA is true and correct, and would appoint certain officials as agents for service of process in states where the advisor maintains its principal office or place of business. Specifically, a domestic municipal advisor would appoint an official in the state where it maintains its principal office and place of business. This appointment would allow private parties and the Commission to bring actions against the municipal advisor by delivering necessary papers to the appointed agent.[226] The agent would be able to receive any process, pleadings, or other papers in any action that arises out of or relates to or concerns municipal advisory activities of the municipal advisor. As proposed, the agent also could receive service for investigation and administrative proceedings.

The execution page for resident and non-resident municipal advisors would require certification that the books and records of the municipal advisor will be preserved and available for inspection and would authorize any person with custody of the books and records to make them available to federal representatives. With respect to non-resident municipal advisors, the execution page also provides that by signing the Form MA, the non-resident municipal advisor agrees to provide, at its own expense, to the Commission, copies of all books and records that the municipal

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225 Proposed rule 15Ba1-1(h) defines a "non-resident" as: "(1) [i]n the case of an individual, one who resides in or has his principal office and place of business in any place not in the United States; (2) [i]n the case of a corporation, one incorporated in or having its principal office and place of business in any place not in the United States; and (3) [i]n the case of a partnership or other unincorporated organization or association, one having its principal office and place of business in any place not in the United States." This definition is consistent with the definition of "non-resident broker-dealer" in rule 15b1-5 under the Exchange Act. See 17 CFR 240.15b1-5. See also 17 CFR 275.0-2 (defining the term "non-resident" for purposes of serving non-residents in connection with Form ADV). In addition, non-resident municipal advisors and non-resident general partners and managing agents of municipal advisors would submit Form MA-NR. See infra Section II.A.5. (discussing proposed Form MA-NR).

226 Appointment of agent for service of process for non-resident municipal advisors is discussed further below. See infra Section II.A.5. (discussing proposed Form MA-NR).

advisor is required to maintain by law. The Commission believes that before granting registration to a domestic or non-resident municipal advisor, it is appropriate to obtain assurance that such person has taken the necessary steps to be in the position to provide the Commission with prompt access to its books and records and to be subject to inspection and examination by the Commission.

The authorized person of a municipal advisor completing the execution pages and the municipal advisor would also be required to certify that the municipal advisor and every natural person associated with it has met, or within any applicable required timeframes will meet, such standards of training, experience, and competence, and such other qualifications, including testing, for a municipal advisor and natural persons associated with it, required by the Commission, the MSRB, or any other relevant SRO. The authorized person and municipal advisor would also be required to certify that the municipal advisor has conducted an initial or annual review, as applicable, of the municipal advisor's business and has reasonably determined that the municipal advisor: 1) can carry out the activities described in the items that are checked in Item 4.K (Applicant's Business Relating to Municipal Securities) of Form MA;[227] 2) can comply with all applicable regulatory obligations; and 3) has met such regulatory obligations during the last year (or such shorter period if the application is an initial application for registration). For these purposes, such applicable regulatory obligations are obligations under the federal securities laws and rules promulgated thereunder and applicable rules promulgated by the MSRB, or any other relevant SRO. The authorized person and the municipal advisor would also be required to certify that the municipal advisor has documented this review process and will maintain all documents relating to

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227 Factors that should be considered in determining whether a municipal advisor can carry out the described activities would include, but not be limited to, whether the municipal advisor has, with respect to the described activities: the appropriate technology systems and equipment; the appropriate financial resources; adequate staffing with appropriate skill sets, training, and expertise; and adequate facilities, such as office space, as appropriate.

such review in accordance with proposed rule 15Ba1-7 under the Exchange Act.[228] Proposed rule 15Ba1-4(e) would require such certification in conjunction with filing of an initial application for registration as a municipal advisor and annually thereafter.[229]

Failure to make the certifications required by the execution pages would be a basis for the Commission to commence proceedings to deny an application for registration.[230] In addition, if an applicant becomes unable to comply with the certifications, this would be a basis for the Commission to commence proceedings to revoke a municipal advisor's registration.[231]

Additionally, proposed rule 15Ba1-5 would require a non-resident municipal advisor, other than a natural person, including non-resident sole proprietors (i.e., non-resident municipal advisory firms) to provide an opinion of counsel that the municipal advisor can, as a matter of law, provide the Commission with access to the books and records of the municipal advisor, as required by law, and that the municipal advisor can, as a matter of law, submit to onsite inspection and examination by the Commission. General Instruction 14 would provide that a non-resident municipal advisor filing Form MA must attach the opinion as an Exhibit to its execution page. Each jurisdiction may have a different legal framework with respect to its laws (e.g., privacy laws) that may limit or restrict the Commission's ability to receive information from a municipal advisor. Providing an

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228 Proposed rule 15Ba1-7(a)(8) would require a municipal advisory firm to make and keep true, accurate, and current, a record of the initial or annual review, as applicable, conducted by the municipal advisor of such municipal advisor's business in connection with its self-certification on Form MA.

229 See proposed rule 15Ba1-4(e). The proposed rule would require the annual self-certification to be filed by municipal advisory firms within 90 days of the end of a municipal advisor's fiscal year, or of the end of the calendar year for municipal advisors that are sole proprietors.

230 See infra Section II.B. (discussing grounds for denial of registration of a municipal advisor's registration). The Commission also notes that if the execution page to Form MA is not completed, the Form MA would be incomplete and the electronic filing system would not permit the Form MA to be filed.

231 See supra notes 218 and 219, and accompanying text (discussing grounds for revocation of registration of a municipal advisor's registration and other sanctions).

opinion of counsel that a municipal advisor can provide access to its books and records and can be subject to onsite inspection and examination would allow the Commission to better evaluate a municipal advisor's ability to meet the requirements of registration and ongoing supervision. Failure to provide an opinion of counsel may be a basis for the Commission to deny an application for registration.

Request for Comment

The Commission requests comment generally on the execution pages of proposed Form MA and also requests comment on the following specific issues:

- Are the instructions relating to execution sufficiently clear? If not, please explain and suggest additional or alternative language.
- Should there be additional or alternative representations required of a person who executes Form MA?
- Are there alternative methods to obtain consent to service of process?
- Are the requirements for domestic municipal advisors, as set forth on the execution page for domestic municipal advisors appropriate? Should these requirements be changed in any way? Please explain.
- Are the requirements for non-resident municipal advisors, as set forth on the execution page for non-resident municipal advisors appropriate? Should these requirements be changed in any way? Please explain.
- Should the Commission's definition of "non-resident" be modified in any way?
- Does requiring a non-resident municipal advisor to certify that it will provide the Commission with access to the municipal advisor's books and records and submit to onsite inspection and examination by the Commission, ensure that the Commission can

- Are there any factors that the Commission should take into consideration to ensure that a non-resident municipal advisor seeking to register as a municipal advisor can, in compliance with applicable foreign laws, provide the Commission with access to its books and records and can submit to inspection and examination by the Commission?
- Should the Commission require non-resident municipal advisors seeking to register as municipal advisors to certify to anything else on the execution page for non-resident municipal advisors?
- Should non-resident municipal advisors be required to provide any additional information or documents?
- Is the proposed self-certification broad enough in scope or too broad? If not, what additional factors should be included or excluded and why? Should the self-certification be required more or less frequently? If so, how often and why? Are there other alternatives the Commission should consider? If so, what alternatives and why?
- In connection with the proposed initial and annual review requirement for the self-certification, would municipal advisors undertake a meaningful review absent a minimum review standard?
- Should the Commission instead mandate a minimum level of review that must be performed of a municipal advisor's business? If so, what level of review would be

appropriate?

- Is there a minimum level of review that would be appropriate without imposing impracticable burdens or costs on municipal advisors?
- Should the self-certification requirement further specify the types of business activities that should be covered by the initial and annual review?
- Should a municipal advisor be required to disclose publicly, such as on Form MA, the nature of its review and its findings and conclusions?
- Should the Commission specify the types of review that should be performed? If so, what types of review would be appropriate for municipal advisors? Should the type of review differ depending on the type of municipal advisory activities in which the advisor engages and/or the size of the advisor? Please explain.
- As an alternative to the proposed self-certification requirement, should the Commission require an independent third party review of the municipal advisor as part of, or prior to, the advisor's application for registration and then annually thereafter? Should the Commission require that the municipal advisor name any such third party reviewer on the Form MA? Should the findings and conclusions of the third party reviewer be made publicly available?
- Is there any other party that a municipal advisor should be allowed to rely upon in order to satisfy an initial and annual review requirement? Please explain. Would an accountant or attorney be an appropriate third party reviewer?
- If the Commission were to permit or require third party reviews, how would the Commission encourage the quality of third party reviews? Should a third party be required to be independent? If so, should the Commission define "independence" for

this purpose? If so, how should "independence" be defined? Should the Commission require disclosure of affiliates related to third parties?

- Should the Commission undertake a review of all municipal advisors as part of the registration and examination process? If so, what should be the scope and frequency of the examination process? Should the Commission provide municipal advisors a choice between independent third party review and Commission review, or a combination thereof? In order to make the most efficient use of the Commission's resources, should the Commission rely on an SRO or other third party to undertake such review?
- Are there other factors that the Commission should consider, in addition to an opinion of counsel, that address whether the Commission can legally, under applicable foreign law, obtain the required access to a municipal advisor's books and records and conduct onsite inspection or examination of the municipal advisor?

**d. Information Requested in Form MA-I**

The Commission is proposing to require natural person municipal advisors, which would include sole proprietors and certain individual employees of municipal advisory firms, to register on proposed Form MA-I. As a result, individual employees who meet the definition of a "municipal advisor" would be required to register independently, apart from the firm at which they are employed, on proposed Form MA-I.[232] Requirements for registration on proposed Form MA-I of individuals who are sole proprietors that meet the definition of "municipal advisor" are also discussed below.

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[232] To date, in somewhat analogous registration contexts, the Commission has not required associated persons to register with the Commission. In the broker-dealer context, associated persons must register with FINRA. In the investment adviser context, associated persons of investment advisers generally must register with the states. For the reasons set forth below, in the context of municipal advisors, the Commission believes that registration of each natural person municipal advisor separately is the appropriate approach.

The Commission believes that the registration of natural person municipal advisors, including employees separately from their firms, would help the Commission better manage its regulatory and examination programs by assisting the Commission in identifying municipal advisors and better understanding their business structures. The required information also would assist the Commission in the preparation of its inspection and examination of municipal advisors, and in overseeing the municipal securities market and investigating instances of possible wrongdoing. In determining what information to propose to be disclosed, the Commission has also considered the broader public interest in availability of information about employees of municipal advisors to the public. The Commission believes that the required disclosures would provide municipal entities, obligated persons, investors, and other regulators with information that would inform them as to the relevant municipal advisory experience and history of such natural person municipal advisors. Moreover, a separate registration application form for natural person municipal advisors could enable municipal entities, investors, obligated persons, and regulators to obtain certain additional information regarding a natural person municipal advisor (as detailed below) directly from that individual, including the kind of information that would not be realistic or desirable to obtain through the firm's Form MA.[233]

For these reasons, the Commission is proposing to require natural person municipal advisors, including individual employees of firms, to register separately with the Commission, and is proposing new Form MA-I as the application form for such registration. As discussed above, a municipal advisory firm that registers by filing proposed Form MA must already provide

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[233] Section 975(c)(5) of the Dodd-Frank Act provides the Commission with authority to censure or place limitations on the activities or functions of any person associated with a municipal advisor or to suspend or bar any such person from being associated with a municipal advisor, but it appears Congress made a technical error in drafting this provision. To address any ambiguity in Section 975(c), the Commission intends to recommend a technical amendment to Section 975(c)(5) of the Dodd-Frank Act.

information on that form concerning the disciplinary history (over specified time spans) for each of its associated persons – a term that includes employees who are "engaged in the management, direction, supervision, or performance of any activities relating to the provision of advice to or on behalf of a municipal entity or obligated person with respect to municipal financial products or the issuance of municipal securities."[234] Thus, some information that could be valuable to municipal entities, obligated persons, investors, and regulators regarding individual employees who provide advice on behalf of a firm (and are natural person municipal advisors) would already be available through the municipal advisory firm's Form MA. As detailed below, Form MA-I would, however, elicit additional information that would not be provided by the firm with which the natural person municipal advisor is employed.[235] In addition, to obtain the same additional information from sole proprietors as obtained from natural person municipal advisors who are employees of firms, the Commission is proposing that sole proprietors, since they are also natural persons, be required to complete both Forms MA and MA-I. However, some information that a sole proprietor has already provided in his or her Form MA would not need to be provided a second time. Form MA-I would permit information required by a DRP to the form to be incorporated by reference, if the information has been previously disclosed on a DRP to his or her Form MA, ADV, BD, or U4, as applicable, or has been previously disclosed on his or her Form MA-T.[236] Thus, the information

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234 See Section 15B(e)(7) of the Exchange Act. 15 U.S.C. 78o-4(e)(7).

235 Under the proposal, however, to the extent that the required information regarding an employee's disciplinary history has already been provided on Forms MA, MA-T, BD, ADV, or U4, the employee would be permitted to incorporate such information by reference in completing Form MA-I.

236 If the sole proprietor is also registered through the IARD system or CRD system, registered with the SEC as a municipal advisor on Form MA, or previously registered with the SEC on Form MA-T, or is an associated person of a municipal advisor that is registered with the SEC on Form MA or that previously registered with the SEC on Form MA-T, and the applicant or municipal advisor with which it is associated previously submitted a DRP (with Form ADV, BD, or U4) to the IARD or CRD, or submitted to the SEC disclosure on Form

required by Form MA-I, as proposed, would supplement, rather than duplicate, the information provided by a sole proprietor on Form MA.

The Commission notes that the information requested on proposed Form MA-I is similar to information requested on FINRA's Form U4.[237] Form U4 is used, among other things, to register associated persons of broker-dealers with FINRA, and associated persons of state-registered investment advisers with the states. Some questions on Form U4, however, have been adapted for purposes of proposed Form MA-I to relate specifically to municipal advisors, or have been omitted as not necessary or appropriate in the municipal advisor context.

Request for Comment

The Commission requests comment generally on proposed Form MA-I and also requests comment on the following specific issues:

- What effects would a separate registration requirement have on natural persons and on firms from the standpoint of compliance? What would be the relative advantages and disadvantages for firms, municipal advisor employees, municipal entities, obligated persons, investors, and regulators, of requiring separate registration for natural person municipal advisors? How, if at all, does the moving of an employee from one firm to another bear on the issue of separate registration?
- Would the existence of a separate registration requirement and registration form for natural person municipal advisors cause confusion among municipal advisors such as to

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MA-T or a DRP with Form MA, for the event that contains the information required by the comparable DRP to Form MA-I, such information may be incorporated by reference, to the extent applicable.

237 See Form U4, Uniform Application for Securities Industry Registration or Transfer, available at: http://www.finra.org/web/groups/industry/@ip/@comp/@regis/documents/appsupportdocs/p015112.pdf.

outweigh its benefits? If the Commission were to only require registration of municipal advisory firms, would inclusion of information regarding the firm's employees on the firm's Form MA cause confusion for municipal entities, obligated persons, and investors?

- What, if any, legal ramifications may result for firms and/or for natural persons based on a registration regime that allows natural person municipal advisors that are employees of a municipal advisory firm to be registered by their firms as opposed to separate registration? What, if any, interpretive issues are raised with respect to the application of the statutory registration requirements?
- What would be the advantages and/or disadvantages of requiring a sole proprietor to complete two separate registration forms, and to keep both updated and to amend each form as the occasion arises? Should a separate form be adopted for the registration of sole proprietors?

Items 1 and 2: Identifying Information and Other Names

In addition to requesting basic identifying information about a natural person municipal advisor, and in the case of a natural person municipal advisor that is an employee[238] and the firm with which he or she currently is associated,[239] Item 1 of Form MA-I, as proposed, would require each such individual to disclose additional identifying information that would not be contained in his or her firm's Form MA, including:

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238 This would include, for example, the individual's full legal name.

239 Such identifying information would include, if any, the CRD number assigned to the firm and any file number assigned to the firm by the Commission. The Commission believes that requiring individuals to provide these numbers would make it easier for municipal entities and investors to gather the information they need, would facilitate regulatory oversight and surveillance of municipal advisory activities, and would be valuable for investigative purposes.

- the individual's CRD number, if he or she has one;
- the individual's social security number;[240]
- the date of the individual's employment or contract with the firm;
- whether the individual has an independent contractor relationship with the firm;
- the firm's registration status;
- all the offices of the firm where the individual may be physically located and all the offices from which the individual will be supervised; and
- whether any of these offices are located in a private residence.

Item 2 would require a natural person municipal advisor to disclose all other names that he or she is using or has been known by since the age of 18, such as nicknames, aliases, and names before and after marriage.

The Commission believes that the information above would be useful to municipal entities and obligated persons in exploring the background, credentials, reliability, and trustworthiness of an individual in the course of making a decision whether to engage that natural person or his or her firm as a municipal advisor. The same information would be valuable to regulators in overseeing the market and investigating possible instances of wrongdoing.

Request for Comment

The Commission requests comment generally on Items 1 and 2 of proposed Form MA-I and also requests comment on the following specific issues:

- Do all these data elements serve the purposes of registration? Are all these facts helpful to municipal entities, obligated persons, and regulators in searching for information

[240] This information would not be made publicly available. This information is necessary in connection with the Commission's enforcement and examination functions pursuant to Section 15B(c) of the Exchange Act (15 U.S.C. 78o-4(c)).

about municipal advisors? If not, which should be eliminated and why?

- Is the additional identification information required of individuals registered as representatives of investment advisers and/or broker-dealers on FINRA's Form U4 a useful model for the disclosures that should be required of municipal advisors – i.e., are natural person municipal advisors distinguishable from representatives of investment advisers and/or broker-dealers in this regard? If so, how?
- Are there any additional data elements that would be useful to municipal entities, obligated persons, and regulators that should be required to be provided? If so, what are they?
- Are there other data elements that should not be made available to the public? If so, which should not be made available?
- Would a requirement to provide any of the information described raise any privacy issues, even if not made available to the public?

Item 3: Residential History

Form MA-I, as proposed, also would require a natural person municipal advisor to disclose each location where he or she has resided for the past five years, including the time period at each residence. Natural person municipal advisors would be required to report changes in residence (via an amendment) as they occur. In addition, the applicant must not leave any gaps greater than three months between addresses.

The Commission believes that a natural person municipal advisor's residential history, like the additional identifying information the proposed Form MA-I would seek, would be useful for interested parties in exploring the background, credentials, reliability, and trustworthiness of an individual and be valuable to regulators in overseeing the market and investigating possible

instances of wrongdoing. The Commission notes that the information proposed to be required regarding residential history is similar to the information requested on Form U4.[241]

Request for Comments

The Commission requests comment generally on Item 3 of proposed Form MA-I and also requests comment on the following specific issues:

- Would a list of all the locations at which a natural person municipal advisor has resided for the past five years be necessary or useful in searching for information about municipal advisors to the extent that municipal advisors must be required to reveal them? If not, which should be eliminated?
- Are the disclosures concerning residential history required on FINRA's Form U4 a useful model for the disclosures that should be required of municipal advisors – i.e., are natural person municipal advisors distinguishable from individuals that are representatives of investment advisers and/or broker-dealers in this regard? If so, how?
- Would five years be an appropriate time span for which to require residential history? If not, what time span, if any, would be appropriate?

Item 4: Employment History

Form MA-I, as proposed, would require natural person municipal advisors to provide their complete employment history for the past ten years, including full and part-time employment, self-employment, military service, and homemaking. All statuses during the ten-year period, such as unemployed, full-time education, extended travel, and other similar circumstances would be required to be included. In addition, the applicant must not leave a gap longer than three months between entries. The information that the Commission proposes to be required is similar to the

241 The Commission does not intend to make the information required by Item 3 publicly available.

information requested on Form U4,[242] and would help inform an understanding of an employee's business experience and provide useful information in preparing for regulatory examinations.

Request for Comments

The Commission requests comment generally on Item 4 of proposed Form MA-I and also requests comment on the following specific issues:

- Would requiring a natural person to provide his or her employment history serve a purpose essential enough to be included in the disclosures required of a natural person in registering as a municipal advisor?
- Is a list of all the places of employment and all the gaps in employment of a natural person municipal advisor over the past ten years necessary or useful for municipal entities, obligated persons, and regulators in searching for information about municipal advisors to the extent that municipal advisors must be required to reveal them? If not, should a less comprehensive employment history be required to be disclosed?
- Would ten years be an appropriate time span for which to require employment history? If not, what time span, if any, would be appropriate?
- If the employment history of a natural person municipal advisor is required for purposes of registration, should it be made available to the public? If so, why? If not, why not?
- To the extent that the employment history of a natural person municipal advisor must be disclosed on Form MA-I, should it be limited to employment relating to securities, or, more narrowly, to municipal securities or investment advice?

Item 5: Other Business

Form MA-I, as proposed, also would require a natural person municipal advisor to provide

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242 The Commission intends to make this information publicly available.

information about other business activities, if any, in which he or she is currently engaged – either as a proprietor, partner, officer, director, employee, trustee, agent or otherwise. The form would ask for the name of the other business, its address, whether it is municipal advisor-related, and, if not, the nature of the business in which it is engaged.

The natural person filing Form MA-I would be required to provide his or her position, title, or relationship with the other business, the start date of the relationship, the approximate number of hours per month the applicant devotes to the other business, and a brief description of his or her duties relating to the other business. The information sought in this section of the form is similar to the information sought by the equivalent section in Form U4, and would help the Commission understand a natural person municipal advisor's business activities and would help staff prepare for examinations.

Request for Comments

The Commission requests comment generally on Item 5 of proposed Form MA-I and also requests comment on the following specific issues:

- Does extensive information about a natural person municipal advisor's other current business activities, or any information at all, serve a purpose essential enough to be included in the disclosures required of a natural person in registering as a municipal advisor?
- Is information about a municipal advisor's other current business necessary or useful for municipal entities, obligated persons, and regulators searching for information about municipal advisors to the extent that municipal advisors must be required to reveal them?
- Are any additional points of information about a natural person municipal advisor's

other business activities relevant and, therefore, appropriate to require a natural person municipal advisor to disclose?

- Should required information about other business activities be limited to current activities? If not, over how long a time span should other business activities be reported?
- If the history of other business activities of a natural person municipal advisor is required for purposes of registration, should it be made available to the public?
- To the extent that the history of other business activities of a natural person municipal advisor must be disclosed, should it be limited to other business activities relating to securities, or, more narrowly, to municipal securities or investment advice?

Item 6: Criminal Action, Regulatory Action, and Civil Judicial History, Customer Complaint/Arbitration/Civil Litigation, Termination, and Financial Disclosure

Proposed Form MA-I would include sections that require a natural person municipal advisor to provide the same general types of information regarding his or her criminal, regulatory, and civil judicial history, if any, as provided by municipal advisory firms, including sole proprietors, in corresponding sections in Form MA.[243] As in Form MA, certain responses would require disclosure of complete details of all events or proceedings on the DRPs attached to the form. However, a natural person completing Form MA-I would need to make certain additional disclosures, as specified below, and the DRPs would require details relating to these additional disclosures of the natural person's history.

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[243] See supra Section II.A.2.c. As previously discussed, a sole proprietor who has already filed a Form MA, and an employee whose employer has already filed a Form MA including information relating to that employee, would be permitted to incorporate by reference certain information in the Form MA into his or her Form MA-I, to the extent that providing the information in Form MA-I would duplicate the information already provided in the Form MA. See supra notes 235 and 236 and accompanying text.

The Commission believes that these additional disclosures, which are also required of individuals associated with broker-dealers and investment advisers on Form U4, would be appropriate to require of municipal advisors, both to aid municipal entities, obligated persons, and other members of the public in researching the background of municipal advisors, and to aid regulators in enhancing their oversight of municipal advisors.

Criminal Action Disclosure

With respect to felonies, Form MA-I, in contrast to the disclosures required by Item 9A of Form MA, would require disclosure of:

- any past conviction of, or plea of guilty or nolo contendere to, a felony by the natural person municipal advisor, rather than limiting the disclosure to the past ten years, as in a firm's or solo practitioner's Form MA.
- any charges of felony against the natural person municipal advisor in the past, rather than limiting disclosure to currently pending charges, as in a firm's or solo practitioner's Form MA.
- any convictions of, or plea of guilty or nolo contendere to, a felony by an organization based on activities that occurred when the natural person municipal advisor exercised control over the organization – a disclosure not required in Form MA.

Similarly, with respect to misdemeanors, in instances where Form MA would require only disclosures of convictions and pleas concerning a natural person municipal advisor looking back ten years, and require only disclosures of charges against the natural person that are currently pending, Form MA-I would require disclosure of such convictions, pleas, and charges that occurred at anytime in the individual's past. Misdemeanors, convictions, pleas, and charges of misdemeanor against an organization based on activities while the individual exercised control over it would also

be required to be disclosed.

These additional disclosures would be consistent with the disclosure requirements on Form U4. In addition, these disclosures would provide additional information with respect to natural person municipal advisors that would be useful to the Commission's regulatory and examination programs, and may be useful to municipal entities and obligated persons who are clients or prospective clients of the municipal advisor.

As would be required for firms with respect to proposed Form MA, the DRP for criminal disclosure on Form MA-I, as proposed, would similarly require a natural person municipal advisor to include certain details regarding events noted in the first section of the form. These additional disclosure details would include, among others: status of the event; details of its disposition; and the date of amended charges, if any. The DRP for Form MA-I would also provide an option and space for the individual to comment with a brief summary of the circumstances leading to the charge(s) as well as the current status or final disposition of the charge(s).

