

FACT SHEET

Municipal Advisor Registration

**SEC Open Meeting
Sept. 18, 2013**

The Securities and Exchange Commission today will consider whether to adopt a rule that would establish a permanent registration regime for municipal advisors. The Dodd-Frank Wall Street Reform and Consumer Protection Act directs the Commission to amend its rules to require this regime.

Background

Municipal Securities and Municipal Advisors

Every year, states and local governments issue municipal securities – most notably municipal bonds – to raise funds for various public projects such as building schools, roads, and hospitals. Those who purchase municipal bonds usually receive interest payments on the principal amount they invest and a return of that principal amount after a period of time, and the municipalities receive needed capital.

Municipalities that issue these securities frequently rely on advisors, who help to decide among other things how and when to issue the securities and how to invest the proceeds from the sales. In turn, these advisors receive fees for the services they provide.

Unlike other market intermediaries, municipal advisors were not required to register with the SEC before the Dodd-Frank Act and were not subject to a comprehensive regulatory regime. Therefore, municipal advisors did not have to adhere to standards for training, qualification, or conduct, including the treatment of conflicts of interest.

In the years leading up to the financial crisis, municipalities across the country invested in or purchased complex derivative products that resulted in substantial financial losses. In deciding whether to engage in these transactions, many of the municipalities relied on advice from intermediaries that were not regulated as municipal advisors. Municipalities were often unaware of any conflicts of interest the intermediaries may have had.

SEC Proposal

In July 2010, Congress passed the Dodd-Frank Act, which included a provision (Section 975) to protect municipalities, taxpayers, and investors from conflicted advice and unregulated advisors. In particular, the Dodd-Frank Act requires the SEC to adopt a rule requiring these municipal advisors to register with the SEC and comply with a set of regulations that would be issued by the Municipal Securities Rulemaking Board (MSRB).

Soon after the Dodd-Frank Act was passed, the SEC issued a temporary rule requiring municipal advisors to register with the SEC by October 2010. Since the temporary registration regime went into effect, more than 1,100 municipal advisors have registered with the SEC.

In December 2010, the SEC proposed a permanent rule governing the registration process. By requiring municipal advisors to register on a permanent basis, the SEC will obtain substantial information that will enhance its oversight of municipal advisors and their activities in the municipal securities market. And because the information contained in the registration forms will be publicly available, municipal entities will be more informed when choosing a municipal advisor.

The proposal defined municipal advisor broadly and would have required among other things municipal advisor registration of appointed board members of municipalities and people providing investment advice on all public funds. The SEC received more than 1,000 comment letters on the proposal, most of which raised concerns about the broad reach of the proposal.

Many commenters:

- Expressed concern that the proposed rule treated appointed board members of municipal entities as municipal advisors.
- Questioned why the definition of “investment strategies” included all public funds of a municipal entity.
- Raised issues regarding the potential impact the rule could have on certain banking activities.

Final Rule

The Commission will consider adopting a final rule requiring municipal advisors to register with the SEC. In particular, the rule would clarify who is and isn't a “municipal advisor” and would offer guidance on when a person is providing “advice” for purposes of the municipal advisor definition.

In particular, the final rule would exempt employees and appointed officials of municipal entities from registration and narrow the application of the term “investment strategies” to apply only to the investment of proceeds from the sale of municipal securities rather than to all public funds.

Exemptions provided under the rule would be based on the activities of the advisor rather than the type of market participant. The staff believes this approach would avoid giving certain market participants an inappropriate competitive advantage.

Additionally, instead of the proposed approach that would have required individuals associated with registered municipal advisory firms to register separately, the final rule would require these firms to furnish information about these individuals. The final rule also would allow the SEC to censure these individuals if necessary.

Defined Terms

The rule would define the following terms:

- **Advice.** A person would be providing “advice” to a municipal entity or an “obligated person” based on “all of the relevant facts and circumstances,” including whether the advice:
 - Involves a “recommendation” to a municipal entity.
 - Is particularized to the specific needs of a municipal entity.
 - Relates to municipal financial products or the issuance of municipal securities.

Advice, however, would not include giving out certain general information.

An “obligated person” essentially means an entity such as a non-profit university or non-profit hospital that borrows the proceeds from a municipal securities offering and is obligated by contract or other arrangement to repay all or some portion of the amount borrowed.

- **Investment Strategies.** A person providing advice to a municipal entity or an “obligated person” with respect to “investment strategies” would only have to register if such advice related to:
 - The investment of proceeds of municipal securities.
 - The investment of municipal escrow funds.
 - Municipal derivatives.