Request for Comment

The Commission requests comment generally on the criminal action disclosure requirements of proposed Form MA-I and also requests comment generally on the following specific issues:

- In addition to the questions posed above regarding the appropriateness of the criminal history disclosures proposed in Form MA,[244] the Commission seeks comment on whether the broadened scope of these disclosures required of natural person municipal advisors in proposed Form MA-I would be warranted. If so, why? If not, why not? Would additional disclosure to those outlined above be appropriate? To the extent that additional disclosure regarding the criminal action history for a natural person municipal

244 See supra Section II.A.2.c.

advisor would be appropriate, please provide details regarding what those disclosures should require.

Regulatory Actions Relating to the Individual

With respect to regulatory actions, in addition to the disclosures required in Form MA, Form MA-I, similar to Form U4, would require a natural person municipal advisor to disclose whether the Commission or the CFTC has ever found the natural person to have:

- willfully violated, or been unable to comply with, any provision of the federal securities laws, the Commodity Exchange Act, and the rules thereunder, and any rule of the MSRB;
- willfully aided, abetted, commanded, induced, or procured the violation by any other person of these laws and rules; and
- failed reasonably to supervise another person subject to his or her supervision with a view to preventing violation of these laws and rules.

The disclosures that would be required by proposed Form MA-I with respect to findings and actions relating to the natural person municipal advisor by other federal regulatory agencies, state regulatory agencies, and foreign financial regulatory authorities, would be the same as disclosures required on Form MA. Proposed Form MA-I would also require a natural person municipal advisor to disclose whether he or she has ever been subject to a final order of a state securities commission or similar agency or office; state authority that supervises or examines banks, savings associations, or credit unions; state insurance commission; an appropriate federal banking agency; or the National Credit Union Administration that: bars the natural person municipal advisor from association with an entity regulated by such commission, agency, authority or office, or from engaging in the business of securities, insurance, banking, savings association activities, or credit union activities; or constitutes a final order based on violations of laws or regulations that prohibit fraudulent,

manipulative, or deceptive conduct.

With respect to SRO actions, in addition to the disclosures required of a municipal advisory firm, including sole proprietors, regarding its individual associated persons on Form MA, Form MA-I would require a natural person municipal advisor to disclose any finding by an SRO that the natural person municipal advisor:

- willfully violated, or is unable to comply with, any provision of the federal securities laws, the Commodity Exchange Act and the rules thereunder, or the rules of the MSRB;
- willfully aided, abetted, counseled, commanded, induced, or procured the violation of any of these laws or rules; or
- failed reasonably to supervise another person subject to his or her supervision, with a view to preventing such violations.

Like Form MA, Form MA-I would require an natural person municipal advisor to disclose whether he or she has ever had an authorization to act as an attorney, accountant or federal contractor that was revoked or suspended. Also, as on Form MA, Form MA-I would also require an natural person municipal advisor to disclose whether he or she ever was notified, in writing, that he or she is currently the subject of any regulatory complaint or proceeding by a regulatory body relating to any occurrence of the kind that could trigger a disclosure requirement relating to regulatory history of the natural person municipal advisor with the Commission, the CFTC, other governmental regulators, or SROs as described above. Form MA-I would also require disclosure of whether the natural person municipal advisor was ever notified, in writing, that he or she is currently the subject of an investigation that could result in any occurrence of the kind that could trigger a disclosure requirement relating to the criminal or regulatory history of the natural person

municipal advisor as described above.[245] Form MA would not require such disclosure.

The Commission believes that the additional disclosure items described above would be helpful to municipal entities and obligated persons as clients or prospective clients of municipal advisors. The information could also serve as the basis for granting or instituting proceedings to deny a registration, or for revoking a registration or imposing other sanctions by the Commission with respect to a natural person municipal advisor.[246]

The DRP for regulatory action disclosure in Form MA-I, as proposed, would require a natural person municipal advisor to include certain details regarding events noted in the main body of the form that are similar to the information that would be required in the corresponding DRP in a firm's Form MA, including: if requalification was a condition of any sanction reported, whether it was by exam, retraining, or other process; the length of time given to requalify; and whether the requalification condition was satisfied.

The additional disclosures required by the DRP would also include details of any monetary sanction imposed, including amount; portion levied against the natural person municipal advisor; payment plan; whether such plan was current; date paid; and whether the sanction was a civil or administrative penalty or fine, a monetary penalty other than a fine, disgorgement, or restitution.

Consistent with Form MA, Form MA-I would also include a DRP requiring a natural person municipal advisor to provide details of any investigation reported in the main body of the form, including the date the investigation was initiated, and indicate whether it was initiated by an SRO, a foreign financial regulatory authority (giving the specific jurisdiction), the Commission, or other federal agency. Space would be provided for the natural person municipal advisor to briefly describe the nature of the investigation, if known; whether it was pending or resolved; and details of

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245 A related DRP would be required to disclose details of any pending investigation.

246 See supra note 218 (discussing grounds for revocation of a municipal advisor's registration).

any resolution. A space for optional comment would also be provided for the natural person municipal advisor to present a brief summary of the circumstances leading to the investigation, and its current status or final disposition and/or findings.

Request for Comment

The Commission requests comment generally on the regulatory action disclosure requirements of proposed Form MA-I, and also requests comment on the following specific issues:

- In addition to the questions posed above regarding the disclosures with respect to regulatory history proposed in Form MA,[247] the Commission seeks comment on whether the broadened scope of the disclosures required of natural person municipal advisors in proposed Form MA-I would elicit information that would be valuable to the public, and in particular municipal entities or obligated persons. If so, in what way? Is there information proposed to be requested that would not be useful? If so, why? Is there additional information that should be requested with respect to regulatory actions relating to natural person municipal advisors? If so, what information and why?

Civil Judicial Action Disclosure

The disclosures that would be required by proposed Form MA-I with respect to certain matters relating to a natural person municipal advisor's civil judicial history would be the same as disclosures required on Form MA. Thus, a natural person municipal advisor would be required to disclose on Form MA-I whether he or she was ever:

- enjoined by a domestic or foreign court in connection with any investment-related or municipal advisor-related activity;

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247 See supra Section II.A.2.c.

- found by a domestic or foreign court to be involved in a violation of any investment-related or municipal advisor-related statute or regulation; or
- had an investment-related or municipal advisor-related civil action brought against him or her dismissed, pursuant to a settlement agreement, by a state or foreign financial regulatory authority; or
- named in any such pending action.

A DRP would be required for affirmative responses to questions under this item. Specifically, the DRP would require, among other things, information regarding by whom the court action was initiated; the name of the party initiating the proceeding; information about the relief sought; the date on which the action was filed and notice or process was served; the types of financial products involved; a description of the allegations relating to the civil action; the current status, including whether the action is on appeal and details relating to any such appeal; sanction details; and if the disposition resulted in a fine, disgorgement, restitution or monetary compensation, information relating thereto. The DRP would also provide the opportunity for an applicant to provide additional comment, including a summary of the circumstances leading to the action and current status. The Commission believes that it is appropriate to seek information from natural person municipal advisors regarding investment-related activities as well as municipal advisor-related activities due to the significant similarities that exist between the two advisory functions, and because such information could serve as a basis to institute proceedings to deny registration of a municipal advisor or to impose other sanctions on the municipal advisor's activities.

Request for Comment

The Commission requests comment generally on the civil action disclosure requirements of proposed Form MA-I and also requests comment on the following specific issues:

- Are these additional disclosure requirements for natural person municipal advisors regarding civil judicial history warranted?
- Would it be useful to municipal entities and obligated persons to require natural persons registering as municipal advisors to provide information regarding past investment-related activities as well as past municipal advisor-related activities? If so, why? If not, why not?

Customer Complaints/Arbitration/Civil Litigation

Form MA does not require a municipal advisory firm or a sole proprietor to disclose any customer complaints, arbitration matters, and civil litigation concerning natural person municipal advisors. Form MA-I, however, would require a natural person municipal advisor to disclose whether he or she has ever been:

- the subject of a complaint initiated by a consumer, whether written or oral, regarding investment-related or municipal advisor-related matters, which alleged that he or she was involved in fraud, false statements, omissions, theft, embezzlement, wrongful taking of property, bribery, forgery, counterfeiting, extortion, and dishonest, unfair or unethical practices; or
- the subject of an arbitration or civil litigation initiated by a consumer regarding investment-related or municipal advisor-related matters, which alleged that he or she was involved in fraud, false statements, omissions, theft, embezzlement, wrongful taking of property, bribery, forgery, counterfeiting, extortion, and dishonest, unfair or unethical practices.

In the case of a complaint, the natural person municipal advisor would be required to indicate whether the complaint is still pending or was settled. In the case of arbitration or civil

litigation, the natural person municipal advisor would be required to indicate whether the arbitration or litigation is still pending; resulted in an arbitration award or civil judgment against the natural person municipal advisor in any amount; or was settled.

A DRP would be required for affirmative responses to questions under this item. Specifically, the related DRP would require the municipal advisor to disclose the customer's name; the customer's state of residence and other states of residence; the employing firm of the municipal advisor when the activities occurred that led to the complaint, arbitration, CFTC reparation or civil litigation; and the allegations and brief summary of events related to the allegations, including the dates when they occurred; the product type; and the alleged compensatory damage amount. For customer complaints, arbitration, CFTC reparation, or civil litigation in which the municipal advisor is not a named party, the DRP would require disclosure of whether the complaint is oral or written, or whether it is an arbitration, CFTC reparation or civil litigation (and the arbitration or reparation forum, docket or case number, and the filing date); whether the complaint, arbitration, CFTC reparation or civil litigations is pending, and if not, the status. The DRP would require disclosure of the status date, and the settlement award amount, including the municipal advisor's contribution amount. If the matter involves an arbitration or CFTC reparation in which the municipal advisor is a named respondent, the DRP would require disclosure of the entity with which the claim was filed; the docket or case number; the date process was served; whether the arbitration of CFTC reparation is pending, and if not pending the form of disposition; the disposition date; and the amount of the monetary award, settlement or reparation (including the municipal advisor's contribution). If the matter involves a civil litigation, the DRP would require disclosure of the court in which the case was filed; the location of the court; the docket or case number; the date the complaint was served on or received by the municipal advisor; whether the litigation is still pending; if not still pending the

form of its disposition; the disposition date; the judgment, restitution or settlement amount, including the municipal advisor's contribution amount; whether the action is currently on appeal, and if so, the date the appeal was filed, the court in which the appeal was filed, the location of the court, and the docket or case number for the appeal. The DRP would also provide for optional additional comment, such as a summary of the circumstances leading to the complaint.

These disclosures, too, would mirror similar disclosures in Form U4, and would provide additional information about natural person municipal advisors that may be useful to municipal entities or obligated persons as clients or prospective clients. The information would also help the Commission prepare for and plan examinations.

Request for Comment

The Commission requests comment generally on the customer complaint/arbitration/civil litigation disclosure requirements of proposed Form MA-I and also requests comment on the following specific issues:

- Would these additional disclosure requirements for natural person municipal advisors provide information that would be useful in the context of natural person municipal advisors but that would not be useful in the context of firms? If so, to whom would the information be useful, and why?
- Would municipal entities and obligated persons find it useful for Form MA-I to require municipal advisors to disclose customer complaints, arbitration, and civil litigation with respect to investment-related matters, in addition to complaints, arbitration, and civil litigation with respect to municipal advisor-related matters? Is this information they would access and use if available? If so, how?
- Should Form MA also require similar disclosure with respect to associated persons of

municipal advisory firms? If so, which additional information would be useful and why?

Termination Disclosure

Unlike in Form MA, Form MA-I would require disclosure regarding the termination of a natural person municipal advisor's employment. Specifically, consistent with Form U4, Form MA-I would ask the natural person municipal advisor to indicate whether he or she ever voluntarily resigned, or was discharged or permitted to resign after allegations were made that accused him or her of:

- violating investment-related or municipal advisor-related statutes, regulations, rules, or industry standards of conduct;
- fraud or the wrongful taking of property; or
- failure to supervise in connection with investment-related or municipal advisor-related statutes, regulations, rules or industry standards of conduct.

An affirmative response to the disclosures described above would require the municipal advisor to disclose additional information on a related DRP. Specifically, the DRP would require the municipal advisor to disclose the name of the firm, the type of termination (whether discharged, permitted to resign, or voluntary resignation), the termination date, the allegations, and the product types. The DRP would also provide for optional additional comment, such as a summary of the circumstances leading to the termination. This disclosure would provide information that would be useful to the Commission in planning and preparing for inspections and examinations, and would be useful to the public generally (including municipal entities and obligated persons, as clients or prospective clients).

Request for Comment

The Commission requests comment generally on the termination disclosure requirements of proposed Form MA-I and also requests comment on the following specific issues:

- Would the requirement for the above-listed additional disclosures by natural person municipal advisors regarding their municipal advisory activities elicit information that would be useful to the public (including municipal entities and obligated persons, as clients or prospective clients) and that would be relevant in the context of natural person municipal advisors that is not relevant in the context of firms? If not, what additional information should be requested and why?
- Would requiring municipal advisors to disclose violations of investment-related statutes, regulations, rules, and industry standards, in addition to violations of municipal advisor-related statutes, regulations, rules, and industry standards on Form MA-I elicit information that would be useful to the public (including municipal entities and obligated persons, as clients or prospective clients)?

Financial Disclosures

Form MA-I also would require natural persons who are municipal advisors to make financial disclosures that are not required to be made by municipal advisory firms regarding their associated persons or by sole proprietors regarding themselves on Form MA. Specifically, the form would ask a natural person municipal advisor whether, within the past ten years:

- he or she has made a compromise with creditors, filed a bankruptcy petition, or been the subject of an involuntary bankruptcy petition;
- an organization controlled by the natural person municipal advisor has made a compromise with creditors, filed a bankruptcy petition, or been the subject of an

involuntary bankruptcy petition based upon events that occurred while he or she exercised control over it; or

- a broker or dealer controlled by the natural person municipal advisor has been the subject of an involuntary bankruptcy petition, had a trustee appointed, or had a direct payment procedure initiated under the Securities Investor Protection Act based upon events that occurred while he or she exercised control over it.

In addition, a natural person who is a municipal advisor would be required to disclose whether:

- a bonding company ever denied, paid out on, or revoked a bond for him or her; or
- the natural person municipal advisor has any unsatisfied judgments or liens against him or her.

An affirmative response to the disclosure items described above would require the municipal advisor to provide additional disclosure on a DRP. Specifically, the municipal advisor would be required to disclose the judgment or lien amount, the judgment or lien holder, the judgment or lien type (whether civil or tax), the date filed, the court in which the action was brought, the name of the court, the location of the court, the docket or case number (and whether the docket or case number is the municipal advisor's social security number, bank card number, or personal identification number), whether the judgment or lien is outstanding, and if the judgment or lien is not outstanding, the status date and how the matter was resolved. The DRP would also provide for optional comment, such as a brief summary of the circumstances leading to the action.

The Commission believes that the information that would be required, which is consistent with that required by Form U4, would be useful for its regulatory purposes, including planning and preparing for inspections and examinations, and to the public generally (including municipal entities

and obligated persons, as clients or prospective clients).

Request for Comment

The Commission requests comment generally on the financial disclosure requirements of proposed Form MA-I and also requests comment on the following specific issues:

- Would financial disclosure requirements be necessary, useful, or relevant in connection with natural person municipal advisors in a way that it would not be useful with respect to municipal advisors that are firms? If so, how? If not, why not?

Item 7: Execution and Self-Certification

With respect to execution of Form MA-I, the natural person municipal advisor who signs the form would be required to represent that the information and statements made in Form MA-I are true and correct. The municipal advisor also would be required to consent to service of any civil action or notice of any proceeding before the Commission or an SRO regarding its municipal advisory activities via registered or certified mail. The proposed requirements for execution of Form MA-I would be consistent with and serve the same purposes as the execution provisions of proposed Form MA, with modifications to reflect that Form MA-I would apply to municipal advisors that are natural persons rather than firms and that, unlike municipal advisory firms, natural person municipal advisors would not be subject to the books and records requirements of proposed rule 15Ba1-7.

A natural person municipal advisor would also be required to certify that he or she has: 1) sufficient qualifications, training, experience, and competence to effectively carry out his or her designated functions; 2) met, or within any applicable required timeframes will meet, such standards of training, experience, and competence, and such other qualifications, including testing, for a municipal advisor, required by the Commission, the MSRB or any other relevant SRO; and 3)

the necessary understanding of and ability to comply with, all applicable regulatory obligations. For these purposes, such applicable regulatory obligations are obligations under the federal securities laws and rules promulgated thereunder and applicable rules promulgated by the MSRB, or any other relevant SRO. Proposed rule 15Ba1-4(e) would require such certification at the time an initial application for registration as a municipal advisor is filed and annually thereafter.[248]

Request for Comment

The Commission requests comment generally on the execution requirements of proposed Form MA-I and also requests comment on the following specific issues:

- Should there be additional or alternative representations to those proposed for Item 7 of Form MA-I? If so, what representations and why?
- Would there be alternative methods to obtain consent to service of process or should such consent not be obtained?
- Is the proposed self-certification broad enough in scope or too broad? If not, what additional factors should be included or excluded and why? Should the self-certification be required more or less frequently? If so, how often and why? Are there other alternatives the Commission should consider? If so, what alternatives and why?
- Should the self-certification required of natural person municipal advisors include additional factors? If so, what would they be and why? Should the Commission require an independent third party review of the municipal advisor? What are examples of such a review? Should the Commission undertake a review of all municipal advisors as part

[248] See proposed rule 15Ba1-4(e). The proposed rule would require the annual self-certification to be filed by natural person municipal advisors, including sole proprietors, within 90 days of the end of the calendar year. General Instruction 13 would require that a natural person municipal advisor filing an annual self-certification on Form MA-I check the appropriate box to indicate as such and complete the certification included in Item 7.

of the registration and examination process? If so, what should be the scope and frequency of the examination process? Should the Commission provide municipal advisors a choice between independent third party review and Commission review, or a combination thereof?

### 3. Proposed Rule 15Ba1-3

#### a. Withdrawal from Municipal Advisor Registration

Pursuant to proposed rule 15Ba1-3, all municipal advisors, whether registered on Form MA or MA-I, would be required to file Form MA-W to withdraw from registration with the Commission as a municipal advisor.[249] As would be the case with Forms MA and MA-I, Form MA-W would be required to be filed electronically with the Commission.[250]

A notice of withdrawal from registration would become effective on the 60th day after electronically filing the Form MA-W with the Commission, or within a longer time period if the municipal advisor consents, or the Commission by order determines as necessary or appropriate in the public interest, for the protection of investors, or within such shorter time as the Commission may determine.[251] Under the proposed rule, if a municipal advisor electronically filed a notice of withdrawal from registration with the Commission at any time subsequent to the date of issuance of a Commission order instituting proceedings pursuant to Section 15B(c) of the Exchange Act[252] to censure, place limitations on the activities, functions or operations of, or suspend or revoke the registration of the municipal advisor, or if the Commission institutes such a proceeding or a proceeding to impose terms and conditions upon the withdrawal, the notice of withdrawal would not

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249 See proposed rule 15Ba1-3(a).

250 See proposed rule 15Ba1-3(b).

251 See proposed rule 15Ba1-3(c).

252 15 U.S.C. 78o-4(c).

become effective except at the time and upon the terms and conditions as deemed by the Commission as necessary or appropriate in the public interest or for the protection of investors.

**b. Form MA-W**

Consistent with the requirements of withdrawal of a registration on Form ADV, Form MA-W would require a municipal advisor, whether a firm, sole proprietor, or associated person of a municipal advisor (that falls within the definition of a "municipal advisor") to provide identifying information keyed to the identifying information on, and the file number of, the municipal advisor's Form MA or Form MA-I. In the case of a firm, the municipal advisor would be required to provide on the form the name of an employee (or principal) of the firm who is authorized to receive information and respond to questions about the Form MA-W. Contact information for outside counsel for the firm would not suffice.

A municipal advisor filing to withdraw registration would be required to indicate on Form MA-W whether it has received any pre-paid fees for municipal advisory services that have not been delivered, including subscription fees for publications, and to specify the amount. In addition, the withdrawing registrant would be required to indicate how much money, if any, it has borrowed from clients that it has not repaid. The municipal advisor that is filing to withdraw its registration also would be required to indicate whether there were any unsatisfied liens or judgments against it. If the filer responded affirmatively that it owed money or had any liens or judgments against it, it would be required to disclose on a schedule attached to Form MA-W, Schedule W2, the nature and amount of its assets and liabilities and its net worth on the last day of the month prior to the filing of the form.

The Commission believes that requiring such information from a municipal advisor that is withdrawing its registration is appropriate for the protection of investors and of those who do business with municipal advisors because it would put them on notice that the municipal advisor

would no longer be registered and, therefore, would not be able to engage in municipal advisory activities without violating federal securities laws. Such information would also alert clients and prospective clients as to the financial stability of the municipal advisor. In addition, the information would help investigative and enforcement efforts on the part of regulators. The Commission notes that an investment adviser that withdraws from registration must supply similar information on its Form ADV-W.[253]

Because proposed rule 15Ba1-7(b) under the Exchange Act requires a municipal advisor withdrawing from registration to nonetheless preserve its books and records, a filer of Form MA-W would be required to list the name and address of each person who has, or will have, custody or possession of its books and records and the location at which such books and records will be kept. A withdrawing municipal advisor would be required to identify, in an additional schedule attached to Form MA-W, Schedule W1, each person to which it has assigned any of its contracts. The Commission believes that such a requirement – which also exists for investment advisers – is important for the protection of participants in the municipal securities markets.

The signatory to the Form MA-W would be required to certify, under penalty of perjury, that the information and statements made in the form, including any exhibits or other information provided, are true. If the form is being filed on behalf of a municipal advisory firm,[254] the signature would constitute such certification by both the firm and the signatory. Similarly, the signatory (and the municipal advisory firm, if the municipal advisor is a firm) would be required to certify that the advisor's books and records will be preserved and available for inspection as required by law, and to authorize any person having custody or possession of these books and records to make them

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253 See 17 CFR 279.2.

254 In the case of a firm, the signatory's certification includes a statement that he or she has signed on behalf of the firm and that he or she has the authority to do so.

available to authorized regulatory representatives.

The certification would include a statement that all information previously submitted on the municipal advisor's most recent Form MA, Form MA-I, or both, as applicable, was accurate and complete as of the date of the signing of the Form MA-W. It would also include an understanding by the signatory that if any information contained in items on the Form MA-W is different from the information contained on the most recent Form MA, MA-I, or both, as applicable, the information on the Form MA-W would replace the corresponding entry on the municipal advisor's Form MA or MA-I available through the Commission's electronic system.

The Commission believes that the certification requirement should serve as an effective means to assure that the information supplied in Form MA-W is correct.

Request for Comment

The Commission requests comment generally on proposed Form MA-W and also requests comment on the following specific issues:

- Form MA-W would have to be filed electronically for purposes of withdrawing from registration with the Commission. Should the proposed rule include an option for the form to be filed in paper rather than electronically? If so, please explain under what circumstances it would be appropriate to allow paper filings of the form.
- How much identifying information should be required of the municipal advisor filing to withdraw its registration? Is the information required in the proposed form too much or too little?
- What are the relative benefits and disadvantages of requiring the contact person for a withdrawal of registration to be an employee or principal of the firm that is

withdrawing? Considering these factors, should a firm be permitted to name outside counsel as the contact?

- Do the proposed disclosures require more, or less, information than necessary from municipal advisors that are withdrawing from registration? To the extent additional disclosures should be required, please provide specific examples of the types of additional disclosures that would be valuable, to whom they would be valuable, and why.

#### 4. Proposed Rule 15Ba1-4: Amendment to Application for Registration and Self-Certification

Proposed rule 15Ba1-4 sets forth the timeframes within which a municipal advisor must amend its Forms MA and MA-I. Proposed rule 15Ba1-4(a)(1) would require that a municipal advisor amend its Form MA at least annually, within 90 days of the end of the applicant's fiscal year in the case of applicants that are firms, or within 90 days of the end of the calendar year in the case of sole proprietors. In addition, proposed rule 15Ba1-4(a)(2) would require that a municipal advisor amend its Form MA more frequently than annually if required by the instructions to Form MA.[255]

Consistent with the requirement of Form ADV, proposed rule 15Ba1-4(a) would require a firm to amend its Form MA promptly if information provided in response to Item 1 (Identifying Information), 2 (Form of Organization), or 9 (Disclosure Information) becomes inaccurate in any way; or if information provided in response to Items 3 (Succession), 7 (Participation or Interest of Applicant, or of Associated Persons of Applicant, in Municipal Advisory Client Transactions), or 8 (Control Persons) becomes materially inaccurate.[256] Proposed rule 15Ba1-4(b) would require that a

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255 See proposed rule 15Ba1-4(a)(2). See also General Instruction 8.

256 See proposed rule 15Ba1-4(a). See also General Instruction 8.

natural person municipal advisor promptly amend its Form MA-I if any information provided previously becomes inaccurate.[257] This requirement for natural person municipal advisors would be consistent with the requirement for updating Form U4.

A non-resident municipal advisory firm would be required to file an amendment to Form MA promptly after any changes in the legal or regulatory framework that would impact its ability or the manner in which it provides the Commission with the required access to its books and records or impacts the Commission's ability to inspect to examine the municipal advisor onsite.[258] The amendment should include a revised opinion of counsel describing how, as a matter of law, the municipal advisor will continue to meet its obligations to provide the Commission with the required access to the municipal advisor's books and records and to be subject to the Commission's onsite inspection and examination under the new regulatory regime. As noted in Section II.a.2.c. above, if a registered non-resident municipal advisory firm becomes unable to comply with this requirement, because of legal or regulatory changes, or otherwise, then this may be a basis for the Commission to revoke the municipal advisor's registration.

The Commission is not proposing to require natural person municipal advisors to annually update their Forms MA-I, as it is proposing to require municipal advisors registered on Form MA to do. In the case of firms, changes commonly occur over the course of a year, and a wide range of changes is possible – e.g., changes in control persons and personnel, number of employees, nature of services provided, types of clients, and compensation arrangements, among others, as well as new disclosures that may be necessary for all of the firm's associated persons, rather than just one natural person. Accordingly, the Commission believes it is appropriate to require a firm to confirm through an annual update that its registration is up-to-date. With respect to natural person

257 See proposed rule 15Ba1-4(b). See also General Instruction 9.

258 See General Instruction 8.

municipal advisors, however, because an amendment to Form MA-I would be promptly required whenever information previously provided becomes inaccurate, the Commission believes that the gains to be had by requiring the extra confirmation of an annual update are outweighed by the burden such a requirement would impose on natural person municipal advisors that are employees of municipal advisory firms.

All amendments to Form MA and Form MA-I would be required to be filed electronically with the Commission.[259] In addition, amendments to Form MA and Form MA-I would be "reports" for purposes of Sections 15B(c), 17(a), 18(a), 32(a) (15 U.S.C. 78oF(b), 78q(a), 78r(a), 78ff(a)) and other applicable provisions of the Exchange Act.[260]

These proposed rules are consistent with the Commission's requirements for other registrants (e.g., national securities exchanges, SIPs, broker-dealers) to file updated and annual amendments with the Commission.[261] The Commission believes that such amendments are important for obtaining updated information on each municipal advisor so that the Commission would be able to assess whether each municipal advisor continues to be in compliance with the federal securities laws and the rules and regulations thereunder. Obtaining updated information would also assist the Commission in its inspection and examination of a municipal advisor, and better inform the MSRB's regulation of municipal advisors. In addition, the Commission believes it is important for municipal entities and obligated persons, as well as the public generally, to have access to current information regarding advisors registered with the Commission.

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259 See proposed rule 15Ba1-4(c).

260 See proposed rule 15Ba1-4(d). As a consequence, it would be unlawful for a municipal advisor to willfully make or cause to be made, a false or misleading statement of a material fact or omit to state a material fact in an amendment to Form MA or Form MA-I.

261 See e.g., rules 6a-2 and 15b3-1 under the Exchange Act. 17 CFR 240.6a-2 and 240.15b3-1. See also 17 CFR 249.1001 (Form SIP, application for registration as a securities information processor or to amend such an application or registration).

Request for Comment

The Commission requests comment generally on the proposed requirement for amendments to Forms MA and MA-I, and also requests comment on the following specific issues:

- Should the events triggering amendment of Form MA be reduced or expanded? If so, which events should be added or removed and why?
- Is there any information that would be required by Form MA-I that should not trigger an amendment if it becomes inaccurate? If so, which information and why? Should the deadline by which a natural person municipal advisor must file an amendment to Form MA-I upon the occurrence of a material change be different from the deadline by which a firm must file an amendment to a Form MA? If so, what should be the deadline, and why?
- Should the requirements for amending or updating Forms MA and MA-I be the same? If so, why? If not, why not?

### 5. Proposed Rule 15Ba1-5: General Procedures for Serving Non-Residents and Form MA-NR

The Commission is proposing rule 15Ba1-5 to set forth the general procedures for serving non-residents under Form MA-NR. Proposed rule 15Ba1-5 would require that non-resident municipal advisors and non-resident general partners and managing agents[262] of municipal advisors must furnish the Commission with a written irrevocable consent and power of attorney on Form

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262 Proposed rule 15Ba1-1(c) defines a "managing agent" as "any person, including a trustee, who directs or manages, or who participates in directing or managing, the affairs of any unincorporated organization or association other than a partnership." This definition is consistent with the definition of a "managing agent" as used in rule 15b1-5 under the Exchange Act relating to consent to service of process to be furnished by non-resident brokers or dealers and by non-resident general partners or managing agents of brokers or dealers. See 17 CFR 240.15b1-5. See also 17 CFR 275.0-2 (discussing general procedures for serving non-resident investment advisers in connection with Form ADV).

MA-NR to appoint an agent in the United States, other than a Commission member, official, or employee, upon whom may be served any process, pleadings, or other papers in any action brought against the non-resident municipal advisor, general partner or managing agent that arises out of or relates to or concerns the municipal advisory activities of the municipal advisor.

This proposed requirement is designed to allow the Commission and others to provide service of process to a non-resident municipal advisor, general partner or managing agent to enforce the provisions of new Exchange Act Section 15B. Proposed rule 15Ba1-5 also would require that non-resident municipal advisors, general partners and managing agents update the information on the Form MA-NR if it becomes inaccurate. Further, the proposed rule would require that the non-resident municipal advisor, general partner or managing agent appoint a successor agent and file an updated Form MA-NR if the non-resident municipal advisor, general partner or managing agent discharges its agent or if the agent becomes unwilling or unable to accept service on behalf of the municipal advisor, general partner or managing agent. Finally, proposed rule 15Ba1-1(h) would define the term "non-resident," to mean: "(i) [i]n the case of an individual, one who resides in or has his principal office and place of business in any place not in the United States; (ii) [i]n the case of a corporation, one incorporated in or having its principal office and place of business in any place not in the United States; (iii) [i]n the case of a partnership or other unincorporated organization or association, one having its principal office and place of business in any place not in the United States."Pursuant to proposed General Instruction 2, and consistent with the proposed rule, every non-resident municipal advisor and every non-resident general partner and managing agent of a municipal advisor, whether or not the municipal advisor is resident in the United States, must file Form MA-NR in connection with the municipal advisor's initial application.[263]

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[263] See General Instruction 2. Failure to file Form MA-NR promptly may delay SEC consideration of the initial application. Additionally, a municipal advisor or general partner

Request for Comments

The Commission requests comment generally on the proposed general procedures for serving non-residents and proposed Form MA-NR, and also requests comment on the following specific issues:

- Is the Commission's proposed rule regarding service of process on non-residents appropriate and sufficiently clear? If not, why not and what would be a better alternative?
- Are there any factors that the Commission should take into consideration to ensure effective service of process on a non-resident municipal advisor or a non-resident general partner or managing agent?
- Should the Commission require non-resident municipal advisors and non-resident managing agents and general partners to certify to anything else on Form MA-NR?

**6. Proposed Rule 15Ba1-6: Registration of Successor to Municipal Advisor**

Proposed rule 15Ba1-6 would govern the registration of a successor to a registered municipal advisor. This proposed rule is substantially similar to rule 15b1-3 under the Exchange Act, which governs the registration of a successor to a registered broker-dealer.[264]

Succession by Application

Specifically, proposed rule 15Ba1-6(a) provides that in the event that a municipal advisor succeeds to and continues the business of a municipal advisor registered pursuant to Exchange Act Section 15B(a), the registration of the predecessor shall be deemed to remain effective as the

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or managing agent of an SEC-registered municipal advisor who becomes a non-resident after the initial application has been submitted must file Form MA-NR within 30 days. Id.

[264] See 17 CFR 240.15b1-3. See also Registration of Successors to Broker-Dealers and Investment Advisers, Exchange Act Release No. 31661 (December 28, 1992), 58 FR 7 (January 4, 1993) (providing interpretive guidance regarding amendments to rule 15b1-3).

registration of the successor if the successor, within 30 days after such succession, files an application for registration on Form MA, and the predecessor files a notice of withdrawal from registration with the Commission on Form MA-W.

This proposed rule further provides that the registration of the predecessor municipal advisor shall cease to be effective 45 days after the application for registration on Form MA is filed by the successor municipal advisor.[265] In other words, the 45-day period would not begin to run until a complete Form MA has been filed by the successor with the Commission. This 45-day period is consistent with Exchange Act Section 15B(a)(2), pursuant to which the Commission has 45 days to grant a registration or institute proceedings to determine if a registration should be denied.[266]

Succession by Amendment

Proposed rule 15Ba1-6(b) further provides that notwithstanding rule 15Ba1-6(a), if a municipal advisor succeeds to and continues the business of a registered predecessor municipal advisor, and the succession is based solely on a change in the predecessor's date or state of incorporation, form of organization, or composition of a partnership, the successor may, within 30 days after the succession, amend the registration of the predecessor municipal advisor on Form MA to reflect these changes. Such amendment shall be deemed an application for registration filed by the predecessor and adopted by the successor. In all three types of successions that are specified in proposed rule 15Ba1-6(b) (change in the date or state of incorporation, change in form of organization, and change in composition of a partnership), the predecessor must cease operating as a municipal advisor. The Commission believes that it is appropriate to allow a successor to file an amendment to the predecessor's Form MA in these types of successions because such successions do not typically result in a change of control of the municipal advisor.

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265 See proposed rule 15Ba1-6(a).

266 See 15 U.S.C. 78o-4(a)(2).

Scope and Applicability of Proposed Rule 15Ba1-6

The purpose of proposed rule 15Ba1-6 is to enable a successor municipal advisor to operate without an interruption of business by relying for a limited period of time on the registration of the predecessor municipal advisor until the successor's own registration becomes effective. The proposed rule is intended to facilitate the legitimate transfer of business between two or more municipal advisors and to be used only where there is a direct and substantial business nexus between the predecessor and the successor municipal advisor. The proposed rule is not designed to allow a registered municipal advisor to sell its registration, eliminate substantial liabilities, spin off personnel, or facilitate the transfer of the registration of a "shell" organization that does not conduct any business. No entity would be permitted to rely on proposed rule 15Ba1-6 unless it is acquiring or assuming substantially all of the assets and liabilities of the predecessor's municipal advisor business, or there has been no practical change of control.[267]

The Commission would not apply proposed rule 15Ba1-6 to a reorganization that involves only registered municipal advisors. In those situations, the registered municipal advisors need not rely on the proposed rule because they can continue to rely on their existing registrations. The proposed rule would also not apply to situations in which the predecessor intends to continue to engage in municipal advisory activities. Otherwise, confusion may result as to the identities and registration statuses of the parties.

Request for Comments

The Commission requests comment generally on the proposed requirement for registration of a successor to a municipal advisor and also requests comment on the following specific issues:

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[267] See Instruction 1 to Form MA.

- Is the Commission's proposed successor rule sufficiently clear? If not, why not and what would be a better alternative?
- Are the 30-day and 45-day timeframes in the proposed successor rule too short or too long? If so, what would be more appropriate timeframes and why?
- Are there any other instances not specified in the proposed rule in which a successor should be permitted to file an amendment to the predecessor's Form MA for registration?
- Are there any downsides to allowing a successor to rely on its predecessor's registration by filing an amendment to the predecessor's Form MA?

**B. Approval or Denial of Registration**

Exchange Act Section 15B(a)(2) provides that within forty-five days of the filing of an application to register as a municipal advisor,[268] the Commission must either: (a) by order grant registration, or (b) institute proceedings to determine whether registration should be denied. Such proceedings shall include notice of the grounds for denial under consideration and opportunity for hearing and shall be concluded within one hundred twenty days of the date of the filing of the application for registration. At the conclusion of such proceedings, the Commission, by order, shall grant or deny such registration. The Commission may extend the time for the conclusion of such proceedings for up to ninety days if it finds good cause for such extension and publishes its reasons for so finding or for such longer period as to which the applicant consents.

In accordance with Exchange Act Section 15B(a)(2), the Commission shall grant the registration of a municipal advisor if the Commission finds that the requirements of Section 15B of

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[268] The statute allows for a longer period if the applicant consents. See 15 U.S.C. 78o-4(a)(2).

the Exchange Act are satisfied.[269] The Commission shall deny the registration of a municipal advisor if the Commission does not make any such finding, or if it finds that if the applicant were registered, its registration would be subject to suspension or revocation under Section 15B(c) of the Exchange Act.[270]

The information currently required by temporary Form MA-T is not reviewed by the Commission prior to registration, although the Commission retains full authority to review such information and examine any registered municipal advisor at any time. The Commission intends that the permanent registration process would entail a review of each Form MA and Form MA-I filed. In approving or denying an application for registration as a municipal advisor, the Commission would review the information provided on Form MA or Form MA-I as applicable. For example, the Commission may perform cross checks of applicants through the use of the applicant's other registration numbers, such as its CRD or other SEC registration numbers, to the extent available. Also, the Commission may review the disclosures required by Item 9 of Form MA and Item 6 of Form MA-I discussed above, including the disciplinary history of an applicant. In order to form a more complete and informed basis on which to determine whether to grant, institute proceedings to deny, or revoke a municipal advisor's registration, the Commission is also proposing to adopt a requirement that a municipal advisor file with the Commission an annual self-certification relating to its ability to meet its regulatory obligations.

The benefit of the proposed municipal advisor registration process is that it would allow the Commission and staff to ask questions and, as needed, to require amendments, before approving an application for registration. The procedural process for reviewing applications for registration as a municipal advisor would be substantially similar to the procedural process for reviewing

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269 See 15 U.S.C. 78o-4(a)(2).

270 See id.

applications of other registrants with the Commission (e.g., SIPs, broker-dealers, national securities exchanges, registered securities associations, clearing agencies, and investment advisers).[271]

### C. Proposed Rule 15Ba1-7: Books and Records to be Made and Maintained by Municipal Advisors

Section 17(a)(1) under the Exchange Act provides, in pertinent part, that all registered municipal advisors other than natural persons (i.e., municipal advisory firms, including sole proprietors) shall make and keep for prescribed periods such records, furnish such copies thereof, and make and disseminate such reports as the Commission, by rule, prescribes as necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.[272] The Commission is proposing rule 15Ba1-7 under the Exchange Act to specify books and records requirements applicable to municipal advisors.[273] Proposed rule 15Ba1-7's requirements are discussed below.

Records to be Made by Municipal Advisors

Proposed rule 15Ba1-7(a) would require municipal advisory firms to make and keep true, accurate, and current, certain books and records relating to its municipal advisory activities. These proposed books and records requirements are based generally on Exchange Act rules 17a-3 and 17a-4, and Investment Advisers Act rule 204-2, which set forth books and records requirements with respect to broker-dealers and investment advisers, respectively, with appropriate revisions to reflect the activities of municipal advisors.[274]

Proposed rule 15Ba1-7(a) would require municipal advisory firms to make and keep current

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271 See 15 U.S.C. §§ 78k-1(b)(3), 78o(b), 78s(a), and 80b-3(c).

272 See Exchange Act Section 17(a)(1). 15 U.S.C. 78q(a)(1).

273 In addition, Section 15B(b)(2)(G) provides that the rules of the MSRB shall "prescribe records to be made and kept by . . . municipal advisors and the periods for which such records shall be preserved." 15 U.S.C. 78o-4(b)(2)(G).

274 See 17 CFR 240.17a-3 and 17a-4, and 17 CFR 275.204-2.

originals or copies of all communications received, and originals or copies of all communications sent, by such municipal advisor (including inter-office memoranda and communications) relating to municipal advisory activities, regardless of the format of the communications.[275] Municipal advisory firms would also have to keep all check books, bank statements, cancelled checks and cash reconciliations; a copy of each version of the municipal advisor's policies and procedures, if any, in effect at any time within the last five years; and a copy of any document created by the municipal advisor that was material to making a recommendation to a municipal advisory client or that memorializes the basis for that recommendation. A municipal advisory firm would also be required to keep copies of all written agreements entered into by the municipal advisor with any municipal entity, employee of a municipal entity or an obligated person or otherwise relating to the business of the municipal advisor. A municipal advisory firm would also be required to keep a record of the names of persons who are, or have been in the past five years, associated persons of the municipal advisor; names, titles and addresses of persons associated with the municipal advisor; municipal entities or obligated persons with whom the municipal advisor has engaged in municipal advisory activities in the past five years; the names and business addresses of persons to whom the municipal advisor agrees to provide payment to solicit municipal entities on its behalf; and the names and business addresses of persons that agree to provide payment to the municipal advisor to make solicitations on their behalf. The purpose of these rules is to assist the Commission in its inspection and examination function. Based on the Commission's experience in conducting examinations of broker-dealers and investment advisers, the Commission believes that requiring municipal advisory firms to comply with these rules would facilitate the Commission's inspections and examinations of

[275] Materials posted on a municipal advisor's website relating to municipal advisory activities would be written communications sent by the municipal advisor for purposes of this provision.

municipal advisors.

Proposed rule 15Ba1-7(b)(1) would require municipal advisory firms to maintain and preserve all books and records required to be made under this proposed rule for a period of not less than five years, the first two years in an easily accessible place. Corporate governance documents, such as articles of incorporation and stock certificate books of the municipal advisor and including those of any predecessor, would be required to be maintained in the principal office of the municipal advisor and preserved for three years after termination of the business or withdrawal from registration as a municipal advisor.

Proposed rule 15Ba1-7(d) is modeled on rule 204-2 under the Investment Advisers Act,[276] and permits, and sets forth the requirements for, electronic storage of the records required to be maintained by this proposed rule. Also, proposed rule 15Ba1-7(e) provides that any book or record made, kept, maintained and preserved in compliance with rules 17a-3 and 17a-4 of the Exchange Act, rules of the MSRB, or rule 204-2 under the Investment Advisers Act, which is substantially the same as a book or record required to be made, kept, maintained and preserved under rule 15Ba1-7, would satisfy these proposed record-keeping requirements.[277] Subparagraph (e) of proposed rule 15Ba1-7 is designed to minimize the record-keeping burden for municipal advisory firms that are otherwise subject to similar record-keeping requirements.

Record-keeping After a Municipal Advisor Ceases to do Business

Proposed rule 15Ba1-7(c) would require a municipal advisory firm, if it ceases doing business as a municipal advisor, to arrange for and be responsible for the continued preservation of the books and records required by the rule for the remainder of the period required by the rule, and would require the municipal advisor to notify the Commission of where such books and records will

276 See 17 CFR 275.204-2.

277 See proposed rule 15Ba1-7(e).

be maintained. This proposed requirement is necessary for the Commission to perform effective inspections and examinations of municipal advisory firms.

Requirements for Non-Residents

Proposed rule 15Ba1-7(f), which is modeled on rule 204-2(j) under the Investment Advisers Act,[278] sets forth the books and records requirements for non-resident municipal advisory firms, including requirements for making, keeping current, maintaining, and preserving copies of books and records required to be made, kept current, maintained, and preserved under any rule or regulation adopted under the Exchange Act, as well as the requirements for providing notice to the Commission regarding the location of such books and records.[279] Specifically, proposed rule 15Ba1-7(f) would require non-resident municipal advisors, other than natural persons, including non-resident sole proprietors (i.e., non-resident municipal advisor firms) to maintain all such books and records in the United States,[280] and provide notice to the Commission of such location within 30 days after the proposed rule becomes effective (in the case of municipal advisory firms that are already registered or in the process of applying for registration when, and if, the rule becomes effective), or when filing an application for registration (in the case of municipal advisory firms that have not yet applied for registration when, and if, the rule becomes effective).[281] A non-resident municipal advisory firm would not be required to keep such books and records in the United States if the municipal advisor files with the Commission an undertaking to furnish the Commission, upon demand, copies of any or all of such books and records at the municipal advisor's expense to the

278 17 CFR 275.204-2(j).

279 See proposed rule 15Ba1-7(f).

280 See proposed rule 15Ba1-7(f)(2).

281 See id.

Commission's principal or regional office (as specified by the Commission),[282] provided the municipal advisor furnishes the requested books and records within 14 days of the Commission's written demand to the offices of the Commission specified in the written demand.[283]

The proposed requirements for non-resident municipal advisory firms are designed to ensure that the Commission has access to the books and records of municipal advisors located outside of the United States to enable it to perform effective examinations and inspections. The proposed requirements would also serve to mitigate the time and cost burdens the Commission may otherwise face in attempting to gain access to books and records located outside of the United States, for example in the case of any jurisdictional dispute relating to such access.

Request for Comments

The Commission requests comment generally on the proposed books and records requirements and also requests comment on the following specific issues:

- What types of documents and data should be retained by municipal advisory firms pursuant to the proposed rules? What burdens or costs would the retention of such information entail?
- Is it appropriate to base the books and records requirements for municipal advisory firms on the books and records requirements for broker-dealers and investment advisers? Are there books and records requirements for broker-dealers and investment advisers not included in proposed rule 15Ba1-7 that should be included? Please provide examples of any such requirements.

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282 See proposed rule 15Ba1-7(f)(3)(i). The proposed rule sets forth the form of undertaking the municipal advisor would be required to file. See id.

283 See proposed Rule 15Ba1-7(f)(3)(ii). The rule would require that any written demand would be forwarded by the Commission to the municipal advisor by registered mail at the municipal advisor's last address of record filed with the Commission. See id.

- Should the proposed periods for maintaining and preserving books and records for municipal advisory firms be lengthened or shortened? If so, by how much and why?
- Should the Commission impose other requirements that might be necessary or useful in protecting the records of a municipal advisory firm upon the failure of such entity?
- What documents and data typically are kept by municipal advisory firms? In what format? How long are such records currently maintained by municipal advisors?
- What are the technological or administrative burdens of maintaining the information specified in the proposed rules?
- Is there an industry standard format for information and records regarding municipal advisory firms? Are there different standard formats depending on the type of municipal advisor? Please answer with specificity.
- Should the Commission require records retained under this section to be retained electronically or furnished to the Commission electronically? If so, should any particular electronic format be mandated?
- Are the proposed requirements for non-resident municipal advisory firms overly burdensome? Are they sufficient to ensure that the Commission would have adequate access to the municipal advisor's books and records in a timely manner?
- Should the proposed books and records requirements include a requirement that municipal advisory firms must keep all bills or statements (or copies thereof), paid or unpaid, relating to the business of the municipal advisor? Would such a requirement be overly burdensome? If so, how should such a requirement be modified to make the information provided useful for examination, enforcement, or any other purpose? Please provide suggested alternatives for any such books and records requirement.

## III. GENERAL REQUEST FOR COMMENT

The Commission is requesting comments from all members of the public. The Commission particularly requests comment from the point of view of persons who must register as municipal advisors, municipal entities, obligated persons, investors, and other regulators. The Commission seeks comments on all aspects of the proposed rules and forms. The Commission will carefully consider the comments that it receives. In addition, the Commission seeks comment on the following:

- Should the Commission clarify or modify any of the definitions included in the proposed rules? If so, which definitions and what specific modifications would be appropriate or necessary?
- Are the proposed rules sufficiently clear? Is additional guidance from the Commission necessary?
- Are there additional disclosures that would be useful to require on Forms MA and MA-I?
- Are the burdens of any of the requirements in the proposed rule greater than the benefits that would be attained by such requirement?
- Exchange Act rule 15b1-4 provides that the registration of a broker or dealer shall be deemed to be the registration of any executor, administrator, guardian, conservator, assignee for the benefit of creditors, receiver, trustee in insolvency or bankruptcy, or other fiduciary, appointed or qualified by order, judgment, or decree of a court of competent jurisdiction to continue the business of such broker or dealer, provided that the fiduciary files with the Commission, within 30 days after entering upon the performance of his duties, a statement setting forth as to such fiduciary substantially the

information required by Form BD.[284] Should rules relating to the registration of municipal advisors similarly include a process through which an executor, administrator, guardian, conservator, assignee for the benefit of creditors, receiver, trustee in insolvency or bankruptcy, or other fiduciary, appointed or qualified by order, judgment, or decree of a court of competent jurisdiction could continue the business of a municipal advisor?

- Form ADV[285] and related rules under the Investment Advisers Act require investment advisers registered with the Commission to provide new and prospective clients with a brochure and brochure supplements written in plain English and to send an updated brochure or a summary of material changes to existing clients at least annually. These brochures are intended to provide advisory clients with clearly written, meaningful, current disclosure of the business practices, conflicts of interest and background of the investment adviser and its advisory personnel.[286] Would such a brochure delivery requirement be necessary or useful to municipal entities and obligated persons? If so, what information would it be helpful to include in such brochures? If the Commission were to adopt a brochure delivery requirement, should it be in substantially the same form as the brochure delivery requirement relating to investment advisers, including with respect to content, amendments to the content, and time periods for delivery? What aspects of the brochure delivery requirement for investment advisers would it be appropriate to apply to municipal advisors and what aspects of the brochure delivery

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284 See 15 U.S.C. 240.15b1-4.

285 See 17 CFR 279.1.

286 See Investment Advisers Act Release No. IA-3060 (July 28, 2010), 75 FR 49234 (August 12, 2010).

requirement for investments advisers would it not be appropriate to apply to municipal advisors? Is there a category of municipal advisors that should be excluded from any such brochure delivery requirement, if the Commission were to adopt such a requirement? If so, how should such a category be described and what would be the reason for the exclusion? If such an exclusion were created, how would the Commission ensure that the clients of excluded advisors received adequate disclosures and protection? Is there a category of clients as to whom the brochure delivery requirement should not, or need not, apply? If so, how should such a category be described and what would be the reason for the exclusion? What would be the costs and benefits of any such brochure delivery requirement to municipal advisors? What would be the costs and benefits of any such brochure delivery requirement to the clients of municipal advisors?

The Commission seeks comments generally concerning the requirement for a municipal advisor to supply information in Forms MA and MA-I concerning the general types of municipal advisory activities in which it engages. In particular, would it be confusing or otherwise difficult for a municipal advisor to provide this information? Are there considerations relating to the business of municipal advisors, or of some types of municipal advisors, that the Commission may not have taken into account in connection with the proposed information disclosure requirements of Forms MA and MA-I?

In addition, the Commission seeks comments on the proposals as a whole, including their interaction with the other provisions of the Dodd-Frank Act. The Commission seeks comments on whether the proposals would help achieve the broader goals of increasing transparency and accountability in the municipal securities markets.

The Commission requests comment generally on whether its proposed actions to govern the

municipal advisor registration process are necessary or appropriate. If commenters do not believe one or all such actions are necessary and appropriate, why not? What would be the preferred action?