Exemptions From the Municipal Advisor Definition

To avoid confusion, the final rule would clarify exemptions from the municipal advisor definition for certain persons engaging in specified activities.

The following people conducting the specified activities would not be required to register as a municipal advisor:

- **Public Officials and Employees.** Public officials would not have to register to the extent that they are acting within the scope of their official capacity. This exemption addresses an unintended consequence of the original proposal that generated significant public comment and created the impression that public officials and municipal employees would be covered if they provide “internal” advice.

This exemption would cover people serving as members of a governing body, an advisory board, a committee, or acting in a similar official capacity as an official of a municipal entity or an “obligated person.”

For instance, it would cover:

- Members of a city council, whether elected or appointed, who act in their official capacity.

- Members of a board of trustees of a public or private non-profit university acting in their official capacity, where the university is an obligated person by virtue of borrowing proceeds of municipal bonds issued by a state governmental educational authority.

Similarly, this exemption would cover employees of a municipal entity or an obligated person to the extent that they act within the scope of their employment.

- **Underwriters.** Brokers, dealers, and municipal securities dealers serving as underwriters would not have to register if their advisory activities involve the structure, timing, and terms of a particular issue of municipal securities.
 - This exemption would begin when the municipal issuer engages the underwriter on a particular transaction and would continue until the end of the underwriting period for that transaction.
 - The exemption would not apply to advice on investments of proceeds of municipal securities (or related municipal escrow investments in refinancings) or municipal derivatives. That is because this type of advice is outside the scope of underwriting the issuance of municipal securities and involves potential conflicts of interest.
- **Registered Investment Advisers.** Registered investment advisers and associated persons would not have to register if they provide investment advice regarding the investment of the proceeds of municipal securities or municipal escrow investments. This exemption helps ensure the rule does not create duplicative regulation of investment advisers.
 - This exemption would not apply to advice on the structure, timing, and terms of issues of municipal securities or municipal derivatives. That is because advice in these areas is outside the focus of investment adviser regulation.
- **Registered Commodity Trading Advisor.** Registered commodity trading advisors under CFTC rules and their associated persons would not have to register if the advice they provide relates to swaps. This exemption helps ensure the rule does not create duplicative regulation with existing CFTC regulation of swap advisers.
- **Attorneys.** Attorneys would not have to register if they are providing legal advice or traditional legal services with respect to the issuance of municipal securities or municipal financial products.
 - This exemption would not apply to advice that is primarily financial in nature or to an attorney representing himself or herself as a “financial advisor” or “financial expert” on municipal advisory activities.

- **Engineers.** Engineers would not have to register if they provide engineering advice such as feasibility studies and cash flow analysis and similar activities related to engineering aspects of a project.
 - This exemption would not apply to activities in which an engineer provides advice regarding municipal financial products or the issuance of municipal securities.
- **Banks.** Banks would not have to register to the extent they provide advice on certain identified banking products and services (such as deposit accounts, extensions of credit, or bond indenture trustee services).
 - This tailored exemption would not apply to banks that:
 - Engage in other municipal advisory activities such as providing advice on municipal derivatives or the issuance of municipal securities.
 - Provide advice on municipal derivatives, in part because municipal derivatives were a source of significant losses by municipalities in the financial crisis.
- **Accountants.** Accountants would not have to register if they are providing accounting services that include audit or other attest services, preparation of financial statements, or issuance of letters for underwriters.
- **Independent Registered Municipal Advisor.** People who provide advice in circumstances in which a municipal entity has an independent registered municipal advisor with respect to the same aspects of a municipal financial product or issuance of municipal securities would not have to register, provided that certain requirements are met and certain disclosures are made.
- **Swap Dealers.** Registered swap dealers under CFTC rules would not have to register as municipal advisors if they provide advice with respect to swaps in circumstances in which a municipal entity is represented by an independent advisor. This exemption helps ensure that the rule does not create duplicative regulation with existing CFTC regulation of swap dealers and recognizes a similar exemption under CFTC rules.
 - This exemption would not apply to swap dealers that engage in other municipal advisory activities such as providing advice on the issuance of municipal securities or the investment of the proceeds of municipal securities or municipal escrow investments.

Registration Forms

The final rule would require municipal advisory firms to:

- File all forms through the SEC's public online filing system (EDGAR).
- File Form MA to register as a municipal advisor.

- File Form MA-I for each individual associated with the firm who engages in municipal advisory activities.

If adopted, the rule would require municipal advisors to register on a staggered basis beginning July 1, 2014. The expiration date of the temporary rules would be extended in order to allow municipal advisors to continue to remain temporarily registered during the staggered compliance period.

What's Next?

If approved, the rule would become effective 60 days after publication in the Federal Register.