Commenters should, when possible, provide the Commission with empirical data to support their views. Commenters suggesting alternative approaches should provide comprehensive proposals, including any conditions or limitations that they believe should apply, the reasons for their suggested approaches, and their analysis regarding why their suggested approaches would satisfy the statutory mandate contained in Section 975 of the Dodd-Frank Act governing municipal advisors.

## IV. PAPERWORK REDUCTION ACT

Certain provisions of the Dodd-Frank Act and the rules and forms the Commission is proposing thereunder relating to the permanent registration of municipal advisors would impose new "collection of information" requirements within the meaning of the Paperwork Reduction Act of 1995 ("Paperwork Reduction Act" or "PRA").[287]

The Commission is submitting these collections of information to the Office of Management and Budget ("OMB") for review and approval in accordance with 44 U.S.C. 3507(d) and 5 CFR 1320.11. The proposed titles for these collections of information are "Form MA: Application for Municipal Advisor Registration"; "Form MA-I: Application for Municipal Advisor Registration for Natural Persons"; "Rule 15Ba1-4: Amendments to Application for Registration and Self-Certification"; "Form MA-W: Notice of Withdrawal from Registration as a Municipal Advisor"; "Form MA-NR: Designation of U.S. Agent for Service of Process"; and "Rule 15Ba1-7: Books and Records to be Maintained by Municipal Advisors."

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[287] 44 U.S.C. 3501 et seq.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. Section 15B of the Exchange Act, as amended by the Dodd-Frank Act, requires municipal advisors (as defined in Section 15B(e)(4) of the Exchange Act[288]) to register with the Commission.[289] As a transitional step to the implementation of a permanent registration program, the Commission adopted, on an interim final basis, Rule 15Ba2-6T, which permitted municipal advisors to temporarily satisfy the registration requirement by filing Form MA-T, effective October 1, 2010. The interim final temporary rule provides that, unless rescinded, a municipal advisor's temporary registration by means of Form MA-T will expire 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 establishing a permanent registration regime; (2) the date on which the municipal advisor's temporary registration is rescinded by the Commission; or (3) December 31, 2011.[290] Pursuant to the Dodd-Frank Act, the Commission is proposing new rules that would establish a permanent municipal advisor registration regime and would impose certain record-keeping requirements on municipal advisors.

**A. Summary of Collection of Information**

Section 15B(a)(2) of the Exchange Act, as amended by 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 persons associated with the municipal advisor as the Commission, by rule, may prescribe as

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288 See 15 U.S.C. 78o-4(e)(4). See also supra Section II.A.1.

289 See 15 U.S.C. 78o-4(a).

290 See 17 CFR 240.15Ba2-6T(e). The OMB approved the collection of information for Form MA-T and Rule 15Ba2-6T ("Temporary Registration of Municipal Advisors – Form MA-T") (OMB Control No. 3235-0659) on an emergency basis for six months.

necessary or appropriate in the public interest or for the protection of investors.[291]

Under the proposed rules, the permanent registration regime for municipal advisors would be more comprehensive than the temporary one. The proposed regime would require more detailed disclosures, and entail a review of a respondent's registration form. Under proposed rule 15Ba1-2(a), a municipal advisory firm would be required to apply for registration with the Commission by completing and electronically filing Form MA. Under proposed rule 15Ba1-2(b), a natural person municipal advisor would be required to apply for registration with the Commission by completing and electronically filing Form MA-I. A sole proprietor would have to complete both Form MA and Form MA-I. The Commission anticipates developing an online filing system, where a municipal advisor would be able to file a completed Form MA and/or MA-I and the information filed would be publicly available. In addition, under proposed rule 15Ba1-7, registered municipal advisors other than natural persons (i.e., municipal advisory firms, including sole proprietors) would be required to maintain books and records relating to their municipal advisory activities.

Under the proposed permanent registration regime, municipal advisors would include sole proprietorships, individual employees of municipal advisors, and firms of varying sizes. In addition, municipal advisors would include firms that engage in municipal advisory activities as part of a broader array of financial services serving many types of clients, and may have many associated persons. Thus, the paperwork burden would reflect these differences in size and types of other financial services in which the municipal advisors engage.

Pursuant to proposed rule 15Ba1-4(a)(1), a municipal advisory firm that registers on Form MA would have to amend its Form MA at least annually, within 90 days of the end of the applicant's fiscal year in the case of applicants that are firms, or within 90 days of the end of the

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[291] See 15 U.S.C. 78o-4(a)(2).

calendar year in the case of sole proprietors. Proposed rule 15Ba1-4(a)(2) would require a municipal advisory firm to amend its Form MA more frequently than annually as required by the General Instructions. Pursuant to proposed rule 15Ba1-4(b), a natural person municipal advisor who registers on Form MA-I would have to amend his or her Form MA-I whenever any information previously provided in Form MA-I becomes inaccurate. Pursuant to proposed rule 15Ba1-4(e), a registered municipal advisor would have to complete the self-certification on Form MA or Form MA-I, as applicable, both at the time the municipal advisor initially files its application for registration, and also on an ongoing annual basis. Municipal advisors registered on Form MA would have to complete the Form MA self-certification within 90 days of the end of a municipal advisor's fiscal year, or for municipal advisors that are sole proprietors, within 90 days of the end of the calendar year. Municipal advisors registered on Form MA-I would have to complete the Form MA-I self-certification within 90 days of the end of the calendar year.

Pursuant to proposed rule 15Ba1-3, all municipal advisors, whether registered on Form MA or MA-I, would be required to file Form MA-W to withdraw from registration with the Commission as a municipal advisor. As would be the case with Form MA and MA-I, Form MA-W would be required to be filed electronically with the Commission.

Proposed rule 15Ba1-5 sets forth the general procedures for serving non-residents on Form MA-NR. Pursuant to the instructions to Form MA-NR, and consistent with proposed rule 15Ba1-5, non-resident municipal advisors other than natural persons, but including sole proprietors ("non-resident municipal advisory firms"), and non-resident general partners and non-resident managing agents of municipal advisors must file Form MA-NR to furnish the Commission with a written irrevocable consent and power of attorney to appoint an agent in the United States, other than a Commission member, official, or employee, upon whom may be served any process, pleadings, or

other papers in any action brought against the non-resident municipal advisory firm, non-resident general partner or non-resident managing agent that arises out of or relates to the municipal advisory activities of the municipal advisor. In addition, proposed rule 15Ba1-5(d) would require each non-resident municipal advisory firm to provide an opinion of counsel that the advisory firm can, as a matter of law, provide the Commission with prompt access to the advisory firm's books and records and that the advisory firm can, as a matter of law, submit to onsite inspection and examination by the Commission.

Proposed rule 15Ba1-7 would require all registered municipal advisors other than natural persons (i.e., municipal advisory firms, including sole proprietors) to maintain books and records relating to their municipal advisory activities. Generally, proposed rule 15Ba1-7 would require such books and records to be maintained and preserved for a period of not less than five years, the first two years in an easily accessible place.

**B. Proposed Use of Information**

The proposed requirement that a municipal advisor must register with the Commission on Forms MA and MA-I to continue to engage in municipal advisory activities would help ensure that the Commission has information to effectively oversee respondents and their activities in the municipal securities market. In particular, the information provided in Forms MA and MA-I would be used to determine whether to grant the applicant's application for registration, institute proceedings to determine whether registration should be denied, and place limitations on the applicant's activities as a municipal advisor. The information would also be used to focus on-site examinations and aid in risk-based examination targeting. It would enable the Commission to obtain an accurate estimate of the number of municipal advisors, by size and by municipal advisory activity; analyze data regarding the various types of municipal advisory activities in which advisors

engage; and evaluate the disciplinary history of all advisors and associated persons, including all regulatory, civil, and criminal proceedings. The proposed registration requirement would also help to ensure that the Commission can make such information transparent and easily accessible to the investing public, including municipal entities and obligated persons who engage municipal advisors, investors who may purchase securities from offerings in which municipal advisors participated, and other regulators.

The proposed requirement that a municipal advisory firm must make and keep books and records, including written communications and records of associated persons, would help to ensure that records exist of the respondent's primary municipal advisory activities and of its associated persons, and could potentially be requested by Commission staff during an examination to evaluate the municipal advisory firm's compliance with the proposed rules. In particular, the proposed requirement that a municipal advisory firm must keep a record of the initial or annual review, as applicable, conducted by the municipal advisory firm of such municipal advisory firm's business in connection with its self-certification on Form MA, would help ensure, among other things, that the municipal advisory firm and every natural person associated with it has met certain standards of training, experience, and competence required by the Commission, the MSRB, or any other relevant SROs.

The proposed requirement that a non-resident municipal advisor, or a non-resident general partner or non-resident managing agent of a municipal advisor, file Form MA-NR in connection with the municipal advisor's initial application would help minimize legal or logistical obstacles that the Commission may encounter when attempting to effect service, to conserve Commission resources, and to avoid potential conflicts of law. The proposed requirement that a non-resident municipal advisory firm provide an opinion of counsel on Form MA would help ensure that such

non-resident municipal advisory firm could provide access to its books and records and submit to onsite inspection and examination by the Commission.

### C. Respondents

The Commission estimates that the proposed "collections of information" would initially apply to approximately 1,000 municipal advisory firms, including sole proprietors. This estimate is based partly on the number of municipal advisors that have registered with the Commission under rule 15Ba2-6T. As of October 2010, there were approximately 800 total unique electronic registrations where Form MA-T was completed and not withdrawn. The Commission believes that this number of Form MA-T registrants would likely increase, because numerous applicants that would be required to register may have missed the October 1, 2010 deadline for a variety of reasons, such as concluding, based on their interpretation of the Dodd-Frank Act, that they were not required to register as municipal advisors. For the PRA analysis of the interim final temporary rule, Commission staff estimated that approximately 1,000 applicants would be required to complete Form MA-T.[292] Commission staff believes that this remains an appropriate estimate for the total number of municipal advisory firms that would be required to register on Form MA under the proposed permanent registration regime.[293]

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292 See Temporary Registration Rule Release, supra note 63, at 54473.

293 The Commission notes that a person that solicits a municipal entity or obligated person on behalf of a broker, dealer, municipal securities dealer, municipal advisor, or investment adviser that controls, is controlled by, or is under common control with the person undertaking such solicitation, may voluntarily apply to register as a municipal advisor. See supra Section II.A.2.a. Based on investment adviser registration data, Commission staff estimates that out of approximately 12,000 investment advisers currently registered with the Commission, only 385, or approximately 3%, (1) have municipal clients; (2) use firms or persons to solicit advisory clients on the adviser's behalf; and (3) compensate persons for client referrals. The Commission expects that of these 385 investment advisers, a significantly smaller subset would have the specific circumstances where voluntary municipal advisor registration would be applicable, i.e., they use affiliates that exclusively solicit municipal entities for them (or other affiliates), and not for third parties. For purposes

The proposed "collections of information" would also apply to natural person municipal advisors. For purposes of estimating the paperwork burden, the Commission notes that the number of Form MA-I applicants may be divided into three main categories: (1) individuals who are currently also registered as investment advisers, broker-dealers, or both, and who are employed at investment advisory firms, broker-dealer firms, or banks; (2) individuals who are employed at financial advisor firms that are not registered as broker-dealers or investment advisers; and (3) individual solicitors who are employed at third-party marketing and solicitor firms. To calculate the total number of likely Form MA-I applicants, the Commission estimates the number of respondents in each of these categories.

First, the Commission estimates the number of individuals who are currently registered as investment advisers, broker-dealers, or both, and would register on Form MA-I. To calculate this estimate, the Commission compares the proportion of FINRA Form U4 filers (i.e., individuals who are registered representatives of investment advisers and/or broker-dealers) to the sum of all investment advisers registered on Form ADV and all broker-dealers registered on Form BD. FINRA estimates that as of October 2010, 637,000 individuals had registered as representatives of broker-dealers and/or investment advisers on Form U4.[294] The Commission estimates that as of October 2010, 11,888 investment advisers had registered on Form ADV, while as of March 2010, 5,163 broker-dealers had registered on Form BD. The proportion of Form U4 registrants to the sum of Form ADV and Form BD registrants is approximately 37.36 to 1.[295] According to Form MA-T

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of this analysis, the Commission's estimate of the number of potential voluntary municipal advisor applicants is included as part of the total estimate of 1,000 applicants noted above.

294 See October 2010 "Registered Reps" in "FINRA Statistics," available at http://www.finra.org/Newsroom/Statistics.

295 637,000 (estimated number of Form U4 registrants) / (11,888 (estimated number of Form ADV registrants) + 5,163 (estimated number of Form BD registrants)) = 37.36.

data collected to date, the Commission estimates that approximately 450 of 1,000 MA-T registrants would be investment adviser and/or broker-dealer firms. Thus, the Commission estimates that approximately 16,800 individuals who are registered as investment advisers, broker-dealers, or both, would be required to register on Form MA-I.[296]

Second, the Commission estimates the number of individuals who are employed at financial advisor firms and would register on Form MA-I. Commission staff understands from discussions with industry and market participants that it is reasonable to estimate that there is an average of approximately 10 professional employees per financial advisor firm. According to Form MA-T data collected to date, the Commission estimates that approximately 450 of 1,000 MA-T registrants would be financial advisor firms. Thus, the Commission estimates that approximately 4,500 individuals who are employed at financial advisor firms would be required to register on Form MA-I.[297]

Third, the Commission estimates the number of individual solicitors who would register on Form MA-I. Commission staff examined the data of all MA-T registrants as of October 2010, and estimates that approximately 100 out of 1,000 registrants are exclusively focused on third-party marketing and solicitation. For purposes of this PRA, the Commission assumes that there are five individual solicitors who would register on Form MA-I for every solicitor firm that would register on Form MA.[298] Thus, the Commission estimates that approximately 500 individual solicitors

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296 450 (total number of investment adviser and broker-dealer firms registered as municipal advisors) x 37.36 (proportion of Form U4 registrants to all Form ADV and Form BD registrants) = 16,812.

297 450 (total number of independent financial advisor firms registered as municipal advisors) x 10 (estimated average number of professional employees per independent financial advisor firm) = 4,500.

298 See Letter from Donna DiMaria, President, Third Party Marketers Association, dated August 27, 2009, available at http://www.sec.gov/comments/s7-18-09/s71809-36.pdf (commenting on the Commission's proposal to adopt a rule addressing "pay to play"

would be required to register on Form MA-I.[299]

The Commission estimates that the total number of Form MA-I applicants would be approximately 21,800 natural persons.[300] The Commission recognizes that, based on a number of factors, the actual total number of respondents may differ from this estimate. For example, the current estimate does not include Form MA-I applicants who might be employed at banks, but are not registered as either investment advisers or broker-dealers. Thus, the actual total number of respondents could be higher. Under the proposed rules, sole proprietors would be required to complete both Form MA and Form MA-I. The respondent estimates presented here likely include some overlap, but the actual total number of respondents could be slightly lower depending on the overall percentage of sole proprietors among all municipal advisory firms.

To estimate the average annual number of new Form MA applicants, the Commission relies on investment adviser registration data, which indicates that new investment adviser applicants comprise, on average, approximately 10.4% of the total number of registered investment

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practices by investment advisers and estimating that the typical solicitor firm consists of 2 to 5 professionals).

299 100 (estimated number of solicitor firms) x 5 (estimated number of Form MA-I applicants per solicitor firm) = 500. The Commission notes that a person that solicits a municipal entity or obligated person on behalf of a broker, dealer, municipal securities dealer, municipal advisor, or investment adviser that controls, is controlled by, or is under common control with the person undertaking such solicitation, may voluntarily apply to register as a municipal advisor. See supra Section II.A.2.a. Based on investment adviser registration data, Commission staff expects that only a small number of registered investment advisers that are natural persons would have the specific circumstances where voluntary municipal advisor registration would be applicable. See supra note 293. For purposes of this analysis, the Commission's estimate of the number of potential voluntary natural person municipal advisor applicants is included as part of the total estimate of 500 individual solicitors noted above.

300 16,800 (estimated number of individual investment advisers and/or broker-dealers) + 4,500 (estimated number of individuals who are employed at financial advisor firms) + 500 (estimated number of individuals who are employed at solicitation firms) = 21,800.

advisers.[301] The Commission expects the proportion of new municipal advisory firm applicants to all municipal advisory firm applicants may be similar. Accordingly, the Commission estimates that the average number of new Form MA applicants per year would be 100.[302] To estimate the average annual number of new Form MA-I applicants, the Commission relies on FINRA registration data, which indicates that new Form U4 applicants that are new to the industry comprise, on average, approximately 8.39% of the total number of Form U4 applicants.[303] The Commission expects the proportion of new natural person municipal advisor registrants to all natural person municipal advisor registrants may be similar. Accordingly, the Commission estimates that the average number of new Form MA-I applicants per year would be 1,800.[304]

### D. Total Initial and Annual Reporting and Record-Keeping Burdens

The estimated burdens on respondents to complete and submit Forms MA, MA-I, MA-W, and MA-NR,[305] amend Forms MA and MA-I, consult with outside counsel, and maintain books and records related to municipal advisory activities, are described below.

#### 1. Form MA

Form MA, which is to be completed by municipal advisory firms (including sole proprietors) registering under the proposed permanent registration regime, would require more

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301 According to the Commission's Division of Investment Management, as of October 2010, there were 11,888 investment advisers registered with the Commission. From 2002 to 2009, there was an average of 1,237 new investment adviser registrations per year. (1,237 / 11,888) = 10.4%.

302 1,000 (all Form MA applicants) x 10.4% = 104 new Form MA applicants per year.

303 According to FINRA, as of October 2010, there were approximately 637,000 individuals registered on Form U4. See supra note 295. FINRA has notified the Commission that from October 2008 to the present, there was an average of 53,474 Form U4 registrants that were new to the industry per year. (53,474 / 637,000) = 8.39%.

304 21,800 (all Form MA-I applicants) x 8.39% = 1,829 new Form MA-I applicants per year.

305 See infra Sections IV.D.4 and IV.D.5 (discussing the number of respondents relating to filing Form MA-W and Form MA-NR, respectively).

comprehensive disclosure in addition to the information already collected and submitted on Form MA-T. As discussed in detail above, municipal advisory firms that would be required to register with the Commission by filing Form MA would have to provide, among other things:

1. identifying information;
2. information regarding the municipal advisor's form of organization;
3. whether the advisor is succeeding to the business of a registered municipal advisor;
4. information about the municipal advisor's business and business structure;
5. information regarding the municipal advisor's other business activities;
6. financial industry affiliations of associated persons of the municipal advisor;
7. the municipal advisor's interest in municipal advisory client transactions;
8. information related to control persons of the municipal advisor;
9. disclosures relating to regulatory, civil, and criminal disciplinary history;[306]
10. information regarding whether the municipal advisor is a "small business;" and
11. a self-certification, filed on an initial and annual basis, regarding the municipal advisor's qualifications as a municipal advisor and its ability to comply with its obligations under the federal securities laws.

The Commission has previously estimated that, in the case of Form ADV – a similar form to Form MA, which must be completed for the registration of investment advisers with the Commission – the average time necessary to complete the form is approximately 36.24 hours.[307] Form ADV, however, is significantly longer than Form MA and contains sections that are not

306 See supra Section II.A.2.c.

307 See Release No. IA-3060, supra note 286, at 49256. Additionally, the Commission notes that the average time necessary to complete Part IA of Form ADV is approximately 4.32 hours. See Form ADV, Part 1A (Paper Version), at 1 (under "OMB Approval," estimated average burden hours per response is 4.32 hours).

required for Form MA registration, such as Part 2A, which requires the applicant to create narrative brochures containing information about the advisory firm. Thus, the Commission expects the hourly burden for Form MA to be considerably less than 36.24 hours.

In contrast, the Commission previously estimated that the average amount of time for a municipal advisor to complete Form MA-T, regardless of advisor size, is approximately 2.5 hours.[308] This estimate for completion of Form MA-T includes all of the time necessary to research, evaluate, and gather all of the information that is requested in the form and all of the time necessary to complete and submit the form.[309]

The Commission believes that the paperwork burden of completing Form MA would be greater than the amount of time required to complete Form MA-T, because Form MA is longer and more comprehensive than Form MA-T. Nevertheless, the Commission believes that the estimated time to complete Form MA-T, rather than Form ADV, is the more appropriate basis to estimate the time to complete Form MA. Accordingly, the Commission estimates that the average amount of time for a municipal advisory firm to complete Form MA would be 3.5 hours. This estimate would apply to all municipal advisory firms, because even those that had already completed Form MA-T under the temporary registration regime must register anew.

In addition, pursuant to proposed rule 15Ba1-4(e)(1), a municipal advisory firm would be required at the time it initially files Form MA to conduct an initial review of its business and certify that, among other things, it and every natural person associated with the municipal advisory firm

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308 See Temporary Registration Rule Release, supra note 63, at 54473.

309 The Commission notes that some municipal advisors that would be required to register under the proposed permanent registration regime would also be registered with the Commission as broker-dealers and/or investment advisers. The Commission believes that these persons could require less time to research and complete the proposed permanent registration forms to the extent information contained in those other registration(s) could be incorporated by reference, avoiding the need to repeat the information on Form MA. See supra note 220, and accompanying text.

meet standards required by the Commission, the MSRB, or any other relevant SRO to engage in municipal advisory activities. To estimate the initial burden for this self-certification, the Commission examined burden estimates for Form N-CSR ("Certified Shareholder Report of Registered Management Investment Companies") and Form N-Q ("Quarterly Schedule of Portfolio Holdings of Registered Management Investment Company"), which include similar self-certification requirements.[310] Based on its prior burden estimates, Commission staff estimates that the initial burden to comply with the Form MA self-certification requirement would be, on average, approximately 3.0 hours per applicant. Thus, the total average initial burden for Form MA would be 6.5 hours per applicant.[311]

The Commission recognizes that depending on the specific circumstances of the municipal advisory firm, the initial burden to complete Form MA may vary from respondent to respondent. For example, as discussed above, a non-resident municipal advisor would be required to attach a legal opinion to its Non-Resident Municipal Advisor Execution Page to Form MA.[312]

As discussed above, Commission staff estimates that approximately 1,000 municipal advisory firms would be required to fill out Form MA. Thus, the Commission estimates that the total initial paperwork burden for completion and submission of Form MA would be 6,500 hours.[313] The Commission notes that respondents may have potential one-time burdens associated with Form MA. For example, respondents may need to develop internal controls associated with procedures

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310 See Exchange Act Release No. 34-47262 (January 27, 2003), 68 FR 5348 (February 3, 2003); Exchange Act Release No. 34-49333 (February 27, 2004), 69 FR 11244 (March 9, 2004).

311 3.5 hours (average time required to complete Form MA) + 3.0 hours (average time required to complete self-certification) = 6.5 hours per applicant.

312 See supra Section II.A.2.b. For a discussion of the estimated burden for a non-resident municipal advisor to provide opinion of counsel, see infra Section IV.D.5.

313 1,000 (persons required to submit Form MA) x 6.5 hours (average estimated time required to complete Form MA and initial self-certification) = 6,500 hours.

for obtaining the information required by Form MA, and they would need to familiarize themselves with the proposed rules and the form. For purposes of this analysis, these potential one-time burdens are included in the estimates noted above.

The Commission estimates that the average number of new Form MA applicants per year would be 100,[314] and the annual paperwork burden for new completions and submissions of Form MA would be 650 hours.[315] The Commission notes that respondents may have potential recurring burdens associated with Form MA, such as systemic ongoing monitoring and maintenance of the information required by the form. For the purposes of this analysis, these potential recurring burdens are included in the estimates with respect to amendments to Form MA.[316]

The collection of information made pursuant to Form MA would not be confidential and would be made publicly available. Some information, such as social security numbers, would be kept confidential to the extent permitted by law.

**2. Form MA-I**

Form MA-I, which is to be completed by natural persons (including sole proprietors) registering under the proposed permanent registration regime, would require more comprehensive disclosure compared to the information already collected and submitted on Form MA-T. As discussed above, natural person municipal advisors required to register with the Commission by filing Form MA-I would be required to provide, among other things:

1. identifying information;

2. residential history for the five years preceding filing of the application;

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314 See supra Section IV.C.

315 100 (new Form MA applicants per year) x 6.5 hours (average estimated time required to complete Form MA and initial self-certification) = 650 hours.

316 See infra Section IV.D.3.

3. employment history for the ten years preceding filing of the application;

4. any other businesses in which the advisor is currently engaged;

5. disclosures relating to regulatory, civil, and criminal disciplinary history; and

6. a self-certification, filed on an initial and annual basis, indicating, among other things, that the municipal advisor has met or will meet qualification standards required by the Commission, the MSRB, or any other relevant SRO for municipal advisors.

Moreover, Form MA-I would require disclosure forms for reporting disciplinary proceedings, including criminal, regulatory, and civil judicial actions.

To estimate the average amount of time required to complete Form MA-I, the Commission compares the average amount of time required for an applicant to complete Form MA-T. As described above, the Commission previously estimated that the average amount of time for a municipal advisor to complete Form MA-T would be approximately 2.5 hours.[317] This estimate includes all of the time necessary to research, evaluate, and gather all of the information that is requested in Form MA-T and all of the time necessary to complete and submit the form. The Commission believes that the paperwork burden of completing Form MA-I would not be significantly greater than the amount of time required to complete Form MA-T, because some of the information required for Form MA-I would have already been gathered for completing Form MA-T. The Commission anticipates that the most burdensome portion of the form would be the disclosure of the advisor's disciplinary history, but the Commission believes that this burden should only be substantial for a small number of applicants. Overall, the Commission estimates that the average amount of time for a natural person municipal advisor to complete Form MA-I would be

317 See supra note 308, and accompanying text.

3.0 hours.[318] This estimate would apply to all natural person municipal advisors, because even those who had already completed Form MA-T under the temporary registration regime must register anew.

The Commission estimates that approximately 21,800 natural person municipal advisors would be required to register on Form MA-I.[319] Thus, the Commission estimates that the total paperwork burden for completion and submission of Form MA-I would be 65,400 hours.[320] The Commission notes that respondents may have potential one-time burdens associated with Form MA-I. For example, respondents may need to locate information not previously required for other registrations, but required by Form MA-I, and they would need to familiarize themselves with the proposed rules and the form. For purposes of this analysis, these potential one-time burdens are included in the estimates noted above.

The Commission estimates that the average number of new Form MA-I applicants per year would be 1,800,[321] and the annual paperwork burden for new completions and submissions of Form MA-I would be 5,400 hours.[322] The Commission notes that respondents may have potential

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318 The Commission notes that pursuant to proposed rule 15Ba1-4(e)(1), a natural person municipal advisor would also be required at the time he or she initially files Form MA-I to certify that, among other things, he or she meets standards required by the Commission, the MSRB, or any other self-regulatory organization to engage in municipal advisory activities. For purposes of this analysis, the Commission believes that the initial burden for a natural person to complete Form MA-I self-certification would be minimal, because it would not require the more burdensome initial review of a municipal advisory firm. Thus, the Commission includes the average amount of time for initial self-certification as part of its estimate of the average amount of time for a natural person municipal advisor to initially complete Form MA-I.

319 See supra Section IV.C.

320 21,800 (persons required to submit Form MA-I) x 3.0 hours (average estimated time required to complete Form MA-I and initial self-certification) = 65,400 hours.

321 See supra Section IV.C.

322 1,800 (new Form MA-I registrants per year) x 3.0 hours (average estimated time required to complete Form MA-I and initial self-certification) = 5,400 hours.

recurring burdens associated with Form MA-I, such as tracking ongoing updates to the information required by the form. For the purposes of this analysis, these potential recurring burdens are included in the estimates with respect to amendments to Form MA-I.[323]

The collection of information made pursuant to Form MA-I would not be confidential and would be made publicly available. Some information, such as social security numbers, would be kept confidential to the extent permitted by law.

### 3. Amendments to Form MA and Form MA-I

Under proposed rule 15Ba1-4, once a municipal advisor is registered on Form MA, the municipal advisor would be required to electronically amend Form MA at least annually, within 90 days of the end of the advisor's fiscal year, if a firm, or within 90 days of the end of the calendar year, if a sole proprietor; and more frequently, as set forth in the General Instructions to Form MA, as applicable. A natural person municipal advisor registered on Form MA-I would be required to electronically amend Form MA-I whenever the information previously provided in Form MA-I becomes inaccurate.

The Commission notes that in addition to preparing amendments for Form MA and/or Form MA-I as described above, a respondent would also be required to certify annually that, among other things, it meets qualification standards required by the Commission, the MSRB, or any other relevant SRO to engage in municipal advisory activities. For purposes of this analysis, the Commission includes the annual self-certification as part of the amendment requirements, and the Commission addresses their associated burdens together below.

The Commission estimates that the average time necessary to prepare an annual amendment for Form MA would be approximately 1.5 hours because only certain parts of Form MA would

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323 See infra Section IV.D.3.

need to be completed for amendments. The Commission recognizes that depending on the extent of the amendments, the burden to complete the annual amendment may vary greatly from respondent to respondent, and that some would require significantly more time than 1.5 hours to submit annual amendments while others would require significantly less time than 1.5 hours. For example, as discussed above, a non-resident municipal advisory firm would be required to file an amendment to Form MA promptly and include a revised opinion of counsel after any changes in the legal or regulatory framework that would impact its ability or the manner in which it provides the Commission with the required access to its books and records or impacts the Commission's ability to inspect to examine the municipal advisory firm onsite.[324]

In addition, pursuant to proposed rule 15Ba1-4(e)(2), a municipal advisory firm would be required to conduct an annual review of its business and certify that, among other things, it and every natural person associated with the municipal advisory firm has met, or will meet, qualification standards required by the Commission, the MSRB, or any other relevant SRO to engage in municipal advisory activities. To estimate the annual burden, the Commission examined burden estimates for Form N-CSR and Form N-Q.[325] Based on its prior burden estimates, Commission staff estimates that the annual burden to comply with the Form MA self-certification requirement would be, on average, approximately one hour per respondent. Therefore, the total average annual burden for Form MA amendments would be 2.5 hours per respondent.[326]

To estimate the average amount of time necessary to prepare an additional updating amendment for Form MA (i.e., any additional amendment other than the required annual

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324 See supra Section II.A.4. For a discussion of the estimated burden for a non-resident municipal advisor to provide opinion of counsel, see infra Section IV.D.5.

325 See supra note 310.

326 1.5 hours (average time required to amend Form MA) + 1.0 hour (average time require to complete annual self-certification) = 2.5 hours per respondent.

amendment), the Commission relies on its estimate for the amount of time required to prepare an interim updating amendment for Form ADV. The Commission estimated that an updating amendment for Form ADV would require 0.5 hours per amendment, because interim amendments typically only amend one or two items in Form ADV and thus should not require as much time to prepare as an annual amendment.[327] For the purposes of this PRA analysis, the Commission believes that the amount of time to complete an updating amendment for Form MA would also be 0.5 hours.

Under proposed rule 15Ba1-4(a)(1), all 1,000 municipal advisory firms registered on Form MA would be required to amend their Form MA once every fiscal or calendar year, as applicable. It is also possible that some of these 1,000 municipal advisory firms would have to submit more than one amendment. To estimate the average number of amendments in addition to the annual amendment, the Commission relies on its prior estimate for the average number of additional amendments for Form ADV. The Commission estimated that, on average, each adviser filing Form ADV would likely amend its form two times during the year – one annual amendment, and one interim updating amendment.[328] For the purposes of this PRA analysis, the Commission believes that the same estimate of two Form MA amendments per year on average – one annual amendment and one interim updating amendment – would be appropriate, although the Commission recognizes that the actual number of amendments per advisor might be higher or lower, depending on how frequently respondents must amend Form MA for material changes. The total estimated burden for updates to Form MA per year, including compliance with the annual self-certification requirement, would be 3,000 hours.[329]

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327 See Release No. IA-3060, supra note 286, at 49257.

328 Id.

329 1,000 (persons required to amend Form MA) x 2.5 (average estimated time to amend Form

To estimate the average amount of time necessary to prepare an updating amendment for Form MA-I (i.e., a required amendment whenever any information previously provided becomes inaccurate), the Commission relies on its estimate for the amount of time required to prepare an interim updating amendment for Form ADV. As noted above, the Commission estimated that an updating amendment for Form ADV would require 0.5 hours per amendment, because interim amendments typically only amend one or two items in Form ADV and thus should not require as much time to prepare as an annual amendment.[330] For the purposes of this PRA analysis, the Commission believes that the amount of time to complete an updating amendment for Form MA-I would also be 0.5 hours.

The Commission estimates that the time required to complete the Form MA-I annual self-certification requirement would be approximately five minutes, or 0.1 hours. The Commission believes that, given the short time required to read and review the self-certification statement and sign the section, this estimate is appropriate.

To estimate the average number of Form MA-I amendments per respondent per year, the Commission relies on FINRA Form U4 registration data. FINRA estimates that from October 2008 to the present, there was an average of 1,088,637 Form U4 amendment filings per year, regardless of the information updated. For purposes of estimating the paperwork burden, the Commission believes that the proportion of Form U4 amendment filings compared to all Form U4 registrants may be similar to the proportion of Form MA-I amendments compared to all Form MA-I respondents. Thus, the Commission estimates that the average number of amendments that a Form

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MA and complete self-certification annually) x 1.0 (number of annual amendments per year) + 1,000 (persons required to amend Form MA) x 0.5 (average estimated time to prepare an interim updating amendment for Form MA) x 1.0 (number of interim updating amendments per year) = 3,000 hours per year.

330 See supra note 327.

MA-I respondent would submit would be 1.7 per year.[331] The Commission recognizes, however, that because Form U4 is significantly longer than Form MA-I and contains sections that are not required for Form MA-I registration, the actual number of Form MA-I amendments per applicant may be less than 1.7 per year.[332] The total burden for these Form MA-I amendments per year would be 18,500 hours.[333]

The Commission estimates that the annual burden attributable to the requirement to certify on Form MA-I would equal approximately 2,200 hours.[334] The total burden associated with updates to Form MA-I, including compliance with the annual self-certification requirement, would be approximately 20,700 hours.[335]

The collection of information made pursuant to amendments to Forms MA and MA-I would not be confidential and would be made publicly available. Some information, such as social security numbers, would be kept confidential to the extent permitted by law.

**4. Withdrawal from Municipal Advisor Registration**

Pursuant to proposed rule 15Ba1-3, municipal advisors that withdraw from municipal advisor registration with the Commission would be required to electronically file Form MA-W. The Commission has previously estimated that, in the case of Form ADV-W – a similar form to

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331 (1,088,637 / 637,000) (proportion of Form U4 amendment filings to all Form U4 registrants) = 1.7.

332 Information requested in Form U4 that is not requested in Form MA-I include fingerprint information, SRO registration requests, jurisdictions for broker-dealer agent and/or investment adviser representative registration requests, and FINRA examination requests.

333 21,800 (persons required to amend Form MA-I during any given year) x 0.5 (average estimated time to prepare any updating amendment for Form MA-I) x 1.7 (average number of amendments per year) = 18,530 hours per year.

334 21,800 (persons required to complete annual self-certification on Form MA-I) x 0.1 (average estimated time to complete self-certification) = 2,180 hours per year.

335 18,530 + 2,180 = 20,710 hours per year.

Form MA-W – the average time necessary to complete the form is approximately 0.5 hours.[336] Based on this prior estimate, the Commission estimates that the average time necessary to complete Form MA-W would be approximately 0.5 hours.

To estimate the annual number of withdrawals for Form MA registrants, the Commission relies on investment adviser registration data, which indicates that annually, investment adviser withdrawals comprise, on average, approximately 6.4% of the total number of registered investment advisers.[337] The Commission expects the proportion of Form MA withdrawals compared to all Form MA registrants would be similar. Thus, the average number of withdrawals from Form MA registration per year would be 60,[338] and the total burden would be approximately 30 hours.[339]

Meanwhile, to estimate the number of Form MA-I withdrawals per year, the Commission relies on FINRA Form U4 registration data. FINRA estimates that from October 2008 to the present, there was an average of 79,722 individuals per year who fully terminated FINRA registration and had not returned to the industry. For purposes of establishing the paperwork burden, the Commission believes that the proportion of individuals who fully terminated FINRA registration compared to all Form U4 registrants may be similar to the proportion of Form MA-I withdrawals compared to all Form MA-I registrants. Thus, the average number of withdrawals from Form MA-I registration per year would be 2,700,[340] and the total burden would be 1,350

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336 See Form ADV-W (Paper Version), at 1 (under "OMB Approval," estimated average burden hours per response is 0.5 hours).

337 As of October 2010, there were 11,888 investment advisers registered with the Commission. From 2002 to 2009, there was an average of 760 investment adviser withdrawals per year. (760 / 11,888) = 6.4%.

338 1,000 (all Form MA applicants) x 6.4% = 64 Form MA withdrawals per year.

339 60 (estimated number of persons withdrawing from Form MA registration each year) x 0.5 hours (average estimated time to complete Form MA-W) = 30 hours per year.

340 21,800 (all Form MA-I applicants) x (79,722 / 637,000) (proportion of individuals who fully terminated FINRA registration to all Form U4 registrants) = 2,728.

hours.[341]

The collection of information made pursuant to Form MA-W would not be confidential and would be made publicly available.

**5. Non-Resident Municipal Advisors**

As discussed above, proposed rule 15Ba1-5 sets forth the general procedures for serving non-resident municipal advisors, non-resident general partners and non-resident managing agents. A non-resident municipal advisor, or a non-resident general partner or non-resident managing agent of a municipal advisor must, among other things, furnish to the Commission a written irrevocable consent and power of attorney on Form MA-NR to appoint an agent in the United States, other than a Commission member, official, or employee, upon whom may be served any process, pleadings, or other papers in any action brought against the non-resident municipal advisor, non-resident general partner, or non-resident managing agent.[342] In addition, proposed rule 15Ba1-5(d) would require each non-resident municipal advisory firm to provide an opinion of counsel that the non-resident municipal advisory firm can, as a matter of law, provide the Commission with access to the advisory firm's books and records and that the advisory firm can, as a matter of law, submit to onsite inspection and examination by the Commission.

The Commission has previously estimated that, in the case of Form ADV-NR – a form with a similar purpose to Form MA-NR – the average time necessary to complete the form is approximately one hour.[343] The Commission estimates that, because of the additional time required

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341 2,700 (estimated number of persons withdrawing from Form MA-I registration each year) x 0.5 hours (average estimated time to complete Form MA-W) = 1,350 hours per year.

342 See supra Section II.A.5, and accompanying text (discussing proposed rule 15Ba1-5 and Form MA-NR).

343 See Form ADV-NR (Paper Version), at 1 (under "OMB Approval," estimated average burden hours per response is 1 hour). The Commission notes that for Form ADV-NR, the non-resident general partner or non-resident managing agent must appoint each of the

to find and designate an agent, the process to complete Form MA-NR would take longer, or approximately 1.5 hours on average. The burden associated with this process would primarily involve the designation and authorization of a United States person as agent for service of process.

To estimate the average time necessary to provide an opinion of counsel, Commission staff relies on its burden estimates for Form 20-F, a form submitted by certain foreign private issuers, which has a similar opinion of counsel requirement to proposed rule 15Ba1-5(d). The Commission estimates that this additional burden would add approximately three hours and $900 in outside legal costs per respondent.[344]

The Commission notes that proposed Form MA-NR would have one additional type of respondent (i.e., non-resident municipal advisory firms) compared to the types of respondents that must file Form ADV-NR. Thus, to estimate the total number of Form MA-NR respondents, Commission staff has combined two different estimates – one for the number of non-resident general partners or non-resident managing agents, and another for the number of non-resident municipal advisory firms. To estimate the number of non-resident general partners or non-resident managing agents that would have to file Form MA-NR, the Commission relies on investment adviser registration data, which indicates that the percentage of Form MA-NR filings to total

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Secretary of the Commission, and the Secretary of State, or equivalent officer, of the state in which the investment adviser maintains its principal office and place of business, if applicable, and any other state in which the adviser is applying for registration, amending its registration, or submitting a notice filing, as agents to receive service. In contrast, Form MA-NR would require the respondent to find and designate a United States person (and not currently the Secretary of the Commission) to be an agent, which the Commission expects would require additional time.

344 See Exchange Act Release No. 49616 (April 26, 2004); 69 FR 24016 (April 30, 2004). The $900 figure is based on an hourly cost estimate of $400 on average for an outside attorney, which is based on Commission staff conversations with law firms that regularly assist regulated financial firms with compliance matters. Based on previous burden estimates, the Commission estimates that outside counsel would take, on average, 2.25 hours to assist in preparation of the opinion of counsel, for an average cost of $900 per respondent.

number of investment adviser applicants is 1.64%.[345] The Commission expects the proportion of non-resident general partners or non-resident managing agents compared to all Form MA applicants would be similar. Based on this estimate, the Commission anticipates that there would be 16 non-resident general partner or non-resident managing agent applicants on Form MA-NR.[346]

To estimate the number of non-resident municipal advisory firms that would have to file Form MA-NR, the Commission relies on Form MA-T registrant data, which indicate that as of October 2010, two of 800 Form MA-T registrants had non-U.S.-based addresses. The Commission expects that the proportion of non-resident municipal advisory firms compared to all Form MA applicants would be similar. Based on this estimate, the Commission anticipates that three respondents would be non-resident municipal advisory firms that would be required to complete Form MA-NR.[347] Thus, the total number of Form MA-NR filers would be approximately 20, and the total initial burden for completion of Form MA-NR would be 30 hours.[348]

The three non-resident municipal advisory firms that would be required to complete Form MA-NR would be the respondents required to provide an opinion of counsel. The total initial burden for providing an opinion of counsel would be approximately 9 hours.[349] Thus, the total initial burden for non-resident municipal advisors to complete Form MA-NR and provide an

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345 The Commission's Division of Investment Management indicates that 195 Form ADV-NRs have been filed since January 1, 2003. The proportion of filed forms to the total number of investment adviser registrants is 195 / 11,888 = 1.64%.

346 1,000 (all Form MA applicants) x 1.64% = 16 Form MA-NR filers that are non-resident general partners or non-resident managing agents.

347 1,000 (all Form MA applicants) x (2 / 800) (proportion of non-U.S.-based Form MA-T registrants compared to all Form MA-T registrants) = 2.5 Form MA-NR filers that are non-resident municipal advisors.

348 20 (persons expected to file Form MA-NR for the first time) x 1.5 hours (average estimated time to complete Form MA-NR) = 30 hours.

349 3 (non-resident municipal advisory firms expected to provide opinion of counsel) x 3.0 hours (average estimated time to provide an opinion of counsel) = 9 hours.

opinion of counsel would be 39 hours. The Commission estimates that the total initial cost for all non-resident municipal advisory firms to hire outside counsel as part of providing an opinion of counsel would be approximately $2,700.[350]

The Commission notes that filers may have potential one-time burdens associated with Form MA-NR. For example, filers may need to locate information required by Form MA-NR, or they may need to familiarize themselves with the proposed rules and the form. For purposes of this analysis, these potential one-time burdens are included in the estimates noted above.

To estimate the ongoing annual number of new Form MA-NR filers that are non-resident general partners or non-resident managing agents, the Commission relies on investment adviser registration data, which indicate that yearly filings of Form ADV-NR comprise, on average, approximately 0.09% of the total number of registered investment advisers.[351] The Commission expects the proportion of Form MA-NR filers that are non-resident general partners or non-resident managing agents compared to all Form MA applicants would be similar. Based on the above estimate, the Commission anticipates that only one municipal advisor respondent per year would have a non-resident general partner or non-resident managing agent that would be required to complete Form MA-NR.[352] This estimate includes the ongoing annual number of new Form MA-NR filers that are non-resident municipal advisors, because the small initial number of non-resident municipal advisors suggests that, at most, there would be only one new non-resident municipal

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350 3 (non-resident municipal advisory firms expected to provide opinion of counsel) x $900 (average estimated cost to hire outside counsel for providing an opinion of counsel) = $2,700.

351 As of October 2010, there were 11,888 investment advisers registered with the Commission. For the years 2003-2004 and 2007-2010, there was an average of 11 new Form ADV-NR filings per year. (11 / 11,888) = 0.09%.

352 1,000 (all Form MA applicants) x 0.09% = 0.9 Form MA-NR filers per year; this number was rounded up to 1.

advisor every several years. Thus, the total burden per year for completion of Form MA-NR would be approximately two hours.[353] For the purposes of this analysis, the Commission assumes that the one new non-resident municipal advisor per year would not be a natural person, and would thus be required to provide opinion of counsel. The total burden per year for providing opinion of counsel would be approximately three hours.[354] The Commission estimates that the ongoing annual cost for non-resident municipal advisors to hire outside counsel as part of providing opinion of counsel would be approximately $900.[355]

The Commission notes that filers may have potential recurring burdens associated with Form MA-NR, such as monitoring and maintaining the information required by the form. For the purposes of this analysis, these potential recurring burdens are included in the estimates noted above.

Proposed rule 15Ba1-5 also would require that non-resident municipal advisors, general partners and managing agents update the information on Form MA-NR if it becomes inaccurate. Commission staff believes that the burdens associated with these updates are accounted for in the above estimates because, given the small number of Form MA-NR filers, the burden for Form MA-NR updates would likely be negligible.

The collection of information made pursuant to Form MA-NR would not be confidential and would be made publicly available.

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353 1 (persons expected to file Form MA-NR each year) x 1.5 (average estimated time to complete Form MA-NR) = 1.5 hours per year.

354 1 (municipal advisory firms expected to provide an opinion of counsel) x 3.0 (average estimated time to provide opinion of counsel) = 3.0 hours per year.

355 1 (persons expected to file Form MA-NR each year) x $900 (average estimated cost to hire outside counsel for providing opinion of counsel) = $900.

### 6. Outside Counsel

The Commission believes that some municipal advisory firms would seek outside counsel to help them comply with the requirements of the proposed rules, and complete Form MA.[356] The Commission believes that it is unlikely that natural person municipal advisors would obtain and consult counsel for purposes of completing Form MA-I. For PRA purposes, the Commission assumes that all 1,000 municipal advisory firms registering on Form MA would, on average, consult outside counsel for one hour to help them comply with the requirements. The Commission believes that the estimate of the number of municipal advisory firms that would consult outside counsel is likely to be lower than 1,000 because some municipal advisory firms, especially those that are sole proprietors, would choose not to seek outside counsel. The Commission also recognizes that some municipal advisory firms would hire outside counsel for more than one hour and others may hire outside counsel for less than one hour. On balance, the Commission believes that its estimate that, on average, each municipal advisory firm would hire outside counsel for one hour is appropriate. The Commission estimates that the total cost for all municipal advisory firms to hire outside counsel to review their compliance with the requirements of the proposed rules and forms would be approximately $400,000.[357]

### 7. Maintenance of Books and Records

As described in detail above, all municipal advisory firms would be required to maintain

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356 The collection of information relating to outside counsel will be included as part of the collection of information "Form MA: Application for Municipal Advisor Registration."

357 1,000 (estimated number of municipal advisory firms that would hire outside counsel) x 1 hour (average estimated time spent by outside counsel to help municipal advisory firms comply with the rule) x $400 (hourly rate for an attorney, outside counsel) = $400,000. The hourly cost estimate of $400 on average for an attorney is based on Commission staff conversations with law firms that regularly assist regulated financial firms with compliance matters.

books and records relating to their municipal advisory activities.[358] These proposed book and records requirements are based generally on Exchange Act rules 17a-3 and 17a-4, and Investment Advisers Act rule 204-2, which set forth books and records requirements with respect to broker-dealers and investment advisers, respectively.[359] In addition, proposed rule 15Ba1-7 would require all municipal advisory firms to keep a record of the initial and annual review, as applicable, conducted by the municipal advisory firm of such municipal advisory firm's business in connection with its self-certification on Form MA.[360]

To estimate the annual books and records burden for municipal advisory firms, the Commission examined the current annual burdens and number of respondents to rules 17a-3 and 17a-4 of the Exchange Act ("Rule 17a-3; Records to be Made by Certain Exchange Members, Brokers and Dealers" and "Rule 17a-4; Records to be Preserved by Certain Exchange Members, Brokers and Dealers"),[361] and rule 204-2 of the Investment Advisers Act ("Books and Records To Be Maintained by Investment Advisers").[362] The most recently approved annual aggregate burden for broker-dealer compliance with rule 17a-3 is currently 2,835 hours based on an estimate of 105 respondents, or 27 hours per respondent,[363] while the most recently approved annual aggregate burden for broker-dealer compliance with rule 17a-4 is currently 1,752,600 hours based on an

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358 See supra Section II.C. (discussing the books and records requirements under proposed rule 15Ba1-7).

359 See 17 CFR 240.17a-3 and 17a-4, and 17 CFR 275.204-2.

360 See supra Section II.C. (discussing the books and records requirements under proposed rule 15Ba1-7).

361 See Collections of Information for Rules 17a-3 and 17a-4 (OMB Control Nos. 3235-0508 and 3235-0279), Office of Information and Regulatory Affairs, Office of Management and Budget, available at http://www.reginfo.gov/public/do/PRAMain.

362 See Collection of Information for Rule 204-2 of the Investment Advisers Act (OMB Control No. 3235-0278), Office of Information and Regulatory Affairs, Office of Management and Budget, available at http://www.reginfo.gov/public/do/PRAMain.

363 2,835 hours / 105 respondents = 27 hours per respondent.

estimate of 6,900 respondents, or 254 hours per respondent.[364] The most recently approved annual aggregate burden for rule 204-2 is currently 2,106,046 hours based on an estimate of 11,607 registered advisers, or 181 hours per registered adviser.[365]

The Commission anticipates that, given the relatively smaller size of municipal advisory firms compared to investment adviser and broker-dealer firms and the fewer books and records requirements imposed by proposed rule 15Ba1-7 than by rules 17a-3 or 17a-4, or by rule 204-2, the hourly burden per registered municipal advisory firm would likely be lower than the hourly burden estimates per broker-dealer and per investment adviser. For the purposes of this analysis, the Commission estimates that the annual books and records burden on average for a municipal advisory firm to comply with the proposed books and records requirements would be similar to that of an investment adviser, or 181 hours. The Commission staff recognizes that the proposed books and records requirements would likely impose initial burdens on respondents in connection with necessary updates to their record-keeping systems, such as systems development or modifications. For the purposes of this analysis, these initial burdens are included in the estimate of 181 burden hours per respondent per year. Thus, the total compliance burden is about 181,000 hours per year.[366]

Based on discussions with industry participants and the Commission's prior experience with broker-dealers and investment advisers, the Commission believes that the ongoing books and records obligations under the proposed rule would be handled internally because compliance with these obligations is consistent with the type of work that a market participant would typically handle

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364 1,752,600 hours / 6,900 respondents = 254 per respondent.

365 2,106,046 hours / 11,607 registered advisers = 181 hours per adviser.

366 1,000 (estimated number municipal advisors) x 181 hours (estimated time spent by municipal advisors to ensure annual compliance with the books and records requirement) = 181,000 hours.

internally. The Commission does not believe that a municipal advisory firm would have any recurring external costs associated with books and records obligations.

The Commission staff would use the collection of information for maintenance of books and records in its examinations and oversight program, and the information would be generally kept confidential to the extent permitted by law.

**8. Total Burden**

Under the proposed rules and forms, the total initial one-time burden for all respondents would be approximately 71,939 hours,[367] while the total ongoing annual burden for all respondents would be approximately 212,135 hours.[368] The total initial outside cost for all respondents would be $402,700,[369] while the total ongoing outside cost for all respondents would be $900 per year.[370]

The Commission seeks comment on the reporting and record-keeping collection of information burdens associated with the proposed rules and forms. In particular:

- How many municipal advisors would incur collection of information burdens if the proposed rules and forms were adopted by the Commission?
- Would there be additional or alternative burdens associated with the collection of information under the proposed rules and forms?

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367 6,500 hours (initial burden for Form MA applicants) + 65,400 hours (initial burden for Form MA-I applicants) + 39 hours (initial burden for Form MA-NR filers) = 71,939 hours.

368 650 hours (annual burden for new Form MA applicants) + 5,400 hours (annual burden for new Form MA-I applicants) + 3,000 hours (annual burden for Form MA amendments) + 20,700 hours (annual burden for Form MA-I amendments) + 30 hours (annual burden for Form MA withdrawal) + 1,350 hours (annual burden for Form MA-I withdrawal) + 5 hours (annual burden for Form MA-NR filers) + 181,000 hours (annual burden for books and records requirement) = 212,135 hours.

369 $2,700 (estimated initial cost to hire outside counsel for providing opinion of counsel) + $400,000 (initial cost for review by outside counsel) = $402,700.

370 $900 = estimated ongoing cost to hire outside counsel for providing opinion of counsel.

- How much work would it take for municipal advisory firms with existing books and records to comply with the books and records requirements of the proposed rules?
- Would municipal advisory firms generally perform the work internally or outsource the work?

**E. Collections of Information are Mandatory**

The collections of information would be mandatory.

**F. Request for Comment**

Pursuant to 44 U.S.C. 3506(c)(2)(B), the Commission solicits comment to:

- evaluate whether the proposed collections of information are necessary for the proper performance of the functions of the Commission, including whether the information would have practical utility;
- evaluate the accuracy of the Commission's estimate of the burden of the proposed collections of information;
- enhance the quality, utility, and clarity of the information to be collected; and
- minimize the burden of collections of information on those who are to respond, including through the use of automated collection techniques or other forms of information technology.

Persons wishing to submit comments on the collection of information requirements should direct them to the Office of Management and Budget, Attention: Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Room 10102, New Executive Office Building, Washington, DC 20503; and should send a copy to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090 with reference to File No. S7-45-10. OMB is required to make a

decision concerning the collection of information between 30 and 60 days after publication, so a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication of this release. Requests for the materials submitted to OMB by the Commission with regard to these collections of information should be in writing, refer to File No. S7-45-10, and be submitted to the Securities and Exchange Commission, Office of Investor Education and Advocacy, 100 F Street, NE, Washington, DC 20549-0213.

## V. ECONOMIC ANALYSIS

As discussed above, the Dodd-Frank Act added provisions to the Exchange Act that, among other things, require municipal advisors to register with the Commission and authorize the Commission to impose certain record-keeping requirements on municipal advisors.[371] In enacting Section 975 of the Dodd-Frank Act, Congress established a mandatory registration regime for municipal advisors but left the form and content of such registration within the discretion of the Commission.[372] In determining the form and content of such registration, the Commission may require "such information and documents" as it considers "necessary or appropriate in the public interest or for the protection of investors."[373] Congress also granted the Commission exemptive authority to exclude certain persons from the definition of municipal advisor.[374]

The Commission is proposing new rules and forms that, if adopted, would provide for a permanent registration regime for municipal advisors. The proposed rules and forms would include the submission of Form MA by municipal advisory firms (including sole proprietors) seeking registration, the submission of Form MA-I by natural person municipal advisors (including sole

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371 See 15 U.S.C. 78o-4.

372 See 15 U.S.C. 78o-4(a)(2).

373 See id.

374 See 15 U.S.C. 78o-4(a)(4).

proprietors) seeking registration, the completion of a self-certification as to the municipal advisors' qualifications and ability to comply with applicable regulatory obligations, and the submission of Form MA-W by municipal advisors seeking to withdraw from registration. The Commission is also proposing rule 15Ba1-5, which would require certain non-resident persons to submit Form MA-NR in certain circumstances, relating to consent to service of process, and would require non-resident municipal advisory firms to provide an opinion of counsel that the non-resident municipal advisory firms can provide the Commission with access to their books and records and submit to onsite inspection and examination by the Commission. In addition, proposed rule 15Ba1-7 would require certain books and records to be maintained by municipal advisory firms in connection with their municipal advisory activities.[375]

The Commission is sensitive to the costs and benefits imposed by its rules. The discussion below focuses on the costs and benefits of the decisions made by the Commission to fulfill the mandates of the Dodd-Frank Act within its permitted discretion, rather than the costs and benefits of the mandates of the Dodd-Frank Act itself. However, to the extent that the Commission's discretion is exercised to realize the benefits intended by the Dodd-Frank Act or to impose the costs associated with the Dodd-Frank Act, the two types of benefits and costs are not entirely separable. Accordingly, the PRA hourly burden estimates made in accordance with the requirements of the PRA, and their corresponding dollar cost estimates, are included in full below, although a portion of the cost to register is attributable to the requirements of the Dodd-Frank Act and not to the specific rules proposed by the Commission.

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

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375 See supra Section II.C (discussing the books and records requirements under proposed rule 15Ba1-7).

the public interest, to consider, in addition to the protection of investors, whether the action would promote efficiency, competition and capital formation.[376] 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.[377] Exchange Act Section 23(a)(2) 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.[378] The Commission's consideration of these matters is set forth below. In considering these matters, the Commission is mindful of the industry background described above in Sections I.A.1.a and I.A.1.b. The Commission requests comment on those Sections I.A.1.a and I.A.1.b in connection with comments requested below.

**A. Proposed Rule 15Ba1-1: Definition of "Municipal Advisor" and Related Terms**

Proposed rule 15Ba1-1(d) would clarify that the exclusion from the definition of "municipal advisor" for a broker, dealer or municipal securities dealer serving as an underwriter shall not apply when such persons are acting in a capacity other than as underwriters on behalf of a municipal entity or obligated person.[379] The proposed rule also would clarify that the exclusion from the definition of "municipal advisor" for a Commission-registered investment adviser and its associated persons applies only to advice that "would subject such adviser or person associated with such adviser to the Investment Advisers Act of 1940."[380] The proposed rule also would interpret the exclusion from the definition of "municipal advisor" for any registered commodity trading advisors and their associated persons to apply only to such persons when they are providing advice related to

376 See 15 U.S.C. 78c(f).

377 See 15 U.S.C. 78w(a)(2).

378 See id.

379 See proposed rule 15Ba1-1(d)(2)(i). See also supra notes 105-106, and accompanying text.

380 See proposed rule 15Ba1-1(d)(2)(ii). See also supra notes 114-117, and accompanying text.

swaps on behalf of a municipal entity or obligated person.[381] In addition, the proposed rule provides that the definition of "municipal advisor" shall not include attorneys offering legal advice or providing services that are of a traditional legal nature,[382] or engineers providing engineering advice.[383]

As discussed above, the Commission is proposing to exclude from the definition of "municipal advisor" accountants preparing financial statements, auditing financial statements, or issuing letters for underwriters for, or on behalf of, a municipal entity or obligated person.[384] The Commission is also proposing to exclude "providers of municipal bond insurance, letters of credit, or other liquidity facilities" from the definition of "obligated persons."[385] Excluding such persons from the definition of "obligated persons" would, among other things, help reduce market confusion because the exclusion would further uniformity among rules relating to the definition of "obligated person" in the municipal securities market.[386]

These proposed interpretations and exclusions would mean that certain persons who are currently regulated (such as broker-dealers serving as underwriters or investment advisers providing advice which would subject them to the Investment Advisers Act) or that are governed by other professional codes of conduct (such as attorneys providing traditional legal services) would not be required to register as municipal advisors.

The Dodd-Frank Act includes distinct groups of professionals within its definition of "municipal advisor" that offer different services and compete in distinct markets. The three

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381 See proposed rule 15Ba1-1(d)(2)(iii). See also supra notes 121-122, and accompanying text.

382 See proposed rule 15Ba1-1(d)(2)(iv). See also supra note 132, and accompanying text.

383 See proposed rule 15Ba1-1(d)(2)(v). See also supra note 133-138, and accompanying text.

384 See proposed rule 15Ba1-1(d)(2)(vi). See also supra note 124-131, and accompanying text.

385 See proposed rule 15Ba1-1(i). See also supra note 90, and accompanying text.

386 See supra note 88, and accompanying text.

principal types of municipal advisors are: (1) financial advisors, including, but not limited to, broker-dealers already registered with the Commission, that provide advice to municipal entities with respect to their issuance of municipal securities and their use of municipal financial products ("financial advisors" or "municipal financial advisors"); (2) investment advisers that advise municipal pension funds and other municipal entities on the investment of funds held by or on behalf of municipal entities (subject to certain exclusions from the definition of a "municipal advisor") ("municipal investment advisers"); and (3) third-party marketers and solicitors ("solicitors"). As discussed above in Sections I.A.1.a and I.A.1.b, these different types of municipal advisors operate in different markets. These markets have distinct competitive structures. Within each of these markets, different participants are subject to different regulatory regimes. For purposes of this Economic Analysis, the Commission uses the above-defined terms to describe these distinct types of professionals separately, while using the term "municipal advisors" to describe all municipal advisors generally.

The Commission believes that the proposed interpretations and exemptions contained in proposed rule 15Ba1-1(d) would not impose a burden on competition and would have minimal, if any, impact on the promotion of efficiency and capital formation except to the extent that they reduce market confusion with respect to which persons would be required to register as municipal advisors under the proposed permanent registration regime. Finally, the Commission believes that the direct costs for respondents to read and apply the definitions in proposed rule 15Ba1-1(d) would be minimal.

### B. Registration System

The Commission is proposing rules to create a permanent registration regime that would consist of the following forms: Form MA, Form MA-I, and Form MA-W. Municipal advisors

would complete these forms to register with the Commission, to amend information previously reported to the Commission, to report the succession of registration of a municipal advisor, and to withdraw from registration. Under proposed rule 15Ba1-4, amendments to Form MA must be filed annually and in the event of certain material changes to the information previously provided, and to Form MA-I whenever the information previously provided becomes inaccurate. Municipal advisors would also be required to provide, on both an initial and annual basis, a self-certification as to their qualifications as municipal advisors and ability to comply with applicable regulatory obligations.

**1. Benefits**

The proposed permanent registration regime is designed to allow the Commission and other regulators to oversee the conduct of municipal financial advisors, municipal investment advisers, and solicitors in the municipal securities market, as contemplated by the Dodd-Frank Act. Forms MA and MA-I have been designed to provide information that the Commission believes would be helpful for municipal entities to have in a standard format, because it would lower the costs of information gathering for municipal entities[387] in comparing municipal advisors. The Commission believes that a municipal advisor's knowledge of the Commission's authority to examine the municipal advisor and its authority to sanction the municipal advisor for false and misleading statements is likely to result in increased reliability of the information submitted by municipal advisors under the proposed permanent registration regime.

The proposed forms would require municipal advisors to provide information about their disciplinary histories and potential conflicts of interest (and information that may be useful in assessing potential conflicts of interest).[388] Municipal entities and obligated persons would have

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387 For the purposes of this Economic Analysis, references to municipal entities include obligated persons where the context requires.

388 See supra Sections II.A.2.c and II.A.2.d.

ready access to this information and thus would be in a position to become more fully informed about more municipal financial advisor candidates at lower cost when choosing those who would provide advice to them. Research has shown that most municipal entities do not utilize a formalized selection process when they choose their municipal financial advisors[389] and, therefore, might not have disciplinary information about the advisors they hire. To the extent that municipal entities or obligated persons consider such information important in the selection of municipal advisors, the proposed permanent registration regime may reduce municipal entities' or obligated persons' reliance on municipal advisors that have been the subject of disciplinary actions, or whose activities or affiliations create or have the potential to create conflicts of interest. In addition, municipal advisors, knowing that conflicts of interest must be disclosed, may be more likely to avoid associations that could be perceived as creating conflicts of interest, or would more likely avoid recommending financial intermediaries or investments for which conflicts of interest might be present.

While much of this information is already publicly available with respect to municipal financial advisors that are already registered with the Commission as broker-dealers, disclosure of potential conflicts of interest specific to their municipal financial advisory role could be valuable to potential municipal clients. Many municipal financial advisors that are not registered as broker-dealers would make this sort of information publicly available for the first time.

Similar benefits would be expected to accrue from the public disclosure of the disciplinary history and potential conflicts of interest of municipal investment advisers not registered with the Commission. Congress determined that investment advisers to municipal entities that are already

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389 According to Mark D. Robbins and Bill Simonsen, 2003, Financial Advisor Independence and the Choice of Municipal Bond Sale Type, Municipal Finance Journal 24: 42 ("Robbins and Simonsen"), an RFP had been used only 22.6% of the time by governments in selecting the financial advisor for their last bond sale. See also Allen & Dudney, supra note 11.

registered with the Commission as investment advisers would not be required to register again as municipal advisors, to the extent the advice provided would subject the investment adviser to the Investment Advisers Act. Many, if not most, of the investment advisers that would be required to register as municipal advisors may be registered as investment advisers under state laws, and any incremental benefit in requiring disciplinary and conflict disclosure would vary from state to state, depending on how that disciplinary and conflict disclosure is required by or applied to different state legal regimes. Nevertheless, the availability of important information in a uniform, standardized format may prove beneficial by reducing the cost of collecting information and comparing it across municipal investment advisers.[390]

Solicitors are a group of municipal advisors about whom relatively little is known, and the benefits of registering this group may prove to be substantial, to the extent that disciplinary records and conflicts of interest are revealed.[391]

Public disclosure of the disciplinary history of municipal advisors, and their associated persons, would make this information available not only to regulators, but also to all interested persons.[392] This disclosure would benefit municipal entities and the general public. Even if the municipal entity does not otherwise seek to obtain this disciplinary information as part of its

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390 Unless registered with the Commission as municipal advisors, state-registered investment advisers that advise municipal entities would not be subject to "pay-to-play" rules, as contemplated in the Commission's recent releases. See Political Contributions Final Rule, supra note 31 and IA-3110, supra note 104 (proposing rules implementing amendments to the Investment Advisers Act, and, among other things, modifying the Commission's "pay-to-play" rule).

391 The Commission's recent proposed amendments to the "pay-to-play" rules for investment advisers contemplate that, if adopted, certain solicitors for municipal investment advisers would be registered as municipal advisors and potentially subject to "pay-to-play" rules. See IA-3110, supra note 104, at 69-70. Other solicitors for municipal investment advisers may voluntarily register as municipal advisors in order to continue in the business of soliciting on behalf of municipal investment advisers. See supra Section II.A.2.a.

392 See supra Sections II.A.2.c and II.A.2.d.

selection process, the information would be available to interested persons (e.g., the press and concerned citizens) who might directly or indirectly influence the selection of the municipal advisor.

In addition, such public disclosure may deter municipal advisors that have disclosable disciplinary events from entering the market. Thus, this proposed requirement (as well as the ability to regulate municipal advisors going forward) could help discourage entities with disclosable disciplinary histories from entering the pool of potential municipal advisors and reduce the potential for corruption in the municipal market.

To the extent that municipal entities or obligated persons have been deterred from engaging a municipal advisor because they were not familiar with the municipal advisor population and were unsure whether they could identify a trustworthy advisor (including fear of hiring someone tainted with conflicts or violations too expensive to uncover), the proposed permanent registration regime might increase the use of municipal advisors generally. As such, there could be an increased likelihood of using a municipal advisor when a municipal entity or obligated person makes issuance or investment decisions.

With respect to the issuance of municipal securities, this increased likelihood of using a municipal financial advisor could in turn reduce issuance costs and may produce savings. One empirical study suggests that the use of municipal financial advisors is associated with better borrowing terms, lower reoffering yields and narrower underwriter gross spreads,[393] particularly where the advisors are of a higher quality.[394] The small average size of publicly offered municipal issues, as compared, for example, to publicly offered corporate issues,[395] makes municipal

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393 See generally Vijayakumar and Daniels, supra note 7.

394 See generally Allen & Dudney, supra note 11.

395 See Testimony of Christopher M. Ryon, Principal and Senior Municipal Bond Portfolio

securities issuers particularly sensitive to issuance costs. This sensitivity may create a demand for advisors that can successfully negotiate to lower these costs. Municipal financial advisors that provide advice with respect to the issuance of municipal securities and are continually active in the municipal securities market may help to reduce the information asymmetry gap between municipal entities and underwriters, swap dealers, bond insurers, letter of credit providers and other financial intermediaries.[396] Thus, municipal issuers and obligated persons should benefit from having municipal financial advisors compete in a more informationally efficient market that may result from the proposed permanent registration regime. In addition, reducing the cost of identifying a high-quality municipal financial advisor may be expected to increase the use of such advisors, who may be in a position to obtain better financing terms for their municipal entity clients and, indirectly, for taxpayers, than those that could be negotiated by lesser-quality municipal financial advisors. Higher-quality municipal financial advisors have been shown to be associated with more efficient capital formation (i.e., lower interest costs).[397]

With the readily available information on municipal advisor disciplinary histories and conflicts of interest, municipal entities would be able to more easily set objective criteria for the municipal advisors hired by decision-making officials. The ease of setting such criteria and verifying compliance with such criteria might reduce the likelihood that municipal advisors are hired because of their political or personal connections to decision-making officials, rather than because of their qualifications.

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Manager, the Vanguard Group, before the Senate Committee on Banking, Housing, and Urban Affairs, June 17, 2004, at 4, available at http://banking.senate.gov/public/index.cfm?FuseAction=Files.View&FileStore_id=2474c4c6-d0ed-4a44-a9c8-6376484a4cde.

396 See generally Vijayakumar and Daniels, supra note 7.

397 See generally Allen & Dudney, supra note 11, at 412.

The collection of this information pursuant to the proposed permanent registration regime, and the fact that, if adopted, the information would be available directly to regulators, would also facilitate enforcement against municipal advisors by allowing the available information to be used for identifying trends and risky firms and natural persons, among other uses. If such information were requested directly from applicants as contemplated in the proposed permanent registration regime, regulators would not have to rely on other sources to obtain this disciplinary history information.

The combined effect of increasing the likelihood of using municipal advisors and improving the average quality of the municipal advisor selection pool (as described above) may improve allocative efficiency, since municipal entities may benefit from better advice in their consideration of issuance or investment alternatives. Such improvements in allocative efficiency may also promote more efficient capital formation. In addition, the improvement in disclosure about, and average quality of, municipal advisors, and the more frequent use of municipal advisors by municipal entities or obligated persons, may also increase competition among municipal advisors of all types – municipal financial advisors, municipal investment advisers, and solicitors. As noted above, however, the benefits in the case of municipal investment advisers would be limited, to the extent that the same or similar information is publicly available under an applicable state law regime.

**2. Costs**

The establishment of a permanent registration regime would impose costs on persons registering as municipal advisors on Form MA and/or Form MA-I. In particular, the Commission anticipates the following one-time costs for the proposed rules:

- The Commission believes that the total initial labor cost for all municipal advisory firms to complete Form MA would be approximately $1,105,000,[398] while the total initial labor cost for all natural person municipal advisors to complete Form MA-I would be approximately $11,118,000.[399]
- If adopted, municipal advisors would incur one-time costs in familiarizing themselves with the proposed rules and the relevant proposed forms. The Commission notes, however, that such a familiarization period is an inevitable necessity for any newly-introduced registration regime. As noted in the PRA section above, the paperwork burden of gathering information for the purpose of completing Forms MA and MA-I would be reduced because some of the information required by Form MA and Form MA-I would have already been gathered for Form MA-T. For municipal advisors that are either municipal financial advisors or municipal investment advisers, to the extent that the disclosures that would be required on Form MA or Form MA-I have been disclosed on Form ADV, BD or U4, the employees would be permitted to incorporate

398 6,500 hours (total estimated hourly burden under the proposed rules for all municipal advisors to complete a Form MA) x $170 (combined hourly rate for a Compliance Manager and Compliance Clerk) = $1,105,000. The Commission expects that Form MA completion would most likely be performed equally by compliance managers and compliance clerks. Dividing the hourly rate evenly between a compliance manager of $273 per hour and a compliance clerk of $67 per hour results in a cost per hour of $170. ($273 x 0.5) + ($67 x 0.5) = $177. The $273 per hour figure for a Compliance Manager and the $67 per hour figure for a Compliance Clerk are from the SIFMA publication titled Management & Professional Earnings in the Securities Industry 2010, as modified by Commission staff to account for an 1,800 hour work year and multiplied by 5.35 to account for bonuses, firm size, employee benefits and overhead.

399 65,400 hours (total estimated hourly burden under the proposed rules for all municipal advisors to complete a Form MA-I) x $170 (combined hourly rate for a Compliance Manager and Compliance Clerk) = $11,118,000. See id. The Commission recognizes that instead of using a Compliance Manager or Compliance Clerk, most Form MA-I registrants would fill out the form themselves. The Commission believes, however, that the average compliance rate used to calculate the labor cost for Form MA would be a reasonable proxy for the compliance rate used to calculate the labor cost for Form MA-I.

such information by reference in completing Form MA or Form MA-I, further reducing the costs to complete the form. The one-time costs for familiarizing themselves with the proposed rules and the relevant proposed forms would likely be higher for municipal financial advisors or solicitors that are not broker-dealers or investment advisers, because they may need to gather information required by Form MA and Form MA-I for the first time. For the purposes of this analysis, this one-time cost is included in the cost estimates noted above.

- If adopted, municipal advisors might incur one-time costs in establishing new internal controls such as procedures for obtaining the information required by Form MA and Form MA-I, as applicable. The Commission believes that these costs would be limited for municipal advisors that are financial advisors or investment advisers and are currently regulated with respect to their other activities or have voluntarily adopted such practices. These costs would be higher for municipal financial advisors or solicitors that are not broker-dealers or investment advisers, are not otherwise regulated, or have not voluntarily adopted such practices.[400] For the purposes of this analysis, this one-time cost is included in the cost estimates noted above.

The Commission also anticipates the following recurring costs for compliance with the proposed permanent registration regime, which would likely be similar across all municipal advisor types – municipal financial advisors, municipal investment advisers, and solicitors:

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400 Some unregulated groups that engage in municipal advisory activities have formed professional associations that have implemented their own voluntary best practices with respect to conflicts of interest, educational standards, and other disclosure of note to their clients. See, e.g., National Association of Independent Public Finance Advisors, www.naipfa.com.

- The Commission believes that the ongoing annual labor cost for new municipal advisory firms to complete Form MA would be approximately $110,500,[401] while the ongoing annual labor cost for new natural person municipal advisors to complete Form MA-I would be approximately $918,000.[402]
- The Commission believes that the ongoing annual labor cost for all municipal advisory firms to amend Form MA and complete the annual self-certification would be approximately $510,000,[403] while the ongoing annual labor cost for all natural person municipal advisors to amend Form MA-I and complete the annual self-certification would be approximately $3,519,000.[404]
- The Commission believes that the ongoing annual labor cost for all municipal advisory firms to complete Form MA-W to withdraw from Form MA registration would be approximately $5,100,[405] while the ongoing annual labor cost for all natural person

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401 650 hours (total estimated hourly burden under the proposed rules for new municipal advisors to complete a Form MA) x $170 (combined hourly rate for a Compliance Manager and Compliance Clerk) = $110,500. See supra note 398 for the calculation of the combined hourly rate.

402 5,400 hours (total estimated hourly burden under the proposed rules for new municipal advisors to complete a Form MA-I) x $170 (combined hourly rate for a Compliance Manager and Compliance Clerk) = $918,000. See supra note 399 for the calculation of the combined hourly rate.

403 3,000 hours (total estimated hourly burden under the proposed rules for all municipal advisors to amend a Form MA and complete annual self-certification) x $170 (combined hourly rate for a Compliance Manager and Compliance Clerk) = $510,000. See supra note 398 for the calculation of the combined hourly rate.

404 20,700 hours (total estimated hourly burden under the proposed rules for all municipal advisors to amend a Form MA-I and complete annual self-certification) x $170 (combined hourly rate for a Compliance Manager and Compliance Clerk) = $3,519,000. See supra note 399 for the calculation of the combined hourly rate.

405 30 hours (total estimated hourly burden under the proposed rules for all municipal advisors to withdraw from Form MA registration) x $170 (combined hourly rate for a Compliance Manager and Compliance Clerk) = $5,100. See supra note 398 for the calculation of the combined hourly rate.

municipal advisors to complete Form MA-W to withdraw from Form MA-I registration would be approximately $229,500.[406]

- If adopted, municipal advisors would incur recurring costs for monitoring and/or maintaining the information required by the registration forms and providing updates to the registration forms. For the purposes of this analysis, this recurring cost is included in the cost estimates noted above.

In addition to the direct, out-of-pocket costs estimated for PRA purposes, the Commission considered the economic costs of the proposed permanent registration regime. The Commission recognizes that the cost of becoming subject to registration for the first time may lead some municipal advisors that are not particularly active to leave the business, to the extent they presume that the additional costs associated with registration would negatively impact potential revenues to such a degree that the best economic choice for them would be to suspend operating their business or, at least, the municipal advisory portion of their business. Moreover, if the proposed permanent registration regime is adopted, municipal entities may also incur costs from decisions based on the incorrect perception that registration as a municipal advisor is a stamp of quality.

Furthermore, as noted above, the additional costs associated with registration may impact those municipal advisors that are not already registered as either investment advisers or broker-dealers to a greater degree than they would impact municipal advisors that have previously registered under another regulatory regime. To the extent that municipal advisors that have not previously registered under another regime provide greater positive value to their advisees,[407] their

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406 1,350 hours (total estimated hourly burden under the proposed rules for all municipal advisors to withdraw from Form MA-I registration) x $170 (combined hourly rate for a Compliance Manager and Compliance Clerk) = $229,500. See supra note 399 for the calculation of the combined hourly rate.

407 See, e.g., Robbins and Simonsen, supra note 389, at 55 (finding that financial advisors that

disproportionate exit from the market, compared to municipal advisors that have previously registered under another regulatory regime, would negatively impact the value of advice provided to municipal entities. In the case of solicitors for investment advisers to municipal pension funds, however, few are currently registered as either broker-dealers or investment advisers. The registration requirement under the proposed permanent registration regime may cause some of these solicitors to exit the market to avoid the cost and scrutiny that would accompany registration. To the extent that the solicitors that would exit this market would disproportionately include those that provide less value to municipal entities, their exit from the market would be a benefit that may mitigate these costs.

Because the existing markets for all three municipal advisor types – municipal financial advisors, municipal investment advisers, and solicitors – appear to be competitive, exits from such markets are not expected to lead to market concentration levels at which economic inefficiency (monopoly profits for the few surviving municipal advisors) would result. Moreover, given the content of the proposed forms, those municipal advisors that may exit such markets may include disproportionately more municipal advisors with disciplinary records or other negative histories.

The Commission further recognizes that some state-registered investment advisers that manage municipal pension investments may have the incentive to exit these investments to avoid federal registration under the proposed permanent registration regime. These investment advisers may perceive the costs of the required federal registration, in addition to one or more state registrations, to outweigh the benefits of managing such municipal pension investments.

The Commission believes that few of these initial and recurring costs, if any, would be passed on to municipal entities or obligated persons in the form of higher fees. To the extent that

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are not broker-dealers are more likely to recommend a competitive sale, which generally results in lower borrowing costs for the issuer).

costs are passed on, the financial advisor and solicitor markets may be impacted to a greater degree than the investment adviser market, which would be more likely to keep fees relatively fixed for investment adviser services.

The Commission has considered the effects on competition, efficiency and capital formation of the proposed rule regarding the proposed permanent registration regime as a whole, as noted above.

### C. Non-Resident Municipal Advisors

The Commission is proposing rule 15Ba1-5 to set forth the general procedures for serving non-residents on Form MA and Form MA-NR. Pursuant to the instructions to Form MA-NR, and consistent with proposed rule 15Ba1-5, non-resident municipal advisory firms, non-resident general partners and non-resident managing agents of municipal advisors must file Form MA-NR to furnish the Commission with a written irrevocable consent and power of attorney to appoint an agent in the United States, other than a Commission member, official, or employee, upon whom may be served any process, pleadings, or other papers in any action brought against the non-resident municipal advisory firm, non-resident general partner or non-resident managing agent. Proposed rule 15Ba1-5(e) would also require each non-resident municipal advisory firm to provide an opinion of counsel that the non-resident municipal advisory firm can, as a matter of law, provide the Commission with prompt access to its books and records and can, as a matter of law, submit to onsite and inspection and examination by the Commission.

#### 1. Benefits

The proposed requirement that a non-resident municipal advisor or a non-resident general partner or non-resident managing agent of a municipal advisor file Form MA-NR in connection with the municipal advisor's initial application would help minimize any legal or logistical obstacles that the Commission may encounter when attempting to effect service, to conserve

Commission resources, and to avoid potential conflicts of law. The proposed requirement that a non-resident municipal advisory firm must obtain an opinion of counsel that the municipal advisory firm can provide access to books and records and can be subject to onsite inspection and examination would allow the Commission to better evaluate a municipal advisory firm's ability to meet the requirements of registration and ongoing supervision. These benefits would be the same across all municipal advisor types – municipal financial advisors, municipal investment advisers, and solicitors. In addition, the requirements to file Form MA-NR and provide an opinion of counsel are expected to have minimal, if any, effect on competition, efficiency and capital formation.

**2. Costs**

The filing of proposed Form MA-NR and the obtaining of an opinion of counsel would impose compliance burdens on municipal advisors. In particular, the Commission anticipates the following one-time costs:

- The Commission believes that the initial labor cost for non-resident municipal advisory firms, non-resident general partners or non-resident managing agents to complete the Form MA-NR would be approximately $5,100.[408]
- The Commission believes that the initial labor cost for non-resident municipal advisory firms to obtain an opinion of counsel that the municipal advisor can provide access to books and records and can be subject to onsite inspection and examination would be approximately $3,200.[409]

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408 30 hours (estimated initial hourly burden under the proposed rules for all respondents to complete a Form MA-NR) x $170 (combined hourly rate for a Compliance Manager and Compliance Clerk) = $5,100. See supra note 398 for the calculation of the combined hourly rate.

409 9 hours (estimated initial hourly burden under the proposed rules for all respondents to obtain opinion of counsel) x $354 (hourly rate for an internal attorney) = $3,186. The $354 per hour figure for an Attorney is from the SIFMA publication titled Management &

- If adopted, non-resident municipal advisory firms and non-resident general partners and non-resident managing agents of municipal advisors may incur one-time costs in establishing new internal controls such as procedures for obtaining the information required by Form MA-NR. For the purposes of this analysis, this one-time cost is included in the cost estimate noted above.

The Commission also anticipates the following recurring costs:

- The Commission believes that the ongoing annual labor cost for non-resident advisory firms, non-resident general partners or non-resident managing agents to complete the Form MA-NR would be approximately $340.[410]
- The Commission believes that the ongoing annual labor cost for non-resident municipal advisory firms to obtain opinion of counsel that the municipal advisory firm can provide prompt access to books and records and can be subject to onsite inspection and examination would be approximately $1,100.[411]
- If adopted, non-resident municipal advisory firms or non-resident general partners and non-resident managing agents of municipal advisors would incur recurring costs for monitoring and maintaining the information required by Form MA-NR. This cost would

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Professional Earnings in the Securities Industry 2010, as modified by Commission staff to account for an 1,800 hour work year and multiplied by 5.35 to account for bonuses, firm size, employee benefits and overhead.

410 2 hours (estimated ongoing annual hourly burden under the proposed rules for respondents to complete a Form MA-NR) x $170 (combined hourly rate for a Compliance Manager and Compliance Clerk) = $340. See supra note 398 for the calculation of the combined hourly rate.

411 3 hours (estimated ongoing annual hourly burden under the proposed rules for all respondents to obtain opinion of counsel) x $354 (hourly rate for an internal attorney) = $1,062. The $354 per hour figure for an Attorney is from the SIFMA publication titled Management & Professional Earnings in the Securities Industry 2010, as modified by Commission staff to account for an 1,800 hour work year and multiplied by 5.35 to account for bonuses, firm size, employee benefits and overhead.

likely be similar across all municipal advisor types – municipal financial advisors, municipal investment advisers, and solicitors. For the purposes of this analysis, this recurring cost is included in the cost estimate noted above.

### D. Record-Keeping

Proposed rule 15Ba1-7 sets forth requirements relating to the maintenance and retention of certain records relating to the business of municipal advisors and the forms required for the proposed permanent registration regime. The proposed rule would require, among other things, that municipal advisory firms maintain and preserve all books and records required to be made under the proposed rule for a period of not less than five years, the first two years in an easily accessible place.[412] Record-keeping requirements are a familiar and important element of the Commission's approach to investment adviser and broker-dealer regulation, and are designed to maintain the efficiency and effectiveness of the Commission's inspection program for regulated entities, which facilitates the Commission's review for their compliance with statutory mandates and with the Commission's rules.

#### 1. Benefits

The proposed rule would assist the Commission in evaluating a municipal advisory firm's compliance with Section 15B of the Exchange Act[413] and rules and regulations promulgated thereunder. Regulators would benefit from standardized record-keeping practices for municipal advisory firms because they would be able to perform more efficient, targeted inspections and examinations, and have an increased likelihood of identifying improper conduct at earlier stages in the inspection or examination. In addition, municipal advisory firms should benefit from standardized record-keeping practices by having their operations interrupted for shorter time periods

412 See supra Section II.C.

413 See 15 U.S.C. 78o-4.

in response to inspections or examinations than if their record-keeping practices were not standardized. Both regulators and municipal advisory firms should benefit from standardized record-keeping requirements to the extent that uniform records would identify for regulators and municipal advisory firms the records that municipal advisory firms should have on hand.

The record-keeping practices proposed in rule 15Ba1-7 would also help regulators perform their supervisory functions in an effective manner. To the extent that more effective supervision results in greater market integrity, municipal entities may make better use of municipal advisory firms in a way that should positively affect their capital formation activities.

**2. Costs**

The books and records requirements of proposed rule 15Ba1-7 would impose compliance burdens on municipal advisory firms. In particular, the Commission anticipates the following one-time costs:

- If adopted, municipal advisory firms may incur one-time costs in establishing the new internal controls and systems necessary to comply with the record-keeping requirements of the proposed rule. The Commission believes that for municipal advisory firms that are municipal financial advisors or municipal investment advisers and are currently regulated with respect to their other activities, these costs would be limited because the proposed rule allows some records to be maintained in compliance with those other rules.[414] The Commission believes that these costs would also be limited for municipal advisory firms that have voluntarily adopted similar record-keeping practices. Commission staff anticipates that these costs may be higher for solicitors and for

414 See supra Section II.C.

municipal advisory firms that are not otherwise regulated or have not voluntarily adopted similar record-keeping practices.

The Commission also anticipates the following recurring costs:

- The Commission believes that the ongoing annual labor cost for all municipal advisory firms to comply with the proposed requirement would be approximately $9,050,000.[415]
- If adopted, municipal advisory firms would also incur recurring costs related to the maintenance of books and records and the storage of such books and records, as required by the proposed rule. For the purposes of this analysis, these recurring costs are included in the cost estimate noted above.
- If adopted, municipal advisory firms would also need to provide applicable training to ensure compliance with the proposed record-keeping requirements. For the purposes of this analysis, this recurring cost is included in the cost estimate noted above.

The Commission does not believe that currently-operating municipal advisory firms would be subject to significant additional record-keeping costs as a result of the proposed rule because such municipal advisory firms already maintain books and records as part of their day-to-day operations. The proposed rule, however, provides specific parameters relating to the retention and maintenance of certain books and records and the proposed requirements may be more extensive than current market practices. Moreover, the Commission recognizes that these costs may impact those municipal advisory firms that are not already registered as either investment advisers or broker-dealers to a greater degree than they would impact municipal advisory firms that have

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415 181,000 hours (total estimated hourly burden under the proposed rules for all municipal advisory firms to annually comply with the books and records requirement) x $50 (hourly rate for a General Clerk) = $9,050,000. The $50 per hour figure for a General Clerk is from the SIFMA publication titled Management & Professional Earnings in the Securities Industry 2010, as modified by Commission staff to account for an 1,800 hour work year and multiplied by 5.35 to account for bonuses, firm size, employee benefits and overhead.

previously registered under another regulatory regime. Based on discussions with industry participants, however, Commission staff believes that some unregistered municipal advisory firms may already keep business records similar to those required by the Commission's proposal. The proposed record-keeping requirements would reinforce improvements in disclosure about, and the average quality of, municipal advisors.

The Commission has considered the effects on competition, efficiency and capital formation of the proposed rule regarding initial and ongoing record-keeping in the context of the proposed permanent registration regime as a whole, as noted above.

### E. Request for Comment on Economic Analysis

The Commission seeks estimates of the costs and benefits identified in this Economic Analysis section, as well as any costs and benefits not already discussed, which may result from the adoption of the proposed rules and forms. In connection with the comments requested below, the Commission requests comment on its understanding of the municipal advisor markets reflected in Sections I.A.1.a and I.A.1.b above. The Commission also requests comment on the potential costs and benefits of alternatives suggested by commenters. The Commission specifically requests comments with respect to the following:

- Would the availability of disciplinary information and conflict of interest information, along with the other information required by Form MA and Form MA-I, assist municipal entities or obligated persons in making hiring decisions with respect to municipal advisors?

The Commission solicits comments on the costs associated with the registration-related rules and new forms. The Commission specifically requests comment on the following:

- Would additional benefits accrue if the Commission required different or additional information on the proposed forms and, if so, what would these requirements entail?
- Are there additional costs or benefits related to registration that the Commission should consider? In particular, are there any outside costs associated with Form MA-NR that the Commission has not identified and should consider?

The Commission solicits comments on the costs and benefits related to the proposed record-keeping requirements. The Commission specifically requests comment on the following:

- Would additional benefits accrue if the Commission imposed different or additional record-keeping requirements and, if so, what would these requirements entail?
- The Commission specifically requests comments on the initial and ongoing costs associated with establishing and maintaining the record-keeping systems and related policies and procedures, including whether municipal advisory firms that are otherwise currently regulated would incur different record-keeping costs.
- Are there additional costs or benefits related to record-keeping that the Commission should consider? If so, please explain.

The Commission generally requests comment on the competitive or anticompetitive effects, as well as efficiency and capital formation effects, of the proposed rules and forms on any market participants if the proposals are adopted as proposed. Commenters should provide analysis and empirical data to support their views on the costs and benefits associated with the proposed rules and forms.

## VI. CONSIDERATION OF IMPACT ON THE ECONOMY

For purposes of the Small Business Regulatory Enforcement Fairness Act of 1996, or

"SBREFA,"[416] the Commission must advise OMB as to whether the proposed regulation constitutes a "major" rule. Under SBREFA, a rule is considered "major" where, if adopted, it results or is likely to result in: (1) an annual effect on the economy of $100 million or more (either in the form of an increase or a decrease); (2) a major increase in costs or prices for consumers or individual industries; or (3) significant adverse effect on competition, investment or innovation. If a rule is "major," its effectiveness will generally be delayed for 60 days pending Congressional review.

The Commission requests comment on the potential impact of the proposed rules and forms on the economy on an annual basis, on the costs or prices for consumers or individual industries, and on competition, investment or innovation. Commenters are requested to provide empirical data and other factual support for their view to the extent possible.

## VII. INITIAL REGULATORY FLEXIBILITY ANALYSIS

The Commission has prepared this Initial Regulatory Flexibility Analysis (IRFA) in accordance with Section 603(a) of the Regulatory Flexibility Act (RFA).[417] This IRFA relates to proposed rules 240.15Ba1-1 through 240.15Ba1-7 under the Exchange Act, which sets forth the requirements for municipal advisors to register with the Commission and the books and records that registered municipal advisory firms must make and keep.

Section 15B, as amended by the Dodd-Frank Act, generally is intended to strengthen oversight of the municipal securities markets and broaden current municipal securities market protections to cover, among other things, previously unregulated market participants. The proposed rules and forms are designed to meet this mandate by requiring each municipal advisor, whether a firm or a natural person, to provide basic identifying information about itself, a description of its

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416 Pub. L. No. 104-121, Title II, 110 Stat. 857 (1996) (codified in various sections of 5 U.S.C., 15 U.S.C. and as a note to 5 U.S.C. 601).

417 See 5 U.S.C. 603(a).

activities, and facts regarding its disciplinary history, if any.

### A. Reasons and Objectives for the Proposed Rules

Sections I and II of this Release describe the reasons for and objectives of the proposed rules and forms. Many market professionals are involved in issuing municipal securities and advising municipal entities and obligated persons with respect to municipal financial products. Historically, however, municipal advisors have been largely unregulated. Consistent with the requirements of the Dodd-Frank Act, the Commission is proposing new rules and forms that, if adopted, would establish a permanent registration regime for municipal advisors. The Commission believes that the information disclosed pursuant to the proposed rules and forms would provide significant value to the Commission in its oversight of municipal advisors and their activities in the municipal securities markets. The information provided pursuant to these proposed rules and forms would also aid municipal entities, obligated persons, and others in choosing municipal advisors, engaging in transactions with municipal advisors, or participating in transactions in municipal securities issued in offerings in which a municipal advisor provided municipal advisory services.

### B. Legal Basis

Pursuant to the Exchange Act, and particularly Sections 15B, 17, and 36 (15 U.S.C. 78o-4, 78q, and 78mm, respectively), the Commission is proposing to adopt §§ 240.15Ba1-1 through 240.15Ba1-7, Form MA, Form MA-I, Form MA-W, and Form MA-NR.

### C. Small Entities Subject to the Proposed Rules

Under section 601(3) of the RFA, the term "small business" is defined as having "the same meaning as the term 'small business concern' under section 3 of the Small Business Act, unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal

Register."[418] The Commission's rules do not define "small business" or "small organization" for purposes of municipal advisors. The SBA defines small business, for purposes of entities that provide financial investments and related activities, as a business that had annual receipts of less than $7 million during the preceding fiscal year and is not affiliated with any person that is not a small business or small organization.[419] Therefore, the Commission is using the SBA's definition of small businesses to define municipal advisors that are small entities for purposes of the RFA.

In developing the proposed rules and forms, the Commission has considered their potential impact on the small entities that would be subject to the proposed rules and would be required to complete the proposed forms. All municipal advisors must register with the Commission, including small entities, and would be subject to the proposed rules.

Based on the number of municipal advisors who have already registered with the Commission by completing Form MA-T, the Commission estimates that approximately 1,000 municipal advisory firms, including sole proprietors, would be required to complete Form MA.[420] In connection with the promulgation of rule 15Ba2-6T, industry sources were unable to provide an estimate, based on the definitions discussed above, of how many of these municipal advisory firms would be small businesses or small organizations.[421] However, for purposes of this IRFA, the Commission believes that the proportion of small municipal advisory firms subject to the proposed rules compared to all Form MA applicants subject to the proposed rules may be similar to the proportion of small registered broker-dealers compared to all registered broker-dealers. The

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418 5 U.S.C. 601(3).

419 See 13 CFR 121.201.

420 See supra Section IV.C.

421 Proposed Form MA, Item 10, would ask municipal advisors to indicate whether they meet the definition of "small business" or "small organization." As a result, if adopted, in the future the Commission would have information on which to base estimates of the number of small municipal advisors subject to its rules.

Commission has previously estimated that approximately 17% of all broker-dealers are "small" for the purposes of the RFA.[422] Thus, the Commission estimates that approximately 170 municipal advisory firms that would be required to register with the Commission by filing Form MA would be small entities subject to the proposed rules.[423]

The Commission estimates that approximately 21,800 natural persons must complete Form MA-I.[424] Of these Form MA-I applicants, only those that are sole proprietors and meet the annual receipts threshold would be considered small entities subject to the proposed rules.[425] Because all sole proprietors would be required to complete Form MA in addition to Form MA-I, the Commission believes that sole proprietors that would be small entities subject to the proposed rules, i.e., that are under the "small entities" annual receipts thresholds, are already counted among the estimate of 170 small entities calculated above. Thus, for the purposes of this IRFA, the Commission does not believe that it would be necessary to further estimate the number of small entities among Form MA-I applicants, because such an estimate would result in the double-counting of respondents. The Commission estimates that a total of 170 municipal advisors would be small entities subject to the proposed rules.

The Commission requests comment on its estimate of how many municipal advisors would

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422 See Securities Exchange Act Release No. 61908 (April 14, 2010), 75 FR 21456, 21483 (April 23, 2010). The Commission received no comments on its estimate of the percentage of all broker-dealers that are considered "small" for RFA purposes.

423 1,000 (estimated number of municipal advisors subject to the Rule) x .17 (estimated percentage of municipal advisors that are small entities) = 170 small entity municipal advisors.

424 See supra Section IV.C.

425 Individuals who are not sole proprietors, i.e., employees of municipal advisors, and must register on Form MA-I would not fall within the definitions of "small business" or "small organization," because only those businesses and organizations that are "independently owned" may qualify as small entities pursuant to the definitions contained in the RFA. See 5 U.S.C. 601(4) and 15 U.S.C. 632(a)(1).

be small entities for purposes of the IRFA. Specifically, the Commission seeks comment on whether there are alternative ways to estimate the number of municipal advisors that are small entities. Is the proportion of small registered municipal advisors to all registered municipal advisors for purposes of the IRFA similar to the proportion of small registered broker-dealers to all registered broker-dealers?

### D. Reporting, Record-keeping, and Other Compliance Requirements

The proposed rules and forms would impose certain reporting and record-keeping requirements on small municipal advisors. For example, under the proposed rules, municipal advisors would be required to complete the information disclosure requirements on Forms MA and MA-I, as applicable. Moreover, municipal advisory firms would be required to maintain books and records relating to their municipal advisory activities in which they engage.

As discussed above, under the proposed rules, municipal advisors are required by statute to register with the Commission. The Commission is proposing a permanent registration regime for municipal advisors that would require completion of Form MA and/or Form MA-I, as applicable.

The Commission estimates that the initial cost per applicant to complete Form MA and the initial self-certification would be approximately $1,110,[426] and the initial reporting cost per applicant to complete Form MA-I and the initial self-certification would be approximately $510.[427] The Commission also estimates that the ongoing annual cost per applicant to amend Form MA and

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426 6.5 hours (total estimated hourly burden under the proposed rules for one municipal advisor to complete a Form MA and complete initial self-certification) x $170 (combined hourly rate for a Compliance Manager and Compliance Clerk) = $1,110. See supra note 398 for the calculation of the combined hourly rate.

427 3.0 hours (total estimated hourly burden under the proposed rules for one municipal advisor to complete a Form MA-I and complete initial self-certification) x $170 (combined hourly rate for a Compliance Manager and Compliance Clerk) = $510. See supra note 399 for the calculation of the combined hourly rate.

complete self-certification would be approximately $510,[428] and the ongoing annual cost per applicant to amend Form MA-I and complete self-certification would be approximately $160.[429]

Municipal advisors would also incur costs when they need to withdraw their registration. The Commission estimates that the cost per registrant to complete Form MA-W would be approximately $85.[430] In addition, non-resident municipal advisors and non-resident general partners and managing agents of municipal advisors would incur costs to file Form MA-NR. The Commission estimates that the cost per filer to complete Form MA-NR would be approximately $255.[431] Non-resident municipal advisory firms would also incur costs to obtain an opinion of counsel. The Commission estimates that the cost per non-resident municipal advisory firm to obtain an opinion of counsel, including the cost to hire outside counsel, would be approximately $1,960.[432]

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428 2.5 hours (estimated time to prepare one annual amendment and complete annual self-certification for Form MA) x 1.0 (number of annual amendments per year) x $170 (combined hourly rate for a Compliance Manager and Compliance Clerk) + 0.5 hours (estimated time to prepare one interim updating amendment per year for Form MA) x 1.0 (average number of interim updating amendments per year) x $170 (combined hourly rate for a Compliance Manager and Compliance Clerk) = $510. See supra note 398 for the calculation of the combined hourly rate.

429 0.5 hours (estimated time to complete amended Form MA-I) x 1.7 (average number of amendments per year) x $170 (combined hourly rate for a Compliance Manager and Compliance Clerk) = $145; 0.1 hours (estimated time to complete annual self-certification on Form MA-I) x $170 (combined hourly rate for a Compliance Manager and Compliance Clerk) = $17; $145 + $17 = $162. See supra note 399 for the calculation of the combined hourly rate.

430 0.5 hours (estimated time to complete Form MA-W) x $170 (combined hourly rate for a Compliance Manager and Compliance Clerk) = $85. See supra note 398 for the calculation of the combined hourly rate.

431 1.5 hours (estimated time to complete Form MA-NR) x $170 (combined hourly rate for a Compliance Manager and Compliance Clerk) = $255. See supra note 398 for the calculation of the combined hourly rate.

432 3.0 hours (estimated time to obtain opinion of counsel) x $354 (hourly rate for an internal attorney) = $1,062. See supra note 411 regarding the hourly rate. $900 = estimated cost to hire outside counsel. See supra note 344 for an explanation of the outside counsel cost estimate. $1,062 +$900 = $1,962.

The Commission also believes that some municipal advisory firms would incur costs associated with hiring outside counsel to determine the need to file and to comply with the requirements of the proposed rules and forms. The Commission estimates that the total cost per municipal advisory firm to hire outside counsel would be approximately $400.[433]

Based on discussions with various industry participants and the Commission's prior experience with broker-dealers and investment advisers, the Commission estimates that the average cost per municipal advisory firm to comply with the proposed requirement to maintain annual books and records would be approximately $9,050.[434] The Commission requests comment on these estimates.

The Commission believes that these compliance burdens would not disproportionately affect small entities. The Commission notes that the proposed rules and forms strike the appropriate balance between minimizing the burden on small municipal advisors and allowing the Commission to meet its mandate under Section 15B of the Exchange Act to establish a permanent registration regime for municipal advisors. Moreover, the Commission believes that completing and submitting Forms MA and MA-I electronically should not be unduly burdensome or costly for municipal advisors, including small municipal advisors.

### E. Duplicative, Overlapping, or Conflicting Federal Rules

As discussed in Section I.B, a temporary registration procedure was developed as a transitional step toward the implementation of a permanent registration regime for municipal advisors. Rule 15Ba2-6T provides that, unless rescinded, a municipal advisor's temporary

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433 1 hour (estimated time spent by outside counsel to help municipal advisor comply with rule) x $400 (hourly rate for an attorney) = $400. See supra note 357 for the calculation of the hourly rate.

434 181 hours (estimated time spent by municipal advisors to ensure annual compliance with the books and records requirement) x $50 (hourly rate for a General Clerk) = $9,050. See supra note 415 for the calculation of the hourly rate.

registration by means of Form MA-T will expire 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 rescinded by the Commission or (2) December 31, 2011.[435]

The Commission is proposing rules and forms to establish a permanent municipal advisors registration regime. Under the permanent registration regime, all municipal advisors, including those who had previously registered on Form MA-T, would be required to register anew on Form MA and/or on Form MA-I. Thus, the Commission believes that current rules do not generally duplicate, overlap, or conflict with the proposed rules.

The Commission recognizes, however, that some of the information that respondents would collect for purposes of the proposed record-keeping rules and the relevant proposed registration forms would overlap with information previously collected for other registration regimes or record-keeping rules. As acknowledged above, the Commission recognizes that persons who have registered on Form MA-T under the temporary registration regime or that have completed a Form BD, ADV or U4, could require less time to research and complete the proposed permanent registration forms to the extent information contained in those other forms can be incorporated by reference or used to assist in completing information on Forms MA or MA-I. Persons who are Commission-registered investment advisers or broker-dealers may also require less time to comply with the proposed rule 15Ba1-7 books and records requirements, to the extent that the proposed books and records requirements overlap with those required to be kept and maintained in accordance with investment adviser and/or broker-dealer books and records requirements.

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435 See 17 CFR 240.15Ba2-6T(e).

### F. Significant Alternatives

Pursuant to Section 3(a) of the RFA,[436] the Commission must consider certain types of alternatives, including: (1) the establishment of differing compliance or recording requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance and reporting requirements under the proposed rules for small entities; (3) the use of performance rather than design standards; and (4) an exemption from coverage of the proposed rules, or any part of the proposed rules, for small entities.

The Commission believes that the proposed rules and forms strike the appropriate balance between minimizing the burden on small municipal advisors and allowing the Commission to meet its mandate under Section 15B of the Exchange Act to establish a registration regime for municipal advisors. The Commission does not believe that establishing different compliance or reporting standards is necessary because the information requested in Forms MA and MA-I would be accessible to municipal advisors regardless of whether the municipal advisor is a small entity. Moreover, the Commission believes that completing and submitting Forms MA and MA-I electronically should not be unduly burdensome or costly for municipal advisors, including small municipal advisors. In developing the proposed rules and forms, the Commission considered requiring additional information from municipal advisors and using different submission mechanisms. The Commission decided that the information in the proposed forms and the submission requirements would be simple, straightforward, and take into account the resources available to all municipal advisors, including small municipal advisors. The Commission believes that it is inconsistent with the goals of a uniform registration system to use performance standards rather than design standards. Further, the Commission believes that it would be inconsistent with

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436 5 U.S.C. 603(c).

the purposes of the Exchange Act to exempt small entities from compliance with the proposed rules.

### G. General Request for Comment

The Commission is soliciting comments regarding its analysis. The Commission requests comment on the number of small entities that would be subject to the proposed rules and forms and whether the proposed rules and forms would have any effects that have not been discussed. The Commission requests that commenters describe the nature of any effects on small entities subject to the rule and provide empirical data to support the nature and extent of such effects. The Commission also requests comment on the compliance burdens and how they would affect small entities. Does the proposed permanent registration regime create an undue burden on small entities? Are there any additional compliance burdens that would affect small entities in particular, compared to larger entities?

## VIII. STATUTORY BASIS AND TEXT OF PROPOSED AMENDMENTS

Pursuant to the Exchange Act, and particularly Sections 15B, 17, and 36 (15 U.S.C. 78o-4, 78q, and 78mm, respectively), the Commission is proposing to adopt §§ 240.15Ba1-1 through 240.15Ba1-7, Form MA, Form MA-I, Form MA-W, and Form MA-NR.

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

Reporting and record-keeping requirement, Municipal advisors, Registration requirements.

**Text of Proposed Rules and Forms**

For the reasons set out above, Title 17, Chapter II of the Code of Federal Regulations is proposed to be amended as follows:

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

1. The general authority citation for part 240 is amended by adding the following citation in numerical order to read as follows:

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77z–2, 77z–3, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78d, 78e, 78f, 78g, 78i, 78j, 78j–1, 78k, 78k–1, 78l, 78m, 78n, 78o, 78o–4, 78p, 78q, 78s, 78u–5, 78w, 78x, 78ll, 78mm, 80a–20, 80a–23, 80a–29, 80a–37, 80b–3, 80b–4, 80b–11, and 7201 et seq.; 18 U.S.C. 1350; and 12 U.S.C. 5221(e)(3), unless otherwise noted.

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Sections 240.15Ba1-1 through 240.15Ba1-7 are also issued under Pub. L. No. 111-203, § 975, 124 Stat. 1376, 1915-1923 (2010).

* * * * *

2. Section 240.15Ba1-1 through 240.15Ba1-7 are added to read as follows:

Sec.

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**§ 240.15Ba1-1 Definitions.**

As used in the rules and regulations prescribed by the Commission pursuant to Section 15B of the Securities Exchange Act of 1934 (15 U.S.C. 78o-4):

(a) Guaranteed investment contract has the same meaning as in Section 15B(e)(2) of the Securities Exchange Act of 1934 (15 U.S.C. 78o-4(e)(2)).

(b) The term investment strategies, as defined in Section 15B(e)(3) of the Securities Exchange Act of 1934 (15 U.S.C. 78o-4(e)(3)), includes plans, programs or pools of assets that invest funds held by or on behalf of a municipal entity.

(c) Managing agent means any person, including a trustee, who directs or manages, or who participates in directing or managing, the affairs of any unincorporated organization or association other than a partnership.

(d)(1) Municipal Advisor has the same meaning as in Section 15B(e)(4) of the Securities Exchange Act of 1934 (15 U.S.C. 78o-4(e)(4)).

(2) The term Municipal Advisor shall not include:

(i) A broker, dealer, or municipal securities dealer serving as an underwriter (as that term is defined in Section 2(a)(11) of the Securities Act of 1933 (15 U.S.C. 77b(a)(11))) on behalf of a municipal entity or obligated person, unless the broker, dealer or municipal securities dealer engages in municipal advisory activities while acting in a capacity other than as an underwriter on behalf of a municipal entity or obligated person.

(ii) An investment adviser registered under the Investment Advisers Act of 1940 (15 U.S.C. 80b-1 et seq.) or a person associated with such registered investment adviser, unless the registered investment adviser or person associated with the investment adviser engages in municipal advisory activities other than providing investment advice that would subject such adviser or person associated with such adviser to the Investment Advisers Act of 1940.

(iii) Any commodity trading advisor registered under the Commodity Exchange Act or persons associated with a commodity trading advisor, unless the registered commodity trading

advisor or persons associated with the registered commodity trading advisor engages in municipal advisory activities other than advice related to swaps (as defined in Section 1a(47) of the Commodity Exchange Act (7 U.S.C. 1a(47)) and Section 3(a)(69) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(69)), including any rules and regulations thereunder).

(iv) Any attorney, unless the attorney engages in municipal advisory activities other than the offer of legal advice or the provision of services that are of a traditional legal nature to a client of the attorney that is a municipal entity or obligated person.

(v) Any engineer, unless the engineer engages in municipal advisory activities other than providing engineering advice.

(vi) Any accountant, unless the accountant engages in municipal advisory activities other than preparing financial statements, auditing financial statements, or issuing letters for underwriters for, or on behalf of, a municipal entity or obligated person.

(e) Municipal advisory activities means providing advice to or on behalf of a municipal entity (as defined in Section 15B(e)(8) of the Securities Exchange Act of 1934 (15 U.S.C. 78o-4(e)(8)) or obligated person (as defined in Section 15B(e)(10) of the Securities Exchange Act of 1934 (15 U.S.C. 78o-4(e)(10))) with respect to municipal financial products or the issuance of municipal securities, including advice with respect to the structure, timing, terms, and other similar matters concerning such financial products or issues; or solicitation of a municipal entity or obligated person.

(f) Municipal derivatives means any swap (as defined in Section 1a(47) of the Commodity Exchange Act (7 U.S.C. 1a(47)) and Section 3(a)(69) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(69)), including any rules and regulations thereunder) or security-based swap (as defined in Section 3(a)(68) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(68)),

including any rules and regulations thereunder) to which a municipal entity is a counterparty, or to which an obligated person, acting in its capacity as an obligated person, is a counterparty.

(g) Municipal financial product has the same meaning as in Section 15B(e)(5) of the Securities Exchange Act of 1934 (15 U.S.C. 78o-4(e)(5)).

(h) Non-resident means:

(1) In the case of an individual, one who resides in or has his principal office and place of business in any place not in the United States;

(2) In the case of a corporation, one incorporated in or having its principal office and place of business in any place not in the United States; and

(3) In the case of a partnership or other unincorporated organization or association, one having its principal office and place of business in any place not in the United States.

(i) The term obligated person, as defined in Section 15B(e)(10) of the Securities Exchange Act of 1934 (15 U.S.C. 78o-4(e)(10)), shall not include providers of municipal bond insurance, letters of credit, or other liquidity facilities.

(j) Principal office and place of business means the executive office of the municipal advisor from which the officers, partners, or managers of the municipal advisor direct, control, and coordinate the activities of the municipal advisor.

**§ 240.15Ba1-2 Application for municipal advisor registration.**

(a) Form MA. A person, other than a natural person, including a sole proprietor, applying for registration with the Commission as a municipal advisor pursuant to Section 15B of the Securities Exchange Act of 1934 (15 U.S.C. 78o-4) must complete Form MA (17 CFR 249.1300) in accordance with the instructions in such Form and file such Form electronically with the Commission.

(b) Form MA-I. A natural person (including a sole proprietor) applying for registration with the Commission as a municipal advisor pursuant to Section 15B of the Securities Exchange Act of 1934 (15 U.S.C. 78o-4) must complete Form MA-I (17 CFR 249.1310) in accordance with the instructions in the Form and file such Form electronically with the Commission.

(c) When filed. Each Form MA (17 CFR 249.1300) and Form MA-I (17 CFR 249.1310) shall be considered filed with the Commission upon acceptance by the [applicable electronic system]. Filings required to be made on a day that the [applicable electronic system] is closed shall be considered timely filed with the Commission if filed electronically no later than the following business day.

(d) Form MA and Form MA-I are reports. Each Form MA (17 CFR 249.1300) and Form MA-I (17 CFR 249.1310) required to be filed under this section shall constitute a "report" within the meaning of Sections 15B(c), 17(a), 18(a), 32(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78o-4(c), 78q(a), 78r(a), 78ff(a)) and other applicable provisions of the Exchange Act.

**§ 240.15Ba1-3 Withdrawal from municipal advisor registration.**

(a) Form MA-W. Notice of withdrawal from registration as a municipal advisor shall be filed on Form MA-W (17 CFR 249.1320) in accordance with the instructions to the Form.

(b) Electronic filing. Any notice of withdrawal on Form MA-W (17 CFR 249.1320) must be filed electronically.

(c) Effective date. A notice of withdrawal from registration shall become effective for all matters on the 60th day after the filing thereof, within such longer period of time as to which such municipal advisor consents or which the Commission by order may determine as necessary or appropriate in the public interest or for the protection of investors, or within such shorter period of time as the Commission may determine. If a notice of withdrawal from registration is filed at any

time subsequent to the date of the issuance of a Commission order instituting proceedings pursuant to Section 15B(c) of the Securities Exchange Act of 1934 (15 U.S.C. 78o-4(c)) to censure, place limitations on the activities, functions or operations of, or suspend or revoke the registration of, such municipal advisor, or if prior to the effective date of the notice of withdrawal pursuant to this paragraph (c), the Commission institutes such a proceeding or a proceeding to impose terms or conditions upon such withdrawal, the notice of withdrawal shall not become effective pursuant to this paragraph (c) except at such time and upon such terms and conditions as the Commission deems necessary or appropriate in the public interest or for the protection of investors.

(d) Form MA-W is a report. Each Form MA-W (17 CFR 249.1320) required to be filed under this section shall constitute a "report" within the meaning of Sections 15B(c), 17(a), 18(a), 32(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78o-4(c), 78q(a), 78r(a), 78ff(a)) and other applicable provisions of the Exchange Act.

**§ 240.15Ba1-4 Amendments to application for registration and self-certification.**

(a) When amendment is required – Form MA. A registered municipal advisor shall promptly amend the information contained in its Form MA (17 CFR 249.1300):

(1) At least annually, within 90 days of the end of a municipal advisor's fiscal year, or of the end of the calendar year for municipal advisors that are sole proprietors; and

(2) More frequently, if required by the General Instructions to Form MA (17 CFR 249.1300), as applicable.

(b) When amendment is required – Form MA-I. A registered municipal advisor shall promptly amend the information contained in its Form MA-I (17 CFR 249.1310) by filing an amended Form MA-I whenever the information contained in the Form MA-I becomes inaccurate for any reason.

(c) Electronic filing of amendments. A registered municipal advisor shall file all amendments to Form MA (17 CFR 249.1300) and Form MA-I (17 CFR 249.1310) electronically.

(d) Amendments to Form MA and Form MA-I are reports. Each amendment required to be filed under this section shall constitute a "report" within the meaning of Sections 15B(c), 17(a), 18(a), 32(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78o-4(c), 78q(a), 78r(a), 78ff(a)) and other applicable provisions of the Exchange Act.

(e) Self-certification. A registered municipal advisor shall complete the self-certification contained in Form MA (17 CFR 249.1300) or Form MA-I (17 CFR 249.1310), as applicable:

(1) At the time the municipal advisor initially files its application for registration as a municipal advisor on Form MA (17 CFR 249.1300) or Form MA-I (17 CFR 249.1310), as applicable; and

(2) In the case of a municipal advisor registered on Form MA (17 CFR 249.1300), annually, within 90 days of the end of a municipal advisor's fiscal year, or of the end of the calendar year for municipal advisors that are sole proprietors; and in the case of a municipal advisor registered on Form MA-I (17 CFR 249.1310), annually within 90 days of the end of the calendar year.

**§ 240.15Ba1-5 Consent to service of process to be furnished by non-resident municipal advisors, general partners and managing agents; legal opinion to be furnished by non-resident municipal advisors.**

(a) Each non-resident municipal advisor, and each non-resident general partner or managing agent of a municipal advisor, applying for registration pursuant to Section 15B(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78o-4(a)) shall, at the time of filing of the municipal advisor's application on Form MA (17 CFR 249.1300) or MA-I (17 CFR 249.1310), furnish to the

Commission a written irrevocable consent and power of attorney on Form MA-NR (17 CFR 249.1330) to appoint an agent in the United States, other than a Commission member, official, or employee, upon whom may be served any process, pleadings, or other papers in any action brought against the non-resident municipal advisor, or non-resident general partner or non-resident managing agent of a municipal advisor, to enforce this Title.

(b) Any change to the name or address of each non-resident municipal advisor's, general partner's or managing agent's agent for service of process shall be communicated promptly to the Commission through amendment of the Form MA-NR (17 CFR 249.1330).

(c) Each non-resident municipal advisor, general partner and managing agent must promptly appoint a successor agent for service of process and file an amended Form MA-NR (17 CFR 249.1330) if the non-resident municipal advisor, general partner or managing agent discharges its identified agent for service of process or if its agent for service of process is unwilling or unable to accept service on behalf of the non-resident municipal advisor, general partner or managing agent.

(d) Each non-resident municipal advisor, other than a natural person, including non-resident sole proprietors, applying for registration pursuant to this section shall provide an opinion of counsel on Form MA (17 CFR 249.1300) that the municipal advisor can, as a matter of law, provide the Commission with access to the books and records of such municipal advisor as required by law and that the municipal advisor can, as a matter of law, submit to onsite inspection and examination by the Commission.

**§ 240.15Ba1-6 Registration of successor to municipal advisor.**

(a) In the event that a municipal advisor succeeds to and continues the business of a municipal advisor registered pursuant to Section 15B(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78o-4(a)), the registration of the predecessor shall be deemed to remain effective as the

registration of the successor if the successor, within 30 days after such succession, files an application for registration on Form MA (17 CFR 249.1300), and the predecessor files a notice of withdrawal from registration on Form MA-W (17 CFR 249.1320); provided, however, that the registration of the predecessor municipal advisor will cease to be effective as the registration of the successor municipal advisor 45 days after the application for registration on Form MA is filed by such successor.

(b) Notwithstanding paragraph (a) of this section, if a municipal advisor succeeds to and continues the business of a registered predecessor municipal advisor, and the succession is based solely on a change in the predecessor's date or state of incorporation, form of organization, or composition of a partnership, the successor may, within 30 days after the succession, amend the registration of the predecessor municipal advisor on Form MA (17 CFR 249.1300) to reflect these changes. This amendment shall be deemed an application for registration filed by the predecessor and adopted by the successor.

**§ 240.15Ba1-7 Books and records to be maintained by municipal advisors.**

(a) Every person, other than a natural person, including sole proprietors, registered or required to be registered under Section 15B of the Securities Exchange Act of 1934 (15 U.S.C. 78o-4) shall make and keep true, accurate, and current the following books and records relating to its municipal advisory activities:

(1) Originals or copies of all written communications received, and originals or copies of all written communications sent, by such municipal advisor (including inter-office memoranda and communications) relating to municipal advisory activities, regardless of the format of such communications;

(2) All check books, bank statements, cancelled checks and cash reconciliations of the

municipal advisor;

(3) A copy of each version of the municipal advisor's policies and procedures, if any, that are in effect or at any time within the last five years were in effect;

(4) A copy of any document created by the municipal advisor that was material to making a recommendation to a municipal entity or obligated person or that memorializes the basis for that recommendation;

(5) All written agreements (or copies thereof) entered into by the municipal advisor with any municipal entity, employee of a municipal entity, or an obligated person or otherwise relating to the business of such municipal advisor as such;

(6) A record of the names of persons who are currently, or within the past five years were, associated with the municipal advisor; and

(7) Books and records containing a list or other record of:

(i) The names, titles, and business and residence addresses of all persons associated with the municipal advisor;

(ii) All municipal entities or obligated persons with which the municipal advisor is engaging or has engaged in municipal advisory activities in the past five years;

(iii) The name and business address of each person to whom the municipal advisor provides or agrees to provide, directly or indirectly, payment to solicit a municipal entity, an employee of a municipal entity, or an obligated person on its behalf; and

(iv) The name and business address of each person that provides or agrees to provide, directly or indirectly, payment to the municipal advisor to solicit a municipal entity, an employee of a municipal entity or an obligated person on its behalf.

(8) A record of the initial or annual review, as applicable, conducted by the municipal

advisor of such municipal advisor's business in connection with its self-certification on Form MA (17 CFR 249.1300).

(b)(1) All books and records required to be made under this section shall be maintained and preserved for a period of not less than five years, the first two years in an easily accessible place.

(2) Partnership articles and any amendments thereto, articles of incorporation, charters, minute books, and stock certificate books of the municipal advisor and of any predecessor shall be maintained in the principal office of the municipal advisor and preserved until at least three years after termination of the business or withdrawal from registration as a municipal advisor.

(c) A municipal advisor subject to paragraph (a) of this section, before ceasing to conduct or discontinuing business as a municipal advisor, shall arrange for and be responsible for the preservation of the books and records required to be maintained and preserved under this section for the remainder of the period specified in this section, and shall notify the Commission in writing, at its principal office, Washington, DC, of the exact address where such books and records will be maintained during such period.

(d) Electronic storage permitted.

(1) General. The records required to be maintained and preserved pursuant to this part may be maintained and preserved for the required time on:

(i) Electronic storage media, including any digital storage medium or system that meets the terms of this section; or

(ii) Paper documents.

(2) General requirements. The municipal advisor must:

(i) Arrange and index the records in a way that permits easy location, access, and retrieval of any particular record;

(ii) Provide promptly any of the following that the Commission (by its examiners or other representatives) may request:

(A) A legible, true, and complete copy of the record in the medium and format in which it is stored;

(B) A legible, true, and complete printout of the record; and

(C) Means to access, view, and print the records; and

(iii) Separately store, for the time required for preservation of the record, a duplicate copy of the record on any medium allowed by this section.

(3) Special requirements for electronic storage media. In the case of records on electronic storage media, the municipal advisor must establish and maintain procedures:

(i) to maintain and preserve the records, so as to reasonably safeguard them from loss, alteration, or destruction;

(ii) to limit access to the records to properly authorized personnel and the Commission (including its examiners and other representatives); and

(iii) to reasonably ensure that any reproduction of a non-electronic record on electronic storage media is complete, true, and legible when retrieved.

(e)(1) Any book or other record made, kept, maintained, and preserved in compliance with §§ 240.17a–3 and 240.17a–4 of this chapter, rules of the Municipal Securities Rulemaking Board, or § 275.204-2 under the Investment Advisers Act of 1940 (15 U.S.C. 80b-1), which is substantially the same as a book or other record required to be made, kept, maintained and preserved under this section, shall satisfy the requirements of this section.

(2) A record made and kept pursuant to any provision of paragraph (a) of this section that contains all the information required under any other provision of paragraph (a) of this section,

need not be maintained in duplicate in order to meet the requirements of the other provisions of paragraph (a) of this section.

(f)(1) Except as provided in paragraph (f)(3) of this section, each non-resident municipal advisor, other than a natural person, including sole proprietors, registered or applying for registration pursuant to Section 15B of the Securities Exchange Act of 1934 (15 U.S.C. 78o-4) shall keep, maintain, and preserve, at a place within the United States designated in a notice from such municipal advisor as provided in paragraph (f)(2) of this section, true, correct, complete, and current copies of books and records which such municipal advisor is required to make, keep current, maintain or preserve pursuant to any provisions of any rule or regulation of the Commission adopted under the Securities Exchange Act of 1934.

(2) Except as provided in paragraph (f)(3) of this section, each non-resident municipal advisor subject to paragraph (f)(1) of this section shall furnish to the Commission a written notice specifying the address of the place within the United States where the copies of the books and records required to be kept and preserved by such municipal advisor pursuant to paragraph (f)(1) of this section are located. Each non-resident municipal advisor registered or applying for registration when this paragraph becomes effective shall file such notice within 30 days after this paragraph becomes effective. Each non-resident municipal advisor that files an application for registration after this paragraph becomes effective shall file such notice with such application for registration.

(3) Notwithstanding the provisions of paragraphs (f)(1) and (2) of this section, a non-resident municipal advisor need not keep or preserve within the United States copies of the books and records referred to in paragraphs (f)(1) and (2) of this section, if:

(i) Such non-resident municipal advisor files with the Commission, at the time or within the period provided by paragraph (f)(2) of this section, a written undertaking, in a form acceptable

to the Commission and signed by a duly authorized person, to furnish to the Commission, upon demand, at the Commission's principal office in Washington, DC, or at any Regional Office of the Commission designated in such demand, true, correct, complete, and current copies of any or all of the books and records which such municipal advisor is required to make, keep current, maintain, or preserve pursuant to any provision of any rule or regulation of the Commission adopted under the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.), or any part of such books and records that may be specified in such demand. Such undertaking shall be in substantially the following form:

The undersigned hereby undertakes to furnish at its own expense to the Securities and Exchange Commission at the Commission's principal office in Washington, DC or at any Regional Office of the Commission specified in a demand for copies of books and records made by or on behalf of the Commission, true, correct, complete, and current copies of any or all, or any part, of the books and records that the undersigned is required to make, keep current, or preserve pursuant to any provision of any rule or regulation of the Securities and Exchange Commission under the Securities Exchange Act of 1934. This undertaking shall be suspended during any period when the undersigned is making, keeping current, and preserving copies of all of said books and records at a place within the United States in compliance with 17 CFR 240.15Ba1-7(f)(1). This undertaking shall be binding upon the undersigned and the heirs, successors and assigns of the undersigned, and the written irrevocable consents and powers of attorney of the undersigned, its general partners, and managing agents filed with the Securities and Exchange Commission shall extend to and cover any action to enforce the same.

and

(ii) Such non-resident municipal advisor furnishes to the Commission, at such municipal advisor's own expense 14 days after written demand therefor forwarded to such municipal advisor

by registered mail at such municipal advisor's last address of record filed with the Commission and signed by the Secretary of the Commission or such person as the Commission may authorize to act in its behalf, true, correct, complete, and current copies of any or all books and records which such municipal advisor is required to make, keep current, or preserve pursuant to any provision of any rule or regulation of the Commission adopted under the Securities and Exchange Act of 1934, or any part of such books and records that may be specified in said written demand. Such copies shall be furnished to the Commission at the Commission's principal office in Washington, DC, or at any Regional Office of the Commission which may be specified in said written demand.

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

3. The general authority citation for part 249 is amended by adding the following citation in numerical order to read as follows:

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

* * * * *

Sections 249.1300, 1310, 1320 and 1330 are also issued under Pub. L. No. 111-203, § 975, 124 Stat. 1376, 1915-1923 (2010).

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4. Subpart N is amended by removing § 249.1300T and adding §§ 249.1300, 249.1310, 249.1320, and 249.1330 to read as follows:

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

Sec.

**§ 249.1300 Form MA, for registration as a municipal advisor, and for amendments to registration**

The form shall be used for registration as municipal advisors by persons other than natural persons, and by sole proprietors, and for amendments to registrations pursuant to Section 15B of the Securities Exchange Act of 1934 (15 U.S.C. 78o-4).

**§ 249.1310 Form MA-I, for registration as a municipal advisor, and for amendments to registration**

The form shall be used for registration as municipal advisors by natural persons, and for amendments to registrations, pursuant to Section 15B of the Securities Exchange Act of 1934 (15 U.S.C. 78o-4).

**§ 249.1320 Form MA-W, for withdrawal from registration as a municipal advisor**

The form shall be used for filing a notice of withdrawal from registration as a municipal advisor pursuant to Section 15B of the Securities Exchange Act of 1934 (15 U.S.C. 78o-4).

**§ 249.1330 Form MA-NR, for appointment of agent for service of process by non-resident municipal advisor, and non-resident general partner and non-resident managing agent of a municipal advisor**

The form shall be used for appointment of agent for service of process by a non-resident general partner and non-resident managing agent of a municipal advisor pursuant to Section 15B of the Securities Exchange Act of 1934 (15 U.S.C. 78o-4).

[Note: The following Forms will not appear in the Code of Federal Regulations.]

By the Commission.

Elizabeth M. Murphy
Secretary

Date: December 20, 2010